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**This policy supersedes the following document which must now be destroyed:**

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NTW(O)43 – V06.4	Freedom of Information Policy

## Freedom of Information Policy

Section	Contents	Page No.
1	Introduction	1
2	Purpose	2
3	Duties, Accountability and Responsibilities	2
4	Definition of Terms	3
5	Procedure / Process	5
6	Communication and Consultation with Stakeholders	16
7	Training	16
8	Implementation	17
9	Monitoring Compliance	17
10	Equality and Diversity	17
11	Fair Blame	17
12	Fraud, Bribery and Corruption	18
13	Associated Documents	18
14	References	19
<b>Standard Appendices – attached to Policy</b>		
A	Equality Analysis Screening Toolkit	20
B	Training Checklist and Training Needs Analysis	22
C	Audit Monitoring Tool	24
D	Policy Notification Record Sheet - <a href="#">click here</a>	
<b>Appendices – attached to Policy</b>		
<b>Appendix No:</b>	<b>Description</b>	
Appendix 1	<a href="#">Exemptions Under FOIA</a>	
<b>Practice Guidance Note – listed separate to Policy</b>		
<b>PGN No:</b>	<b>Description</b>	
FOI-PGN-01	Freedom of Information Request Procedure	

## 1 Introduction

1.1 The Freedom of Information (FOI) Act 2000 is part of the Government's commitment to greater openness in the public sector, a commitment supported by Cumbria Northumberland, Tyne and Wear NHS Foundation Trust, (the Trust/CNTW). The Freedom of Information Act 2000, referred to hereafter as the FOI Act, will further this aim by helping to transform the culture of the public sector to one of greater openness. 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 FOI Act replaces the non-statutory "**Code of Practice on Openness in the NHS**".

1.2 The main features of the FOI Act are:

- A general right of access from 1st January, 2005 to recorded information held by public authorities, subject to certain conditions and exemptions
- In cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
  - i. Inform the applicant whether they hold the information requested **and**
  - ii. Communicate the information to him or her, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure
- A duty on every public authority to adopt and maintain a Publication Scheme, specifically applicable to the NHS from 31st October, 2003
- A new office of Information Commissioner with wide powers to enforce the rights created by the FOI Act and to promote good practice, and a new Information Tribunal
- A duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues

1.3 The Freedom of Information Act Policy is a statement of what the Trust intends to do to ensure compliance with the FOI Act. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures.

## 2 Purpose

- 2.1 The FOI Policy will provide a framework within which the Trust will ensure compliance with the requirements of the FOI Act.
- 2.2 The FOI Policy will underpin any operational procedures and activities connected with the implementation of the FOI Act.
- 2.3 The Policy supports the principle that openness and not secrecy should be normal in public life. The Trust wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the Trust will facilitate the development of such an environment.
- 2.4 The Trust believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidentiality or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 2018 and is dealt with in other Trust policies.
- 2.5 The Trust believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the FOI Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.
- 2.6 The Trust believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the FOI Act. The FOI Policy sets out a framework to provide this knowledge.
- 2.7 The Trust believes that common standards are required to ensure that the organisation is compliant with the FOI Act. The FOI Policy outlines the areas in which common standards will be established through other Trust policies and procedures.

## 3 Duties, Accountability and Responsibilities

- Responsibility for implementation and compliance to this Policy lies with the Chief Executive
- The Executive Director of Commissioning and Quality Assurance has delegated responsibility from the Chief Executive
- All staff, including agency, temporary, voluntary, support staff and contractors are bound by this Policy
- Line managers in collaboration with the Information Governance Team are responsible for the day-to-day management locally of Freedom of Information requests

