



**Joint Policy for Cumbria Partnership Foundation Trust & North Cumbria  
University Hospital NHS Trust**

**Policy Title: Freedom of Information Act 2000**

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## Policy On A Page

### **SUMMARY & AIM**

This Policy outlines good practice and identifies the responsibilities of Trust staff in terms of the Freedom of Information Act 2000 (FOIA), in order to promote a culture of openness and accountability by providing people with rights of access to information held by the Trust(s). The Trust(s) expects these rights will facilitate better public understanding of how it carries out its duties, why it makes the decisions it does and how it spends the public's money.

The Trust(s) believes that common standards are required to ensure that the organisation is compliant with the FOI Act. The Policy outlines the area in which common standards will be established through other Trust policies and procedures.

### **TARGET AUDIENCE:**

This policy applies to all Trust staff including temporary, contracted staff, volunteers and students or other external organisations that provide services to the Trust(s).

It also relates to the procedure in place with Cumbria Partnership NHS Foundation Trust and North Cumbria University Hospital NHS Trust for dealing with requests under the Act. This excludes personal identifiable data which will continue to be dealt with under General Data Protection Regulations & Data Protection Act 2018.

### **TRAINING:**

Information Governance training is provided to all members of staff at their induction, followed by Statutory and Mandatory training which also covers Freedom of Information Act awareness and responsibilities. In addition staff with particular responsibilities for processing FOI requests will receive training specific to their roles

### **KEY REQUIREMENTS**

1. This policy applies to all information the Trust(s) hold regardless of how it was created or received.
2. It applies no matter what media the information is stored in and whether the information is on paper or held electronically. This may include documents, emails, minutes of meetings, correspondence, plans and all other types of recorded information.
3. The FOI Act is fully retrospective.

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## 1. INTRODUCTION

The Freedom of Information Act 2000, came into force on the 1<sup>st</sup> January 2005 and is part of the Government's commitment to greater openness in the public sector, a commitment supported by both Cumbria Partnership NHS Foundation Trust (CPFT) and North Cumbria University Hospital NHS Trust (NCUH). The Freedom of Information Act 2000, referred to hereafter as the FOI Act, will further this aim by helping to transform the culture of the public sector to one of greater openness. It enables members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered. The FOI Act replaces the Code of Practice on Openness in the NHS.

The Freedom of Information policy applies all requests for information under the FOI Act received by the Cumbria Partnership NHS Foundation Trust (CPFT) and North Cumbria University Hospital NHS Trust (NCUH).

The main features of the FOI Act are:

- A general right of access from 1<sup>st</sup> January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions
- In cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
  - i) Inform the applicant whether they hold the information requested, and
  - ii) Communicate that the information will not be released and the relevant exemption that applies
- If the information requested is subject to a qualified exemption under the FOI Act, the Trust will implement the public interest test to determine whether the information can be released. Where exemptions apply (either qualified or absolute) the Trust will release what information it can in a redacted form.
- The Information Commissioner has wide powers to enforce the rights created by FOI Act and to promote good practice, and instigate where necessary an Information Tribunal;
- A duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues

This Policy is a statement of what the Trust(s) intends to do to ensure compliance with the FOI Act. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures. The Policy refers to Freedom of Information Act, but will also be applied to any requests made for environmental information which may be treated under the Environmental Information Regulations (EIRs). The minor differences between FOI Act and EIR will be taken into account by the FOI Team when processing the request.

## **2. PURPOSE**

The FOI Policy will provide a framework within which the Trust(s) will ensure compliance with the requirements of the FOI Act and associate Codes of Practice issued by the Lord Chancellors Department pursuant to section 45(5) and 46(6) of the FOI Act. These codes of practice are not directly legally binding but failure to follow them is likely to lead to breaches of the FOI Act

The section 45 code of practice gives recommendations for public authorities about their handling of requests. It covers the situations in which you should give advice and assistance to those making requests; the complaints procedures that should put in place; and various considerations that may affect your relationships with other public bodies or third parties.

The section 46 code of practice covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed.

This policy is supported by a procedure detailing the operational process for managing and responding to FOI requests.

The Trust believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the FOI Act. The FOI Policy sets out a framework to provide this knowledge.

