

**OPERATIONAL MANUAL FOR THE DISCHARGE OF
TRUST FUNCTIONS UNDER PART I OF THE
FREEDOM OF INFORMATION ACT 2000**

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Introduction

1. This Operational Manual puts into practical effect the Freedom of Information Policy of the Oxford Radcliffe Trust (the “Trust”), and should be read in conjunction with it.
2. The Government is committed to greater openness in the public sector, a commitment supported by the Trust. The Freedom of Information Act 2000 (the “Act”) will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered.
3. The main features of the Act are:
 - 3.1. a general right of access to all recorded information held by public authorities, subject to certain conditions and exemptions;
 - 3.2. the right, subject to certain exemptions, to be informed whether the Trust holds the information;
 - 3.3. the right, subject to certain exemptions, to have the information communicated;
 - 3.4. where an absolute exemption is applicable, the Trust may choose to rely on it. Where a conditional exemption applies then the Trust must apply the Public Interest Test before reaching a decision, balancing whether the public interest in maintaining the exemption in question outweighs the public interest in disclosure;
 - 3.5. a duty on every public authority to adopt and maintain a Publication Scheme;
 - 3.6. a new office of the Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
 - 3.7. a duty on the Department of Constitutional Affairs to promulgate Codes of Practice for guidance on specific issues.

Department of Constitutional Affairs Code of Practice

4. This document is based upon the Code of Practice issued by the Department of Constitutional Affairs pursuant to section 45(5) of the Act¹. It is designed to support implementation of the Act and ensure compliance with Code of Practice.
5. Failure to comply with the Code of Practice may result in the making of a best practice recommendation by the Information Commissioner who has a duty under Section 47 of the Act to promote the observance of the Code by public authorities. Evidence of compliance with the Code by the Trust will be regarded as evidence of good practice.

Duty to Provide Advice and Assistance

6. Section 16 of the Act places a duty on public authorities to provide advice and assistance to applicants. The procedures in this manual will facilitate compliance with this duty which, again, is enforceable by the Information Commissioner. In the discharge of this duty the Trust will take account of other Acts of Parliament that may be relevant to the provision of advice and assistance to those requesting information, e.g. the Human Rights Act 1998, the Data Protection Act 1998, the Disability Discrimination Act 1995 and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000).
7. The FOI lead will be responsible for the discharge of this duty in respect of this Trust.

Aims and Scope of the Operational Manual

8. In common with the Code of Practice, the aim of this manual is to:
 - 8.1. facilitate the disclosure of information under the Act by setting out good administrative practice that the Trust will follow when handling requests for information, including, where appropriate, the transfer of a request to a different authority;
 - 8.2. protect the interests of applicants to the Trust 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;

¹ 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 Act, November 2002

- 8.3. ensure, by setting standards for consultation, that the interests of third parties who may be affected by any decision to disclose information, are considered by the Trust.
9. All Non-Executive Directors and staff must be aware of, and adhere to, these procedures, which apply to all individuals engaged in the discharge of the duties of this Trust. A failure to adhere to these procedures may result in disciplinary action.
10. The FOI lead will review these procedures on at least an annual basis.

Publication Scheme or general right of access?

11. Requests for information under the Act will arise from two different rights:
 - 11.1. through the right of access to the material published on the Trust's Publication Scheme; or
 - 11.2. through the general right of access to recorded information held by the Trust.
12. Under section 19 of the Act all public authorities are required to publish and maintain a Publication Scheme and to make that published information available on request. The Publication Scheme is a complete guide to all the information routinely published by the Trust. It describes the classes or types of information about our organisation that we make publicly available.
13. The Trust has adopted a model Publication Scheme for NHS Trusts. The Scheme is accessible through the Trust's web site at <http://www.oxfordradcliffe.nhs.uk/aboutus/foi.aspx>. Hard copies will be available at main reception areas on each hospital site. The FOI lead will review the Publication Scheme for content and accuracy on a quarterly basis. The Information Commissioner will formally review the Publication Scheme every three to four years.
14. The Trust's Publication Scheme is to be used as a proactive tool for the dissemination of information relating to the business of the Trust. The benefit to the Trust of keeping a comprehensive and up to date Scheme is that the formal administrative regime for making an FOI request is not activated where material has been published and made available via the Publication Scheme. Requests for any information which has been published in the Trust's Publication Scheme may be made verbally or in writing (including through electronic means) and should be responded to as soon as possible.
15. The general rights of access to recorded information under the Act come into force on 1st January 2005. Under the Act, requests must be made in writing. Requests may be made electronically provided they are in legible form and are capable of being used

for subsequent reference. These requests will cover all information that has not been included in the Publication Scheme.