- Failure to comply with this policy may result in disciplinary action

#### 4 Definition 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 the general right of access (q.v.) under the FOI Act. Information to which an absolute exemption applies does not require a public authority (q.v.) to take a test of prejudice or the balance of public interest to be in favour of non-disclosure. Reference to absolute exemptions can be found in Part 1, section 2 and Part 2 of the FOI Act
- **Applicant:** the individual(s), group or organisation requesting access to information under the FOI Act
- **Duty to confirm or deny:** any person making a request for information to a public authority (q.v.) is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not
- **Fees Notice:** a written notification issued to an applicant (q.v.) stating that a fee is payable and exempts public authorities (q.v.) from being 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 the request lapses
- **Fees Regulations:** national regulations that will prohibit a fee with regard to certain types of request set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information
- **General right of access:** Section 1 of the FOI 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 it communicated to them. Provisions limiting an authority's duty under Section 1 appear in Sections 1(3), 2, 9, 12 and 14 and in Part 2 of the FOI 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 with it. The provisions of Part 2 relate to the nature of the information requested

- **Information Commissioner:** The Information Commissioner enforces and oversees the Data Protection Act 2018 and the Freedom of Information Act 2000. The Information 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
- **Lord Chancellor's Department:** The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor 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 and referenda law, defamation and legal aid
- **Public authority:** The FOI 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 FOI Act it is not feasible to list each body individually
  - Public authorities are, therefore, designated in one of the following ways:
    - On the face of the FOI Act (in Schedule 1), using generic descriptions where appropriate, which specifies 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

- By order under Section 4(1) adding to Schedule 1 anybody or the holder of any office that satisfies certain specified conditions
  - By order under Section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority
  - 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 requires a public authority (q.v.) to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part 1, Section 2 and Part 2 of the FOI Act
  - **Information Commissioner:** The Information Commissioner has been appointed by the Government to regulate the information related legislation in the UK, including the Data Protection Act 2018 and the Freedom of Information Act 2000

## 5 Procedure/Process

- 5.1 The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to Sections 45(5) and 46(6) of the FOI Act.

### 5.2 Publication Scheme

- 5.2.1 The Trust adopted a model Publication Scheme developed by the NHS Freedom of Information Project Board and Team in April, 2006, following

the merger of the three former Trusts. This is permissible under Section 20 of the FOI Act and ensures compliance with Section 19 of the legislation. Following recent changes issued through the Information Commissioners Office the Trust has developed a new publication scheme in 2008, based on the recommended changes.

5.2.2 The Trust's Publication Scheme is a prospective document, detailing the information that the Trust publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Scheme will be available in hard copy on request and through our website. It will be subject to regular review in terms of content.

5.2.3 Applications for information listed in the Publication Scheme should be received in writing. The Trust will establish systems and procedures to process applications arising from the Publication Scheme, and will establish a central point of contact for such applications.

### 5.3 **General Rights of Access**

5.3.1 Section 1 of the FOI Act gives a general right of access from 1st January, 2005 to recorded information held by the Trust, subject to certain conditions and exemptions contained in the FOI Act. Simply, any person making a request for information to the Trust is entitled:

- To be informed in writing whether the Trust holds the information of the description specified in the request, and
- If the Trust holds the information to have that information communicated to them

5.3.2 This is referred to as the “duty to confirm or deny”. These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to the certain conditions and exemptions. The Trust will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

5.3.3 In accordance with Section 8 of the FOI Act, a request for information under the general rights of access must:

- Be received in writing
- State the name of the applicant and an address for correspondence
- Describe the information requested

5.3.4 For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

5.3.5 The Trust will establish systems and procedures to process applications arising from the introduction of general rights of access on 1st January, 2005. The Procedure Guidance Note FOI-PGN-01 contains instructions on the process to follow.

## 5.4 Conditions and Exemptions

5.4.1 The duty to confirm or deny is subject to certain conditions and exemptions. Under Section 1(3) the duty to confirm or deny does not arise where the Trust:

- Reasonably requires further information in order to identify and locate the information requested, **and**
- Has informed the applicant of that requirement

5.4.2 The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required. The Lord Chancellor's Code of Practice advises that two months is an appropriate length of time to wait to receive clarification before closing a request. As such, any request that has not been clarified by its applicant within this timeframe will be closed.