## **3. POLICY DETAILS**

Cumbria Partnership NHS Foundation Trust and North Cumbria University Hospital NHS Trust will promote a culture of openness and accountability by providing people with rights of access to the information held by the Trust(s). The Trust(s) expects these rights will facilitate better public understanding of how it carries out its duties, why it makes the decisions and how it spends the public's money.

The Trust(s) believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidentiality or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the General Data Protection Regulation and Data Protection Act 2018.

The Trust(s) believe that public authorities should be allowed to discharge their functions effectively. This means that the Trust(s) will use exemptions contained in the FOI Act where an absolute applies or where a qualified exemption can reasonably be applied in the terms of public interest of disclosure.

### **3.1 Corporate Records**

This policy is intended to cover all records created in the course of the business of the Trust(s), i.e. corporate records which are also public records under the terms of the Public Records Act 1958 and 1967. This includes email messages and other electronic records. It excludes personally identifiable records subject to General Data Protection Regulation and Data Protection 2018.

### **3.2 Publication Scheme**

The publication scheme is a legal requirement of the FOI Act, and encourages the proactive and routine publication of information by the Trust(s). The Trust aims to comply with the Information Commissioner (ICO) publication scheme template. This lists information into seven categories that the ICO would expect a public authority to make available. A list of the specific classes of information covered by the Publication Scheme is provided under section 3.2.1

In addition, the publication scheme must set out the following:

- The classes of information published, or intended to be published
- The manner in which publication is or is intended to be made
- Whether the information is available free of charge, or if payment is required.

The Trust(s) has adopted a model publication scheme in line with Publication Scheme Development and Maintenance Initiative 2008. CPFT and NCUH has completed its publication scheme and made it available on the internet. The publication scheme will be regularly reviewed and updated to ensure the accuracy of the information contained within it.

In line with ICO best practice expectations, the Trust(s) aims to maintain a disclosure log of previous FOI requests within the Trust's publication scheme. The Trust(s) aims to update this disclosure log within reasonable timeframes and to include FOI responses which are in the public interest.

#### **3.2.1 Classes of Information on the Public Scheme**

The Trust Publication Scheme will contain information in the following classes:

- Who we are and what we do
- What we spend and how we spend it
- What our priorities are and how we are doing
- How we make our decisions
- Our policies and procedures
- Lists and registers
- The services we offer

### 3.3 General Rights of Access

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

- To be informed in writing whether the Trust holds the information of the description specified in the request, and
- If the Trust holds the information to have that information communicated to them.

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

In accordance with section 8 of the FOI Act, request for information must be made in writing (this includes email) and a charge may be made for supply of the information as specified by the Fees Regulations. The request must state the name of the applicant and an address for correspondence and describe the information requested.

The right to request information under the FOI Act extends to anyone who wishes to make an enquiry, whether they are an employee of the Trust, an employee of some other organisation or any other member of the public (effectively identity and motive blind). There is no limitation on who may make an enquiry, the law gives the right to minors and adults alike, and foreign nationals (even those based abroad) are equally entitled to request information. The presumption of the Act is one of disclosure unless a valid exemption applies.

Applicants’ reasons for requesting information are not relevant and they are not obliged to disclose these when making a request.

### 3.4 Conditions and Exemptions

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

- Reasonably requires further information in order to identify and locate the information requested, and
- Has informed the applicant of that requirement

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

Under section 2 of the FOI Act, the Trust does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption.

A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information.

The Part II exemptions are listed in Appendix 1 of this Policy. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the FOI Act, justify the use of such exemptions.

The duty to confirm or deny does not arise if 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.

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 (a) refuse, or (b) charge for the communication of information that exceeds this limit.

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

### **3.5 Charges and Fees**

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

The Trust will follow the national Fees Regulations for general rights of access under the FOI Act. These set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied. See below link to ICO website:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

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 as required by section 9 of the FOI Act. Applicants will be required to pay fees within a period of three months beginning with the day on which the fees notice is given to them.

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There may be a few cases where the request is particularly complex and the costs of meeting it would exceed the appropriate limit, set at £450. If this is the case, the Trust may be exempt from answering the request.

The limit is applied first to the Trust's duty to confirm or deny that it holds the information and then to its duty to supply the information. Therefore, if it would cost more than £450 to confirm or deny then there is no duty to do so.

