

# FREEDOM OF INFORMATION POLICY

<b>Department / Service:</b>	Digital Division
<b>Originator:</b>	Matthew Thurland Health Records Manager
<b>Accountable Director:</b>	Executive Chief Digital Information Officer
<b>Approved by:</b>	Information Governance Steering Group 24 <sup>th</sup> April 2023, Trust Management Executive
<b>Date of Approval:</b>	24 <sup>th</sup> May 2023
<b>Review Date:</b> <b>This is the most current document and should be used until a revised version is in place</b>	24 <sup>th</sup> May 2026
<b>Target Organisation(s)</b>	Worcestershire Acute Hospitals NHS Trust
<b>Target Departments</b>	All
<b>Target staff categories</b>	All

## Policy Overview:

The Freedom of Information Act 2000 (FOIA) gives anyone the right to request information from public authorities including central government, local authorities, schools, police and the NHS.

This policy relates to all records of information held by the organisation and applies to all staff in the Trust.

## Key amendments to this Document:

Date	Amendment	By:
29-11-13	Document issued for consultation	KS
6-11-13	Document approved by Information Governance Steering Group	IGSG
30-11-16	Revision of document to include limit on time for appeal on response	KS
10-12-18	Minor amendments to accountable director. Document Approved for further two years	KS
Nov 2019	Changes to the accountable officer and to the review stage of the policy	KS
13-1-20	Document approved by the Information Governance Steering Group subject to minor amendments to the structure (appendix 1)	

## Trust Policy



**Worcestershire  
Acute Hospitals**  
NHS Trust

20-1-20	Minor amendments to the structure. Document approved until January 2022.	
01-02-22	Document review date extended by 12 months in line with amendment to Key Document Policy.	Trust Policy
01-04-23	Minor amendments to the policy reflecting latest guidance and organisational changes.	IGSG, TME

**Contents**

1. Introduction..... 4

2. Key features of the FOI Act ..... 4

3. General Rights of Access and Requests for Information..... 4

4. Roles and Responsibilities..... 5

5. Duty to assist..... 6

6. Publication Scheme..... 6

7. Information Management..... 7

8. Management of Requests..... 7

9. Refusing a Request ..... 9

10. Exemptions..... 9

11. Third Party Information ..... 10

12. Fees and Charges ..... 10

13. Appeals Process..... 10

14. Complaints ..... 11

15. Policy Implementation and Communication ..... 11

16. Monitoring..... 11

17. References ..... 11

18. Review ..... 11

Appendix 1 ..... 12

Procedure for the management of requests under the FOI Act..... 12

Appendix 2 ..... 13

Exemptions available under Part II of the Freedom of Information Act 2000..... 13

Appendix 3 ..... 14

The Prejudice Test & The Public Interest Test..... 14

## 1. Introduction

The Freedom of Information Act 2000 (FOIA) gives anyone the right to request information from public authorities, in this case the Trust.

The Act is intended to promote a culture of greater openness and accountability among public sector bodies and facilitate better public understanding of how authorities carry out their duties, why they make the decisions they do and how they spend public money.

The Trust supports the culture of openness that the Act brings. The Trust also believes that individuals have a right to privacy and confidentiality, and this policy does not overturn the duty of confidentiality or statutory provisions that prevent disclosure of personal information. The release of such personal information will be managed under the provisions of the Data Protection Act 2018.

The Trust must still be able to carry out its duties effectively and to ensure this; the exemptions outlined in the Freedom of Information Act will be applied appropriately.

This policy relates to all records of information held by the organisation and applies to all staff in the Trust and managers must ensure that all staff are made aware of this document.

## 2. Key features of the FOI Act

- Grants members of the public or organisations (public or private) statutory rights of access to any recorded information held by public authorities. This extends also to information which the Trust holds about other organisations or individuals (in some instances).
- Confers on members of the public a legal right to inspect these records.
- Puts public authorities under a legal obligation to comply with requests for the information it holds unless an exemption from disclosure applies.
- Legally obliges public authorities to adopt, implement and maintain a Publication Scheme.
- Expects public authorities to follow the guidance provided in the Codes of Practice issued under Part III of this Act. Namely:
  1. Section 45 Code of Practice on Discharge of Public Authorities' Functions defined under Part I of the Freedom of Information Act 2000.
  2. Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000.

