

# Freedom of Information Act 2000 Policy

This Policy aims to set out the obligations of the Trust to meet its obligations for compliance with the Freedom of Information Act 2000.

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## Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1.0	June 2007	First Issue
2.0	April 2010	Updated to reflect organisational change and national requirements.
3.0	January 2012	Reviewed to harmonise policies for Leicestershire Partnership NHS Trust, post April 2011.
4.0	January 2015	Revised for textual clarity and updated to reflect legislative change under the Protection of Freedoms Act 2012.
5.0	April 2017	Updated to reflect organisational change and add clarity on exemptions.
6.0	Sept 2019	Complete review carried out no changes required as no law changes
6.1	Sept 2021	No material changes

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### Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

### Due Regard

LPT will ensure that Due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and services are free from discrimination;
- LPT complies with current equality legislation;
- Due regard is given to equality in decision making and subsequent processes;
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 4) of this policy.

### Definitions that apply to this Policy

The following are definitions within the Freedom of Information Act 2000 and this policy.

<b>Absolute Exemption</b>	Applied to information that does not have to be released to the applicant either through a Publication Scheme or through a general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to consider whether disclosure will prejudice a protected interest or whether the balance of the public interest favours non-disclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.
<b>Applicant</b>	The individual(s), group or organisation requesting access to information under the Act.
<b>Dataset</b>	Dataset means information comprising a collection of information held in electronic form where all or most of the information in the collection— (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority, (b) is factual information which— (i) is not the product of analysis or interpretation other than calculation, and (ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.”
<b>Duty to Confirm or Deny</b>	Any person making a request for information to a public authority is entitled in principle to be informed in writing by that authority whether the public authority holds the information specified in the request or not. Public authorities accordingly have a duty to confirm or deny that they have the information sought.
<b>Fees Notice</b>	A written notification issued to an applicant stating that a fee is payable. Following issue of a fees notice, public authorities are not 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/her request lapses.
<b>Fees Regulations</b>	Statutory regulations that set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The Fees Regulations may prohibit the imposition of a fee in relation to certain types of request. Where other legislative provisions set out fees regimes in relation to the provision of information, the FOI Fees Regulations may not always be applicable.
<b>General Right of Access</b>	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 the information provided. 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.
<b>Information Commissioner</b>	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.
<b>Ministry of Justice</b>	The Ministry of Justice is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Ministry is responsible for: <ul style="list-style-type: none"> <li>• The effective management of the courts</li> <li>• The appointment of judges, magistrates and other judicial office holders</li> <li>• The administration of legal aid</li> <li>• 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 &amp; referenda law, defamation and legal aid.</li> </ul>
<b>Public Authority</b>	The Act is intended to have wide application across the public sector at national, regional, and local level. In view

	<p>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 designated in one of the following ways:</p> <ul style="list-style-type: none"> <li>a) on the face of the Act, (in Schedule 1), which lists 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:</li> <li>b) by order under section 4(1) of the Act which allows the names of bodies or office holders to be added to Schedule 1, provided certain conditions are satisfied;</li> <li>c) by order under section 5 which allows the Secretary of State, under certain circumstances, to designate bodies or public authorities for the purposes of the Act;</li> <li>d) by reference to the definition of a publicly-owned company in section 6.</li> </ul>
<b>Public Interest Test</b>	<p>When considering a qualified exemption the Trust must weigh the public interest in maintaining the exemption against the public interest in disclosure. This is the public interest test. The public interest here means the public good, not what is of interest to the public and not the private interests of the applicant.</p>
<b>Publication Scheme</b>	<p>A scheme specifying the classes of information which a public authority publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.</p>
<b>Qualified Exemption</b>	<p>Information to which a qualified exemption applies is information which is exempt from disclosure because it falls within a designated class of information or because disclosure will prejudice a protected interest. In all cases of qualified exemptions it is necessary to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.</p>
<b>Redaction</b>	<p>Process of checking information and removing all information that cannot be disclosed, in an otherwise disclosable document.</p>

## **1.0. Purpose of the Policy**

This is a policy for LPT and it explains the principles which underpin the Trust's commitment to openness and transparency in the decisions it makes about the provision of health services to the population it serves. It sets out our commitment to full implementation of the Freedom of Information Act to compliance with the Codes of Practice issued under Sections 45 and 46 of the Act<sup>1</sup>.

