

Freedom of Information Policy

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1. Introduction

1.1. Rationale

1.1.1 The Freedom of Information Act 2000 is part of the Government's commitment to greater openness in the public sector, a commitment supported by South Devon Healthcare Foundation NHS Trust, referred to hereafter as 'the Trust'. The Freedom of Information Act 2000, referred to hereafter as the Act, will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensuring that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory *Code of Practice on Openness in the NHS*.

1.1.2 The main features of the Act are:

- a general right of access from 1 January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions;
- in cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
 - (i) inform the applicant whether they hold the information requested, and
 - (ii) communicate the information to him or her,unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure;
- a duty on every public authority to adopt and maintain a Guide to Information (formerly known as a Publication Scheme), specifically applicable to the NHS from 31 October 2003;
- a new office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
- a duty on the Lord Chancellor to implement Codes of Practice for guidance on specific issues.

1.1.3 The Freedom of Information Act Policy is a statement of what the Trust intends to do to ensure compliance with the Act. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures.

1.2. Scope

1.2.1 The Freedom of Information Act Policy applies to all Trust employees and to Non-Executive Directors.

1.2.2 The Policy provides a framework within which the Trust will ensure compliance with the requirements of the Act.

1.2.3 The Policy underpins any operational procedures and activities connected with the implementation of the Act.

1.3. Principles

1.3.1 The Policy supports the principle that openness and not secrecy should be the norm in public life. The Trust wants to create a climate of openness and

dialogue with all stakeholders and improved access to information about the Trust will facilitate the development of such an environment.

- 1.3.2 The Trust believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 1998 and is dealt with in other Trust policies.
- 1.3.3 The Trust believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.
- 1.3.4 The Trust believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this knowledge.
- 1.3.5 The Trust believes that common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other Trust policies and procedures.

2.0 Freedom of Information Act Policy

2.1 Policy Statement

- 2.1.1 The Trust will use all appropriate and necessary means to ensure that it complies with the Act and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act.

2.2. Guide to Information

- 2.2.1 The Trust has adopted a Guide to Information developed by the NHS Freedom of Information Project Board and Team and approved by the Information Commissioner in March 2003 followed by a revised Guide effective from 1/1/2009. This is permissible under section 20 of the Act and ensures compliance with section 19 of the Act.
- 2.2.2 The Trust's Guide to Information is a current document, detailing the information that the Trust publishes. It details the format in which the information is available and whether or not a charge will be made for the provision of that information. The Guide to Information is available in hard copy on request and through our website www.sdhc.nhs.uk. It will be subject to regular review in terms of content both internally and by the Information Commissioner's Office.
- 2.3.3 Applications for information listed in the Guide to Information may be received verbally or in writing. The Trust will establish systems and procedures to process applications arising from the Guide to Information. *Appendix D*

2.3 General Rights of Access

2.3.1 Section 1 of the Act gives a general right of access to recorded information held, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information (see 2.3.2) is entitled:

- (a) to be informed in writing whether TSDFT holds the information of the description specified in the request, and
- (b) if the Trust holds the information, to have that information communicated to them.

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to the certain conditions and exemptions. The Trust will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

2.3.2 In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describes the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

2.3.3 The Trust will establish systems and procedures to process applications arising from the introduction of general rights of access. *Appendix C*

2.4. Conditions and Exemptions

2.4.1 The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where the Trust:

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement.

The Trust will make reasonable efforts to contact the applicant for additional information relating to their request should further information be required.

2.4.2 Under section 2 of the Act the Trust does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information. The Part II exemptions are listed in Appendix A of this Policy. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

2.4.3 The duty to confirm or deny does not arise if a fees notice (see 2.5.0) has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

2.4.4 The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit established in national Fees Regulations. TSDFT will work

with applicants to keep compliance costs to a minimum but reserves the right to either

(a) refuse or

(b) charge for the communication of information that exceeds this limit.

- 2.4.5 The Trust is not obliged to comply with a request for information if the request is vexatious. Where the Trust has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

2.5. Charges and Fees

- 2.5.1 The Trust will generally not charge for information that it has chosen to publish in its Guide to Information. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. The Guide to Information and the procedures that support this Policy will provide further guidance on charging.

