

## **FREEDOM OF INFORMATION POLICY AUGUST 2014**

This Policy supersedes all previous policies for Freedom of Information

**Version 3.0**

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**Approved by (Committee):**      ICT Sub Committee – June 2011

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**Membership of the Policy development/ review team**      Information Governance Steering Group

Consultation

Information Governance Steering Group

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## 1. Introduction

The Freedom of Information Policy outlines good practice and identifies the responsibilities of staff in terms of the Freedom of Information Act (2000) (FOIA).

All Trust permanent and temporary staff, including contractors and non-executive directors must be aware of and adhere to this Policy which applies to all individuals engaged in the discharge of the duties of this Trust.

All Freedom of Information requests (FOI requests) should be directed to the Information Governance Department at the 1st Floor, East Wing, St Pancras Hospital (via internal post/external post) or via email [freedom.information@candi.nhs.uk](mailto:freedom.information@candi.nhs.uk)

## 2. Aims and Objectives

This Policy is intended to ensure that staff are aware of the FOIA and its procedures to enable the Information Governance Office to carry out its duty and obligations under the terms of this Act.

## 3. Scope of the Policy

The purposes of the FOIA are:

- a general right of access to recorded information held by the Trust subject to certain exemptions;
- a duty by the Trust to inform the requestor where information is exempt from disclosure or via the public interest test;
- A duty on the Trust to adopt and maintain a Publication Scheme

The Information Governance Office keeps records of all responses and notices issued under the FOIA and these are subject to periodic review by the Information Governance Manager and where applicable, the Information Governance Steering group and ICT Sub Committee to maintain consistency in decision making.

The FOIA assists members of the public to question the decisions of public authorities more closely and ensuring that the services provided are efficiently and properly delivered. Camden & Islington NHS Foundation Trust is committed to transparency and openness across the organisation.

## 4. Publication Scheme

Under Section 19 the Trust is required to publish and maintain a Publication or adopts a model Publication Scheme approved by the Information Commissioner under Section 20. The Publication Scheme is a complete guide to the information routinely published by the Trust. It described the classes or types of information about the Trust that we make publicly available.

## 5. Duty to Provide Advice and Assistance

Section 16 of the FOIA places a duty on the Trust to provide advice and assistance to the requestor. These procedures will facilitate compliance with this duty and is enforceable by the Information Commissioner. This is especially in the case where the requestor is having difficulty in composing or is very vague with regard to the type of information the requestor is looking for.

## **6. Roles and Responsibilities**

All permanent, temporary, contracting staff and Non-Executive Directors must be aware of and adhere to this Policy which applies to all individuals engaged in the discharge of the duties of this Trust. Failure to adhere to this Policy and relevant procedures may result in disciplinary action.

This Policy and its relevant procedures will be reviewed annually by the Information Governance Manager.

The Trust's information Governance Manager is responsible for rights of access to information under the Access to Health Records Act 1990, Data Protection Act 1998 and Freedom of Information Act 2000. Reporting and accountability structure is attached (**See Appendix 2 – Structure of the Information Governance Team**).

## **7. Incoming Requests for Information**

All requests for information under the FOIA are dealt with by the Information Governance Office. In the event that request for information is directed to another office or individual, it must be directed immediately to the Information Governance Office. The clock commences immediately after the email arriving in the inbox or on the desk.

## **8. Receipt Log**

Once information request is received by the Information Governance Officer, the request will be logged on the FOI database by the end of the next working day.

## **9. Acknowledgement**

An acknowledgement letter will be sent/mailed to the requestor within five working days. If sufficient information is available to respond to the request, the applicant will be informed in the letter of acknowledgement that their request will be processed within the 20 day period.

## **10. Request for Further Information**

If the requestor has not provided sufficient information to be processed a letter requesting further information will be issued. The requestor will be informed that without additional information the request cannot be processed and the clock will stop.

## **11. Applicable Fees Notice**

The requestor will be informed of any fees or charges that are payable for the provision of the information. (i.e. photocopying charges and postage). If this happens the clock then stops until the Information Governance Office receives the fees and charges.

In accordance with Section 12 and 13 of the Act, if it is estimated that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations (i.e. £450) the requestor will be notified in writing. The requestor will be asked to review their request to investigate ways of bringing costs within the appropriate limits.

