



Freedom of Information Policy

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Freedom of Information Policy (incorporating Environmental Information Regulations 2004 and Re-Use of Public Sector Information Regulations 2015)

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STAFF SUMMARY

The key points for all staff to understand and adhere to in respect of this policy are:

- The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) are part of the Government's commitment to greater openness in the public sector. This commitment is shared by Yorkshire Ambulance Service.
- All Staff should be aware of the requirement for information requests to be handled promptly and in accordance with the timescales detailed in the FOIA and EIR.
- All employees allocated responsibility for responding to FOIA and EIR requests will be aware of and adhere to this policy and the legal obligations under the FOIA and EIR.
- The Trust will meet the requirements of the Re-Use of Public Sector Information Regulations 2015 (RPSIR), which gives the public and the private sector the right to re-use public sector information which we produce as part of our Public Task.
- As part of FOIA the Trust is required to publish information in the Publication Scheme. This will help to ensure that the Trust is open and transparent.

1 INTRODUCTION

- 1.1 The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) are part of the Government's commitment to greater openness in the public sector. This commitment is shared by Yorkshire Ambulance Service (the Trust).
- 1.2 Both the FOIA and EIR came into full effect on 1 January 2005 and legislate for a general right of access to recorded information held by public authorities. By establishing these legal rights of members of the public, it enables the public to question the decisions of public authorities more closely and ensure that the services provided are delivered efficiently and effectively.
- 1.3 The Re-Use of Public Sector Information Regulations 2015 which replace the 2005 regulations give the public and the private sector the right to re-use public sector information. Whilst the 2005 regulations made provision for accessible information to be re-usable, the 2015 regulation makes provision that any information produced, held or disseminated within a public sector body's public task must be re-usable (unless restricted or excluded).

- 1.4 The Trust's public task includes our core roles and functions as defined by legislation and regulations. Information on our public task, such as the services we provide and our key functions can be found on the Trusts public website. Information which is not within the scope of our public task is not covered by the Re-Use of Public Sector Information Regulations 2015. Information is not covered by the regulations if it would be exempt from disclosure under information access legislation i.e. FOIA and EIR.
- 1.5 The Trust has a requirement to ensure that the Publication Scheme is kept up to date. This will ensure that the Trust is open and transparent, and will also help reduce the number of FOI requests.

2 SCOPE

- 2.1 Subject to a number of exemptions (FOIA) and exceptions (EIR), any recorded information held by the organisation may be accessible under the Acts, including both electronic and paper based information. The Acts are retrospective and include information held prior to the 1 January 2005.
- 2.2 Both the FOIA and EIR do not overturn the common law of confidence or statutory provisions (including the Human Rights Act 1998, the General Data Protection Regulation and the Data Protection Act 2018) that prevent disclosure of personal identifiable information. The right to release personal information (of the data subject) is covered by the right of Subject Access under the Data Protection Act 2018.
- 2.3 This policy applies to all employees of the Trust, including permanent, temporary voluntary and contract staff, who may be asked to provide information in respect of either Freedom of Information Act 2000 (FOIA), Environmental Information Regulations 2004 (EIR) or Re-Use of Public Sector Information Regulations (RPSIR).

3 PURPOSE

- 3.1 The purpose of this policy is to set out the Trust's approach to handling requests for information under the FOIA, EIR and RPSIR, ensuring that the Trust is compliant with all legal requirements.

4 PROCESS

4.1 Standard Process for Handling FOIA and EIR Requests

- 4.1.1 All requests received under the FOIA and EIR are received, coordinated and managed by the Legal Services Department.

