

Trust Policy

Freedom of Information/Environmental Information Regulations Policy

Key Points

- The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2005 (EIR) provide a legal right of access to anybody who wishes to obtain Trust information.
- The FOIA and EIR place a legal obligation on the Trust to inform the person making the request whether the information requested is held by the Trust and, if so, to provide a copy of the requested information.
- All requests must be made in writing and the Trust legally has 20 working days in which to respond to a request for information
- The right to obtain a copy of information held by the Trust may be subject to an exemption or exception as detailed in the FOIA and/or EIR.
- If an individual is seeking information about themselves, it is exempt under the FOIA, but is covered by the 'subject access' provisions within the Data Protection Act 1998.
- The FOIA provides a right of access to information held by a public authority, however, where a request has been made and the requester wishes to re-use the information, the requester must apply to the Trust for a re-use licence.

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1. INTRODUCTION

- 1.1 The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2005 (EIR) provide a legal right of access to anybody who wishes to obtain Trust information.
- 1.2 The FOIA and EIR place a legal obligation on the Trust to inform the person making the request whether the information requested is held by the Trust and, if so, to provide a copy of the requested information.
- 1.3 The right to obtain a copy of information held by the Trust may be subject to an exemption or exception as detailed in the FOIA and/or EIR.
- 1.4 The FOIA and EIR makes it a criminal offence to alter, deface, block, erase, destroy or conceal any record held by the Trust, with the intention of preventing disclosure to all or part of the information that an applicant is entitled to.
- 1.5 Penalties can be imposed on both the Trust and staff for non-compliance with the FOIA or EIR.

2. SCOPE OF THE POLICY

- 2.1 This policy is not designed to be a guide or a statement of procedures in complying with the FOIA and EIR. Guidance for staff will be provided within training and other related documentation.
- 2.2 Within the context of the FOIA and EIR, the term 'information' means every piece of information held by the Trust, whether paper or electronic. It includes all draft documents, agendas, minutes, emails (both work and personal), diaries and even rough handwritten notes. This policy applies to all information held by the Trust.
- 2.3 Every member of staff has a legal duty to preserve formal records of their official activities which must be accurate, adequately named and indexed for easy retrieval or publication. Poor record management itself is not an offence, but it may lead to an inability to comply with Freedom of Information requirements. This policy is not a records management policy, but should be integrated with Trust's records management structures.

3. DEFINITIONS

3.1 Freedom of Information 2000 (FOIA)

3.1.1 The FOIA provides individuals with the right to access information held by a public authority, to be informed whether the public authority holds the requested information and to be provided a copy of this information within 20 working days.

3.2 Environmental Information Regulations 2004 (EIR)

3.2.1 The Environmental Information Regulations 2004 set out the requirements for responding to requests for information relating to the environment and have been updated in line with the Freedom of Information Act 2000.

3.2.2 The EIR provide a right of access to environmental information held by public authorities and relates to any information that is written, visual, aural, and electronic or in any other material form on:

- a. The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components including genetically modified organisms and the interaction amongst these elements
- b. Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases in the environment, affecting or likely to affect the elements of the environment referred to in section (a) above.
- c. Measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) or (b) as well as measures or activities designed to protect those elements.
- d. Reports on the implementation of the environmental legislation
- e. Cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c)
- f. The state of the human health and safety, including the contamination of the food chain where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or through those elements, by any of the matters referred to in (b) or (c).

3.2.3 Under the EIR, individuals are entitled to make a verbal request for information. In order for the Trust to manage the request, all requests will be written down. Where the Trust receives a request for information under EIR it will be processed in the same manner as an FOI request.

3.2.4 In line with the EIR the Trust will endeavour to make environmental information available electronically.

3.3 Data Protection Act 1998 (DPA)

3.3.1 If an individual is seeking information about themselves, it is exempt under the FOIA, but is covered by the 'subject access' provisions within the Data Protection Act 1998.

3.3.2 Where there is an overlap between the FOIA and the Data Protection Act (DPA) with regard to information relating to living individuals, the relevant areas of the DPA will be taken into account.

