

# FREEDOM OF INFORMATION ACT 2000 POLICY

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**Approved By:**

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## Purpose

This policy is a common policy for the Thames Valley Strategic Health Authority and all the NHS Trusts and Primary Care Trusts within its geographical area (the Thames Valley Health bodies).

It explains the principles, which underpin the Thames Valley Health bodies' commitment to openness and transparency in the decisions, which they make about the provision of health care to the local community

It sets out their commitment to full implementation of the Freedom of Information Act by the Thames Valley Health bodies and to compliance with the Codes of Practice issued under Sections 45 and 46 of the Act<sup>1</sup>.

It emphasises the importance of an effective overall training strategy, which will meet the needs of all staff throughout the organisation at appropriate levels.

It explains how the Thames Valley Health bodies will pro-actively implement their duty to provide advice and assistance to members of the public.<sup>2</sup>

It re-inforces the commitment of the Thames Valley Health bodies to take into account the practical guidance's on the interpretation and implementation of their statutory obligations issued from time to time by the Department of Constitutional Affairs, the Information Commission and the National Archives Office

It underpins any operational procedures and activities adopted locally by any of the Thames Valley Health bodies in connection with the implementation of the Act.

It acknowledges that the Thames Valley Health bodies will at the same time, and in conjunction with this Policy, adopt and manage equivalent procedures for the provision of Environmental Information under the Environmental Information Regulations (add reference and date)<sup>\*\*\*</sup>.

## Status

**This Policy is not a legal document and it does not override any legal statutory provision, which may either require or prevent the disclosure of information.**

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<sup>1</sup> Code of practice on the Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act and the Code of Practice on the Management of Records issued under sections 45 and 46 of the FOIA 2000 respectively by the Department of Constitutional Affairs

<sup>2</sup> Section 16 of FOIA

# 1 Introduction

## Rationale

- 1.1 The Freedom of Information Act 2000 (“ The Act”) is part of the Government’s commitment to greater openness in the public sector, a commitment supported by the Thames Valley Health bodies and, for the purposes of this policy, the Milton Keynes Hospital NHS Foundation Trust (“the Trust”). The Act furthers this aim by helping to transform the culture of the public sector to one of greater openness. By establishing the legal rights of members of the public to seek access to our information, it will enable members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory Code of Practice on Openness in the NHS.
- 1.2 The main features of the Act:
- A general statutory right of access to all recorded information held by public authorities, subject to certain conditions and exemptions.
  - From January 2005, anyone who writes or emails the Trust and asks for information will have the right to be told whether or not the Trust has the information, and if so, have that information communicated to him or her subject to clearly defined exemptions
  - The exemptions in the Act specify the circumstances in which the Trust may consider whether information should be withheld. Many of the exemptions will be subject to a “public interest“ test, which the Trust will have to apply before reaching a decision. Where the “public interest” test applies, the Trust will still be obliged to disclose the information, unless it can show that the public interest in withholding the information outweighs the public interest in disclosing it. There are a few exemptions, which are “absolute” which means that the public interest test does not have to be applied.
  - A continuing duty to advise any member of the public who proposes to make, or has made, a request for information under the Act
  - A duty on every public authority to adopt maintain and review a Publication Scheme. The Trust’s Publication Scheme is at <http://www.mkhospital.nhs.uk/>.
  - A new office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal to hear appeals.
  - A duty on the Department of Constitutional Affairs to promulgate Codes of Practice for guidance on specific issues.
  - Under the Environmental Information Regulations there are separate rights of access to information about the environment.
  - A defined interface with the Data Protection Act, which maintains the privacy of personal data.
- 1.3 This Policy is a statement of what the Trust will do to ensure compliance with the Act. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures.

