



# **CORPORATE POLICY & PROCEDURE NO. 11**

## **FREEDOM OF INFORMATION POLICY June 2018**

## **DOCUMENT INFORMATION**

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## Contents

1.0	INTRODUCTION .....	4
2.0	FREEDOM OF INFORMATION ACT 2000 POLICY.....	5
3.0	IMPLEMENTATION AND COMPLIANCE.....	11
4.0	REFERENCES .....	11
5.0	DISTRIBUTION .....	12
6.0	OWNER AND REVIEW .....	12
7.0	OTHER ASSOCIATED TRUST DOCUMENTS	12
8.0	EQUALITY STATEMENT .....	12
	APPENDIX 1: Exemptions - Freedom of Information Act 2000 .....	14

## 1.0 INTRODUCTION

### 1.1 Rationale

The Freedom of Information Act 2000 is part of the Government's commitment to increased openness and transparency within the Public Sector, to which The South Central Ambulance Service NHS Foundation Trust (*The Trust*) is fully in support.

The Act furthers this aim by helping to transform the culture of the public sector to one of greater openness. By establishing the legal rights of members of the public to seek access to its information, it will enable members of the public to question the decisions of public authorities more closely and ensure that the services provided are efficiently and properly delivered. The Act replaces the non-statutory Code of Practice on Openness in the NHS.

The main features of the Act are:

- to provide a right of access to recorded information held by public authorities from 1<sup>st</sup> January 2005, subject to certain conditions and exemptions (see appendix 1)
- in cases where information is exempt from disclosure, except where an absolute exemption applies, there is a duty on the Public Authority to
  - inform the applicant in writing whether it holds information of the description specified in the request. This is known as the duty to confirm or deny
  - communicate the information to him or her
- a duty on every public authority to adopt and maintain a Publication scheme
- a duty to respond to an applicant within 20 working days of a written request for information, except where the exemptions apply
- an Information Commissioner's Office (ICO) with powers to enforce the rights within the Act, to promote good practice and to impose financial penalties where serious security/data breaches occur
- a duty on the Lord Chancellor to disseminate Codes of Practice for guidance on specific issues
- Under the Environmental Information Regulations there are separate rights of access to information about the environment.
- A defined interface with the General Data Protection regulation (GDPR) and the Data Protection Act 2018 (DPA 2018) which maintains the privacy of personal data.

### 1.2 Scope

This policy provides a framework within which the Trust will ensure compliance with the requirements of the Act and will underpin any operational procedures and processes in the implementation and governance of the Act.

This policy is not an operational procedure but a statement of how compliance will be achieved by the Trust.

### 1.3 Principles

The Trust follows the principle that openness and honesty should be ingrained within its working practices, and that the Trust supports the creation of an environment where open dialogue and increased access to information with all stakeholders is facilitated.

The Trust supports the belief that:

- all individuals have a right to privacy and confidentiality. The Trust fully supports the principles set out within the (GDPR) and the DPA 2018. The release of personal identifiable data is covered under the data subject rights provisions within data protection legislation which does not overturn the Trusts common law duties of confidence or statutory provisions
- public authorities should be allowed to discharge their functions effectively. The Trust will use exemptions contained within the Act to ensure this is so
- all staff should have training and knowledge of the implications of the act and operational procedures to ensure compliance. This includes having access to expert knowledge
- guidelines and common standards are required to ensure that the Trust is compliant with the Act. This policy outlines the areas in which these need to be established
- The Trust will adopt similar standards and policies in relation to the implementation of the Environmental Information Regulations.

## **2.0 FREEDOM OF INFORMATION ACT 2000 POLICY**

### **2.1 Policy Statement**

The Trust will use all appropriate and necessary means to ensure that it is compliant with the Act and the associated Code of Practice issues by the Lord Chancellors Department

### **2.2 Publication Scheme**

The Trust adopted a model Publication Scheme which was approved by the Information Commissioner in March 2003 and then updated to a new model Scheme April 2009, which can be found on the Trust's website

The publication scheme outlines the classes of information which the Trust publishes or intends to publish, detailing:

- the format in which the information will be made available
- the dates or intended dates of publication
- whether a charge is applicable for the supply of information

The publication scheme will be made available in hard copy or through the Trusts website and will be subject to regular review and maintenance

All material made available through the publication scheme is exempt under section 21 from the right to access. Therefore the Trust is not obliged to respond to requests for it on an individual basis.

