Belfast Health and Social Care Trust

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**Reference No:** TP 108/19

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| **Title:** | **Policy on the Freedom of Information Act 2000** | | |
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## 1.0 INTRODUCTION / PURPOSE OF POLICY

### 1.1 Background

The Freedom of Information Act 2000 (FOI) is part of the Government's commitment to greater openness in the public sector, a commitment supported by Belfast Health & Social Care Trust, referred to hereafter as the Trust.

The Freedom of Information Act 2000, referred hereafter as the 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 the Trust more closely and ensure that the services the Trust provides are efficiently and properly delivered. The Act replaces the non-statutory Code of Practice on Openness in the HPSS.

### 1.2 Purpose

Section 1 of the Act provides for a general right of access from 1 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 to the Trust is entitled to be informed, in writing, whether the Trust holds the information described in the request and 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 even if it was produced before 2000, subject to certain conditions and exemptions.

This Policy should be read in conjunction with following policies:-

TP026/08 Data Protection Act 1998 & Protection of Personal Information
TP013/08 Records Management Policy
TP062/10 Data Access to Organisations External to the Trust
TP060/10 Processing Requests for Access to Patient/Client and Personal Records
TP014/08 Records Retention & Disposal

### 1.3 Objectives

This Policy will provide a framework within which the Trust will ensure compliance with the requirements of the Act and form a basis for any operational procedures and activities connected with the implementation of the Act.

The Trust is committed to ensuring that common standards are required to ensure that the organisation is compliant with the Act. This Policy outlines the areas in which common standards will be established through other Trust policies and procedures.

## 2.0 SCOPE OF THE POLICY

### 2.1 All staff

This Policy applies to all permanent, temporary or contracted staff employed by the Trust, including non-executive directors and students.

### 2.2 Private Email Accounts

Where private email accounts are used to undertake work-related business, information held in these accounts falls within the scope of the Act.

### 2.3 Recorded Information

The Act gives the public a right of access to types of 'recorded' information held by the Trust; it does not in general apply to personal information as this is covered by the Data Protection Act.

## 3.0 ROLES/RESPONSIBILITIES

### 3.1 Chief Executive

Ultimate responsibility for FOI rests with the Chief Executive of the Trust but all staff members who record information, whether on paper or by electronic means, also have responsibilities under the Act and under this Policy. Section 36 exemption states that information is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information would prejudice the effective conduct of public affairs. The qualified person is the Chief Executive of the Trust.

### 3.2 Directors

Each Director is accountable for the management of risks within their own areas of specific responsibility. They are responsible for ensuring that appropriate systems are in place for effective information access arrangements to be accessible across all services for which they are responsible.

### 3.3 Head of Communications

The Head of Communications is the FOI Lead for the Trust. He/she will ensure organisational compliance with the FOI Act including promoting FOI awareness throughout the organisation and the publication scheme. The Head of Communications is responsible for the development of the FOI Policy and in conjunction with all Directors, Co-Directors and Senior Managers is responsible for the implementation of the FOI Policy.

### 3.4 Senior Information Risk Owner (SIRO)

The SIRO as a Director of the Trust is familiar with information risks and is the focus for the management of information risk at Board level. The Director of Performance, Planning and Informatics is responsible for this within the Trust and therefore has a key role in ensuring that the Trust complies with its legal responsibilities in this regard.

### 3.5 Information Asset Owners (IAO)

The role of an IAO is to understand what information is held, what is added and what is removed, how information is moved and who has access and why. As a result they have a key role to understand and address risks to information and to lead and foster a culture that values, protects and uses information for the public good. This role is undertaken by a number of Co-Directors with Belfast Trust, with an additional reporting function to the SIRO. An up to date list of all IAOs can be located on the Trust's Intranet site.

### 3.6 Co-Directors/Service Managers

Co-Directors/Service Managers have specific responsibilities in the implementation of this policy and in monitoring compliance with it. This includes:

- the implementation of the general procedures within their departments;
- the preparation and implementation of specific departmental procedures where necessary and appropriate;
- acting as decision maker and must agree release/non-release of information from their Directorate.
- ensuring that this Policy is accessible and liaise with the Public Liaison Service to ensure that it is current.

### 3.7 Senior Communications Manager (External)

The Senior Communications Manager's responsibilities include the management of the review process where the applicant considers that the request has not been properly handled under the legislation.

### 3.8 Public Liaison Officers

The Public Liaison Officers' responsibilities include the management of the operational procedures for processing requests for information which are handled under this legislation. The Public Liaison Officer acknowledges all requests for information under the Act, maintains a database of all requests and records what action was taken for each application. This includes obtaining information from service areas, advising on, reviewing, confirming the redactions and exemptions and issuing responses on behalf of the Trust.

