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Freedom of Information Policy

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Information Governance Operational Group			
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Links or overlaps with other policies:			
<p>We are committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): Sexual Orientation; Gender; Age; Gender Reassignment; Pregnancy and Maternity; Disability; Religion or Belief; Race; Marriage and Civil Partnership. In addition to these nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.</p> <p>We are committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality and Diversity Policy.</p>			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
0.1	Draft	Sept 2020	New policy	Information Governance Steering Group
2	Final	July 2021	No change	Information Governance Steering Group
2.1	Final	Nov 2021	Removal of duplication	Information Governance Steering Group
2.2	Final	Feb 2023	No change	Information Governance Steering Group
3	Final	Feb 2024	Minor updates	Information Governance Steering Group
4	Final	Jan 2025	No change	Information Governance Steering Group
5	Final (this version)	Feb 2026	Update to assurance routes to reflect new Trust structures	Information Governance Operational Group

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1. Introduction

- 1.1 The Freedom of Information Act 2000 are part of the Government's commitment to greater openness in the public sector. The Freedom of Information Act 2000 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 and ensuring that the services we provide are efficiently and properly delivered.
- 1.2 The Act replaces the non-statutory Code of Practice on Openness in the NHS.
- 1.3 The Freedom of Information Act ensures
- 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
 - inform the applicant whether they hold the information requested, and
 - communicate the information to him or her unless the public interest in maintaining the exemption 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
 - The Information Commissioner has powers to enforce the rights created by the Act to promote good practice
 - the creation of the Information Tribunal
 - a duty on the Lord Chancellor to implement Codes of Practice for guidance on specific issues.
- 1.4 Any reference to Freedom of Information includes both the Freedom of Information Act 2000 and Environmental Information Regulations 2004 unless otherwise specified.
- 1.5 The Freedom of Information Act Policy applies to all Trust employees and to Non-Executive Directors. The Policy provides a framework within which the Trust will ensure compliance with the requirements of the Act. The Policy underpins any operational procedures and activities connected with the implementation of the Act.

2. Aims and Objectives

- 2.1 The Policy supports the principle that openness 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.
- 2.2 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 UKs data protection legislation.
- 2.3 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.

3. General right of access

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- 3.1 Section 1 of the Freedom of Information Act (FOIA) gives a general right of access to recorded information held by the Trust. Any person making a request for information is entitled:
- to be informed in writing whether TSDFT holds the information specified in the request, and
 - if the Trust holds the information, to have that information communicated to them.
- 3.2 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 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.
- 3.3 In accordance with section 8 of the FOIA, 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.

4. Conditions and Exemptions

- 4.1 Under section 1(3) of the FOIA the duty to confirm or deny does not arise where the Trust
- reasonably requires further information in order to identify and locate the information requested, and
 - has informed the applicant of that requirement.
- 4.2 The Trust will make reasonable efforts to contact the applicant for additional information relating to their request should further information be required.
- 4.3 Under section 2 of the FOIA 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 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.
- 4.4 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.
- 4.5 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. The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either
- refuse or
 - charge for the communication of information that exceeds this limit.
- 4.6 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. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

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5. Charges and Fees

- 5.1 Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM.
- 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
- 5.3 Section 13 applies if the appropriate limit is exceeded.
- 5.4 In all cases where the Trust chooses to charge for 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.

6. Time limits for compliance with requests

- 6.1 The Trust will provide the information requested within twenty working days of a request (section 10).
- 6.2 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.
- 6.3 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.
- 6.4 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
- 6.5 The Trust will endeavour to provide the information in the format preferred by the applicant.
- a copy of the information in the format acceptable to the applicant e.g. email, hard copy, CD, video, photograph
 - to inspect the record containing the information • a summary of the information
- 6.6 The Trust will follow all guidance issued by the Information Commissioners Office in relation to acceptable formats for disclosure, including the avoidance of Excel spreadsheets wherever possible.
- 6.7 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 the Trust will notify the applicant of the reasons and will provide the information deemed to be reasonable in the circumstances.

7. Refusal of requests

- 7.1 The duty to confirm or deny does not arise if the Trust:
- is applying an exemption (section 2, Part II)

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- has issued a fees notice 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 (section 9)
- estimates that the cost of compliance with the request for information exceeds the appropriate limit (section 12)
- can demonstrate that the request for information is vexatious or repeated, (section 14) 13.8.2 If the Trust chooses to refuse a request for information, the applicant will be informed of the reasons for this decision within twenty working days

7.2 The applicant will be kept informed

- If the time frame for response will be delayed
- If the Trust finds, while considering the public interest, that the estimate is proving unrealistic

7.3 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.

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

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

8. Duty to provide advice and assistance

8.1 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 (section 16)

8.2 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 FOIA.

9. Transferring Requests for Information

9.1 A request can only be transferred where the Trust receives a request for information which it does not hold. If the Trust receives a request and holds some of the information requested a transfer can only be made in respect of the information it does not hold.

9.2 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 (section 3(2)(a))

9.3 Upon receiving the initial request for information, the Trust will process it in accordance with the Act. The Trust will advise the applicant that it does not hold part of the requested information or all of it.

9.4 If the Trust believes that some or all of the information requested is held by another public authority:

- contacting the applicant and informing them the information requested may be held by another public authority
- providing them with contact details for that authority.