5.4.3 Under Section 2 of the FOI Act the Trust does not have to comply with this duty if the information is exempt under the provisions of Part 2 of the FOI Act, Sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption.

5.4.3.1 A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information. The Part 2 exemptions are listed in Appendix 1 of this Policy. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with Section 17 of the FOI Act justify the use of such exemptions.

5.4.4 The duty to confirm or deny does not arise if a fees notice (see 2.5 **Charges and Fees**) 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.

5.4.5 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 national 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.

5.4.6 The Trust is not obliged to comply with a request for information if the request 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 subsequently 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

## **5.5 Charges and Fees**

- 5.5.1 The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. The Publication Scheme and the procedures that will support this Policy will provide further guidance on charging.
- 5.5.2 The Trust will follow the national Fees Regulations for general rights of access under the FOI Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.
- 5.5.3 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 FOI 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.

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

- 5.6.1 The Trust will establish 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 in accordance with Section 10 of the FOI Act. All staff will be required to comply with the requirements of these procedures.
- 5.6.2 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with Section 9(2), the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.
- 5.6.3 If the Trust chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days, informing the applicant of this decision (see 5.8 **Refusal of Requests**).

## **5.7 Means by which Information will be conveyed**

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

- The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- The provision to the applicant of a summary of the information in permanent form or in another form acceptable to the applicant, the Trust shall so far as reasonably practicable give effect to that preference in accordance with Section 11 of the FOI Act

5.7.2 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 their request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

5.7.3 The Trust will establish systems and procedures to monitor the provision of information arising from requests under the FOI Act.

## 5.8 Refusal of Requests

5.8.1 As indicated above, the duty to confirm or deny does not arise if the Trust:

- Using Section 2 of the FOI Act applies an exemption under Part 2 of the FOI Act, as illustrated in Appendix 1
- Has issued a fees notice under Section 9 of the FOI Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant
- Under Section 12 of the FOI Act estimates that the cost of compliance with the request for information exceeds the appropriate limit
- Can demonstrate that the request for information is vexatious or repeated, as indicated by Section 14 of the FOI Act

5.8.2 If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in Section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust under the FOI Act and of the right conferred by Section 50 of the FOI Act (see 5.10 **Transferring Requests for Information**).

5.8.3 If the Trust is to any extent relying on a claim that any provision of Part 2 of the FOI Act relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information a notice will be issued within twenty working days under s.17 of the FOI Act. The notice will:

- State that fact
- Specify the exemption in question, and
- State (if that would not otherwise be apparent) why the exemption applies

5.8.4 Where the Trust is relying on a claim:

- That any provision of Part 2 which relates to the duty to confirm or deny and is not specified in Section 2(3) of the FOI Act as an absolute exemption is relevant to the request

**Or**

- That the information is exempt only by virtue of a qualified exemption, a provision not specified in Section 2(3), and at the time when the notice under 2.8.3 above is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of Section 2 of the FOI Act – the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Trust expects that a decision will have been reached

5.8.5 As indicated by the Lord Chancellor's Code of Practice issued under Section 45 of the FOI Act, such estimates as described in 6.8.4 should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Trust will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

5.8.6 If applying a qualified exemption under subsection (1)(b) or (2)(b) of Section 2 of the FOI Act the Trust will, either in the notice issued under 6.8.3 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

- That, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information, **or**

- That, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The statement should not involve the disclosure of information which would itself be exempt information

5.8.7 If the Trust is relying on a claim that Section 12 or 14 of the FOI Act apply, the notice will state that fact. If the Trust is relying on a claim that the request is vexatious or repeated under Section 14 of the FOI Act, and a notice under Section 17 has already been issued to the applicant stating this fact, a further notice is not required.