The Trust is permitted to estimate whether the cost of meeting a particular request would exceed the £450 limit. Any estimate of cost should take into account the cost of employing staff to:

- a. find out whether the information is held;
- b. locate and retrieve the information;
- c. extract the information (including editing and redacting).

To estimate these staff costs, an hourly rate of £25 per person per hour is used. No other costs may be taken into account.

If the cost limit is exceeded, then the Trust can utilise the appropriate exemption, providing the applicant with the opportunity to refine the request to enable its disclosure within the cost framework.

### **3.6 Release of Trust Employee Names and Details**

As a public authority, there is often recognised justification for the disclosure of employee names and work contact details. It is Trust policy that the Trust will release names of staff members whose names are already published on the Trust's public website without gaining additional consent.

In addition the Trust will routinely release the names of Directors, Department heads and Senior Managers who have responsibilities for departments within the Trust. For other staff, consent will normally be sought if release of names is thought to be appropriate. In some cases, the public interest in disclosure of personal details may be judged to outweigh an individual's preference to restrict such disclosure. The final decision on release of information remains with Director of Finance, Strategy and Support Service (Executive Lead) for FoI compliance and that this responsibility has been devolved to the Head of Information Governance / who has responsibility for FoI compliance within the Trust(s)

Staff with public facing roles are more likely to have their names released. Personal contact details (i.e. home address, home telephone number, personal email address) will never be released in response to a request under the FOI Act.

Requests for salary information will be answered by providing Agenda for Change pay bands. Where a person falls outside of the Agenda for Change pay bands, their salary will be given in £10,000 bands. Requestors will be referred to the Annual Report if requesting information regarding Executive Directors salaries.

### **3.7 Time Limit for Compliance**

The Trust(s) have systems and procedures to ensure that they comply with the duty to confirm or deny and to provide the information requested within the statutory twenty working days of a request being received in accordance with section 10 of the FOI Act.

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 working days in the period from when the applicant received the fees notices to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.

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 the decision. (See 3.9 Refusal of Requests)

### **3.8 Means by which Information will be conveyed**

Where possible the information will be supplied in the format requested by the applicant. This could be communicated by any one or more of the following:

- The provision to the applicant of a copy of the information in permanent form, or in another form acceptable to the applicant
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The Trust shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the FOI Act.

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

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

### 3.9 Refusal of Requests

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

- Using section 2 of the FOI Act, applies an exemption under part II of the FOI Act, as illustrated in Appendix 1.
- Has issued a fees notice under section 9 of the FOI Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant
- Under section 12 of the FOI Act, estimates that the cost of compliance with the request for information exceeds the appropriate limit
- Can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the FOI Act.

If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust under the FOI Act and of the right conferred by section 50 of the FOI Act. (See 3.11 Transferring Requests for Information)

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

- State that fact
- Specify the exemption in question, and
- State (if it would not otherwise be apparent) why the exemption applies.

Where the Trust is relying on a claim:

- That any provision of Part II which related to the duty to confirm or deny and is not specified in section 2(3) of the FOI Act as an absolute exemption is relevant to the request, or
- That the information is exempt only by virtue of a qualified exemption, a provision not specified in section 2(3), and at the time when the notice under 2.8.3 above is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 of the FOI Act the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Trust expects that a decision will have been reached.

As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the FOI Act, such estimates should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Trust will keep a record

of instances where estimates are exceeded, and where this happens more than occasionally, takes steps to identify the problem and rectify it.

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

- That, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information, or
- That, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The statement should not involve the disclosure of information which would itself be exempt information.

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

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

### **3.10 Duty to Provide Advice and Assistance**

The Trust will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the FOI Act.

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 FOI Act.

### **3.11 Transferring Requests for Information**

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

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

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must be certain as to the extent of the information relating to the request which it holds itself. If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider what would be the most helpful way of assisting the applicant with his or her request.

In most cases this is likely to involve:

- Contacting the applicant and informing him or her that the information requested may be held by another public authority
- Suggesting that the applicant re-applies to the authority which the original authority believes to hold the information
- Providing him or her with contact details for that authority.