## **12. Exemptions**

If the information requested is exempt from disclosure under Part II of the Act a letter explaining why the information is exempt from disclosure will be sent to the requestor. This includes circumstances where the information requested is available from another source other than the Trust, unless that source is a public authority, in which case the requestor may be advised to contact the other organisation. authority (**See attached Appendix 3 – Exemptions**).

## **13. Accessing the Information**

The Information Governance Office will identify who holds the information that the requestor has been requested and contact the member of staff(s) in the Trust who are most appropriately placed to meet the requirements of the applicant within two working days.

Upon receipt of an information request notification from the Information Governance Office, Trust staff will give priority to locate and provide the information requested. If it is not possible to provide the information within a reasonable time, the Information Governance Manager must be informed immediately. The Information Governance Office will keep a record of these contacts.

The information that the requestor had requested will then be forwarded to the Information Governance Office, where the information will be reviewed in respect of any exemptions and/or fees payable before providing the information to the requestor.

If any exemptions are applicable, a refusal notice will be sent to the requestor and if fees are payable the requestor will be issued with a Fees Notice.

## **14. Providing the Information**

When the information is ready for disclosure, the draft response will be reviewed by the Information Governance Manager prior to sending to an exec director for final sign off / further amendments. Currently Claire Johnston – Director of Nursing and People signs off all FOIA requests. If there are outstanding concerns, these concerns will be clarified by the relevant staff.

If no fees or charges are either payable or outstanding (see 17 below) or if no exemptions are application, the Information Governance Office will provide the information requested by the requestor directly to them in writing (whether by email or via post).

All requests under the Freedom of Information act must be signed off by Claire Johnston (Director of Nursing & People) before they leave the organisation. Three working days must be allowed for sign off, however if the draft is ready earlier it should be sent through via email.

## **15. Refusing of Requests**

A refusal of a request may apply to all or part of the information requested by the requestor. A request for information may be refused if:

- The information is exempt from disclosure under Part II of the Act.
- (A fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the requestor.
- The cost of compliance exceeds the appropriate limit (i.e. £450)

- The request is demonstrably vexatious or repeated.

If a request for information is refused under any of the above clauses, the requestor will be informed of the reasons for this decision within 20 working days. As set out in section 17(7) the requestor will also be informed of the Internal Review procedures and of their right to complain to the Information Commissioner. The refusal notice will state the reasons for claiming exemptions and the public interest tests.

If it is anticipated that due to circumstances that the information requested will take more than 20 working days to reach a decision as to whether any part of the information requested by the requestor is exempt under Part II of the Act, the requestor will be notified that no decision as to the application of an exemption has been reached. A reasonable and realistic estimate of the day by which they expect that a decision will have to be reached will be provided.

If the information requested is exempt as either the cost of compliance exceeds the appropriate limit or the request is demonstrably repeated or vexatious, the refusal notice will state that fact. If the Trust is relying on a claim that the request is vexatious or repeated under Section 14, and a notice under Section 17 has already been issued to the requestor, then a further notice is not required.

## 16. Internal Reviews

The Information Commissioner's Office in 2009 stated that all public authorities must conduct an internal review of any refusal of information under the FOIA. (**See Appendix 5**)

The Internal Reviews should be completed by a senior member of staff that wasn't involved in the initial request for information. Currently internal reviews are completed by Claire Johnston – Director of Nursing and People.

- The review procedure should provide “a fair and thorough review of handling issues and of decisions taken pursuant to the Act...”
- The review should be impartial
- It should enable a fresh decision to be taken on a reconsideration of all factors relevant to the issue
- The review should be as prompt, thorough, clear and simple as possible and should be a one stage procedures
- All public authorities should keep records of all internal review and their outcomes and monitor their own performance in handing the reviews
- Any action required as a result of the review should be carried out promptly. For example, if procedures have not been properly followed, the authority should give an apology and explanation to the requestor and take appropriate steps to prevent a recurrence. If the outcome of the review is that the information must be disclosed, that this should be done as soon as possible. If the original decision is upheld, the authority must inform the requestor of his or her right of appeal to the Information Commissioner.
- All internal reviews should be dealt with within 20 days from the date the requestor's letter (or email).

## 17. Charges and Fees

Most reasonable information requests should be provided free of charges. However where the collation of the response puts excessive demands to the Trust, a reasonable charge may be applicable.

