



# FREEDOM OF INFORMATION POLICY AND PROCEDURES

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## Version Tracking

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10.2	01/02/2021	Due to the second wave of the Coronavirus pandemic and continuing exceptional circumstances, the Trust Board have agreed that all policies which are currently within review date will have their review date further extended by six months	-
10.1	25/03/2020	Due to the current Coronavirus pandemic the Trust Board have agreed that all policies which are currently within review date will have their review date extended by six months from the review date stated on the currently published policy	-
10	05/08/2019	Definitions added – public interest test, environmental regulation, confirm or deny, repeat requests, vexatious requests, minor word changes, disclosure of information (redaction of third party information)	E Armour/C Froggatt

## CONTENTS

QUICK REFERENCE GUIDE .....	3
1. INTRODUCTION.....	4
2. PURPOSE .....	4
3. SCOPE .....	4
4. DEFINITIONS .....	4
5. DUTIES AND RESPONSIBILITIES .....	7
6. PROCESS .....	8
6.1 Legislation.....	8
6.2 Publication Scheme.....	9
6.3 General Rights of Access .....	9
6.4 Conditions and Exemptions.....	10
6.5 Charges and Fees.....	11
6.6 Time Limits for Compliance with Requests .....	11
6.7 Internal Timescales and Validation .....	11
6.8 Creating 'New Information' .....	12
6.9 Disclosure of Information about Staff.....	12
6.10 Means by which Information will be conveyed .....	13
6.11 Refusal of Requests .....	13
6.12 Duty to Provide Advice and Assistance .....	14
6.13 Transferring Requests for Information .....	14
6.14 Consultation with Third Parties .....	15
6.15 Duties and Public Sector Contracts .....	16
6.16 Accepting Information in Confidence from Third Parties .....	16
6.17 Records Management .....	16
6.18 Round Robin Requests .....	17
6.19 Appeals and Complaints.....	17
7. TRAINING REQUIREMENTS .....	17
8. REFERENCES AND ASSOCIATED DOCUMENTATION .....	17
9. EQUALITY IMPACT STATEMENT .....	18
10. MONITORING COMPLIANCE WITH PROCEDURAL DOCUMENTS .....	19
APPENDIX 1: Freedom of Information Process .....	20
APPENDIX 2: FOI request process.....	20
EQUALITY IMPACT SCREENING TOOL .....	<b>Error! Bookmark not defined.</b>

## QUICK REFERENCE GUIDE

For quick reference the guide below is a summary of actions required. This does not negate the need for the document author and others involved in the process to be aware of and follow the detail of this policy.

1. The main feature of the Freedom of Information Act (FOIA) is to provide the public with access to recorded information held by public authorities, subject to certain exemptions. The NHS is a public authority.
2. Recorded information can take many forms including agendas, minutes of meetings, personal notebooks, e-mails, registers, lists and CCTV footage. This list is not exhaustive.
3. Portsmouth Hospitals NHS Trust (the Trust) wants to create a climate of openness and transparency with all stakeholders and improved access to information about the Trust will facilitate, encourage and promote the development of such an environment
4. The Trust's Publication Scheme will be a proactive means of providing information, detailing the information that the Trust publishes and intends to publish in the future. It will also detail the format in which the information is available The Publication Scheme will be available via the Trust's website.
5. A request for information must be received in writing, stating the name of the applicant and an address for correspondence, and describe the information requested – this may include requests received by e-mail
6. The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed 18 hours (based on the total staff time involved in identification, retrieval and collation of information)
7. The Trust has to provide the information requested within twenty working days of a request.
8. The Trust may be obliged to disclose third party information e.g. partner organisations in response to a request, although the Trust may seek the views of the affected party
9. The release of third party information may be particularly relevant to contracts that the Trust enters in to. Unless an exemption is applicable in relation to particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract

## 1. INTRODUCTION

The Freedom of Information Act (FOIA) 2000 is part of the Government's commitment to greater openness and transparency in the public sector, a commitment supported by Portsmouth Hospitals NHS Trust. The Freedom of Information Act 2000 will further this aim by helping to transform the culture of the public sector. It will enable members of the public to question the decisions of public authorities more closely and ensure that the services provided are efficiently and properly delivered.

The main features of the FOIA:

- A general right of access to recorded information held by public authorities, subject to certain conditions and exemptions. Recorded information can take many forms including agendas, minutes of meetings, personal notebooks, e-mails, registers, lists and CCTV footage. This list is not exhaustive.
- Members of the public can request current information as well as information produced many years ago as the Act is fully retrospective;
- The Trust has a duty under the Act (unless an absolute exemption applies) to inform the applicant whether they hold the information requested and communicate the information to the applicant within 20 working days
- Some exemptions require a 'public interest test' to evaluate whether the public interest in maintaining the exemption in question outweighs the public interest in disclosure
- A duty on every public authority to adopt and maintain a Publication Scheme;
- The formation of the Information Commissioner's Office with wide powers to enforce the rights created by the Act and to promote good practice, and an Information Tribunal.
- A duty on the Lord Chancellor to develop Codes of Practice for guidance on specific issues

## 2. PURPOSE

This Policy is a statement of what the Trust intends to do to ensure compliance with the FOIA. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures.

## 3. SCOPE

This Policy will provide a framework within which the Trust will ensure compliance with the requirements of the FOIA and will underpin any operational procedures and activities connected with the implementation of the FOIA.

This policy is intended to cover all records created in the course of the business of the Trust i.e. corporate records which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes e-mails and other electronic records.

This policy should be read in conjunction with the Trust's Non Clinical Records Management policy, The Records Retention, Disposal and Destruction policy and the Confidentiality and Data Protection Policy

*'In the event of an infection outbreak, flu pandemic or major incident, the Trust recognises that it may not be possible to adhere to all aspects of this document. In such circumstances, staff should take advice from their manager and all possible action must be taken to maintain ongoing patient and staff safety'*

## 4. DEFINITIONS

### **Absolute Exemption**

Applied to information that does not have to be released to the applicant either through a Publication Scheme or through the 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.

### **Applicant**

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

### **Duty to Confirm or Deny**

Any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

### **Fees Notice**

Based on FOIA and Data Protection Act 2018 we will provide information free of charge, wherever possible, when it is requested.

Under the FOIA we are entitled either to charge for or decline requests for information that would cost us more than a set amount, referred to as the “appropriate limit”, to deal with the request.

### **Fees Regulations**

Whilst this policy will apply to all requesters, we will not charge individuals either a fee for dealing with requests or for our costs of preparing a response to other information requests, nor will we charge individuals for disbursement costs which we incur in handling other information requests, provided these costs are reasonable and not excessive.

National regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

### **Vexatious Requests**

Under section 14(1) of the Act, Portsmouth Hospitals NHS Trust do not have to comply with vexatious requests this allows the Trust to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, strain on resources or distress.

Section 14(1) can only be applied to the request itself, and not the individual who submits it. Portsmouth Hospitals NHS Trust cannot, therefore, refuse a request on the ground that the requester is vexatious. The Trust cannot simply refuse a new request solely on the basis that it has classified previous request from the same individual as vexatious. If the Trust is concerned about any possible prejudice which might arise from disclosure, then it will need to be considered whether an exemption of the Act can be applied.

### **Repeat Requests**

Under Section 13(2) of the Act, Portsmouth Hospitals NHS Trust does not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. A repeat request will be identical if both its scope and its wording precisely matches that of a previous request.

Portsmouth Hospitals NHS Trust may only apply Section 13(2) where it has either:

- Previously provided the same requester with the information in response to an earlier FOIA request; or
- Previously confirmed the information is not held in response to an earlier FOIA request from the same requester.

If neither of these conditions applies then Portsmouth Hospitals NHS Trust must deal with the request in the normal manner.

### **Public interest test**

The public interest test can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. There is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision making by public authorities, in upholding standards of integrity, in ensuring justice and fair treatment for all, in securing the best use of public resources and in ensuring fair commercial competition in a mixed economy.

The public interest is not necessarily the same as what interests the public. The fact that a topic is discussed in the media does not automatically mean that there is a public interest in disclosing the information that has been requested.

FOIA section 2(2) refers to the public interest; furthermore, disclosures of information under FOIA are in effect to the world at large and not merely to the individual requester. The requesters private interest are not in themselves the same as the public interest and what may serve those private interests does not necessarily serve a wider public interest.

When carrying out the public interest test Portsmouth Hospitals NHS Trust should consider the circumstance at the time at which it deals with the request. If the Trust is carrying out an internal review then it may consider the circumstances up to the time the review is completed.

Portsmouth Hospitals NHS Trust should consider the argument in favour of disclosing the information and those in favour or maintaining the exemption. The Trust should try to do this objectively, recognising that there are always arguments to be made on both sides.

### **General Right of Access**

To information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. The grounds relate to the request itself and the circumstances in which an authority is / is not obliged to comply with it.

Portsmouth Hospitals NHS Trust is required to inform a requester whether it holds the information specified in the request. This is known as “the duty to confirm or deny”. The Trust will be able to comply with its duty to confirm or deny under section 1(1) (a) to respond to a request by at least informing the requester whether or not it holds the information.

### **Duty to confirm or deny**

The Trust will consider whether information should be provided under section 1(1) (b), or whether it is subject to an exemption. In some instances when complying with the duty to confirm or deny under section 1(1) (a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the Act allows Portsmouth Hospitals NHS Trust to respond by refusing to confirm or deny whether we hold the requested information.

### **Information Commissioner**

The Information Commissioner enforces and oversees the Data Protection Act 2018 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament. The Information Commissioner’s Office (ICO) is responsible for providing information and guidance, investigating complaints and issuing sanctions to public authorities who fail to follow the Act.

## **Environmental Information Regulations**

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The regulations do this in two ways:

- Portsmouth Hospitals NHS Trust must make environmental information available proactively
- Members of the public are entitled to request environmental information from Portsmouth Hospitals NHS Trust

The regulations cover any recorded information held by public authorities in England, Wales and Northern Island.

Public authorities include government departments, local authorities, the NHS, police forces and universities. The Regulations also cover some other bodies that do public work that affects the environment.

The Regulations apply only to the environmental information held by public authorities. The Freedom of Information Act gives people access to most other types of information held by public authorities.

### **Public Authority**

The Act is intended to have wide application across the public sector at national, regional, and local level. The NHS is designated by the Act as a public authority.

### **Publication Scheme**

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

### **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.

### **Working Days**

Any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday under the Banking and Financial Dealings Act 1971 (This includes England, Wales, Scotland and Northern Ireland bank holidays).

## **5. DUTIES AND RESPONSIBILITIES**

All members of staff 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 that members of staff are updated with regard to any changes in this Policy.

**Chief Executive (Accountable Officer)** is ultimately responsible for the Trust's compliance with Freedom of Information Act and associated legislation regarding the disclosure of information about the Trust.

**Director of Governance and Risk / Senior Information Risk Officer (SIRO)** acts as an advocate for information risk on the Board and in internal discussions and provides written advice to the Accountable Officer regarding the "information risk" elements of their annual Statement of Internal Control (SIC). The SIRO is also responsible for final scrutiny of information released under FOI before it leaves the Trust.

**Head of Information Governance and Data Protection Officer** with the support of the SIRO and local IG Leads, where appropriate, are responsible for:

- Ensuring organisational compliance with the FOI Act
- Maintaining the currency of this policy
- Promoting FOI training and awareness throughout the organisation
- Ensuring the general public has access to information about their rights under the FOI Act
- Assisting with investigations into complaints and appeals

**Data Protection and Data Quality Committee** is responsible for:

- Reviewing progress on the Trust's compliance with the Act and with relevant regulatory requirements (e.g. Data Security and Protection Toolkit Reporting FOI issues to the Data Protection and Data Quality Committee)
- Taking decisions on contentious FOI matters e.g. considering the Public Interest test where appropriate

**Directors, Divisional and Care Group Managers and Department Heads** are responsible for:

Ensuring that all corporate information, for example contracts and commercially sensitive information, is 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) receive adequate training to ensure they are able to adhere to policies, procedures and guidance.

**All Staff Members** are responsible for:

- The creation of their own records, including emails, which may be subject to and disclosed in response to an FOI request, and for adhering to the Trust's Records Management Strategy and policies
- Ensuring that all information is provided to the FOI Team by the required timescale in response to a request for information
- Ensuring that any received requests for information are forwarded to the FOI Team within one working day

## 6. PROCESS

### 6.1 Legislation

The Policy supports the principle that openness and transparency should be the norm in public life. The Trust wants to create a climate of openness and dialogue with all stakeholders and improve access to information about the Trust and will facilitate, encourage and promote the development of such an environment.

Requests for information relating to the environment fall under the Environmental Information Regulations (EIR) 2004. Such requests include information relating to air, water, land, energy, noise, flora and fauna, soil, waste and omissions. The main differences with accessing information under EIR are that the request can be made in any format, written or verbal and all exemptions are subject to the public interest test.

All information requests under FOIA and EIR will be processed in accordance with this policy.

The Re-use of Public Sector Information (PSI) Regulations 2005 recognises that public sector information is a valuable information resource that could be utilised by the private sector to develop added products and services. A request for access to information held by the Trust may be accompanied by a request to re-use the information for commercial purposes (this does not include the sharing of documents between public service bodies in the normal course of their business).

If an application for re-use of information provided under FOI is made to the Trust, under Regulation 16 of the PSI Regulations, the Trust has a responsibility to specify any:

- Applicable conditions for re-use, and
- Standard charges for re-use



The Trust governs commercial re-use of information disclosed under FOI by using the Open Government Licence, outlined in FOI response letters:

*The Trust provides information under the Freedom of Information Act in line with the template [Open Government Licence for public sector information](#). Should you wish to re-use any information in line with this Licence then you are not required to take any further action.*

*The Open Government Licence allows you to re-use information freely and flexibly, with only a few conditions. If you wish to re-use information outside of the Licence terms then please inform the Trust as unauthorised re-use may be in breach of copyright law.*

The Trust supports the belief 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 still covered by the subject access provisions of the Data Protection Act 2018 and is dealt with in other Trust policies
- 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
- Staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this knowledge
- Common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other Trust policies and procedures

The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department.

## **6.2 Publication Scheme**

*The Trust has adopted the latest model Publication Scheme approved by the Information Commissioner.*

The Trust's Publication Scheme details the information that the Trust publishes at that point in time and intends to publish in the future. It details the format in which the information is available. The Publication Scheme is available through our website. It is subject to regular review in terms of content, and will be formally reviewed at least annually.

Enquires relating to requests for information listed in the Publication Scheme may be received verbally or in writing. The Trust will establish systems and procedures to process such requests arising from the Publication Scheme.

In the spirit of transparency and openness, Portsmouth Hospitals NHS Trust publishes the majority of our responses to Freedom of Information Act (FOIA) request on our Trust website; it is a live document and is updated quarterly [disclosure log](#).

## **6.3 General Rights of Access**

The Freedom of Information Act gives a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request to the Trust for information is entitled:

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

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

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 describe the information 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 (e.g. e-mail).

#### **6.4 Conditions and Exemptions**

The duty to confirm or deny is subject to certain conditions and exemptions. The duty to confirm or deny does not arise where the Trust:

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

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

*The Trust does not have to comply with this duty if the information is exempt. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with the Act justify the use of such exemptions (see appendix A).*

The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit that has been established in national Fees Regulations (£450) (Section 12). In terms of time, this is based on an average cost to the Trust of £25 per hour, which relates to a maximum of 18 hours. The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication of information that exceeds this limit.

The Trust is not obliged to comply with a request for information if the request is vexatious (Section 14). Where the Trust has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

Other exemptions may apply to Trust information such as:

Section 21 – Information already reasonably accessible

Section 22 – Information intended for future publication

Section 22A – Research information

Section 31 – Prejudice to law enforcement

Section 38 – Endangering Health and Safety

Section 39 – Environmental information

Section 40(1) & 40(2) – Personal information of the requestor or third parties

Section 41 – Confidentiality

Section 42 – Legal professional privilege

Section 43 – Trade secrets and prejudice to commercial interests

Section 44 – Prohibitions on disclosure

## 6.5 Charges and Fees

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

Any charges made by the Trust will be in accordance with the Fees Regulations published by the Department of Constitutional Affairs.

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

## 6.6 Time Limits for Compliance with Requests

The Trust has established systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

If a request is not sufficiently clear to enable Portsmouth Hospitals NHS Trust to locate or identify the requested information, then it is our duty to go back to the requester to ask for further clarification.

The 20 working timeframe is the normal timescales for compliance; however, there is provision within section 10 for an authority to extend or vary this time limit under certain circumstances.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid, the working days in the period from when the applicant received the *fees notice* to when they paid will be disregarded for the purpose of calculating the twentieth working day following receipt.

If the Trust chooses to apply an exemption to any information, or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision.

## 6.7 Internal Timescales and Validation

The expected process for internal management of the request is outlined below. The nature of requests often means it will not be possible to follow this explicitly (e.g. in the event of information being required for more staff than initially anticipated). Timescales are set out such that minor delays should still enable the Trust to respond within the statutory timeframe. In the event of any moderate delays being expected, staff should contact the Head of Information Governance and Data Protection Officer immediately.

Initial administration of the request should be completed within two working days of receipt. The request will be communicated to relevant staff members within this time period, the relevant department will then have **7 working days** in order to identify and retrieve relevant information. If the request is not relevant or cannot be answered, members of staff must respond to the FOI team within **two working days** of receipt of the request to avoid unnecessary delays to the request.

All requests are validated by the SIRO prior to formal disclosure. Executive Directors may also be involved where relevant and the Associate Director of Communications and Engagement also validates all media and parliamentary requests.

Action	Day Count (Working Days)																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Acknowledge / distribute internally	■	■																		
Identify and retrieve information			■	■	■	■	■	■	■	■										
Confirm subject matter not relevant			■	■																
Draft response									■	■	■	■	■							
Validate response													■	■	■	■	■	■		
Respond																	■	■	■	■

### 6.8 Creating ‘New Information’

The Trust does not have to create ‘new information’ to respond to requests. New information is **not** created where the Trust:

- presents information it holds in the form of a list or schedule
- compiles an answer to a request that involves simple manual manipulation of information held in files, or
- extracts information from an electronic database by searching it in the form of a query

### 6.9 Disclosure of Information about Staff

Whilst the Data Protection Act applies to personal information that the Trust holds about its staff, both in a professional and personal capacity, the practical application of the Freedom of Information Act suggests that there are instances where disclosure of information about staff would not breach the principle of ‘fairness’ and the conditions necessary for processing personal data under the Data Protection Act.

Factors for public authorities to consider when deciding whether to release information identifying an employee:

- Is the information requested about an employee’s professional or personal life? The threshold for releasing professional information will generally be lower than that for releasing truly personal sensitive information e.g. that found in an employee’s occupational health record.
- Can the information requested be edited to remove personally identifiable information? In some cases it may be possible to redact information identifying a specific employee without reducing the value of the information released. In other cases this approach will not be feasible, for example where the information requested is specifically about the activities of a named employee.
- Have employees been told that information about them will be disclosed? What information, if any, will they expect to be disclosed? This will depend on the nature of the organisation and the seniority and role of the employees who are the subject of the information. In general, more senior staff and those carrying out public functions should expect more information about them to be disclosed. The Trust will only release information regarding employees who are a Band 8 and above.
- The Trust will ensure that any third party information will be redacted and will be checked by an executive to ensure that all third party data has been excluded appropriately.
- Is the requested information about disciplinary action involving a particular employee? Arguments in favour of disclosure are stronger where a disciplinary measure is being taken against a senior member of staff over a serious allegation of impropriety or criminality. This is particularly the case where an external agency is involved in an investigation. Arguments in favour of disclosure are weaker where the information is about an internal disciplinary procedure concerning a relatively minor matter.
- Has the employee objected to the disclosure of information? If so, what are his or her reasons for doing so? An employee’s objection to the disclosure of information does not necessarily mean that it cannot be released. It is good practice, though, to inform employees that a request for access to information about them has been made and to take any objections into account.

- Would disclosure of the information be damaging to the employee? The likelihood of damage being caused to an employee will depend on the nature of the organisation and the employee's role within it. For example, the release of the names of staff working for certain law enforcement agencies could endanger them. Public authorities should assess such risks as part of the disclosure decision.
- How sensitive is the information? In general, the more sensitive the information about an employee, the higher the threshold for its release. It is difficult to envisage circumstances in which information such as that concerning an employee's health, racial / ethnic origin, religious belief or sexual life could be disclosed in response to an access request.

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

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

- The provision to the applicant of a copy of the information in, permanent form or in another form acceptable to the applicant,
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant

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

In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If the Trust determines that it is not reasonably practicable to comply with a preference expressed by the applicant in making their request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.

The Trust has established systems and procedures to monitor the provision of information arising from requests under the Act.

#### **6.11 Refusal of Requests**

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

- i. Applies an exemption
- ii. Estimates that the cost of compliance with the request for information exceeds the appropriate limit,
- iii. Can demonstrate that the request for information is vexatious or repeated

If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. The applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust.

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

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

Where the Trust is relying on a claim the notice will state:

- That any provision of Part II of the Act which relates to the duty to confirm or deny and is not specified as an absolute exemption is relevant to the request, or
- That the information is exempt only by virtue of a qualified exemption

At the time when the notice is given to the applicant where no decision as to the application of an exemption has been made, the notice will indicate this and contain an estimate of the date by which the Trust expects that a decision will have been reached.

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

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

The Trust will ensure that the systems and procedures that are deployed to meet the duty also conform to the Code of Practice.

### **6.13 Transferring Requests for Information**

A request can only be transferred where the Trust receives a request for information which it does not hold within the meaning of the Act, but which is held by another public authority e.g. other healthcare trust. If the Trust is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority).

The Trust recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body).

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

If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

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

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

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.

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.

#### **6.14 Consultation with 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 is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 2018 ("the DPA").

Unless an exemption provided for in the Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence), the Trust will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party (that may be affected by a disclosure) do not give rise to legal rights, consultation may still be appropriate.

Where information constitutes "personal data" within the meaning of the DPA, the Trust will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

The Trust will undertake consultation where:

- The views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- The views of the third party may assist the authority to determine where the public interest lies

The Trust may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Trust will consider the most reasonable course of action for it to take, in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- The public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- The views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- No exemption applies and so under the Act's provisions, the information must be provided

Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the

Act. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

#### **6.15 Duties and 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 recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. The Trust will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the 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 Information Commissioner.

The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption 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 which the authority has provided to the contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

#### **6.16 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 of the authority's 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, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

#### **6.17 Records Management**

The Trust has a separate policy with supporting systems and procedures that will ensure compliance with FOIA Section 46 Code of Practice –Records Management Code of Practice for Health and Social Care 2016

The Non-Clinical Records Policy and the Record Retention, Disposal and Destruction policy and associated procedures will address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Trust. It is imperative that the Trust maintains a systematic approach to the management of its records in order to maintain compliance with the provisions of the FOI Act.



## **6.18 Round Robin Requests**

Where the Trust receives a request that is identified as having, or is suspected to have, regional or national circulation and would benefit from wider consideration, the CCG Information Governance Lead will be informed.

## **6.19 Appeals and Complaints**

Complaints about the Trust's handling and disclosures of Freedom of Information requests and appeals against decisions not to supply exempt information, should be made to the Head of Information Governance and Data Protection Officer. If necessary, the Head of Information Governance will escalate to the Executive Team.

If local resolution is not achieved the requestor can contact the Information Commissioner's Office: Information Commissioner's Office

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
5AF

## **7. TRAINING REQUIREMENTS**

The Head of Information Governance and Data Protection Officer have overall responsibility for maintaining training and awareness of Freedom of Information issues for all staff. Freedom of Information is referenced in all Trust Information Governance training materials.

Information Governance training is mandatory and all new starters must receive IG training as part of their corporate induction.

All staff members are required to undertake accredited Information Governance training as appropriate to their role. The preferred method is through the Trust's Essential Skills Handbook (ESH) and the associated e-assessment in the Electronic Staff Record (ESR).

Information Governance training must be completed on an annual basis.

## **8. REFERENCES AND ASSOCIATED DOCUMENTATION**

The Freedom of Information Act 2000

[http://www.opsi.gov.uk/Acts/acts2000/ukpga\\_20000036\\_en\\_1](http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000036_en_1)

The Data Protection Act 2018

<https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

Records Management Code of Practice for Health and Social Care 2016

<https://www.gov.uk/government/publications/records-management-code-of-practice-for-health-and-social-care>

General Data Protection Regulations 2016

### **Trust Policies**

Non-Clinical Records Management Policy

Records Retention, Disposal and Destruction Policy

## 9. EQUALITY IMPACT STATEMENT

Portsmouth Hospitals NHS Trust is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on any grounds.

This policy has been assessed accordingly.

Our values are the core of what Portsmouth Hospitals NHS Trust is and what we cherish. They are beliefs that manifest in the behaviours our employees display in the workplace.

Our Values were developed after listening to our staff. They bring the Trust closer to its vision to be the best hospital, providing the best care by the best people and ensure that our patients are at the centre of all we do.

The Trust is committed to promoting a culture founded on these values which form the 'heart' of our Trust:

**Respect and dignity**  
**Quality of care**  
**Working together**  
**Efficiency**

This policy should be read and implemented with the Trust Values in mind at all times.

## 10. MONITORING COMPLIANCE WITH PROCEDURAL DOCUMENTS

This document will be monitored to ensure it is effective and to assurance compliance.

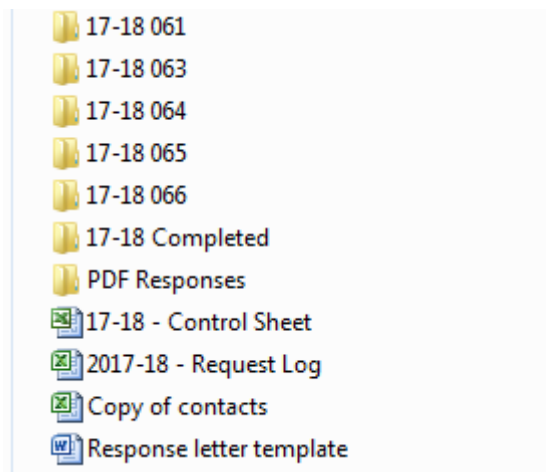
Minimum requirement to be monitored	Lead	Tool	Frequency of Report of Compliance	Reporting arrangements	Lead(s) for acting on Recommendations
<ul style="list-style-type: none"> <li>▪ Annual audit report of FOI +breaches to theDPDQ Committee. These reports focus on Freedom of Information request performance and enable the effectiveness of the Policy to be evaluated.</li> <li>▪ Staff awareness will be routinely assessed as part of the Information Governance Compliance Monitoring Tool, which is assessed as part of the Information Governance Compliance Framework and will also be reported in to DPDQ Committee.</li> </ul>	Head of IG	<a href="#">IG Compliance Framework</a>			Head of IG

## APPENDIX 1: Freedom of Information Process

### APPENDIX 2: FOI request process

## Freedom of Information Request Process

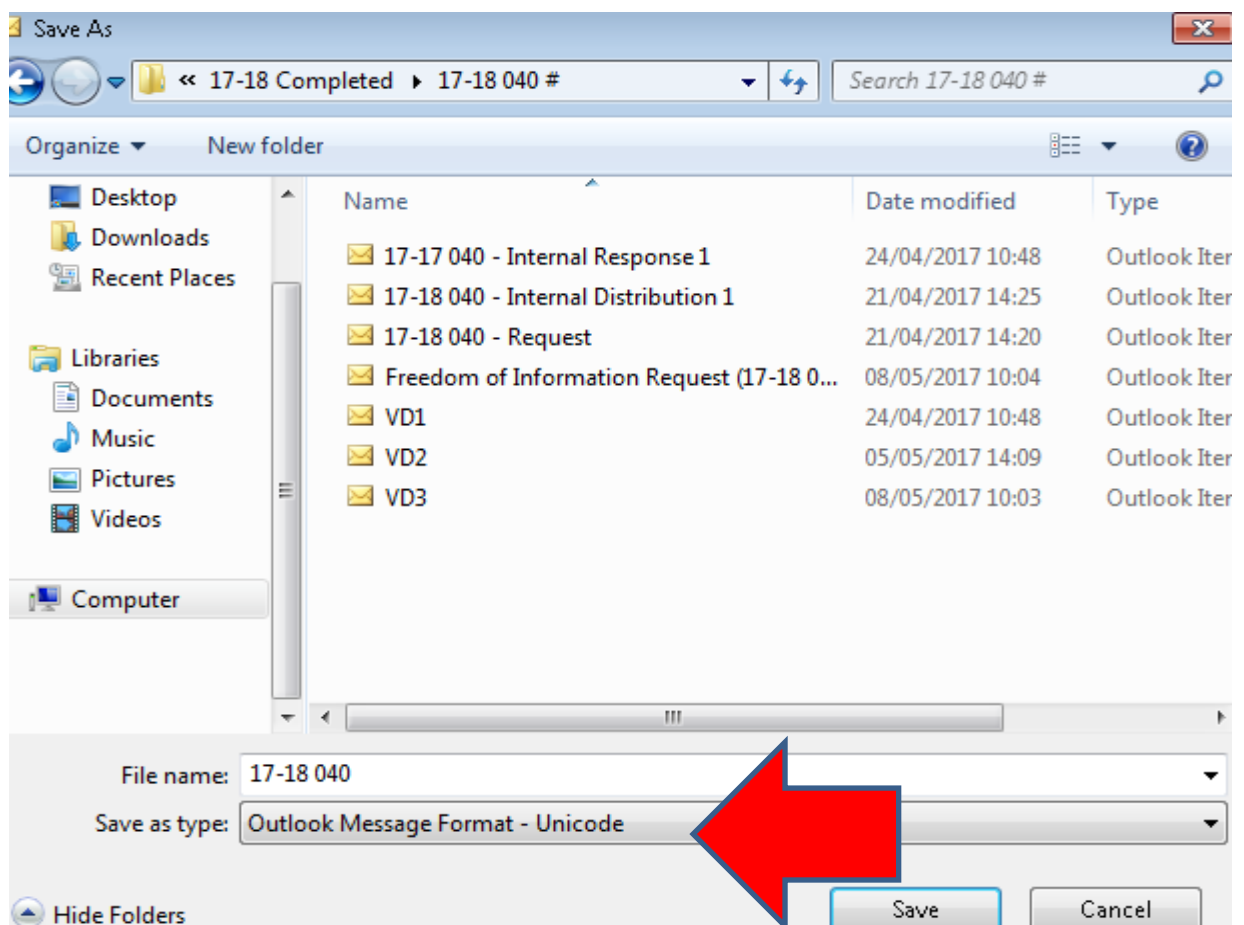
1. Filing process
  - 1.1. New request – create a new folder – 17-18 [000]



2. Filing and naming conventions
  - 2.1. Order the files within the folder by Date Created – this will allow you to keep a chronological check of progress.

17-18 030 - Acknowledgement	13/04/2017 15:24	Outlook Item	106 KB
17-18 030 - Control Sheet	13/04/2017 15:26	Microsoft Excel 97...	1,210 KB
17-18 030 - Internal Distribution 1	13/04/2017 15:27	Outlook Item	142 KB
17-18 030 - Internal Response 1	21/04/2017 13:59	Outlook Item	153 KB
17-18 030 - Internal Response 2	27/04/2017 15:25	Outlook Item	181 KB
17-18 030 - Internal Response 3	27/04/2017 15:52	Outlook Item	170 KB
17-18 030 - Internal Response 4	27/04/2017 16:51	Outlook Item	173 KB
17-18 030 - Request	13/04/2017 15:23	Outlook Item	78 KB
17-18 030 - Response	08/05/2017 09:50	Microsoft Word D...	91 KB
17-18 030 - VD2	05/05/2017 14:06	Outlook Item	1,482 KB
17-18 030 - VD3	08/05/2017 09:50	Outlook Item	221 KB
17-18 030 -VD1	27/04/2017 15:41	Outlook Item	1,353 KB
17-18 030 -VD4	08/05/2017 09:51	Outlook Item	207 KB
17-18 030 VD5 updated	08/05/2017 14:57	Outlook Item	231 KB
Ophthalmolgy Services June to Dec 2016	08/05/2017 09:49	Microsoft Excel W...	10 KB

2.2. Save all outgoing and incoming e-mails (as much as possible in date order so that the filing structure – by date created – is accurate). All e-mails should be saved as an Outlook Message Format file, so that the integrity of the e-mail is maintained (including attachment, hyperlinks etc.)



- 2.3. When renaming attachments (e.g. Word or Excel) remember that you may need to reselect the file type, or input the file suffix (e.g. .xls / .xlsx or .doc / .docx) otherwise it gets saved as a generic file type when the name is changed and then will not open.
- 2.4. E-mails should include a numerical reference at the end of the file name where there are likely to be multiple files of the same sort. A number (1) should always be used to positively confirm it is first e-mail (and not be left without a numerical reference). E-mail names are likely to adhere to the following:
  - 2.4.1. Request
  - 2.4.2. Request to be added to Electronic request log
  - 2.4.3. Internal Distribution 1
    - 2.4.3.1. Internal Distribution 2
    - 2.4.3.2. Internal Distribution 3...
  - 2.4.4. Internal Response 1
    - 2.4.4.1. Internal Response 2
    - 2.4.4.2. Internal Response 3...
  - 2.4.5. Response
  - 2.4.6. Validation Distribution 1 or VD 1
    - 2.4.6.1. Validation Distribution 2...
  - 2.4.7. Validation Response 1
    - 2.4.7.1. Validation Response 2...
  - 2.4.8. Response E-mail
- 2.5. Occasionally, other e-mail names may be required to clarify the nature of a request query, clarification, extension etc., generally following:
  - 2.5.1. Clarification Sought 1
  - 2.5.2. Clarification Received 1
  - 2.5.3. Extension E-mail 1
  - 2.5.4. Response Query 1
  - 2.5.5. Query Distribution 1
  - 2.5.6. Query Response 1

### 3. Electronic Control Sheet – Expiry Date

- 3.1. The first day of a request is the day after it has been received by the Trust. If a request is received after office hours it is still counted as being received on that day, except for weekends and Bank Holidays. Examples:
  - 3.1.1. A request is received at 11.00am on a Tuesday. Wednesday is Day 1.
  - 3.1.2. A request is received at 8.59pm on a Tuesday. Wednesday is Day 1.
  - 3.1.3. A request is received at 01.30am on a Saturday. Monday is Day 1.
  - 3.1.4. A request is received at 12.30pm on a Sunday during a Bank Holiday weekend. Tuesday is Day 1.

### 4. Using Signatures

- 4.1. Use an [e-mail signature](#) for each type of e-mail you send out, as this cuts down on the time spent writing the same wording over and over. Do not use personal signatures; use FOI Team as the signature.

#### Signatures for:

- FOI Completion
- FOI Extension
- FOI Internal
- FOI Distribution

- Clarification
- Reminder 1
- Reminder 2

Some e-mail signatures will require additional information adding into the body of the e-mail: for example, to identify requester types, internal deadlines etc.

#### 5. Internal Distribution

An internal distribution list is to be stored in the current years 'FOI – Requests' file and kept up to date with the current contacts.

## EQUALITY IMPACT SCREENING TOOL

**To be completed and attached to any procedural document when submitted to  
The appropriate committee for consideration and approval for service and policy  
changes/amendments.**

### Stage 1 - Screening

**Title of Procedural Document:** Freedom of Information Policy

<b>Date of assessment</b>	05/07/2017	<b>Responsible Department</b>	Information Governance
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<b>Name of person completing assessment</b>	Emile Armour	<b>Job Title</b>	IG Manager
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**Does the policy/function affect one group less or more favorably than another on the basis of :**

	Yes/No	Comments
• Age	NO	
• Disability Learning disability; physical disability; sensory impairment and/or mental health problems e.g. dementia	NO	
• Ethnic Origin (including gypsies and travelers)	NO	
• Gender reassignment	NO	
• Pregnancy or Maternity	NO	
• Race	NO	
• Sex	NO	
• Religion and Belief	NO	
• Sexual Orientation	NO	
<b>If the answer to all of the above questions is NO, the EIA is complete. If YES, a full impact assessment is required: go on to stage 2, page 2</b>		
More Information can be found be following the link below  <a href="http://www.legislation.gov.uk/ukpga/2010/15/contents">www.legislation.gov.uk/ukpga/2010/15/contents</a>		

### Stage 2 – Full Impact Assessment

What is the impact	Level of Impact	Mitigating Actions (what needs to be done to minimise / remove the impact)	Responsible Officer



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**Monitoring of Actions**

The monitoring of actions to mitigate any impact will be undertaken at the appropriate level

Specialty Procedural Document:	Specialty Governance Committee
Clinical Service Centre Procedural Document:	Clinical Service Centre Governance Committee
Corporate Procedural Document:	Relevant Corporate Committee

All actions will be further monitored as part of reporting schedule to the Equality and Diversity Committee