5.8.8 The Trust will keep a record of all notices issued to refuse requests for information.

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

5.9.1 The Trust will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so, to persons who propose to make, or have made, requests for information. This is a duty under Section 16 of the FOI Act.

5.9.2 The Trust will ensure that the systems and procedures that are deployed to meet the Section 16 duty also conform to the Code of Practice issued under Section 45 of the FOI Act.

## **5.10 Transferring Requests for Information**

5.10.1 A request can only be transferred where the Trust receives a request for information which it does not hold, within the meaning of Section 3(2) of the FOI Act, but which is held by another public authority. If the Trust is in receipt of a request and holds some of the information requested itself, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Trust recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in Section 3(2)(a) of the FOI Act).

5.10.2 Upon receiving the initial request for information, the Trust will always process it in accordance with the FOI Act in respect of such information relating to the request as it holds. The Trust will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Trust must be certain as to the extent of the information relating to the request which it holds itself.

5.10.3 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:

- Contacting the applicant and informing him or her that the information requested may be held by another public authority
- Suggesting that the applicant re-applies to the authority which the original authority believes to hold the information
- Providing him or her with contact details for that authority

5.10.4 If the Trust considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information.

5.10.5 Prior to transferring a request for information to another authority, the Trust will consider:

- Whether a transfer is appropriate; and if so
- 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

5.10.6 Where there are reasonable grounds to believe 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 makes a new request to the other authority.

5.10.7 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 that it 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.

## **5.11 Consultation with Third Parties**

5.11.1 The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 2018 unless an exemption provided for in the FOI Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

- 5.11.2 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 their consent would constitute an actionable breach of confidence such that the exemption at Section 41 of the FOI Act would apply), the Trust will consult that third party with a view to seeking their consent to the 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 that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.
- 5.11.3 Where information constitutes "personal data" within the meaning of the Data Protection Act 2018, the Trust will have regard to Section 40 of the FOI Act which makes detailed provision for cases in which a request relates to such information and the interplay between the FOI Act and the Data Protection Act 2018 in such cases.
- 5.11.4 The Trust will undertake consultation where:
- The views of the third party may assist the authority to determine whether an exemption under the FOI Act applies to the information requested; or
  - The views of the third party may assist the authority to determine where the public interest lies under Section 2 of the FOI Act
- 5.11.5 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 the most reasonable course of action for it to take in light of the requirements of the FOI Act, and the individual circumstances of the request. Consultation will be unnecessary where:
- The public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the FOI Act
  - The views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information
  - No exemption applies and so under the provisions of the FOI Act, the information must be provided
- 5.11.6 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.

- 5.11.7 The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the FOI Act, or its duty to reply within the time specified in the FOI 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 FOI Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

## **5.12 Public Sector Contracts**

- 5.12.1 When entering into contracts the Trust will 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 FOI Act. Unless an exemption provided for under the FOI Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
- 5.12.2 When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible.

Where, exceptionally, 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 FOI 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.

- 5.12.3 The Trust will not agree to hold information "in confidence" which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in Section 41 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 FOI Act would constitute a breach of confidence actionable by that, or any other person.
- 5.12.4 It is for the Trust to disclose information pursuant to the FOI 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 FOI 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.

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

- 5.13.1 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 otherwise be provided.
- 5.13.2 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, capable of being justified to the Information Commissioner.

### **5.14 Complaints about the Discharge of the Duties of the Trust under the FOI Act**

- 5.14.1 The Trust's CNTW(O)07 Complaints Policy should be followed for dealing with complaints about the Trust and the discharge of their duties under the FOI Act, including the handling of requests for information.
- 5.14.2 Applicants should be informed of their right under section 50 of the FOI 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. Contact details for the Information Commissioner should be supplied to the applicant if required.