It reinforces the commitment of the Trust to take into account the practical guidance on the interpretation and implementation of its statutory obligations issued by the ICO and underpins the operational procedures and activities adopted by the Trust in connection with the implementation of the Act.

The Policy is applicable to all the activities which the Trust conducts with other public bodies including other NHS organisations, partnership bodies as well as voluntary organisations and commercial suppliers of goods and services.

## **2.0. Summary and Key Points**

The Freedom of Information Act 2000 ("The Act") gives people the right to request, in writing, access to information held by public authorities. It is intended to promote a culture of openness and accountability amongst public sector organisations, thereby facilitating how public authorities carry out their duties, why they make the decisions they do and how they spend public money.

In addition to the Act, the following other legislation may also require consideration when dealing with matters concerning access information held by the Trust:

- Environmental Information Regulations 2004 (EIR), which enables access to environmental information.
- Data Legislation (Retained General Data Protection Regulation (EU) 2016/679 – UKGDPR/Data Protection Act 2018), which enables individuals to access information about themselves.
- Access to Health Records Act 1990, which enables access to the medical records of deceased individuals.

## **3.0. Introduction**

This Policy provides a framework within which the Trust will ensure compliance with the requirements of the Act, the main features of which are:

- A general statutory right of access to all recorded information held by public authorities, subject to certain conditions and exemptions.
- Anyone who writes or emails the Trust and asks for information has the right to be told whether or not the Trust holds the information, and if so,

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<sup>1</sup> Code of practice on the Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act and the Code of Practice on the Management of Records issued under sections 45 and 46 of the FOIA 2000 respectively by the Ministry of Justice



have that information communicated to them, subject to clearly defined exemptions.

- There are 24 exemptions, either absolute or qualified, in the Act specifying the circumstances in which the Trust may consider whether information should be withheld. Where, applicable the public interest test will be applied.
- A continuing duty to advise any member of the public who proposes to make, or has made, a request for information under the Act.
- A duty on every public authority to adopt, maintain and review a Publication Scheme. The Trust's Publication Scheme can be found on the Trust website at <https://www.leicspart.nhs.uk/about/freedom-of-information-requests/>
- The Information Commissioner's Office (ICO) has powers to uphold information rights in the public interest and provides guidance for organisations and members of the public.
- This Policy applies to all Trust employees (including honorary contract holders and volunteers) and to Non-Executive Directors. A failure to adhere to this policy may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are accountable are aware of and adhere to this policy.

#### **4.0 Compliance with the Act**

The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and the statutory Codes of Practice. It will also take into reasonable account guidance that is issued from time to time by the Ministry of Justice, Information Commission and National Archives Office.

In order to ensure compliance with the Act the Trust will use such resources as are reasonably available to ensure that records are created systematically, that they can be retrieved efficiently and can be provided promptly to any person making a request for information. Consequently, this policy links to the records management policy of the Trust.

It is a key commitment of the Trust that all employees should be aware of their obligations under the Act. Appropriate levels of training will be provided depending upon the extent to which various categories of staff will be involved in managing requests for information, either as part of the day-to-day business of the Trust or in response to managing formal FOIA requests.

The Freedom of Information Lead Officer will work with the Trust Learning and Development department to ensure that training in relation to the Act is available to all staff and Non-Executive Directors who require it.

The Trust Data Privacy Group will monitor the effectiveness of its compliance with the FOIA and its performance and implementation of this policy.

The Trust is committed to openness and transparency in its activities and supports access to information about the Trust.

The Trust accepts that individuals also have certain rights to privacy and confidentiality. The Act clearly explains and defines the interface between the Act and the Data Protection Law. This Policy does not overturn the common law duty of confidence or statutory provisions (including the Human Rights Act 1998 and the DPA 18) that prevent disclosure of personal identifiable information. The right to release of personal information is still covered by the subject access provisions of the DPA 2018 and is dealt with in the Trust's Data Protection and Information Sharing Policy.