### Scope and Responsibilities

- 1.4 The Policy provides a framework within which the Trust will ensure compliance with the requirements of the Act.
- 1.5 This Policy applies to all Trust employees (including honorary contract holders and volunteers) and to Non-Executive Directors.
- 1.6 Directorate Heads are responsible to the Board lead for their Directorate's compliance with the policy, for ensuring the adoption of appropriate procedures in managing a request for information and for monitoring the effectiveness of those procedures and the implementation of this policy.
- 1.7 All individual employees responsible for responding to requests for information need to be aware of the responsibilities of the Trust under the Act and, in particular, the continuing duty to advise and assist any member of the public.
- 1.8 The Policy is applicable to all the activities, which the Trust conducts with other Public bodies including other NHS organisations, partnership bodies as well as voluntary organisations and commercial suppliers of goods and services.

### Principles

- 1.9 The Policy supports the principle that openness about decision making and not secrecy should be the norm in public life. The Trust wishes to be as open as possible and to create a climate of openness and to encourage dialogue with all stakeholders. The Trust welcomes the fact that improved access to information about the Trust will facilitate the development of openness.
- 1.10 The Trust accepts that individuals also have certain rights to privacy and confidentiality. The Act clearly explains and defines the interface between the Act and the Data Protection Act 1998 (the DPA). This Policy does not overturn the common law duty of confidence or statutory provisions (including the Human Rights Act 1998 and the DPA) that prevent disclosure of personal identifiable information. The right to release of personal information is still covered by the subject access provisions of the DPA 1998 and is dealt with in relevant Trust policies.
- 1.11 Before responding to a request for information, the Trust will follow the Section 45 Code in consulting with individuals or organisations where the request involves disclosing information relating to them and where their interests are likely to be affected by disclosure.
- 1.12 The Trust believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will rely on the exemptions contained in the Act if, following careful consideration at senior management level, the Trust concludes that an absolute exemption applies or if the Trust considers a qualified exemption should be applied in the public interest.
- 1.13 The Trust believes that staff should have access to training and to expert guidance to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide both a training strategy and the provision of expert guidance.

- 1.14 The Trust believes that common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other Trust policies and procedures.
- 1.15 The Trust will adopt similar standards and policies in relation to the implementation of the Environmental Information Regulations.

## 2 Freedom Of Information Act 2000 Policy

### Policy Statement

- 2.1 The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and the statutory Codes of Practice issued by the Department of Constitutional Affairs<sup>3</sup>. It will also take into reasonable account guidances, which are issued from time to time by the Department of Constitutional Affairs, Information Commission and National Archives Office.
- 2.2 The means that the Trust will use to ensure compliance with the Act will include the use of such resources as are reasonably available to ensure that records are created systematically, that they can be retrieved efficiently and can be provided promptly to any person making a request for information. This policy links to the Records Management Policy of the Trust.
- 2.3 It is a key commitment of the Trust that all employees should be aware of their obligations under the Act and that different levels of training will be provided depending upon the extent to which various categories of staff will be involved in managing requests for information either as part of the day to day business of the Trust or in response to managing formal FOIA requests
- 2.4 The ICT Security Manager will ensure that training in relation to the Act is available to all staff and Non-Executive Directors who require it.
- 2.5 The Trust will monitor the effectiveness of its compliance with the FOIA and its performance and implementation of this policy.

### Publication Scheme

- 2.6 The Trust has adopted the model Publication Scheme that was approved by the Information Commissioner and is regularly updated in March 2003. The Publication Scheme can be accessed at <http://www.mkhospital.nhs.uk/>. All employees of the Trust should be aware of the Scheme and its contents.
- 2.7 It is the policy of the Trust to publish as much information about the activities of the Trust as it is reasonably practical to publish so that members of the public do not have to make a formal request for access to information under the Freedom of Information Act
- 2.8 The Trust's Publication Scheme is a living document and will be kept under continuing review. It details the information that the Trust publishes at any one point in time and intends to publish in the future. It details the format in which information is available and indicates whether or not a charge will be made for the provision of

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<sup>3</sup> under sections 45 and 46 of the FOIA

that information. The Publication Scheme is available in hard copy on request and through our web site.