- 4.1.2 When a request for information is received, the Legal Services Department will assess whether the request is valid (e.g. written for FOIA, written or verbal for EIR) and under which legislation the request is to be responded to.
- 4.1.3 If the request is clearly for personal information (of the applicant making the request i.e. data subject), the request will be dealt with as a Subject Access request under the provisions of the Data Protection Act 2018.
- 4.1.4 The Legal Services Department will record the request and assess whether any additional information is required from the applicant to enable the Trust to respond to the request. If further details or clarification are required, the applicant will be contacted as soon as possible.
- 4.1.5 The Legal Services Department will send a standard acknowledgement letter to the applicant.
- 4.1.6 The request will then be sent to the relevant departmental manager/Information Asset Owner (IAO) to advise whether the information can be provided in whole or provided in part and to provide a response.
- 4.1.7 Under the FOIA and EIR the response timeframe is 20 working days. An internal deadline of 10 working days is set in relation to the gathering of information, to ensure that the final checking process can be completed, any additional material/information gathered if necessary and to allow for the response to be authorised. When a request from the Legal Services Department is received it should be complied with in a timely manner, and within the timescales set. The Legal Services Department work to strict deadlines set externally within legislation whereby fines can be imposed on the Trust for failure to meet these. Any difficulties meeting the timescales should be communicated at the earliest opportunity to the Legal Services Department. Requests for information should not be ignored under any circumstance.
- 4.1.8 If the information cannot be disclosed at the present time but is due for release at a later date (*a Section 22 exemption applies – information intended for future publication*) a letter will be sent to the applicant advising when the information will be available and to re-contact the Trust at that time.
- 4.1.9 If the information cannot be released now or at any time in the future, a letter must be sent to the applicant advising of this. The applicant must be given an explanation as to why the request has been refused. If an exemption (or exception in the case of the EIR) has been relied upon, this exemption/exception must be stated (see exemptions/exceptions within Appendix C).

- 4.1.10 If the relevant departmental manager is unsure whether the information requested can be released; advice will be sought from the Legal Services Department or the Information Governance Manager in the first instance. Further advice may be taken from the Executive Director of Quality, Governance and Performance Assurance, the Chief Executive and/or the Caldicott Guardian. A decision may also be taken to seek legal advice from the Trust's solicitors.
- 4.1.11 For any matter relating to the FOIA and EIR process and where the Trust intends to rely upon an exemption/exception for either part or the whole of the request, advice may be sought from the Legal Services Department or Information Governance Manager. Where an exemption/exception is relied upon, the department who holds the information must provide sufficient information as to the reasons why it applies, including the completion of a Public Interest Test where required (please refer to Appendix C).
- 4.1.12 The relevant departmental manager will advise whether a fee would be payable for the information requested. The Legal Services Department will calculate the cost using the criteria stated in the Trust Publication Scheme. If a fee is not required, the information can be released. This must be done within 20 working days of receipt of the request.
- 4.1.13 If a fee is required, the Legal Services Department will write to the applicant and the information released only on receipt of this payment. The deadline of 20 working days is suspended until the payment has been received. If the fee is not received within three months, the request can be closed.
- 4.1.14 If the intended FOIA or EIR response could impact on another public body or private sector organisation, the Legal Services Department will notify the public body or private sector organisation of the request and intended response out of courtesy and at the earliest opportunity. The purpose of this is to seek their views and any concerns in relation to the intended response. A copy of the response to the applicant will be copied to the public body or private sector organisation at the same time as it is sent to the applicant.
- 4.1.15 Before responses are sent back to the Legal Services Department, the IAO or appropriate senior manager should sign off the information as being accurate. The final response will be drafted by the Legal Services Department.
- 4.1.16 All responses are to be approved by the Head of Legal Services (or delegated deputy), and in some circumstances approval will also be sought from either the Executive Director of Quality, Governance and Performance Assurance or other relevant Executive Director before being released to the requestor by the Legal Services Department.
- 4.1.17 The Corporate Communications department will be advised of any FOIA requests from journalists or those known to have links to the media and all responses will be passed to the press office for approval before issuing.
- 4.1.18 Further advice and assistance can be obtained from the Legal Services Department at yas.foi@nhs.net.

4.2 Handling Round Robin Requests

- 4.2.1 A 'round robin' request is one that has been sent to a number of different organisations by the same person. In some cases it may not be immediately obvious that the request has been sent to other organisations.
- 4.2.2 'Round robin' requests must be handled in the same manner as any other FOIA or EIR request, however, on receipt:
- the Head of Legal Services or Legal Services Manager should be informed that such a request has been received, and
 - to help achieve consistency of responses FOI leads in other ambulance services will be contacted to share views of how the request may be interpreted.

