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<b>Author / Title:</b> Paul Jones, Deputy Director of Corporate Governance	<b>Responsibility:</b> Governance	
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Does this document meet the requirements of the Equality Act 2010 in relation to Race, Religion and Belief, Age, Disability, Gender, Sexual Orientation, Gender Identity, Pregnancy & Maternity, Marriage and Civil Partnership, Carers, Human Rights and Social Economic Deprivation discrimination? Yes		
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## BEHAVIOURAL STANDARDS FRAMEWORK

To help create a great place to work and a great place to be cared for, it is essential that our Trust policies, procedures and processes support our values and behaviours. This document, when used effectively, can help promote a workplace culture that values the contribution of everyone, shows support for staff as well as patients, recognises and celebrates the diversity of our staff, shows respect for everyone and ensures all our actions contribute to safe care and a safe working environment - all of which are principles of our Behavioural Standards Framework.

### Behavioural Standards Framework – Expectations ‘at a glance’

Introduce yourself with #hello my name is... 	Value the contribution of everyone	Share learning with others
Be friendly and welcoming	Team working across all areas	Recognise diversity and celebrate this
Respect shown to everyone	Seek out and act on feedback	Ensure all our actions contribute to safe care and a safe working environment
Put patients at the centre of all we do	Be open and honest	For those who supervise / manage teams: ensure consistency and fairness in your approach
Show support to both staff and patients	Communicate effectively: listen to others and seek clarity when needed	Be proud of the role you do and how this contributes to patient care

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## 1. SUMMARY

This procedural document has been designed to ensure the Trust uses all appropriate and necessary means to comply with the Freedom of Information Act 2000<sup>1</sup>.

## 2. PURPOSE

The purpose of this document is to ensure that the provisions of the Freedom of Information Act<sup>1</sup> are adhered to by all Trust staff in particular that:

- The Trust Publication Scheme ensures that appropriate information is readily available to the public and staff
- Information not included within the publication scheme is readily available on request
- In cases where information is covered by an exemption, consideration is given as to whether or not the information should be released
- The procedure for managing requests is adhered to (4.11 Procedure for Dealing with Requests: Section 12)
- To ensure that alongside FOI Requests, Environmental Information Regulations (EIR) and Subject Access Requests (SAR) are recorded correctly

## 3. SCOPE

The policy applies to all staff working in the Trust, including voluntary and contract staff. All members of staff are required to adhere to the principles involved as outlined within this document together with any related procedures, which are enabled by this policy.

## 4. PROCEDURE

### 4.1 Introduction

The main features of the Freedom of Information Act 2000<sup>1</sup> are:

- A law that allows a general right of access to recorded information held by public authorities
- The Act<sup>1</sup> aims to provide people with a better understanding of how public authorities carry out their duties, make decisions and spend public money
- The Act<sup>1</sup> is subject to certain conditions and exemptions

### 4.2 Publication Scheme

The Trust has adopted a model Publication Scheme developed by the NHS Freedom of Information Project Board and approved by the Information Commissioner.

The Publication Scheme details information which the Trust publishes or intends to publish in the future. It also details the format in which the information is available and whether or not a charge will be made for the provision for that information. The publication scheme will be available in hard copy on request and through the Trust website ([www.uhmb.nhs.uk](http://www.uhmb.nhs.uk)).

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### 4.3 General Rights of Access to Information

The Act<sup>1</sup> gives the public a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions. Any person making a request for information to the Trust is entitled to be informed of whether the Trust holds the information requested and have that information communicated to them if the Trust does hold the information.

In accordance with the Act<sup>1</sup>, a request for information under general rights of access should be received in writing, including email to anyone in the Trust, stating the name of the applicant and address for correspondence describing the information required. This is referenced in the law under Section 8 (1) of the Act<sup>1</sup>. The 20 working day response time does not start until Section 8 (1) is clearly abided by.

### 4.4 Conditions and Exemptions

The duty to confirm or deny the information exists is subject to certain conditions and exemptions (Appendix 1). 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
- Has informed the applicant of that requirement

The Trust will make reasonable efforts to contact the applicant for additional information to clarify the request.