### 3.9 Individual Members of Staff Responsibilities

Any member of staff who receives an FOI request should send this to the Public Liaison Service immediately. Email: publicliaison@belfasttrust.hscni.net.

All Trust 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 in regard to any changes in this Policy.

## 4.0 KEY POLICY PRINCIPLES

### 4.1 Openness

This Policy supports the principle that openness should be the norm in public life. The Trust aims 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. The main principle behind FOI legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. This is sometimes described as a presumption or assumption in favour of disclosure.

### 4.2 Purpose and Applicant Blind

The Act is also sometimes described as purpose and applicant blind. This means that: everybody has a right to access official information. Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by the Act; an applicant does not need to give a reason for wanting the information. On the contrary, the Trust must justify refusing them information.

### 4.3 Valid Request

For a request to be valid under the Act it must be in writing, include the requester's real name, include an address for correspondence and describe the information requested.

A valid request could be by letter or email. Requests can also be made via the web, or even on social networking sites such as Facebook or Twitter.

This does not mean that every enquiry has to be treated formally as a request under the Act. It will often be most sensible and provide better service to deal with it as a normal enquiry under usual procedures. The provisions of the Act need to come into force only if:

- The information requested cannot be provide straight away; or

- The requestor makes it clear they expect a response under the Act.

Any information requested under alternative formats will be considered under FOI and provided where reasonable. Accessible formats can include information in easy to read formats, audio when the person requesting the information has a learning disability or is visually impaired. If the person requesting the information does not speak/read English as a first language the information may be translated where reasonable.

### 4.4 Information Covered

This Policy supports a general right of anyone to access recorded information held in any format by the Trust, subject to certain conditions and exemptions. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings.

### 4.5 Confidentiality

The Trust acknowledges that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duty of confidentiality or statutory provisions that prevent disclosure of personally identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 1998.

### 4.6 Access to Personal Information

The Act does not give people access to their own personal data (information about themselves) such as their health records. If a member of the public wants to see information that the Trust holds about them, they should make a subject access request under the Data Protection Act 1998.

### 4.7 Exemptions

The Trust is committed to ensuring that public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.

Information can be automatically withheld because an exemption applies only if the exemption is 'absolute'. However, most exemptions are not absolute but require the Trust to apply a public interest test. See Appendix one for a list of exemptions.

### 4.8 Timescale

Requests for information must be responded to within 20 working days of receipt of the request by the Trust.

### 4.9 Publication Scheme

In order to comply with the Act, the Trust has a duty to adopt and maintain a publication scheme. The Trust routinely publishes information whenever possible on the website.

### 4.10 Review Process

In accordance with advice from the Information Commissioner's Office (ICO), the Trust will:

- ensure the internal review procedure is triggered whenever a requester expresses dissatisfaction with the outcome to his/her FOI request;
- make sure it is a straightforward, single-stage process;
- make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision;
- ensure the review is done by someone who did not deal with the request, where possible, and preferably by a more senior member of staff; and
- ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
- Following this review the requestor can then contact the ICO if they remain dissatisfied, the process to do this is outlined in every FOI response issued.

## 5.0 IMPLEMENTATION OF POLICY

### 5.1 Dissemination

This policy will be circulated to all Directors and IAOs for dissemination.

### 5.2 Implementation

The Senior Communications Manager (External) will oversee the implementation of this Policy on behalf of the Head of Corporate Communications. The Public Liaison Officers ensure systems and procedures are established to support the implementation of this Policy, which, as stated above, all staff including Non-Executive Directors will be expected to adhere to.

### 5.3 Resources

This Policy will be available on the Trust Hub. All Trust staff will be made aware of their responsibilities to comply with the Trust's procedure for processing Freedom of Information requests through generic and specific

training programmes and guidance. A Freedom of Information training module is available on the Trust's eLearning portal.

## 6.0 MONITORING

**6.1** This Policy is a statement of what the Trust does to ensure compliance with the Act. It is not a statement of how compliance will be achieved. Compliance rates is measured by the Corporate Communications Department.

**6.2** Wilful breach of this Policy can result in disciplinary action in line with the Trust's Disciplinary Policy. The legislative framework relating to records management, especially the Data Protection and Freedom of Information Acts, means that there is a possibility of legal action being taken against the Trust, and/or individuals involved.

**6.3** The application of information governance procedures are monitored on a monthly basis through the Trust's Performance Score Card. Other specific monitoring responsibilities will be under the remit of the Information Governance Board.

