

# Freedom of Information Act and the Environmental Information Regulations Policy

*Please be advised that the Trust discourages the retention of hard copies of policies and procedures and can only guarantee that the policy on the Trust Intranet is the most up to date version*

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<b>Approving Group:</b>	<b>Information Governance Group</b>
<b>Approved by them in the minutes of:</b>	<b>5<sup>th</sup> September 2017</b>
<b>Distribution to:</b>	<b>All Trust staff via the Trust Intranet</b>

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<b>Risk Rating</b>			
Who will be affected by this procedure?	Trust Employees		
Is there an existing risk assessment related to this procedure?	No		
If <b>No</b> is one required?	No	Yes – Date completed	
If <b>Yes</b> does it require updating?	Yes / No	Yes – Date completed	
	<b>A Consequence (1-5)</b>	<b>B Likelihood of Occurrence (1-5)</b>	<b>C Risk rating (A x B = C)</b>
Raw Risk Rating (no control measures in place)	4	3	12
Final Risk Rating (control measures in place)	4	1	4
Name: Information Governance and Information Security Manager		Date: July 2017	

## 1 Introduction / Purpose

The Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (the Regulations) are part of the Government's commitment to greater openness in the public sector, a commitment supported by Mid Cheshire Hospital NHS Foundation Trust (the Trust).

Both the Act and the Regulations came into full effect on 01 January 2005 and legislate for a general right of access (subject to exemptions/exceptions) to recorded information held by public authorities. By establishing these legal rights of members of the public, it will enable them to question the decisions of public authorities more closely and ensure that the services we provide are delivered efficiently and effectively.

All non-personal information may be accessible under the legislation, including both electronic and paper versions. The legislation is retrospective and includes information held prior to the 01 January 2005.

The policy will provide a framework within which the Trust can ensure compliance with the requirements of the Act and the Regulations. The Trust understands individuals have a right to privacy and confidentiality, both the Act and the Regulations clearly explain and define the interfaces between themselves and the Data Protection Act 1998 (DPA). This policy does not overturn the common law duty of confidence or statutory provisions (including the Human Rights Act 1998 and the DPA) that prevent disclosure of personal identifiable information. The right to release personal information is covered by the right of Subject Access under DPA.

This policy applies to all employees of the Trust, including permanent, temporary and contract staff, who come into contact with information.

This Policy aims to:

- a. Ensure that all information held by the Trust is processed in accordance with the requirements of the Act and the Regulations.
- b. Meet the requirements of the Information Governance Toolkit.
- c. Provide guidance on the correct way to handle requests for information.

This policy is a guide as to how the Trust will manage its obligations under the Act and the Regulations; appropriate precedent will be given to the legislation itself and any associated case law.

It is the policy of the Trust that no one will be discriminated against on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. The Trust will provide interpretation services or documentation in other mediums as requested and necessary to ensure natural justice and equality of access.

## 2 General Document Principles

### 2.1 Business Requests

Not all requests for information should be handled formally under information rights legislation. Requests by individuals acting within their official capacity within the NHS should not normally be treated under access to information legislation. An example of a business request could include an employee at one NHS Trust asking for a copy of another NHS Trust's policy. Treating such a request under the Freedom of Information Act would not be an efficient use of NHS resources; instead staff should consider whether it is appropriate to share with colleagues and other external parties. Where appropriate staff should seek approval from their line manager and advice from other relevant departments such as the Communications Team and the Information Governance Team (where personal data or information confidential to the Trust is to be shared).

Any other requests should be forwarded to the Information Governance Team for consideration as to whether any information rights legislation applies. Where a request is deemed to fall outside of information rights legislation, it will be considered to be a business request and the department to which the request is made is responsible for ensuring that it is appropriate to release the requested information.