16. Requests for information published on the Publication Scheme and for information available under the Act will be dealt with by adopting the procedures outlined below.

Freedom of Information contact details

17. Andrew Stevens, Director of Planning and Information is the Executive Director with responsibility for FOI.
18. Kathy Hulcup, Information Governance Manager is the Trust's FOI lead and will support the development, implementation and monitoring of the Trust's response to the Act and will also be responsible for maintaining the publication scheme, reviewing the contents on a regular basis and liaising with departments to ensure relevant information is placed on the Scheme at the appropriate time.
19. The FOI lead will be the first point of contact for all requests under the Act with responsibility for the recording and monitoring of all requests for information ensuring responses are dealt with within twenty working days. The contact details are foia@orh.nhs.uk.

Guidance Leaflet

20. There is attached at Appendix Three a copy of the Guidance Leaflet which will be made available to anyone who is seeking to make, or is making, a request for information under the Act.

When not to use this Manual

21. Whilst under the Act, any request in writing for access to information is a request made under the Act, information is made available by the Trust to stakeholders through staff on a daily basis as part of the routine day to day business of providing healthcare services. It would be impractical and overly bureaucratic to attempt to record this activity for FOI purposes.
22. It is not appropriate to use this Manual and refer issues to the FOI lead where for example:
 - 22.1. you are providing information as part of the Trust's normal business process. This may include leaflets and other reference material that has

already been approved for use by the Trust. This would also include the Publication Scheme, Trust Board papers, Annual Reports, the Corporate Plan and service information leaflets;

- 22.2. you are discussing an information leaflet or other reference material with another individual, helping them decide on their options and sign posting them to a more appropriate source of help;
 - 22.3. you are providing information on the current care and treatment of an individual using established practices – for example, sharing care plans with the service user as part of normal clinical interactions;
 - 22.4. a request is for information which is already reasonably accessible to the applicant by other means;
 - 22.5. correspondence that is not a request for information;
 - 22.6. a request does not include a name and address for correspondence;
 - 22.7. a request is made orally (unless it is a request for environmental information).
23. Remember that all written requests for information should be treated as FOI requests, so you must use this Manual for guidance. If you are in doubt at any stage about how you should deal with any information request, contact one of the FOI Team for help on foia@orh.nhs.uk.

Procedure for dealing with the initial application for information

Publication Scheme Applications

24. The Publication Scheme directs all applicants who require assistance in obtaining information from the Trust to the FOI lead . As the Publication Scheme also lists the contact details of other key people within the Trust, these individuals may also receive enquiries via the Publication Scheme.
25. In the event that a request arising from the Publication Scheme is directed to an individual other than the FOI lead , that individual must:
 - 25.1. take the name and contact details of the applicant;
 - 25.2. ascertain what information the applicant wants and record this;
 - 25.3. inform the applicant that their request will be referred to the FOI lead within one working day;

- 25.4. provide the applicant with the contact details of the FOI lead and inform them that their enquiry will be responded to as soon as possible and within a maximum of twenty working days;
- 25.5. pass the applicant's name, contact details and a detailed account of what information they require to the FOI lead by e-mail www.foi@orh.nhs.uk or by facsimile ext. 22861. If this is not possible a telephone contact with the FOI lead is acceptable as a last resort.
26. All requests for information arising from the Publication Scheme must be referred to the FOI lead within one working day of receipt. These requests may be written or verbal.
27. Once the FOI lead has received the request the procedure for processing requests for information applies.