The Trust is not obliged to comply with a request for information if the request is repeated or vexatious (Section 14 of the Act<sup>1</sup>). The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests. This includes on many occasions notifying the requester that the Trust has applied the exemption correctly, considering any public interest or prejudice based arguments as mentioned in the Act<sup>1</sup>.

### 4.5 Charges and Fees

The Trust will not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copy particularly in relation to multiple photocopies or use of media such as CD-ROM. Charges may also be levied for time in excess of the 18 hour limit applied under the Act<sup>1</sup> to source the information required. Current national guidance will be followed in all instances. Charges will not apply when accessing personal records through a Subject Access Request (SAR).

### 4.6 Time Limits for Compliance with Requests

The Trust has established systems and procedures to ensure that it complies with the duty to provide the information requested within **20 working days** of a request in accordance with the Act<sup>1</sup>. This is calculated from when the request arrives into the Trust. In the event that this is not possible, the applicant should be advised as soon as possible. All staff are required to comply with the requirements of the procedures. Failure to do so may result in disciplinary action.

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Internally, the deadline given for staff to assist with requests is 10 working days.

#### 4.7 Means by Which Information will be Conveyed

Where an applicant expresses a preference for communication by any one or more of the following means, namely:

- The provision of hard copy information via electronic or written means
- The provision of a reasonable opportunity to inspect a record containing the information
- The provision of a summary of the information in permanent form or in another form acceptable to the applicant, where the information is in technical or professional language which may not be readily understood

The Trust shall so far as reasonably practicable, give effect to that preference in accordance with the Act<sup>1</sup>.

#### 4.8 Refusal of a Request

If the Trust chooses to refuse a request for information, the applicant will be informed of the reasons for this decision within **20 working days**. The applicant will be informed of the procedure for making a complaint against the Trust and the appeals process. This is included in the response letter in Appendix 2 of this document.

#### 4.9 Duty to Provide Advice and Assistance

The Trust will ensure systems and procedures are in place to meet the duty of the public authority to provide advice and assistance to applicants, so far as it would be reasonable to expect the Trust to do so. All staff will be required to comply with the requirements of the procedure.

All staff must abide by Section 16 of the Freedom of Information Act (2000)<sup>1</sup> by advising and assisting the requester in their pursuit of information.

#### 4.10 Implementation and Compliance

##### 4.10.1 Responsibilities of all staff

All staff, including contractors and volunteers, are obliged to adhere to this policy. Managers at all levels are responsible for ensuring that staff for whom they are responsible are aware of and adhere to this policy. They are also responsible for ensuring staff are updated in regard to any changes in the policy.

##### 4.10.2 Information Owners

A variety of Trust staff will be responsible for the information identified within the Publication Scheme. These staff will be responsible for ensuring that information is updated at regular intervals and that additional information is provided in the correct format when requested.

##### 4.10.3 Lead Director

The Medical Director leads on information governance and the Director of Governance leads on Freedom of Information on behalf of the Trust.

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#### 4.10.4 Awareness for staff

Awareness material can be found on the Trust's website, on the Freedom of Information Act page: <https://www.uhmb.nhs.uk/about-us/freedom-of-information-act/>

Leaflets and e-learning packages are being drafted for future use.

#### 4.11 Procedure for Dealing with Requests

##### 1. **Application for information**

- All requests must be made in writing to the Freedom of Information Team in Legal Services. If they arrive elsewhere in the Trust, they should be passed over to the Team. Requests received by email anywhere in the Trust are permitted and should be forwarded immediately to the Trust's FoI email address: [Freedom.Information@mbht.nhs.uk](mailto:Freedom.Information@mbht.nhs.uk)
- Where an individual is unable to submit their request in writing, staff must ensure the appropriate assistance is given to enable that person to make a request for information. In exceptional circumstances, aside from the Environmental Information Regulations which can be received verbally (EIR), this may include offering to take a note of the request over the telephone. If this should occur, the request should be returned to the applicant for confirmation of the content prior to forwarding to Trust Headquarters. The statutory time limit for response would commence on the date the written confirmation is then received.