The Trust believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will rely on the exemptions contained in the Act if, following careful consideration at senior management level, the Trust concludes that an absolute exemption applies or if the Trust considers a qualified exemption should be applied in the public interest.

## **5.0 Duties within the Organisation**

- 5.1 The Trust Board supports compliance with the Act and endorses this Freedom of Information Act Policy.
- 5.2. The Chief Executive and Executive Directors have overall responsibility for the Freedom of Information Act Policy within the Trust. The implementation of and compliance with this policy is delegated to the Head of Information Governance.
- 5.3 Where contractors and employment agencies are used, the contracts between the Trust and these third parties will contain clauses to ensure that their responsibilities under the Act are clearly defined.
- 5.4 The Trust's Head of Data Privacy is responsible for compliance with the policy, for ensuring the adoption of appropriate procedures in managing a request for information and for monitoring the effectiveness of those procedures and the implementation of this policy.
- 5.5 All individual employees responsible for responding to requests for information need to be aware of the responsibilities of the Trust under the Act and, in particular, the continuing duty to advise and assist any member of the public.

## **6.0 Publication Scheme**

An approved publication scheme is a statutory requirement under the Act. The Trust has adopted the publication scheme approved by the Information Commissioner in

September 2003. The Trust's publication scheme can be accessed at <https://www.leicspart.nhs.uk/about/freedom-of-information-requests/>.

The Trust's publication scheme is a living document that is regularly reviewed. It sets out the information that the Trust routinely publishes and details how information can be obtained and whether or not a charge will be made for the provision of that information.

## **7.0 General Rights of Access to Recorded Information**

The Trust has produced a guidance leaflet to help any applicant who may wish to make a request for information. Copies of the leaflet are available from the Trust and at <https://www.leicspart.nhs.uk/about/freedom-of-information-requests/>

It is Trust policy that whenever possible members of the public should be provided with a copy of the leaflet when they have indicated they wish to make or are making an FOIA request.

### **7.1 Making a Request under The Act**

The Trust has adopted practical procedures for managing an FOIA request where it considers that the Act or the Environmental Information Regulations are engaged.

Under the Act any request in writing for access to information is a request made under the Act. There is no requirement for the request to quote the Act. For the purposes of this Policy the Trust accepts that all written requests for information are potentially FOIA requests.

Requests must be in writing and state the information requested, the name of the applicant and an address for correspondence. For the purpose of general rights of access, a request is treated as made in writing if it is transmitted by email and includes an email address for subsequent reference

Written requests for information that are part of the day-to-day business of the Trust will continue to be handled in a timely manner by individual services and departments. In so doing, individual services and departments will take into account the time limits imposed by the Act for managing requests for information (a maximum of 20 working days). Examples of information that are part of the Trust's day-to-day business include patient information leaflets, site locations, visiting times etc.

Section 1 of the Act gives a general right of access from 1<sup>st</sup> January 2005 to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act. Put simply, any person making a written request for information to the Trust is entitled:

- (a) to be informed in writing whether the Trust holds the information of the description specified in the request (this is referred to as the "duty to confirm or deny"); and
- (b) if the Trust holds the information, to have that information communicated to them.

These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to certain conditions and exemptions.

The Protection of Freedoms Act 2012 amends the Act in relation to the disclosure of datasets for re-use, in so much as, where the applicant expresses a preference for communication in electronic form, the Trust will, as far as is reasonably practicable, provide the information to the applicant in re-useable format.

## **8.0 Conditions and Exemptions**

The duty to confirm or deny does not arise where:

- (a) the Trust reasonably requires further information in order to identify and locate the information requested and has informed the applicant of that requirement
- (b) a fees notice 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
- (c) either confirming or denying the requested information is held can reveal information that falls under an exemption

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 costs limit established in statutory Fees Regulations. The Trust 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. Where multiple requests are received from an applicant, or applicants believed to be acting together or in pursuance of a campaign, within 60 consecutive working days the Trust will aggregate the requests.