3.3.3 The Data Protection Act does not provide a right of access to information about third parties, however depending on applicable exemptions, the FOIA does set out:

- That the information should be disclosed to the subject of the information if he/she were to apply under the Data Protection Act
- That disclosure should not contravene the Data Protection Act principles set out in schedule 1 of the Act
- That the subject of the data has not exercised his/her rights to prevent processing likely to cause damage or distress
- The information requested is not 'sensitive' within the terms of Data Protection Act or about an individual's personal life

3.4 Re-Use of Public Sector Information

3.4.1 Re-use of Public Sector Information Regulations 2005 enables the public sector to establish a framework that provides for:

- Identification of documents that are available for re-use
- Documents that are available for re-use at a marginal cost
- Dealing with applications for re-use in a timely, open and transparent manner
- Establishing a fair, consistent and non-discriminatory process

3.4.2 The Trust will apply these regulations where it holds the intellectual property rights / copyright for the information and where re-use has been requested by a body that is not a public authority.

3.4.3 The FOIA provides a right of access to information held by a public authority; however, where a request has been made and the requester wishes to re-use the information, the requester must apply to the Trust for a re-use licence.

3.4.4 A standard response is included to the Trust's final response stating that if the requester wishes to re-use the information, then this is subject to a licence from the Trust.

3.4.5 Where a request for re-use is received, this will be processed by the Trust taking into consideration the reason for re-use. Where a person does not identify the purpose of re-use, this will be queried with the requester.

3.4.6 The Trust will grant permission to re-use information under the terms of the Open Government Licence for public sector information policy, unless there are clear grounds to withhold the licence.

3.4.7 Where the Trust raises a re-use charge for information this will be applied on a cost recovery basis, taking into account the cost to provide the information and of the time spent on original creation. The Information Commissioners rate for determining fees will be used as the standard (£25 per hour at time of the publication of this policy).

4. PURPOSE OF THE POLICY

- 4.1 The Policy has been written to provide staff with an understanding of the FOIA, including the role of the legislation and the responsibilities of the Trust.

5. THE POLICY

5.1 Responding to an Information Request

- 5.1.1 The FOIA, Section 8, and EIR Regulation 4(2), make it a duty for a public authority to have an efficient process for responding to requests. The Trust's Deputy Head of Information Governance is responsible for ensuring the Trust has a process in place to manage all non-standard requests for information submitted to the Trust.

- 5.1.2 Staff receiving requests for non-standard requests for information must pass them to the Information Governance Department to action (email: foi@fhft.nhs.uk).

- 5.1.3 All requests will be logged, referenced, acknowledged and a final Trust response documented. The FOI/Corporate Records Officer will liaise with the appropriate member(s) of staff to respond to a request for information and, where necessary, obtain Director approval for the Trust's response to a request for information.

- 5.1.4 All requests for information must be:

- received in permanent form, such as in writing or email (EIR requests can be received verbally)
- contain the name and correspondence address for the applicant
- include sufficient information to enable the Trust to identify the information requested.

5.2 Trust Final Response

- 5.2.1 When the Trust has processed a request for information, it will submit a "Trust Final Response" to the requester. Within this final response, the following information will be provided:

- how to request an internal review,
- contact the office of the Information Commissioner or
- apply for a Re-use licence.

5.3 Information provided by another Organisation

- 5.3.1 If the response to a request will contain information provided by another organisation, the Trust will ensure that it is clear to the applicant where this information has come from, so that they can, if they require, raise a request to the source organisation.

- 5.3.2 In deciding whether to disclose information provided by another organisation in response to a request, the Trust will apply the same process with regard to exemptions and will, if required, involve staff from the source organisation in discussions about possible exemptions.
- 5.3.3 If the response to a request is that the Trust does not hold any relevant information, where it is known, the Trust will direct the applicant to organisation(s) that may hold the information they seek.
- 5.3.4 If there is a request to re-use information provided by another organisation, the requester will be directed to the other organisation as they are likely to be the copyright holders.

5.4 Contracts with other Organisations

- 5.4.1 All operational contracts the Trust has will have a clause detailing that information may be disclosed under the terms of the FOIA/EIR and this Policy. For existing contracts the clause will be inserted at the next review.

5.5 Timescales for complying with an Information Request

- 5.5.1 The FOIA, Section 10, and EIR Regulations 5(2) make it a duty for a public authority to process all requests for information within 20 working days.
- 5.5.2 When the Trust is in receipt of a request that fulfils the criteria above it will respond within 20 working days. Within this time, the Trust must:
- Identify what information it holds and whether any exemption/exception applies (in full or part) to the information
 - Advise the applicant of any exemption/exception it believes applies (in full or part) to the information and inform them of their right to request an internal review, and then appeal to the office of the Information Commissioner
 - Inform the applicant of any fee to be charged
 - Provide any information not covered by an exemption/exception to the applicant in any manner specified by the applicant within 20 working days of receiving the request, provided any applicable fee has been received.
 - Otherwise advise the applicant if the request cannot be processed within 20 working days, giving an indication of the likely timescale for a decision to be reached and arrangement to ensure appropriate communication regarding this.
- 5.5.3 The timing for response does not commence until the Trust has sufficient information to process the request. Any communications to clarify a request will be undertaken without unnecessary delay.
- 5.5.4 Where the Trust has sought clarification from a requester and has not received a reply within a month, the Trust will send a reminder email to the requester. If the Trust has not received a response for clarification within 3 months, the Trust will consider the request to have been withdrawn by the requester and close the request.
- 5.5.5 A formal withdrawal notice will be sent to the requester.