- 2.5.2 The Trust will follow, the national Fees Regulations for general rights of access under the Act. The “appropriate limit” for the NHS has been set at £450. Section 9 of the Act applies to requests where the appropriate limit has not been met and we are obliged to provide information in compliance with Section 1 of the Act. Section 13 applies if the appropriate limit is exceeded. We are not otherwise obliged to comply with the request but would be able to answer and would like to do so in return for a fee.

- 2.5.3 In all cases where the Trust chooses to charge for information published through the Guide to Information or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

2.6. Time limits for compliance with requests

- 2.6.1 The Trust will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

- 2.6.2 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with section 9(2), the number of working days in the period from when the applicant was sent the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day timeframe.

2.6.3 If the Trust chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision (see 2.8.0 below).

2.7 Means by which information will be conveyed

2.7.1 TSDFT will endeavour to provide the information in the format preferred by the applicant.

- (a) a copy of the information in the format acceptable to the applicant eg email, hard copy, CD, video, photograph
- (b) to inspect the record containing the information
- (c) a summary of the information

2.7.2 In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If the Trust determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Trust will notify the applicant of the reasons and will provide the information by such means as which it deems to be reasonable in the circumstances.

2.7.3 The Trust will establish systems and procedures to monitor the provision of information arising from requests under the Act.

2.8 Refusal of requests

2.8.1 As indicated above, the duty to confirm or deny does not arise if the Trust:

- (a) using section 2 of the Act applies an exemption under Part II of the Act, as illustrated in Appendix A,
- (b) has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant,
- (c) under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit,
- (d) can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

2.8.2 If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust under the Act and of the right conferred by section 50 of the Act (see 2.10.0).

2.8.3 If the Trust is to any extent relying on (a) a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or (b) on a claim that information is exempt, a notice will be issued within twenty working days under section 17 of the Act. The notice will:

- (a) state that fact,
- (b) specify the exemption in question, and

- (c) state (if that would not otherwise be apparent) why the exemption applies.

2.8.4 Where the Trust is relying on a claim:

- (a) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) of the Act as an absolute exemption is relevant to the request, or
- (b) that the information is exempt only by virtue of a qualified exemption, a provision not specified in section 2(3),

and at the time when the notice under 2.8.3 above is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 of the Act – the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Trust expects that a decision will have been reached.

2.8.5 As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the Act, such estimates as described in 2.8.4 should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Trust will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

2.8.6 If applying a qualified exemption under subsection (1)(b) or (2)(b) of section 2 of the Act, the Trust will, either in the notice issued under 2.8.3 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information, or
- (b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement should not involve the disclosure of information which would itself be exempt information.

2.8.7 If the Trust is relying on a claim that section 12 or 14 of the Act apply, the notice will state that fact. If the Trust is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

2.8.8 The Trust will keep a record of all notices issued to refuse requests for information.

2.9 Duty to provide advice and assistance

2.9.1 The Trust will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance to an applicant who proposes to make, or has made, a request for information. This is a duty under section 16 of the Act.

2.9.2 The Trust will ensure that the systems and procedures that are deployed to meet the section 16 duty also conform to the Code of Practice issued under section 45 of the Act.

2.10 Transferring Requests for Information

2.10.1 A request can only be transferred where TSDFT receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If TSDFT is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Trust recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).

2.10.2 Upon receiving the initial request for information, TSDFT will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Trust will advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Trust must be certain as to the extent of the information relating to the request which it holds itself.

2.10.3 If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

- (a) contacting the applicant and informing him or her that the information requested may be held by another public authority;
- (b) suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
- (c) providing him or her with contact details for that authority.

2.10.4 If the Trust considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Trust will consider:

- (a) whether a transfer is appropriate; and if so

- (b) whether the applicant is likely to have any grounds to object to the transfer;

If the Trust reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so.

2.10.5 Where there are reasonable grounds to believe an applicant is likely to object, the Trust will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

2.10.6 All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Trust is unable either to advise the applicant which it holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

2.11 Consultation with Third Parties

2.11.1 The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998 (DPA). This would apply in particular to patient information and staff identity. Unless an exemption provided for in the Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

2.11.2 Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption at section 41 of the Act would apply), the Trust will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

2.11.3 Where information constitutes "personal data" within the meaning of the DPA, the Trust will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

2.11.4 TSDFT will undertake consultation where:

- (a) the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- (b) the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

2.11.5 The Trust may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Trust will consider what is the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- (a) the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- (b) the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- (c) no exemption applies and so under the Act's provisions, the information must be provided.