The Trust is not obliged to comply with a request for information if the request itself is vexatious, or where the Trust has previously complied with a request for information and a subsequent identical or substantially similar request from the same applicant is received unless a reasonable interval has elapsed.

## **8.1 Exemptions under The Act**

The Trust may apply the following exemptions set out in Part II of the Act:

- Section 21: information reasonably accessible to the applicant by other means
- Sections 22 and 22A: Information intended for future publication and research information
- Section 23: security bodies
- Section 24: safeguarding national security
- How Section 23 and 24 interact

- Section 26: defence
- Section 27: international relations
- Section 28: relations within the UK
- Section 29: the economy
- Section 30: Investigations and proceedings
- Section 31: law enforcement
- Section 32: information contained in court records
- Section 32: information contained in court transcripts
- Section 33: public audit
- Section 34: parliamentary privilege
- Section 35: government policy
- Section 36: effective conduct of public affairs
- Section 36: record of the qualified person's opinion
- Section 37: communications with Her Majesty and the awarding of honours
- Section 38: health and safety
- Section 39: environmental information
- Section 40: personal information
- Section 40: access to information held in complaint files
- Section 40: information exempt from the subject access right
- Section 40: neither confirm nor deny in relation to personal data
- Section 40: personal data of both the requester and others
- Section 40: requests for personal data about public authority employees
- Section 41: information provided in confidence
- Section 42: legal professional privilege
- Section 43: commercial interest
- Section 43: commercial detriment of third parties
- Section 43: public sector contracts
- Section 44: prohibitions on disclosure

Exemptions are either absolute exemptions or qualified exemptions. Before applying a qualified exemption, the Trust will consider the public interest test.

## **9.0 Refusal of Requests**

If the Trust decides to refuse a request for information under any of the exemptions set out in Part II of the Act, the applicant will be informed of the reasons for this decision within twenty working days. The applicant will also be informed of

procedures for requesting an internal review about the Trust's handling of the request and of the right to complain to the Information Commissioner.

## **10.0 Charges and Fees**

Generally, the Trust will not charge for information that is available through its Publication Scheme. Charges may be levied for paper copies, multiple copies or copying into specific media formats. The charges will reflect the cost of retrieval, copying, postage, etc. The Publication Scheme provides further guidance on charging for information available from the Scheme.

The Trust has considered the statutory Fees Regulations for general rights of access made under the Act.<sup>2</sup> It has concluded that in circumstances when the cost of complying with a request will exceed the appropriate costs limit (currently £450) that the Trust will normally adopt the approach provided in the Fees Regulations of not supplying the requested information. In exceptional circumstances, that will be individually approved by the Trust Board, where the cost of complying with a request exceeds the limit of £450, the Trust will make the appropriate charge and comply with the request, provided the requested information is not exempt.

### **10.1 Fee Structure**

If a fee is charged it will not exceed the total of:

- a) the staff costs involved in determining whether the information is held
- b) the staff costs of locating, retrieving, extracting the information
- c) the disbursements and staff costs incurred in informing the applicant that the information is held
- d) the disbursements and staff costs incurred in communicating the information to the applicant

Staff costs will be calculated on the basis of an hourly rate of £25 per person (£450 being equivalent to 18 hours).

Disbursement costs may include any or all of the following:

- a) the costs of meeting the applicant's preference regarding the form in which the information is provided
- b) the costs of reproducing any document containing the information requested
- c) the costs of packaging, postage and delivery.

The Trust reserves the right to charge a fee for disbursement costs only, even when the cost of locating, retrieving or extracting information is less than the prescribed limit in the statutory Fees Regulations.

Where the Trust receives two or more requests, either from the same individual or from different people who appear to be acting together or in pursuance

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<sup>2</sup> Currently these are set out in the 'Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004'.

of a campaign, and the requests are received within 60 consecutive days of each other, the estimated cost of complying with any of the requests will be taken to be the aggregated cost of complying with all the requests.

In all cases where the Trust chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is sent to them. The period of time between the date the fees notice is sent to the applicant and the date the fee is received will not be counted as part of the twenty working day target time to respond to requests for information. The requested information will be sent only when payment of the fee is received. If the fee remains unpaid after 3 months, the request will become lapsed.

