

## Freedom of Information (FOI) Policy

Greater Manchester Mental Health NHS  
Foundation Trust



## Freedom of Information (FOI) Policy

<b>Document Name:</b>	<b>Freedom of Information (FOI) Policy</b>
<b>Executive Summary:</b>	This policy relates to all information held by or on behalf of Greater Manchester Mental Health and provides a framework within which it will ensure compliance with the requirements of the Freedom of Information Act (2000) and the associated codes of practice issued by the Ministry of Justice.
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## 1. Introduction

The [Freedom of Information Act 2000](#) is part of the Government's commitment to greater openness in the public sector, which gave members of the public a general right to request access to all types of recorded information held by public authorities from 1 January 2005. This commitment is supported by Greater Manchester Mental Health NHS Foundation Trust (referred to hereafter as the Trust).

The Freedom of Information Act 2000, (referred to hereafter as FOIA or the Act), furthers this aim by helping to transform the culture of the public sector to one of greater openness and accountability. It enables members of the public to gain a better understanding of how public authorities carry out their duties, why they make the decisions they do and how they spend public money. The Act replaces the non-statutory Code of Practice on Openness in the NHS.

The three main provisions of the FOI Act are:

- by virtue of section 19 of the Act, to adopt and maintain a scheme which relates to the publication of information held by the Trust and to publish information in accordance with that scheme;
- by virtue of section 1 of the Act, to inform a person making a request for information whether the Trust holds the information of the description specified in the request; and
- also by virtue of section 1 of the Act, to communicate information held to the applicant.

The Trust believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is covered by the subject access provisions of the Data Protection Act 2018 and is dealt with in other Trust policies.

The Trust also believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust uses 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.

### 1.1. Purpose

This document defines the Freedom of Information Policy for Greater Manchester Mental Health NHS Foundation Trust. The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 are adhered to. Both regimes have been in force since 1 January 2005.

The policy should not be read in isolation and regard should be given to the Lord Chancellors Record Management Code of Practice under Sections 45 and 46 on the practice to be followed in "Handling Requests for Information" and "Management of Records" respectively. The Trust further recognises that although it is not legally

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binding, failure to comply with the Code may lead to failure to comply with the Act.

### 1.2. Policy Aim

The aim of this policy is to ensure timely access to information held by the Trust in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal privacy, commercial sensitivity and where disclosure would not be in the public interest.

### 1.3. Scope

This policy applies to all recorded information that qualifies to be released to the public that the Trust holds regardless of how it was created or received. It applies no matter what media the information is stored in and whether the information may be on paper or held electronically. The Act is retrospective which means it also applies to information created prior to the implementation of the Freedom of Information Act. All staff should be aware of this policy.

## 2. Definitions

For the purpose of this document the following definitions have been adopted:

- **Absolute exemption** - Applied to information that does not have to be released to the applicant either through a Publication Scheme or through general right of access under the Act. Information to which an absolute exemption applies does not require a public authority 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 I section 2 and Part II of the Act.
- **Applicant** - The individual(s), group or organisation requesting access to information under the Act.
- **Disclosure Log** – A log of previous requests and their responses which are published on the Trust website
- **Fees regulations** - National regulations set an upper limit on the amount that can be charged for FOI requests, prescribe the manner in which any fees are to be calculated and prohibit the charging of fees for certain types of request. The regulations do not apply where provision for the fee that may be charged is made under another Act.
- **General Data Protection Regulation (GDPR)** - The General Data Protection Regulation (GDPR) applies across Europe from 25th May 2018. GDPR strengthens the rights of individuals to control how their personal data is processed. It places tighter obligations on organisations to be more accountable for data protection.
- **General right of access** - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be

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told whether that authority holds the information requested, 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 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 with 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 2018, General Data Protection Regulation (GDPR) and the Freedom of Information Act 2000.
- **Public Interest Test** - When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.
- **Qualified exemption** - Information to which a qualified exemption applies requires a public authority 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 I section 2 and Part II of the Act.

### 3. Duties

#### 3.1. Board/Lead Committee

The Information Governance Steering Group is responsible for the approval and monitoring of this Policy. The group will receive performance reports and will agree any necessary improvement plans, recommendations for improvements and increasing staff awareness through additional training or guidance materials. Monitoring will take the form of performance reports which highlight:

- Number of requests received.
- Numbers responded to within the 20 working day limit and the reasons for any exceeding the statutory deadline.
- The justification for the application of any exemptions.
- Details of any complaints made about any response or the process itself.
- Details of any requests escalated to the Information Commissioner's Office by the applicant.

#### 3.2. Chief Executive

Chief Executive Officer is the accountable officer and as such is accountable for ensuring the Trust complies with the Freedom of Information Act 2000 and [Environmental Information Regulations](#).