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

### 2.3 General Rights of Access

From the 1<sup>st</sup> January 2005 the Act gave the right of access to all recorded information held by the Trust, this includes email, electronic files, paper records, voice and images of all information held, subject to exemptions and conditions

Section 1 of the Act sets out;

1 (1) any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request – to be known as the duty to confirm or deny
- (b) if that is the case, to have that information communicated to him or her

The provision of information is fully retrospective at the point of request, in that if the Trust holds the requested information it has a duty to communicate it.

All requests for information to the Trust must be in writing, stating legibly via post or electronic means;

- the name of applicant
- the address for correspondence
- a description of the information requested
- it must be capable of being used for subsequent reference

It is not necessary for the applicant to quote the Act in their request in order for the legislation to apply.

The Trust will ensure that there are appropriate systems and procedures in place to conform with its duty to provide advice and assistance to applicants making a request for information in accordance with the Code of Practice

### 2.4 Conditions and Exemptions (Appendix 1)

The Trust has a duty to confirm or deny to the applicant whether it holds the requested information, subject to conditions and exemptions. This duty to confirm or deny does not arise where the Trust;

- requires further information in order to identify and locate the information, and
- has informed the applicant of that requirement
- would contravene provisions within the GDPR and DPA 2018
- meets exemption criteria within set out within the Act

The Trust has a duty to contact the applicant for further information to progress a request should it be required. However the Trust does not have to comply with this duty if the information is exempt, either absolute or qualified.

A qualified exemption may be applied if the withholding of information outweighs the cost to public interest in disclosing whether the Trust holds it or not.

The Trust will use exemptions summarised within Appendix A.

## 2.5 Charges and Fees

Information published in the Trust's publication scheme and available via the Trust's website will not be subject to a fees notice but the Trust may levy a fee for hard copies, multiple copies or copying onto a media such as CD-ROM.

The Trust will follow the statutory Fees Regulations for general rights of access made under the Act.

If a fees notice is applicable the applicant will be informed in writing. Applicants are required to pay the fee within a 3 month period of the day the notice was given to them. Until the fee is received the Trust is not obliged to confirm or deny the information it holds. Also until a fee is received the clock for the 20 days compliance will be stopped.

If the Trust estimates that the request for information exceeds the appropriate limit it has the right to exemption. The Trust also holds the right to apply a fee for disclosure where the cost of compliance far exceeds the appropriate limit.

## 2.6 Timeframe for Request Compliance

The Trust has a duty to confirm or deny and supply the requested information within a 20 working day period on receipt of a written request. The Trust will establish systems and procedures to monitor all requests and ensure compliance with the time frames contained within the Act, and performance manage against Key Performance Indicators.

If a fees notice has been issued and the applicant has paid, the period between the issue of the notice and receipt of payment will be disregarded. If the applicant does not pay within 3 months the Trust is exempt from meeting the request.

If the Trust decides to apply an exemption or refuse a request based on a vexatious or repeated request the Trust must inform the applicant in writing within 20 working days. This may state clearly the reasons for the decisions to be based.

## 2.7 Means by which information will be conveyed

The Trust acknowledges the right of each applicant to request a preference by which the information is communicated back to them by any one or more of the following means, namely:

- 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 or in another form acceptable to the applicant

The Trust shall so far as reasonably practicable meet the preference of the applicant and in determining whether it is reasonably practical consider all circumstances, including cost.

If the Trust considers it unreasonable in meeting this preference the applicant will be contacted in writing outlining the reasons for this decision.