5.6 Fees

- 5.6.1 The FOIA, section 9, EIR Regulation 8(1) enable a public authority to charge a requester for making information available.
- 5.6.2 It is the aim of the Trust to make as much information as possible available free of charge. However, there will be occasions when the Trust will need to levy a charge for information, which will reflect the cost to the Trust of providing the information.
- 5.6.3 The Trust will not charge a fee for dealing with a request for information, in line with the National Fees FOIA regulations, where the cost of the work to respond to a request for information is estimated to be less than £450. Where the cost is in excess of this amount, the Trust will correspond with the applicant either to reduce the request (and therefore the cost) below the threshold. If agreement cannot be reached in such circumstances the Trust may decide not to respond to the request. Requests for information under EIR will be charged in line with the National Fees FOIA regulations.
- 5.6.4 In circumstances whereby the scope of the request needs to be reduced to remain within the fees regulations, or where clarification is required, then the clock measuring the 20 days can be paused between the date the applicant is notified and the date the clarification is received. If this period is in excess of 3 months the Trust will consider the request to have been withdrawn by the requester and close the request. For example, if a request is received and it takes 3 days to identify the request and notify the applicant that clarification is sought, then 3 of the 20 days have been used. When the clarification is received, there are then 17 days remaining of the 20 in which to complete the response.

5.7 Duty to provide Advice and Assistance

- 5.7.1 The FOIA, Section 16, EIR Regulation 9(1) require a public authority to provide advice and assistance to a person making a request. The Trust will take all reasonable steps to advise anyone whose request does not fulfil the above criteria and what is required by the Trust to progress their request.
- 5.7.2 Where the Trust receives a request which is incompatible with the manner in which the Trust holds information, it will contact the requester to provide advice and guidance.

5.8 Vexatious / Repeat Requests

- 5.8.1 Should an applicant make 'vexatious' or 'repeated requests' for identical or substantially similar information, the Trust may inform the applicant in writing that they will not fulfil the request under Section 14 of the FOIA.
- 5.8.2 Multiple requests from an individual will be aggregated (and dealt with as a single request) if the requests relate to a similar subject.
- 5.8.3 When responding in this manner the Trust will inform the individual why it is considered that the request is 'vexatious' or 'repeated'. The Trust will also indicate what recourse the applicant has if they are unhappy with this decision.

5.9 Refusing an Information Request

5.9.1 FOI Exemptions

- 5.9.1.1 The FOIA provides a number of restrictions or exemptions to the right of access. These are categorised as either absolute exemptions or qualified exemptions and are detailed at Appendix A.
- 5.9.1.2 The Deputy Head of Information Governance is responsible for facilitating responses to requests including the facilitation of decision making about exemptions and the public interest by engaging staff involved in the areas the information relates to. Each request is decided on a case by case basis.
- 5.9.1.3 An “absolute” exemption may be claimed where there is an explicit provision that the Trust does not have to release the information. In some cases this will also remove the duty for the Trust to confirm or deny that the information requested is held.
- 5.9.1.4 A “qualified” exemption may be claimed where there is a reason for not disclosing information. Before a final decision is made, a public interest test must be applied to each exemption claimed. If a qualified exemption is claimed, the Trust will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.
- 5.9.1.5 Where a request is refused, the Trust will notify the applicant within 20 working days of receiving the request that this is the case and explain why the request is being refused.
- 5.9.1.6 In some cases, only part of a document requested may be withheld. In such circumstances the Trust will ‘redact’ documents to edit out those elements for which an exemption is claimed.

5.9.2 EIR Exceptions

- 5.9.2.1 The Act provides a number of restrictions or exceptions to the right of access. These are detailed at Appendix B.

