



**Worcestershire  
Health and Care**  
NHS Trust

# **Freedom of Information Act Policy**

**Working together  
for outstanding care**

## **Guideline / Policy on a Page – Summary of Key Points**

This policy describes how Worcestershire Health and Care NHS Trust will comply with the Freedom of Information Act 2000 (the Act).

The Act gives the public a general right of access to almost all types of recorded information held by public authorities, subject to some exemptions. The aim of the Act is to promote a culture of greater openness and accountability and to facilitate better understanding of how public bodies carry out our duties, why we make the decisions we do and how public money is spent.

Worcestershire Health and Care NHS Trust supports this culture of openness and will ensure compliance with the Act by:

- putting in place appropriate procedures and practices
- using the Trust's publication scheme to make as much information as possible available
- regularly reviewing the publication scheme to ensure that it is maintained and kept up to date
- responding to written requests within the 20 working day deadline
- ensuring that all staff are aware of their responsibilities and that relevant training is provided
- protecting personal information, by disclosing only that information which it is lawful to do so, in accordance with the provisions of the EU General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA)

## Freedom of Information Act Policy

<b>Document Type</b>	Corporate Policy
<b>Unique Identifier</b>	To be set by Web and Systems Development Team
<b>Document Purpose</b>	This policy sets out the obligations, responsibilities and procedures relating to the management of enquiries received by Worcestershire Health and Care NHS Trust under the Freedom of Information Act 2000
<b>Document Author</b>	FOI Officer
<b>Target Audience</b>	All Worcestershire Health and Care NHS Trust Staff
<b>Responsible Group</b>	Worcestershire Health and Care NHS Trust Quality and Safety Committee
<b>Date Ratified</b>	24 October 2018
<b>Expiry Date</b>	3 years

The validity of this policy is only assured when viewed via the Worcestershire Health and Care NHS Trust website (hacw.nhs.uk.). If this document is printed into hard copy or saved to another location, its validity must be checked against the unique identifier number on the internet version. The internet version is the definitive version.

If you would like this document in other languages or formats (i.e. large print), please contact the Communications Team on 01905 681770 or by email to [WHCNHS.Communications@nhs.net](mailto:WHCNHS.Communications@nhs.net)



## **Accessibility**

Interpreting and Translation services are provided for Worcestershire Health and Care NHS Trust including:

- Face to face interpreting;
- Instant telephone interpreting;
- Document translation; and
- British Sign Language interpreting.

Please refer to the intranet page: <http://nww.hacw.nhs.uk/a-z/services/interpreting-and-translation-services/> for full details of the service, how to book and associated costs.

## **Training and Development**

Worcestershire Health and Care NHS Trust recognises the importance of ensuring that its workforce has every opportunity to access relevant training. The Trust is committed to the provision of training and development opportunities that are in support of service needs and meet responsibilities for the provision of mandatory and statutory training.

All staff employed by the Trust are required to attend the mandatory and statutory training that is relevant to their role and to ensure they meet their own continuous professional development.

## **Co-production of Health and Care – Statement of Intent**

The Trust expects that all healthcare professionals will provide clinical care in line with best practice. In offering and delivering that care, healthcare professionals are expected to respect the individual needs, views and wishes of the patients they care for, and recognise and work with the essential knowledge that patients bring. It is expected that they will work in partnership with patients, agreeing a plan of care that utilises the abilities and resources of patients and that builds upon these strengths. It is important that patients are offered information on the treatment options being proposed in a way that suits their individual needs, and that the health care professional acts as a facilitator to empower patients to make decisions and choices that are right for themselves. It is also important that the healthcare professional recognises and utilises the resources available through colleagues and other organisations that can support patient health.

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## 1. Introduction

The Freedom of Information (FOI) Act was passed in 2000 and replaces the Open Government Code of Practice that has been in place since 1994. The Act gives the public a general right of access to almost all types of recorded information held by public authorities. The Act came into full effect on the 1 January 2005.

The Act places a statutory obligation on all public bodies to publish details of all recorded information that they hold and to allow, the general public to have access to this information on request, except where an exemption applies e.g. personal or confidential data.

Worcestershire Health and Care NHS Trust (the Trust) recognises the importance of the Act and it will ensure that appropriate systems are put in place to publicise what recorded information is kept by the Trust and how this information can be accessed on request by the general public.

The main features of the FOI Act are:

- A general right of access to information held by public authorities.
- Sets out exemptions from the duty to provide information.
- Place a requirement on public authorities to exercise discretion; they may have to determine not only whether an exemption applies but also the extent to which it may apply (some exemptions are conditional and depend on where the balance of 'public interests lie').
- Make arrangements in respect of costs and fees.
- Places a duty on public authorities to adopt publication schemes.
- Public Authorities must make arrangements for enforcement and appeal.
- Places a duty to provide advice and assistance to people who wish to make, or have made requests for information, and
- Outlines Codes of Practice e.g. How to handle a request.

The UK FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. It does not oblige public authorities to retain information which is no longer useful to the authority.

The FOI Act is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.

## 2. Purpose of document

This policy outlines the Trust's commitment to providing information requested under the FOI Act, the provision of the statutory publication scheme and ensuring information requests can be fulfilled in a structured and timely manner. The last point is particularly relevant with consideration to the 20 working day legal limit for responding.