#### 3.3. Director of Finance, Capital and IM&T

The Director of Finance, Capital and IM&T, who is also the Trust SIRO, (Senior Information Risk Owner), has the ultimate responsibility for the Trust's compliance with the Freedom of Information Act. The SIRO is responsible for the final approval and subsequent release of all response letters. The SIRO has responsibility for

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highlighting issues of information risk, resource, performance and compliance to the Trust and Executive Management Boards.

The SIRO will ensure organisational policy, procedures and processes are in place to comply with the Act and associated Codes of Practice and that they are widely disseminated and available to all staff.

### **3.4. Associate Director of IM&T**

The Associate Director of IM&T will lead on all internal reviews requested by applicants who are dissatisfied with the outcome of their request, this is delegated to the Head of IM&T Service Delivery.

The Freedom of Information Lead responsibilities are delegated to the Head of IM&T Service Delivery and include:

- Ensuring that appropriate Freedom of Information policy for the Trust is produced and kept up to date.
- Ensuring that the appropriate procedures and practices are formulated and adopted by the Trust.
- Representing the Trust on Freedom of Information Act 2000 matters.
- Providing the appropriate leadership and direction for the Freedom of Information team operating within the Trust.
- Setting the standard of Freedom of Information Act 2000 training for staff across the Trust.
- Ensuring the existing Publication Scheme is reviewed, maintained and renewed as required by the Information Commissioner.
- Ensuring that there is a management system in place to support the Lord Chancellor's Code of Practice under Section 45 on the practice to be followed for the management of requests.
- Acting as a central point of contact on Freedom of Information Regulation 2004 within the Trust.
- Implementing an effective framework for the management of the Freedom of Information Act 2000.
- Ensuring that there is a Records Management Retention and Destruction Policy in place to support compliance with both the Freedom of Information Act 2000 and the Lord Chancellor's Code of Conduct under Section 46 on the practice to be followed for the management of records.

### **3.5. Information Governance Manager**

The IG manager has overall responsibility for the implementation of this policy and for monitoring and reviewing its effectiveness on behalf of the Director of Finance, Capital and IM&T. They will ensure that full commitment and support is provided with regards to the administration of this policy and offer specialist advice and assistance when required.

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The Senior Information Governance Officer and the Information Governance Officer will share the role of FOI Officer and ensure that all Freedom of Information matters are co-ordinated centrally, oversee the management of requests under the Act, advise on the use of exemptions and provide advice and assistance to those who request it.

The IG department will manage the Freedom of Information process and routinely report to the IG Manager and Information Governance Steering Group. They will have responsibility for FOI policy, procedures and guidance and keep abreast of changes to legislation. They will also liaise with external FOI networks to keep updated on 'round robin requests'.

In managing the process, the IG department will liaise with the Request Handler ensuring information is supplied within mandated time limits, provide advice and assistance in relation to the application of exemptions and the public interest test and seek the appropriate approval at each stage prior to release.

The FOI Officer will ensure the Publication Scheme is maintained and updated on the Trust website.

### 3.7. Request Handler

The Request Handler is the person who is responsible for confirming that information is held. They are responsible for locating and retrieving information to process a request. They have a duty to provide advice and assistance, supply information within mandated time limits, or, if relying on an exemption, state why the exemption applies and explain the balance of the public interest both against and in favour of disclosure.

### 3.8. Communications Manager

The Communications Manager has a strategic role to play in internal and external communications concerning the rights and requirements of the Act. The Director of Finance, Capital and IM&T supported by the Communications Manager and IG manager are responsible for informing the public on their rights under the Act and raising awareness with Trust staff.

The Communications Manager is responsible for recognising any FOI requests received via the Trust social networking sites and website mailboxes and forwarding them to [foi@gmmh.nhs.uk](mailto:foi@gmmh.nhs.uk) in a timely manner.

### 3.9. All Directors, Heads of Service and Managers

All Directors, Heads of Service and Managers are responsible for ensuring that any corporate information, for example contracts and commercially sensitive information, should be created with the awareness that a request for this information may be received and information which is not exempt must be disclosed to comply with the Act. Senior members of staff should therefore ensure that they (and their staff)

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receive adequate and appropriate training to ensure they are able to adhere to policies, procedures and guidance.

All managers will be responsible for ensuring that this policy is communicated and implemented within their area of responsibility, ensuring that staff are made aware of any Freedom of Information notices and are aware of their Freedom of Information responsibilities.

A named person will be identified as the FOI Lead for each Directorate to act as Freedom of Information Directorate co-ordinator. They will liaise with the IG Team to ensure the Trust meets its obligations under the Act.

Any advice and assistance regarding this policy or the Freedom of Information Act can be obtained from the IG Team.

### **3.10. Employees**

All Trust employees, including temporary and contract staff, are subject to this policy.

