

Freedom of Information Code of Practice: Requests for Information

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1.0 INTRODUCTION

1.1 The Freedom of Information Act 2000 introduces a number of obligations on public authorities, (including The Rotherham NHS Foundation Trust) to disclose information about its activities. This code of practice is based on the "Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions Under Part I of the Freedom of Information Act 2000". Any references to "the Act" in the following text relate to the Freedom of Information Act 2000. This Code should be read in combination with the Trust's Freedom of Information Policy and Freedom of Information Code of Practice: Management of Records.

1.2 This Code of Practice is intended for dealing with requests for information under the Freedom of Information Act 2000. Requests for environmental information should follow the Freedom of Information Code of Practice: Requests for Environmental Information (EIR). If a request is for environmental and other information, the environmental information should be dealt with under the Freedom of Information Code of Practice: Requests for Environmental Information (EIR), and the other information should be dealt with under this Code of Practice.

1.3 This Code of Practice has been revised to take into account the UK Re-use of Public Sector Information Regulations 2005, which came into force on July 1, 2005. See Appendix D for further details on how the Trust will manage requests for the re-use of information.

1.4 The aims of this Code of Practice are to:

- facilitate the disclosure of information under the Act by setting out good administrative practice that it is desirable for the Trust to follow when handling requests for 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 which it would be good practice to make available to them and to encourage the development of effective means of complaining about decisions taken under the Act;
- ensure that the interests of third parties who may be affected by any decision to disclose information are considered by the authority by setting standards for consultation; and
- ensure that the Trust consider the implications for Freedom of Information before agreeing to confidentiality provisions in contracts and accepting information in confidence from a third party more generally.
- outline the process the Trust will follow in the identification and release of documents for re-use.

2.0 PROVISION FOR DEALING WITH FOI APPLICATIONS (See Appendix A for Flow Diagram)

2.1 Upon Receipt of a Request

2.1.1 **All Trust** staff have a responsibility to ensure that all FOI 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 information where a member of staff is unable or unwilling to respond to the request or the request is explicitly made under the Act and the information requested is not covered in the Trust's Publication Scheme.
- 2.1.4 From 1st January 2005, all such requests for information which are not related to a complaint, a claim or an access to patient notes request must be treated as an FOI request.
- 2.1.5 The provisions of the DPA always take precedence over those of the Freedom of Information Act 2000. Personal information must always be obtained, processed, stored and disclosed in accordance with the DPA, even where a request for information has been made under the provisions of the Freedom of Information Act.
- 2.1.6 The Data Protection Act 1998 applies to individuals who want to obtain information about themselves. Requests for access to patient notes (data subject access) should be directed to the Deputy Medical Records Manager.
- 2.1.7 There is a requirement on the Trust to ensure that FOI requests are actioned within **20 working days**. All requests that are either identified as an FOI request or are being treated as one in the case where the nature of the request is unclear **must** be forwarded to the FOI Co-ordinator Telephone EXT 5097 or email Freedom of Information 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.
- 2.1.7 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**.
- 2.1.8 Once the FOI Co-ordinator has received an application for information the required details will be recorded on the Trust FOI request-tracking database.
- 2.1.9 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.
- 2.1.10 The Trust has a duty to confirm or deny a request to the applicant subject to certain conditions and exemptions. 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](#).

- 2.1.11 Following consultation with the Trust FOI Lead and/or Caldicott Guardian, if the FOI Co-ordinator believes that any of the information requested is exempt from disclosure under Part II of the Act the procedure for Refusal of a Request ([section 2.4](#)) will be invoked. 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 Part II exemptions are listed in Appendix C of this Policy. The Trust will seek to use the qualified exemptions sparingly and will justify the use of such exemptions. 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 2.10](#)) will be initiated. The FOI Co-ordinator/Trust FOI Lead may wish to consult the Trust's legal advisors for guidance, where applicable.
- 2.1.12 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 3 months 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.
- 2.1.13 The Trust is not obliged to comply with a request for information if the request is vexatious (requests posed to frustrate normal business interests of the Trust with no intrinsic interest in the information requested). 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.
- 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 three months.

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 Under the UK Re-use of Public Sector Information Regulations 2005, the Trust can charge a fee to cover collection, production, reproduction and dissemination, together with a reasonable return on investment. The FOI Co-ordinator and/or Trust FOI Lead will liaise with the producer of the material to determine an appropriate charge. The details of this will be set out in the licence agreement between the Trust and the party requesting to re-use the information (Licensee). Copies of the Licence template can be obtained from the Head of Information.

2.2.3 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.

2.2.4 The Trust will follow the national Fees Regulations for general rights of access under the FOI Act.

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. 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 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 exemptions and/or fees payable within **two working days** before providing the information to the applicant. If any exemptions 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. The Trust will refuse the re-use of material based on the same exemptions as any FOI request. The process to determine this will be the same. Additionally, the Trust will refuse a request for re-use of material if a third party holds copyright. In cases where a third party holds copyright, the requester will be directed to the third party for the right to re-use the material. A request for information may be refused if:

- a) (the information is exempt from disclosure under Part II of the Act ([Appendix C](#)))
- b) a fee notice or charge has not been paid within three months beginning on the day on which the applicant receives the Fees Notice or is informed of the charge
- c) the cost of compliance exceeds the appropriate limit
- d) the request is demonstrably vexatious or repeated

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 exemption in question, and
- c) state (if that would not otherwise be apparent) why the exemption applies.

2.4.4 If the applicant is unhappy with the response they receive regarding their request they will be informed of the Trust's Complaints Procedure (See [section 9.0](#) – Complaints about the discharge of the duties of the Trust under the FOI Act).

2.4.5 If the FOI Co-ordinator/ Trust FOI Lead anticipate that it will take more than twenty working days to reach a decision as to whether any part of the information requested by the applicant is exempt under the exempt information section of the Act, the FOI Co-ordinator will notify the applicant that a decision as to whether the information is subject to an exemption has not been reached. The applicant will be provided with an estimate of the date by which the expected decision will have been reached.

2.4.6 All estimates provided to applicants must be realistic and reasonable and the Trust will ensure compliance unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the FOI Co-ordinator. If during the course of considering the public interest the FOI Team finds that the estimate is unrealistic, the applicant will be informed. A record will be kept of instances where estimates have been exceeded, and where this happens more frequently, steps will be taken to identify the problem and rectify it.

2.4.7 If a qualified exemption is being applied the FOI Co-ordinator will, within such a time as is reasonable in the circumstances, state the reason for claiming:

- a) that, in the 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, or
- b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement will not involve the disclosure of information which would itself be exempt information.

2.4.8 If the FOI Co-ordinator/Trust FOI Lead decide that the information requested is exempt as either the cost of compliance exceeds the appropriate limit or the request is demonstrably repeated or vexatious, the notice will state that fact.

2.4.9 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 Act. 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 exempt information section of the Act.
- 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 Act.
- 2.5.5 A request for information under the Act's general right of access must be made in writing (which includes a request transmitted by electronic means which is received in legible form and is capable of being used for subsequent reference).
- Advising the person that another person (including Trust staff) or agency (such as the Citizens Advice Bureau or other provider of information, advice or advocacy) may be able to assist them with the application, or make the application on their behalf;
 - In exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).
- 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. 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 authority 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 will disclose any information relating to the application which has been successfully identified and for which the Trust does not wish to claim an exemption. The FOI Co-ordinator will explain to the applicant why the Trust cannot take the request any further and provide details of the Trust complaints procedure and the applicant's rights to complain to the Information Commissioner (section 50 of the Act) (See [section 9.0](#) – Complaints about the discharge of the duties of the Trust under the FOI Act).
- 2.6.6 The twenty working day time limit is not activated until the applicant has provided sufficient information for the Trust to supply them with the information they require.
- 2.7 The Applicant is unprepared or unable to pay a charge or fee or fees exceed the appropriate limit**

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 Under section 12(1) (exemption where cost of compliance exceeds appropriate limit) and regulations made under section 12(4) of the Act the Trust is not obliged to comply with a request for information because, the cost of complying would exceed the “appropriate limit” (i.e. cost threshold). In such circumstances, the Trust has three options:

- a) to refuse the request on the basis that it exceeds the cost threshold;
- b) to charge, under section 13 of the Act, for the provision of the information;
- c) to seek a means by which information could be provided within the cost ceiling.

2.7.3 In the event of a request exceeding the cost ceiling, the FOI Co-ordinator will, with the applicant, seek a way in which the information can be provided within the cost ceiling and/or examine with them what information could be provided within the cost ceiling. If this is not possible or if the applicant still wishes to pursue their original request, the FOI Co-ordinator will ask the applicant whether or not they would be willing to pay the full fees for the information they request.

2.7.4 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 Requests which appear to be part of an organised campaign

2.8.1 The Trust may receive a number of related requests that take the cumulative cost of compliance over the “appropriate limit” as prescribed in the Fee Regulations.

2.8.2 In such circumstances the FOI Co-ordinator will consider whether the information could be disclosed in another, more cost effective manner. For example, the information that has been requested could be published on the Trust’s website, with the applicants being notified of this, thus bringing the cost within the appropriate limit.

2.9 Providing the Information

2.9.1 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.

2.9.2 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.

2.10 Transferring Requests for Information

2.10.1 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).

2.10.2 The “holding” of 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 as provided for in section 3(2)(a) of the Act). 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.

2.10.3 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.

2.10.4 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.

2.10.5 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.

2.10.6 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.

2.10.7 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 Part I of the Act 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.

2.10.8 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. The target time for such transfers by the Trust to another public authority will be **twenty working days**.

2.10.9 Where the FOI Co-ordinator is unable either to advise the applicant which public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority they should consider what advice, if any, they can provide to the applicant to enable him or her to pursue his or her request.

2.10.10 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 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 1998 (DPA). Unless an exemption provided for in the FOI Act applies in relation to any particular information, the Trust is obliged to disclose that information in response to a request.

3.2 In some cases 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 these circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption in section 41 of the Act

would apply. In such cases the FOI Co-ordinator will consult the 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 which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

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

3.4 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.

4.0 CONSULTATION WITH THIRD PARTIES IN NON-LEGAL CIRCUMSTANCES

4.1 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. The FOI Co-ordinator will undertake consultation where:

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

4.2 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 FOI Act and the individual circumstances of the request.

4.3 Consultation will be unnecessary where:

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

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

5.0 CONSULTATION WITH A NUMBER OF THIRD PARTIES

- 5.1 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.
- 5.2 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.
- 5.3 A record will be kept of all contacts with representative organizations or representative samples of third parties in regard to consultations and decision-making on the disclosure of information.

6.0 WHERE THERE IS NO RESPONSE BY THE THIRD PARTY

- 6.1 The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the FOI Act, or its duty to reply within the time specified in the FOI Act.
- 6.2 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 FOI Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.
- 6.3 A record will be kept of all responses to consultations and the decision making process that arises from them.

7.0 PUBLIC SECTOR CONTRACTS

- 7.1 When entering into contracts the Trust will refuse to include contractual terms that purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the FOI Act. Unless an exemption provided for under the FOI 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.
- 7.2 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 that 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 FOI Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

7.3 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 provided for in section 41 only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the FOI Act would constitute a breach of confidence actionable by that, or any other person.

7.4 It is for the Trust to disclose information in accordance with the FOI Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor, information that the Trust has provided to the contractor that would clearly be exempt from disclosure under the FOI 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.

8.0 ACCEPTING INFORMATION IN CONFIDENCE FROM THIRD PARTIES

8.1 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 authority's functions and it would not otherwise be provided.

8.2 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.

9.0 COMPLAINTS ABOUT THE DISCHARGE OF THE DUTIES OF THE TRUST UNDER THE FOI ACT

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

9.2 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.

10.0 INFORMATION RECORDS MANAGEMENT

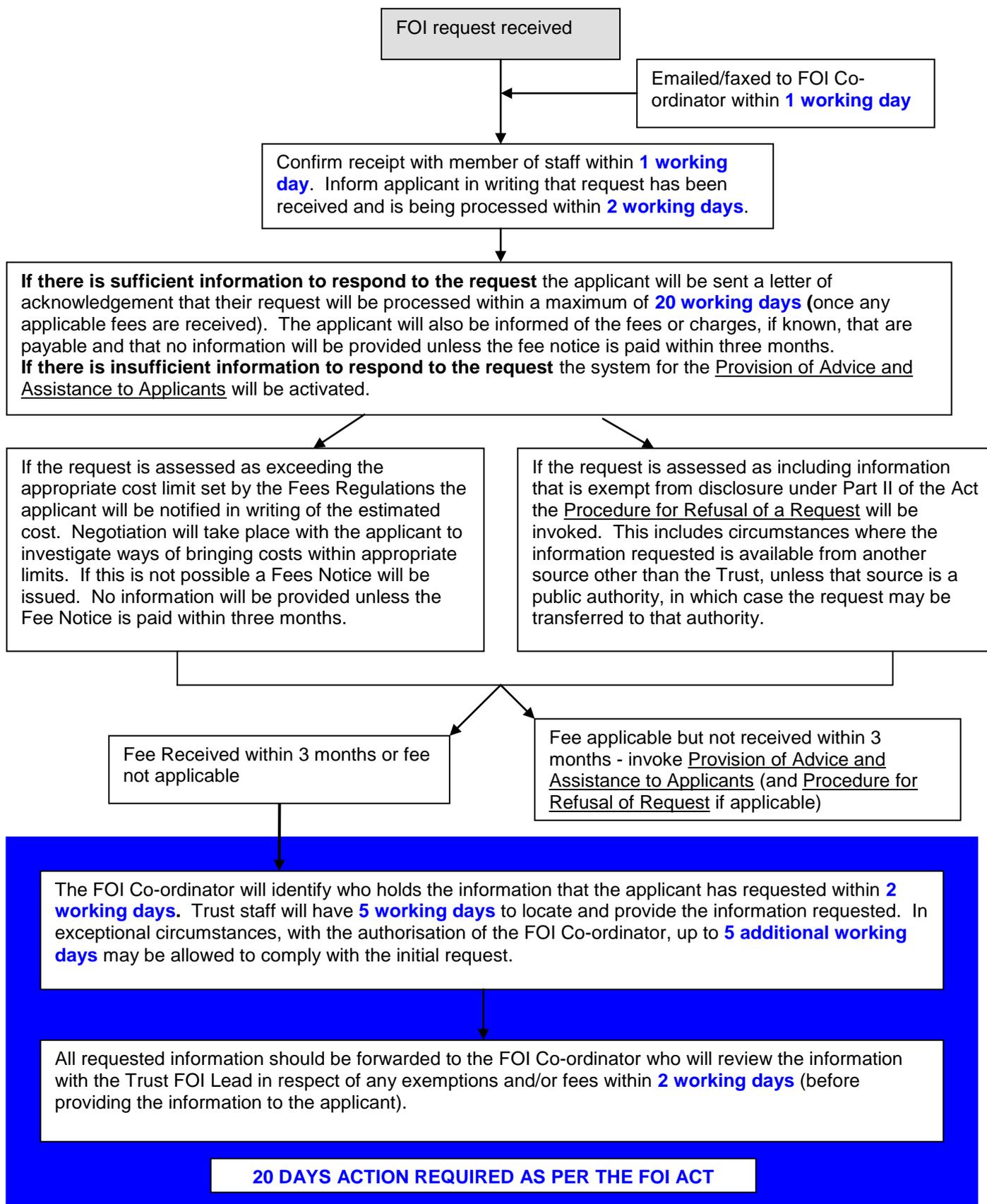
10.1 The Trust's Information Records Management Code of Practice will be in accordance with the requirements that the law places upon the Trust and with the Department of Health's Guidance HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities. It is currently under development 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.

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

11.0 REFERENCE DOCUMENTS

- Data Protection Act 1998
- 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.
- The Re-use of Public Sector Information Regulations 2005.
- Guide to Best Practice on Re-Use of Public Sector Information – HMSO, 2004.

12.0 APPENDIX A – REQUESTS FOR INFORMATION FLOW CHART



13.0 APPENDIX B – DESCRIPTION OF COMPLAINTS PROCEDURE

Receipt of Complaint

- 13.1 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.
- 13.2 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.
- 13.3 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

- 13.4 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.
- 13.5 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.
- 13.6 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

- 13.7 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 FOI Co-ordinator 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 FOI Co-ordinator 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.

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

Stage 2

13.9 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.

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

Stage 3

13.11 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.

14.0 APPENDIX C – EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption: -

- a) Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- b) Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

With the exception of s21 (information available by other means) exemptions apply both to the communication of information AND the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the FOI Act are:-

- section 21, Information accessible to applicant by other means
- section 23, Information supplied by, or relating to, bodies dealing with security matters.
- section 32, Court Records
- section 34, Parliamentary Privilege
- section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- section 41, Information provided in confidence
- section 44, Prohibitions on disclosure

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

- section 22, Information intended for future publication
- section 24, National Security
- section 26, Defence
- section 27, International Relations
- section 28, Relations within the United Kingdom
- section 29, The Economy
- section 30, Investigations and proceedings conducted by public authorities
- section 31, Law Enforcement
- section 33, Audit Functions
- section 35, Formulation of Government Policy
- section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- section 37, Communications with Her Majesty, etc. and honours
- section 38, Health and Safety
- section 39, Environmental Information
- section 42, Legal Professional Privilege
- section 43, Commercial Interests

More information on the exemptions can be found on the HMSO website at www.legislation.hmso.gov.uk/acts/en/2000en36.htm

15.0 APPENDIX D – THE RE-USE OF INFORMATION

The following steps outline how the Trust will manage requests for the re-use of information for which it holds the copyright.

15.1 NOTICES FOR PUBLICATIONS

Option 1:

This covers cases where the material can be re-used without a licence.

© The Rotherham NHS Foundation Trust copyright [insert year of publication]

You may re-use this document/publication (not including logos) free of charge in any format or medium. You must re-use it accurately and not in a misleading context. The material must be acknowledged as The Rotherham NHS Foundation Trust copyright and you must give the title of the source document/publication.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

This document/publication is also available on our website at [insert address if applicable].

Any enquiries regarding this document/publication should be sent to us at:

**The Rotherham NHS Foundation Trust
Moorgate Road, Oakwood
Rotherham, S60 2UD**

Option 2:

This covers cases where a licence is required to re-use the material. This is for situations where a fee will be charged for the re-use of the information.

© The Rotherham NHS Foundation Trust copyright [insert year of publication]

If you wish to re-use all or part of this document/publication you will need a licence. Applications can be sent to us at:

**Freedom of Information Co-ordinator
The Rotherham NHS Foundation Trust
Moorgate Road, Oakwood
Rotherham, S60 2UD**

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

The Trust will consult with the individual(s) who created the requested information to determine an appropriate charge (if applicable) for its re-use. This will be conveyed to the requester in a fees notice/licence.

If the requested information is determined to be releasable, and the copyright is held by the Trust, the information will be released for re-use subject to the appropriate fee being paid.

The Trust will grant a licence to the requester allowing them to re-use the identified information.

15.2 NOTICES FOR WEBSITES

The following statement will be displayed at the bottom of all web pages on the Trust Internet site.

© The Rotherham NHS Foundation Trust copyright 2005

The Terms & Conditions page will contain the following text:

You may re-use the material featured on this website (not including logos) free of charge in any format or medium. You must re-use it accurately and not in a misleading context. You must acknowledge the material as The Rotherham NHS Foundation Trust copyright and give the title of the document/publication.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

Where a licence is required to re-use particular information, the document concerned will contain the following statement:

© The Rotherham NHS Foundation Trust copyright 2005

You may download the material featured on this website to file or printer for non-commercial research and private study. You will need a licence from us for any other form of re-use. Applications can be sent to us at:

**Patient Advice & Liaison Service (PALS)
The Rotherham NHS Foundation Trust
Moorgate Road, Oakwood
Rotherham, S60 2UD**

The Trust will then follow the procedure above (15.1 – Option 2) for the release of a publication requiring a licence.

16.0 APPENDIX E – GLOSSARY OF TERMS

Absolute exemption – Applied to information that does not have to be released to the applicant either through a Publication Scheme (q.v.) or through the general right of access (q.v.) under the FOI Act. Information to which an absolute exemption applies does not require a public authority (q.v.) to take a test of prejudice or the balance of public interest to be in favour of non-disclosure. Reference to absolute exemptions can be found in Part I, Section 2 and Part II of the FOI Act.

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

Document – A means any content, including any part of such content, whether in writing or stored in electronic form or as a sound, visual or audio-visual recording, other than a computer program.

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 three months 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.

General right of access – Section 1 of the FOI Act confers a general right of access to information held by public authorities (q.v.). An applicant (q.v.) 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. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the FOI Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

Information Commissioner – The Information 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.

Licence – A document stating the terms for the re-use of copyright material, and the details of any costs associated with the re-use of the material.

Notice – A statement appended to documents that state the copyright and re-use limitations.

Public authority - The FOI Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the FOI Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

- a) on the face of the FOI Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
- b) by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
- c) by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or
- (d) by reference to the definition of a publicly-owned company in section 6.

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.

Qualified exemption - Information to which a qualified exemption applies requires a public authority (q.v.) to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, Section 2 and Part II of the FOI Act.

Re-use – The use by a person of a document held by the Trust for a purpose other than the initial purpose within the Trust's public task for which the document was produced.

Vexatious Request – Requests posed to frustrate normal business interests of the Trust with no intrinsic interest in the information requested.