- 2.9 Applications for information listed in the Publication Scheme may be received verbally or in writing. Any request for information, which has been published, will be responded to promptly and in accordance with the systems and procedures, which the Trust has established to deal with such applications.<sup>4</sup>

#### General Rights of Access to Recorded Information

- 2.10 The Trust has produced a Guidance leaflet to help any applicant who may wish to make a request for information. Copies of the leaflet are available at the Trusts main reception. It is Trust policy that members of the public must be provided with a copy when they have indicated they wish to make or are making an FOIA Request.
- 2.11 Under the Act any request in writing for access to information is a request made under the Act. There is no requirement for the request to quote the Act. For the purposes of this Policy the Trust accepts that all written requests for information are potentially FOIA requests save where the information is available through the Publication Scheme. However the provision of advice and assistance to members of the public about every aspect of the health services which the Trust provides is part of the day to day business process of the Trust. A key element of the Trust's policy is that the release of information does not become cumbersome, time consuming or resource intensive. The Trust therefore expects that written requests for information, which are part of the day to day business of the Trust, will continue to be handled in the normal way. In so doing however individual policies and procedures will take into account the overarching time frame imposed by the Act for managing requests for information.
- 2.12 The Trust's FOIA procedures do not apply to
- Requests for information where the information is already reasonably accessible to the applicant by other means;
  - Information that is released as part of the Trust's normal business process;
  - Correspondence that is not a request for information;
  - Requests that do not include a name and address for correspondence;
  - Requests that are not made in writing unless the request is for environmental information;
  - Information which is available via the Publication Scheme
- 2.13 The Trust has adopted practical procedures for managing an FOIA request where it considers that the Act or the Environmental Information Regulations are consciously engaged. The Trust has taken the practical view based on guidance from the Department of Constitutional Affairs that the Act is consciously engaged when thought has to be given to complying with it, such as through searching for information, releasing actual documents, charging fees or not providing the information requested.<sup>5</sup>
- 2.14 The Trust's procedures take into account the fact that sometimes a request may be a hybrid request in that some of the information is already published via the Publication Scheme whilst the remainder may constitute an FOIA request.

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<sup>4</sup> Add reference for local procedure?

<sup>5</sup> Department of Constitutional Affairs "Product Description for the Generic User Specification"

- 2.15 Section 1 of the Act gives a general right of access from 1<sup>st</sup> January 2005 to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information (see 2.6) to the Trust is entitled:
- (a) To be informed in writing whether the Trust holds the information of the Description specified in the request (this is referred to as the “duty to confirm or deny”); and
  - (b) If the Trust holds the information to have that information Communicated to them.

These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to certain conditions and exemptions.

- 2.16 In accordance with section 8 of the Act, the request must be in writing, stating the name of the applicant and an address for correspondence, which sets out the information requested. For the purpose of general rights of access, a request is to be treated as made in writing if it is transmitted by email and includes an email address for subsequent reference.

#### Conditions and Exemptions

- 2.17 Under section 1(3) the duty to confirm or deny does not arise where the Trust:
- (a) Reasonably requires further information in order to identify and locate the information requested, and
  - (b) Has informed the applicant of that requirement

The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

- 2.18 The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.
- 2.19 The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in statutory Fees Regulations. The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication of information that exceeds this limit.
- 2.20 The Trust is not obliged to comply with a request for information if the request itself is vexatious. Where the Trust has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.
- 2.21 In certain circumstances, the duty to confirm or deny whether information exists and/or to provide access to that information does not arise where the Trust has decided it is appropriate to rely upon an exemption in accordance with the principles set out in paragraph 1.12. The exemptions are set out in Part II of the Act and are

explained in Appendix A. Some exemptions are absolute and others are qualified. Before relying on a qualified exemption, the Trust will make a decision as to whether the public interest in withholding the information outweighs the public interest in disclosing it.