## 3. General Rights of Access and Requests for Information

The Act gives people a general right of access to recorded information held by public organisations (subject to certain exemptions). This means that any person who makes a request has the right:

- to be informed in writing whether the organisation holds the information requested, this is the duty to confirm or deny;
- to share the information if the organisation holds it.

There is no need for the applicant to state that they are making a Freedom of Information request - this Act covers all requests for information and is fully retrospective.

Basic requirements only are required when requests are made for information:

Name

Address (postal or email)

Description of information requested

Requests must be in writing and sent to the Trust by post or email.

The Act requires that requests are responded to within 20 working days. If the organisation decides to make use of an exemption to withhold the information, the applicant must be informed within 20 working days.

Whilst the organisation cannot ask the applicant the reason or purpose for their request, it can contact the applicant to obtain more detail about the information requested and narrow down what might otherwise be a vague or broad request.

#### **4. Roles and Responsibilities**

The roles and responsibilities are as follows:

##### **Executive Level**

The Chief Executive has overall responsibility to ensure the Trust is responsive and acts upon the requirements of the Freedom of Information Act 2000.

The Executive Chief Digital Information Officer is responsible for ensuring the provision of the Freedom of Information service.

##### **Senior Management Level**

The Chief Information Officer and Health Records Manager are responsible for the overseeing the implementation of this policy and will establish systems, procedures and operational processes to support the function ensuring requests for information and advice are acted upon.

All directors and senior managers have a duty to ensure that requests for information and advice under the Act which relate to their area are responded to in line with the FOIA policy and procedure within the agreed timescales.

## All Managers

All managers are responsible for ensuring that this policy is communicated and implemented within their area of responsibility. Any advice or assistance regarding this policy or the Freedom of Information Act should be referred to the Chief Information Officer.

All managers have a duty to ensure information and records are managed to ensure requests can be dealt with effectively and appropriately. The management of records is dealt with within the records management policy.

## All Staff

All staff have a responsibility to ensure any requests for information under the FOI Act are referred on immediately to the FOI Office or to their line manager for action.

## 5. Duty to assist

The Trust has a duty as a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so. This would mean helping to frame requests, narrow down information and to help the person requesting the information to receive what they are looking for.

## 6. Publication Scheme

All NHS Bodies have a duty to adopt and maintain a Publication Scheme. The Scheme details what information is available for publication, how this can be accessed and if a fee for its release is applicable. Most information within Trust's Publication Schemes will be available via the Trust website. WAHT uses the NHS model Publication Scheme.

### 6.1 Classes of Information with the Publication Scheme

The current classes of information are:

#### **Who we are and what we do.**

Organisational information, locations and contacts, constitutional and legal governance.

#### **What we spend and how we spend it.**

Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.

#### **What our priorities are and how we are doing.**

Strategy and performance information, plans, assessments, inspections and reviews.

#### **How we make decisions.**

Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.

**Our policies and procedures.**

Current written protocols for delivering our functions and responsibilities.

**Lists and Registers.**

Information held in registers required by law and other lists and registers relating to the functions of the authority.

**The services we offer.**

Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- The disclosure of information which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.

## 7. Information Management

It is the responsibility of the executive team and divisional directors to ensure that information is maintained in all their relevant areas to ensure the Publication Scheme can be kept up to date. This is especially important with documents such as policies and procedures. It will be assumed that the appropriate managers are satisfied with current documents within the scheme, unless they state otherwise.

It is also the responsibility of the relevant directors to ensure that records management in their department will be compliant with Trust policy.

## 8. Management of Requests

Where the Trust has existing processes for providing information to members of the public (and external organisations), these should continue.