##### 2. **Clarification of the request**

- Where the request received is ambiguous or the applicant does not describe the information sought in a way that readily enables the Trust to respond appropriately under Section 8 (1) of the Act<sup>1</sup>, clarification will be required. The 20 working day deadline is on hold until the request is clear and Section 8 (1) of the Act<sup>1</sup>.
- The aim of clarifying the information sought is to ensure the applicant is provided with the appropriate information in a timely manner. It is not to determine the aims or motivation of the applicant and all efforts should be made to avoid this impression being given.
- It is important that the applicant is contacted as soon as possible, preferably by telephone or email (if details are provided) to clarify information sought.
- If the applicant still fails to describe the information requested in a way which enables the Trust to respond appropriately, the staff member dealing with the request is not expected to seek further clarification. The Trust will disclose any information relating to the application which has been successfully identified. An explanation will be provided to the applicant as to why the Trust cannot take the request any further. Details of the Trust's Complaints procedure will be provided

##### 3. **Receipt of the request**

- All requests received by letter in the Trust should be date stamped and forwarded to Freedom of Information Team, Legal Services, Westmorland General Hospital, Kendal, LA9 7RG.
- Requests received by email should be forwarded to the FoI email address

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- For those sending a request via letter, an acknowledgement letter will be sent within **2 working days** of receipt of the request within the Trust.
- A standard acknowledgement letter is utilised which includes information relating to exemptions, potential fees and a named handling officer with contact details provided.
- Requests that arrive via email will receive an instant automated acknowledgement from the inbox notifying them of their right to a response in 20 working days.
- Requests for information received from another NHS Trust should in the first instance be escalated to the Information Access Case Officer. The Information Access Case Officer will contact the NHS Trust to establish why they haven't spoken to the department direct for professionals to share data and to explain the expense of undertaking such searches. We should ask them to consider if this is the most appropriate way of obtaining it, rather than just writing / contact the department direct as professionals to professionals. If they still wish the FOI to be processed, it should be processed as normal.

#### **4. Time limits**

- All requests must be answered within a **20 working day** period from arrival of the request, calculated on Ulysses.
- When an FOI request is forwarded to an individual or department for collation of evidence or information, staff should respond promptly to the request or identify any issues with regard to feasibility of fulfilling the request within the timeframe, assessing the need for any possible exemptions, lack of information or time constraints due to quantity of information requested.
- Staff within the Trust have 10 working days to reply to the Freedom of Information Team. All requests for information should be dealt with promptly and staff should not delay responding until the end of the 10 working day internal period if the information could reasonably have been provided earlier. Failure to comply with this can result in escalation to the Director of Governance.
- It is recognised that there will be some instances where it will not be possible to deal with such an application within 20 working days. In these instances, the requestor will be provided with a realistic and reasonable timescale with which the Trust is then expected to comply.

#### **5. Requests for information not held by the Trust/ is available elsewhere**

- If any requested information is not held by the Trust, the requester is still entitled to a formal response including an explanation and how the Trust could, if possible, help further.
- If the information is not held by us but by another public authority, the requester should be given their contact details so the request can be made to the correct authority.

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- If the information is held, but is planned to be published widely at a later date, the information can be withheld.
- Under Section 16 (1), the Trust should always advise and assist the requester.

## 6. Consultation with third parties

- In some cases the disclosure of information 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<sup>2</sup>. Consultation will take place prior to disclosure of information to ensure other legal obligations are not breached
- If the information is about personal data of another individual, that is not the requester, it is rejected under Section 40 of the Act<sup>1</sup>. If it is a request for personal data of the requester, it is rejected under FOI but forwarded to the Cross Bay Legal Team (UHMBT) who will manage it as a Subject Access Request. The requester is notified of such.

## 7. Refusal of a request

- Where a request for information is refused in reliance on an exemption, the applicant should be notified of which exemption has been claimed and the reasons for applying the exemption.

## 8. FOI Formal and Informal Reviews and Complaints

### Informal Review Process:

- Should an FOI applicant be dissatisfied with the outcome of the request for information, they can seek an informal request to resolve the issue by contacting the Director of Governance.

### Formal Review Process:

- Should an FOI applicant be dissatisfied with the outcome of the informal request for information, they can seek to resolve the issue by using the trust’s appeal process to have the matter reviewed (Appendix 2). Please note that this is separate from the Trust’s normal complaints process.
- The Trust’s FOI Appeals Officer is the Head of Legal Services. The Trust’s FOI Appeals Officer will review the handling of the case (or can delegate this to an appropriate person e.g. solicitor) as well as the final response sent to the applicant.
- If the applicant is unhappy with the way the Trust has handled the FOI request, the applicant may ask for an internal review by contacting: Mary Aubrey, Director of Governance, Westmorland General Hospital, Burton Road, Kendal LA9 7RG.