5.10 Complaints / Appeals

- 5.10.1 Any notice issued by the Trust in response to a request for information will include details of the Trust’s complaints procedure.
- 5.10.2 The Trust’s process for handling FOI complaints (including appeals against a decision) will follow the key principles of the Trust’s Complaints Policy. It applies to the complaints on the handling of information requests and complaints about the Trust’s Publication Scheme. The Trust’s FOI complaints process is detailed at Appendix C.
- 5.10.3 Should the Trust receive any notices served by the Information Commissioner it will make every endeavour to comply unless the Trust feels it needs to appeal to the Information Tribunal.

5.11 Monitoring FOI Requests

5.11.1 Regular reports on the Trust's FOI requests are incorporated with the SIRO report submitted to the Trust Board each quarter.

5.11.2 Details of requests will be reviewed by the Information Governance Committee, at least annually.

5.11.3 Annual reports will be sent to each department, summarising the requests received for their department and highlighted improvements in the Trust process to increase the timescale and efficiency of dealing with requests for information e.g. placing frequently requested information within the Trust's Publication Scheme.

5.12 FOI Publication Scheme

5.12.1 The FOIA, Section 19, makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority which is approved by the Information Commissioner. There is also a duty to review information published under the scheme from time to time.

5.12.2 The scheme must specify the classes of information, the manner of publication and whether the material will be provided free of charge or on payment. The Publication Scheme details the information that the Trust makes routinely available to the general public.

5.12.3 The Trusts publication scheme follows the Model Publication Scheme for Health Bodies in England and is available at: <https://www.fhft.nhs.uk/about-us/freedom-of-information/>. The seven headings of the scheme are:

1. Who we are and what we do
2. What we spend and how we spend it
3. What are our priorities and how are we doing
4. How we make our decisions
5. Our policies and procedures
6. List and registers
7. The services we offer

5.12.4 Following the completion of a response to a request for information that is not covered by the publication scheme, consideration will be made as to whether this information should become part of the publication scheme.

5.12.5 The Deputy Head of Information Governance is responsible for facilitating review of the scheme on a regular basis and, where appropriate, seeking revised approval from the Information Commissioner's Office if classes are added or deleted from the scheme.

5.12.6 The Publication Scheme will also state, where applicable, the sort of information that the Trust considers to be exempt, outlining the nature of the exemption applied.

5.12.7 Where datasets are sought from the Trust as a Freedom of Information request, the Trust must, so far as reasonable, provide the information to the applicant in an electronic form which is capable of re-use in accordance with the terms specified in the 'Open

Government Licence'. The terms of the Open Government Licence may be found at <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2/>

5.12.8 The Publication Scheme must include publication of the datasets the Trust holds in response to any request made under the Freedom of Information Act, and any updated version of that dataset, unless the Trust is satisfied that it is not appropriate for the dataset to be published.

5.13 Right of Access Code of Practice (FOIA Section 45)

5.13.1 The Lord Chancellor's Code of Practice issued under Section 45 provides guidance for public authorities on their legal obligations under Part 1 of the FOIA.

5.13.2 This guidance has been adopted by the Trust within this policy and in the Trust's FOI procedures and association with other key legislation.

5.14 Records Management Code of Practice (FOIA Section 46)

5.14.1 The Lord Chancellor's Code of Practice issued under Section 46 provides guidance for public authorities that are subject to the Public Records Acts 1958 and Public Records Act 1923, in relation to the creation, retention, management and destruction of their records.

5.14.2 The Lord Chancellor's Code of Practice describes the arrangements public authorities should follow in reviewing public records and transferring them to the Public Record Office or to places of deposit.

5.14.3 This guidance has been adopted by the Trust and incorporated into the Trust's Non-Clinical and Clinical Records Policies.

6. DUTIES / ORGANISATIONAL STRUCTURE

6.1 Responsibilities

6.1.1 The Chief Executive has overall responsibility for the FOI and EIR policy within the Trust.

6.1.2 The implementation and compliance with this policy has been delegated to the Trust's Deputy Head of Information Governance

6.1.3 The responsibilities of the Deputy Head of Information Governance include:

- Developing clear procedures for dealing with information requests
- Management of requests for information to ensure compliance with the FOIA and EIR
- Providing education and awareness to staff, ensuring that the basic principles of the FOIA and EIR are understood
- Developing the approach and maintenance of the Trusts Publication Scheme
- Review of this policy and any other supporting documentation (incorporating changes in Legislation or guidance from the Information Commissioner).

6.1.4 The breadth of this legislation means that all staff will to some degree be affected; therefore this policy sets out the responsibilities of all staff.