All requests for information outside of normal business processes, or those specifically defined as FOI requests, should be referred to the FOI Office for processing.

The Trust is not obliged to respond to vexatious requests. These are determined by the information requested and not by the individual. The question at hand is whether the request is a genuine endeavour to access information or whether it is aimed at disruption of the service or harassment of a specific member of staff.

The Trust is under no obligation to comply with a repeated request from the same person, unless a reasonable period has elapsed. In this situation, a corporate decision will be made taking into account the overall cost of the repeated request(s) and the lapse in time between each of them.

On receipt of an application for information under the FOIA, the FOI Office will write to the applicant confirming receipt of the request within 2 working days. This will state that the organisation intends to manage with the request within 20 working days, unless there are exceptional circumstances.

Administration and documentation of requests will co-ordinated by the FOI Office within the Digital Division.

**A procedure for the management of requests is outlined in Appendix 1.**

### **8.1 Clarity of Requests**

If the applicant has not provided enough information for the request to be processed or is requesting advice and assistance, one of the following steps will be taken, depending on the situation:

- Give guidance on how to access the information from the organisation under the Publication Scheme and the general rights;
- Inform the applicant of the progress of their request;
- Explain the basis for any charges or fees levied or exemptions applied;
- Direct applicants to the appeals process, complaints procedure or the Office of the Information Commissioner if they are dissatisfied with any outcome.

Requests can be delayed until sufficient information has been received from the applicant to process the request, and the 20 working days will commence at the stage when the sufficient information has been provided.

### **8.2 Accessing Information**

The FOI Office will identify who holds the information that the applicant has requested, if it is not available in the Publication Scheme. Managers and staff will have a deadline to review the request and provide the information. Any problems should be escalated immediately.

The information will be forwarded to the FOI Office who will review the information in respect of any exemptions. If an exemption applies to part of the information, the rest of the document is still eligible for release.

### **8.3 Providing the information**

If no exemptions apply and there are no fees or charges to be levied, the FOI Office will provide the information requested by the applicant within the 20 working day standard of the original request.



## 9. Refusing a Request

A request for information may be refused if:

- The information is exempt under Part II of the Act (see Appendix 2).
- The Trust has requested further detail from the applicant to progress the request and no further information has been supplied. The organisation will make reasonable efforts to contact the applicant for the additional information.
- A fees notice has been served to the applicant and has not been paid within three months (beginning on the day the fees notice is issued).
- If complying with the request would exceed the appropriate cost limit established in the National Fees Regulations. (see section 12). The organisation will work with applicants to keep compliance costs to a minimum, but maintains the right to refuse such a request.
- If the request is vexatious - if the organisation has recently complied with a request for information, then it is not required to comply with a subsequent identical or highly similar request unless a reasonable time interval has elapsed. A log of all requests will be kept for monitoring purposes and this can be used to identify vexatious requests.

The applicants will be informed in writing of the decision within 20 working days of the request and will be told the following:

- The exemption(s) that has been applied;
- The justification for the use of the exemption(s);
- Details of the appeals process if they are not satisfied with the outcome.

If the exemption is absolute, then the organisation is exempt from the duty to confirm or deny (that is the duty to tell the applicant whether or not the Trust actually holds the information). In these circumstances, the applicant will be informed within 20 working days of the following:

- The fact that the Trust is exempt from the duty to confirm or deny;
- Specify the exemption in question;
- State why the exemption applies.

It is acknowledged that it can take more than 20 working days to reach a decision as to whether all or some of the information is exempt, especially in cases where the public interest has to be considered. As a result, the Trust will inform the applicant of this delay and give a reasonable estimate of the date by which a decision is expected.

## 10. Exemptions

The Trust's principle will be to release/disclose information on request, however exemptions will be applied where warranted and justified. The application of exemptions can be subject

- to the outcome of the Prejudice Test and/or the Public Interest Test (the Tests are outlined in Appendix 3).