### **5.15 Records Management**

- 5.15.1 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, Records Management: NHS Code of Practice Parts 1&2
- 5.15.2 The Policy and associated Procedures will address issues of active records management, which includes the creation, storing, maintenance and disposal of records in accordance with requirements that the law places upon the Trust.

### **5.16 Reuse of Public Information**

- 5.16.1 The reuse of Public Sector Information Regulations (SI 2005 No. 1515) came into force on 1st July, 2005. The objective of the European Directive 2003/98/EC, under which they were issued, is to encourage the electronic information industry by making information held by public bodies available for reuse.
- 5.16.2 Information published will be subject to the Trust's copyright unless otherwise indicated. It may be reproduced free of charge in any format or medium, unless expressly indicated to the contrary, provided:

- It is reproduced accurately and not used in a misleading manner
- The source is identified and the Trust's copyright is acknowledged

5.16.3 This permission does not extend to any material which is the copyright of third parties. Authorisation to reproduce such material must be obtained from the copyright holders concerned.

## **6 Identification of Stakeholders**

6.1 This is an existing Policy which has no changes that relate to operational and/or clinical practice therefore did not require a full consultation process.

- North Locality Care Group
- Central Locality Care Group
- South Locality Care Group
- North Cumbria Locality Care Group
- Corporate Decision Team
- Business Delivery Group
- Safer Care Group
- Communications, Finance, IM&T
- Commissioning and Quality Assurance
- Workforce and Organisational Development
- NTW Solutions
- Local Negotiating Committee
- Medical Directorate
- Staff Side
- Internal Audit

## **7 Training**

7.1 Training for this Policy is incorporated into the annual Information Governance Training mandated to all staff.

7.2 Where additional training is required it is the responsibility of both managers and staff to ensure that this is undertaken and that attendance is verified and recorded.

## **8 Implementation**

- 8.1 Taking into consideration all the implications associated with this Policy, it is considered that a target date of Dec 2020 is achievable for the contents to be implemented across the Trust.

## **9 Monitoring Compliance**

- 9.1 Responsibility for monitoring compliance with this Policy locally lies with Directors and Line Managers.
- 9.2 Compliance with legislative timeframes will be monitored routinely through the Caldicott & Information Governance Group (CIGG and Quality and Performance Committee (Q & P).
- 9.3 The Information Governance Team will monitor compliance with this Policy through observation, spot checks and through incident management in line with the Trust Incident Reporting Process.
- 9.4 Compliance with this Policy will routinely monitored through Internal and External Audit.
- 9.5 Any compliance issues will be reported to the line managers concerned and may be handled through staff disciplinary processes or contractual arrangements.

## **9.6 Incident Reporting**

- 9.6.1 All incidents involving the loss of data whether encrypted or unencrypted must be reported immediately to the Information Governance Department and dealt with in accordance with the Trust incident reporting procedure (See Trust Policy, CNTW(O)05 Incident Reporting and Procedures).

## **10 Equality and Diversity Assessment**

- 10.1 In conjunction with the Trust's Equality and Diversity Officer this Policy has undergone an Equality and Diversity Impact Assessment which has taken into account all human rights in relation to disability, ethnicity, age and gender. The Trust undertakes to improve the working experience of staff and to ensure everyone is treated in a fair and consistent manner.

## **11 Fair Blame**

- 11.1 The Trust is committed to developing an open learning culture. It has endorsed the view that, wherever possible, disciplinary action will not be taken against members of staff who report near misses and adverse incidents, although there may be clearly defined occasions where disciplinary action will be taken.

## 12 Fraud, Bribery and Corruption

12.1 The Fraud Act 2006 represents an entirely new way of investigating fraud. It is no longer necessary to prove that a person has been deceived. The focus is now on the dishonest behaviour of the suspect and their intent to make a gain or cause a loss.