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

- Whether the transfer is appropriate; and if so
- 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 an applicant is likely to object, the Trust will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

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 to advise the applicant that it holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

### **3.12 Consultation with Third Parties**

The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party. For example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 2018. Unless an exemption provided for the FOI Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption at section 41 of the FOI Act would apply, the Trust will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party who may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate. The Trust will follow the ICO guidance on section 43 commercial interests. See link below to ICO guidance.

<https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&query=section+43&profile=default>

Where information constitutes “personal data” within the meaning of the Data Protection Act 2018, the Trust will have regard to section 40 of the FOI Act which makes detailed provision for cases in which a request relates to such information and the interplay between the FOI Act and the Data Protection Act 2018 in such cases.

The Trust will undertake consultation where:

- The views of the third party may assist the authority to determine whether an exemption under the FOI 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 FOI 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 the most reasonable course of action is for it to take; this will occur in light of the requirements of the FOI Act and the individual circumstances of the request. 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 FOI 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 FOI Act, 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. The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the FOI Act, or its duty to reply within the time specified in the FOI Act.

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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 FOI Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

### **3.13 Public Sector Contracts**

When entering into contracts, the Trust will generally 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 FOI Act. Unless an exemption provided for under the FOI 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.

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.

In exceptional cases 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 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 FOI Act, as described above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

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

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

### 3.14 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. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

### 3.15 Public Interest Test

When deciding whether to disclose information under the FOI Act, in respect of non-absolute exemptions, the Trust will need to take into account the public interest. This means weighing up the public interest in complying with the request versus the public interest in non-disclosure of the information. The balance will lie in favour of disclosure.

Reasons to **favour** disclosure:

- That the documents "*complete the picture*" of what is already known about a matter.
- That the documents disclose the reasons for decisions.
- The importance of openness in the administration, and of the public's need to be better informed of and more able to participate in public affairs.
- The general public interest in obtaining access.

Reasons **against** disclosure include:

- Premature release of tentative and partially considered policy matters may mislead the public and encourage ill-informed speculation.
- Ongoing negotiations between the Trust and third parties could be prejudiced if the documents released would not fairly disclose the reasons for the decision, or involve sensitive matters considered at the highest level.

Timing is also an issue to be considered as over time the sensitiveness of the information can diminish and what is not to be disclosed at one point in time could be later in proceedings. The Public Interest in disclosure must be considered in every case where a non-absolute exemption applies. The public interest protected by the exemption will vary with each exemption. The Trust will need to be sure that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Some of the areas to be considered in the implementation of a public interest are the following. **NB:** This list is not exhaustive:

- Transparent and open decision making.
- Accountability of decision makers.
- Financial probity.
- Absence of bias.
- Integrity of judicial process.

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- Adherence to natural justice,
  - The general public interest in openness.
  - Health of the population and / or individuals.
  - Economic management.
  - Prosecution of offenders.

The following must not be considered when applying the public interest test:

- Embarrassment to the authority / employee.
- The applicant may misunderstand the information.
- Incomplete information.
- Loss of confidence in the authority.

### **3.16 Complaints relating to the Freedom of Information Act Process (Internal Reviews)**

FOI complaints will be managed as an internal review. This responsibility has been assigned to the Head of Information Governance for dealing with any complaints, e.g. initial complaints (internal review) about the organisation's FOI procedures and appeals against decision not to supply exempt information. The Head of Information Governance will liaise where appropriate with relevant individuals (i.e. Company Secretary). The dealing of complaints cannot be included within the Complaint's Policy as FOI falls outside the Complaints Statutory Instrument. Advice and support should be considered by an expert third party, i.e. solicitor or neighboring Trust if a Trust is unable to resolve the issue.

Applicants have the right under section 50 of the FOI Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

The Head of Information Governance / Data Protection Officer in line with Appendix 2 will determine if this complaint is vexatious.

### **3.17 Reuse of Public Information**

The reuse of Re-Use of Public Sector Information (SI 2005 No.1515) came into force on 1<sup>st</sup> July 2005. The objective of the European Directive 2003/98/EC, under which they were issued, is to encourage the electronic information industry by making information held by public bodies available for reuse.

Information published will be subject to the Trust's copyright unless otherwise indicated. It may be reproduced free of charge in any format or medium, unless expressly indicated to the contrary provided:

- It is reproduced accurately and not used in a misleading manner
- The source is identified and the Trust's copyright is acknowledged

This permission does not extend to any material which is the copyright of third parties. Authorisation to reproduce such material must be obtained from the copyright holders concerned.