2.11.6 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, TSDFT will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

2.11.7 The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

2.12 Public Sector Contracts

2.12.1 When entering into contracts the Trust will refuse to include contractual terms which claim to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

2.12.2 When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information

relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. The Trust will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

2.12.3 The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.

2.12.3 It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor information which the authority has provided to the contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

2.13 Accepting Information in Confidence from Third Parties

2.13.1 The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with any of its functions and it would not otherwise be provided.

2.13.2 The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

2.14 Complaints about the discharge of the duties of the Trust under the Act

2.14.1 The Trust has implemented a procedure for dealing with requests for reviews/complaints about the handling of requests for information.
Appendices C & D

2.14.2 The procedure will refer applicants to the right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

2.15 Records Management

2.15.1 The Trust has a separate policy with supporting systems and procedures that will ensure compliance with the Lord Chancellor's Code of Practice on the

Management of Records under section 46 of the Freedom of Information Act 2000 and the Department of Health's Guidance "Records Management – Code of Practice Parts 1 & 2".

- 2.15.2 The Trust's Records Management Policy and Procedure for Retention & Disposal of Corporate Records based on the DH recommendations, addresses issues of active records management – creation, keeping, maintenance, appraisal and disposal are available on the intranet.

2.16 "Round Robin" FOI requests

The DP/FOI Lead will inform the Communications Team if a request has been received and is believed to have been circulated to either all or selected groups of NHS organisations

3. Implementation and Compliance

3.1 Responsibilities of all Staff and Non-Executive Directors

All staff and Non-Executive Directors are obliged to adhere to this Policy. A failure to adhere to this Policy and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this Policy and associated procedures. They are also responsible for ensuring staff are updated in regard to any changes in this Policy.

3.2 Responsibilities of Heads of Departments

Heads of Departments will ensure that this Policy and associated procedures are accessible and available to all staff.

3.3 Corporate Oversight

The DP/FOI Lead will oversee the implementation of this Policy on behalf of the Chief Executive. The DP/FOI Lead will establish systems and procedures that will support the implementation of this Policy which, as stated above, all staff and Non-Executive Directors will be expected to adhere to.

3.4 Training

The DP/FOI Lead will work with the Head of Information Governance & the Education & Training Directorate to ensure that training on the Act is available to staff and Non-Executive Directors who require it. The Trust's Information Governance training includes a section on FOI and Records Management. All staff are required to undertake this training annually.

4. Reference Documents

- Freedom of Information Act 2000
- Data Protection Act 1998
- Human Rights Act 1998
- Department of Health's Guidance "Records Management – Code of Practice Parts 1 & 2".
- Environmental Information Regulations 2004

- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002.
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.
- NHS Confidentiality Code of Practice

5 Retention of FOI requests

- 5.1 Requests for information handled under the FOI Act will be retained for three years after full disclosure or 10 years if information has been redacted or the information requested is not disclosed.

6. Distribution

- 6.1 This Policy will be available to all members of staff via the Freedom of Information/Data Protection (Information Governance) ICON page and the Trust 's public website under "Guide to Information".

7. Review

- 7.1 This Policy will be reviewed every two years by the Data Protection/ Freedom of Information Lead or earlier if there is a change to legislation or national guidance documents.

APPENDIX A

Exempt Information Under Part II of the Freedom of Information Act 2000

There are two types of class exemption:

- (a) absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

With the exception of s21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the Act are:

- section 21, Information accessible to applicant by other means
- section 23, Information supplied by, or relating to, bodies dealing with security matters.
- section 32, Court Records
- section 34, Parliamentary Privilege
- section 36, Prejudice to effective conduct of public affairs
- section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- section 41, Information provided in confidence
- section 44, Prohibitions on disclosure

The exemptions that are qualified by the public interest test are:

- section 22, Information intended for future publication
- section 24, National Security
- section 26, Defence
- section 27, International Relations
- section 28, Relations within the United Kingdom
- section 29, The Economy
- section 30, Investigations and proceedings conducted by public authorities
- section 31, Law Enforcement
- section 33, Audit Functions

- section 35, Formulation of Government Policy
- section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- section 37, Communications with Her Majesty, etc. and honours
- section 38, Health and Safety
- section 39, Environmental Information
- section 42, Legal Professional Privilege
- section 43, Commercial Interests

More information on the exemptions can be found on the Information Commissioner's website www.ico.gov.uk and the Department for Constitutional Affairs website www.dc.gov.uk

APPENDIX B

Glossary of Terms

Absolute exemption – applied to information that does not have to be released to the applicant. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of non-disclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

Applicant - the individual(s), group or organisation requesting access to information under the Act.