12.2 The Trust is committed to taking all necessary steps to counter fraud and corruption. To meet its objectives, it has adopted the seven-stage approach developed by NHS Protect:

- The creation of an **anti-fraud and corruption culture**
- Maximum **deterrence** of fraud and corruption
- Successful **prevention** of fraud and corruption which cannot be deterred
- Prompt **detection** of fraud and corruption which cannot be prevented
- Professional **investigation** of detected fraud and corruption
- Effective **sanctions**, including appropriate legal action against people committing fraud and corruption

## 13 Associated Documents

- CNTW(O)05 - Incident Policy , (including the management of Serious Untoward Incidents and associated practice guidance notes (PGNs))
- Data Protection Act 2018
- Lord Chancellor's Code of Practice on the Discharge of Public Authorities'
- Records Management, NHS Code Of Practice Parts 1 and 2
- Functions under Part 1 of the Freedom of Information Act 2000, 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
- CNTW(O)09 – Records Management Policy (and associated PGNs)

**14**      **References**

<https://www.gov.uk/government/organisations/information-commissioner-s-office>



### Equality and Diversity Impact Assessment Screening Tool

Equality Analysis Screening Toolkit			
Names of Individuals involved in Review	Date of Initial Screening	Review Date	Service Area / Locality
Angela Faill	Dec 2020	Dec 2023	Trust-wide
<b>Policy to be analysed</b>		<b>Is this policy new or existing?</b>	
CNTW(O)43 - Freedom of Information Policy – V06		Existing	
<b>What are the intended outcomes of this work?</b> Include outline of objectives and function aims			
To ensure the Trust complies with national legislation in relation to the Freedom of Information Act 2000 To promote the effective, secure and appropriate use of information within records held by the Trust			
<b>Who will be affected?</b> e.g. staff, service users, carers, wider public etc			
Staff, service users, carers and the wider public.			
<b>Protected Characteristics under the Equality Act 2010.</b> The following characteristics have protection under the Act and therefore require further analysis of the potential impact that the policy may have upon them			
<b>Disability</b>	N/A		
<b>Sex</b>	N/A		
<b>Race</b>	N/A		
<b>Age</b>	N/A		
<b>Gender reassignment (including transgender)</b>	N/A		
<b>Sexual orientation.</b>	N/A		
<b>Religion or belief</b>	N/A		
<b>Marriage and Civil Partnership</b>	N/A		
<b>Pregnancy and maternity</b>	N/A		
<b>Carers</b>	N/A		
<b>Other identified groups</b>	N/A		
<b>How have you engaged stakeholders in gathering evidence or testing the evidence available?</b>			

Though standard policy consultation mechanisms.	
<b>How have you engaged stakeholders in testing the policy or programme proposals?</b>	
Though standard policy consultation mechanisms.	
<b>For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:</b>	
Though standard policy consultation mechanisms.	
<b>Summary of Analysis</b> Considering the evidence and engagement activity you listed above please summarise the impact of your work. Consider whether the evidence shows potential for differential impact, if so state whether adverse or positive and for which groups. How you will mitigate any negative impacts. How you will include certain protected groups in services or expand their participation in public life.	
N/A	
<b>Now consider and detail below how the proposals impact on elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups. Where there is evidence, address each protected characteristic</b>	
<b>Eliminate discrimination, harassment and victimisation</b>	N/A
<b>Advance equality of opportunity</b>	N/A
<b>Promote good relations between groups</b>	N/A
<b>What is the overall impact?</b>	N/A
<b>Addressing the impact on equalities</b>	N/A
<b>From the outcome of this Screening, have negative impacts been identified for any protected characteristics as defined by the Equality Act 2010? No</b>	
<b>If yes, has a Full Impact Assessment been recommended? If not, why not?</b>	
<b>Manager's signature:</b>	<b>Angela Fail</b>
<b>Date:</b>	<b>Dec 2020</b>