#### 4. TRAINING AND SUPPORT

Information Governance training is provided to all members of staff at their induction, followed by Statutory and Mandatory training which also covers Freedom of Information Act awareness and responsibilities. In addition staff with particular responsibilities for processing FOI requests will receive training specific to their roles.

#### 5. PROCESS FOR MONITORING COMPLIANCE

The process for monitoring compliance with the effectiveness of this policy is as follows:

Aspect being monitored	Monitoring Methodology	Reporting		
		Presented by	Committee	Frequency
Performance in terms of acknowledging FOI requests within 2 working days	KPI agreed & included in Performance reports	Freedom of Information Lead	Information Governance Performance Group	Monthly
Performance in terms of responding to FOI requests within 20 working days	KPI agreed & included in Performance reports	Freedom of Information Lead	Information Governance Performance Group	Monthly
Review of ad-hoc cases to ensure systems in place to meet organisation's legal duties, exemptions appropriately used	IG Compliance Audit methodology	Freedom of Information of Lead	Information Governance Performance Group	Quarterly
Report on the outcome of internal reviews (reference section 3.16)	Information from Ulysses Risk management system	Freedom of Information Lead	Information Governance Performance Group	Quarterly

#### 6. REFERENCES:

Freedom of Information Act 2000

Information Commissioners Office website:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

Revised Code of Practice on the Discharge of Public Authority Functions under Part 1 of the Freedom of Information Act issued under section 45 of the Act November 2002.

<https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Information Commissioners Website: <https://ico.org.uk/>

Data Protection Act 2018

<http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

Environmental Information Regulations 2004  
<http://www.legislation.gov.uk/uksi/2004/3391/contents/made>

Public Records Act 1958 and 1967  
<http://www.legislation.gov.uk/ukpga/Eliz2/6-7/51>  
<http://www.legislation.gov.uk/ukpga/1967/44>

### **NHS Codes of Practice on Records Management**

<https://www.gov.uk/government/publications/records-management-code-of-practice-for-health-and-social-care>

### **National Archives**

The National Archives has produced a workbook “Complying with the Records Management Code: evaluation workbook and methodology” to help each organisation decide how well they are complying with section 46 Code of Practice under the Freedom of Information Act 2000. Visit:  
<http://www.nationalarchives.gov.uk/information-management/>

## **7. ASSOCIATED DOCUMENTATION:**

Information Governance Policies and Procedures – see respective Trust website.

CPFT Policies and Procedures: <https://www.cumbriapartnership.nhs.uk/health-professionals/policy-documents/category/all>

Complaints Policy

Corporate Records Management Policy

Records Management Policy

NCUH: <http://www.ncuh.nhs.uk/about-us/freedom-of-information/index.aspx>

Disclosure of Staff Information for Freedom of Information Requests

Corporate Records Management strategy

Complaints and PALS Policy

## **8. DUTIES (ROLES & RESPONSIBILITIES):**

### **8.1 Chief Executive / Trust Board Responsibilities:**

The Chief Executive and Trust Board jointly have overall responsibility for Freedom of Information compliance including ensuring that Trust policies comply with all legal, statutory and good practice requirements.

### **8.2 The Director of Finance, Strategy and Support Services Responsibilities:**

The Director is accountable for this policy and has the responsibility for ensuring the Trusts' Freedom of Information compliance.

**8.3 Company Secretary Responsibilities:**

Company Secretary is available to provide support and direction to the Head of Information Governance in applying accurately public interest tests, internal reviews (where required).

**8.4 Head of Information Governance Responsibilities:**

Head of information Governance is responsible for ensuring overall compliance with the FOI Act in ensuring requests are responded to in line with relevant guidance, developing and maintaining policies, standards, procedures and guidance and coordinating requests. The Head of Information Governance is responsible for conducting internal reviews into FOI complaints.