4.3 Requests for Internal Review

- 4.3.1 If a requestor is not satisfied with the Trust's response they have the right to request an internal review. This request may be made in writing by email or letter.
- 4.3.2 The Trust will aim to respond to all internal reviews within 20 working days, but the time period may be extended to a maximum of 40 working days.
- 4.3.3 When an internal review is requested, a member of the Trust who was not involved in compiling the first response will review the way the request was handled and whether the response was fair under the requirements of the FOIA, EIR or RPSIR. The Information Governance Manager may carry out this review or provide guidance to another reviewer.
- 4.3.4 Responses to internal reviews will follow the same approvals process as set out in paragraph 4.1.18
- 4.3.5 When the applicant is informed of the outcome of this process, they must be given the full postal address of the Information Commissioner's Office (ICO) and informed of their right to take their complaint to them.

4.4 Re-use of Public Sector Information Regulations (RPSIR)

- 4.4.1 Requests under the RPSIR 2015, in relation to re-use of information will be managed by the Legal Services Department using the established FOI and EIR process.
- 4.4.2 Any internal complaints, relating to the RPSIR will follow the same process as FOI and EIR internal reviews.

5 TRAINING EXPECTATIONS FOR STAFF

- 5.1 All new staff undertake information governance induction training either via a classroom training session or via the Trust's Statutory and Mandatory training workbook. This training includes awareness of the FOI and how to direct enquiries under the Act. All staff receive annual information governance training which includes a reminder of the legislation and directing requests.
- 5.2 Staff handling FOIA requests will receive appropriate training, development and support to allow them to discharge their responsibilities.

6 IMPLEMENTATION PLAN

- 6.1 The latest approved version of this policy will be posted on the Trust Intranet site for all members of staff to view.

7 MONITORING COMPLIANCE WITH THIS POLICY

- 7.1 Compliance reports are presented by the Head of Legal Services/Legal Services Manager throughout the year to a range of executive committees including regular updates to the Quality Committee. The committees review the reports, note any deficiencies and remedial actions in their minutes. Progress against actions will be monitored as part of routine business and will be subject to the Trust's performance management process.
- 7.2 The effectiveness of this policy is monitored against adherence to external timescales set by the various legislation and judiciary. Key Performance Indicators (KPI) based on the legislative timeframes have been agreed, and performance against these KPIs is monitored through reports to executive committees and Trust board via the monthly Integrated Board Report.
- 7.3 Every six months there is to be a review of the requests received in the past six months. This is to determine if there have been numerous requests for the same information. Where there have been numerous requests for the same information, that information can be added to the publication scheme to reduce the number of similar requests.

8 REFERENCES

Legislation

- Freedom of Information Act 2000
- Freedom of Information Act 2000 – Section 45, Code of Practice
- The Environmental Information Regulations 2004
- The Re-use of Public Sector Information Regulations 2015

External guidance

- Information Commissioners Office: Guide to freedom of Information. Available at: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

- Information Commissioners Office: Guide to environmental information regulations. Available at: <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>
- NHS Connecting for Health. Publications: Information Governance Toolkit. Available at: <https://www.igt.hscic.gov.uk/>

Internal guidance and support

Services Department
[Ambulance HQ – Springhill](#)
[Wakefield 41 Business Park](#)
[Wakefield](#)
[WF2 0XQ](#)

E-mail: yas.foi@nhs.net

9 APPENDICES

Appendix A: Roles and Responsibilities

Appendix B: Definitions

Appendix C: Guidance on Legal Obligations

Appendix A – Roles and Responsibilities

Executive Director of Quality, Governance and Performance Assurance (Senior Information Risk Owner)

The Executive Director of Quality, Governance and Performance Assurance has responsibility for ensuring that adequate arrangements are in place to effectively manage requests made under the FOIA and EIR, ensuring that an appropriate system is in place to manage risks arising from these processes. The Director has the responsibility for providing the Trust Executive Group and Trust Board with updates on significant developments and assurance on the management of these processes.

Head of Legal Services

The Head of Legal Services has overall responsibility for the management of the Legal Services Department, which includes the management of FOIA and EIR requests. The Head of Legal Services has responsibility for the collation and analysis of data and for providing detailed reports to Trust Committees. This can be delegated to the Legal Services Manager as required. The Head of Legal Services will approve all FOI and internal review responses before they are sent out externally and can provide advice and guidance on the handling of requests including the application of exemptions.