## 7.0 EVIDENCE BASE / REFERENCES

- Freedom of Information Act 2000
- Lord Chancellor's Code of Practice on the Discharge of Public Authorites' Functions under Part I 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.
- Information Commissioner's Office website: www.ico.gov.uk
- Belfast Trust Freedom of Information Act 2000 Public Information Leaflet
- Belfast Trust Freedom of Information Act 2000 Staff Induction Leaflet

If staff require further guidance on this matter they may be directed to: Public Liaison, 1st Floor Nore Villa, Knockbracken Healthcare Park, Saintfield Road, Belfast BT8 8BH. Telephone: 028 9504 5888. Email: publicliaison@belfasttrust.hscni.net. Alternatively staff may wish to visit the Freedom of Information section on the Trust's internet site which is available at: http://www.belfasttrust.hscni.net/about/AccesstoInformation.htm

## 8.0 CONSULTATION PROCESS

This Policy has been consulted via the Information Governance Operational Working Group, Information Governance Board, staff side consulted via Workforce Governance Policy Review sub-committee and approved for publication.

## 9.0 APPENDICES / ATTACHMENTS

Appendix 1 – FOI Exemptions

## 10.0 EQUALITY STATEMENT

In line with duties under the equality legislation (Section 75 of the Northern Ireland Act 1998), Targeting Social Need Initiative, Disability discrimination and the Human Rights Act 1998, an initial screening exercise to ascertain if this Policy should be subject to a full impact assessment has been carried out. The outcome of the Equality screening for this Policy is:

**Major impact** ☐

**Minor impact** ☐

**No impact.** ☒

## 11.0 DATA PROTECTION IMPACT ASSESSMENT

New activities that involve collecting and using personal data can result in privacy risks. In line with requirements of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 the Trust has to consider the impacts on the privacy of individuals and ways to mitigate against the risks. Where relevant an initial screening exercise should be carried out to ascertain if this policy should be subject to a full impact assessment (see Appendix 7). The guidance for conducting a Data Protection Impact Assessments (DPIA) can be found via this **link**.
The outcome of the DPIA screening for this policy is:

**Not necessary – no personal data involved** ☐

**A full data protection impact assessment is required** ☐

**A full data protection impact assessment is not required** ☐

**If a full impact assessment is required the author (Project Manager or lead person) should go ahead and begin the process. Colleagues in the Information Governance Team will provide assistance where necessary.**

## 12.0 RURAL IMPACT ASSESSMENTS

The rural need has been considered and there is no impact of this policy on people in rural areas

## 13.0 REASONABLE ADJUSTMENTS ASSESSMENT

Reasonable adjustments will be considered for people who are disabled. Any information requested under alternative formats will be considered under FOI and provided where requested. Accessible formats can include information in easy to read formats, audio when the person requesting the information has a learning disability or is visually impaired. If the person requesting the information does not speak/read English as a first language the information may be translated where reasonable.

## SIGNATORIES

(Policy – Guidance should be signed off by the author of the policy and the identified responsible director).

27/02/2019

**Date:** _____

**Name: Mrs Bronagh Dalzell**
**Title: Head of Corporate Communications**

27/02/2019

**Date:** _____

**Name: Mrs Jacqui Kennedy**
**Title: Director of Human Resources/ Organisational Development**

27/02/2019

**Date:** _____

**Name: Mr Martin Dillon**
**Title: Chief Executive**

## Appendix 1 – FOI Exemptions

The absolute exemptions under the Act are:

Section 21 – information already reasonably accessible;
Section 23 – security bodies;
Section 32 – court records;
Section 34 – parliamentary privilege;
Section 40 – personal information (where disclosure may contravene the Data Protection Act 1998);
Section 41 – confidentiality;
Section 44 – prohibitions on disclosure.

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

Section 22 – information intended for future publication;
Section 22A – research information;
Section 24 – safeguarding national security;
Section 26 – defence;
Section 27 – international relations;
Section 28 – relations between the UK government, the Scottish Executive, the Welsh Assembly and the Northern Ireland Executive;
Section 29 – the economy;
Section 30 – investigations;
Section 31 – prejudice to law enforcement;
Section 33 – prejudice to audit functions;
Section 35 – government policy;
Section 36 – prejudice to the effective conduct of public affairs;
Section 37 – communications with the royal family and the granting of honours;
Section 38 – endangering health and safety;
Section 39 – environmental information;
Section 42 – legal professional privilege;
Section 43 – trade secrets and prejudice to commercial interests.