### **11.0 Time Limits for Compliance with Requests**

The Trust has established appropriate 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 or within a reasonable period of time where the public interest test has to be considered. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures and failure to do so may result in disciplinary action.

If the Trust is unable to respond within twenty working days the Freedom of Information Lead Officer will be advised. A letter will be sent to the applicant explaining the position, giving reasons for the delay and an estimated timescale for a full response, together with details of the Trust's complaint procedure for FOI requests.

Where the Trust has issued either a request for clarification, or a fees notice, and the applicant has responded accordingly, the working days during the period beginning on the date when the request or fees notice was sent to the applicant and ending on the date when the clarification or fee is received by the Trust will be disregarded for the purposes of calculating the twentieth working day following receipt.

### **12.0 Means by which information will be conveyed**

An applicant, on making a request for information, may express a preference for the communication of that information by any one or more of the following means, namely:

- (a) information in permanent or other form,
- (b) the provision of a reasonable opportunity to inspect a record containing the information,

- (c) a digest or summary of the information in permanent form or in another form acceptable to the applicant

The Trust will, so far as is reasonably practicable, give effect to that preference.

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 a request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.

The Trust has established systems and procedures to monitor and audit the provision of information arising from requests under the Act.

### **13.0 Transferring Requests for Information**

A request can only be transferred to another public body where the Trust receives a request for information which it does not hold, but which is held by that other public authority. If the Trust receives a request and holds some but not all of the information requested, a transfer may be made only in respect of the information which the Trust does not hold (but which is held by another public authority).

Where 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 to inform them the information requested may be held by another public authority
- (b) suggesting that the applicant re-applies to the authority which the Trust believes holds the information
- (c) providing him or her with contact details for that authority.

If the Trust considers it to be more appropriate to transfer that part of the request that relates to information which it does not hold to another authority, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consideration will be given as to whether the request should be transferred. 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.



Where there are reasonable grounds to believe that 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 they make a new request to the other authority.

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 other public authority 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 them to pursue their request.

#### **14.0 Consultation with Third Parties**

The Trust 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.

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 cannot have any 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.

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, the Trust 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.

If a third party does not respond to consultation the Trust is not relieved 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.

## **15.0 Public Sector Contracts**

The Trust's procurement processes will be compliant with any applicable EU procurement regulations and also with the Act. This Policy should be read in conjunction with the Trust's Procurement Policy. Partnership agencies and commercial suppliers of goods and services should be made aware of the Trust's obligations under the Act and under the Section 45 Code. The Trust will take into account current guidance issued by the Information Commissioner when deciding whether any information may be exempt from disclosure.

When entering into contracts the Trust will consider to what extent it should refuse to include contractual terms which purport 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 considers that it will be obliged to disclose that information in response to a request, regardless of the terms of contract.

If the Trust is being asked by non-public authority contractors to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure, then the Trust will reject such clauses wherever possible within the course of the contractual negotiations. Where 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 that clearly identifies information that should not be disclosed. The Trust will take care when drawing up any such schedule and be aware that any restrictions on disclosure 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.

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 apply appropriate contractual terms to protect from disclosure by the contractor information that the authority has provided to the contractor which would clearly be exempt from disclosure under the Act. 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.

## **16.0 Accepting Information in Confidence from Third Parties**

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

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 and capable of being justified to the Information Commissioner.

## **17.0 Complaints about the discharge of the duties of the Trust under the Act**

The Trust has implemented a procedure for dealing with complaints about the way the Trust discharges its duties under the Act, providing opportunity for the applicant to request an internal review.

The complaints procedure also refers applicants to their right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following the internal review.

In any correspondence with an applicant giving any decision in respect of which the applicant has a right of complaint, the applicant will be notified of the right to complain under the Trust's internal procedure and of the right to complain to the Information Commissioner.

## **18.0 Records Management**

The Trust has a separate policy for records management to comply with the Lord Chancellor's Code of Practice on the management of records issued under Section 46 of the Freedom of Information Act 2000 and the Records Management Code of Practice 2021.