### Process steps:

- Requests for review should be acknowledged in writing (by email or post according to how the request was submitted).
- If the request for review is sent to the FOI mailbox, the Trust’s FOI Appeals Officer must be informed as soon as possible.

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- The Information Commissioner’s guidance is that a review should **not take longer than 20 working days from receipt of the appeal** for a review of the request. In exceptional circumstances this may be extended by another 20 days but the applicant must be informed.
- All documentation and decision-making evidence relating to the FOI request should be collated and forwarded to the Trust’s FOI Appeals Officer.
- Internal reviews should not be overly bureaucratic but they should be a fair and impartial means of reviewing the original request process.
- Dealing with the complaint/request for review will consist of an analysis of the evidence, consideration of the appropriateness of the exemption(s) cited, review of the decision making process for withholding/disclosing information in the particular circumstances of the case, and consideration of whether the public interest has been properly considered.
- In all cases the applicant must be fully informed, in writing, of the outcome of the internal review. The proposed disclosure of information or further information should only be made in consultation with the department responsible for providing the information from the Information Access Case Officer.
- Where the outcome of a complaint/request for review is that an initial decision to withhold/disclose information is upheld, the applicant will be informed of their right to complain to the Information Commissioner’s Office (ICO). The applicant is also informed of this right in the Trust’s initial letter of response to their FOI request. The ICO contact details are: The Information Commissioner’s Office
  - Wycliffe House
  - Water Lane
  - Wilmslow
  - Cheshire
  - SK9 5AF
  - Telephone 0303 123 1113
  - Website: [www.ico.gov.uk](http://www.ico.gov.uk) or [http://www.ico.gov.uk/complaints/freedom\\_of\\_information.aspx](http://www.ico.gov.uk/complaints/freedom_of_information.aspx)

## 9. **Public Sector Contracts**

- It will be the duty of every member of staff when entering into contractual terms to ensure provisions of the Act<sup>1</sup> are taken into consideration
- When entering into contracts with other public authorities, it should be noted that no terms should be accepted which restrict the disclosure of information held by that authority. Public authorities cannot ‘contract out’ of their obligations under the Act<sup>1</sup>. The Trust will be obliged to disclose that information in response to a request regardless of the terms of the 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

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terms of the contract, its value and performance will be exempt from disclosure. The Trust should reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, an option could be to agree with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. Staff will need to take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by their obligations under the Act<sup>1</sup>, as described in the paragraph above.

- Any acceptance of confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

### **10. Accepting information in confidence from third parties**

- The Trust should 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. In addition, staff should 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.

### **11. Copyright**

- Some information disclosed by the Trust may be subject to copyright protection. If an applicant wishes to use any such information in a way that would infringe copyright, e.g. by making multiple copies, or issuing copies to the public, he or she would require a license from the copyright holder.

### **12. Response to Requests**

- Information received from contacts within the Trust is then compiled into the relevant FOI response template. Please reference appendix 3 of this document.
- The named Information Access Case Officer checks the information, having considered any exemptions as referenced in Appendix 1 of this document, and then forwards it to the Director of Governance for approval.
- In the instance that a request may be of significant media interest, the Director of Corporate Affairs is consulted. Once approved, the document is sent to the requester via their specified route and template where possible of correspondence.
- Attached alongside the response letter is a feedback form for the requester to let us know how the process has been for them and how we can improve.

### **13. Reporting**

- On a weekly basis, the Director of Governance is notified of any high profile requests.
- On a monthly basis, a larger FOI Report is created by the Information Access Case Officer which is sent to the Director of Governance, the Governance team and Communications. This report tracks complaints, the Trust's compliance rate and performance.