- 2.22 In determining whether an exemption may apply, the Trust will still provide any other information, which can be disclosed. The Trust's procedures provide for the redaction of material, which cannot be disclosed when it appears within the content of an otherwise disclosable document.

### Refusal of Requests

- 2.23 If the Trust chooses to refuse a request for information under any of the exemptions, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) of the Act the applicant will also be informed of procedures for making a complaint about Trust's discharge of its duties under the Act and of the right to complain to the Information Commissioner.

- 2.24 Section 17 of the Act requires written notice to be given to the applicant when a Trust refuses to disclose requested information. There are four different types of notice:

- (a) The first type of notice is to be given when any Part II provision is relied upon to claim either that the duty to confirm or deny is excluded or that the information is exempt.
- (b) The second type of notice is appropriate when the Trust is relying on one of the Part II provisions which does not confer absolute exemption, but has not yet decided where the balance of public interest lies.
- (c) The third type of notice is supplemental to the second type of notice. It is a statement of reasons for claiming that the public interest in maintaining the exclusion of the duty to confirm or deny, or in maintaining an exemption, outweighs the public interest in disclosing whether the authority holds particular information or in disclosing information as the case may be.
- (d) The fourth type of notice is issued when the Trust claims that the section 12 or section 14 exemptions apply (that is, that the cost of compliance would exceed the appropriate limit or that the request is vexatious or repeated).

- 2.25 The Trust has adopted systems, procedures and templates for managing the drafting and service of the appropriate Notices, which must be served in compliance with the detailed requirements of the Act. The ICT Security Manager will be responsible for managing and operating this procedure.

### Charges and Fees

- 2.26 Generally, the Trust will not charge for information that it has chosen to publish on its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as CD-ROM. The Publication Scheme and the procedures that support this Policy will provide further guidance on charging.

- 2.27 The Trust will follow the statutory Fees Regulations for general rights of access made under the Act.<sup>6</sup>

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<sup>6</sup> ( add reference for Regs)

- 2.28 In all cases where the Trust chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

#### Time Limits for Compliance with Requests

- 2.29 The Trust has established appropriate systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request or within a reasonable period of time where the public interest test has to be considered. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.
- 2.30 If the Trust is, in exceptional circumstances, unable to reply within 20 days then the appropriate Manager will be advised and a letter will be written to the applicant explaining the position and giving reasons together with details of the Trust's complaints procedure.
- 2.31 Where the Trust has issued a fees notice in accordance with paragraph 2.22 above, and the applicant has paid the charge or fee required, the working days during the period beginning on the day when the applicant received the fees notice and ending on the day when the fee was received by the Trust will be disregarded for the purposes of calculating the twentieth working day following receipt.

#### Means by which information will be conveyed

- 2.32 When an applicant, on making a request for information, expresses a preference for the communication of that information by any one or more of the following means, namely:
- (a) Information in permanent or other form,
  - (b) The provision of a reasonable opportunity to inspect a record containing the information,
  - (c) A digest or summary of the information in permanent form or in another form acceptable to the applicant

The Trust shall, so far as is reasonably practicable, give effect to that preference in accordance with section 11 of the Act.

- 2.33 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 the Trust determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making a request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.
- 2.34 The Trust has established systems and procedures to monitor and audit the provision of information arising from requests under the Act.

### Duty to provide advice and assistance

- 2.35 It is the Trust's policy to be as open as possible and to assist any member of the public who is seeking information about whether or not the Act is engaged. The Trust will ensure that all departments and members of staff are made aware of the continuing duty which the Trust has to advise and assist any member of the public, so far as is reasonable, who has made a request or is proposing to make a request for information.