In such circumstances, the Information Governance Office will inform the applicant in writing of the cost and charges that will have to be paid in advance. The notification of charges and the date the applicant pays the charge will be recorded. The maximum cost of fees will be £450 (**See Appendix 4 – FOI Fees**).

If a Fees Notice has been issued to an applicant, or they have been informed of a charge for information listed in the Publication Scheme, the 'clock stops'. Once the requestor has paid the charges and fees, the 'clock starts again'. The applicant will then be provided with the information they requested.

The requestor will have three months beginning on the day on which they were notified of the charge to pay the fee.

## 18. Vexatious or Repeated Requests

While the Information Governance team will give maximum support to requestor genuinely seeking to exercise the right to know, an information request can be treated as vexatious where:

It would impose a significant burden on the Trust in terms of expense or distraction

**And** meets at least one of the following criteria.

- It clearly does not have any serious purpose or value
- It is designed to cause disruption or annoyance
- It has the effect of harassing the Trust
- It can otherwise fairly be characterised as obsessive or manifestly unreasonable.

If there is evidence to demonstrate that the request is vexatious or repeated as defined under Section 14 of the Act, a letter will be sent to the requestor informing the refusal of their request.

## 19. Complaints

All complaints must be referred immediately to the Information Governance Manager.

Complaints will be logged with the complaints department and an acknowledgement will be sent to the requestor within two working days. The Information Governance Manager will then decide whether the complaint, if applicable, be escalated to the Director of Nursing and People for comments.

The requestor will be informed of their right to complain directly to the Information Commissioner (ICO) and will be given the Information Commissioner's contact details.

Requestors who remain dissatisfied with the Trust at the end of the Internal Review will be advised take their complaint to the ICO.

## **20. Quality Review**

The Information Governance Office keeps records of all responses and notices issued. The database will be subject to quality reviews by the Information Governance Manager and Information Governance steering group and ICT Sub Committee to maintain consistency in decision making.

## **21. Re-use of Public Sector Information Regulations 2005**

If a Trust has to comply under the FOIA to release information to the requestor but feels the information given is being used other than what could be considered for personal use, the Trust could state that the requestor must be required, under the Public Sector Re-use of Information Regulations 2005 to apply for a licence to use that information. Applications for reuse should be directed to the Information Governance Office for the Information Governance Manager to decide whether or not to grant a licence.

## **22. Environment Information Request**

The Environmental Information Regulations allows the public to request environmental information from public authorities.

The information covered can be divided into the following six main areas:

- The state of the elements of the environment, such as air, water, soil, land, fauna (including human beings)
- Emissions and discharges, noise, energy, radiation, waste and other such substances
- Measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment
- Reports, cost-benefit and economic analyses
- The state of human health and safety, contamination of the food chain
- Cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment)

If the Trust receives a request from a member of the public for environmental information on any of the areas mentioned above, there is a legal duty to provide it, usually within 20 working days. There are a number of exceptions to this rule and if the Trust withholds the information and exemption will be applied and given the public interest reasons for refusal.

## **23. Support and Advice**

For any assistance or advice please contact

Information Governance Office  
1<sup>st</sup> Floor, East Wing  
St. Pancras Hospital  
4. St. Pancras Way  
London NW1 0PE  
Tel: 020 3317 3115  
Email: [freedom.information@candi.nhs.uk](mailto:freedom.information@candi.nhs.uk)

## 24. Dissemination and Implementation Arrangements

This Policy will be circulated to all managers who will be required to cascade the information to members of their teams and to confirm receipt of the procedure and destruction of previous policies which this supersedes. It will be available to all staff via the Trust Intranet. Managers will ensure that all staff are briefed on its contents and on what it means for them.

## 25. Training Requirements

For any particular Training requirements please refer to the Trust's Mandatory Training Policy and Learning and Development Guide.

## 26. Monitoring and Audit Arrangements

Element to be monitored	Lead	How Trust will monitor compliance	Frequency	Reporting arrangements	Acting on recommendations and Lead(s)	Change in practice and lessons to be shared
<i>See list of NHSLA minimum requirements if relevant</i>				<i>Which committee or group will the monitoring report go to?</i>	<i>Which committee or group will act on recommendations?</i>	<i>How will changes be implemented and lessons learnt/ shared?</i>
	IG Manager	For auditing information	Annually/or as required	IG Steering Group	Required actions will be identified in a specified timeframe.	Required changes to practice will be identified and actioned within a specific time frame. A lead member of the team will be identified to take each change forward where appropriate. Lessons will be shared with all the relevant stakeholders.