## 3. Definitions

In the context of FOI, 'information' is defined as each item of material held by the Trust in paper or electronic forms. This includes but is not limited to, all draft documents, agendas, minutes, emails, diaries, handwritten notes and all other recorded information.

For the purpose of this policy, 'Team(s)' are defined as Trust Service Delivery Units (SDUs), teams or departments to which an FOI request has been made or those who may be involved in the management of an FOI request or potential response.

## 4. Scope

The scope of this policy relates to all activity to both maintain the Trust's approved FOI publication scheme as well as the process to respond to, and manage requests for information under the Act.

This policy will apply to all Trust employees and anybody working for or on behalf of the Trust. The Policy outlines good practice and identifies the responsibilities of staff in relation to the Act and should be read in conjunction with the Trust's Records Management Policy and professional codes of conduct.

## **5. Training/Competencies**

The Company Secretary will ensure that those members of staff responsible for managing FOI requests will receive suitable training on the Act.

The Head of Information Governance will ensure that staff guidance or awareness materials will be available for all staff.

## **6. Responsibilities and duties**

### **Corporate responsibilities**

The Trust recognises its responsibility under the Act to provide the general right of access to information held. Overall responsibility for this policy is with the Chief Executive.

The FOI Act makes it an offence to alter, deface, block, erase, destroy or conceal any information from disclosure which is held by the Trust.

### **Chief Executive responsibilities**

- As Accountable Officer has overall accountability and responsibility for compliance with the Act.
- Ensure that responsibility for bringing FOI issues to the Board is delegated to an appropriate Director. The Chief Executive has delegated responsibility for FOI to the Company Secretary.

### **Head of Information Governance responsibilities**

- Define the Trust's policy in respect of Freedom of Information, taking into account legal and NHS requirements.
- Ensure they are alerted to relevant issues arising that may affect policy.
- Support a comprehensive Records Management policy that supports FOI.
- To oversee the implementation of this Policy and to establish systems, procedures and operational processes to support this function as necessary.
- Deal with any complaints and appeals against decisions not to supply exempt information, including conducting internal reviews.
- The Head of Information Governance is supported by the FOI Officer.

### **Freedom of Information (FOI) Officer responsibilities**

- Develop and maintain clear procedures for recognising and responding to requests for information under FOI in a timely manner to meet the requirement to respond within 20 working days.
- Publish and maintain a Publication Scheme.
- Ensure that the public has access to information about their rights under the Act.
- Escalate any complaints and appeals against decisions not to supply exempt information.
- Provide relevant FOI training for all staff with FOI responsibilities.
- Provide weekly reports to Directors.

### **Directors, Associate Directors, Service Delivery Unit Leads, Senior Managers and Team Managers responsibilities**

- Provide the full and appropriate responses to FOI requests to the FOI Officer within the timescales outlined in this policy (**See Appendix A**) and supporting procedures, including

any opinion and supporting detail if there is a concern that the information should not be disclosed.

- Check the accuracy and content of FOI response where deemed necessary.
- Advise the FOI Officer of requests which may be subject to an exemption (or, if they have reason to believe that the disclosure may be used in a contentious or malicious way) and for ensuring that they nominate a senior person within the team, department or directorate to act as a single point of contact for the FOI request.
- Ensure Directorate records and information is created, maintained, retained and disposed of in accordance with all Trust Records Management Policies, procedures and processes to enable easy identification and retrieval when required.
- Maintain up to date information within the Trust Website / Publication Scheme.
- Act appropriately to FOI recommendations generated by the Information Governance Steering Group.
- Ensure written requests for information within the directorate/team that should be dealt with under the Act are referred promptly to the FOI Officer.
- Provide assistance to the Head of Information Governance / FOI Officer with investigations into appeals and complaints.

### **Employee responsibilities**

Penalties can be imposed upon the Trust and staff for breaching the FOI Act.

All employees have a legal duty to preserve formal records. Employees must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices are not offences in themselves, however they may lead to an inability to comply with requirements of the Freedom of Information Act.

All employees will, through appropriate training and responsible management:

- Observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records.
- Provide the full and appropriate responses to FOI requests within the timescales outlined in this policy and supporting procedures and provide information promptly when requested from the FOI Officer.
- Undertake any formal FOI training which the Trust deems to be relevant to that persons role.
- Be aware that ultimately the general public may have access to any piece of information held within the Trust and must pay due regard to how they record information as part of their normal duties.
- On receipt of Freedom of Information request, which does not need to specify that it is a 'Freedom of Information' request, immediately notify the Trust FOI Officer. This can be done by forwarding correspondence to [WHCNHS.FOIrequest@nhs.net](mailto:WHCNHS.FOIrequest@nhs.net)
- Understand that breaches of this Policy may result in disciplinary action, including dismissal.

## **7. Freedom of Information Act 2000 Policy**

### **Managing requests for information**

It is the responsibility of the Head of Information Governance to ensure that the Trust has sufficiently efficient processes to support the FOI agenda and assure that all requests are managed correctly.

The Trust has existing processes for providing information to members of the public and other persons which are not superseded by this policy. Requests for information generated as part of Trust's existing processes may be answered as 'business as usual' if it is deemed reasonable to do so.

Requests for information outside of 'business as usual' processes, or those specifically defined as FOI requests, will be managed by the FOI Officer.

Each department of the Trust may be required to nominate an FOI representative to liaise with the FOI Officer in the provision of information as required.

Final draft responses to FOI requests should be approved for issue by a member of staff operating at a Director/Senior Manager level, a deputy in their absence or a member of staff with delegated authority.