## **19.0 The Re-use of Disclosed Information**

Information released under the obligations imposed by the Freedom of Information Act 2000 by the Trust is for the information of the applicant only. The Trust retains its copyright in all information that it discloses. Anyone wishing to re-use some or all of the information supplied to circulate it to a wider audience must first obtain the Trust's written permission to do so. The Trust may impose a charge for such re-use.

## **20.0 Training needs**

There is a need for training identified within this policy. In accordance with the classification of training outlined in the Trust Learning and Development Strategy this training has been identified as role development training. Any training will be delivered by subject matter experts utilising external companies to deliver on an ad-hoc basis. The course directory e-source link below will identify who the training applies to, delivery method, the update frequency, learning outcomes and a list of available dates to access the training as arranged.

A record of the event will be recorded on ULearn

The governance group responsible for monitoring the training is Data Privacy Committee.

## 21.0 Monitoring Compliance and Effectiveness

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
	Conditions and exemptions are applied appropriately	Section 8.0	Information Request Report	Data Privacy Committee	Six-monthly
	Requests are responded to within 20 working days	Section 11.2	Information Request Report	Data Privacy Committee	Six-monthly
	The Trust has adopted an appropriate model Publication Scheme		Information Governance Toolkit Audit	Data Privacy Committee	Annually

## 22.0 Standards/Performance Indicators

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
Achieve 'Standards Met' under the Data Security and Protection Toolkit	Data Security and Protection Toolkit

## 23.0 References and Bibliography

This policy was drafted with reference to the following:

- Freedom of Information Act 2000  
<http://www.legislation.gov.uk/ukpga/2000/36/contents>
- Environmental Information Regulations 2004  
<http://www.legislation.gov.uk/uksi/2004/3391/contents/made>
- Data Protection Act 2018  
<http://www.legislation.gov.uk/ukpga/2018/12/contents>
- Access to Health Records 1990  
<http://www.legislation.gov.uk/ukpga/1990/23/contents>
- Protection of Freedoms Act 2012

<http://www.legislation.gov.uk/ukpga/2012/9/section/102/enacted>

- Records Management Code of Practice 2021  
<https://www.nhsx.nhs.uk/information-governance/guidance/records-management-code/>
- Freedom of Information Act 2000 Code of Practice under section 45 of the Act.  
<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>
- Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004  
[http://www.legislation.gov.uk/uksi/2004/3244/pdfs/uksi\\_20043244\\_en.pdf](http://www.legislation.gov.uk/uksi/2004/3244/pdfs/uksi_20043244_en.pdf)
- Ministry of Justice web site:  
<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners>
- Information Commissioner web site:  
<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>
- National Archives web site:  
<http://www.nationalarchives.gov.uk/services/>

Training Needs Analysis

Training Required	YES <input checked="" type="checkbox"/>	NO
<b>Training topic:</b>	Information Governance Freedom of Information	
<b>Type of training:</b> (see study leave policy)	<input checked="" type="checkbox"/> Mandatory <input checked="" type="checkbox"/> Role specific <input type="checkbox"/> Personal development	
<b>Division(s) to which the training is applicable:</b>	<input checked="" type="checkbox"/> Adult Mental Health & Learning Disability Services <input checked="" type="checkbox"/> Community Health Services <input checked="" type="checkbox"/> Enabling Services <input checked="" type="checkbox"/> Families Young People Children <input checked="" type="checkbox"/> Hosted Services	
<b>Staff groups who require the training:</b>	All LPT staff are required to undertake Information Governance Training Those with a specific role relating to the handling of Information Requests require role specific Freedom of Information Training	
<b>Regularity of Update requirement:</b>	Annually (IG Training) Ad-hoc (FOI Training)	
<b>Who is responsible for delivery of this training?</b>	eLearning (IG Training) External expert (FOI Training)	
<b>Have resources been identified?</b>	Yes	
<b>Has a training plan been agreed?</b>	Yes	
<b>Where will completion of this training be recorded?</b>	<input checked="" type="checkbox"/> ULearn <input type="checkbox"/> Other (please specify)	
<b>How is this training going to be monitored?</b>	Through reports to the Records and Information Governance Group	