General Right of Access Applications

28. Applications made under the general right of access to recorded information will relate to all recorded information not listed in the Publication Scheme. These requests may be retrospective in that they may seek information held by the organisation that is no longer being actively used or that has been archived. Such requests will be permissible under the Act from 1st January 2005.
29. As stated above, these applications *must* be received in writing (which includes a request transmitted electronically) and include a postal or e-mail address. They will usually be directed to the FOI lead (see page 8) although another individual working with the Trust may also receive them. In such circumstances, that individual *must* forward the request to the FOI lead by e-mail (foia@orh.nhs.uk) or facsimile (ext. 22861), within one working day. If the application has been made in the form of a letter the original documentation should also be sent to the FOI lead in addition to the facsimile or electronic copy.
30. If an applicant wishes to access information under the general right of access but has not requested information in writing, the applicant should be referred to the FOI lead thus activating the systems for the Provision of Advice and Assistance to Applicants (see page 17).
31. Once the FOI lead has received the applicant's request the procedures for processing requests for information will be activated and the request logged.
32. All written requests for information to the Trust must, from 1st January 2005, be treated as if they are a FOI request.

Procedure for processing requests for information

Stage One - Upon Receipt of a Request

33. Once the FOI lead receives an applicant's request for information the following information will be recorded by the Trust:
 - 33.1. Initial Date Received by the Trust
 - 33.2. Name and Contact Details of Initial Recipient
 - 33.3. Date Received by FOI lead
 - 33.4. Name of applicant
 - 33.5. Contact Details
 - 33.6. Access route - Publication Scheme or general right of access
 - 33.7. Information Requested
34. A summary of all the information that the Trust will record, for the purposes of monitoring compliance with the Act, can be found in Appendix Two.
35. The FOI lead will write to the Applicant (e-mail contact will be appropriate if the applicant has made contact by e-mail), within two working days of receipt of the applicant's request to inform the applicant that the request has been received and is being processed. A record will be kept of this contact.
36. If the FOI lead has sufficient information to respond to the request the applicant will be informed in the letter of acknowledgement that the request will be processed as soon as possible and within a maximum of twenty working days. The applicant will also be informed in writing of any fees or charges that are payable for the provision of the information. If a charge is payable, the applicant will be informed that no information will be provided unless the fee or charge is paid within three months. In relation to information supplied pursuant to the general right of access from 1st January 2005, this information will be communicated as part of a statutory Fees Notice. The Publication Scheme will make clear whether there will be any charges for the information provided through that mechanism. Charges and fees are addressed on page 26.
37. If any fee or charge requested is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge the systems for the Provision of Advice and Assistance to Applicants (see p17) will be activated.

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If the applicant still refuses to pay a Fees Notice after advice and assistance is offered, the Procedure for Refusal of a Request will be activated (see p15).

38. If the applicant has not provided sufficient information to enable the request to be processed the systems for the Provision of Advice and Assistance to Applicants (see p17) will be activated.
39. In accordance with sections 12 and 13 of the Act, if the FOI lead estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations, she will notify the applicant in writing of the estimated cost. The systems for the Provision of Advice and Assistance to Applicants (see p17) will be initiated to investigate ways of bringing costs within appropriate limits.
40. If the FOI lead **believes** that any of the information requested is exempt from disclosure under Part II of the Act the Procedure for Refusal of a Request will be invoked (see p 15).
41. If the FOI lead has evidence to demonstrate that the request itself is vexatious or repeated as defined in section 14 of the Act, the Procedure for Refusal of a Request (see p15) will be activated.

Round Robin requests

42. The FOI lead will take responsibility for reporting to the Strategic Health Authority via informal networks of FOI leads of 'round robin' requests which in their consideration may have significant implications at regional or national level.

Stage Two - Accessing the Information

43. The FOI lead will identify who holds the information that the applicant has requested and within two working days, contact the person(s) in the Trust who will be most appropriately placed to meet the requirements of the applicant. The FOI lead will keep a record of this contact.
44. Upon receipt of an information request from the FOI lead, Trust staff will have up to 15 working days to locate and provide the information requested to the FOI lead. If it is not possible to meet this deadline, the FOI lead must be informed immediately; additional working days may then be allowed to comply with the initial request. FOI lead will keep a record of these contacts.
45. The information that the applicant has requested will, once it has been identified and retrieved, be forwarded to the FOI lead. The FOI lead will then review the information within two working days, taking into account any exemptions that may

be available and/or fees that may be payable before providing the information to the applicant. If any exemptions are applicable, the Procedure for the Refusal of Requests will be activated (see p15). If fees are payable the applicant will be issued with a Fees Notice as described on page 11 above.