6.1.5 All staff are responsible for:

- Creating and maintaining records which are accurate, appropriate and retrievable. This will include adherence to standards for referencing, titling, filing and authoring documents, both electronically and on paper
- Ensuring that requests for information and possible re-use are passed in a timely manner to staff who are responsible for responding
- Ensuring that disclosures are not made outside of the defined process so that inappropriate disclosures are avoided
- Ensuring that documents which fall within the requirements of the publication scheme are provided for publication
- Bringing new documents or classes of information that have not been previously published to the attention of Information Governance, who will facilitate agreement on publication of such material(s).

6.1.6 Staff responsibilities will be set out in contracts of employment. A breach of these responsibilities could result in disciplinary action

7 RAISING AWARENESS / IMPLEMENTATION / TRAINING

7.1 As part of the induction process, both corporate and departmental, all Trust employees will be made aware of their responsibilities in connection with the Acts mentioned in this Policy.

8 MONITORING COMPLIANCE OF POLICY

8.1 The Trust will monitor compliance against this policy through the Information Governance Dashboard and the quarterly SIRO report.

9 EQUALITY IMPACT ASSESSMENT

9.1 The users of this Policy will take into account their statutory duty to promote equality and human rights and act lawfully within current equality legislation and guidance.

9.2 This Policy has been equality impact assessed and has been shown to have no adverse impact on any equality group.

9.3 The Trust will continue to monitor its effect and will assess again if negative impact is identified or at the next review date.

10 REFERENCES

- Freedom of Information Act 2000 (FOIA)
- Data Protection Act 1998 (DPA)
- Open Government Licence for Public Sector Information Policy
- Information Commissioners Office (ICO)
- Department of Health Records Management Code of Practice 2016
- Environmental Information Regulations 2004
- Re-Use of Public Sector Information Regulations 2005

Appendix A – Freedom of Information Act Exemptions

Section	Exemption Description	Type
Section 21*	Information reasonably accessible to the applicant by other means	Absolute
Section 22*	Information intended for future publication	Qualified
Section 23	Information supplied by or relating to bodies dealing with the security services	Absolute
Section 24	National Security	Qualified
Section 26	Defence	Qualified
Section 27	International relations	Qualified
Section 28	Relations within the UK	Qualified
Section 29	Economy	Qualified
Section 30	Investigations	Qualified
Section 31	Law enforcement	Qualified
Section 32	Information contained in court records	Absolute
Section 33	Public audit	Qualified
Section 34	Parliamentary privilege	Absolute
Section 35	Policy formulation, Ministerial communications, Law Officers' advice and the operation of Ministerial Private Office	Qualified
Section 36	Effective conduct of public affairs	Qualified
Section 37	Communications with Her Majesty and the awarding of honours	Qualified
Section 38*	Health and safety	Qualified
Section 39*	Environmental information	Qualified
Section 40*	Personal Information	Absolute
Section 41*	Information provided in confidence The duty of confidence and the public interest Information provided in confidence relating to contracts	Absolute
Section 42*	Legal professional privilege	Qualified
Section 43*	Commercial interest Public sector contracts Commercial detriment of third parties	Qualified
Section 44*	Prohibitions on disclosure	Absolute

* Exemptions likely to be applied by the Trust.

Absolute – if a request falls into this category, there is no requirement to consider the public interest test.

Qualified – if a request falls into this category, a public interest test must be considered and applied.

Appendix B – Environmental Information Regulations Exceptions

Regulation	Exception Description
Regulation 12(3)	Personal Data
Regulation 12(4)(a)	Information not held when receiving a request
Regulation 12(4)(b)	Manifestly unreasonable
Regulation 12(4)(c)	The request is too general
Regulation 12(4)(d)	Material in the course of completion, unfinished documents and incomplete data
Regulation 12(4)(e)	Disclosure of internal communications
Regulation 12(5)	Adverse effect
Regulation 12(5)(a)	International relations, defence, national security or public safety
Regulation 12(5)(b)	The course of justice, the ability of a person to obtain a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature
Regulation 12(5)(c)	Intellectual property rights
Regulation 12(5)(d)	The confidentiality of the processing of a public authority where such confidentiality is provided by law
Regulation 12(5)(e)	The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
Regulation 12(5)(f)	The interests of the person who provided the information where that person – <ol style="list-style-type: none"> I. Was not under, and could not have been put under any legal obligation to supply it to that or any other public authority; II. Did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and III. Has not consented to its disclosure.
Regulation 12(5)(d)	The protection of the environment to which the information relates
Regulation 12(9)	Information relating to emissions