Duty to confirm or deny - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

Environmental Information Regulations 2004 – Verbal or written requests for information about the environment eg emissions & discharges, state of the elements of the environment eg air, water, soil, land etc. Organisations must respond within 20 working days.

Fees Notice – a written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses.

Fees Regulations – national regulations that allow public authorities to refuse to answer requests for information if the cost of complying would exceed the “appropriate limit” prescribed in the Regulations. For the NHS this has been set at £450. The Regulations set out what may be taken into account when estimating whether the appropriate limit has been exceeded. The costs are limited to (i) determining whether the information is held (ii) locating the information (iii) retrieving the information (iv) extracting the information from a document (including editing or redacting) (v) staff time for carrying out i-iv (set hourly rate of £25 per person per hour).

General right of access - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

Information Commissioner - The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data,

(information about identifiable, living individuals) are processed. www.ico.gov.uk
From April 2010 the Information Commissioner has the power to fine data controllers up to £500,000 for contravening data protection principles likely to cause substantial damage or distress.

Lord Chancellor's Department - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts.
- The appointment of judges, magistrates and other judicial office holders.
- The administration of legal aid.
- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

Public authority - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

- (a) on the face of the Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
- (b) by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
- (c) by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or
- (d) by reference to the definition of a publicly-owned company in section 6.

Guide to Information - a guide specifying the classes of information which it publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

Qualified exemption - Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

Qualified Person for the purposes of S36 "Prejudice to effective conduct of public affairs" – The DoH have delegated the role of Qualified Person to Chief Executives who take ultimate responsibility for deciding whether the S36 exemption may legitimately be applied to a specific request for information.

Freedom of Information Act (FOI) 2000 Guidance Note 6

Internal Freedom of Information Complaints/Review Process

Should an applicant be dissatisfied with the way their request was handled or the outcome of their request for information under the Freedom of Information Act 2000 (FOI) they can ask for a review of the Trust's decision by invoking the South Devon Healthcare NHS Foundation Trust's FOI review process. The applicant will be informed of his or her right to complain to the Chief Executive of South Devon Healthcare in the Freedom of Information (FOI) Department's initial response to their request. The complaint will give rise to a full reconsideration of the handling of the case, as well as the final decision.

Process steps

1. On receipt of a request for an internal review, the Chief Executive, Deputy Chief Executive or DP/FOI Lead will forward the complaint to the Patient Services Office who will acknowledge the request and inform the applicant of the target date for the review. The required target time for responding to the applicant is 20 working days.
2. The Patient Services Officer, on behalf of the Chief Executive or Deputy will request a full history of the case from the DP/FOI Lead and any other member of staff involved in responding to the original request. In order to complete the review within the target time, the relevant documents must be made available with the minimum of delay.
3. Where it is apparent that the response to the complaint will take longer than 20 working days (for example because of the complexity of the particular case) the complainant will be informed accordingly but in those circumstances it should not exceed 40 working days.
4. Dealing with the complaint will consist of an analysis of the evidence; consideration of the appropriateness of the exemption(s) cited; review of the arguments for withholding/disclosing information in the particular circumstances of the case; consideration of whether the public interest had been properly considered and consulting the DP/FOI Lead who handled the initial request where necessary. Where it would be helpful to do so, the reviewer will also discuss the case directly with the applicant.
5. Where exemption S.36 has been applied, the review will be conducted by the Chairman of the Trust.
6. During the review period, the complainant will be kept informed of progress.
7. If the final decision is to uphold the complaint, the proposed disclosure of the information originally requested will be made in full consultation with the FOI Lead concerned. Where the outcome of a complaint is that an initial decision to withhold information is upheld, the applicant will be informed and provided with details of his or her right to complain to the Information Commissioner.
8. All steps taken during the review process will be recorded on the TSDFT Internal Review form.