### Transferring Requests for Information

- 2.37 A request can only be transferred to another public body where the Trust receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by that other public authority. If the Trust receives a request and holds some but not all of the information requested, a transfer may be made only in respect of the Trust information which it does not hold (but which is held by another public authority). The Trust is "holding" information itself even if it is holding a copy of a record produced or supplied by another person or body, but not if it is holding a record on behalf of another person or body (Section 3(2) of the Act).
- 2.38 Upon receiving an initial request for information which it regards as an FOIA request, the Trust will always, in respect of such information relating to the request as it holds, process the request in accordance with the Act. The Trust will advise the applicant if it does not hold all or any part of the requested information. Prior to doing this, a thorough check will have been made as to the extent of the information held by the Trust relating to the request.
- 2.39 If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:
- (a) Contacting the applicant and informing him or her that the information requested may be held by another public authority,
  - (b) Suggesting that the applicant re-apply to the authority which the original authority believes to hold the information,
  - (c) Providing him or her with contact details for that authority.
- 2.40 If the Trust considers it to be more appropriate to transfer that part of the request that relates to information which it does not hold to another authority, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consideration will be given as to whether the request should be transferred. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Trust will consider:
- (a) Whether a transfer is appropriate, and if so
  - (b) Whether the applicant is likely to have any grounds to object to the transfer
- If the Trust reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so.
- 2.41 Where there are reasonable grounds to believe that an applicant is likely to object, the Trust will only transfer the request to another authority with the applicant's

consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she make a new request to the other authority.

- 2.42 All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Trust is unable either to advise the applicant which other public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

#### Consultation with Third Parties

- 2.43 The Trust recognises that in some cases the decision as to the disclosure of information to an applicant may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998 ("the DPA"). Unless an exemption provided for in the Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.
- 2.44 Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and, in the circumstances, the disclosure of the information without the consent of the third party would constitute an actionable breach of confidence such that the exemption at section 41 of the Act would apply), the Trust will consult the third party with a view to seeking their consent to disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party, which may be affected by a disclosure, do not give rise to legal rights, consultation may still be appropriate.
- 2.45 Where information constitutes "personal data" within the meaning of the DPA, the Trust will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.
- 2.46 The Trust will undertake consultation where:
- (a) The views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested, or
  - (b) The views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.
- 2.47 The Trust may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Trust will consider what is the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:
- (a) The public authority does not intend to disclose the information, relying on some other legitimate ground under the terms of the Act.

- (b) The views of the third party cannot have any effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- (c) No exemption applies and so under the Act's provisions, the information must be provided.

- 2.48 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.
- 2.49 If a third party does not respond to consultation the Trust is not relieved 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 (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

#### Public Sector Contracts

- 2.50 The Trust's procurement processes will be compliant with any applicable EC procurement regulations and also with the Act. This Policy should be read in conjunction with the Trust's procurement policy. Partnership agencies and commercial suppliers of goods and services should be made aware of the Trust's obligations under the Act and under the Section 45 Code. In deciding whether any information may be exempt from disclosure because it may involve a breach of a confidentiality imposed by a third party or it may breach a trade secret or it may prejudice the commercial interest of any party, the Trust will take into account current guidance issued by the Information Commissioner or the Department of Constitutional Affairs.
- 2.51 When entering into contracts the Trust will consider to what extent it should refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust considers that it will be obliged to disclose that information in response to a request, regardless of the terms of contract.
- 2.52 If the Trust is being asked by non-public authority contractors to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure, then (as recommended by the Department of Constitutional Affairs), the Trust will reject such clauses wherever possible within the course of the contractual negotiations. Where it is 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 identifies 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, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

- 2.53 The Trust will not agree to hold information “in confidence” which is not in fact confidential in nature. Advice from the Department of Constitutional Affairs indicates that the exemption provided for in section 41 of the Act only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.
- 2.54 It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor information, which the authority has provided to the contractor, which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any Such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

#### Accepting Information in Confidence from Third Parties

- 2.55 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 of the authority’s functions and it would not be otherwise provided.
- 2.56 The Trust will not agree to hold information received from third parties “in confidence” which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capably of being justified by the Information Commissioner.