**27. Review of the Policy**

This Policy should be reviewed every year from implementation date as a minimum. This Policy may also be reviewed and amended at any time if it is considered that amendments are required to ensure the Policy is up to date and accurate for the Trust.

Any amendments to this Policy will need to be approved by the Information Governance Steering Group.

**28. References**

In addition to the list below, references to the appropriate national Policy legislation have been incorporated into the Policy.

The Data Protection Act 1998

Human Rights Act 1998

Access to Medical Records Act 1990

**29. Associated Documents**

See Appendices below

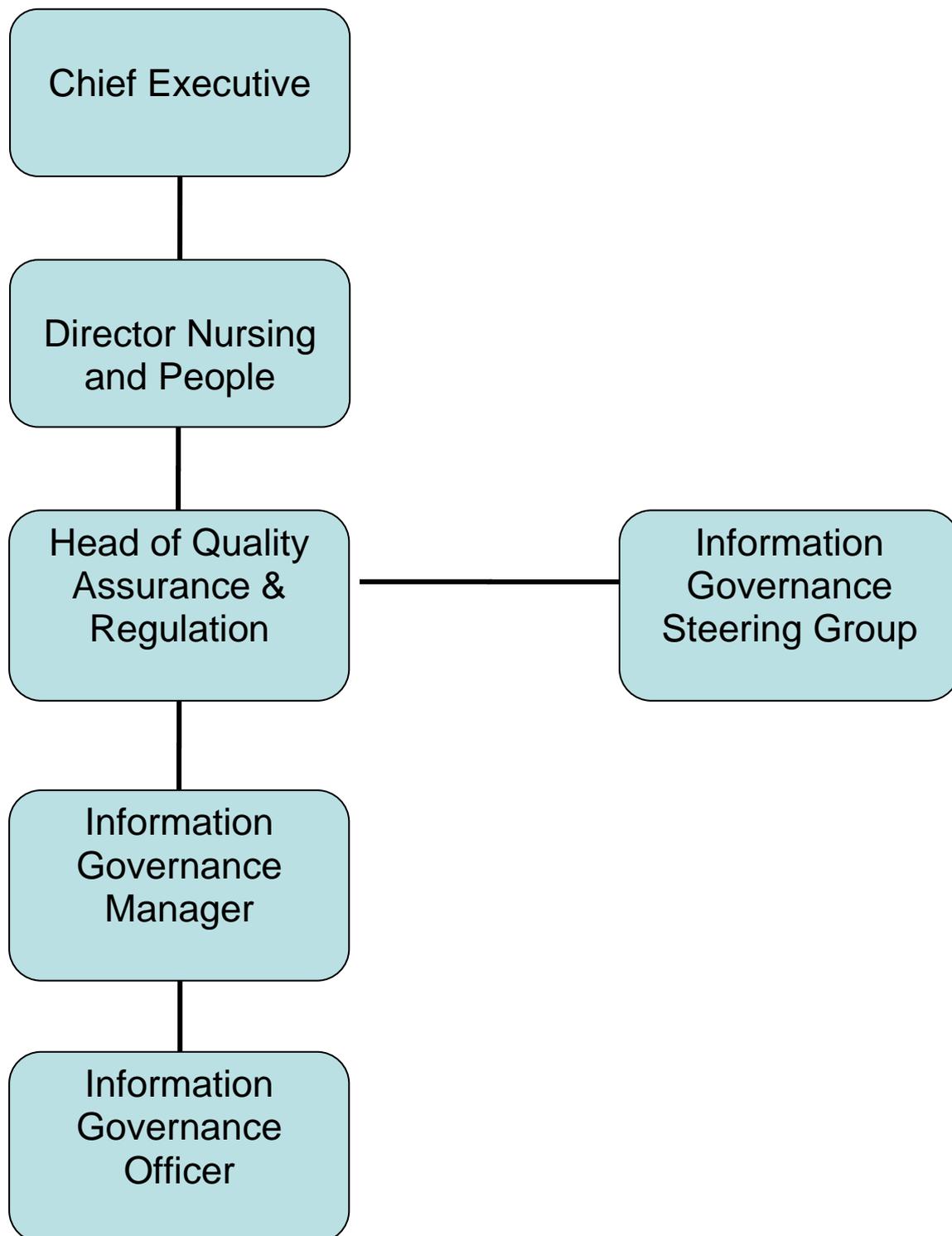
## Appendix 1 – Equality Impact Assessment Tool