Legal Services Manager

The Legal Services Manager has responsibility for the operational function of the Legal Services Department which includes the management of requests made under the FOIA and EIR. The Legal Services Manager will support the Head of Legal Services in the collation and analysis of in data and for providing detailed reports to Trust Committees as required. The Legal Services Manager will act as delegated deputy and approve responses prior to external release and provide advice and guidance on the handling of requests and exemptions.

Information Governance Manager

The Information Governance Manager is responsible for ensuring appropriate information governance policy and procedure is in place providing advice and guidance on handling of requests under FOIA, EIR and RPSIR and application of exemptions. The Information Governance Manager will advise and/or carry out internal reviews.

Legal Services Department

The Legal Services Department consists of a number of coordinators and administrators, each of which is allocated with specific aspects of Legal Services responsibilities. They support the Head of Legal Services and Legal Services Manager in the operational delivery of departmental objectives and in the achievement of mandated performance standards. The administrator responsible for handling such requests will follow the process as set out within this policy at paragraph 4.

All Trust Managers

All managers are required to co-operate with the Legal Services Manager and the Legal Services Department, by responding in a timely manner to requests for any information or support required in handling requests made under FOIA, EIP and RPSIR. It is the responsibility of the departmental manager to ensure the information is accurate when responding to any such request.

All Staff

All Trust staff should be aware that FOIA, EIR and RPSIR requests are to be handled by the Legal Services Department and details should immediately be notified to yas.foi@nhs.net. All staff should ensure that all correspondence carried out via Trust communication channels in a professional manner and to understand that it may be disclosable under the FOIA and EIR.

Appendix B Definitions

The definitions or explanation of terms relating to this policy are:

Applicant	The individual, group or organisation making the request for information
Exemption	A valid reason for non-disclosure of information under the Freedom of Information Act 2000
Exception	A valid reason for non-disclosure of information under the Environmental Information Regulations 2004
Publication Scheme	A publication detailing all the information routinely available from the organisation
Public Interest Test	Determining whether the interests of the public are better served by withholding or disclosing the information
Personal Information	Information from which an individual's identity can be obtained
Third Party	Someone other than the applicant

Appendix C – Guidance on Legal Obligations

1 Legal Obligations – Freedom of Information Act 2000

Full implementation of the FOIA means that all public authorities are required to meet a number of legal obligations. The summary guidance below should be referred to when handling requests. In addition the Trust will utilise the detailed specialist guidance documents for the handling of freedom of information and environmental information requests which are published by the Information Commissioner's Office.

1.1 Maintain a Publication Scheme

- 1.1.1 The FOIA requires each public authority to produce and maintain a Publication Scheme. This details all the information readily accessible from the organisation, along with additional information relating to any fees that may be charged and contact details. The Trust will publish as much information about the Trust as is reasonably practical so that members of the public do not have to make a formal FOIA request. The Trusts scheme is based on the model developed by the Information Commissioner and is available on the public web site www.yas.nhs.uk. The scheme will be reviewed on a regular basis. How to access information under the EIR is also included within the Publication Scheme.

2 Legal Obligations – Freedom of Information Act 2000 and Environmental Information Regulations 2004

2.1 Responding to requests for information

- 2.1.1 **FOIA** – The Trust will publish as much information as possible on its Publication Scheme. Any requests for information not available via this media must be made in writing to the Legal Services Department. 'Writing' includes letters, fax and emails but excludes text messaging. All requests must be dealt with within 20 working days of receipt. However, if a fee is required or additional information required to locate the required information, the 20 days will be suspended and re-commence from receipt of this or these.
- 2.1.2 **EIR** – The Trust will publish as much information as possible on its Publication Scheme. Any requests for information not available via this media must be made to the Legal Services Department; requests **do not** have to be made in writing. Wherever possible, requests must be dealt with within 20 working days of receipt. However, if the request is considered complex and voluminous, this can be extended to 40 working days. The applicant should be informed of this as soon as possible. If additional information is required to locate the required information, the 20 days will be suspended and re-commence from receipt of this.
- 2.1.3 **RSPIR** – The Trust will deal with requests for the re-use of public sector information. Re-use means using public sector information for a different purpose to the original public task it was produced for. Requests must be

made in writing to the Legal Services Department. All requests must be dealt with within 20 working days of receipt. Any information that falls within the Trust's public task must be permitted for re-use, unless the information would be exempt under FOIA or EIR. The only exception to this is if the information is exempt under Section 21 of FOIA, because it is already readily available. Any request for the re-use of information which has not previously been disclosed must also be dealt with under FOIA or EIR. Information made available for re-use must be in the format and language of which the Trust holds it.

2.2 Providing advice and assistance with regard to requests under the Acts

2.2.1 Public authorities have a duty to provide advice and assistance to applicants, or would-be applicants, for information. The procedure for dealing with requests is published in the Trusts Publication Scheme. The Publication Scheme will provide comprehensive information to assist an individual with locating the information they require. The Legal Services Department and Information Governance Manager are also available to provide advice.

2.2.2 The Trust is committed to meeting these obligations.

2.3 Classes of Information

2.3.1 The information in the Publication Scheme is grouped into broad categories as follows:

- a) Who we are and what we do
- b) What we spend and how we spend it
- c) What are our priorities and how are we doing
- d) How we make decisions
- e) Our policies and procedures
- f) List and registers
- g) The services we offer

2.3.2 Further details of what can be found within each class can be found in Part 2 of the Publication Scheme. Any additions to the scheme will be placed in the most appropriate class and the Publication Scheme contents amended accordingly.

2.4 Charges and Fees

2.4.1 FOIA and EIR

2.4.1.1 No charge will be made for information provided in the form of:

- downloads or information taken from the Trusts website, although any charges for Internet Service provider and personal printing costs would have to be met by the individual
- email – unless it is for information not routinely published in the public domain
- leaflets and brochures
- access to any public registers or lists of environmental information.

2.4.1.2 Charges *may* be incurred for the following:

- information provided on CD ROM or similar medium
- multiple copies of documents
- archived copies of documents that are no longer available on the Trust's website
- any information held by the Trust that is not routinely published in the public domain.

2.4.1.3 Charges will be advised in advance and payment will be required before the information is released. Standard charges will be published on the Publication Scheme.

2.4.1.4 Charges will be reviewed regularly and be in line with The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. **Please note that these regulations do not apply to the EIR.**

2.4.2 RPSIR

2.4.2.1 No charge will be made for permitting the re-use of information under the Open Government Licence (OGL). Once information has been permitted under OGL it would be difficult to impose a charge at a later date. It is therefore important to be clear about the basis in which information is being permitted for re-use.

2.4.2.2 Charges may be incurred for the marginal costs of reproducing, providing and disseminating the information.

2.5 Identifying which Act to apply

2.5.1 The EIR specifically covers information on the state of the environment, and can be summarised as follows:

- the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites and the interaction between these elements factors such as substances, energy, noise, radiation or waste affecting or likely to affect the elements of the environment
- measures such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect or protect the elements of the environment
- reports on the implementation of environmental legislation
- cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities
- the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment.

2.5.2 All other requests for non-personal information should be handled under the FOIA.

2.6 Conditions for non-disclosure

- 2.6.1 There are certain conditions whereby the Trust is not obliged to comply with an information request.
- 2.6.2 The duty to comply does not arise if the estimated cost of supplying the information exceeds the appropriate limit established in statutory Fees Regulations (£450.00 for NHS Trusts). Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

All public authorities should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour.

This means that the appropriate limit will be exceeded if it would require more than 18 hours work for public authorities including NHS Trusts. The Trust will work with the applicant to keep costs to a minimum but reserves the right to refuse or charge for the communication of information that exceeds the limit.

Please note, that this does not apply to the EIR.

- 2.6.3 Under the EIR, there is no cost limit. However, requests that cost a disproportionate amount can be refused on the basis they are 'manifestly unreasonable' (see Exceptions section 2.8)
- 2.6.4 The Trust does not have to comply with a request if it is considered vexatious. The Trust will log all requests for monitoring purposes and will be able to identify repeated or vexatious requests.
- 2.6.5 The duty to comply does not arise if a fees notice has been issued to an applicant and said fees are not paid within three months of the date of the notice.
- 2.6.6 The Trust will redact material which cannot be disclosed (an exemption or exception applies) when it appears within the content of an otherwise disclosable document.
- 2.6.7 Both the FOIA and the EIR set out a series of exemptions (FOIA) and exceptions (EIR) which amount to valid reasons why information cannot be disclosed. The exemptions are separated into 'absolute' and 'qualified', whilst the exceptions are all 'qualified'.

2.7 Qualified Exemptions/Exceptions (FOIA & EIR)

- 2.7.1 These exemptions require the 'public interest test' to be applied to them. Information that falls within this particular category will have to be disclosed unless it can be successfully argued that the public interest in withholding it is greater than the public interest in releasing it.

2.8 Absolute Exemptions (FOIA only)

- 2.8.1 These exemptions do not contain the above requirement. Where information falls within the terms of an absolute exemption, the Trust may withhold this without applying the public interest test.
- 2.8.2 When information is withheld due to an exemption, the applicant must be informed of this.
- 2.8.3 The full list of exemptions is as follows:

Qualified Exemptions (FOIA)

- **Section 22** Information intended for future publication and research information. There has to be a genuine intention to publish at the time the request is made. It is not necessary to have set a publication date but the exemption can be claimed only if it is reasonable in all the circumstances to do so.
- **Section 22A** Information obtained from a programme of research, as long as the programme is still under way; there is an intention to publish a report of the research; and disclosure of the information would or would be likely to prejudice the research programme, the interests of participants in the programme, or a public authority holding or intending to publish a report of the research.
- **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 etc.
- **Section 36** Prejudice to effective conduct of public affairs
- **Section 37** Communications with Her Majesty, etc. and honours
- **Section 38** Health and safety - Information is exempt if disclosure would be likely to endanger the safety or physical or mental health of anyone. In this context, the information covered will relate either to physical health and medical matters, or physical safety (i.e. the risk of accident and the security of individuals).
- **Section 40** *Some* Personal information – This relates to information which constitutes the personal data of a third party (which is not at the same time the personal data of the applicant) and will be dealt with as a FOI request. However, personal data of a third party will be exempt if its disclosure to a member of the public would:
 - ❖ Contravene any of the data protection principles as outlined in the Data Protection Act 2018 Contravene Schedule 3, Part 2, Paragraph 5 of the Data Protection Act 2018 (“serious harm”).
 - ❖ Not be required to be disclosed in response to a subject access request due to the operation of one of the exemptions outlined in

Schedules 2 – 4 of the Data Protection Act 2018 (“exemptions from the GDPR”)

The information will be exempt under section 40(3)(a)(i) (or section 40(3)(b)) and the FOI Act request must be refused.

- **Section 42** Legal professional privilege
- **Section 43** Commercial interests - Information is exempt if it constitutes a trade secret or if disclosure would prejudice the commercial interests of any person or body.

Absolute Exemptions (FOIA)

- **Section 21** Information accessible to applicant by other means - This could include, for example, information contained already in the Trusts Publication Scheme or an Annual Report.
- **Section 23** Information supplied by, or relating to, bodies dealing with security matters
- **Section 32** Court records etc.
- **Section 34** Parliamentary privilege
- **Section 36** Prejudice to effective conduct of public affairs - Information can be withheld under this section if, in the opinion of the Trusts Qualified Person, its disclosure would inhibit the full and frank provision of advice or exchange of views, or prejudice the effective conduct of public affairs.
- **Section 40** Personal Information - If information is the personal data of the person making the request, it will be exempt under Part (1) of section 40. In other words, if a request for information that constitutes personal data is received from the data subject, it is exempt. This is in accordance with the Data Protection Act 2018. Any applications for personal data should be treated as a data subject access requests (e.g. details about an individual's pension). If information constitutes the personal data of the applicant, the duty to confirm or deny will also be excluded in respect of that information even if confirmation or denial would not in itself have disclosed personal data.
- **Section 41** Information provided in confidence - Relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another person (e.g. a contract genuinely containing sensitive commercial information protected by a confidentiality clause).
- **Section 44** Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute a contempt of court.

Further details about these exemptions can be found in the relevant section of the Act as listed above.

Exceptions (EIR)

- **Regulation 12(4)(a)** Does not hold that information when an applicant's request is received
- **Regulation 12(4)(b)** Is manifestly unreasonable
- **Regulation 12(4)(c)** Is formulated in too general a manner (providing assistance has been given to the applicant with a view to re-framing the request)

- **Regulation 12(4)(d)** Relates to unfinished documents or incomplete data
- **Regulation 12(4)(e)** Would involve disclosure of internal communications

If disclosure would adversely affect:

- **Regulation 12(5)(a)** International relations, defence, national security or public safety
- **Regulation 12(5)(b)** The course of justice, fair trial, conduct of a criminal or disciplinary inquiry
- **Regulation 12(5)(c)** Intellectual property rights
- **Regulation 12(5)(d)** Confidentiality of public authority proceedings when covered by law
- **Regulation 12(5)(e)** Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest
- **Regulation 12(5)(f)** Interests of the person who provided the information
- **Regulation 12(5)(g)** Protection of the environment
- **Regulation 13** Personal data

2.9 Refusal of Requests and Right to Appeal

- 2.9.1 If a request for information has been refused or the applicant is not satisfied with the information disclosed to them, they have the right to appeal. In the first instance, the applicant should request an internal review by contacting the Legal Services Department.
- 2.9.2 Under EIR the applicant's request for an internal review must be made within 40 working days of the date of the refusal letter. The appeal must then be dealt with within 40 working days by the Trust. There are no such timelines dictated under the FOIA. However, good practice would be to follow the same timescales as under the EIR.
- 2.9.3 If the applicant remains dissatisfied with the outcome, they may refer the matter to the Information Commissioner who will investigate the issue and advise accordingly. These steps are in line with guidance issued by the Information Commissioner's Office. The Trust reserves the right to seek legal advice if deemed necessary.

2.10 Advice and Assistance

- 2.10.1 The Trust will endeavour to provide advice and assistance to anyone requesting information when it is unclear what is requested or if there is a cost implication. If clarification of the request is needed, this must be requested promptly and in any event no later than 20 working days.
- 2.10.2 If the request exceeds the Fees Regulations (FOIA) or is too complex or large, the Trust should work with the applicant to try to explore ways in making the request more reasonable.

2.11 Personal Information

2.11.1 Personal information contained within disclosures under the FOIA and EIR should be redacted if they relate to the private life of the individual detailed, which is in accordance with the Data Protection Act 2018. However, some personal information pertaining to an individual who is mentioned in their official capacity may be released. This is in accordance with the Information Commissioner's Awareness Guidance (no.1).

2.11.2 Personal information should not be released if there is any evidence that damage or distress may be caused to the individual being named, or their safety may be compromised. However, this does not include withholding details to prevent potential embarrassment being caused as a result of the disclosure.

2.11.3 Staff should be informed that information and documents they may have contributed to in their professional capacity, may be disclosable.

2.12 Consultation with Third Parties

2.12.1 Where information has been obtained from a third party in confidence, the Trust will make every effort to consult with the third party with a view to obtaining consent for disclosure. However, if a third party does not respond or they refuse to consent, this does not automatically mean information will be withheld. The final decision as to whether the information should be disclosed will lie with the Trust.

2.13 Public Sector Contracts

2.13.1 In deciding whether any information may be exempt from disclosure because it may involve a breach of confidentiality imposed by a third party or it may breach a trade secret or it may prejudice the commercial interest of any party, the Trust will take into account current guidance issued by the Information Commissioner or the Department of Constitutional Affairs. Contractors should be advised to include FOIA or EIR disclosure clauses within their contracts.

2.14 Records Management

2.14.1 The Trust follows a Records Management Policy and Retention and Disclosure of Information Schedule. These are in compliance with the Lord Chancellor's Code of Practice on the Management of Records (under Section 46 of the Act) and Records Management: NHS Code of Practice (2009). This policy addresses issues of active records management, including the creation, retention, maintenance and disposal of records, according to the legal requirements placed upon the Trust.