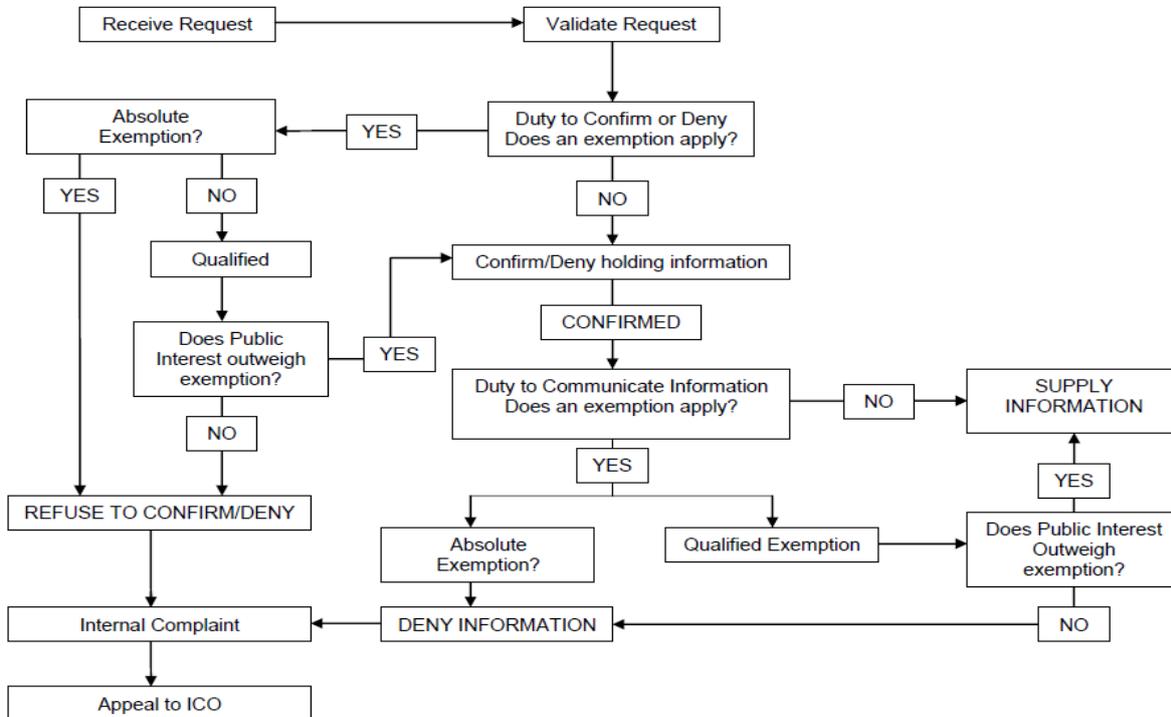
All staff should be aware of their own personal responsibilities for good information handling practice and implementing records management policies and procedures as appropriate to their post, including the creation of records, (including emails), which may be subject to disclosure in response to an FOI request.

In addition, all staff should be aware of the Trust's process for dealing with a request which is received by them, such as who to contact and the urgency for doing so due to the strict time limits which the law applies. Staff also have an obligation to assist the public with making a request.

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## 4. Processes and Procedures

### 4.1. FOI process overview



### 4.2. Policy Statement

The Trust uses all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Lord Chancellor Codes of Practice issued by the Ministry of Justice's Department pursuant to sections 45(5) and 46(6) of the Act.

### 4.3. Publication Scheme

Under section 19 of the FOI Act, the Trust is required to adopt and maintain a publication scheme which has been approved by the Information Commissioner, and to publish information in accordance with the scheme.

The publication will set out the following:

- a) the classes of information published, or intended to be published;
- b) the manner in which publication is, or is intended to be made;
- c) a schedule of any fees charged for access to information which is made proactively available.

On the 1 January 2009, the Information Commissioner published a single approved model publication scheme which must be adopted by all public authorities. The Trust will use the health sector specific guidance manual to produce its 'guide to

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information' and will:

1. Proactively publish or otherwise make available as a matter of routine, information, including environmental information, which is held by the Trust and falls within the classifications below.
2. Specify the information which is held by the Trust and falls within the classifications below.
3. Proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within the scheme.
4. Produce and publish the methods by which the specific information is made routinely available so that it can be easily identified and accessed by members of the public.
5. Review and update on a regular basis the information the Trust makes available under this scheme.
6. Produce a schedule of any fees charged for access to information which is made proactively available.
7. Make the publication scheme available to the public.
8. Publish any dataset held by the authority that has been requested, and any updated versions it holds, unless the authority is satisfied that it is not appropriate to do so; to publish the dataset, where reasonably practicable, in an electronic form that is capable of re-use; and, if any information in the dataset is a relevant copyright work and the public authority is the only owner, to make the information available for re-use under the terms of the Re-use of Public Sector Information Regulations 2015, if they apply, and otherwise under the terms of the Freedom of Information Act section 19. The term 'dataset' is defined in section 11(5) of the Freedom of Information Act. The term 'relevant copyright work' is defined in section 19(8) of that Act.

### 4.3.1 Classes of Information

- Who we are and what we do - Organisational information, locations and contacts, constitutional and legal governance.
- What we spend and how we spend it - Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- What our priorities are and how we are doing - Strategy and performance information, plans, assessments, inspections and reviews.
- How we make decisions - Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.
- Our policies and procedures - Current written protocols for delivering our functions and responsibilities.
- Lists and Registers - Information held in registers required by law and other lists and registers relating to the functions of the authority.
- The Services we offer - Advice and guidance, booklets and leaflets,

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transactions and media releases. A description of the services offered.

### 4.3.2 Disclosure Log

The Trust will maintain a log of requests, referred to as a 'disclosure log' in line with the retention schedules of Records Management NHS Code of Practice.

## 4.4. Requests for Information

Any written request for recorded information that is not routine business correspondence should be considered a Freedom of Information (FOI) request.

It is important to draw a distinction between requests and routine correspondence:

- Requests for information that can be provided without any question – such as recruitment brochures, leaflets, press releases, and the text of public speeches – should be treated as business as usual.
- Requests which are not for recorded information, but instead ask questions such as “please explain your policy on.....” or “please explain your decision to do.....” are NOT requests for recorded information and therefore should be treated as routine correspondence.

### 4.4.1 Valid Requests under the Act

In accordance with section 8 of the Act a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and must describe the information being requested. 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. This includes requests made via social networking sites.

It is very important to note that the correspondence does not need to mention the FOI Act. The Trust is under a general duty to assist anyone who has made a request or proposes to request information. Staff must therefore keep this in mind if they receive an approach from anyone.

All Freedom of Information requests must be sent to the Information Governance Department via [foi@gmmh.nhs.uk](mailto:foi@gmmh.nhs.uk) on the day they are received.

### 4.4.2 Information covered by the Act

All recorded information 'held' by the Trust is within the scope of the Act. It extends to closed files and archived material.

The right of access applies to information recorded in any form. This includes:

- a) Information that is held electronically, (such as on a laptop computer or on an electronic records management system).
- b) Information that is recorded on paper, (such as a letter, memorandum or papers in a file).
- c) Sound and video recordings, (such as CD or videotape).

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- d) Hand-written notes or comments, including those written in note pads or on Post-it notes.

### 4.4.3 Personal Information

Personal information which identifies a staff member but only relates to the public functions they carry out in their job may be made available if requested. The Trust will routinely release names of staff at Associate/Deputy Director level and above but the consent of individuals below this level will be sought on a case by case basis before their names are released. For staff in public facing roles they should expect that their name and contact details may be made public e.g. if named on websites, on documents etc.

## 4.5. Other Information Access Regimes which may apply to a request

### 4.5.1 Data Protection Act 2018 (DPA)

Requests may be received that should be handled under DPA. These requests are called 'subject access request'.

The main features of the processing of subject access requests are:

- a) it applies to all personal data that is held by the Trust,
- b) the Trust must reply within 1 calendar month,
- c) the request does not have to cite the DPA,
- d) there are a number of exemptions from the right of access.

A request for personal information of an individual is exempt under section 40 of FOIA and any request will be dealt with under the DPA regime.

### 4.5.2 Environmental Information Regulations 2004 (EIR)

Requests may be received that should be handled under EIR. These requests can be made verbally and can be identified as requests for information relating to:

- the state of the elements of the environment, such as air, water, soil, land, fauna;
- emissions and discharges, noise, energy, radiation, waste and other such substances;
- cost benefit analysis of measures and activities which have, or are likely to have, an effect on the environment;
- information about the built environment;
- the state of human health and safety, contamination of the food chain;
- any information relating to policies, plans and programmes that affect, or are likely to affect, the environment.

Environmental information is exempt under section 39 of the FOI Act and any request will be dealt with under the EIR regime.

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#### 4.6. Time Limits for Responding

The Trust has procedures and guidance to ensure that it responds to requests for information no later than 20 working days following the date on which the request was received in accordance with section 10 of the Act. A request is received when it is delivered to the Trust. The Act makes a limited number of provisions for extra time to be taken in responding to requests.

#### 4.7. Provision for extra time

##### 4.7.1 Clarification

There is requirement under the FOI Act for applicants to describe the information they want.

The legislation also puts a duty on the Trust to provide advice and assistance to people who have made, or propose to make, a request for information. These parallel obligations will be most evident when a request for information is unclear or it seems possible that it could be satisfied by directing the applicant to another source of information.

The key requirement is to establish a dialogue with the applicant. If clarification of the request is needed in order to identify and locate the information, this must be requested promptly and in any event no later than 20 working days. The day after the clarification is received by the Trust the 20 working day period begins. It will often be helpful to explain what information is readily available, or to explore ways in which a request could be made more specific. This will be particularly important if the original request would be refused due to excessive cost. A written record of any conversations with the applicant should be kept.

##### 4.7.2 Fees

Fees Regulations made under the FOI Act say that requests should be processed without any charge unless the cost involved exceeds £600 for central government and £450 for other public authorities. Above the appropriate limit, there will be no requirement to proceed with a request, but it will be appropriate in these circumstances to assist the applicant to narrow the scope of the request.

Any charges imposed must be reasonable, and the Trust publishes these under a schedule of charges.

The timescale is put on hold if, after initial consideration of the request, a fee is requested in accordance with section 9(2). The timescales remain on hold while the Trust is waiting for the fee to be paid.

##### 4.7.3 Applying the public interest test

If the information being sought has to be considered under an exemption to which the public interest test applies, then the Trust will extend the timescale by a 'reasonable period'. Under section 17(2) the Trust is required to give an estimate to the requestor of the date by which it expects to reach such a decision.

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#### 4.8. Providing Advice and Assistance

The Trust will meet with its duty under section 16 of the Act and will provide the applicant with advice and assistance while processing their request.

Where a request exceeds the 'appropriate limit' and would therefore be refused, the Trust will make every effort to provide the applicant with suggestions that will, if followed, result in a request that can be processed under the appropriate limit. The Trust will also identify specific pieces of information that the applicant may be able to access within the 'appropriate limit'.

The public may or may not be aware that information is available to them under the Act. The Trust will assist in the communication of this fact by widely publicising the way in which the public may gain access to information covered by the Act. The Trust will ensure it has materials to support communications about FOI applications, supported by FOI request handling procedures.

The Trust will also assist the public with making a request, for example, if a request is made verbally by someone who is unable to read and write. In this case, the Trust will assist the applicant to write down their request and encourage him/her to verify with a friend or family member that the written request is in fact what is required. A similar approach can be taken with applicants for whom English is not their first language who may require assistance to write down their request.

#### 4.9. Transferring Requests for Information

The Trust may receive requests for information that it does not hold but believes is available from another public authority. It recognises that "holding" information includes holding a copy of records 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 Act).

If The Trust believes that some or all of the information requested is held by another public authority, it will consider what would be the most helpful way of assisting the applicant with his or her request.

A request (or part of a request) will not be transferred without confirmation from 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.

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.

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## 4.10. Fees and the 'Appropriate Limit'

### 4.10.1 Fees

The Trust does not generally charge for information that it has chosen to publish in its Publication Scheme. It is permitted to charge reasonable fees to meet some of the cost of providing information which may include:

- a) the cost of putting the information into the applicant's requested format e.g. CD, audio tape;
- b) photocopying and printing costs, (set at no more than 10p per page);
- c) postage and other transmission costs.

The Trust may not charge for putting the information into another format where it has a duty to make information accessible under other legislation, e.g. the Disability Discrimination Act 1995.

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 is issued to the applicant as required by section 9 of the Act. Applicants are required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

### 4.10.2 The 'appropriate limit'

There may be a few cases where the cost of meeting a request would exceed the appropriate limit, defined under section 12 and currently set at £450. If this is the case, the Trust may be exempt from answering the request.

The limit is applied first to the Trust's duty to confirm or deny that it holds the information and then to its duty to supply the information. Therefore, if it would cost more than £450 to confirm or deny then there is no duty to do so.

The Trust is permitted to estimate whether the cost of meeting a particular request would exceed the £450 limit. To do this it should take into account the cost of employing staff to:

- a) find out whether the information is held;
- b) locate and retrieve the information;
- c) extract the information.

To estimate these staff costs the Trust should use an hourly rate of £25 per person per hour. In making this estimation, no other costs may be taken into account.

The Trust may be willing to provide the information even where the cost exceeds the limit if the applicant is willing to pay the full costs in dealing with the request but it is not obliged to do so.

## 4.11. Vexatious and Repeated Requests

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

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vexatious or repeated.

There is no rigid definition of a 'vexatious request', but a request may be considered vexatious if:

- it seeks information of a frivolous nature, lacking serious purpose or value;
- it is likely to cause distress or irritation without justification;
- it is aimed at disrupting the work of the Trust or harassing individuals in it;
- the request can be seen as obsessive.

Under section 14(2) of the FOIA, public authorities do not have to comply with repeated requests for the same information from the same person. There is no public interest test.

Thus where the Trust has previously complied with a request for information which is 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 making of the current request.

The Trust logs all requests for information for monitoring purposes and can therefore identify repeated or vexatious requests.

### 4.12. Consultation with Third Parties

If a third party has supplied the requested information or has a close interest in it, it may be appropriate for the Trust to consult them when processing the request.

Third party information held may include:

- a) contracts;
- b) tenders for contracts;
- c) other commercial information;
- d) information provided by other public authorities;
- e) personal information about individuals.

The Trust will undertake consultation where:

- a) the views of the third party may assist the Trust to determine whether an exemption under the Act applies to the information requested; or
- b) the views of the third party may assist the Trust to determine where the public interest lies under section 2 of the Act.