Amendments to approved draft responses may only be made by the Chief Executive, the Company Secretary or another Director.

### **Defining a Valid FOI Request**

As defined in Section 8 of the FOI Act, to meet all the requirements of a valid FOI request, a request must:

- Be in writing
- State the name of the applicant and a valid address for correspondence (e-mail address is valid)
- Describe the information requested
- Be received in a legible form
- Be capable of being used for subsequent reference

The term 'in writing' covers requests submitted by letter and electronic form, including those sent via Social Media (e.g. Twitter and Facebook) and the request does not have to make any direct reference to the Act, or be the sole or main theme of the requester's correspondence.

When determining whether or not a name and/or address is valid, where a requester's name is an obvious pseudonym or only includes a part of their real name (e.g. Mickey@123 or Mouse@456) then the request will only be valid if their real name is visible elsewhere on their profile in the body of the request (e.g. Signed from Michael Mouse)

A request also becomes valid when:

- The Freedom of Information Act is mentioned in correspondence
- When information cannot be supplied under Business as Usual criteria within 20 working days

### **Time Limits for Compliance with Requests**

The Trust has, and continues to develop, systems and procedures to ensure that it complies with the duty to confirm or deny whether it holds requested information, and to provide a response to requests within the statutory timeframe of twenty working days from the point of a valid request being received.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, the period from when the applicant received the fees notice to when they paid the fee is disregarded for the purposes of calculating the twentieth working day following receipt.

The Trust may choose to apply an exemption to any information, to refuse a request if it is vexatious or repeated, or exceeds the appropriate limit for costs of compliance. A notice must be issued within twenty working days informing the applicant of this decision.

A summary of internal FOI processing timescales is outlined in **Appendix A**.

### **Means by which information will be conveyed**

When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means;

- The provision to the applicant of a copy of the information in permanent form or in another form deemed to be acceptable by the applicant
- The provision to the applicant of a reasonable opportunity to inspect the record containing the information, and
- The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant

The Trust, so far as is reasonably practicable, will give effect to that preference.

In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If it is determined that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the applicant will be notified of the reasons for its determination and will provide the information by such means as which it deems reasonable in the circumstances.

### **Refusal of Requests**

The duty to confirm or deny whether information is or is not held does not arise if:

- An exemption applies under section 2 of the Act
- A fees notice has been issued and the fee has not been paid
- An estimate demonstrates that the cost of compliance will exceed the appropriate limit
- It can be demonstrated that the request is repeated or vexatious

Upon refusal of a request for information, the applicant will be informed of the reasons for this decision within twenty working days, and at the same time, will be informed of the procedures for making a complaint about the discharge of the duties of the Trust and their rights.

If the Trust is reliant upon an exemption under part 2 of the Act, relating to the duty to confirm or deny, a notice will be issued within twenty working days, which will state that fact and specify the exemption being applied and why it applies

### **Internal Review**

All Internal Reviews will be carried out in line with the FOI Internal Review Procedure. Applicants may ask the Trust to conduct an Internal Review of its handling of FOI requests. Internal Reviews consider decisions made, rationale, public interest, timeliness and all other relevant aspects of the request.

The FOI Officer will identify and communicate with all relevant staff that were active in the original request and invite them to review the handling of the request. This, where applicable, will form part of the information issued to the Internal Review Panel for consideration.

The Trust will conduct Internal Reviews within 20 working days or 40 working days where a review is shown to be particularly complex.

Applicants who may remain unsatisfied with the outcome of an Internal Review will be advised that they may exercise their right to appeal to the Information Commissioner, and subsequently to an Information Tribunal.

This process is outlined in **Appendix E**.

### **Vexatious/Repeat requests**

Should an applicant make a 'vexatious' or 'repeated' request for identical or substantially similar information, the Trust will inform the applicant in writing that they will not fulfil the request. When responding in this manner the Trust will offer assistance to the individual, by indicating why they consider the request is vexatious or repeated. The Trust will also indicate what recourse the applicant has if they are unhappy with this position.

### **Datasets**

A dataset is a collection of factual information in electronic form (e.g. statistics or figures) that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation.

Clause 92 of the Protection of Freedoms Bill amends the FOI Act meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use at the point of release under the Open Government Licence, and where reasonably practicable, they will be published in a reusable format.

### **Environmental Information Regulations**

Requests for information to the Trust which relate to the environment will be processed in accordance with the Environmental Information Regulations 2004. This includes, but is not restricted to, all information about the impact on the elements and measures that might affect the environment. This applies to information in all formats which is held by the Trust.

The statutory time limit for responses to requests for information under the Environmental Information Regulations is 20 working days, though this may be extended by a further 20 working days if the request is deemed to be complex or voluminous in nature.

### **Round Robin Requests**

Round Robin requests are those which are generic in nature and are designed to be 'catch all' requests submitted to a number of similar organisations.

All written requests for information received by the Trust may be FOI requests. Upon receipt of a circular, a questionnaire or any other 'round robin' request for information, the Trust will:

- Work with those organisations to whom the request has been submitted to ensure a consistent and cohesive approach is applied
- Identify which questions are requests for information
- Provide, if necessary, advice and assistance that is reasonable in the circumstances
- Provide a response in line with the requirements of the Act

Where questions invite comment or opinion not held on record, the Trust will, dependent on the question, advise the applicant the information is not held, or if appropriate to do so, provide the comment or opinion as part of its routine 'business as usual' functions.

### **Requests relating to potential media interest**

The Trust will not distort its process or compile a response to an FOI request differently if it is felt that the response will prompt media interest, though the Trust Communications department will be sighted on the response to be aware of the media interest in the topic.

### **Formal NHS Complaints**

All formal complaints received via the Trust complaints process about the discharge of the duties of the Trust under the Act will be handled in the same manner and using the same procedures as any other formal complaint which the Trust receives.

## **The Role of the Information Commissioner**

The Information Commissioner Office (ICO) is an independent public authority which upholds Information Rights in the UK. Applicants who are not satisfied with the outcome of their FOI request may approach the ICO as the information ombudsman to review how the Trust has performed in response to the complainant's request.

## **Duty to Provide Advice and Assistance**

The Trust has a duty to provide advice and assistance to persons making FOI Requests in line with Section 16 of the FOI Act and the Section 45 Code of Practice. The Trust will endeavour to undertake all steps it deems to be reasonable to achieve this directive.

## **Identity of the applicant and reasons for the request**

The FOI Act does not mandate that the identity of an applicant must be disregarded, though the Information Commissioner has advised that, as the Act enables disclosure of information on grounds of public interest, requests ought to be made applicant and motive blind when responses to requests are formulated by organisations.

On this basis, the Trust will assess all requests on the understanding that applicant identity is not a relevant consideration during the lifecycle of the request management process.

Possible exceptions to this include, but are not limited to:

- A request is deemed to be repeated
- The applicant has made a request for their own personal data
- Aggregated costs in line with the Fees Regulations
- Release would be likely to endanger the health and safety of the requester or any other person
- Prejudice may be caused by releasing the information either to the requester or to any other person (prejudice based exemptions only)
- Situations where the Trust is confident that the identity of the applicant means the requested information is reasonably accessible to that person by other means, and is therefore exempt by way of Section 21 of the Act
- If disclosure of third party personal data would be contrary to the EU General Data Protection Regulation (GDPR) / Data Protection Act 2018 (DPA) principles to release the information to the general public

## **Transferring Requests for Information**

The Trust may only transfer a request when it does not hold, or does not substantially hold the information requested.

Holding of information includes the holding of a copy of the record produced or supplied by another person or body, but does not extend to holding a record on behalf of another person or body.

The Trust may not hold the information requested and the applicant will be advised as soon as possible in these cases.

The Trust may believe that the information requested is held by another public authority, in such cases it will either;

- Contact the applicant informing them of this and provide contact details of that authority
- Advise the applicant to contact the relevant authority
- Contact the authority on the applicants' behalf and transfer the request.

Should the Trust consider it appropriate to transfer the request, consultation will take place with the other authority, to determine if it holds the information and whether it should transfer the request.

The request may be transferred to the other authority without further consultation with the applicant where the Trust believes that the applicant would not object to such a transfer.

Should the Trust believe that the applicant would object to the transfer, the transfer will only take place with the consent of the applicant.

All transfers of requests will take place as soon as is practicable and the applicant will be informed as soon as this has been done.

### **Consultation with Third Parties**

The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where the information is subject to the common law duty of confidence or where it constitutes Personal Data. Unless an exemption applies in relation to any particular information, the Trust will be obliged to disclose the information in response to a request.

Where disclosure of information cannot be made without the consent of a third party and would constitute an actionable breach of confidence such that an exemption would apply, the Trust will consult that third party with a view to seeking their consent, unless such consultation is not practicable.

The Trust will undertake consultation where:

- The views of the third party may assist in determining whether an exemption under the Act applies, or
- The views of the third party may assist in determining where the Public Interest lies.

The Trust may consider that consultation is not appropriate where the cost of consulting with the third party would be disproportionate. In such it will consider the most reasonable course of action to take in light of the requirements of the Act. Consultation will be unnecessary where:

- The Trust does not intend to disclose the information
- The view of the third party can have no effect on the decision as to whether to disclose
- An exemption applies

Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to only some of the organisations.

If a third party does not respond to consultation it does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Trust, not the third party, to determine whether or not information should be disclosed. A refusal to consent to disclosure by a third party does not automatically mean information will be withheld.

### **Information provided by other organisations**

If the response to an FOI request belongs to or contains a significant amount of information provided by another organisation, the Trust will consider, on a case by case basis, whether to consult with that organisation. The organisation will apply this process when considering whether an exemption may be applicable.

### **Accepting Information in Confidence from Third Parties**

The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any or its functions and it would not be otherwise provided.

The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature.

## **Staff Names and Details**

It is acknowledged that as a public authority, justification exists for the disclosure of employee names and contact details.

The Trust will release the names of Board members, Directors, senior staff of Agenda for Change (AfC) Band 8 and above, Consultants, Associate Specialists and Specialty Doctors upon request. Names and details of staff published on the Trust website will also be provided without gaining additional consent.

Consent will be sought from all other staff to release their information where it is reasonably practicable to do so. The Head of Information Governance will decide when it may or may not be reasonably practicable to obtain consent.

Requests for salary information will be answered, if applicable, by providing salary levels or pay bands (not scale point or net salary). Where a person falls outside of this, their salary will be given in £5,000 bands. Requestors will be referred to the Annual Report if requesting information regarding Executive Director's salaries.

## **Exemptions and the Public Interest Test**

Information requested from the Trust may be subject to an FOI Act exemption.

The Trust will consistently encourage the release of recorded information to the public. Sometimes it is not appropriate or practicable for recorded information held by the Trust to be disclosed and there are 23 exemptions (**See Appendix D**) under the FOI Act which may be applied to withhold information from disclosure. There are two types of Exemption: Absolute and Qualified.

Absolute exemptions are not subject to a Public Interest Test; however qualified exemptions are subject to a Public Interest Test prior to their reliance to determine whether to disclose the requested information or to withhold it based upon the greater public good.

The Public Interest Test is set out in section 2 of the FOI Act. It provides that, even where the information meets the requirements of a qualified exemption, the information may only be withheld where, *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*.

A Public Interest Test requires the Trust to consider the competing public interest factors in disclosure and the maintenance of secrecy by weighing of competing information and circumstances. The Trust will conduct Public Interest Tests without bias, in line with guidance set by the Information Commissioner and with a view to release of the requested information unless a clear margin public interest in maintaining the exemption exists.

The strength of the factors both in favour of disclosure and maintaining the exemption will be assessed on a case-by-case basis.

Section 36 of the FOI Act enables information to be made exempt if its disclosure may inhibit the ability of an authority to conduct its business effectively.

Reliance upon this exemption requires the approval of the Chief Executive in receipt of a recommendation to do so by the Company Secretary.

## **Public Sector Contracts**

The Trust will, when entering into contracts, refuse to include contractual terms which attempt to restrict the disclosure of information it holds relating to the contract beyond the restrictions permitted by the Act.

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 terms of the contract, its value and performance will be exempt from disclosure. The Trust must reject such clauses

wherever possible. Where it is exceptionally necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identified information which should not be disclosed.

The Trust will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act.

The Trust must disclose information pursuant to the Act, and not the non-public authority contractor. Steps must be taken to protect from disclosure by the contractor, information which the Trust has provided which would clearly be exempt from disclosure under the Act.

### **Re-use of information**

Regulations apply in respect of the 're-use' of information where the Trust holds the intellectual property/copyright of information and where re-use has been requested by a body that is not a public authority.

The regulations around re-use require organisations to publish details of information available for re-use. Information that the Trust publishes as part of its Publication Scheme can be considered as the list of information available for re-use. Any published document can be re-used without charge, provided the Trust is quoted as the source and retains copyright.

Requests for re-use will be granted or denied by the FOI Officer in consultation with the Head of Information Governance. Following the completion of a response to a request for information that is not covered by the Publication Scheme, consideration will be made as to whether this information should become part of the Publication Scheme.

If a request to re-use information provided by another organisation is received, the Trust will advise applicants of this and will be directed to that organisation.

### **Fees and re-use charges**

The Trust is able to charge a fee for dealing with a request, in line with the 'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004'.

In line with these regulations, when determining whether the cost of the work to respond is estimated to be less than £450, the Trust is not able to charge a fee. Where the cost exceeds this amount, the Trust will correspond with the applicant either to reduce the requirement (and therefore cost) below the threshold or to agree a fee. If an agreement cannot be reached the Trust may exempt the requested information from disclosure.

### **Publication Scheme**

The FOI Act, by way of Section 19, makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner.

The Trust has adopted the 'approved model' issued by the Information Commissioner. The scheme is divided into 7 sections:

- Who are we and what we do
- What we spend and how we spend it
- What our priorities are and how we are doing
- How we make decisions
- Our policies and procedures
- Lists and registers
- The services we offer

The Publication Scheme of the Trust can be found on the Trust website [www.hacw.nhs.uk](http://www.hacw.nhs.uk)

## **Disclosure log**

In addition to proactively updating its Publication Scheme, the Trust will maintain an online disclosure log that identifies the main types of requests received and the responses given.

A disclosure log lists responses to requests made to us under the FOI Act and EIR which are felt to be of wider public interest.

The Trust will assess each response to determine if it should be published in the disclosure log and will make a judgement accordingly by typically using the following criteria:

- Demonstrable evidence that key decisions have been made within the Trust
- If disclosure passes the Public Interest Test
- Where the Trust has spent public money or disclosed information around resources.

The Trust will not publish any requests from a complainant for correspondence on their complaint file.

## **8. Monitoring implementation**

- a. Compliance with this Policy will be monitored the Information Governance Steering Group, in consultation with the Head of Information Governance.
- b. Each applicant making a request for information will receive a satisfaction survey to complete and this will be used to inform measures for improvement, including identifying any communication and training needs and whether new or revised procedures are needed to comply with the policy.
- c. The Head of Information Governance and FOI Officer are responsible for the monitoring, revision and updating of this document.

## **9. References**

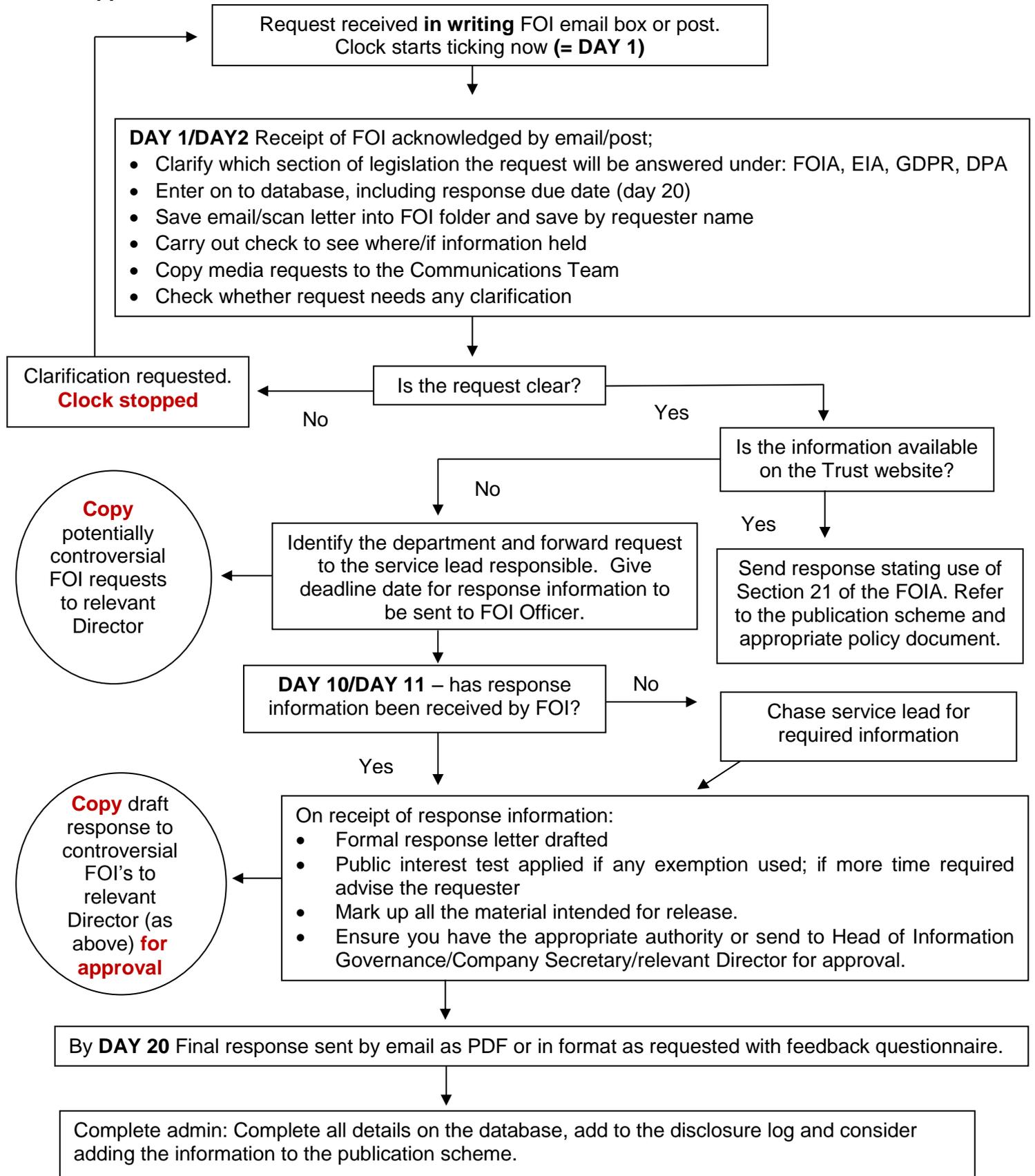
- a. The EU General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA18)
- b. Freedom of Information Act 2000
- c. Records Management Code of Practice for Health and Social Care 2016
- d. NHS England Freedom of Information Policy

## **10. Associated documentation**

- a. Data Protection Policy
- b. Records Management Policy
- c. Information Governance Policy
- d. Code of Conduct for Employees in Respect of Confidentiality
- e. Guidance on Reporting IG Related Incidents
- f. Information Security Policy
- g. Acceptable Use Policy

**11. Appendices**

**Appendix A - FOI Process Flowchart**



**Appendix B - checklist for logging and acknowledging FOI requests**

Request received by email	Requests received by post
<p>Create a new record on the FOI Database and enter relevant details</p> <p><i>NB Received date =</i></p> <ul style="list-style-type: none"> <li>• <i>Date of email if received before 5.00pm on a working day, otherwise the next working day</i></li> </ul>	
<ul style="list-style-type: none"> <li>• <i>Date letter received</i></li> </ul> <p>Calculate response due date  <i>(20 working days from date of receipt, day 1 is the day after receipt. Bank holidays are classed as non-working days do not include these)</i></p> <p>Where possible, identify requester category  <i>(Either from email/letter, previous requests or via internet. If not sure, leave blank)</i></p>	
<p>Set up a folder on the M: drive in the Trust FOI Requests folder using the request reference (HACW-****) and the requester's full name.</p>	
<p>Save the original email into the folder.</p>	<p>Scan the letter and save it into the folder.</p>
<p>Send the standard email acknowledgement to the requester, using the request reference in the subject header</p>	<p>Send the standard acknowledgement letter to the requester, using the request reference in the reference and title.</p>
<p>Save the acknowledgement in folder  <i>(all correspondence relating to this request will be saved in this folder)</i></p>	