### 2.2 Proactive Dissemination of Information

In order to comply with the proactive dissemination requirements of the Act and the Regulations; the Trust has adopted the model Publication Scheme developed by the Information Commissioner. This is permissible under section 20 of the Act and ensures compliance with section 19 of the Act. This publication scheme is structured around the following classes of Information:

- Who we are and what we do
- What we spend and how we spend it
- What are our priorities and how are we doing
- How we make decisions
- Our policies and procedures
- List and registers
- The services we offer

Applicants are made aware via the Trust's Publication Scheme that responses to requests may be made available on website as part of our disclosure log; all personal information about the applicant will be removed prior to publication. Requests where information has not been disclosed due to exemptions being applied will not be placed onto the disclosure log.

### 2.3 General Rights of Access

The Trust will ensure that it complies with the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.

As stipulated in the Freedom of Information Act 2000, it is the public body's duty to assist when a member of the public is seeking to access information it may hold. The Trust will endeavour to provide advice and assistance to the public in order to ensure they receive the information they are seeking.

## 2.4 The Freedom of Information Act 2000

Section 1 of the Act gives a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions contained within the Act.

Any person making a request for information to the Trust is entitled:

- a. to be informed in writing whether the Trust holds the information of the description specified in the request, and
- b. if the Trust does hold the information to have that information communicated to them in format they desire.

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, address for correspondence, and describing the information requested. At times requests may be made directly to specific divisions or departments, in these cases, the request should be immediately transferred to the Information Governance Department to avoid any unnecessary delays.

## 2.5 The Environmental Information Regulations 2004

The Regulations give a general right of access to environmental information held by the Trust, subject to certain conditions and exceptions contained in the Act.

Request can be made under the EIR either verbally or in writing. Where a request is made verbally, the Information Governance Team will write to the applicant asking them to confirm the scope of their request.

Upon receipt of a valid request under the Regulations the Trust shall respond to requests for information in the simplest, most cost effective way. This will usually be by email in the standard form of a letter.

## 2.6 Charges and Fees

The Act and the Regulations are subject to different fee's Regulations, under the Regulations the Trust is able to make reasonable charges for making information available, whereas under the Act no charges apply to information which can be provided within the appropriate limit of 18 hours except for costs incurred in contacting the requester to inform them the information is held, and communicating the information to the requester. As an open and transparent organisation the Trust will not generally charge for the provision of information, in particular:

No charge will be made for information provided in the form of:

- Downloads or information taken from the Trusts website, although any charges for Internet Service provider and personal printing costs would have to be met by the individual.
- Emails
- Trust Issued Leaflets and brochures

However, charges *may* be incurred for the following:

- Information provided on CD or similar medium
- Multiple copies of documents
- Archived copies of documents that are no longer available on the Trust website

Charges for information will be reviewed regularly; and will be made in line with the legislation and national guidance. In all cases where the Trust chooses to charge for information, a fees notice will be issued to the applicant. Applicants will be required to pay any fees within a period of three months from the day on which the fees notice is given to them.

## 2.7 Time Limits for Compliance with Requests

As required by the Act, the Trust has established systems and procedures to ensure Requests for information are responded to within **20 working days**. There are circumstances where it is permissible for the Trust to take longer than 20 days to respond; such as when clarification is sought from the applicant or where an exemption merits the consideration of the public interest test. Where this is the case the Trust will notify the applicant as soon as possible.

If the information requested by the applicant incurs a charge or a fee; charges will be advised in advance and payment will be required before the information is released.

## 2.8 Exemptions and Exceptions

Where information requested is exempt from disclosure under the Freedom of Information Act 2000, the trust will issue a refusal notice, explaining the reason for refusing disclosure along with the associated exemption.

## 2.9 Exemptions under the Act

There are two types of class exemption:

**Absolute**, these do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure; these exemptions are as follows:

**Section 21** – information accessible to applicant by other means

**Section 23** – information supplied by, or relating to, bodies dealing with security matters

**Section 32** – court records

**Section 34** – parliamentary privilege

**Section 36** – prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)

**Section 40** – personal information (where disclosure may contravene the Data Protection Act 1998)

**Section 41** – information provided in confidence

**Section 44** – prohibitions on disclosure

**Qualified**, these exemptions require the public body to decide whether it is in the balance of public interest to not disclose the information; these exemptions are as follows:

**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

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 the Trust considers it is reasonable to withhold.

## 2.10 Exceptions under the Regulations

- Reg. 12 (4) (a)** Does not hold that information when an applicant's request is received
- Reg. 12 (4) (b)** Is manifestly unreasonable
- Reg. 12 (4) (c)** Is formulated in too general a manner
- Reg. 12 (4) (d)** Relates to unfinished documents or incomplete data
- Reg. 12 (4) (e)** Would involve disclosure of internal communications

If disclosure would adversely affect:

- Reg.12 (5) (a)** International relations, defence, national security or public safety
- Reg.12 (5) (b)** Justice, fair trial, conduct of a criminal or disciplinary inquiry
- Reg.12 (5) (c)** Intellectual property rights
- Reg.12 (5) (d)** Confidentiality of public authority proceedings when covered by law
- Reg.12 (5) (e)** Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest
- Reg.12 (5) (f)** Interests of the person who provided the information
- Reg.12 (5) (g)** Protection of the environment
- Reg.13** Personal data

All exceptions under the Regulations are subject to the public interest test and if the information requested is information relating to emissions, exceptions 12(5)(d) to (g) cannot be used.

## 2.11 Refusal of a Request and Right to Appeal

The Trust will keep a record of all relevant correspondence regarding FOI requests including refusal notices, for the period of time as required by the Information Governance Alliance Records Management Code of Practice for Health and Social Care 2016.

If a request for information has been refused or the applicant is not satisfied with the information disclosed to them, they have the right to appeal. In the first instance, the applicant should write to the Associate Director of Integrated Governance who will be responsible for conducting an internal review. This will be done with a panel chosen by the Head of Integrated Governance. In complex cases the complaint may be escalated to the Trust's Caldicott Guardian who will review the decision.

The Trust aims to complete all internal reviews within 20 working days of receiving the complaint from the applicant.

If the applicant remains dissatisfied with the outcome, they have the right to refer the decision to the Information Commissioner.



## 2.12 Transfers of Requests

A request can only be transferred where the Trust receives a request for information which it does not hold, but which is held by another public authority.

The Trust will also advise the applicant that it does not hold part of the some or all the requested information. 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 the applicant with the contact details for that authority.

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. 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;

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.

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Trust is unable either to advise the applicant which 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.

## 2.15 Third Parties

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 may be deemed within the commercial interest of the third party in question.

Where appropriate prior to disclosure of information the consent of a third party will be sought by the Trust. However, if a third party does not respond or they refuse to consent, this does not automatically mean information will be withheld. The final decision as to whether the information should be disclosed will be in line with the Act and the Regulations.

## 2.16 Public Sector Contracts

When entering into contracts the Trust will ensure that all third parties are aware the Trust is subject to the Act and regulations and is therefore obliged by law to disclose information held unless an exemption applies, regardless of the terms of any contract.

When entering into contracts with non-public 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 for disclosure. As recommended by the Lord Chancellor's Department, the Trust should 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. There must be awareness that any restrictions on disclosure could potentially be overridden by obligations under the Act. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

The Trust will not agree to hold '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 of the Act only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, other than under the Act would constitute a breach of confidence.

The Trust must disclose information pursuant to the Act and the Regulations, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor, information which that organisation has provided to the contractor which would clearly be exempt from disclosure under the Act or the Regulations, 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.

## 2.17 Accepting Information in Confidence from Third Parties

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 organisational functions and it would not otherwise be provided.

The Trust will not agree to hold information received from third parties 'in confidence' which is not confidential in nature. Again, any acceptance of confidentiality provisions must be justifiable to the Information Commissioner.

## 2.18 Redaction

'Redaction is the separation of disclosable and non-disclosable information by blocking out individual words, sentences or paragraphs or the removal of whole pages or sections prior to the release of the document.' (The National Archives)

On occasion, rather than refusing a whole document, redaction may be used by the Trust to block out non-disclosable information.

The Trust is of the view it is usually considered appropriate to release names of staff with public facing roles or roles banded 7 and above; this is due to the nature of their role and/or seniority. However, the decision to redact is made on a case by case basis considered at the time of responding to the request.

### 3 Definitions

#### Information Held

The Act and the Regulations covers all recorded information held by the Trust. It is not limited to official documents and it covers for example drafts, staff emails, notes, recordings of telephone conversations and CCTV recordings. It also covers information received by the Trust. The Act and Regulations covers information that is held on behalf of the Trust even if it is not held on Trust premises. For example medical records kept in offsite storage.

#### Environmental Information

Environmental information covers information on the state of the environment, such as:

- Air, water, soil, land, flora and fauna, diversity, genetically modified organisms.
- Information on emissions and discharges, noise, energy, radiation, waste and other such substances.
- Measures and activities such as policies, plans and agreements.
- Reports, cost benefit and economic analyses.
- The state of human health and safety, contamination of the food chain.
- Cultural sites and built structures (as they may be affected by environmental factors).

### 4 Associated Documents

#### [Confidentiality and Data Protection Policy](#)

### 5 Duties

This policy applies to all employees, permanent and temporary/bank staff, consultants and secondees working within the Trust. Everyone employed by the Trust has responsibility for handling requests for information appropriately.

In order to support the Trust in ensuring compliance with its statutory obligations all Trust staff must:

- a. Forward any requests received immediately to the Information Governance Team
- b. Provide all information requested within the specified deadlines provided.

Staff should be aware that under section 77 of the Act it is an offence to alter, deface, block, erase, destroy or conceal any record held by the Trust, with the intention of preventing the disclosure, and can be personally liable and fined up to £5000.

#### 5.1 Duties within the Organisation

The Information Governance Department is responsible for generating and authorising responses to requests. Under no circumstances may staff respond to requests for information made under the Freedom of Information Act 2000 directly without seeking advice or approval from the Information Governance Team.

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 that staff are aware of any changes to this policy.

**6 Consultation and Communication with Stakeholders**

Information Governance Group  
[Governance.policies@mcht.nhs.uk](mailto:Governance.policies@mcht.nhs.uk)

**7 Implementation**

This policy is already implemented across the Trust, this revised version will be implemented through the Information Governance Departments existing protocols and work plans.

**8 Education and Training**

Awareness of this document will be made via the Information Governance Departments Training; this includes hand-outs, inductions and regular updates.

**9 Monitoring and Review**

The table below must be completed in the document to demonstrate effective monitoring of all documents.

Standard/process /issue required to be monitored	Monitoring and Audit			
	Process for monitoring e.g. audit	Responsible individual /group	Frequency of monitoring	Responsible Group
Compliance with the Act and the Regulations.	Information Governance Group Report  Integrated Governance Quarterly Report  Divisional Report	Information Governance Officer / Manager	Information Governance Group	Monthly and Quarterly

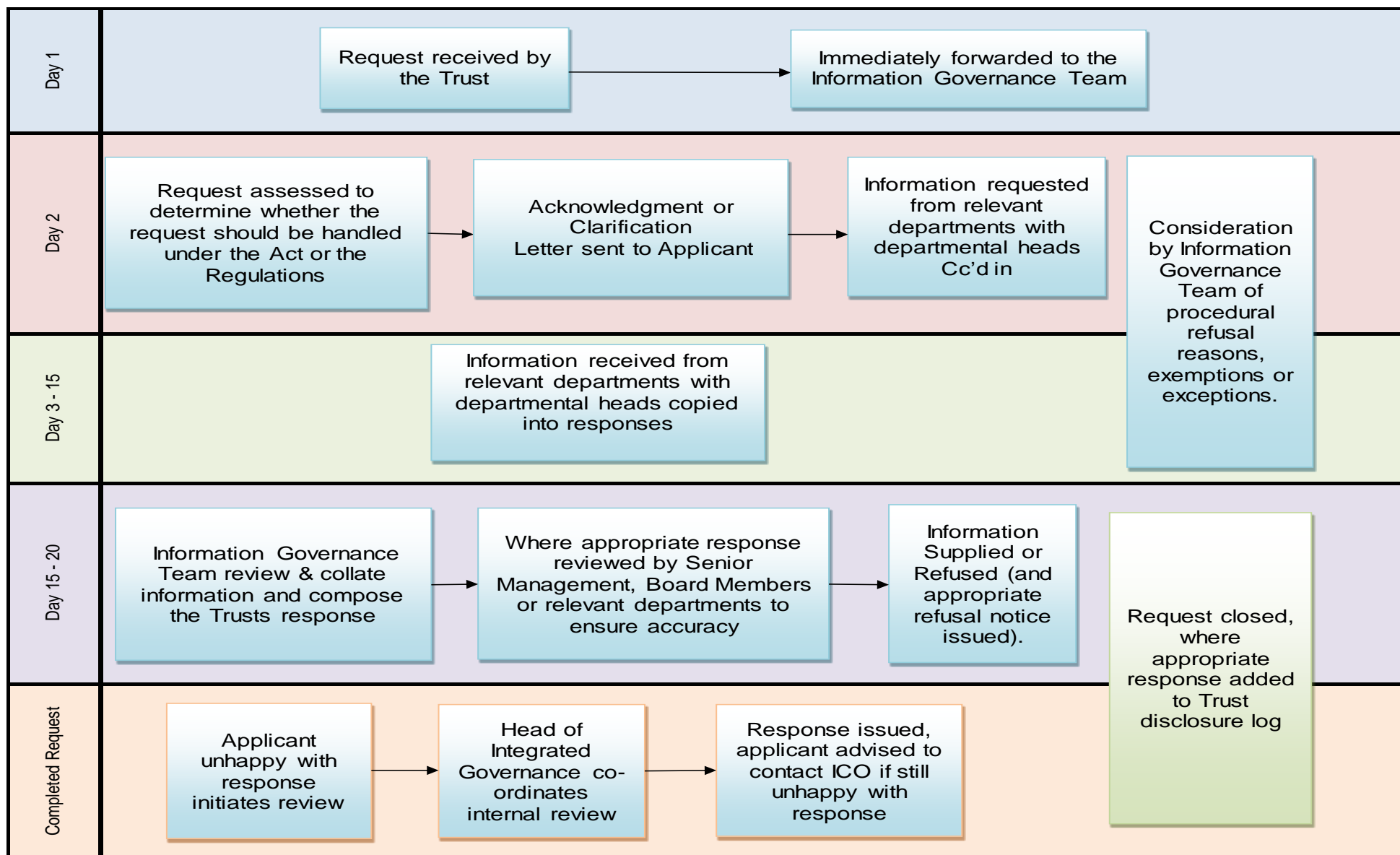
**10 References / Bibliography**

- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- East Cheshire NHS Trust FOI & EIR Policy
- Information Governance Alliance Records Management Code of Practice for Health and Social Care
- Data Protection Act 1998
- Walsall Teaching Primary Care Trust, FOI Act 200 Policy
- East Midlands Ambulance Service Trust, FOI Policy and Procedure
- The National Archives

**11 Appendices**

- 1 Request for Information Process**
- A Version Control Document**
- B Communication / Training plan**
- C Equality Impact and Assessment Tool**

**Appendix 1- Request for Information Process**



**APPENDIX A - Control Sheet**

This must be completed and form part of the document appendices each time the document is updated and approved.

<b>VERSION CONTROL SHEET</b>			
<b>Date dd/mm/yy</b>	<b>Version</b>	<b>Author</b>	<b>Reason for changes</b>
18/01/10	1	Information Governance Manager	Combined 3 policies into 1
24/08/11	2	Information Governance Manager	Addition of processes in relation to the Environmental Information Regulations 2004
April 2012	2.1	Information Governance Manager	Addition of section on how to handle business requests
Oct 2013	3	Information Governance Manager	Policy put into the new Trust template
Dec 2014	3.1	Information Governance Manager	Addition of Section 2.17 Redaction
May 2016	4.0	Information Governance Manager	Changes to processes.
August 2017	5.0	Information Governance and IT Security Manager	Minor updates: changes to committee/ job titles and reference documents.

**APPENDIX B - Training needs analysis**

<b>Communication/Training Plan</b> (for all new / reviewed documents)	
<b>Goal/purpose of the communication/training plan</b>	Notify all staff our obligations under the Freedom of Information Act
<b>Target groups for the communication/training plan</b>	All Staff
<b>Target numbers</b>	All
<b>Methodology – how will the communication or training be carried out?</b>	Included in Information Governance Training, Announcement on Intranet & by Email to Risk and Governance Managers
<b>Communication/training delivery</b>	
<b>Funding</b>	
<b>Measurement of success. Learning outcomes and/or objectives</b>	Raised awareness of Freedom of Information Act, more efficient request handling
<b>Review effectiveness – learning outputs</b>	
<b>Issue date of Document</b>	September 2017
<b>Start and completion date of communication/training plan</b>	Document approval date
<b>Support from Learning &amp; Development Services</b>	n/a

For assistance in completing the Communication / Training Plan please contact the MCHT Learning and Development Services



**APPENDIX C - Form 1**

**Equality Impact Screening Assessment**

Please read the Guide to Equality Impact Assessment before completing this form. To be completed and form part of the policy or other document appendices when submitted to [governance-policies@mcht.nhs.uk](mailto:governance-policies@mcht.nhs.uk) for consideration and approval or to be completed and form part of the appendices for proposals/business cases to amend, introduce or discontinue services.

**POLICY/DOCUMENT/SERVICE...Freedom of Information Act and the EIR Policy...**

		Yes/ No	Justification and Data Sources
<b>A</b>	<b>Does the document, proposal or service affect one group less or more favourably than another on the basis of:</b>		
1	Race, ethnic origins (including gypsies and travellers) or nationality	<b>Yes</b>	Alternative Language versions of the Policy / Procedure, provisions for requests from abroad or in other languages
2	Sex	<b>No</b>	No issues identified
3	Transgender	<b>No</b>	No issues identified
4	Pregnancy or maternity	<b>No</b>	No issues identified
5	Marriage or civil partnership	<b>No</b>	No issues identified
6	Sexual orientation including lesbian, gay and bisexual people	<b>No</b>	No issues identified
7	Religion or belief	<b>No</b>	No issues identified
8	Age	<b>No</b>	No issues identified
9	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	<b>Yes</b>	Alternative formats, i.e. Braille, audio, large print etc
10	Economic/social background	<b>Yes</b>	Provision for assistance with fees
<b>B</b>	<b>Human Rights – are there any issues which may affect human rights</b>		
1	Right to Life		No
2	Freedom from Degrading Treatment		No
3	Right to Privacy or Family Life		No
4	Other Human Rights (see guidance note)		No

**NOTES**

If you have identified a potential discriminatory impact of this document, proposal or service, please complete form 2 or 3 as appropriate.

**Date:** August 2017

**Name:** Cora Suckley

**Signature:**

**Job Title:** Information Governance & It Security Manager