Any views expressed by third parties concerning the release of information provided by them to the Trust are not binding as the Trust holds the information and is therefore under the statutory duty to provide access to the information, not the third party.

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The only real exception to this is when the third party considers that the release of the information would be an actionable breach of confidence. If this is the case, legal advice should be sought.

### 4.13. Authority to Release

Before releasing information or applying an exemption, staff must be satisfied that they have the appropriate authority to make that decision. This is especially important if information proposed for release has a protective marking, if the material was originated outside the terms of a contract or any other collaborative or legally binding arrangement.

It is very important to consider the possibility that releasing, (or withholding), information in response to a request could have wider implications. The normal procedures for informing the most senior people in the Trust should therefore be followed when appropriate.

This will be especially important if there is a prospect that the response may draw criticism or cause embarrassment to the Trust.

In particular, if the information to be disclosed, (or the fact that information is being withheld), is novel, contentious or in any other way likely to be newsworthy, it is necessary to contact the Communications team who deal with enquiries from the media.

Staff failing to follow the Trust policy and procedures for processing requests for information could ultimately lead to them being the subject of disciplinary action being taken by the Trust.

Section 36(2): The Trust can only rely on the exemption in section 36(2), (prejudice to effective conduct of public affairs), if a 'qualified person' considers that disclosure of the information would be prejudicial. In relation to The Trust, the 'qualified person' is the Chief Executive.

The Director of Finance and IM&T (the SIRO) is responsible for the final approval and subsequent release of all response letters under the Act.

### 4.14. Means of Disclosing Information

The legislation gives an entitlement to information rather than documents, although the information requests will often consist of a whole document. Although most information is held in the form of documents, it is also necessary to consider other media such as CD, DVD, microfiche or photographs. This will obviously have a bearing on the manner in which any information is disclosed.

It is not necessary to create new information in order to answer a request, even if this can be easily done from other information that is held. However, the Trust should provide the requestor with advice and assistance so that they may understand what information is held and could be requested.

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The Act allows applicants to express a preference about the form in which the information is provided. The Trust shall, so far as is reasonably practicable, give effect to that preference in accordance with section 11 of the Act.

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

The Trust will bear in mind its obligations under other legislation when responding to requests for information, in particular the Disability Discrimination Act. As far as possible, the Trust has a duty to assist applicants by ensuring they receive the information in the form most suitable for them.

Information which should not be released will be removed or redacted from a document. Where information has been redacted it will be made clear why the information has been removed by citing the relevant exemption and the reason why it applies. However, if the Trust is satisfied that there is no sensitivity about the additional information, they will consider releasing the whole document.

If redaction would make the document incomprehensible or if the relevant information is contained within a small section of the document or dispersed throughout several documents, the Trust will assemble it into a readable format such as a digest.

Great care must be taken when redacting information to ensure that the original information is not disclosed. For this reason advice must be sought from the IG Team regarding the most suitable method of redaction.

### 4.15. Refusing to Release Information

The Freedom of Information Act provides a right of access to information and information should be released wherever possible. However it is clearly not appropriate for all information to be made public and as such the FOIA contains 23 exemptions to the right of access.

The exemptions listed in part II of the Act set the boundaries to the rights of access. If information is exempt, then individuals do not have a right of access to it under the Act.

The exemptions ensure a proper balance is achieved between the right to know, the right to personal privacy and the delivery of effective government.

The reason for withholding information must be explained to the applicant. The Trust will identify the exemption(s) under which the information is being withheld and explain why it applies, unless to do so would reveal the information.

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In some circumstances it may be appropriate to neither confirm nor deny whether information is held. This is an exemption from the right under section 1(1) (a) of applicants to be informed whether the information is held.

The Trust keeps a record of all refusal notices issued.

### **4.15.1 Refusing a Request under the Exemptions**

A few of the FOI exemptions are “absolute”, meaning that the information can be held without considering any public interest in disclosure. Nevertheless, it is important to ensure that the decision to cite an absolute exemption is valid, as this may itself be challenged.

The majority of exemptions in the FOI Act are “qualified” and therefore the main consideration, if one of these exemptions applies, is whether the public interest favours withholding or disclosing the information.

Even if a qualified exemption applies, the public interest in withholding the information has to outweigh the public interest in releasing, if information is to be withheld.

Under section 17 of the Act, the Trust must explain which exemption it is relying on and why it is applicable.

The response to the applicant must:

- a) state that information is being withheld under an exemption;
- b) specify which exemption or exemptions;
- c) state (if it is not apparent) why the exemption applies;
- d) if it is a qualified exemption, explain the balance of the public interest both against and in favour of disclosure.

### **4.15.2 Refusing a request under section 12 or section 14**

If The Trust refuses any part of a request under section 12, (where the cost of complying with the request would exceed the appropriate limit), or section 14, (the request is vexatious or repeated), it will, within the 20 working day time limit, give the applicant notice stating that fact. It will also explain the factors that have led to conclude that section 12 or section 14 apply.