Decisions regards the claiming of an exemption and drafting a response to applicant of the reasons, will be made by the FOI lead in discussion with the Director of Planning and Information.

Stage Three - Providing the Information

46. If no fees or charges are either payable or outstanding (see p26), or if no exemptions are applicable, the FOI lead will provide the information requested by the applicant directly to them within three working days of receipt of the information held by the Trust that is relevant to the request.
47. Information will be provided to applicants by any one or more of the following means, namely:
 - 47.1. as a copy of the information in permanent form or another form acceptable to the applicant
 - 47.2. through the provision of a reasonable opportunity to inspect a record containing the information
 - 47.3. through the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.
48. The FOI lead will consider all the circumstances of the request for the communication of information by a particular means, including the cost of doing so. If it is felt that it is not reasonably practicable to comply with any preference for the provision of information in the form requested by the applicant, the FOI lead will notify the applicant of the reasons of this decision. The information will then be provided by such means as it is deemed reasonable. In the discharge of this function, the FOI lead will have regard to the Trust's other statutory obligations such as those arising from the Data Protection Act 1998 and Disability Discrimination Act 1995.
49. The FOI lead will record:
 - 49.1. the date upon which the information was provided to the applicant;
 - 49.2. the form in which the information was requested; and
 - 49.3. the format in which the information was provided.

Procedure for refusal of requests

50. A request for information may be refused in whole or in part. A request for information may be refused if:
 - 50.1. the information is exempt from disclosure under Part II of the Act
 - 50.2. a fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant/the applicant was notified of the charge (see p26)
 - 50.3. the cost of compliance exceeds the appropriate limit, as set out in statutory Fees Regulations
 - 50.4. the request is demonstrably vexatious or repeated.
51. If a request for information is refused for any of the reasons set out at paragraph 49 above, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) of the Act, the applicant will also be informed of the Trust's complaints procedures and of the statutory right to complain to the Information Commissioner (see p27).
52. Section 17 of the Act requires written notice to be given to the applicant when a public authority refuses to disclose requested information. There are four different types of notice:
 - 52.1. The first type of notice is to be given when any Part II provision is relied upon to claim either that the duty to confirm or deny is excluded or that the information is exempt.
 - 52.2. The second type of notice is appropriate when an authority is relying on one of the Part II provisions which does not confer absolute exemption, but has not yet decided where the balance of public interest lies.
 - 52.3. The third type of notice is a statement of reasons for claiming that the public interest in maintaining the exclusion of the duty to confirm or deny, or in maintaining an exemption, outweighs the public interest in disclosing whether the authority holds particular information, or in disclosing information as the case may be.
 - 52.4. The fourth type of notice is issued when a public authority claims that the section 12 or section 14 exemptions applies (that is, that the cost of compliance would exceed the appropriate limit, or that the request is vexatious or repeated).

53. The first type of notice must state that the Trust is relying on a claim that a provision of Part II relating to the duty to confirm or deny is relevant to the request, or that the information sought is exempt information, specify the exemption relied upon, and state why the exemption applies if that would not otherwise be apparent. A statement as to why the exemption applies need not be made if, or to the extent that, it would involve disclosure of information which would itself be exempt information.
54. The second type of notice must include all the information that has to be included in the first type of notice and indicate that no decision as to the balance of public interest has yet been made. It must also contain an estimate of the date by which a decision is expected.
55. As to the “public interest” test notices, Section 17(3) of the Act comes into play once a decision has been made as to the balance of public interest which is adverse to the applicant. The reasons for that decision may be included in the first form of notice. Alternatively, when the authority has initially given a notice of the second type, it may state the reasons in a separate and subsequent notice (the third type) given within such time as is reasonable in the circumstances. A statement as to why the balance is in favour of maintaining the exclusion need not be made if, or to the extent that, it would involve disclosure of information which would itself be exempt information.
56. The fourth type of notice (that is, one stating that section 12 or section 14 of the Act is relied upon) must be given within the time for complying with section 1(1) of the Act.
57. Such estimates as are described in paragraph 53 should be realistic and reasonable and compliance with time estimates is to be expected unless there are extenuating circumstances. If it is not possible to communicate a decision to the applicant by the estimated date and the time estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the FOI lead. If the FOI lead finds, while considering the public interest, that the time estimate is unrealistic, the applicant will be kept informed. A record will be kept of instances where time estimates are exceeded. Where time estimates are exceeded more than occasionally, steps will be taken by the FOI lead to identify the problem and rectify it.
58. The FOI lead will keep records of all notices issued to refuse requests for information and will maintain a file recording the decision making process. This file will be subject to periodic review to maintain consistency in decision making.