Appendix D

FOIA Internal Review

Reference No – request dated *[insert date]*

Request for:

a) *[give a description of the information requested]*

Persons involved in the original decision

[insert those consulted upon when the original decision was made]

Response *[insert date]*:

[give the response, i.e. the exemptions being used and the reasons why, including public interest test is appropriate]

Exemptions used:

List exemptions and whether public interest test should be applied.

Reason for decision:

1. *[list the reasons on which the decision was based. Attach any relevant paperwork, i.e. ICO/DCA guidance.]*

People involved in decision:

List people involved in the decision and/or providing the information requested including third parties, i.e. ICO, other organizations.

List of Guidance, websites used for reference

List ICO, DCA guidance used and websites that may have supported the decision being made.

Date Internal Review Requested

Reason given for Internal Review by applicant

1. *[provide information, if provided by the applicant as to why they feel the information should be disclosed]*

Date by which decision of internal review should be sent to requester:

Any additional information:

Include any information, guidance, changes of circumstances, etc that may have come to light in between the first response and the internal review.

Anything else that may be relevant to the disclosure of the information. Please bear in mind that if you have not used S36 before, you may wish to use it now. If you do then you will need to place the public interest test against the exemption, provide information here.

Options:

1. Disclose information as requested
2. Partial disclosure of information.
3. Uphold the decision not to disclose made on *[insert date]*

Independent Review to be carried out by Chief Executive/Chair¹.

[insert name(s) of person compiling the information]

Date:

Decision made

☐

Signed:

Date:

Job Title:

Letter sent to requester: _____

¹ Independent review to be carried out by the appointed person (Chief Executive or her nominated officer) unless section 36 is used then it will be carried out by the Chairman of the Trust.

Action to be taken for WRITTEN requests under General Rights of Access (Section 8 FOI Act) (Section 2.3 p 3 SDHC FOI Policy)

APPENDIX E

Timescale for responding to requests

- Acknowledgement. **1-2 days**
- Identify person(s) holding info. **1 day**
- Locate & provide info. **5-10 days**
- Additional time granted if info difficult to retrieve/reproduce. **5 days**
- Info reviewed in respect of fees/exemptions. **2 days**
- Timescale suspended until payment received (if relevant).**
- Information provided.

Information must be provided within 20 working days unless an exemption is being considered. Applicant must be kept informed if delay expected.

Written request received

Forward request immediately to DP/FOI Lead. (Rm 5 Hengrave Hse)
NOTE: If you hold the information being requested please attach to request for forwarding to FOI Lead. If information is held electronically forward by email to tsdft.foi@nhs.net

FOI Lead to acknowledge receipt of request immediately. If description of information required is not clear, ask for further details.

FOI Lead to locate and request information

FOI Lead to establish if information is disclosable

YES

Note: Information must be disclosed within 20 working days of receipt. (S 10 FOI Act). (S 2.6.2. p 5 SDHC Policy)

Is a fee to be charged?

NO

Send information

YES. (S 9.2 FOI Act)

Send letter to applicant advising of cost

Upon payment send information

UNCERTAIN

Consideration must be given whether information is exempt. Arrange meeting with author and other key personnel to discuss possible exemption.

