

# **Freedom of Information Code of Practice: Requests for Environmental Information (EIR)**

**Version 2.02**

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**Author:** Head of Information on behalf of the

**Information Governance Steering Group**  
*The Rotherham NHS Foundation Trust*  
*Moorgate Road*  
*Rotherham*  
*S60 2UD*

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## 1.0 INTRODUCTION

1.1 The Environmental Information Regulations 2004 introduces a number of obligations on public authorities, (including The Rotherham NHS Foundation Trust) to disclose information about the environmental information it holds. This code of practice is based on the EIR Code of Practice and the guidance produced by the Department for Environment, Food and Rural Affairs. Any references to “EIR” in the following text relate to the **Environmental Information Regulations 2004**. This Code should be read in combination with the Trust’s Freedom of Information & Environmental Information Policy, Freedom of Information Code of Practice: Requests for Information and Freedom of Information Code of Practice: Management of Records.

1.2 This Code of Practise is intended for dealing with requests for environmental information. If a request is for environmental and other information, the environmental information should be dealt with under this Code of Practice, and the other information should be dealt with under the Freedom of Information Code of Practice: Requests for Information.

1.3 The aims of this Code are to:

- facilitate the disclosure of environmental information under the EIR by setting out good administrative practice that it is desirable for the Trust to follow when handling requests for environmental information, including, where appropriate, the transfer of a request to a different authority;
- protect the interests of applicants by setting out standards for the provision of advice and assistance that it would be good practice;
- ensure that third party rights are considered and that authorities consider the implications for access to environmental information before agreeing to confidentiality provisions in contracts and accepting information in confidence from a third party;
- advise on information whose disclosure would harm the frankness and candour of internal discussion, including proceedings of Cabinet and Cabinet committees, internal opinion, advice, recommendation, consultation and deliberation;
- encourage the development of effective means of complaining about decisions taken under the EIR.

## 2.0 PROVISION FOR DEALING WITH EIR APPLICATIONS (See [Appendix A](#) for Flow Diagram)

### 2.1 Upon Receipt of a Request

2.1.1 **All Trust** staff has a responsibility to ensure that all EIR applications are identified and reported.

2.1.2 The Trust regularly receives requests for information as part of the normal course of business. Members of staff will be expected to continue dealing with these requests as normal.

2.1.3 This Code of Practice relates solely to requests for environmental information where a member of staff is unable or unwilling to respond to

the request or the request is explicitly made under the EIR and the information requested is not covered in the Trust's Publication Scheme.

- 2.1.4 From 1<sup>st</sup> January 2005, all such requests for environmental information must be treated as an EIR request.
- 2.1.5 There is a requirement on the Trust to ensure that EIR requests are actioned within **20 working days**. However in exceptional cases, the volume or complexity of the request may mean it is impractical to respond in 20 working days. In these cases the period may be extended to **40 working days**. If the Trust decides that an extension is needed, the applicant should be informed as soon as possible and in any event within 20 working days of the delay and the reasons for it.
- 2.1.6 Under the EIR a request can be made in writing, by e-mail, orally over the telephone or during a meeting, or by some other means of communication, for example, by sign language. It is therefore possible that any member of staff may be the recipient of a request for environmental information. If possible, the individual making the request should be directed to the FOI Co-ordinator for assistance with their request. This will not always be possible, so the staff member should take adequate steps to date and record the request and contact details for the individual, and forward these onto the FOI Co-ordinator as outlined below. It is important that the date is recorded as the 20 working day time limit starts at the point the request is received.
- 2.1.7 All requests that are identified as an EIR request **must** be forwarded to the FOI Co-ordinator either by telephone (**ext 5097**), e-mail ([Freedom of Information@rothgen.nhs.uk](mailto:FreedomofInformation@rothgen.nhs.uk)) within **1 working day** of receipt. If the application is in the form of a paper copy, the original documentation should also be sent to the FOI Co-ordinator.
- 2.1.8 The FOI Co-ordinator will confirm receipt of the request with the member of staff responsible within **1 working day**. If receipt is not confirmed, the member of staff should contact the FOI Co-ordinator on **extension 5097**.
- 2.1.9 Once the FOI Co-ordinator has received an application for information the required details will be recorded on the Trust FOI request-tracking database.
- 2.1.10 Within **two working days** from the **initial** receipt of the application, the FOI Co-ordinator will contact the applicant in writing (electronic contact is appropriate if the applicant has made contact by electronic means), to inform them that their request has been received, is being processed, and whether or not a fee applies (see [Section 2.2](#)). A record will be kept of this contact.
- 2.1.11 The Trust has a duty to confirm or deny a request to the applicant subject to certain conditions and exceptions. The duty to confirm or deny a request does not arise where the Trust:
- a) reasonably requires further information in order to identify and locate the information requests, and
  - b) has informed the applicant of this requirement.

If the applicant has not provided sufficient information for the request to be processed, the FOI Co-ordinator will follow the procedure detailed in [Section 2.6](#).

- 2.1.12 Following consultation with the Trust FOI Lead and/or Caldicott Guardian, if the FOI Co-ordinator believes that any of the information requested is an exception to the duty to disclose, the procedure for Refusal of a Request ([section 2.4](#)) will be invoked. In all circumstances, the public interest test applies. The exceptions to the duty to disclose environmental information are listed in [Appendix C](#) of this document. The Trust will seek to use the exceptions sparingly and will justify the use of such exceptions. This includes circumstances where the information requested is available from another source other than the Trust, unless that source is a public authority, in which case the procedure for Transferring Requests for Information ([section 2.9](#)) will be initiated. The FOI Co-ordinator/Trust FOI Lead may wish to consult the Trust's legal advisors for guidance, where applicable.
- 2.1.13 The duty to confirm or deny does not arise if a fees notice (see [section 2.2](#) for Fees and Charges) has been issued to an applicant and the fee has not been paid within the period of 60 days beginning on the day on which the fees notice is sent to the applicant or is informed of the charge. The FOI Co-ordinator will then activate the system for the Provision of Advice and Assistance to Applicants ([section 2.5](#)). If the applicant still refuses to pay a Fees Notice after advice and assistance is offered, the procedure for Refusal of a Request ([section 2.4](#)) will be activated.
- 2.1.14 If the FOI Co-ordinator has sufficient information to respond to the request the applicant will be informed in the letter of acknowledgement that their request will be processed within a maximum of **twenty working days**. The applicant will be informed in writing of any fees or charges, if known, and a Fees Notice will be issued to the applicant. The applicant will be informed within the letter that the fees are payable for the provision of the information and that no information will be provided unless the fee or charge is paid within 60 days.

## 2.2 Fees and Charges

- 2.2.1 The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. Information that is available from the Trust's website will be free of charge. For those without Internet access, a single printout of the information available on the website will be made available. The Trust will not provide printouts of other organisation's websites.
- 2.2.2 The duty to comply with a request for information does not arise if the FOI Co-ordinator and/or Trust FOI Lead judge that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. The FOI Co-ordinator will initiate the system for the Provision of Advice and Assistance to Applicants ([section 2.5](#)) to investigate ways of bringing costs within appropriate limits. If the FOI Co-ordinator estimates that the cost of compliance with the request for information exceeds the appropriate limit

set by the Fees Regulations the applicant will be notified in writing of the estimated cost.

2.2.3 The Trust will follow the national Fees Regulations for general rights of access under the FOI Act (once published).

### **2.3 Accessing the Information**

2.3.1 The FOI Co-ordinator and/or the Trust FOI Lead will identify who holds the information that the applicant has requested. In the case of environmental information, this will usually be the **Head of Estates**. Within **two working days** the contact person(s) will be identified and a request for information will be made. A record will be kept of this contact.

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

- a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- c) 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.

2.3.3 In determining whether it is reasonably practicable to communicate information by a particular means, the FOI Co-ordinator will consider all the circumstances, including the cost of doing so. The Trust will have considered all other statutory obligations upon the Trust such as those established under the Disability Discrimination Act 1995. If the Trust determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the FOI Co-ordinator will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

2.3.4 Upon receipt of the information requested by the FOI Co-ordinator, Trust staff will have **five working days** to locate and provide the information requested to the FOI Co-ordinator. If it is not possible to comply with this deadline the FOI Co-ordinator must be informed immediately. In exceptional circumstances the FOI Co-ordinator will allow **five additional working days** to enable Trust staff to comply with the request. A record will be kept of these contacts.

2.3.5 Once compiled, the information that the applicant has requested will be forwarded to the FOI Co-ordinator. The FOI Co-ordinator will liaise with the Trust staff that produced the information to ensure it is understandable by the applicant. The FOI Co-ordinator and/or Trust FOI Lead will then review the information in respect of any exceptions and/or

fees payable within **two working days** before providing the information to the applicant. If any exceptions are applicable, the procedure for the Refusal of Requests ([section 2.4](#)) will be activated. If any fees are payable the applicant will be issued with a Fees Notice.

## **2.4 Procedure for Refusal of Requests**

2.4.1 A refusal of a request may apply to all the information requested by an applicant or a part thereof. A request for information may be refused if:

- a) the information is listed as an exception under the EIR ([Appendix C](#))
- b) a fee notice or charge has not been paid within 60 days beginning on the day on which the applicant receives the Fees Notice or is informed of the charge

2.4.2 If the FOI Co-ordinator and Trust FOI Lead decide 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**.

2.4.3 There may be exceptional circumstances where the Trust does not have to either confirm or deny the existence of information. If the FOI Team believes this to be the case a notice will be issued within **twenty working days**. The notice will:

- a) state the fact;
- b) specify the exception in question (12(5)(a)), and
- c) state (if that would not otherwise be apparent) why the exception applies

2.4.4 If the applicant is unhappy with the response they receive regarding their request they will be informed of the Complaints Procedure (See [section 8.0](#) – Complaints about the discharge of the duties of the Trust under the EIR).

2.4.5 The FOI Co-ordinator will keep a record of all refusal notices issued to applicants. These will be subject to quarterly review to maintain consistency in decision-making.

## **2.5 Provision of Advice and Assistance to Applicants**

2.5.1 The FOI Co-ordinator will act as a key contact point for applicants for the Trust.

2.5.2 The FOI Co-ordinator/Trust FOI Lead will provide advice and assistance to potential and actual applicants for information under the EIR. The advice and assistance may include:

- guidance on how to access information from the Trust under the general right of access and the Publication Scheme,
- informing the applicant of the progress of their request
- explaining the basis upon which any charges or fees have been levied or exemptions applied (this is in addition to Fees Notices and refusal of request notices),
- suggesting other routes through which applicants may wish to access information, including from other public authorities,

- obtaining additional information to assist the Trust in meeting the information needs of the applicant;
  - consulting with third parties as required;
  - identifying source of independent help for applicants, and
  - directing applicants to the complaints procedure and/or Information Commissioner if they are dissatisfied with the discharge of the duties under the EIR.
- 2.5.3 The FOI Co-ordinator will keep a record of all instances where applicants have been provided with advice and assistance.
- 2.5.4 The FOI Co-ordinator/Trust FOI Lead will act as a source of advice and support for Trust staff in regard to the EIR.
- 2.5.5 The FOI Co-ordinator will provide advice to the public on the EIR.
- 2.5.6 This list is not exhaustive, and the FOI Co-ordinator will discuss the options available to the potential applicant with them, ensuring flexibility offering advice and assistance most appropriate to the circumstances of the potential applicant.
- 2.6 The Applicant has provided insufficient information to fulfil their request**
- 2.6.1 Where the applicant has not described the information sought in a way that would enable the FOI Co-ordinator to identify or locate it, or the request is ambiguous, the FOI Co-ordinator will contact the applicant (within 20 working days) and request further details be provided. The FOI Co-ordinator will provide assistance to the applicant to enable them to describe more clearly the information requested.
- 2.6.2 The purpose of this contact will be to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. The FOI Co-ordinator will take care not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or email, or even in a face-to-face contact where more information is needed to clarify what is sought.
- 2.6.3 Appropriate assistance in this instance might include:
- Providing an outline of the different kinds of information which might meet the terms of the request;
  - Providing access to catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the Trust;
  - Providing, where possible, identifiers such as a file reference number, or a description of a particular record so that an applicant can decide if the information is appropriate for their needs;
  - Providing a general response to the request setting out options for further information which could be provided on request.
- 2.6.4 The above list is not exhaustive, and the FOI Co-ordinator will aim to be flexible in offering advice and assistance to applicants in the most

appropriate way. The Trust recognises that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the Trust for the use of applicants.

- 2.6.5 If the FOI Co-ordinator has provided such assistance and the applicant still fails to describe the information requested in a way that would enable the Trust to identify and locate it, the FOI Co-ordinator will seek further clarification. The FOI Co-ordinator will disclose any information relating to the application which has been successfully identified and for which the Trust does not wish to claim an exception. The FOI Co-ordinator will explain to the applicant why the Trust cannot take the request any further and provide details of the complaints procedure and the applicant's rights to complain to the Information Commissioner (section 50 of the FOI Act) (See [section 8.0](#) – Complaints about the discharge of the duties of the Trust under the EIR).

## **2.7 The Applicant is unprepared or unable to pay a charge or fee**

- 2.7.1 In some circumstances an applicant may indicate that he or she is not prepared or is unable to pay the fee notified in any fees notice or the charge levied for the information they have requested. In such cases the FOI Co-ordinator will consider whether there is any information that may be of interest to the applicant that is free of charge. The FOI Co-ordinator will contact the applicant and explore ways in which the fee or charge may be reduced. For example by:

- Providing information electronically instead of in hard copy or
- Inviting the applicant to view the information and take their own notes or to select the information they feel to be most relevant to them.

- 2.7.2 In all cases where appropriate, a Fees Notice will be issued. If the applicant is unwilling to pay the full fees the Procedure for Refusal of a Request ([section 2.4](#)) will be activated.

## **2.8 Providing the Information**

- 2.8.1 Information will be provided to the applicant by any one or more of the following means, namely:

- a) as a copy of the information in permanent form or another form acceptable to the applicant.
- b) through the provision of a reasonable opportunity to inspect a record containing the information.
- c) the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

- 2.8.2 The FOI Co-ordinator will record:

- a) the date upon which the information was provided to the applicant and;
- b) the format in which the information was requested;
- c) the format in which the information was provided.

## 2.9 Transferring Requests for Information

2.9.1 If the FOI Co-ordinator receives a request for information which it does not hold, but which is held by another public authority, the FOI Co-ordinator/Trust FOI Lead will oversee the transfer of that request to the other public authority. If, after investigation, the FOI Co-ordinator/Trust FOI Lead finds that the Trust holds some of the information requested, a transfer will be made in respect of the information that the Trust does not hold (but is held by another public authority).

2.9.2 The “holding” of information includes holding a copy of a record produced or supplied by another person or body and extends to holding a record on behalf of another person or body. If the Trust holds the information, whether or not the Trust has produced it, the obligation to confirm or deny and to subsequently provide the information remains the same as if the Trust had produced the information.

2.9.3 Through consultation with the FOI Co-ordinator/Trust FOI Lead if it is decided that the Trust does not hold all or part of the information requested the FOI Co-ordinator will advise the applicant of this fact.

2.9.4 If the FOI Co-ordinator/Trust FOI Lead believes that some or all of the information requested is held by another public authority, consideration will be given to 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 request may be held by another public authority;
- Suggesting that the applicant re-applies to the authority which the Trust believes to hold the information;
- Providing him or her with contact details for that authority.

In most cases the above steps will be taken when it is determined that another public authority holds the information requested.

2.9.5 In some cases the FOI Co-ordinator/Trust FOI Lead may consider it to be more appropriate to transfer the request to another authority in respect of the information that the Trust does not hold. In such cases, the FOI Co-ordinator/Trust FOI Lead will consult with the other authority with a view to ascertaining whether it does hold the information and if so, consider whether they should transfer the request to it. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information. If this course of action is pursued, the applicant will be informed of this and updated on progress by the FOI Co-ordinator. The applicant will also be informed that they reserve the right to make an application to the other authority themselves.

2.9.6 Before transferring the request for information to another authority, the FOI Co-ordinator/Trust FOI Lead will consider:

- Whether a transfer is appropriate; and if so
- Whether the applicant is likely to have any grounds to object to the transfer;

The FOI Co-ordinator/Trust FOI Lead will transfer the request to another authority with the applicant's consent. If the applicant refuses to give consent, the FOI Co-ordinator will suggest that he or she makes a new request to the other authority.

- 2.9.7 Where a request or part of a request is transferred from one public authority to another, the receiving authority must comply with its obligation under the EIR in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the receiving authority receives the request.
- 2.9.8 All transfers of requests should take place as soon as is practicable, and the applicant should be informed as soon as possible once this has been done by issuing a refusal letter in accordance with Regulation 14. The refusal letter should state that the Trust does not hold the information.
- 2.9.10 A record will be kept of all activity associated with the transfer of requests for information to other public authorities.

### **3.0 CONSULTATION WITH THIRD PARTIES**

- 3.1 The Trust must always remember that unless an exception is provided for in EIR in relation to any particular information, it will be obliged to disclose that information in response to a request.
- 3.2 Unlike the FOI Act, the EIR contains no 'absolute' exceptions. Moreover, lack of consent of a third party does not necessarily preclude disclosure. In each case the public interest must be balanced. If the public interest in disclosing the information outweighs the public interest in withholding it, the information should be disclosed. (Information on emissions must be disclosed in accordance with Regulation 12 and personal data must be considered in accordance with DPA requirements).
- 3.3 A record will be kept of all contacts with third parties in regard to consultations and decision-making on the disclosure of information that may affect their legal rights.
- 3.4 The FOI Co-ordinator may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the FOI Co-ordinator will consider what is the most reasonable course of action for it to take in light of the requirements of the EIR and the individual circumstances of the request.
- 3.5 A record will be kept of all contacts with third parties in regard to consultations and decision-making on the disclosure of information.

### **4.0 CONSULTATION WITH A NUMBER OF THIRD PARTIES**

- 4.1 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation that can express views on behalf of those parties, the FOI Co-ordinator will, if it considers consultation appropriate, consider it to be sufficient to consult that representative organisation.

4.2 If there is no representative organisation, the FOI Co-ordinator may consider it to be sufficient to consult a representative sample of the third parties in question.

4.3 A record will be kept of all contacts with representative organisations or representative samples of third parties in regard to consultations and decision-making on the disclosure of information.

## **5.0 WHERE THERE IS NO RESPONSE BY THE THIRD PARTY**

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

5.2 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 EIR. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

5.3 A record will be kept of all responses to consultations and the decision making process that arises from them.

## **6.0 PUBLIC SECTOR CONTRACTS**

6.1 When entering into contracts the Trust should refuse to include contractual terms that purport to restrict the disclosure of environmental information held by the authority and relating to the contract beyond the restrictions permitted by the EIR. The Trust cannot “contract out” of its obligations under the Regulations. This means that it cannot sign a contract that gives an undertaking to a private firm (or anyone else) that they will not comply with it’s obligations under the Regulations. Unless an exception provided for under the EIR is applicable in relation to any particular information and the balancing of public interest favours refusal, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract. Where personal data is concerned this will be done in accordance with the requirements of the Data Protection Act 1998.

6.2 When entering into contracts with non-public authority contractors, public authorities 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. Public authorities should reject such clauses wherever possible and explain the relevance of the public interest test. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, an option could be to agree with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. But authorities will need to take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by their obligations under the EIR, as described above.

6.3 The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. The Trust should be aware that certain exceptions including those for commercial confidentiality, and voluntarily

supplied data, are not available when the information requested is about emissions into the environment.

6.4 Any acceptance of confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

6.5 It is for the Trust to disclose information pursuant to the EIR, and not the non-public authority contractor unless that contractor received the request and is, itself, a body subject to the EIR. However, the Trust may wish to protect from disclosure by the contractor, by appropriate contractual terms, information that the Trust has provided to the contractor that in their view may be exempt from disclosure under the EIR. In these cases, contracts or other working arrangements should be made to ensure appropriate consultation about the handling of requests for information exchanged between the parties. Any such constraints should be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, public authorities should not impose terms of secrecy on contractors.

6.6 Under the EIR, some contractors, including public utilities that have been privatised, are subject to the requirements of the EIR.

See ([http://www.sustainable-development.gov.uk/what\\_is\\_sd/eirguide.htm](http://www.sustainable-development.gov.uk/what_is_sd/eirguide.htm))

## **7.0 ACCEPTING INFORMATION IN CONFIDENCE FROM THIRD PARTIES**

7.1 The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Trust's functions and it would not otherwise be provided. Even in these circumstances it will be necessary to explain the relevance of the public interest test and the fact that there could be circumstances in which the public interest in responding to a request outweighs the desires for confidentiality of a third party.

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

## **8.0 COMPLAINTS ABOUT THE DISCHARGE OF THE DUTIES OF THE TRUST UNDER THE EIR**

8.1 In the first instance, all complaints about the discharge of the duties of the Trust under the EIR, including the handling of requests for information will be dealt with under the Complaints Procedure (see [Appendix B](#)).

8.2 If after exhausting the Complaints Procedure the applicant remains dissatisfied with the conduct of the Trust, the applicant may apply to the Information Commissioner who will decide whether the request has been handled properly. The Trust will provide the applicant with contact details for the Information Commissioner.

## **9.0 INFORMATION RECORDS MANAGEMENT**

9.1 The Trust's Information Records Management Code of Practice will be in accordance with the requirements that the law places upon the Trust and

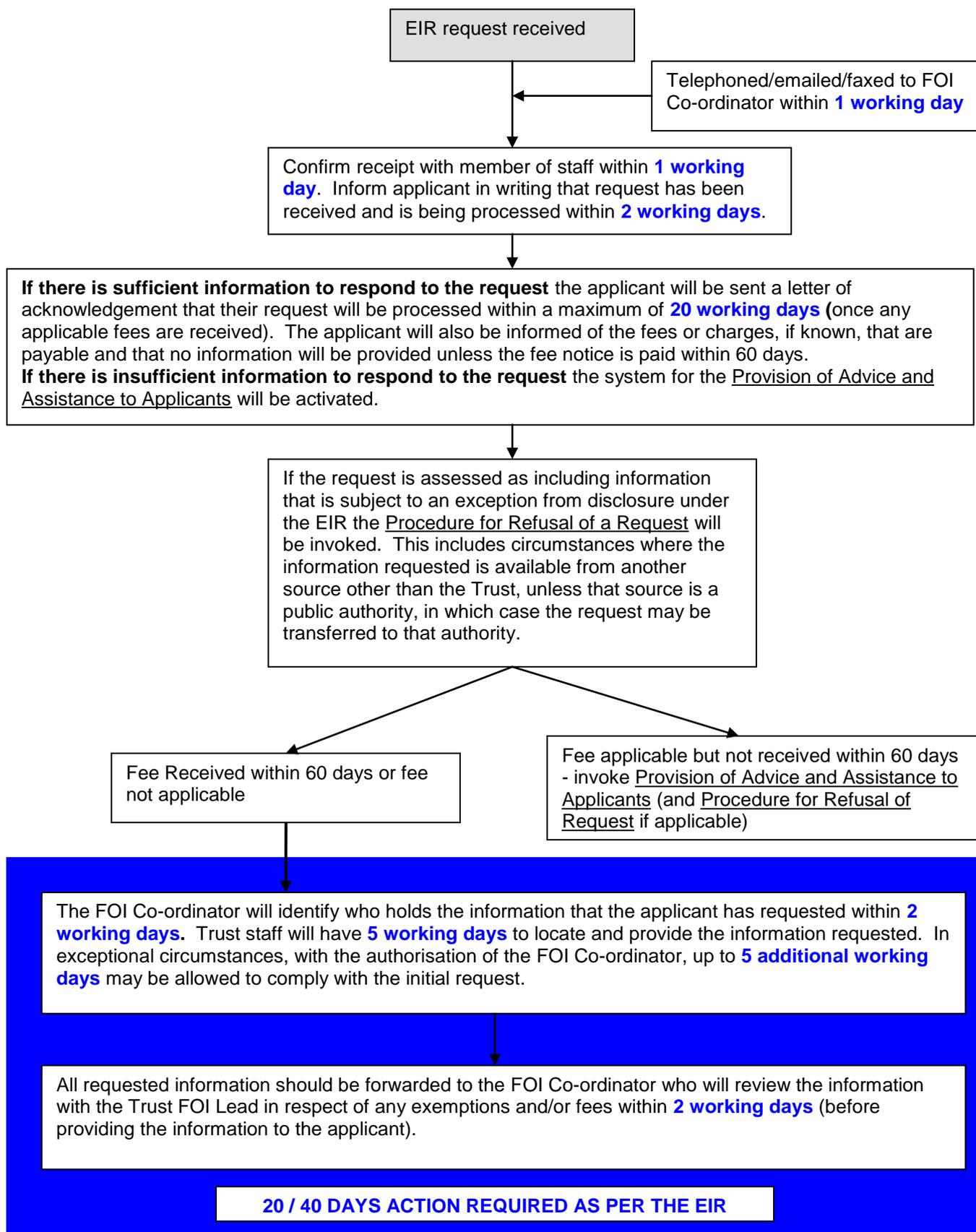
with the Department of Health's Guidance HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities. It is currently under development and once complete will ensure compliance with the Lord Chancellor's Code of Practice on the Management of Records under section 46 of the FOI Act.

- 9.2 The Trust's Information Records Management Code of Practice and associated procedures address issues of active records management, including creation, keeping, maintenance and disposal.

## **10.0 REFERENCE DOCUMENTS**

- Data Protection Act 1998
- Draft Guidance on the Environmental Information Regulations
- Environmental Information Regulations 2004
- Freedom of Information Act 2000
- HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities, Department of Health 1999.
- Lord Chancellor's 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 FOI Act, November 2002.
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.
- Secretary of State's Code of Practice on the Discharge of the Obligations of Public Authorities Under the Environmental Information Regulations 2004.

11.0 APPENDIX A – REQUESTS FOR INFORMATION FLOW CHART



## 12.0 APPENDIX B – DESCRIPTION OF COMPLAINTS PROCEDURE

### Receipt of Complaint

- 12.1 Any written correspondence from an applicant (including one transmitted by electronic means) expressing dissatisfaction with the Trust's response to a valid request for information should be treated as a complaint, as should any written communication from a person who perceives the Trust is not complying with its Publication Scheme. These communications should be handled in accordance with the complaints procedure outlined below, even if, in the case of a request for information under the general right of access, the applicant does not state his or her desire for the Trust to review its decision or its handling of the application.
- 12.2 In all cases, complaints should be acknowledged and the complainant should be informed of the Trust's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), staff must inform the applicant and explain the reason for the delay. The complainant should always be informed of the outcome of his or her complaint.
- 12.3 The Trust can set its own target times for dealing with complaints, but these must be reasonable, defensible, and subject to regular review. The Trust must publish its target times for determining complaints and information as to how successful it is with meeting those targets.

### Outcome

- 12.4 Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be informed how soon this will be.
- 12.5 Where the outcome of a complaint is that the Trust's staff has not properly followed the procedures within the Trust, the Trust should apologise to the applicant. The Trust should also take appropriate steps to prevent similar errors occurring in future.
- 12.6 Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the Trust's favour, the applicant should be informed of his or her right to apply to the Information Commissioner, and be given details of how to make an application, for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

### Internal Action: Stage 1

- 12.7 The FOI Co-ordinator will deal with any initial complaint in an informal manner. If a complaint cannot be dealt with satisfactorily on an informal basis, the Senior Patient Services Manager will inform the complainant about the internal complaints procedure, and also how he or she may contact the Information Commissioner if he or she wishes to do so. The Senior Patient Services Manager must also explain that although the complainant cannot apply to the Commissioner for a decision until the

Trust's Complaints Procedure has been exhausted, the Commissioner might investigate the matter at his or her discretion.

12.8 All complaints at this stage must normally be dealt with within 28 days.

**Stage 2**

12.9 Where the complaint concerns a request for information under the general right of access, a person who was not a party to the original decision, where this is practicable, should handle the review. In most instances the Caldicott Guardian or Head of Information will conduct the review.

12.10 All complaints at this stage must normally be dealt with within 28 days.

**Stage 3**

12.11 If the complainant still wishes to progress their complaint, they shall again be informed of the process for applying to the Information Commissioner for a decision.

### 13.0 APPENDIX C – EXCEPTIONS UNDER WHICH ENVIRONMENTAL INFORMATION MAY BE WITHHELD

Exceptions to disclosure of information are covered in sections 12(4), 12(5) and 13 of the EIR. In all the circumstances the public interest test must be applied. This states the public interest in maintaining the exception must outweigh the public interest in disclosing the information.

- 12 (4) The Trust may refuse to disclose information to the extent that:

- (a) The Trust does not hold that information when an applicant's request is received
- (b) The request for information is manifestly unreasonable
- (c) The request for information is formulated in too general a manner and the public authority has complied with section 9 of the EIR (Providing Advice and Assistance)
- (d) The request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (e) The request involves the disclosure of internal communications

- 12 (5) The Trust may refuse to disclose information to the extent that its disclosure would adversely affect:

- (a) International relations, defence, national security or public safety
- (b) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature
- (c) Intellectual property rights
- (d) The confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law
- (e) The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
- (f) The interests of the person who provided the information where that person
  - (i) Was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) Did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - (iii) Has not consented to its disclosure; or
- (g) The protection of the environment to which the information relates

The EIR allows for personal data to be withheld from disclosure. Section 13 of the EIR states "To the extent that the information requested includes personal data of which the applicant is not the data subject, then those data shall not be disclosed otherwise than in accordance with regulation 13".

More information on the exceptions can be found in the EIR Guidance document: <http://www.defra.gov.uk/corporate/consult/eir-guidance/guidance-7.pdf>

## 14.0 APPENDIX D – GLOSSARY OF TERMS

**Applicant** - the individual(s), group or organisation requesting access to information under the EIR.

**Duty to confirm or deny** - any person making a request for information to a public authority (q.v.) is entitled to be informed in writing by that authority whether the public authority the information specified in the request or not.

**Fees Notice** – a written notification issued to an applicant (q.v.) stating that a fee is payable and exempts public authorities (q.v.) from being obliged to disclose information until the fee has been paid. The applicant will have 60 days from the date of notification to pay the fee before his request lapses.

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

**Information Commissioner** - The Information Commissioners Office is the UK's independent public body set up to promote access to official information and protect personal information by promoting good practice, ruling on eligible complaints, providing information to individuals and organisations, and taking appropriate action when the law is broken.

**Lord Chancellor's Department** - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts.
- The appointment of judges, magistrates and other judicial office holders.
- The administration of legal aid.
- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

**Public authority** - Public authorities are designated in one of the following ways:

- all public authorities, including those covered by the FOI Act
- plus other organisations performing public administrative functions or who have responsibility directly or indirectly for the development, management regulation or inspection of aspects of the environment on behalf of the public, including some private companies and Public Private Partnerships, such as those dealing with waste, water, energy and transport.

**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 or on payment.