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#### 14. Publishing Requests

- A month after responding to the requester, requests can be published, once anonymised, on the Trust's disclosure log on the Freedom of Information Act page: <https://www.uhmb.nhs.uk/about-us/freedom-of-information-act/>

5. ATTACHMENTS	
Number	Title
1	Exemptions Under The Freedom Of Information Act (2000) and the Environmental Information Regulations 2004 (EIR)
2	Internal Review Template
3	FOI Response Template
4	Equality and Diversity Impact Assessment Tool

6. OTHER RELEVANT / ASSOCIATED DOCUMENTS	
Unique Identifier	Title and web links from the document library
Corp/Scheme/001	Freedom of Information Scheme <a href="http://uhmb/cs/tpdl/Documents/CORP-SCHEME-001.docx">http://uhmb/cs/tpdl/Documents/CORP-SCHEME-001.docx</a>
	Subject Access Review Standard Operating Procedure

7. SUPPORTING REFERENCES / EVIDENCE BASED DOCUMENTS	
References in full	
Number	References
1	DoH (2000) Freedom of Information Act 2000. London: DoH. Available at: <a href="http://www.legislation.gov.uk/ukpga/2000/36/contents">http://www.legislation.gov.uk/ukpga/2000/36/contents</a> (accessed 18/06/2018 )
2	Information Commissioner's Office (ICO). Guide to freedom of information. Available at: <a href="https://ico.org.uk/for-organisations/guide-to-freedom-of-information/">https://ico.org.uk/for-organisations/guide-to-freedom-of-information/</a> (accessed 18/06/2018 )
3	Great Britain (2018). Data Protection Act (2018). Available at: <a href="https://www.legislation.gov.uk/ukpga/2018/12/contents">https://www.legislation.gov.uk/ukpga/2018/12/contents</a> (accessed 05/09/2018)
4	Publication Scheme Guidance from the Information Commissioner's Office (ICO) <a href="https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/">https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/</a> (accessed 18/06/2018)
Bibliography	
	Useful Website: Information Commissioner's Office. Available at: <a href="https://ico.org.uk/">https://ico.org.uk/</a> (accessed 18/06/2018)

8. DEFINITIONS / GLOSSARY OF TERMS	
Abbreviation or Term	Definition

9. CONSULTATION WITH STAFF AND PATIENTS		
Enter the names and job titles of staff and stakeholders that have contributed to the document		
Name	Job Title	Date Consulted
Mary Aubrey	Director of Governance	May 2018
Paul Jones	Deputy Director of Corporate Governance	May 2018

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<b>10. DISTRIBUTION PLAN</b>	
Dissemination lead:	Paul Jones
Previous document already being used?	Yes
If yes, in what format and where?	Trust Procedural Document Library
Proposed action to retrieve out-of-date copies of the document:	Previous version to be archived
<b>To be disseminated to:</b>	
Document Library	
Proposed actions to communicate the document contents to staff:	Include in the Friday Round-up Email – New documents uploaded to the Document Library

<b>11. TRAINING</b>		
Is training required to be given due to the introduction of this procedural document? No Please delete as appropriate		
Action by	Action required	Implementation Date

<b>12. AMENDMENT HISTORY</b>				
Version No.	Date of Issue	Page/Selection Changed	Description of Change	Review Date
1	10 June 2011	8	Changed Chief Executive to Director of Human Resources and Organisational Development	
2	10 June 2011	5 and 8	Changed link to new intranet page	
3	9 October 2012	4	Edited text to say the Trust has established systems	
4	9 October 2012	8	Changed Director of Human Resources and Organisational Development to Chief Executive	
5	18 March 2015	12	Chief Executive changed to Associate Director of Corporate Affairs	
5	20 July 2017	throughout	2.1, 4.12 1-12, 12, added 4.12 13 and 14. Updated contact information, policy elements and hyperlinks	01/07/2022
5.1	10/10/2017	Page 3	BSF page added	01/07/2022

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<b>12. AMENDMENT HISTORY</b>				
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6	09/05/2018	Page 6 Page 7	4.10.3 The Director of Governance leads on Freedom of Information.	01/07/2022
		Page 8	4.11 Procedure for Dealing with Requests:  4.11.3 Removed Communications Manager to Information Access Case Officer	
		Page 9	8 Process for Formal and Informal added.	
		Page 10	8 FoI Administrator changed to Information Access Case Officer	
		Page 15 Page 17	8. FOI Reviews and Complaints  Appendix 1: Exemptions Appendix 2: Internal Review Template Appendix 3: Formal and Informal included	
		Page 18	Communication Team changed to FoI Team	

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## Appendix 1: Exemptions Under Part II The Freedom Of Information Act (2000)<sup>1</sup> and the Environmental Information Regulations 2004 (EIR)

Exemptions apply where releasing the information would not be in the public interest, for example because it would affect law enforcement or break confidentiality.