- Each decision surrounding the use of the Prejudice test, the Public Interest Test, an exemption and details of non-compliance (within the 20-day deadline) will be documented centrally.

## 11. Third Party Information

The Trust will hold information that relates to other organisations. This could relate to both public and private organisations. Commercially sensitive third party information should remain confidential and the Trust will make every effort to protect this information and adhere to confidentiality.

Prior to disclosure of any information, the Trust will seek consultation with the organisation(s) to whom the request relates. However, should the outcome of the Public Interest Test favour disclosure, the Trust will comply and disclose the requested information.

## 12. Fees and Charges

In accordance with the Ministry of Justice Affairs guidelines:

- Requests for information to the value of £450.00 (based on 18 hours of staff time) will be provided free of charge.
- A fee will be levied for requests costing over and above £450.00 (i.e. the fee levied will be the total cost minus £450.00).

The Trust will also utilise the provisions in the re-use of Public Sector Information Regulations 2005 as and when required.

## 13. Appeals Process

The FOIA does not require an authority to have a review procedure in place. However, both the Code of Practice made under section 45 of the FOIA and the ICO recommend it is good practice to have one. Section 17(7) of the FOIA provides that, in a refusal notice, an authority must give details of any review procedures, as well as details of the right of appeal to the Information Commissioner.

Therefore, if a person is dissatisfied with the outcome of a request for information they have the right to ask for an internal review.

In the first instance, concerns should be referred to the FOI Office who will undertake an informal review and endeavour to resolve the concerns with relevant Trust staff and the requester.

If it is not possible to resolve the issue informally, the requester may write to the Chief Executive who will instruct a senior manager to conduct an internal review. Any requests for an internal review must be received by the Trust within 3 months of the initial response.

The internal review must be carried out within 20 working days from the date of the request of the review. In a small number of cases, it may be reasonable to take longer. In these circumstances, FOI Office should notify the requester, explain why more time is needed and give an estimate of the completion date. However, the total time taken for review should not exceed 40 working days.

Should the person making the request remain dissatisfied with the outcome of the review by the Chief Executive, the final recourse for an appeal is to the Information Commissioner.

### **14. Complaints**

Initial complaints about the handling of a request for information under the Act will go to the Chief Executive and will follow the Trust's complaints procedure. When the applicant is informed of the outcome of this process, they must be given the details of the Office of the Information Commissioner and informed of their right to take their complaint to that Office.

### **15. Policy Implementation and Communication**

Following approval of the Information Governance Steering Group, the policy and procedure will be published on the Trust intranet.

### **16. Monitoring**

Freedom of Information Requests and their compliance with this Policy will be reported to the Information Governance Steering Group.

### **17. References**

Freedom of Information Act 2000

The following organisation policies and procedures are relevant to this policy:

Data Protection Act 2018

Records Management Policy

Records Management Strategy

Data Protection/Confidentiality Policy

Complaints Policy and Procedure

Communications and Engagement Strategy

### **18. Review**

This policy will be reviewed by April 2025 or earlier if revised legislation requires.

**Appendix 1 - Procedure for the management of requests under the FOI Act**



## Appendix 2

### Exemptions available under Part II of the Freedom of Information Act 2000

There are two types of class exemption:

**Absolute** which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

**Non-absolute and qualified** by the public interest test, which require the public body to decide whether it is in the balance of public interest not to disclose information.

With the exception of s21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

<b>The absolute exemptions available under the Act are</b>	
Section 21	Information available to the 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 40	Personal information
Section 41	Information provided in confidence
Section 44	Prohibitions on disclosure

<b>The exemptions that are qualified by the public interest are:</b>	
Section 22	Information intended for future publication
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
Section 37	Communications with Her Majesty etc., and honours
Section 38	Health and safety
Section 39	Environmental information
Section 42	Legal professional privilege
Section 43	Commercial interests

### **Appendix 3**

#### **The Prejudice Test & The Public Interest Test**

With respect to both the Prejudice Test and the Public Interest Test, each case must be considered on its individual merits. All decisions will be documented.