### Communication and Training Check List for Policies

#### Key Questions for the accountable committees designing, reviewing or agreeing a new Trust policy

Is this a new policy with new training requirements or a change to an existing policy?	No this is an existing Policy
If it is a change to an existing policy are there changes to the existing model of training delivery? If yes specify below.	N/A
<p>Are the awareness/training needs required to deliver the changes by law, national or local standards or best practice?</p> <p>Please give specific evidence that identifies the training need, e.g. National Guidance, CQC, NHS Resolutions etc.</p> <p>Please identify the risks if training does not occur.</p>	<p>The training needs are led by legislation of the Freedom of Information Act, guidance issued by the Information Commissioners Office and Mandatory IG Training endorsed by the IG Toolkit and Connecting for Health.</p> <p>Breaches in the law may incur financial penalties</p>
Please specify which staff groups need to undertake this awareness/training. Please be specific. It may well be the case that certain groups will require different levels e.g. staff group A requires awareness and staff group B requires training.	Trust-wide
Is there a staff group that should be prioritised for this training / awareness?	It is essential that all staff groups within the Trust are made aware of the policy and the responsibilities associated with the legislation and guidance.
<p>Please outline how the training will be delivered. Include who will deliver it and by what method.</p> <p>The following may be useful to consider:            Team brief/e bulletin of summary            Management cascade            Newsletter/leaflets/payslip attachment            Focus groups for those concerned            Local Induction Training            Awareness sessions for those affected by the new policy            Local demonstrations of techniques/equipment with reference documentation            Staff Handbook Summary for easy reference            Taught Session            E Learning</p>	<p>Team brief, CEO Bulletin, Intranet, face to face training Team based training upon request            'E' Learning package through Connecting to Health            Induction Training            Staff IT Security Handbook</p>
Please identify a link person who will liaise with the training department to arrange details for the Trust Training Prospectus, Administration needs	Head of Information Governance and Medico Legal.



Appendix B – continued

Training Needs Analysis

Staff/Professional Group	Type of training	Duration of Training	Frequency of Training
All	Mandatory IG Training	1 hour	Annual

Should any advice be required, please contact:- 0191 245 6777 (Option 1)



## Monitoring Tool

### Statement

The Trust is working towards effective clinical governance and governance systems. To demonstrate effective care delivery and compliance, policy authors are required to include how monitoring of this policy is linked to auditable standards/key performance indicators will be undertaken using this framework.

<b>CNTW(O)43 – Freedom of Information Policy - Monitoring Framework</b>			
<b>Auditable Standard / Key Performance Indicators</b>		<b>Frequency / Method / Person Responsible</b>	<b>Where results and any Associate Action Plan will be reported to, implemented and monitored;</b> (this will usually be via the relevant Governance Group)
<b>1.</b>	Ensure compliance with the 20 working day legislative deadline	The Information Governance Team will provide a bi-monthly Highlight Report covering FOI compliance to the CIGG	Caldicott and Information Governance Group (CIGG)
<b>2.</b>	A record is made where requests have been refused and exemptions have been used	The Information Governance Team as part of the bi-monthly Highlight Report will include a breakdown of FOI's refused and exemptions used in that period to the CIGG	Caldicott and Information Governance Group (CIGG)
<b>3.</b>	Complaints pertaining to the FOI process to be dealt with under the Trust's Complaints Procedure	The Information Governance Team as part of the bi-monthly Highlight Report will include a breakdown of reviews / complaints where the requester is not satisfied with the information provided by the Trust in that period to the CIGG.	Caldicott and Information Governance Group (CIGG)

The Author(s) of each Policy is required to complete this monitoring template and ensure that these results are taken to the appropriate Quality and Performance Governance Group in line with the frequency set out.

## Exempt Information under Part 2 of the Freedom of Information Act 2000

There are two types of class exemption:

- a) **absolute**, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure
- b) **Qualified** by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information. With the exception of s21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold

The **absolute** exemptions under the FOI 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 2018)
- 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: Investigations 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 ICO website at:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>