There are two types of exemptions;

- Qualified – may still have to be release if it is considered to be in the public interest
- Absolute means the authority does not have to consider what is in the public interest and should not release the information. For absolute exemptions, we do not need to confirm or deny whether information is held. these do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure. (Please note: Information that is accessible to the applicant in other ways (for example, via the Publication Scheme)

### (a) **Absolute** -

- **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** – personal information (where disclosure may contravene the Data Protection Act 2018)
- **section 41** – information provided in confidence
- **section 44** – prohibitions on disclosure

### (b) **qualified by the public interest test**, these require the public body to decide whether it is in the balance of public interest to not disclose the information

- **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 (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

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- **section 39** – environmental information
- **section 42** – legal professional privilege
- **section 43** – commercial interests

With the exception of section 21 (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.

More information about exemptions can be found on the HMSO web site at

[www.legislation.hmso.gov.uk/acts/en/2000en36.htm](http://www.legislation.hmso.gov.uk/acts/en/2000en36.htm)

## EXCEPTIONS UNDER THE EIR

### EIR Exceptions

NB all exceptions are subject to the public interest test

**reg. 12 (4) (a)** Does not hold that information when an applicant's request is received

**reg. 12 (4) (b)** Is manifestly unreasonable

**reg. 12 (4) (c)** Is formulated in too general a manner (provided assistance has been given to the applicant with a view to re-framing the request)

**reg. 12 (4) (d)** Relates to unfinished documents or incomplete data

**reg. 12 (4) (e)** Would involve disclosure of internal communications

And if disclosure would adversely affect:

**reg.12 (5) (a)** International relations, defence, national security or public safety

**reg.12 (5) (b)** The course of justice, fair trial, conduct of a criminal or disciplinary inquiry

**reg.12 (5) (c)** Intellectual property rights

**reg.12 (5) (d)** Confidentiality of public authority proceedings when covered by law

**reg.12 (5) (e)** Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest

**reg.12 (5) (f)** Interests of the person who provided the information

**reg.12 (5) (g)** Protection of the environment

NB If the information requested is information on emissions, exceptions 12(5)(d) to (g) cannot be used

**reg.13** Personal data

<http://www.opsi.gov.uk/si/si2004/20043391.htm>

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## Appendix 2

### INTERNAL REVIEW DOCUMENT

<b>Applicant's name</b>	
<b>Date</b>	
<b>Appeals Officer</b>	

#### Notes to assist the appeals officer/panel

- Part VI of the S45 COP places a duty on public authorities to implement a complaints process to ensure that applicants are able to request an internal review if they are not content with the authority's response. This provides a first review stage for applicants.
- If a complaint or request for review is received, written acknowledgement of receipt must be provided to the applicant with an indication of when a response may be expected.
- The Act does not stipulate a time but the ICO has provided guidance on its expectation of a reasonable timeframe. The ICO's guidance is that a review should not take longer than 20 working days from receipt of the appeal for a review of the request. In exceptional circumstances this may be extended by another 20 days but the applicant must be informed.
- The internal review stage is an opportunity to consider a case completely afresh. Compliance with the legislation is an important component but all relevant considerations should be revised and appropriately documented.
- Internal reviews should not be overly bureaucratic but they should be a fair and impartial means of reviewing the original request process.
- The original process should have produced a record of how the original decision was made and this record will provide important information to those conducting the internal review.
- The applicant must be fully informed, in writing, of the outcome of the internal review. In all cases, there is a requirement to notify the applicant of the result of the internal review. If revised exemptions or public interest tests are being relied upon, a new s17 refusal notice must be issued.
- Whatever the result of the review, the applicant must be made aware of their further right of appeal to the Information Commissioner's Office. Full contact details for the Information Commissioner's Office must be provided to the applicant.