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

	Yes/No	Comments
<b>1. Does the policy/guidance affect one group less or more favourably than another on the basis of:</b>	No	
Race	No	
Ethnic origins (including gypsies and travellers)	No	
Nationality	No	
Gender	No	
Culture	No	
Religion or belief	No	
Sexual orientation including lesbian, gay and bisexual people	No	
Age	No	
Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
<b>2. Is there any evidence that some groups are affected differently?</b>	No	
<b>3. If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?</b>	N/A	
<b>4. Is the impact of the policy/guidance likely to be negative?</b>	No	
<b>5. If so can the impact be avoided?</b>	N/A	
<b>6. What alternatives are there to achieving the policy/guidance without the impact?</b>	N/A	
<b>7. Can we reduce the impact by taking different action?</b>	N/A	

For advice in respect of answering the above questions, please contact the Information Governance team- [freedom.information@candi.nhs.uk](mailto:freedom.information@candi.nhs.uk)

## STRUCTURE OF THE INFORMATION GOVERNANCE TEAM



## **APPENDIX 3 – EXEMPTIONS**

Although the Trust has a Policy of being open and transparent and in most circumstances would like to assist the requestor, it is sometimes necessary and avoidable that exemptions to information will need to apply.

Below are examples of the type of exemptions that the Trust needs to apply. It is important to state the reasons to the requestor when using an exemption so that the requestor understands fully.

### **Absolute Exemptions (Exemptions where the public interest test does not apply)**

- Section 21 - Information accessible by other means
- Section 23 - National Security - Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals mechanism against such certificates)
- Section 32 - Court Records
- Section 34 - Parliamentary Privilege - a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliament, in respect of the House of Lords is conclusive proof that the exemption is justified.
- Section 36 - Effective Conduct of Public Affairs - so far as relating to information held by the House of Commons or the House of Lords
- Section 40: Personal Information - where the applicant is the subject of the information. The applicant already has the right of 'subject access' under the Data Protection Act 1998; where the information concerns a third party and disclosure would breach one of the data protection principles
- Section 41 - Information provided 'In Confidence'
- Section 44 - Prohibitions on disclosure - where a disclosure is prohibited by an enactment or would constitute contempt of court.

### **FOI - Qualified Exemptions (Exemptions where the public interest test applies)**

- Section 22: Information Intended For Future Publication Exemption
- Section 24: National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not apply)
- Section 26: Defence
- Section 27: International relations
- Section 28: Relations within the United Kingdom
- Section 29: UK Economic Interests
- Section 30: Investigations And Proceedings Conducted By Public Authorities
- Section 31: Law Enforcement
- Section 33: Audit Functions
- Section 35: Formulation of government Policy and Ministerial Communications
- Section 36: Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
- Section 37: Communications with Her Majesty, the Royal Family or concerning honours
- Section 38: Health And Safety
- Section 39: Environmental Information - as this can be accessed through the Environmental Information Regulations
- Section 40: Personal information relating to a third party access request
- Section 42: Legal Professional Privilege
- Section 43: Commercial Interests

Note: Where a public authority considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must inform the applicant of its reasons, unless to do so would mean releasing the exempt information.

## **APPENDIX 4 - FOI FEES**

Under the Freedom of Information Act there is an upper limit above which we, as a Trust do not have to provide information. This limit for health authorities is £450. The general guideline for working out whether or not a request may exceed this total is if the amount of work involved in finding and retrieving the information is likely to exceed 18 hours (2.5 working days).

The requestor of the information will be informed that the request will cost more than £450 as early on in the process as possible so that they have the option to adjust their request to bring it under the £450 limit.

Where information needs to be collated, copied and sent via postage, the Trust is entitled to apply appropriate charges. These charges are as follows:-

10p per A4 sheet and 15p per A3 sheet and charges will apply once the total amount is over £5. This equates to 50 pages of A4 or 34 pages of A3.

The requestor will be informed of a charge. As soon as the charge is determined they will be sent a letter requesting that they pay the amount before the information can be sent to them.

If payment is not received within 90 days of the fees letter being sent then the request will be closed.

**APPENDIX 5 – FLOW CHART OF AN FOI REQUEST**