#### Complaints about the Discharge of the Duties of the Trust under the Act

- 2.57 The Trust has implemented a procedure for dealing with complaints about the discharge of the duties of the Trust under the Act, including the handling of requests for information and the management of requests made for information from the Publication Scheme. This Policy should be read in conjunction with the FOIA complaint procedure.
- 2.58 The procedure also refers applicants to their right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint. In any correspondence with the Applicant giving any decision in respect of which the applicant has a right of complaint, the Applicant will be notified of the right to complain under the Trust’s internal procedure and of the right to complain to the Information Commissioner.

#### Records Management

- 2.59 The Trust will have a separate policy with supporting systems and procedures that will ensure compliance with Lord Chancellor’s Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 and the Department of Health’s Guidance HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities.
- 2.60 The policy and associated procedures will address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Trust.

- 2.61 The Trust has implemented a policy on the use and storage of E-mails which should be read in conjunction with this policy.

### **3 Implementation And Compliance**

#### Responsibilities of all Staff and Non-Executive Directors

- 3.1 All staff and Non-Executive Directors are obliged to adhere to this Policy. A failure to adhere to this Policy and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this Policy. They are also responsible for ensuring staff are updated about any changes in this Policy.

#### Responsibilities of Location Managers

- 3.2 A named person will be identified for each location at which the Trust delivers services. The Location Manager will ensure that this Policy is accessible and up-to-date.

#### Corporate Oversight

- 3.3 The Director of Human Resources will oversee the implementation of this policy on behalf of the Trust Director to whom responsibility for the FOIA 2000 has been delegated by the Chief Executive. The Director of Human Resources will establish systems and procedures that will support the implementation of this Policy to which, as stated above, all staff and Non-Executive Directors will be expected to adhere.

#### Training

- 3.4 The Trust will establish a training strategy, which will:
- Secure compliance with the FOIA and the Environmental Information Regulations;
  - Meet the needs of all staff throughout the organisation at appropriate levels;
  - Secure the co-operation of all employees;
  - Ensure the competence of individuals at appropriate levels;
  - Assess whether the level of training is appropriate to meet performance standards for the FOIA and EIR compliance.

### **4 References**

- Data Protection Act 1998
- Freedom of Information Act 2000
- HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities, Department of Health 1999
- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 200, issued under section 45 of the Act, November 2002
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.
- Department of Constitutional Affairs web site
- Information Commission web site

- National Archives web site

## 5 Distribution

- 5.1 This policy will be available at all the Trust's designated locations. Copies will also be available from the Library and on the Trust's Intranet.

## 6 Auditing And Monitoring Criteria

<b>Document Audit and Monitoring Table</b>	
<b>Monitoring requirements</b> <b>*What in this document do we have to monitor ( e.g. processes)</b>	The compliance of the Freedom of Information Act and its regulations
<b>Monitoring Method:</b> <b>(e.g. statistics, report)</b>	FOI reports
<b>Monitoring prepared by :-</b> <b>(name job titles)</b>	Dawn Budd, ICT Security Manager
<b>Monitoring presented to:-</b> <b>(e.g. Committees)</b>	Executive Committee
<b>Frequency of presentation:-</b> <b>(e.g. annually, six-monthly etc)</b>	Quarterly

## 7 Equality Impact Assessment

This document has been subject to an Equality Impact Assessment in accordance with the Trust's Race Equality Scheme and the Disability Equality Scheme.

## 8 Implementation And Dissemination Of Document

This document will be placed on the Trust's Intranet and internet.

## 9 Overall Responsibility For The Document

Dawn Budd, ICT Security Manager, takes responsibility for co-coordinating the development, implementation, review and upkeep of this document.

## APPENDIX A

### **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 any public interest in disclosure is outweighed by the public interest in non-disclosure.

With the exception of S21 (information available by other means) qualified exemptions require organisations to consider whether it is in the public interest not to disclose information.