Provision of advice and assistance to applicants

59. The handling of Freedom of Information requests will be dealt with by the Trust's Freedom of Information team as stated on page 8.
60. The FOI lead will act as the key contact point for applicants for the Trust.
61. The FOI lead will provide advice and assistance to potential and actual applicants for information under the Act. The advice and assistance will include:
 - 61.1. guidance on how to access information from the Trust under the general right of access and the Publication Scheme
 - 61.2. informing the applicant of the progress of their request
 - 61.3. explaining the basis upon which any charges or fees have been levied or exemptions applied (this is in addition to Fees Notices and notice issued under s17 of the Act)
 - 61.4. suggesting other routes through which applicants may wish to access information, including from other public authorities
 - 61.5. obtaining additional information to assist the Trust in meeting the information needs of the applicant
 - 61.6. consulting with third parties as required
 - 61.7. identifying sources of independent help for applicants, and
 - 61.8. directing applicants to the complaints procedure and/or Information Commissioner if they are dissatisfied with the discharge of the duties of the Trust under Part I of the Act.
62. The text below explores some specific areas in which the FOI lead may provide advice and assistance to applicants.
63. **Staff must refer all requests for information (written, e-mail, telephone calls) to the FOI lead (see p8), that is not part of the day to day business of the department, i.e. requests for leaflets and/or information or general concerns about treatment, appointments, admissions etc.**
64. A record will be kept of all instances, including those described below, where the FOI lead has provided advice and assistance to (potential) applicants.
65. FOI lead will also act as a source of advice and support for Trust staff in regard to the Act.

66. A request for information under the Act's general right of access must be made in writing. Written requests include requests transmitted by electronic means provided these are legible and are capable of being used for future reference. Where a potential applicant is unable to frame a request in writing, the FOI lead will take reasonable steps to ensure that appropriate assistance is given to enable that individual to make a request for information.
67. Appropriate assistance might include:
 - 67.1. advising the person that another person (including Trust staff) or agency (such as a 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;
 - 67.2. referring the individual to the Trust's Patient Advice and Liaison Service (PALS);
 - 67.3. 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).
 - 67.4. This list is not exhaustive, and the FOI lead will discuss with the potential applicant the options available thus ensuring flexibility and offering the advice and assistance most appropriate to the circumstances of the individual potential applicant.

Applicant has provided insufficient information to fulfil their request

68. Where the applicant has not described the information sought in a way that enables the Trust to identify or locate it, or the request is ambiguous, the FOI lead will contact the applicant and provide assistance to the applicant to enable him or her to describe more clearly the information requested.
69. 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 lead 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 e-mail, or even in a face-to-face contact where more information is needed to clarify what is sought.
70. Appropriate assistance in this instance might include:

- 70.1. providing an outline of the different kinds of information which might meet the terms of the request;
 - 70.2. providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
 - 70.3. providing, wherever 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;
 - 70.4. providing a general response to the request setting out options for further information which could be provided on request.
71. This list is not exhaustive, and the FOI lead will be flexible in offering advice and assistance most appropriate to the circumstances of the applicant. 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.
72. If the FOI lead has provided such assistance, but the applicant still fails to describe the information requested in a way which would enable the Trust to identify and locate it, then further clarification will be sought from the applicant. The FOI lead will then disclose any information relating to the application which has been successfully identified and found, and for which the Trust does not wish to claim an exemption. If it is still not possible to identify the nature of some or all of the information being sought by the applicant, the FOI lead will explain to the applicant why the Trust cannot take that part of the request any further and will provide details of the complaints procedure (see p27) and of the applicant's rights under section 50 of the Act.
73. The twenty working day time limit is not activated until the applicant has provided sufficient information for the Trust to supply the applicant with the information sought.