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

## 2.8 Refusal of Request

Outlined in 2.4 through 2.7 the Trust does not have to comply with the duty to confirm or deny if:

- an exemption in Appendix A applies
- a fees notice is unpaid after 3 months
- the cost of compliance exceeds the appropriate limit
- a request is vexatious or repeated

**If the Trust chooses to refuse a request the applicant will be informed in writing within 20 working days stating:**

- notice of the fact
- exemption applied
- reason for exemption – if a qualified exemption the statement itself should not involve the disclosure of information which would itself be exempt

There are four different types of notice:

- (a) The first type of notice is to be given when any Part II provision is relied upon to claim either that the duty to confirm or deny is excluded or that the information is exempt.
- (b) The second type of notice is appropriate when the Trust is relying on one of the Part II provisions, which does not confer absolute exemption, but has not yet decided where the balance of public interest lies.
- (c) The third type of notice is supplemental to the second type of notice. It is a statement of reasons for claiming that the public interest in maintaining the exclusion of the duty to confirm or deny, or in maintaining an exemption, outweighs

the public interest in disclosing whether the authority holds particular information, or in disclosing information as the case may be.

- (d) The fourth type of notice is issued when the Trust claims that the section 12 or section 14 exemptions applies (that is, that the cost of compliance would exceed the appropriate limit, or that the request is vexatious or repeated).

**If the Trust has not reached a decision on the application for information it must inform the applicant of an estimated decision date. At all times the applicant must be informed of changes and reasons for delays in meeting this date. The Trust must ensure monitoring systems are in place to record exceeded estimated dates**

The Trust will monitor and record all notices issued to refuse a request for information under the Act

## 2.9 Transferring Requests for Information

The Trust will transfer all or part of a request for information that it does not hold, but which is held by another public authority

The Trust recognises that 'holding' information includes holding a copy of a record produced by another person or body, but does not extend to holding that information on behalf of another person or body

The Trust must inform the applicant if it does not hold all or part of the requested information, and has the duty to offer advice and assistance in obtaining requested information.

In most cases this is likely to involve:

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

A request cannot be transferred to another Public Authority unless confirmation is received by the second authority of acceptance of the transfer. If the Trust transfers a request it must inform the applicant;

- before the transfer if an objection is likely
- after the transfer informing them they have done so
- suggesting that a new application be made to the second authority

## 2.10 Third Party consultation

The Trust recognises that in some cases the disclosure of information may affect the legal rights of a Third party, e.g. where information is subject to the common law duty of

confidence or where it constitutes 'personal data' within the GDPR and DPA 2018. Unless an exemption applies in the Act the Trust will be obliged to disclose that information to the applicant.

If disclosure of information cannot be made without consent from the Third party e.g. if information is obtained from the Third party or information without their consent would breach confidence, the Trust will consult with a view to seek their consent, unless consultation is not practicable or the cost in doing so exceeds the appropriate limit.

If the interests of a number of Third parties may be affected by the disclosure of information and those Third Parties have a representative organisation acting on their behalf, the Trust will, if considered appropriate, consult with them on their behalf. 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 Trust acknowledges that the Trust's duty to comply is not removed if the Third party fails to respond within the time specified by the Act. In all cases it is the Trust, not the Third party who determines to disclose information under the act.

Refusal by the Third party to disclose information does not, in itself, mean that information should be withdrawn.

## 2.11 Public Sector Contracts

When entering into new contracts the Trust will refuse to include terms that restrict the disclosure of information held by the Trust and relating to the contract, subject to conditions and exemptions.

Unless an exemption is applied the Trust is obliged to disclose that information in response to a request, regardless of the terms of contract.

The Trust, when entering into non-public service contracts, wherever possible will reject entering into confidentiality clauses. Where this is not possible the Trust will agree with the contractor a schedule of information acceptable for disclosure. Any reason for nondisclosure must be justifiable to the Information 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 applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.

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

according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

## 2.12 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 accept information 'in confidence' which is not confidential in nature.

Any acceptance 'in confidence' must be justifiable to the Information Commissioner.

## 2.13 Complaints

The Trust has a working complaints policy and procedure that will include provisions regarding the Trusts discharge of duties and compliance with the Act.