#### General Considerations:

- The review should be undertaken by someone different from, and preferably senior to the original decision maker.
- If this is not possible, the trust should make sure that there is independence of the reviewer from the influence of the initial process and decision maker.
- The reviewer should preferably be trained in and have a good understanding of FOI issues or be able to directly seek advice from such as person. (FOI+ Public Partners can assist with this).
- If the nominated review or reviewers have no FOI experience, they should identify a suitably qualified person to assist with the review. The advisor should preferably be someone who had no involvement in the original request.
- More complex reviews can be carried out by a panel.

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<b>FOI INTERNAL REVIEW PROCEDURE – CHECKLIST</b>	
<b>IMMEDIATE ACTION FOR INTERNAL REVIEWER</b>	
Acknowledge request for review/complaint <ul style="list-style-type: none"> <li>• Standard letter available from Communications Team</li> </ul>	
Request copies of all correspondence, decision making and print of log (from Respond).	
Identify if panel is required and set a date for the appeal review.	
Ensure that final date for disclosure is identified. <ul style="list-style-type: none"> <li>• 20 working days from date review request/complaint received in the trust.</li> </ul>	
<b>COMPLIANCE WITH PROCEDURE</b>	<b>COMMENTS</b>
Were timescales adhered to? <ul style="list-style-type: none"> <li>• 20 working days from day after request received by trust</li> <li>• Can stop clock for clarification</li> <li>• Can extend for considering exemptions</li> </ul>	
Was the requestor kept informed? <ul style="list-style-type: none"> <li>• Acknowledgement letter + complaints proc</li> <li>• Clarification letter + complaints proc</li> <li>• Extension letter + complaints</li> <li>• Response letter + complaints</li> </ul>	
If any of the request information was held by another authority, was the request, or part of the request, appropriately transferred S16 (COP 45)	
<b>REVIEW OF RELEVANT INFORMATION</b>	<b>COMMENTS</b>
Was all the requested information held located and recovered correctly?	
If there was any difficulty, what action has or can be taken to address this matter? EG has appropriate discussion taken place with the information owner?	
Where issues regarding inaccurate or misleading information appropriately conveyed to the requestor?	
<b>ORIGINAL DECISION MAKING REVIEW</b>	<b>COMMENTS</b>
Did the response 'no information held' accurately reflect the circumstances?	
Was the request correctly defined as 'repeated' or 'vexatious'? <ul style="list-style-type: none"> <li>• See s16 for guidance</li> </ul>	
Were the grounds for any refusal appropriate and correctly explained to the requestor? (s17) Must be applied when: <ul style="list-style-type: none"> <li>• Request is vexatious or repeated or</li> <li>• Request exceeds cost limitations or/and</li> <li>• Exemptions apply</li> </ul> Not required when: <ul style="list-style-type: none"> <li>• Further vexatious request – previously refused</li> <li>• No information held</li> <li>• s8 not complied with (must be valid request)</li> </ul>	
Have circumstances changed since the original decision was made?	
Would further disclosure now be possible, beneficial or desirable?	
Were appropriate exemptions cited?	
Was suitable evidence provided to demonstrate they were engaged?	
Were any prejudice and public interest considerations correctly addressed?	

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Were submissions made by the information owners regarding the appropriateness of disclosure suitably considered?	
Was any other local or national advice regarding the information considered in the original response? EG NHS Improvement	
<b>REVIEW DECISION</b>	<b>COMMENTS</b>
Does the review support the original decision?	
Is the release of additional information appropriate?	
Were any shortcomings in the original process identified?	
<b>REVIEW DECISION</b>	<b>COMMENTS</b>
<b>Response to the complainant:</b>	
Have you informed the complainant within 20 working days of the result of your review? The letter should clearly set out the decisions and rationale similar to the initial FOI response.	
Have you disclosed any additional information or clearly articulated the steps to be taken to provide access to the information.	
Have you apologised for any identified inadequacies in the original process (if appropriate)?	
Have you provided contact details for the Information Commissioner's appeal process and the necessary instructions on how to initiate an appeal? Link:	
<b>Original Decision Maker Feedback:</b>	
Has appropriate feedback been provided to the original decision maker?	
Have you identified any additional training needs?	
<b>The Organisation:</b>	
Have you informed the relevant information owners, providing comment and advice where their opinion on any release does not reflect the decision of the review?	
Have you checked that all those with an interest in the result of the review are informed?	
Have you identified any need to change or improve business processes, provide training or raise awareness within the organisation?	