Appendix C – FOI Complaints Process

1. Internal Review

- 1.1 Individuals who are dissatisfied with the Trust's decision on an information request, or with the way in which the Trust has handled a request for information under the Freedom of Information Act 2000, the individual(s) should address their complaint in writing to:

Head of Information Governance
Frimley Health NHS Foundation Trust
Portsmouth Road
Frimley
Camberley
Surrey
GU16 7UJ

- 1.2 If as a member of staff you receive a complaint about the Trust's handling of an information request or a complaint in relation to the Trust's FOI Publication Scheme, this should be forwarded immediately to the Trust's Head of Information Governance.
- 1.3 The Head of Information Governance will review, or appoint a Senior Manager to review, the complaint. The Trust Manager undertaking the review must:
- have a good understanding of the principles of FOI
 - not have been involved in the Trust's decision relating to the information request which has led to the complaint.
- 1.4 Complaints about information requests will be acknowledged within 2 working days of receipt.
- 1.5 Upon acknowledgement of receipt, the complainant will be informed that the Trust aims to respond to their complaint within 20 working days. All FOI complaints will be logged and tracked.
- 1.6 In line with the Lord Chancellor's Code of Practice, the Trust's FOI complaints procedure will "provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information.
- 1.7 The remit of the internal review will be as follows:
- To consider whether the Act was properly applied in the case of the initial information request – in particular, to review whether the information requested falls under any exemption/exceptions(s) cited in the Trust's response and whether the public interest test (if applicable) has been applied appropriately.
 - To consider whether the Trust has complied with its stated FOI policy and procedures in the handling of the initial information request.
 - To consider what weight should be given to any additional points made by the applicant when registering their complaint

- To consider whether there are any lessons to be learnt in relation to the handling of future information requests
 - To make a recommendation on the Trust's response to the FOI complaint.
- 1.8 In undertaking the internal review, the reviewer will have access to all the information held by the Trust in relation to the information request and will be able to discuss the case with all those involved in the original decision.
- 1.9 In many cases, the procedure should be simple and quite informal; however, in some cases a more detailed review may be required.
- 1.10 The internal reviewer will produce a written report on his/her review of the complaint, recording the outcome of the review and the reasons for it. Where applicable, the report should clearly set out whether the reviewer recommends that either:
- The Trust's original decision is upheld, or
 - The Trust's original decision is reversed or modified.
- 1.11 Once the internal review is complete, the internal reviewer will send a copy of the final report and recommendations to the Head of Information Governance, together with a draft reply to the complainant.
- 1.12 The Trust's Head of Information Governance will review the recommended response and reply to the complainant with the outcome of the Trust's internal review.

2. External Review

- 2.1 If a complainant remains dissatisfied following the Trust's internal review stage, he or she has the right to complain to the Information Commissioner at:
- Information Commission:
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK95 5AF
www.ico.org.uk
- 2.2 In all correspondence with the requester, the Trust's response will include details of this right of external appeal.
- 2.3 The Information Commissioner is a regulator, not an ombudsman. He will make an assessment as to whether or not the provisions of the Act have been complied with.
- 2.4 If a case is appealed to the Information Commissioner, the Commissioner may require information to be provided by the Trust in order to consider the appeal. Usually this will be the information that has been requested as well as the reasons for withholding it and any other relevant information. In the case of a qualified exemption, the explanation will need

to cover how the public interest test has been applied. Such notices are called Information Notices and will specify the information required and the deadline for providing it.

- 2.5 Information Notices must be complied with – refusal to comply could be treated as contempt of court if referred by the Information Commissioner to the High Court. The Information Commissioner may not require disclosure of any legal advice to the Trust surrounding the request.
- 2.6 If the Information Commissioner upholds a complaint, a Decision Notice will be issued and served on the complainant and the Trust. This will specify the steps that must be taken and the time period for doing so.
- 2.7 Decision notices are binding on the Trust and refusal to comply may lead the Information Commissioner to refer the case to the High Court which would deal with the Trust as if it had committed a contempt of court.
- 2.8 Both the applicant and the Trust can appeal the Information Commissioner's decision to an Information Tribunal and thereafter, on a point of law only, to the courts.
- 2.9 The Information Commissioner also has the power to issue Enforcement Notices in relation to failure to comply with any requirement of Part 1 of the Act. These do not necessarily have to be linked to complaints. Failure to comply may result in contempt of court and can be appealed by the Trust in the same way as decision notice.

Appendix D – Process for Information Requests