The 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 attempts at local resolution of their complaint. In any correspondence with the 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.

## **3.0 IMPLEMENTATION AND COMPLIANCE**

### 3.1 Staff Responsibility

All staff and Non-Executive Directors are required to adhere to this policy and any associated procedures that may result from its implementation. Failure to do so may result in disciplinary action. All managers are responsible for ensuring that all staff are aware of this policy and any changes to it that may occur.

### 3.2 Corporate Responsibility

The Information Governance Manager will oversee the implementation of this policy on behalf of the Director Finance who has delegated responsibility from the Chief Executive. The Information Governance Manager will establish systems, procedures and training that support this policy.

## **4.0 REFERENCES**

General Data Protection Regulation

Data Protection Act 2018

Freedom of Information Act 2000

Lord Chancellors Code of Practice on the Discharge of Public Authorities Functions under Part 1 of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002

Lord Chancellors Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002

## **5.0 DISTRIBUTION**

This policy will be made available through the Trust's Publication scheme via the internet and intranet.

## **6.0 OWNER AND REVIEW**

This document will be reviewed every 3 years (or earlier if required) with the responsibility resting with the Information Governance Manager or his or her delegate to review content and compliance.

## **7.0 OTHER ASSOCIATED TRUST DOCUMENTS**

- Confidentiality Policy
- Records Management Policy
- Data Protection Policy
- Publication Scheme
- Information Governance Strategy
- Information Governance Policy

## **8.0 EQUALITY STATEMENT**

8.1 The Trust is committed to promoting positive measures that eliminate all forms of unlawful or unfair discrimination on the grounds of age, marital status, disability, race, nationality, gender, religion, sexual orientation, gender reassignment, ethnic or national origin, beliefs, domestic circumstances, social and employment status, political affiliation or trade union membership, HIV status or any other basis not justified by law or relevant to the requirements of the post.

8.2. By committing to a policy encouraging equality of opportunity and diversity, the Trust values differences between members of the community and within its existing workforce, and actively seeks to benefit from their differing skills, knowledge, and experiences in order to provide an exemplary healthcare service. The Trust is committed to promoting equality and diversity best practice both within the workforce and in any other area where it has influence.

8.3. The Trust will therefore take every possible step to ensure that this procedure is applied fairly to all employees regardless of race, ethnic or national origin, colour or nationality; gender (including marital status); age; disability; sexual orientation; religion or belief; length of service, whether full or part-time or employed under a permanent or a fixed-term contract or any other irrelevant factor.

8.4. Where there are barriers to understanding e.g. an employee has difficulty in reading or writing or where English is not their first language additional support will be put in place wherever necessary to ensure that the process to be followed is understood and that the

employee is not disadvantaged at any stage in the procedure. Further information on the support available can be sought from the Human Resource Department

## **APPENDIX 1: Exemptions - Freedom of Information Act 2000**

List of exemptions under the Freedom of Information Act 2000

### **A. Exemptions where the public interest test applies:**

- s22 Information intended for future publication
- s24 National security
- s26 Defence
- s27 International relations
- s28 Relations within the United Kingdom
- s29 The economy
- s30 Investigations and proceedings conducted by public authorities
- s31 Law enforcement
- s33 Audit functions
- s35 Formulation of government policy, etc.
- s36 Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
- s37 Communications with Her Majesty, etc., and honours
- s38 Health and safety
- s39 Environmental information
- s40 Personal information
- s42 Legal professional privilege
- s43 Commercial interests

### **B. The absolute exemptions**

If these exemptions apply it is not necessary to go on to consider whether the disclosure is in the public interest.

- s21 Information accessible to applicants by other means
- s23 Information supplied by, or relating to, bodies dealing with security
- s32 Court records, etc
- s34 Parliamentary
- s36 Prejudice to effective conduct of public affairs (only applies to information held by the House of Commons or the House of Lords)
- s40 Personal information (where the applicant is the subject of the information)
- s42 Information provided in confidence
- s44 Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court