9.5 If the Trust reasonably concludes that the applicant is not likely to object, it may

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transfer the request without going back to the applicant but will inform the applicant that it has done so.

- 9.6 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.

10. Consultation with Third Parties

- 10.1 The Trust recognises that in some cases the disclosure of information 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". This would apply in particular to patient information and staff identity. Unless an exemption provided for in the Act applies to the information, the Trust will be obliged to disclose that information in response to a request.

- 10.2 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) the Trust will consult with the 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.

- 10.3 Where the interests of the third party who may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

- 10.4 Where information constitutes "personal data" within the meaning of data protection legislation, the Trust will refer to section 40 of the FOIA.

- 10.5 The Trust will undertake consultation where:

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

- 10.6 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

- 10.7 Consultation will be unnecessary where:

- the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act
- 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
- no exemption applies and so under the Act's provisions, the information must be provided.

- 10.8 Where the interests of a number of third parties may be affected by a disclosure, The Trust will 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.

11. Public Sector Contracts

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- 11.1 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.
- 11.2 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.
- 11.3 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. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.
- 11.4 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 is 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.
- 11.5 It is for the Trust to disclose information 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 contract. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

12. Accepting Information in Confidence from Third Parties

- 12.1 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.
- 12.2 The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

13. Complaints about the discharge of the duties of the Trust under the Act

- 13.1 The Trust has implemented a procedure for dealing with requests for reviews/complaints.
- 13.2 The procedure will refer applicants to the right under section 50 of the FOIA to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

14. Corporate Oversight

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14.1 The Data Protection Officer will oversee the implementation of this Policy on behalf of the Chief Executive. The Data Protection Officer 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.

15. Retention of FOI requests

15.1 Requests for information handled under the FOI Act will be retained for three years after full disclosure or six years if the request has been appealed.

16. Exemptions

16.1 There are two types of class exemption

- ABSOLUTE does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- 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.

16.2 Exemptions apply not only to the communication of information but also to the duty to confirm or deny the Trust holds the information, if that itself would disclose information that it is reasonable to withhold.

17. FOI Internal Review

17.1 Should an applicant be dissatisfied with the way their request was handled or the outcome of their request for information under Act, they can ask for a review of the Trust's decision. The applicant will be informed of his or her right to complain to the Chief Executive in the Trust'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.

17.2 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 DSP Lead or DPO.

17.3 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.

17.4 All steps taken during the review process will be recorded on the TSDFT Internal Review form.

18. Distribution

18.1 This policy document will be made available to staff via ICON, the Trust Website and signposted in the Staff Bulletin.

18.2 Awareness will be raised through Equality Impact Assessment training, all ratifying committees/groups, policies and procedures training and ICON.

19. Key Contacts

Contact	Email	Phone
Data Protection Officer	Tsdft.dpo@nhs.net	07393 799539
Information Governance Team	tsdft.igteam@nhs.net	01803 654868

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Data Access & Disclosure Office
Senior Information Risk Officer
Caldicott Guardian
Freedom of Information Team

tsdft.dataprotection@nhs.net
tsdft.siro@nhs.net
tsdft.caldicottguardian@nhs.net
tsdft.foirequests@nhs.net

01803 654868

20. Appendices

Appendix 1: Rapid Equality Impact Assessment

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21. Appendices

Appendix 1: Rapid Equality Impact Assessment

Appendix 1

Rapid Equality Impact Assessment (for use when writing policies and procedures)

Policy Title (and number)		Freedom of Information Policy	Version and Date	5	
Policy Author		Information Governance Officer			
An equality impact assessment (EIA) is a process designed to ensure that a policy, project or scheme does not discriminate or disadvantage people. EIAs also improve and promote equality. Consider the nature and extent of the impact, not the number of people affected.					
EQUALITY ANALYSIS: How well do people from protected groups fare in relation to the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>					
Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)					
Age	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Sexual Orientation	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Race	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Gender	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Religion/Belief (non)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Gender Reassignment	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Pregnancy/ Maternity	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Marriage/ Civil Partnership	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers ¹ ; travellers ² ; homeless ³ ; convictions; social isolation ⁴ ; refugees)					Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Please provide details for each protected group where you have indicated 'Yes'.					
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion					
Is inclusive language ⁵ used throughout?					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Are the services outlined in the policy/procedure fully accessible ⁶ ?					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Does the policy/procedure encourage individualised and person-centered care?					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Could there be an adverse impact on an individual's independence or autonomy ⁷ ?					Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If 'Yes', how will you mitigate this risk to ensure fair and equal access?					
EXTERNAL FACTORS					
Is the policy/procedure a result of national legislation which cannot be modified in any way?					Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)					
To facilitate a standardized approach to policy documents across the Trust					
Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?					
ACTION PLAN: Please list all actions identified to address any impacts					
Action			Person responsible	Completion date	
AUTHORISATION:					
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them					
Name of person completing the form	Information Governance Officer		Signature		
Validated by (line manager)	Data Protection Officer		Signature		

Any issues Please contact Diversity & Inclusion Lead

For Torbay and South Devon NHS Trusts, please email tsdft.diversityandinclusion@nhs.net

² Travellers may not be registered with a GP - consider how they may access/ be aware of services available to them

³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge

⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated

⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives

⁶ Consider both physical access to services and how information/ communication is available in an accessible format

⁷ Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy