

**Hodford Road Surgery
Freedom of Information Act Policy
19/05/2022**

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1 Introduction

- 1.1 Information is an invaluable asset to any organisation. The practice relies on this information in order to carry out statutory and other functions as well as deliver services. However, holding this information imposes legal obligations as a public body. The central legislation that this policy document focuses on is the **Freedom of Information Act 2000** (FOIA 2000) and to a lesser extent **Environmental Information Regulations 2004** (EIR 2004).
- 1.2 The document provides a framework to meet legal requirements in relation to information requests that fall within the scope of FOIA or EIR legislation.
- 1.3 This policy relates to all information held by the practice regardless the format it is held or when it came into the possession of the practice. Furthermore, the information does not necessarily have to originate from the practice (e.g. it may have originated from another organisation, a contractor or any other third party). The only criterion is that the practice, at the time of the request, holds the information or it is held on the practice's behalf by a third party.
- 1.4 This policy was last updated October 2021.

This document sets out the policy framework to assist in complying with practice's obligation under the Freedom of Information Act (FOIA). It is not intended that this document provides a comprehensive guide as to the legal obligations that apply under the FOIA, and should be read in conjunction with the following references.

*Freedom of Information Act 2000
Environmental Information Regulation 2004
Section 45 (Freedom of Information Act) Code of Practice
Guidance published by the Information Commissioner's Office*

2 Aim of the Policy

- 2.1 The aims of this document are to:
 - assist workforce to comply with the law;
 - to ensure free and reasonable access to information held by the practice;
 - promote greater openness;
 - provide increased transparency of decision making; and
 - build public trust and confidence.

- 2.2 These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal privacy, confidentiality and commercial sensitivity where disclosure would not be in the public interest.

3 Our commitment

- 3.1 The practice is committed to openness about the way in which it operates and makes decisions and there will be a presumption in favour of the disclosure of information where ever possible. This policy sets out the general principles that will be adopted in response to requests for information under these statutory access regimes.

4 Roles and responsibilities

- 4.1 Ultimate accountability for all decisions made relating to Freedom of Information and associated legislation lies with the Senior Information Risk Officer (SIRO).
- 4.2 Application of Section 36 exemption (FOIA 2000) can only be sanctioned by the **Practice Board** (“the authority’s primary decision-making organ”).
- 4.3 The **SIRO** is responsible for ensuring that sufficient resources are provided to support the requirements of this policy as well as making strategic level decisions which impact on how the practice carries out its obligations under the legislation. The Practice Manager is responsible for monitoring compliance within their service area and taking any necessary corrective action.
- 4.4 The **Practice Board** monitors, oversees, reports and makes recommendations on all strategic level FOI issues.
- 4.5 The **Data Protection Officer** provides advice and guidance on FOI issues, and should be consulted if there is any uncertainty as to how to handle a request. The DPO is also responsible for dealing directly with the Information Commissioners Office and assist them as necessary in investigating a complaint made against the practice, with the assistance of the **Practice Manager**.
- 4.6 The **Practice Manager** is responsible for overseeing the handling of the request. The Practice Manager is responsible and accountable for the information that is or is not provided. If in any doubt as to whether information should be disclosed or not then the Practice Manager should consult the DPO, who may advise that an external legal opinion is needed. The Practice Manager may also be called upon to undertake a review if requested by an applicant.

5 Training and Awareness

- 5.1 It is mandatory that all practice staff (including temporary or casual workers) undertake the E-Learning module covering FOI. New entrants will be expected to undertake and successfully complete the module within 5 working days of joining the practice. Established staff will be expected to undertake and complete refresher training as directed.
- 5.2 Practice Managers should encourage and make time for their staff to attend any further FOI training or awareness opportunities that may arise.

6 Requests for information

6.1 Different type of Information requests

- 6.1.1 Not all requests for information are necessarily handled under FOIA / EIR legislation. For instance, requests for personal information, belonging to the applicant themselves, is governed by access rights available under the data protection law. Also, where information is requested which is of a more routine nature (see examples below) these can be handled as a *business as usual* request and consequently dealt with under the practice's procedures for dealing with requests for information. Requests for information that may fall within the scope of a business as usual request may include but is not limited to the following examples:

Requests for practice leaflets, brochures or other publications

practice opening times, contact details.

Routine information regarding practice services (e.g. clinics, immunisations)

Any other type of information requests that are routinely handled and delivered over the phone.

- 6.1.2 If in any doubt as to whether the request should be handled under FOIA or "business as usual" it is recommended that you treat under the former to reduce the risk of non-compliance with FOIA.

6.2 Methods of making a request under FOIA

- 6.2.1 All requests must be made in writing.
- 6.2.2 However, the legislation does not oblige the requestor to submit the request on-line and the request is acceptable by post by email or fax. The clock (public bodies have 20 working days to respond), will start as

soon as the request arrives in the practice (and not necessarily from the day the responsible officer receives or reads it). This is why it is essential that there is no delay in handling the request and that it is directed to the Practice Manager as soon as possible. By doing this there is a reduced risk that the request is missed or delayed.

- 6.2.3 Although requests under FOIA cannot be made verbally the legislation permits environmental information made under EIR to be made in this manner either over the phone or in person. However wherever possible the applicant should be encouraged to make the request in writing.
- 6.2.4 A common issue is persons confusing the FOI regulations with the Data Protection Regulations e.g. "I want to make an FOI request for my patient record". We need to respond to the FOI request **even if it is clearly invalid because it is the personal data of the applicant**. A template response to these is given at **Error! Reference source not found..**

7 Handling Requests

7.1 Time limit for responding to a request

- 7.1.1 Although the practice has 20 working days to comply with a request, the practice is expected to respond to the request as quickly as is reasonably possible, given the resources available and the complexity of the request. In any event the time limit allowed should be seen as an absolute maximum, rather than a target for responding and resources will need to be managed accordingly to ensure that the statutory limit is not breached.
- 7.1.2 It should be noted that in cases where additional information is sought from the applicant to help locate the information requested, or if a charge notice has been issued (in the event that the charging policy applies), the waiting period is not counted towards the 20 days allowed.
- 7.1.3 Where a request is transferred from another practice to the practice (e.g. another practice) as it was identified that the practice held part, or all of the information requested, the first day of the statutory period will be the first working day after the practice receives the transferred request.

7.2 Contentious or novel requests

- 7.2.1 As a public body the practice has a statutory duty to comply with the Freedom of Information Act and, when responding to a request, provide any information that is held subject to any exemptions that may apply.

- 7.2.2 If a contentious or novel request, which may be the subject of media interest, is received it should be referred immediately to the DPO so that they are aware. The responsibility for dealing with the request remains with the practice. The DPO will engage the PCN/CCG/ICS as required.
- 7.2.3 To assist in determining what should be referred to the DPO please see **Appendix 1** for guidance. If in doubt about referring, please seek the advice from the Practice Manager.
- 7.2.4 If a request subsequently undergoes an appeal, the Practice Manager should be notified and have sight of the appeal response before despatch to the applicant for comment.
- 7.2.5 When referring a draft response to the Practice Manager please allow up to **2 working days** turnaround time. This will need to be taken into account in meeting the statutory 20 day limit.
- 7.3 **Information required from the Applicant**
- 7.3.1 Information requests are *motive blind*, meaning that the requestor should not be challenged as to the reason for why the information is being asked. The only relevant factors are whether we hold information and whether circumstances exist why the information may not be disclosed (i.e. a statutory exemption is engaged).
- 7.3.2 The practice is only obliged to comply with a request if an applicant makes a request in writing (although request for environmental information under EIR can be made verbally) and provides the following:
- a) A **description of the information** so that it can be located. If there is any doubt about what information is being requested the applicant should be asked to clarify their request as soon as possible. Practice Manager should not presume or anticipate what the applicant is requesting.
 - b) A means by which a response can be communicated to the requestor such as a **postal or email address**.
 - c) The **applicant's name**. If the applicant only provides the name of an organisation this is also acceptable. There are occasions where applicants may use fictitious or assumed names. If it is suspected that this is the case officers should use their discretion. The real name of an applicant is only usually relevant if for instance personal information is being sought and the identity of the requestor is necessary to ascertain whether they are the data subject or a third party. The true identity of an individual is also necessary if the applicant is using a pseudonym to

either circumvent the *appropriate limit* or because the applicant has previously been issued with a vexatious refusal notice. If in doubt legal advice should be sought.

7.4 Appropriate Limit

- 7.4.1 Where complying with a request would exceed the “appropriate limit”, which is set at £450 (or 18 hours) The Practice Manager should advise the applicant that the cost limit applies and provide guidance to the applicant on modifying the request so that the request can be dealt with within the limit.
- 7.4.2 If the Practice Manager refuses to comply with the request (as permitted under Section 12 FOIA 2000) because the appropriate limit will be breached, then a note should be made of how the estimate was arrived at. This is so if the refusal is subsequently challenged, there is evidence at hand that an estimate was undertaken and shows that compliance with the request would breach the limit.
- 7.4.3 The estimate is no more than a rough calculation of the time likely to be taken to comply with the request.

Example

Where to comply with a request requires one or more practice staff members to search through 80 separate files or records which on average would take approximately 15 minutes to review each one. Therefore, the total time required to collect the information would be $80 \times 15 = 20$ hours, which exceeds the appropriate limit of 18 hours. Note that the time for redaction cannot generally be taken into account.

In this situation before invoking section 12 and refusing the information request, the Practice Manager would be expected to have first engaged with the applicant to explore if at least some information can be provided within the limit.

7.5 Disbursements

- 7.5.1 Under FOIA the practice is permitted to make reasonable charge for photocopying, printing and postage costs or disbursements. A charging policy is available on request.
- 7.5.2 It should be noted that only the costs of materials can be included in disbursements costs and cannot include staff time.

7.6 Third Party Consultation

- 7.6.1 Some requests under FOIA may require practice staff to consult with third parties (e.g. partner agencies and contractors) to consider whether any exemptions apply.
- 7.6.2 A refusal to consent to the disclosure by a third party is not determinative in whether information is disclosed or otherwise, but

such opinion should be considered alongside other relevant factors to make this assessment. The final decision on whether or not to disclose rests solely with the practice.

- 7.6.3 The practice will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with an exercise of any of the functions and it would not otherwise be provided. The practice will not agree to hold information received from third parties "in confidence" which it believes does not have the necessary quality of confidence.
- 7.6.4 Potential and existing contractors must be made aware of practice obligations with regards to FOIA and EIR and that all information held by the practice may be disclosable subject to any relevant exemption that applies.

7.7 Transferring Requests

- 7.7.1 A request can only be transferred to another public body where the practice receives a request for information which it does not hold itself. There may be occasion that the practice holds only part of the information in which case the practice should respond to that part of the request for which it holds information and transfer the remaining part of the request to the other public body for it to respond separately.
- 7.7.2 Before transferring a request, the practice must ensure that the identified public body does indeed hold the information that has been requested. Furthermore, the applicant should be contacted as soon as possible to advise that the practice does not hold the information and to seek consent to transferring the request to the public body holding the information. Alternatively the applicant should be advised to contact the public body holding the information directly.
- 7.7.3 Where information is held on practice's behalf by a third party (e.g. a contractor), this is captured by FOIA and the practice should respond as if it physically held the information.

7.8 Right of Appeal

- 7.8.1 In circumstances where information is being withheld in part or completely, a refusal notice must be issued to the applicant which must include references to the right of appeal. Although there is no legal requirement to refer to this right of appeal if supplying all the information as requested, it is good practice to do so.

7.9 Review process

- 7.9.1 A formal review process must be carried out by the practice if requested by the applicant. This may happen where the applicant is unsatisfied about any aspect of how their request was handled (including exceeding the 20 day time limit). Although there is no set time stated for when the review must be completed, the Practice Manager should aim to complete the appeal and respond to the

applicant within 20 working days of receiving the written appeal request. If the applicant is still unhappy they may apply to the Information Commissioner to review their case. Full details of the review procedure can be found at **Appendix 3** attached.

8 Disposal and Destruction of information

- 8.1 FOIA only applies to information that a practice holds. Where information is earmarked for disposal, as it is no longer required, there is nothing preventing schools from carrying out these routine records management responsibilities.
- 8.2 It is illegal under the section 77 of FOIA to wilfully destroy or alter any original documents in order to avoid releasing information. It is important to note that it is the individual that is responsible rather than the public body and carries a fine of up to £5000. Any person found guilty of such an offence will almost certainly face internal disciplinary proceedings and possible dismissal.
- 8.3 Please also see section 11 below which relates to the retention schedule for FOIA related documents.

9 Publication Scheme

- 9.1 FOIA requires all public bodies to have a publication scheme. The practice has chosen to adopt the [Information Commissioner's Model Publication Scheme](#). The scheme:
 - sets out the types of information we must routinely publish;
 - explains the way we must provide the information;
 - states what charges can be sought for providing information; and
 - commits the practice to providing and maintaining a guide to the information it provides, how it is provided and any charges where they apply.
- 9.2 The publication scheme facilitates the pro-active release of information and the practice encourages as much information as possible to be released in this way and not just to information prescribed within the publication scheme.
- 9.3 If new information is published please notify the Practice Manager so that the information can be added to the list that records information within the practice.

10 Retention Periods for FOIA related documents

The retention schedule is given in the Health and Social Care [Records Management Code of Practice](#):

11 Requests To and from Other NHS Bodies

- 11.1 The legislation allows any person or organisation to make a freedom of information request including other NHS bodies. In practice this access regime is not commonly used between NHS bodies. In a spirit of co-operation these will normally use less formal avenues to obtain information from each other.
- 11.2 Therefore, the Practice Manager should avoid wherever possible using the freedom of information access regime to procure information from other organisations and instead use a less formal route in the first instance.
- 11.3 Similarly, should practice staff receive a request from another public body they may wish to contact the requesting organisation to seek agreement for their request to be handled less formally, perhaps as a practice business as usual request. However, the requesting body's agreement is necessary. Unless they do withdraw their freedom of information request it must be handled under the freedom of information regime.

12 Datasets

- 12.1 The FOIA gives users the right to access data sets for reuse, once the practice has decided that no exemptions or other provisions (e.g. costs, vexatious) in the legislation apply.
- 12.2 Further information on the obligations including what the legislation defines as a dataset can be found in the Information Commissioner [guidance](#) on Datasets.