## **4.16. Public Sector Contracts**

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 Act. Unless an exemption provided for under the 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.

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

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recommended by the Ministry of Justice'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 that clearly identifies information that 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.

The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Ministry of Justice'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 Act would constitute a breach of confidence actionable by that, or any other person.

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 that it has provided to the contractor that 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.

### 4.17. Accepting Information in Confidence from Third Parties

The Trust only accepts information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Trust's functions and it would not otherwise be provided.

The Trust does not agree to hold information received from third parties "in confidence" that is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

### 4.18. Complaints

When information is refused the applicant must be informed of the right to appeal initially through the Trust's internal review process and then to the Information Commissioner.

Furthermore if an applicant is dissatisfied with a response, they can also request an internal review. Following this, the applicant has a further right of appeal to the Information Commissioner and subsequently the Information Tribunal

Applicants may be justifiably unhappy if:

- a) their application was not dealt with within the 20 working day time limit;
- b) they did not receive all of the information requested;

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- c) they feel that exemptions have been wrongly applied;
- d) they feel that a fee has been wrongly charged;
- e) the Trust has in any other way mishandled the request.

To instigate the internal review process, the applicant should write to:

Associate Director of IM&T  
Oakwood Building  
Greater Manchester Mental Health NHS Foundation Trust  
Bury New Road  
Prestwich  
Manchester  
M25 3BL  
E-mail: [foi@gmmh.nhs.uk](mailto:foi@gmmh.nhs.uk)

The Trust will complete an internal review within 20 working days of receiving the complaint. Complex reviews, (where it is necessary to re-consider the public interest test), will aim to be dealt with within 6 weeks of receiving the complaint.

Applicants will be advised of 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.

### 4.19. Records Management

The Trust has a separate policy with supporting procedures and guidance that ensures compliance with the Lord Chancellors Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 and the Department of Health's Records Management NHS Code of Practice - August 2016

This policy and associated procedures address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Trust.

### 4.20. Legal Advice

If it is felt that legal advice may be required before responding to a request this will be sought from Trust Solicitors in line with Trust policy.

## 5. Training Requirements

Training should be provided for staff working in areas where requests are processed. Staff who assist with the locating and collation of information in response to a request should also receive appropriate training.

Refer to the Information Governance Education Commissioning Document.

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**6. Monitoring**

Minimum Requirement	Frequency	Process for monitoring	Evidence	Responsible Individual(s)	Response Committee(s)
Performance Report	Monthly / annually	Non-attendance monitoring report  audit	Report	Information Governance Steering Group	Information Governance Steering Group

Monitoring will take the form of performance reports which highlight:

- Number of requests received
- Numbers responded to within the 20 working day limit and the reasons for any exceeding the statutory deadline
- The justification for the application of any exemptions
- Details of any complaints made about any response or the process itself
- Details of any requests escalated to the Information Commissioner's Office by the applicant

**7. Resource/Implementation Issues**

None.

**8. Risk Issues**

None.

**9. Requirements, Supporting Documents and References****9.1. Requirements**

**Trust External/Internal Requirements:**

<b>Board Objective Reference:</b>	Objective 6 – To achieve financial strength and be well-governed
<b>CQC Regulation Reference:</b>	17 – Good Governance
<b>Other requirements:</b>	Legislation including the Freedom of Information Act, Data Protection Act, and Environmental Information Regulations and related requirements including the Lord Chancellors Record Management Code of Practice.

## 9.2. Supporting Documents

None.

## 9.3. References

- The Freedom of Information (FOI) Act 2000
- Lord Chancellors Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act
- Lord Chancellors - Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000
- Records Management: NHS Code of Practice 2016
- Trust Records Management Policies.

## 10. Subject Expert and Feedback

Advice and support queries in relation to this document should be sent to the author.

## 11. Review

Trust policy for review is every five years, however this policy will be reviewed annually in line with the Data Security and Protection Toolkit, or sooner in the light of organisational, legislative or other changes.

## 12. Appendices

See following pages.

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## Appendix 1 – List of Exemptions

### Exempt information under Part II of the Freedom of Information Act 2000.

With the exception of section 21, (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 exemptions under the Act are:

<b><i>Absolute Exemptions where the public interest does not apply:</i></b>	<b>Section</b>
Information accessible to applicant by another means (except in relation to historical records held in public records offices)	21
Information supplied by, or relating to, bodies dealing with security matters (except in relation to historical records held in public records offices) A certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified.	23
Information relating to court records	32
Parliamentary Privilege	34
Prejudice to the effective conduct of public affairs, in so far as it relates to information held by the House of Commons or the House of Lords	36
Personal Information (where the applicant is the subject of the information. The applicant already has the right of 'subject access' under the Data Protection Act 2018; where information concerns a third party and disclosure may breach one of the Data Protection Principles)	40
Information provided in confidence	41
Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court	44
<b><i>Qualified Exemptions where the public interest test applies:</i></b>	
Information intended for future publication	22
National Security	24
Defence	26
International relations	27
Relations within the United Kingdom	28
The Economy	29
Investigations and proceedings conducted by public authorities	30
Law enforcement	31
Audit Functions	33
Formulation of Government Policy	35
Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)	36
Communications with Her Majesty/Honours	37
Health & Safety	38
Environmental Information as this can be accessed through the Environmental Information Regulations	39
Personal Information (where the applicant is not the subject of the information)	40
Legal Professional Privilege	42
Commercial Interests	43
Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court	44

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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)

### The RESPONSE Process – the 8 “R”s

- 1. Read:** Read correspondence and decide whether it constitutes a request or not and if you actually hold the information, what it relates to and whether or not it needs to be transferred to another party. If so, don't delay.
- 2. Record:** Maintain a formal system of logging requests and record all key actions. You will need an accurate and complete audit trail for each request, particularly if a request for an internal review is subsequently received.
- 3. Retrieve:** You will need to retrieve and consider all the relevant information.
- 4. Refer to others:** Where necessary, consult with others both within the Trust and externally. Remember to seek views on the disclosure of information and the balance of public interest.
- 5. Redact:** As the legislation refers to the release of information rather than documents it may be appropriate to release just some of the information within a document. Any potentially sensitive information not relevant to the request or for which disclosure was not authorised should be removed or “redacted” in the copy sent to the applicant. This will involve going through a document line by line.
- 6. Review:** Once the response to a request has been prepared, this will need to be reviewed by the Trust Board Secretary and/or a Director who will have the necessary authority to release or refuse to disclose information. The use of exemptions to withhold information needs to be approved by the Trust Board Secretary/Director/Chief executive.
- 7. Reply:** Once the necessary authority has been secured, the reply can be sent to the applicant. Replies must be in writing.
- 8. Release to Publication Scheme:** Consider whether or not the information provided is likely to be of general public interest. If so, consider whether it should be included in the Trust's Publication Scheme or in simultaneous releases pages on the website.

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## Appendix 2 – Requests for information: Key Dos and Don'ts

- ✓ **Do** respond quickly – replies must be sent promptly but in any event not later than 20 working days from the date of receipt by the Trust.
- ✓ **Do** remember that a request for personal data about the applicant is a Subject Access Request and must be answered in accordance with the Data Protection Act 2018.
- ✓ **Do** record receipt of the request in a formal recording system and ensure the progress of the request is tracked to completion.
- ✓ **Do** inform the applicant as soon as possible if the need to assess the balance of public interest means that a substantive reply is likely to take longer than 20 working days. Specify a reasonable date and ensure that it is met.
- ✓ **Do** give a clear explanation of any exemptions claimed for information withheld and the reasons why the balance of public interest is against disclosure.
- ✓ **Do** maintain an audit trail of information sources consulted, any redactions made and a copy of what is finally sent to the applicant.
- ✓ **Do** follow the rules – the Trust will back up any actions provided that all requests have complied with current policy and guidelines.
- ✓ **Do** consider the readability of the your reply; use a sensible text font and size, avoid abbreviations or jargon, draft in plain English and remember you cannot assume that applicants will have background knowledge of the subject matter.
- ✓ **Do** think about the wider implications of disclosing or withholding information. Is there a need to alert anyone else within the Trust?
- ✓ **Do** consider the implications of disclosing information which is either held on behalf or may affect other Trusts. In such cases, it is good practice to consult those who may be affected.
- ✓ **Do** keep a record of what was released, including correspondence which provides an audit trail of the decision-making process and full and redacted versions of any information disclosed.
- ✗ **Don't** withhold information without clear justification under one or more of the exemptions allowed by the legislation. Unjustified withholding will only undermine the reputation of the Trust in the eyes of the public and the Information Commissioner.
- ✗ **Don't** wilfully destroy or alter any original documents that are the subject of a request. Under the legislation this will be a criminal offence for the individual official representative (not the Trust), carrying a potential fine of up to £5,000. Any document for destruction must be handled in accordance with the Trust's record management arrangements.

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### Appendix 3 – Schedule of charges

<b>Schedule of Charges</b>	
Dealing with Freedom of Information Act requests and other related information	
Dealing with a Freedom of Information Act Request	First 18 hours of time are free, thereafter time spent is £25.00 per hour
Sending documents by email	Free
Sending documents on CD	£0.20 + VAT per CD
Sending documents on DVD	£0.83 + VAT per DVD
Commercial publications	Cover price + post and packaging at cost
Postage	At costs
Photocopying and printing	£0.06 per A4 page £0.08 per A3 page
Scanning of documents	At cost
Faxing of documents	Faxing is not available for FOI responses

**NB:** All appropriate fees must be paid in full and cleared before any information will be released to the requestor.