Applicant is unprepared or unable to pay a charge or fee or fees exceed appropriate limit

74. 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 (see p26). In such cases the FOI lead will consider whether there is any information that may be of interest to the applicant that is available free of charge and will contact the applicant to explore ways in which the fee or charge may be reduced. For example by:

- 74.1. providing information electronically instead of in hard copy or
 - 74.2. inviting the applicant to view the information and take notes or
 - 74.3. to select the information the applicant feels to be most relevant.
75. Under section 12(1) and regulations made under section 12(4) of the Act, the Trust is not obliged to comply with a request for information where the cost of complying would exceed the "appropriate limit" (i.e. cost threshold). In such circumstances, the Trust has three options:
- 75.1. to refuse the request on the basis that it exceeds the cost threshold;
 - 75.2. to charge, under section 13 of the Act, for the provision of the information;
 - 75.3. to seek a means by which information could be provided within the cost ceiling.
76. In the event of a request exceeding the cost ceiling, the FOI lead will, with the applicant, seek a way in which the information can be provided within the cost ceiling and/or examine what information could be provided within the cost ceiling. If this is not possible or if the applicant still wishes to pursue the original request, the FOI lead will ask the applicant whether or not he or she would be willing to pay the full fee for the information requested.
77. If the applicant is willing to pay the full fee for the information requested a Fees Notice will be issued. If the applicant is unwilling to pay the full fee the Procedure for Refusal of a Request will be initiated (see p15). The applicant will also be informed of their rights to appeal under the complaints procedure and section 50 of the Act (see p27).

Vexatious or repeated requests

78. The FOI lead will not provide assistance to applicants whose individual requests are vexatious or repeated, as defined by section 14 of the Act.
79. In such circumstances, the FOI lead should be able to demonstrate that the applicant's request is vexatious or repeated based upon the monitoring data that has been collected. Each request must be considered individually and on its merits.

Requests which appear to be part of an organised campaign

80. The Trust may receive a number of related requests that, under section 12(1) and regulations under section 12(4), take the cumulative cost of compliance over the "appropriate limit" as prescribed in Fees Regulations.

81. In such circumstances the FOI lead 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 web site, and the applicants notified.

Transferring requests for information

82. If the Trust receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority, the FOI lead will oversee the process for considering whether to transfer the request to the other public authority. If, after investigation, it is found that the Trust holds some of the information requested, a transfer may be made in respect of the information that the Trust does not hold (but which is held by another public authority).
83. 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). Provided the Trust "holds" information that is requested, it will be under an obligation, irrespective of whether the information was produced by the Trust, to confirm or deny and to subsequently provide the information.
84. The Trust will deal with all initial requests for information in accordance with the procedure described in page 11. When it becomes apparent to the FOI lead that the Trust does not hold all or part of the information requested, the applicant will be advised of this fact.
85. If the FOI lead believes that some or all of the information requested is held by another public authority, the FOI lead will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:
- 85.1. contacting the applicant and informing him or her that the information requested may be held by another public authority;
 - 85.2. suggesting that the applicant re-applies to the authority which the Trust believes to hold the information;
 - 85.3. providing him or her with contact details for that authority.
 - 85.4. These will be the initial options that will be offered to applicants whose information requests cannot be fulfilled in full or in part by the Trust.
86. In some cases the FOI lead may consider it more appropriate to transfer that part of the request, in respect of which the Trust does not hold relevant information, to

another authority. In such cases, the FOI lead will consult the other authority with a view to ascertaining whether the other authority does hold the information and, if so, will consider whether the request should be transferred. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information. If a request or part of a request is transferred in this way, the applicant will be informed of this and updated on progress. The applicant will also be informed of the right to make an application directly to the other authority, as described in paragraph 70.

87. Before transferring a request for information to another authority, the FOI lead will consider:
 - 87.1. whether a transfer is appropriate; and if so
 - 87.2. whether the applicant is likely to have any grounds to object to the transfer;
88. The FOI lead will transfer a request to another authority in accordance with the Trust's policy as to consultation with third parties.
89. Where a request or part of a request is transferred from one public authority to another, the receiving authority must comply with its obligations 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.
90. 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.
91. Where the FOI lead 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, the FOI lead should consider what advice, if any, can be provided to the applicant to enable him or her to pursue his or her request. This may include referral to not-for-profit sector information and advice providers, such as the Citizens Advice Bureau, or the Information Commissioner.
92. A record will be kept of all activity associated with the transfer of requests for information to other public authorities.