#### **The Prejudice Test**

The Prejudice Test is one that is applied to certain elements of an exemption. This is to assess whether prejudice may be caused to the 'interests' (defined within the scope of the exemption) through the release and/or disclosure of the requested information.

A number of exemptions are identified under the Act where the Prejudice Test should be considered, namely:

- Relations within the United Kingdom; Section 28.
- The Economy; Section 29.
- Law Enforcement, Section 31.
- Audit Functions; Section 33.
- Prejudice to the effective conduct of public affairs; Section 36.
- Health & Safety; cited at Section 38.
- Commercial Interests; Section 43.

It is the interest(s) represented within the elements of a particular exemption that is/are tested for prejudice. In each case, where disclosure would prejudice any of the elements defined within the scope of the exemption, the Prejudice Test will apply. For example, under Section 31, where the disclosure of information may prejudice the prevention or detection of a crime, the information will be withheld without the need to apply the Public Interest Test.

The elements subject to the Prejudice Test differs for each exemption. Once it is ascertained that there is no risk of prejudice, the Public Interest Test can be applied. In all cases, the Prejudice Test will always precede the application of the Public Interest Test.

It is important to note that the Test of Prejudice does not always apply to every element of an exemption. Therefore, reference should always be made to the FOI legislation to check where this is applicable.

#### **The Public Interest Test**

The Public Interest Test in each case determines whether the interest of the public is better served by the release of the requested information or whether it is better served by the withholding or non-disclosure of that information.

The objective of the Public Interest Test is to make reasoned judgments as to whether the information is disclosed or not for the benefit of the general public. In principle, the following favour disclosure:

- Accountability

- Public participation
- Public awareness
- Justice to an individual
- Research

Whilst the following favour non-disclosure:

- Exemption provisions
- Interests of third parties
- Efficient and effective conduct of service
- Flow of information to service
- Fair treatment of an individual

In relation, to the Public Interest Test, the following considerations are not valid reasons for non-disclosure:

- High Office
- Policy development
- Candour & frankness
- Disclosure of confusing or misleading information
- The information or record does not reflect the reason for the decision (e.g. Minutes)
- Draft documents
- Embarrassment

### **Supporting Document 1 – Equality Impact Assessment form**

To be completed by the key document author and included as an appendix to key document when submitted to the appropriate committee for consideration and approval.

Please complete assessment form on next page;

# Trust Policy



## Herefordshire & Worcestershire STP - Equality Impact Assessment (EIA) Form

Please read EIA guidelines when completing this form

### Section 1 - Name of Organisation (please tick)

Herefordshire & Worcestershire STP		Herefordshire Council		Herefordshire CCG	
Worcestershire Acute Hospitals NHS Trust	x	Worcestershire County Council		Worcestershire CCGs	
Worcestershire Health and Care NHS Trust		Wye Valley NHS Trust		Other (please state)	

<b>Name of Lead for Activity</b>	Health Records Manager
----------------------------------	------------------------

<b>Details of individuals completing this assessment</b>	<b>Name</b>	<b>Job title</b>	<b>e-mail contact</b>
	Matthew Thurland	Health Records Manager	matthew.thurland@nhs.net
<b>Date assessment completed</b>	1 April 2023		

### Section 2

Activity being assessed (e.g. policy/procedure, document, service redesign, policy, strategy etc.)	Freedom of Information Policy		
What is the aim, purpose and/or intended outcomes of this Activity?	To outline the key features of the Freedom of Information Act 2000 and the roles and responsibilities of Trust staff in ensuring compliance.		
Who will be affected by the development & implementation of this activity?	<input checked="" type="checkbox"/> Service User <input type="checkbox"/> Patient <input type="checkbox"/> Carers <input type="checkbox"/> Visitors	<input checked="" type="checkbox"/> Staff <input checked="" type="checkbox"/> Communities <input type="checkbox"/> Other _____ <input type="checkbox"/>	
Is this:	<input checked="" type="checkbox"/> Review of an existing activity		