The absolute exemptions under the Act are:

- Section 21, Information accessible to applicant by other means
- Section 23, Information supplied by, or relating to, bodies dealing with security matters
- Section 32, Court Records
- Section 34, Parliamentary Privilege
- Section 36, Prejudice to 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 disclosure may contravene the Data Protection Act 1998)
- Section 41, Information provided in confidence
- Section 44, prohibitions on disclosure

The exemptions that are qualified by the public interest test are:

- Section 22, Information intended for future publication
- Section 24, National Security
- Section 26, Defence
- Section 27, International Relations
- Section 28, Relations within the United Kingdom
- Section 29, The Economy
- Section 30, Investigators and proceedings conducted by public authorities
- Section 31, Law Enforcement
- Section 33, Audit Functions
- Section 35, Formulation of Government Policy
- Section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37, Communications with Her Majesty, etc and honours
- Section 38, Health and Safety
- Section 39, Environmental Information
- Section 42, Legal Professional Privilege
- Section 43, Commercial Interests.

More information on the exemptions can be found on the HMSO website at [www.legislation.hmso.gov.uk/acts/en/2000en36.htm](http://www.legislation.hmso.gov.uk/acts/en/2000en36.htm)

**APPENDIX B****GLOSSARY OF TERMS****Absolute Exemption**

Applied to information that does not have to be released to the applicant either through a Publication Scheme (q.v) or through a general right of access (q.v) under the Act. Information to which an absolute exemption applies does not require a public authority (q.v) to consider whether disclosure will prejudice a protected interest or whether the balance of the public interest test favours non-disclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

**Applicant**

The individual(s), group or organisation requesting access to information under the Act.

**Duty to Confirm or Deny**

Any person making a request for information to a public authority (q.v) is entitled in principle to be informed in writing by that authority whether the public authority holds the information specified in the request or not. Public authorities accordingly have a duty to confirm or deny that they have the information sought.

**Fees Notice**

A written notification issued to an applicant (q.v) stating that a fee is payable. Following issue of a fees notice, public authorities (q.v) are not obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses.

**Fees Regulations**

Statutory regulations that will set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The Fees Regulations may prohibit the imposition of a fee in relation to certain types of request; Where other legislative provisions set out fees regimes in relation to the provision and information, the FOI Fees Regulations may not always be applicable.

**General Right of Access**

Section 1 of the Act confers a general right of access to information held by public authorities (q.v). An applicant (q.v) has a right to be told whether the information requested is held by that authority and, if it is held, to have the information communicated. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2,9,12 and 14 and in Part II of the Act. The grounds in sections 9,12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply it. The provisions of Part II relate to the nature of the information requested.

**Information Commissioner**

The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

**Learning Foundation**

The Learning Foundation exists to bring learning opportunities and knowledge to all the stakeholders in the services supported by Milton Keynes Hospital.

**Department for Constitutional Affairs (DCA)**

The DCA is responsible for the efficient administration of justice in England and Wales. Broadly speaking the DCA is responsible for:

- The effective management of the courts
- The appointment of judges, magistrates and other judicial office holders
- The administration of legal aid
- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

**Public Authority**

The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are designated in one of the following ways:

- a) On the face of the Act, (in Schedule 1), which lists the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices:
- b) By order under section 4(1) of the Act, which allows the names of bodies or office holders to be added to Schedule 1, provided certain conditions, are satisfied.
- c) By order under section 5 which allows the Secretary of State, under certain circumstances, to designate bodies or public authorities for the purposes of the Act;
- d) By reference to the definition of a publicly owned company in section 6.

**Publication Scheme**

A scheme specifying the classes of information which a public authority publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

**Qualified Exemption**

Information to which a qualified exemption applies is information which is exempt from disclosure because it falls within a designated class of information or because disclosure will prejudice a protected interest. In all cases of qualified exemptions it is necessary to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure. Reference to qualified exemptions can be found in Part I, Section 2 and Part II of the Act.