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## Appendix 3: FOI Response Template



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NHS Foundation Trust

### FREEDOM OF INFORMATION

Westmorland General Hospital  
Burton Road  
Kendal  
LA9 7RG

Tel: 01539 715285  
Fax: 01539 795313  
Web: [www.uhmb.nhs.uk](http://www.uhmb.nhs.uk)

**Reference:**  
**Date:**  
**Name:**  
**Email:**

Dear

### RE: REQUEST FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT (FOI Act)

I refer to your email dated **XX/XX/XXXX**. I am now able to provide the following response to your request.

You asked us to supply the following information. Our replies appear in bold type below.

**XXXX**

If you are unhappy with the way the Trust has handled your request, you may ask for an informal review by contacting: Mary Aubrey, Director of Governance, Westmorland General Hospital, Burton Road, Kendal LA9 7RG.

If you are not content with the outcome of the informal review, you can ask for a formal review by contacting: Mary Aubrey, Director of Governance, Westmorland General Hospital, Burton Road, Kendal LA9 7RG.

If you are not content with the outcome of the formal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

I hope this information has answered your question. If you require any further clarification or assistance regarding this request, please do not hesitate to contact the Freedom of Information office on 01539 715213. Please remember to quote the reference number above in any future communications.

Kind regards

**MARY AUBREY**  
**DIRECTOR OF GOVERNANCE**

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## Equality Impact Assessment Form

Department/Function	Governance			
Lead Assessor	Paul Jones			
What is being assessed?	Freedom of Information (Fol) Procedure			
Date of assessment	09/05/2018			
What groups have you consulted with? Include details of involvement in the Equality Impact Assessment process.	Equality of Access to Health Group	<input checked="" type="checkbox"/>	Staff Side Colleagues	<input type="checkbox"/>
	Service Users	<input type="checkbox"/>	Staff Inclusion Network/s	<input type="checkbox"/>
	Personal Fair Diverse Champions	<input type="checkbox"/>	Other (Inc. external orgs)	<input type="checkbox"/>
	Please give details:			

1) What is the impact on the following equality groups?		
Positive:	Negative:	Neutral:
<ul style="list-style-type: none"> <li>➤ Advance Equality of opportunity</li> <li>➤ Foster good relations between different groups</li> <li>➤ Address explicit needs of Equality target groups</li> </ul>	<ul style="list-style-type: none"> <li>➤ Unlawful discrimination, harassment and victimisation</li> <li>➤ Failure to address explicit needs of Equality target groups</li> </ul>	<ul style="list-style-type: none"> <li>➤ It is quite acceptable for the assessment to come out as Neutral Impact.</li> <li>➤ Be sure you can justify this decision with clear reasons and evidence if you are challenged</li> </ul>
Equality Groups	Impact (Positive / Negative / Neutral)	Comments
Race (All ethnic groups)	Neutral	<ul style="list-style-type: none"> <li>➤ Provide brief description of the positive / negative impact identified benefits to the equality group.</li> <li>➤ Is any impact identified intended or legal?</li> </ul>
Disability (Including physical and mental impairments)	Neutral	
Sex	Neutral	
Gender reassignment	Neutral	
Religion or Belief	Neutral	
Sexual orientation	Neutral	
Age	Neutral	
Marriage and Civil Partnership	Neutral	
Pregnancy and maternity	Neutral	
Other (e.g. caring, human rights)	Neutral	

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2) In what ways does any impact identified contribute to or hinder promoting equality and diversity across the organisation?	
--	--

<p>3) If your assessment identifies a negative impact on Equality Groups you must develop an action plan <b>to avoid discrimination and ensure opportunities for promoting equality diversity and inclusion are maximised.</b></p> <ul style="list-style-type: none"> <li>➤ This should include where it has been identified that further work will be undertaken to further explore the impact on equality groups</li> <li>➤ This should be reviewed annually.</li> </ul>
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Action Plan Summary
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Action	Lead	Timescale

*This form will be automatically submitted for review for Policies and Procedures once approved by Policy Group. For all other assessments, please return an electronic copy to [EIA.forms@mbht.nhs.uk](mailto:EIA.forms@mbht.nhs.uk) once completed.*

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