**8.5 Senior Media and Communications Officer Responsibilities:**

The Senior Media and Communications Officer is responsible for:

- Ensuring the Trust's Publication Scheme is displayed on the Trust's website;
- Ensuring that the Publication Scheme is regularly reviewed and maintained. (See section 3.2)

**8.6 Freedom of Information Team Responsibilities:**

The FOI team will manage Freedom of Information requests, working within the timescales set by the FOI Act. They will provide advice and assistance to applicants and to information leads where this is required. The team will provide quarterly reports on the Trust's FOI Act compliance to the Information Governance Group.

**8.7 Line Managers and Departmental Heads Responsibilities:**

Line Managers and Departmental Heads are responsible for ensuring that:

- Information is supplied to the FOI Team when requested for inclusion within the Publication Scheme
- Information not included within the Scheme is created and stored in accordance with Trust procedures and processes to enable easy location
- Supply information in a timely manner to the FOI Team in response to information requests as laid down under the FOI Act
- In the event that the time limit for an enquiry would be breached, to prepare a draft response detailing why they consider the amount of hours would be exceeded. This response must also include a calculation of the time involved to demonstrate how many hours would be required to process the enquiry. The time is currently 18 hours as laid down by the FOI Act.

Specific Departmental managers will be identified to take responsibility for particular sections of the Trust's Freedom of Information publication scheme categories.

**8.8 Joint Information Governance Board Responsibilities:**

The Chair of the approving committee will ensure the policy approval is documented in the final section of the Checklist for Policy Changes. The committee will agree the approval of the final draft of the policy.

## 9. ABBREVIATIONS / DEFINITION OF TERMS USED

ABBREVIATION	DEFINITION
CPFT	Cumbria Partnership NHS Foundation Trust
DPA2018	Data Protection Act 2018
EIR	Environmental Information Regulations 2004
FoIA	Freedom of Information Act 2000
GDPR	General Data Protection Regulation
ICO	Information Commissioner's Officer
KPI	Key Performance Indicator
NCUH	North Cumbria University Hospitals NHS Trust
PID	Personal Identifiable Data

TERM USED	DEFINITION
Absolute Exemption	Exemptions that do not require a public interest test to be undertaken
Applicant	The individual(s), group or organisation requesting access to information under the FOI Act
Data Protection Act 2018 (DPA)	The DPA supplements the major reforms to data protection laws that are contained in the General Data Protection Regulation (GDPR). It regulates the processing of personal data by companies, public authorities, law enforcement and intelligence agencies.
Duty to confirm or deny	Any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not
Environmental Information Regulations 2004 (EIRs)	Statute which came into force in 2005 and gives the public the right of access to environmental information held by public authorities.
Exemptions	Conditions which may be applied in circumstances in which requested data may be withheld from disclosure. There are two types of exemption - absolute & qualified:
Freedom of Information Act 2000	An Act of Parliament which came into force in 2005. The Act gives the public the 'right to know' and allows them to request any information held by public authorities.
Information Commissioner's Officer (ICO)	An independent UK regulatory office reporting directly to UK Parliament and overseeing the DPA 2018, FOI Act and the EIRs. The ICO is appointed by the Crown
Lord Chancellors Department	Is responsible for the efficient administration of justice in England and Wales.

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<b>TERM USED</b>	<b>DEFINITION</b>
Public Authority	The FOI Act is intended to have a wide application across the public sector at national, regional and local level. In view of the large number of bodies and offices intended to fall within the scope of the FOI Act it is not feasible to list each body individually
Public Interest Test	A public interest test must be applied when the use of a qualified exemption is proposed. The factors for and against the disclosure of requested information must be considered. In order to apply the exemption, the factors against disclosure must be seen to outweigh the factors for disclosure
Publication Scheme	A list of information that the ICO expects public authorities to regularly publish. All public authorities are required to produce and maintain a Publication Scheme.
Qualified Exemption	Exemptions which require a public interest test to be completed before they are applied

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**APPENDIX 1 – FOIA EXEMPTIONS:**

There are two types of exemption:

- A. Absolute** – which do not require a test of prejudice of the balance of a public interest to be in favour of non-disclosure
- B. Qualified** – by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information. With the exception of Section 21 (information available by other means) exemptions apply not only to the communication of information but also duty to confirm or deny that itself would disclose information that it is reasonable to withhold.