**The NHS Constitution**

**The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services**

<b>Shape its services around the needs and preferences of individual patients, their families and their carers</b>	√
<b>Respond to different needs of different sectors of the population</b>	√
<b>Work continuously to improve quality services and to minimise errors</b>	<input type="checkbox"/>
<b>Support and value its staff</b>	<input type="checkbox"/>
<b>Work together with others to ensure a seamless service for patients</b>	<input type="checkbox"/>
<b>Help keep people healthy and work to reduce health inequalities</b>	<input type="checkbox"/>
<b>Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance</b>	√

**Key individuals involved in developing the document**

<b>Name</b>	<b>Designation</b>
Sam Kirkland	Head of Data Privacy
Hannah Plowright	Data Privacy Officer

**Circulated to the following individuals for comment**

<b>Name</b>	<b>Designation</b>
Members of Data Privacy Committee	



<b>Section 1</b>					
<b>Name of activity/proposal</b>	Freedom of Information Act Policy				
<b>Date Screening commenced</b>	25.08.21				
<b>Directorate / Service carrying out the assessment</b>	Finance and Performance/ Data Privacy				
<b>Name and role of person undertaking this Due Regard (Equality Analysis)</b>	Data Privacy Manager				
<b>Give an overview of the aims, objectives and purpose of the proposal:</b>					
<b>AIMS:</b> To outline the rights of staff, patients, stakeholders and the general public in relation to requesting information under the terms of the Freedom of Information Act 2000					
<b>OBJECTIVES:</b>					
<ul style="list-style-type: none"> <li>• Meet the compliance requirements under the Act under which the Trust is obliged to act</li> <li>• Ensure transparency around all Trust business activities</li> </ul>					
<b>Section 2</b>					
<b>Protected Characteristic</b>	<b>If the proposal/s have a positive or negative impact please give brief details</b>				
Age	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Disability	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Gender reassignment	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Marriage & Civil Partnership	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Pregnancy & Maternity	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Race	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Religion and Belief	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Sex	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Sexual Orientation	Positive – under the FOI Act anyone can make a request for information about the Trusts' business				
Other equality groups?					
<b>Section 3</b>					
<b>Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please <u>tick</u> appropriate box below.</b>					
<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%; text-align: center;">Yes</th> <th style="width: 50%; text-align: center;">No</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B</td> <td style="text-align: center;">Low risk: Go to Section 4. <span style="float: right;">√</span></td> </tr> </tbody> </table>		Yes	No	High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B	Low risk: Go to Section 4. <span style="float: right;">√</span>
Yes	No				
High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B	Low risk: Go to Section 4. <span style="float: right;">√</span>				
<b>Section 4</b>					
<b>If this proposal is low risk please give evidence or justification for how you</b>					

<b>reached this decision:</b>			
As defined by the Freedom of Information Act 2000 every individual has the right of access to information about how public sector organisations conduct their business			
<b>Signed by reviewer/assessor</b>	Mary Stait	<b>Date</b>	25.08.21
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
<b>Head of Service Signed</b>	Sam Kirkland	<b>Date</b>	03.09.21

## DATA PRIVACY IMPACT ASSESSMENT SCREENING

<p><b>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</b></p> <p><b>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</b></p>		
<b>Name of Document:</b>	Freedom of Information Policy	
<b>Completed by:</b>	Mary Stait	
<b>Job title</b>	Data Privacy Manager	<b>Date</b> 25.08.21
<b>Screening Questions</b>	<b>Yes / No</b>	<b>Explanatory Note</b>
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	No	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	No	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	No	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	No	
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	No	
8. Will the process require you to contact individuals in ways which they may find intrusive?	<b>No</b>	
<p><b>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via <a href="mailto:Lpt.dataprivacy@nhs.net">Lpt.dataprivacy@nhs.net</a></b></p> <p><b>In this case, adoption of a procedural document will not take place until review by the Head of Data Privacy.</b></p>		
<b>Data Privacy approval name:</b>	Sam Kirkland, Head of Data Privacy	
<b>Date of approval</b>	03.09.21	

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust