

ACCESS TO INFORMATION POLICY

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EXECUTIVE DIRECTOR	Sandra Betney- Exec Director of Resources and SIRO	
POLICY LEAD	Head of Information Governance	
POLICY AUTHOR (if different from above)		
FORMULATED VIA	Information Governance Assurance Group (IGAG) and Information Governance Steering Group (IGSG)	

POLICY CONTEXT

This policy details the principles, arrangements, practices and staff responsibilities adopted by the Trust to support its commitment to comply with the requirements of statutory access to information regimes established by the Data Protection Act 1998 (DPA), Access to Health Records Act 1990 (AHRA), Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR).

POLICY REQUIREMENT (see Section 2)

The Trust will:-

- identify and immediately action all valid information requests,
- deal with information requests in a fair and consistent manner,
- follow the approved information request and information request complaint procedures,
- assist the public in exercising their information rights by providing advice and assistance,
- be proactive in publishing appropriate information in the public domain, and
- create and maintain appropriate records of all information requests.

CONTENTS

1	INTRODUCTION	3
1.1	Rationale (Why)	3
1.2	Scope (Where, When, Who)	3
1.3	Principles (Beliefs)	4
2	POLICY (What).....	4
3	PROCEDURE.....	5
3.1	Identifying valid information requests and immediate action	5
3.2	Dealing with information requests.....	7
3.3	Locating and reviewing information for disclosure	8
3.4	Information request complaints	10
3.5	Publishing information in the public domain	10
3.6	Record-keeping	11
3.7	Training and Awareness	11
4	ROLES AND RESPONSIBILITIES.....	11
5	DEVELOPMENT AND CONSULTATION PROCESS.....	12
6	REFERENCE DOCUMENTS.....	13
7	BIBLIOGRAPHY	13
8	GLOSSARY	14
9	AUDIT AND ASSURANCE.....	15

1 INTRODUCTION

1.1 Rationale (Why)

The aims of this policy are:-

- To support and promote the Trust's core value of openness and honesty.
- To provide a framework to support the Trust's commitment to comply with statutory access regimes established by the Data Protection Act 1998 (DPA), Access to Health Records Act 1990 (AHRA), Freedom of Information Act 2000 (FOIA), and Environmental Information Regulation 2004 (EIR).
- To build the trust and confidence of the public and our stakeholders.

These aims are balanced by:-

- Ensuring an individual's right to privacy and confidentiality is managed appropriately.
- The requirement to prohibit the disclosure of information as may be necessary by law.

1.2 Scope (Where, When, Who)

The Trust must not treat every request for information it receives formally as an 'information request' for the purpose of this policy, as this would represent a waste of Trust resources and could put service users at risk. The following types of information should be disclosed outside this policy:-

- Information that supports the detection, investigation and punishment of serious crimes where the public good achieved by disclosure outweighs the obligation of confidentiality.¹
- Information that informs a patient assessment where there are immediate concerns about risk and safeguarding.
- information that can be provided routinely and as part of good customer service, for example, requests for service opening hours, clinic times or information that is already published on the Trust website.

This policy covers all Trust staff. It is important to note that an information request is valid even if it has not been sent directly to the team who normally deals with such requests. All staff, therefore, will be able to identify valid information requests and know what to do if and when they receive one.

This policy covers all recorded information held by the Trust regardless of content, location, format, and source. This policy therefore covers information held by third parties on behalf of the Trust, for example, information held by non-public authority contractors.

This policy does not cover information in someone's head unless that knowledge is held by the Trust as information in a recorded form.

This policy does not cover all information rights that individuals have under the DPA, for example, the right to apply to amend or delete personal information held by the Trust is not in scope.

¹ See the Trust's Confidentiality Policy

This policy does not cover requirements for the arrangement, storage, retention and disposal of Trust records although sound records management practices will support our effectiveness in dealing with information requests.

1.3 Principles (Beliefs)

The Trust will always works on the basis that disclosing information requested to support service users is essential. It is not acceptable that the care a service user receives might be undermined because information is not disclosed effectively.

The Trust recognises that disclosing non personal information requested about the Trust supports the Trust's core value of openness and honesty and acknowledges its importance in increasing confidence in public services, supporting democracy and maximising the value of public information for the public good.

The Trust respects the confidentiality of individuals and will not disclose personal information to third parties without consent, unless legally obliged to so, if there is an overriding public interest (e.g. to prevent a serious crime), or if there are reasons to believe that failing to share information would put someone at risk.

The Trust treats all information requests equally and without bias. The Trust does however prioritise information requests that are subject to legal instruments such as court orders.

The Trust will assist the public positively in exercising their information rights and 'right to know' by providing advice and assistance to applicants and potential applicants of information requests. The Trust will do so taking into account other statutory duties such as the Disability Discrimination Act 1995.

The Trust accepts that public authorities are liable to heavy financial penalties for non-compliance with the requirements of legislation governing the access to and management of public information.

The Trust will apply the same degree of urgency to dealing with a valid information request as it would apply to handling a formal complaint.

2 POLICY (What)

The Trust will:-

- 2.1 Identify valid information requests and action them immediately.
- 2.2 Follow the approved procedures when dealing with information requests.
- 2.3 Be open and honest, that is to say, disclose all the information requested, and will only withhold information if there is a justifiable reason based on an exemption stated in the appropriate legislation.

- 2.4 Assist the public in exercising their information rights by providing advice and assistance.
- 2.5 Follow the approved procedures when dealing with information request complaints.
- 2.6 Proactively publish appropriate information in the public domain.
- 2.7 Create and maintain appropriate records of all information requests.

3 PROCEDURE

3.1 Identifying valid information requests and immediate action

3.1.1 Data Protection Act 1998 (DPA)

- A request to access personal information by the individual to which the information relates ('data subject'), or a third party acting on behalf of the data subject ('authorised representative'), is covered under Section 7 of the DPA and is known as a subject access request (SAR).
- A SAR received from, or on behalf of a service user or ex-service user is known as a 'care records request' and a SAR received from, or on behalf of an employee or ex-employee is known as a 'corporate SAR'.
- All appropriate Trust documentation will state that SARs will be sent direct to the Information Governance (IG) team:
IG Office, B1, Trust HQ
Information.Requests@bsmhft.nhs.uk
0121 301 1159
- If a request goes elsewhere the procedure will be to contact the IG Office to inform them of the request and to send them a copy so they can acknowledge receipt and begin to process the request. A copy will be sent via:-
 - email to Information.Requests@bsmhft.nhs.uk, or
 - fax to 0121 301 1103 (contact staff prior to sending to ensure someone is available to collect the request), or
 - secure internal post.

3.1.2 Access to Health Records Act 1990 (AHRA)

- A request to access the health records of a deceased service user is covered under the Access to Health Records Act 1990. When such a request is received it will be sent immediately to the IG Office as above.

3.1.3 Environmental Information Regulations 2004 (EIR)

- A request to access environmental information is covered under the EIR². Unlike a SAR or FOI request, an EIR request can be made verbally over the phone or in person. When this happens, the staff member taking the call will put the request in writing on behalf of the applicant. When a EIR is

² A description of 'environmental information' is provided in the glossary at section 8.

received, the request will be sent immediately to the FOI Office who will acknowledge receipt and begin to process the request:

FOI Office, B1 Trust HQ
 FOI.Office@bsmhft.nhs.uk
 0121 301 1370

3.1.4 Freedom of Information Act 2005 (FOIA)

- A request to access any information not already covered under sections 3.1.1 – 3.1.3 is covered under the FOIA. When such a request is received it will be sent immediately to the FOI Office as above.

3.1.5 Combination Requests

- A request to access information comprising a combination of personal information by the individual to which the information relates and non-personal information, and/or environmental information and non-environmental information will be sent immediately to the FOI Office as above. The FOI Office will separate out the request and ensure that each element is separated and dealt with under the relevant statutory access regime. This is important because the test for disclosure under the FOIA / EIR is to the world at large and not just the requester.

3.1.6 Valid Information Requests

- Upon receipt, the IG Office / FOI Office will check the validity of information requests.

A valid information request must:-

	AHRA request	SAR	FOIA request	EIR request
Be made in any written form e.g. email, fax, letter, application form *	Yes	Yes	Yes	Not required
Provide a name and contact address for further correspondence	Yes	Yes	Yes	Yes
Provide sufficient information to verify the applicants identify**	Yes	Yes	Not required	Not required
Be clear what information is being requested ***	Yes	Yes	Yes	Yes

Notes:

* The applicant does not need to mention the relevant legislation in their request, for example, an information request could form part of general correspondence on another matter such as a compliment or complaint letter.

** The IG Office will only process a SAR / AHRA request when they have received sufficient information to verify the identification of the data subject, or the authorised representative and their entitlement to act on behalf of the data subject.

*** The applicant may make a request that is very broad (e.g. 'give me a copy of all the information you hold about me'), or that is very precise (e.g. 'give me a copy of the letter you wrote about me yesterday'). However, if

an information request is identified to be incomplete or unclear, the IG Office / FOI Office will request whatever reasonable clarifications it requires from the requester before beginning to process the request. The request will be closed if the clarification requested has not been received within 20 working days.

3.1.7 Advice and Assistance

- The Trust will provide reasonable advice and assistance to support potential applicants make valid information requests, for example, a staff member that receives a phone call from an individual asking for access to personal data will ask for a contact address and then send the requester a SAR application form. Note: although the Trust cannot insist on the use of particular form for making a SAR, the Trust has designed a SAR application form to assist the requester to provide all the information we need to deal with the request. The form is available from the Trust website: [http://www.bsmhft.nhs.uk/about-us/information-rights/data-protection /](http://www.bsmhft.nhs.uk/about-us/information-rights/data-protection/)

3.2 Dealing with information requests

3.2.1 Procedures

- After a valid information request has been received and logged, it will be forwarded to the relevant request lead(s) (See 3.3.1), and the approved procedure and guidelines for handling information requests will be followed. SAR / AHRA requests will be dealt with under the Trust's subject access request procedure, and FOI / EIR requests will be dealt with under the Trust's FOI procedure.
- The IG Office will make the most up-to-date version of information request procedures and guidelines available on the IG section of the Trust intranet.

3.2.2 Fees

- In accordance with the relevant fees regulations at the time, the IG Office maintains a schedule of fees that it charges for information requests.
- When a payment is required, a fees notice will be sent to the requester and the request will be put on hold until payment is received. The IG Office will close the request if payment has not been received within three months.

3.2.3 Statutory Timeframes

- The Trust will aim to respond to all information requests within the statutory timeframe. This is 40 calendar days for SAR and AHRA requests and 20 working days for FOI / EIR requests.
- The timeframe for dealing with requests will start when the Trust receives it, not when it reaches the IG Office or FOI Office.
- The Trust will not view the statutory timeframe as a target but the maximum period in which to respond.

3.2.4 Compliance Breaches

- In exceptional circumstances, the Trust may find itself unable to meet the statutory timeframes. In such circumstances the IG Office / FOI Office will:-

- communicate regularly with the applicant by whatever means appropriate to apologise for any delay and to keep them informed of progress, and
 - release any information that has already located and approved for disclosure, and
 - escalate as appropriate, for example, the IG Office will inform the Deputy Caldicott Guardian/ Medical Director if a SAR breach is the result of a clinical delay that requires intervention.
- The request lead is responsible for informing the IG Office if a SAR or AHRA request is likely to breach no later than 5 working days from the request deadline.
 - The FOI Office will inform the appropriate executive lead if information has not been received for a FOI / EIR request on the 18th working day of the request.
 - The Trust will not deliberately destroy any information which is the subject of a current information request. This is a serious criminal offence and the staff member involved will carry individual liability for any legal action arising.

3.2.5 Information held by other public authorities

- If the Trust does not hold all or part of the information requested but is aware that another public authority might do so, the Trust will write to the requester advising them that the information may be held by another authority, and will provide the contact details of the public authority which is believed to hold the information.

3.2.6 Information held by non-public authority contractors

- If information requested is held by a non-public authority contractor on behalf of the Trust, the request lead will request this information or relevant advice from the contractor as soon as possible to prevent delay. Note: the Trust is responsible for compliance with statutory access regimes and making the final decision on disclosure, not third parties.

3.2.7 Information format

- If the requester specifies a preferred format for the information requested, the request lead will comply with this request unless it is impractical to do so. If it is impractical to do so, or a preferred format is not specified, the Trust will communicate the information in a format that it considers most reasonable.
- If it is agreed that a requester or an authorised representative may physically inspect information on Trust premises, the request lead will consider whether access will be supervised by an appropriate member of staff or lay manager.

3.3 **Locating and reviewing information for disclosure**

3.3.1 Request leads

- All Trust departments that hold information regularly requested under the FOIA or EIR will have a nominated department FOI lead responsible for locating information requested, reviewing for disclosure and preparing a draft response for executive lead sign off. The department FOI lead may delegate tasks but retains this responsibility. Specific guidance for

department FOI leads is available from the IG section on the Trust intranet.

- A nominated responsible clinician or line manager retains ultimate responsibility for locating and reviewing information to disclose in response to a SAR or AHRA request. The responsible clinician or line manager will normally be the most recent staff member responsible for, or in charge of the data subject, but will otherwise be nominated by the IG Office in consultation with relevant staff such as a clinical director. The nominated responsible clinician or line manager may delegate information request tasks (for example to care records administrators) but retains this responsibility. Detailed guidance on preparing and disclosing information under the DPAs is available from the IG section on the Trust intranet and includes guidance on making decisions on disclosing third party information that is likely to cause harm if disclosed.
- The request lead will always work on basis that all information requested will be disclosed, and information will only be withheld if there is a justifiable reason based on an exemption stated in the appropriate legislation.

3.3.2 The appropriate executive lead retains ultimate responsibility for determining what information to disclose in response to a FOI / EIR request.

3.3.3 The request lead will review all information located for disclosure on a case by case basis. This is particularly important for requests for information containing personal information as inappropriate disclosure could constitute a breach of the DPA.

3.3.4 The request lead may withhold information where it believes an exemption as defined in the appropriate legislation applies and can be justified³. In general, information may be exempt because of its nature or because of the effect its disclosure is likely to have.

3.3.5 If information is withheld in reliance on an exemption, the Trust will:-

- release as much information requested as it can, including the use of redaction to block out information that is to be withheld, and
- inform the applicant whether the information is held, why it is being withheld and the exemption(s) that is being relied on. However, the Trust will not confirm or deny whether information is held if doing so will inadvertently disclose sensitive information such as the identity of a third party.

3.3.7 The existence of protective markings such as 'commercial in confidence', or contractual terms that claim to restrict the disclosure of information will not be reasons in themselves to withhold information.

3.3.8 If the request lead estimates that the cost of complying with a FOI / EIR request will exceed the appropriate cost / time limit established by the relevant regulations at the time, for example, because the request would require an extensive search in a number of locations, the Trust will inform the requester

³ 'If challenged, you must be prepared to defend to the Information Commissioner's Office or a court your decision to apply an exemption. It is therefore good practice to ensure that such a decision is taken at a suitably senior level in your organisation and that you document the reasons for it.' (Subject access code of practice, ICO)

and provide reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits.

3.4 Information request complaints

- 3.4.1 Complaints relating to SAR / AHRA requests will be dealt with under the Trust's complaints policy, unless the SAR/ AHRA relates to a non-client, in which case the IG Office will deal with the complaint.
- 3.4.2 Complaints relating to FOI / EIR requests will be dealt with through an internal review process that falls outside the usual NHS complaints procedure. Unless the requester's complaint relates to a specific matter, the internal review will review the Trust's decision based on an examination of the process undertaken as well as the response. The requester does not need to expressly ask for a review of the decision in order for the review process to be instigated. The FOI Office will co-ordinate the internal review and will make the appropriate executive lead aware when it has been instigated.
- 3.4.3 The Trust aims to bring complaints to a swift and satisfactory conclusion to all parties concerned, and aims to inform the applicant of the outcome of the review within 20 working days in most cases, or 40 working days in exceptional circumstances.
- 3.4.4 3.4.1 and 3.4.2 will be the Trust's final escalation points relating to information request complaints. This means that if anyone remains dissatisfied with the outcome, they will have the right to complain to the Information Commissioner's Office (ICO).

3.5 Publishing information in the public domain

- 3.5.1 The FOI Lead will develop and manage the publication scheme on the Trust website in accordance with the requirements of the FOIA and any relevant ICO guideline at the time.
- 3.5.2 Information published via. the publication scheme will be kept up to date according to a documented maintenance schedule.
- 3.5.3 Information published via. the publication scheme will be made available in electronic form and free of charge where it is reasonable to do so.
- 3.5.4 The Trust will be proactive in publishing information that supports the Trust's transparency goals and obligations via. the publication scheme and on the Trust's public website.
- 3.5.5 The Trust will publish all datasets requested under the FOIA via the publication scheme in accordance with the requirements of the FOIA and relevant ICO guideline at the time. All datasets will be published in a reusable format and under the Open Government License where it is reasonable to do so.

3.6 Record-keeping

3.6.1 The IG Office / FOI Office will maintain records of all information requests (including case files for all valid information requests and master logs) for the purposes of:-

- tracking and monitoring requests and ensuring compliance,
- providing an audit trail of how requests have been dealt with and responded to,
- ensuring consistency in the application of exemptions and
- supplying management information for future planning purposes.

3.6.2 A copy of all information disclosed will be retained on the information request case file.

3.7 Training and Awareness

3.7.1 The IG Office / FOI Office has responsibility for the training and awareness of information legislation for staff, covering the following subjects:-

- Personal responsibilities for all staff, e.g. identifying a request.
- Relevant Trust policies and procedures compliance with the legislation.
- Individuals rights (access to information and compliance with the principles).
- Specific training for staff groups with defined responsibilities within the processes.

4 ROLES AND RESPONSIBILITIES

4.1 Caldicott Guardian

- The medical director is the Caldicott Guardian. The Caldicott Guardian is accountable for compliance with statutory access regimes established by the Data Protection Act 1998 (DPA) and Access to Health Records Act 1990 (AHRA).

4.2 Company Secretary

- The Company Secretary is accountable for compliance with statutory access regimes established by the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR).
-

4.3 Head of Information Governance

This role leads the IG agenda for the Trust and has day to day operational responsibility for all aspects of Information Governance including DPA and AHRA compliance.

4.4 FOI lead

This role has day to day operational responsibility for FOIA and EIR compliance.

4.5 Request Leads

- *Responsible clinicians / line managers of data subjects*
 - Responsible for locating, reviewing and determining what information to disclose in response to a SAR / AHRA request assigned to them.
- *Department FOI Leads*

- Responsible for locating information requested and preparing draft responses for FOI / EIR requests assigned to them.

4.6 Trust Solicitors

- Responsible for providing legal advice on information requests when requested, for example, the use of certain exemptions to withhold information under FOIA.

4.7 Communications & Marketing Managers

- Responsible for providing communications advice on information requests when requested, for example, reviewing responses to FOI / EIR requests that relate to high profile subject areas in the media.

4.8 Care Records Staff

- Responsible for supporting the SAR/ AHRA process and request leads by locating, copying, monitoring, chasing for responses, sending copy records and liaising with third parties for consultation where needed.

4.9 All Staff

- Responsible for identifying valid information requests and immediately actioning them in accordance with section 3.1 of this policy. In addition, all staff are required to undertake mandatory information governance training on an annual basis and are responsible for data subject confidentiality for personal information that they handle during the course of their work.

5 DEVELOPMENT AND CONSULTATION PROCESS

Consultation summary		
Date policy issued for consultation	04/11/2014, March 2015	
Number of versions produced for consultation		
Committees or meetings where this policy was formally discussed		
Information Governance Assurance Group	04/11/2014	
Information Governance Steering Group	22/12/2014/ 14/01/2015	
Where else presented	Summary of feedback	Actions / Response

6 REFERENCE DOCUMENTS

Acts / Regulations

- Access to Health Records Act 1990
- Data Protection Act 1998
- Human Rights Act 1998
- Freedom of Information Act 2000
- The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000
- The Data Protection (Subject Access Modification) (Health) Order 2000
- Environmental Information Regulations 2004
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Trust Policies

- Care Records Management Policy
- Complaints Policy
- Corporate Records Management Policy
- Freedom of Information Act 2000
- IG Assurance Policy
- Confidentiality Policy

Trust Procedures

- Freedom of Information Act 2000 procedures
- Guidance on preparing and disclosing information under the Data Protection Act 1998
- Subject access request procedures under Section 7 of the Data Protection Act 1998

7 BIBLIOGRAPHY

- Guidance for Access to Health Records Requests, Department of Health
- Subject Access Code of Practice, Information Commissioner's Office
- The Guide to Freedom of Information, Information Commissioner's Office

8 GLOSSARY

Termination	Definition
Authorised Representative	Where the data subject, or legal appointee, asks someone to act on behalf of them, e.g. solicitors or family members.
Data Subject	The Data Subject is a living individual to whom personal data relates. The Act does not count as a data subject an individual who has died or who cannot be identified or distinguished from others.
Datasets	<p>Information comprising a collection of information held in electronic form where all or most of the information in the collection –</p> <ul style="list-style-type: none"> (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority, (b) is factual information which - <ul style="list-style-type: none"> (i) is not the product of analysis or interpretation other than calculation, and (ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.
Environmental Information	<p>Environmental information is any information that is, about, concerning, or relating to – the various definitions contained in the EIR:</p> <ul style="list-style-type: none"> (a) state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components. (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a); (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b). (d) reports on the implementation of environmental legislation; (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and (f) the state of human health and safety, including the contamination of the food chain, where relevant,

	conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
Exemption	There are 23 exemptions in the Freedom of Information Act under which a request for information may be refused. Some exemptions are 'absolute' - if the exemption applies then there is no obligation to release the requested information. For other exemptions, public authorities are required to assess the balance of the public interest for and against disclosure. These exemptions are often referred to as 'qualified'.
Information Commissioner's Office	The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The ICO enforces the application of legislation governing and access to, and management of information.
Information Requests	Request for information from an individual which falls under the remit of FoI, DPA, EIR or AHRA.
Information Request Complaints	Any written statement from an applicant expressing dissatisfaction with the Trust's response or handling of the request to a valid information request as an information request complaint ('complaint'). The requester does need not to expressly ask for a review of the decision in order for the appropriate procedure to be instigated.
Personal Information	Data which relates to a living individual who can be identified from that data or from data and from other information which is in the possession of, or likely to come into the possession of the data controlled (e.g. our Trust).
Publication Scheme	A requirement of FoI requirement organisations to adopt and maintain a scheme so that information can be routinely made available to the public.

9 AUDIT AND ASSURANCE

Element to be monitored	Lead	Tool	Frequency	Reporting Committee
Information request compliance	Head of IG	Information request master log and reports	Quarterly	IGAG