**Appendix C - Checklist for sending responses to FOI requests**

Requests received by email	Requests received by post
<p>Locate original request email in FOI Inbox Use standard wording for reply email Put request reference (HACW-****) in subject heading</p> <p><i>Dear .....</i></p> <p><i>Further to your request for information under the Freedom of Information Act, please find attached the Trust's response.</i></p> <p><i>(Use FOI Team signature)</i></p> <p>Attach response letter and any attachments (.pdf format) to the email.</p> <p>Save a copy of the response email in the relevant correspondence folder.</p>	<p>Print response letter and any attachments and send them to the requester by post</p>
<p>Open Word version of response letter and delete requester's name and address details (Don't save this version)</p> <p>Save the amended letter in .pdf format in the Disclosure Log folder for the month the request was received. Use the ID no. as the filename + the category of requester. Copy any attachments into the same folder and use the ID.no. as the filename + A1, A2 etc.</p>	<p>Open Word version of response letter and delete requester's name and address details (Don't save this version)</p> <p>Save the amended letter in .pdf format in the Disclosure Log folder for the month the request was received. Use the ID no. as the filename + the category of requester. Copy any attachments into the same folder and use the ID.no. as the filename + A1, A2 etc.</p>
<p>Mark the record as complete in the FOI /database</p> <p>Enter date response sent</p>	<p>Mark the record as complete in the FOI database</p> <p>Enter date response sent</p>

## Appendix D - Exempt information under part II of the Freedom of Information Act 2000

There are two types of class exemption:

- (a) **Absolute** - which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) **Qualified** - by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

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.

### Absolute Exemptions:

- **Section 21 - Information accessible to the applicant by other means**  
Information which is already in the public domain, such as that which is published in the Publication Scheme
- **Section 23 - Information supplied by, or relating to, bodies dealing with security matters** This applies only to information supplied by or relating to security bodies
- **Section 32 - Court Records**  
Information that is only held as part of the documentation for a court, tribunal case or a statutory inquiry
- **Section 34 - Parliamentary Privilege**  
Where disclosure would infringe the privileges of either House of Parliament
- **Section 40 - Personal Information**  
Information which is personal to the person making the request
- **Section 41 - Information provided in confidence**  
An 'actionable' breach of confidence where disclosure would constitute a breach of confidence which would lead to legal action being taken
- **Section 44 - Legal Prohibitions on Disclosure**  
Where disclosure of information is prohibited by any other law or regulation, or if it would be a contempt of court section 22, Information intended for future publication

### Qualified Exemptions:

- **Section 22 - Information intended for future publication**  
Where publication was planned at the time the request was made, for example, an annual report, or the results of an investigation. Applicants will be advised when the information will be published and how it can be obtained.
- **Section 22A – Research**  
Where information 'obtained in the course of, or derived from, a programme of research', where the research is ongoing, and there is a plan to publish a report of the outcome.
- **Section 24 - National Security**  
Information that is not covered by Section 23 under the Absolute Exemption category above, but exemption is needed to safeguard national security. This requires a certificate signed by a Minister of the Crown.
- **Section 26 - Defence**  
Information likely to prejudice national defence or the activities or our armed forces, or those of allies
- **Section 27 - International Relations**  
Information likely to prejudice the United Kingdom's international relations or interests, for example, information obtained in confidence from another State or international court.
- **Section 28 - Relations within the United Kingdom**  
Information likely to prejudice relations between the United Kingdom Government, Wales, Scotland or Northern Ireland

- **Section 29 - The economy**  
Information likely to prejudice the economic interests of the United Kingdom or part of the United Kingdom, or the financial interests of the government
- **Section 30 - Investigations and proceedings conducted by public authorities**  
Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.
- **Section 31 - Law enforcement**  
Information not covered by Section 30 above, and which is likely to prejudice a wider range of investigative activities.
- **Section 33 - Audit**  
Applies to information held by public authorities which have functions relating to audit (for example, the National Audit Office), or which examine the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions.
- **Section 35 - Formulation of Government Policy**  
Information held by a government department or the National Assembly for Wales, relating to the creation of government policy.
- **Section 36 - Prejudice to the effective conduct of public affairs**  
Information that may inhibit the ability of the authority to conduct its business effectively should that information be made freely available in the public domain - Use of this exemption requires sign off from the Chief Executive
- **Section 37 - Communication with Her Majesty etc. and honours**  
This applies to information that relates to communications with Her Majesty, members of the Royal family or Royal household, or the conferring of honours, for example, recommendations for individuals to receive an honour in the New Year's Honours List.
- **Section 38 - Health and Safety**  
Information that would, or would be likely to, endanger the physical health, mental health or safety of an individual.
- **Section 39 - Environmental Information**  
Exempted under Freedom of Information but the request will be dealt with in accordance with the Environmental Information Regulations.
- **Section 40 - Personal information about a third party**  
Information which is personal to someone other than the person making the request
- **Section 42 - Legal Professional Privilege**  
This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings, for example advice provided by a lawyer to his client, or information relating to ongoing legal proceedings.
- **Section 43 - Commercial Interests**  
Such as trade secrets, and to information which if disclosed could harm/prejudice the commercial interests of any person, including the authority holding it.

### **Neither Confirm nor Deny**

In certain circumstances, even confirming or denying that requested information is held can reveal information that falls under an exemption. A public authority may be able to use an exemption to refuse to confirm whether or not it holds information, if either confirming or denying would reveal exempt information in itself.

A neither confirm nor deny response is more likely to be needed for very specific requests than for more general or wide ranging requests.

It can be important to use a neither confirm nor deny response consistently, every time a certain type of information is requested, regardless of whether the information is actually held or not. For this reason public authorities need to be alert to the possibility of receiving future requests for the same type of information when handling very specific or detailed requests.

## **Appendix E - FOI Requests - Review Procedure**

Applicants may seek an internal review if they are dissatisfied with the initial response by contacting the FOI Team. An internal review must normally be completed before an appeal may be made to the Information Commissioner.

Applicants should specify the nature of their complaint and set out any arguments or points that they wish to be taken into consideration. The FOI Act does not stipulate a time limit for completion of an internal review, but the Trust aims to deal with reviews within a reasonable timeframe. The Trust usually completes reviews within 20 working days from the date of the request for review. However, in some cases, it may be reasonable to take longer. In these circumstances, the requester will be notified. The total time taken for review is usually within 40 working days.

### **The review process**

On receipt, the request for internal review will be acknowledged before it is assigned to one of a panel of reviewers, who are usually senior members of staff. The FOI Officer will provide the reviewer with a summary and details of the original handling of the request. The job of the internal reviewer is threefold:

- To assess whether the Trust has complied with its responsibilities under the FOIA, including timeliness and the duty to advise and assist.
- To consider the information released against the information requested and make a full review of the papers associated with the original application, if appropriate, discussing the decisions with staff who dealt with the initial application.
- To re-consider any public interest in disclosure and determine whether the information should be disclosed.

Internal reviews constitute a fresh inquiry into the request, rather than taking as a starting point the decision already reached and submitting it to a test of reasonableness. Reviews are also undertaken in the light of the general presumption in the FOI Act in favour of release of information. The internal reviewer sets out their decision in the form of a document outlining their conclusions and recommendations. Following management approval, the outcome of the review is communicated to the applicant.

On completion of the review, records relating to the review are returned to the FOI Officer. They are retained in order to assist in any investigation by the Information Commissioner.

### **Appeals to the Information Commissioner**

If, following the internal review, an applicant remains dissatisfied with the Trust's treatment of the request then they may appeal the decision to the Information Commissioner. The Head of Information Governance is the point of contact with the Information Commissioner's Office and is responsible for advising senior management on Information Commissioner decisions. An appeal to the Information Commissioner should be made in writing directly to:

**Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire, SK9 5AF**

Both the Trust and the applicant may appeal a decision by the Information Commissioner.

12. Equality Analysis

### Equality Impact Analysis Screening Form

Title of Activity	Freedom of Information policy		
Date form completed	05 July 2018	Name of lead for this activity	[REDACTED]
Analysis undertaken by:			
Name(s)	Job role	Department	Contact email
[REDACTED]	FOI Officer	Information Governance	[REDACTED]
[REDACTED]	Head of Information Governance	Information Governance	[REDACTED]
[REDACTED]	Information Governance Officer	Information Governance	[REDACTED]
What is the aim or objective of this activity?	To give staff guidance and information on requests received under the Freedom of Information Act 2000		
Who will this activity impact on? <i>E.g. staff, patients, carers, visitors etc...</i>	All Staff working for or on behalf of Worcestershire Health and Care NHS Trust. Members of the public requesting information under the Freedom of Information Act 2000.		

#### Potential impacts on different equality groups:

Equality Group	Potential for positive impact	Neutral impact	Potential for negative impact	Please provide details of <b>how</b> you believe there is a potential positive, negative or neutral impact (and what evidence you have gathered)
<b>Age</b>	✓		<input type="checkbox"/>	Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.
<b>Disability</b>	✓		✓	Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000. Potential for negative impact if there is a visual impairment as this Guidance is a visual resource
<b>Gender Reassignment</b>	✓		<input type="checkbox"/>	Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.
<b>Marriage &amp; civil partnerships</b>	✓		<input type="checkbox"/>	Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.
<b>Pregnancy &amp; maternity</b>	✓		<input type="checkbox"/>	Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.
<b>Race</b>	✓		✓	Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.

Equality Group	Potential for positive impact	Neutral impact	Potential for negative impact	Please provide details of <b>how</b> you believe there is a potential positive, negative or neutral impact (and what evidence you have gathered)
				<i>Potential for negative impact if English is not a first language.</i>
<b>Religion &amp; belief</b>	✓		<input type="checkbox"/>	<i>Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.</i>
<b>Sex</b>	✓		<input type="checkbox"/>	<i>Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.</i>
<b>Sexual Orientation</b>	✓		<input type="checkbox"/>	<i>Positive-Members of the public could be reassured knowing that the Trust has procedures in place to effectively deal with requests received under the FOI Act 2000.</i>
<b>Additional Impacts</b> <i>(What other groups might this activity impact on? e.g. carers, homeless, travelling communities etc.)</i>	<input type="checkbox"/>	✓	<input type="checkbox"/>	

## Level of impact

If a potential negative or disproportionate impact has been identified from this activity:

	Yes	No
Could this impact be considered direct or indirect discrimination?		✓
If yes, how will you address this?		

*If the impact could be discriminatory, please contact the Inclusion Team to discuss actions*

	High	Medium	Low
What level do you consider the potential negative impact to be?			✓

*If the negative impact is high, a full equality impact analysis will be required*

## Action Plan

How could you minimise or remove any negative impact identified, even if this is rated low?
<i>Make Guidance available in alternative formats upon request. Additional support would be provided by FOI Officer and/or IG team by telephone and/or email.</i>
How will you monitor this impact or planned actions?
<i>Monitoring any requests for support</i>
Future Review Date: <i>when Policy is reviewed</i>

Once completed, please attach this form to the relevant proposal, strategy, policy etc and submit for approval via normal channels