	<input type="checkbox"/> New activity <input type="checkbox"/> Planning to withdraw or reduce a service, activity or presence?
What information and evidence have you reviewed to help inform this assessment? (Please name sources, eg demographic information for patients / services / staff groups affected, complaints etc.)	N/A
Summary of engagement or consultation undertaken (e.g. who and how have you engaged with, or why do you believe this is not required)	N/A
Summary of relevant findings	N/A

### Section 3

Please consider the potential impact of this activity (during development & implementation) on each of the equality groups outlined below. **Please tick one or more impact box below for each Equality Group and explain your rationale.**

Please note it is possible for the potential impact to be both positive and negative within the same equality group and this should be recorded. Remember to consider the impact on e.g. staff, public, patients, carers etc. in these equality groups.

Equality Group	Potential positive impact	Potential neutral impact	Potential negative impact	Please explain your reasons for any potential positive, neutral or negative impact identified
Age		X		
Disability		X		
Gender Reassignment		X		
Marriage & Civil Partnerships		X		
Pregnancy & Maternity		X		
Race including Traveling Communities		X		
Religion & Belief		X		
Sex		X		
Sexual Orientation		X		

Equality Group	Potential <u>positive</u> impact	Potential <u>neutral</u> impact	Potential <u>negative</u> impact	Please explain your reasons for any potential positive, neutral or negative impact identified
<b>Other Vulnerable and Disadvantaged Groups</b> (e.g. carers; care leavers; homeless; Social/Economic deprivation, travelling communities etc.)		X		
<b>Health Inequalities</b> (any preventable, unfair & unjust differences in health status between groups, populations or individuals that arise from the unequal distribution of social, environmental & economic conditions within societies)		X		

## Section 4

What actions will you take to mitigate any potential negative impacts?	Risk identified	Actions required to reduce / eliminate negative impact	Who will lead on the action?	Timeframe
<b>How will you monitor these actions?</b>	N/A			
<b>When will you review this EIA?</b> (e.g in a service redesign, this EIA should be revisited regularly throughout the design & implementation)	N/A			

## Section 5 - Please read and agree to the following Equality Statement

### 1. Equality Statement

1.1. All public bodies have a statutory duty under the Equality Act 2010 to set out arrangements to assess and consult on how their policies and functions impact on the 9 protected characteristics: Age; Disability; Gender Reassignment; Marriage & Civil Partnership; Pregnancy & Maternity; Race; Religion & Belief; Sex; Sexual Orientation

1.2. Our Organisations will challenge discrimination, promote equality, respect human rights, and aims to design and implement services, policies and measures that meet the

diverse needs of our service, and population, ensuring that none are placed at a disadvantage over others.

1.3. All staff are expected to deliver services and provide services and care in a manner which respects the individuality of service users, patients, carer's etc, and as such treat them and members of the workforce respectfully, paying due regard to the 9 protected characteristics.

<b>Signature of person completing EIA</b>	Matthew Thurland
<b>Date signed</b>	3 February 2020
<b>Comments:</b>	
<b>Signature of person the Leader Person for this activity</b>	Matthew Thurland
<b>Date signed</b>	1 April 2023
<b>Comments:</b>	



**Supporting Document 2 – Financial Impact Assessment**

To be completed by the key document author and attached to key document when submitted to the appropriate committee for consideration and approval.

	<b>Title of document:</b>	<b>Yes/No</b>
1.	Does the implementation of this document require any additional Capital resources	No
2.	Does the implementation of this document require additional revenue	No
3.	Does the implementation of this document require additional manpower	No
4.	Does the implementation of this document release any manpower costs through a change in practice	No
5.	Are there additional staff training costs associated with implementing this document which cannot be delivered through current training programmes or allocated training times for staff	No
	Other comments:	

If the response to any of the above is yes, please complete a business case and which is signed by your Finance Manager and Directorate Manager for consideration by the Accountable Director before progressing to the relevant committee for approval