

NHS BOURNEMOUTH AND POOLE
FREEDOM OF INFORMATION REQUESTS

**Requests for Information under the Freedom of Information Act 2000 –
Procedure and Guidelines for Staff and the Public**

1. INTRODUCTION

Purpose

- 1.1 This paper outlines the process for dealing with requests for information under the Freedom of Information Act 2000. The access provisions came into force on 1 January 2005.

Summary of Act

- 1.2 The Freedom of Information Act gives a general right of access to all types of recorded information held by public authorities and gives the public the right to be told whether the information exists as well as the right to receive the information.
- 1.3 It seeks to balance three rights:
- the right to information;
 - the right to confidentiality;
 - the right to effective public administration.
- 1.4 The Act, which supplements and complements the Data Protection Act, is fully retrospective. Accountable Officers face a maximum punishment of two years imprisonment for offences under the Act.

Scope

- 1.5 The Freedom of Information Act applies to *corporate* records and information and the emphasis is on granting access to information.
- 1.6 The Data Protection Act refers to *personal data* and the emphasis is on maintaining confidentiality.
- 1.7 The Environmental Information Regulations refers to *environmental information* such as environment, energy, health and safety.
- 1.8 Under the Freedom of Information Act, the body who 'holds' the information must release it upon request, as long as it does not fall in one of the exempt categories.
- 1.9 Under the Data Protection Act, the 'owner' of the data releases information to the data subject.

2. CULTURE OF OPENNESS

- 2.1 The legislation reflects a national policy shift from a culture of confidentiality to one of openness. The underlying principle is that all information held by a public authority should be freely available except for a small number of tightly defined exempt items.
- 2.2 The Primary Care Trust considers itself to be an open organisation. Board meetings are held in public and members of the public may attend to observe the decision-making process and may also ask a question at the meeting. Papers for board meetings are publicly available and agendas and minutes are posted to the Trust website (www.bournemouthandpoole.nhs.uk) Copies of policies and procedures are available through the website or from the Corporate Business Manager who is also the Freedom of Information lead.
- 2.3 The Primary Care Trust involves local stakeholders, GPs, patients, users and carers in its decision-making in relation to the planning and delivery of services.

3. PUBLICATION SCHEME

- 3.1 All public bodies are required to have a publication scheme in place since 2003. This gives details of routine information which the PCT publishes regularly and where it is available. Examples include the PCT annual report and papers for board meetings held in public and so on.
- 3.2 The PCT's website is the main vehicle for the publication scheme and the scheme will be updated when the new website becomes available at the beginning of 2011.

4. ACCESS REQUESTS

Right of access

- 4.1 Since 1 January 2005, any individual, anywhere in the world, has the right to:
- be informed whether the Primary Care Trust holds certain information;
 - obtain a copy of that information.

Definition and making a request

- 4.2 A request for information must be in writing (by letter or email), addressed to the Primary Care Trust and contain the name and address of the applicant. It is sufficient under the Act for the address to be an email-only address.
- 4.3 An email address has been set up to help make it easier for people to apply for information (foi-requests@bp-pct.nhs.uk).

4.4 Written requests by letter should be addressed to:

- Corporate Business Manager, NHS Bournemouth and Poole, Canford House, Discovery Court Business Centre, 551 – 553 Wallisdown Road, Poole, BH12 5AG

Type of request

4.5 The request can be for:

- a copy of the information;
- an opportunity to inspect the records;
- a summary of the information.

Receiving and response to a request

4.6 Requests for information will be managed by the Corporate Business Manager. A flow chart of the procedure is given at Appendix A.

4.7 It is permissible under the Act for any member of staff to receive a written request for information and there is no need for the enquirer to mention the Freedom of Information Act when making their request: all written requests for information come within the Freedom of Information Act.

4.8 The Primary Care Trust is obliged to help members of the public in making a request. For example, if a request is made verbally by someone who is unable to read or write then the Primary Care Trust will assist the applicant to write down their request and encourage him/her to verify with a friend or family member that the written request is in fact what is required. A similar approach will be taken with applicants who do not speak English as their first language and who need assistance in writing down their request.

4.9 Any member of staff who receives a written request, whether by letter or email, for information should immediately send it to the Corporate Business Manager or via the FOI email address foi-requests@bp-pct.nhs.uk for action. The Corporate Business Manager will consult internally and may take advice before releasing information, where appropriate.

4.10 The Primary Care Trust must respond to all requests within 20 working days. Where reasonable, the Primary Care Trust will endeavour to supply the information in the required format.

4.11 If the Primary Care Trust requires further clarification to enable it to identify the information requested, then the 20 working days timeline will be restarted when the applicant has provided that clarification. If no response has been received within three months then the request will be considered void.

4.12 Each request for information will be considered on an individual basis and the Trust will respond appropriately within the Act.

- 4.13 All responses advise the enquirer of their right under the Freedom of Information Act 2000 to apply to the Information Commissioner for a decision whether, in any specified respect, their request for information has been dealt with in accordance with the requirements of Part 1 of the Act. It is also made clear that the Information Commissioner will expect the Trust's complaints procedure to be exhausted before he makes a decision.
- 4.14 Information will be supplied electronically unless it has been requested in paper format. Enquirers may also be directed to the Primary Care Trust website (www.bournemouthandpoole.nhs.uk) which is increasingly being used as the repository for all key information produced by the Primary Care Trust.
- 4.15 It is permissible for the Primary Care Trust to permit the enquirer to view the information if it is inappropriate, for example the document is very large, to send a copy.

Round Robin Requests

- 4.16 Some requests are sent to a number of NHS organisations and while the Strategic Health Authority (SHA) only advises on 'round robin' requests, it is important that the Primary Care Trust informs the SHA of any suspected round robins so that other NHS organisations can be made aware and liaise between themselves appropriately.
- 4.17 The Strategic Health Authority may issue advice to ensure a co-ordinated response across the region. This advice will normally prove sufficient for the PCT to process the request without further involvement, but there may be occasions when guidance needs further refinement because of the particular circumstances of the PCT.

Withholding or Refusing Information

- 4.18 The Primary Care Trust will usually supply the information where it is held unless:
- it is held by another organisation in which case the Primary Care Trust will advise who holds the information so that the applicant can approach them direct;
 - the information falls under one of the absolute exemptions (see 4.24);
 - the information falls under one of the more general exemptions (see 4.24) and has applied a public interest test which shows that there would be more harm done to the public interest in publishing the information than in withholding it.
- 4.19 In cases where information is withheld because a public interest test has been applied, then the rationale for refusing the information will be made clear to the applicant.

Complaints Procedure

- 4.20 Where a request for information is refused, the applicant may appeal against the decision. Any applicant who is dissatisfied with the PCT response should write to the Corporate Business Manager within 28 days of the date of the Trust's response, stating why they are dissatisfied.
- 4.21 The Corporate Business Manager will review the response in consultation with the Information Governance Steering Group Sub Committee for reviewing Freedom of Information decisions and if necessary take legal advice. The PCT aims to respond to complaints within 20 working days.
- 4.22 If the applicant is still dissatisfied with the PCT response, they have right of appeal to the Information Commissioner.
- 4.23 Individuals are also free to contact the Information Commission directly although they will expect the Primary Care Trust complaints procedure to have been exhausted first. The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel 01625 545700

Fax 01625 524510

Email mail@ico.gsi.gov.uk

Exemptions

- 4.24 There are 23 categories of information under which it is permissible not to release information and a full list is attached at Appendix B. Some of these categories are 'absolute exemptions' (those shown in **bold** type) and no reason needs to be given for non-disclosure, other than quoting the relevant exemption. Other exemptions – the majority (in plain type) - are subject to a public interest test which must be taken into account before an exemption is applied.
- 4.25 Consideration of the public interest may take longer than 20 working days in which case the applicant will be kept informed of when they are likely to receive a response.
- 4.26 If an exemption is used, then the applicant must be informed which one has been used and the reasons for applying the exemption.

4.27 Exempted information will be kept under review in case it is possible to release it in the future. This may include information provided to third parties, given with the expectation that it would be held in confidence, such as tenders for contracts before the contract has been awarded. When the contract has been awarded, it may be possible to release the successful and unsuccessful tenders if a request has been made.

Charges

4.28 Primary Care Trusts are permitted to charge reasonable fees to meet some of the cost of providing information. The Primary Care Trust may charge for reasonably incurred costs to:

- inform the applicant whether the Primary Care Trust holds the information;
- communicate the information to the applicant.

4.29 The fee may include:

- the cost of putting the information into the applicant's requested format such as CD or audio tape;
- photocopying and printing costs (set at no more than 10p for each page);
- postage or other transmission costs.

4.30 Charges for information are set centrally and defined in regulations. There is no charge for information that costs the Primary Care Trust less than £450 to produce although the PCT may charge for costs incurred in retrieval, photocopying and postal charges as above.

4.31 The PCT cannot charge for time deciding whether an exemption is applicable.

4.32 Where it will cost more than £450 to respond then the Primary Care Trust may refuse to answer the request. The limit is applied first to the organisation's duty to confirm or deny that it holds the information and then to its duty to supply the information. Therefore if it would cost more than £450 to confirm or deny, there is no duty to do so.

4.33 Primary Care Trusts are permitted to estimate whether the cost of meeting a particular request would exceed the £450 limit. To do this, the organisation needs to take into account the costs of employing staff to:

- find out whether the information is held;
- locate and retrieve the information;
- extract the information (including editing and redacting).

4.34 To estimate these costs the Primary Care Trust uses an hourly rate of £25 per person per hour, in line with national guidance.

- 4.35 The PCT must make clear to the applicant from the start if it will be charging for the information and specify the fee. The 20 day response time is then put on hold until the fee is received. The Trust does not have to respond where the applicant refuses to pay the fee. If the fee has not been paid within three months then the Primary Care Trust will assume that the applicant no longer wants to have the information.

5. INFORMATION COMMISSIONER AND ENFORCEMENT

- 5.1 The Information Commissioner is responsible for promoting compliance with the Act and has powers of enforcement. He is independent and responsible directly to Parliament.

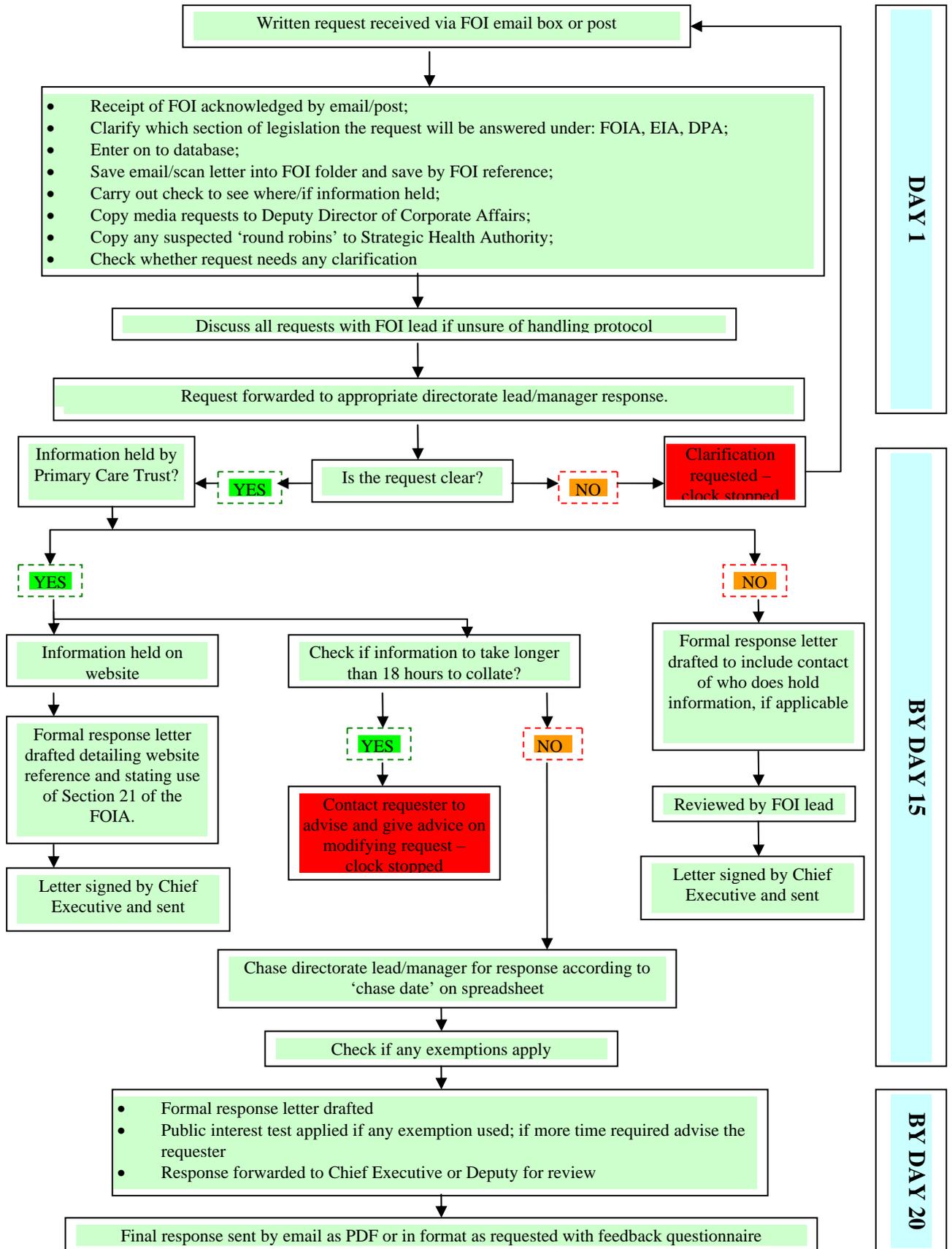
6. TRAINING

- 6.1 The Primary Care Trust will provide training and support for all staff in how to handle written requests for information.
- 6.2 Any member of staff with any specific query should contact their line manager in the first instance. Line managers should refer to the Corporate Business Manager for further guidance or advice.

7. RECORDS AND REGISTERS

- 7.1 The Corporate Business Manager will keep a register of requests received which will record the following details:
- date request received;
 - name of individual or company requesting the information;
 - information requested;
 - whether a charge is applicable;
 - date of response and outcome including whether the information was sent or withheld.
- 7.2 The Corporate Business Manager will establish and maintain regular summary reports of the requests register and submit these to the Information Governance Steering Group for information.
- 7.3 An individual electronic file will be kept for each request which will be retained as follows in line with the national Records Management NHS Code of Practice:
- three years in cases where the request has been met in full;
 - ten years in cases where information has not been disclosed or has been edited (redacted) before being published.

**NHS Bournemouth and Poole
Procedure for managing Freedom of Information requests**



Exemptions under the Freedom of Information Act 2000

Section of the Act	Exemption Name
Section 21	Information accessible by other means
Section 22	Information intended for future publication
Section 23	Information supplied by, or related to, bodies dealing with security matters
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 32	Court records
Section 33	Audit functions
Section 34	Parliamentary privilege
Section 35	Formulation of Government policy
Section 36	Prejudice of effective conduct of public affairs
Section 37	Communications with Her Majesty, with other members of the Royal Household and the conferring by the Crown of any honour or dignity
Section 38	Health and safety
Section 39	Environmental information
Section 40	Personal information
Section 41	Information provided in confidence
Section 42	Legal professional privilege
Section 43	Commercial interests
Section 44	Prohibitions on disclosure

Notes

Bold type indicates an 'absolute exemption'. No reason needs to be given for non-disclosure.

All other exemptions (in plain text) require a public interest test to be applied. In cases where the PCT is considering withholding the information, a public interest test needs to be applied to decide whether it is in the public interest to withhold or publish the information.