Keep applicant informed of progress

YES

NO

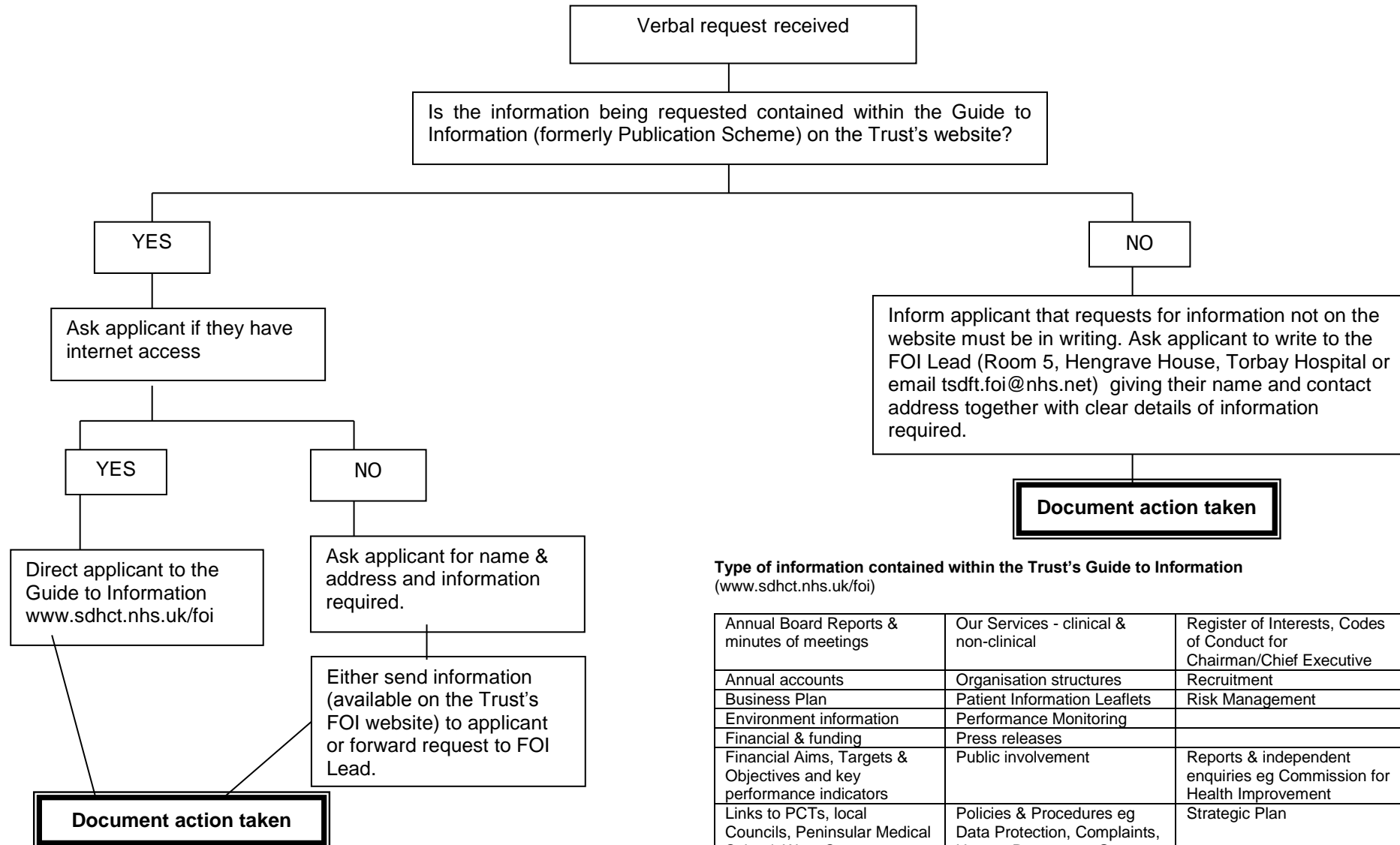
NO

Inform applicant of refusal and reason for refusal. Offer advice on next steps to take if not satisfied with our response. (S 50 FOI Act). S 2.14 p 11 SDHC Policy)

Document decision on database

APPENDIX F

Action to be taken for VERBAL request under Freedom Of Information (S 19 & 20 FOI Act & S 2.2 . p 3 TSDFT Policy)



Type of information contained within the Trust's Guide to Information (www.sdhct.nhs.uk/foi)

Annual Board Reports & minutes of meetings	Our Services - clinical & non-clinical	Register of Interests, Codes of Conduct for Chairman/Chief Executive
Annual accounts	Organisation structures	Recruitment
Business Plan	Patient Information Leaflets	Risk Management
Environment information	Performance Monitoring	
Financial & funding	Press releases	
Financial Aims, Targets & Objectives and key performance indicators	Public involvement	Reports & independent enquiries eg Commission for Health Improvement
Links to PCTs, local Councils, Peninsular Medical School, West Country Ambulance, Devon Partnership NHS Trust	Policies & Procedures eg Data Protection, Complaints, Human Resources, Green Transport Plan, Patient Advice & Liaison Service	Strategic Plan
NHS Logistics Authority	Procurement of supplies &	Structure of the local NHS