The **absolute** exemptions under the FOI Act are:

- Section 21** Information accessible to applicant by other means;
- Section 23** Information supplied by, or relating to, bodies dealing with security matters;
- Section 32** Court Records;
- Section 34** Parliamentary Privilege;
- Section 36** Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords);
- Section 40(1)** Personal Information (where disclosure may contravene the DPA2018);
- Section 41** Information provided in confidence;
- Section 44** Prohibitions on disclosure.

The exemptions that are **qualified are subject to the** public interest test

- Section 22** Information intended for future publication;
- Section 22 (A)**, Research exemption
- Section 24** National Security;
- Section 26** Defence;
- Section 27** International Relations;
- Section 28** Relations within the United Kingdom;
- Section 29** The Economy;
- Section 30** Investigations and proceedings conducted by public authorities;
- Section 31** Law Enforcement;
- Section 33** Audit Functions;
- Section 35** Formulation of Government Policy;
- Section 36** Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords);
- Section 37** Communications with Her Majesty, etc. and honours;
- Section 38** Health and Safety;
- Section 39** Environmental Information; (however, this should be processed as an EIR request)
- Section 40(2)** Personal information of third parties (*breach of GDPR/ DPA2018*)
- Section 42** Legal Professional Privilege;
- Section 43** Commercial Interests.

**APPENDIX 2 – FOIA SECTION 14 ‘VEXATIOUS OR REPEATED REQUESTS:**

Under section 14 (1) does not oblige a public authority to comply with a request for information if the request is vexatious.

Under section 14 (2) where a public authority 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 substantially similar request from the person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

The decision to refuse a request as vexatious or repeated would be taken by the Head of Information Governance or Company Secretary

For further information on section 14 of FOI Act can be found on the ICO website see links below:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

**DOCUMENT CONTROL**

<b>Equality Impact Assessment Date</b>	September 2018
<b>Sub-Committee &amp; Approval Date</b>	Joint IG Board – 21/09/2018

**History of previous published versions of this document:**

<b>Version</b>	<b>Ratified Date</b>	<b>Review Date</b>	<b>Date Published</b>	<b>Disposal Date</b>
NCUH IG13 v5.0	20/10/2016	30/10/2019	21/10/2016	
CPFT POL/002/003	31/08/2016	31/03/2019	07/09/2016	

**Statement of changes made from existing CPFT and NCUH versions**

<b>Version</b>	<b>Date</b>	<b>Section &amp; Description of change</b>
0.1	06.09.18	<ul style="list-style-type: none"> <li>Initial Draft – amalgamation of NCUH and CPFT</li> <li>Addition of Section 3.6 Release of Trust Employee Names and Details</li> </ul>
0.2	07.09.18	<ul style="list-style-type: none"> <li>Amended following feedback from Head of IG - Roles and Responsibilities section amended to reflect the cross Trust structures</li> <li>Section 3.16 Complaints wording updated</li> </ul>
0.3	10.09.18	<ul style="list-style-type: none"> <li>Amendments following feedback from Financial Systems Manager</li> <li>Section 3.3 General Rights of Access, additional paragraphs that requests are both identity and motive blind</li> <li>Section 3.12 inclusion of section 43 commercial interests</li> </ul>
0.4	10.09.18	<ul style="list-style-type: none"> <li>Section 1 Introduction amended</li> <li>Comments added from Communications and Engagement Manager grammar and typographical</li> </ul>
0.5	18.09.18	<ul style="list-style-type: none"> <li>Amendments from Information Governance Lead NCUH</li> <li>Addition to Section 2 FOI Codes of Practice</li> <li>Addition of Subsections 3.2.1</li> <li>Removal of wording under Section 3</li> <li>Section 3.7 amended wording</li> <li>Amendment to Section 3.7 &amp; 3.16</li> <li>Amendment to Section 8</li> <li>Section 7 Associate Documentation</li> </ul>

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**List of Stakeholders who have reviewed the document**

<b>Name</b>	<b>Job Title</b>	<b>Date</b>
Yvonne Salkeld	Head of Information Governance	07.09.18
David Franklin	Financial Systems Manager	07.09.18
Anne Gadsden	Information Governance Officer	10.09.18
Marti Irving	Communications and Engagement Manager	10.09.18
Rhia Heron	Head of Communications	12.09.18
	Information Rights Officer	10.09.18
	Freedom of Information Assistant	10.09.18
	Joint Information Governance Board	21.09.18