Consultation with third parties

Where a request affects legal rights of a third party

93. In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party. This may arise 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 ("the DPA"). Unless an exemption provided for in the Act applies in relation to any particular information, the Trust is obliged to disclose that information in response to a request.
94. 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, disclosure of that information without consent would in some circumstances constitute an actionable breach of confidence, such that the exemption at section 41 of the Act would apply. In such cases the FOI lead will consult the third party with a view to seeking the consent of the third party 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.
95. Where information constitutes "personal data" within the meaning of the DPA, the FOI lead will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and deals with the interplay between the Act and the DPA in such cases.
96. A record will be kept of all contacts with third parties regarding consultation and decision making relating to the disclosure of information that may affect the third parties' legal rights.

Consultation in non-legal circumstances

97. Where the interests of a third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate. The FOI lead will lead any consultation where:
 - 97.1. The views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
 - 97.2. the views of the third party may assist the authority to determine where the public interest lies.
98. The FOI lead may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the FOI lead

will consider what is the most reasonable course of action to take in light of the requirements of the Act and the individual circumstances of the request.

99. Consultation will be unnecessary where:

99.1. the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;

99.2. the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;

99.3. no exemption applies and so under the Act's provisions, the information must be provided.

100. A record will be kept of all contacts with third parties regarding consultation and decision making relating to the disclosure of information.

Consultation with a number of third parties

101. Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on behalf of those parties, the FOI lead may, if he or she considers consultation appropriate, consider that it would be sufficient to consult that representative organisation only. For example, a consultation may take place with the Staff side Representatives regarding the views of the Trust's workforce.

102. If there is no representative organisation, the FOI lead may consider that it would be sufficient to consult a representative sample of the third parties in question.

103. A record will be kept of all contacts with representative organisations or representative samples of third parties regarding consultations and decision making in relation to the disclosure of information.

Where there is no response or a refusal to consent by the third party

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

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

106. A record will be kept of all responses to consultations and the decision making processes that arise from them.

Charges and fees

Publication Scheme Charges

107. The Trust will charge only for hard copies or copying onto media (e.g. CD ROM). Most information will be available free of charge, although some information may incur a charge. The charges will vary according to how information is made available.
108. Information that is available from the Trust's web site will be free of charge, although any charges for Internet Service provider and personal printing costs must be met by the individual applicant. For those without Internet access, a single print-out of the information as on the web site will be available by postal or personal application to the FOI lead.
109. Requests for multiple printouts, or for archived copies of documents that are no longer accessible or available on the web, may attract a charge for the retrieval, photocopy, postage and so on. In such circumstances, the FOI lead will inform the applicant in writing of the cost and the charges that will have to be paid in advance. The notification of charges will be through the 'Recorded Signed for' service so that the Trust has a record of the charge levied, the date notification is received by the applicant, and the date payment is received.
110. The Trust will not provide printouts of other organisations' web sites.
111. Leaflets and brochures produced by the Trust will be provided free of charge.
112. Any "glossy" or other bound paper documents, or information contained on CD ROM, video or other media may be subject to a charge as determined by the costs to the Trust of producing the information. A price will be given on application to the applicant.
113. Any information that can be transmitted by e-mail will be provided free of charge, unless otherwise stated.
114. The charges will be reviewed regularly by the FOI lead.

Fees under general right of access

115. The Trust will levy a fee in accordance with Fees Regulations made under the Act in respect of requests made under the general right of access.

116. The Fees Regulations do not apply:
- 116.1. to material made available under a publication scheme under section 19 (covered in previous page);
 - 116.2. to information which is reasonably accessible to the applicant by other means within the meaning of the exemption provided for at section 21; or
 - 116.3. where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosure of the information as provided in sections 9(5) and 13(3) of the Act".
117. The Trust will ensure that any charges made in cases falling outside those covered by the Fees Regulations are in accordance with any relevant legislation and are within the terms of any relevant guidance which has been issued or approved by HM Treasury and which is applicable to the Trust.
118. The Trust will issue Fees Notices by the 'Recorded Signed for' service to ensure that the Trust has a record of the date upon which the applicant is given the notice.
119. A record will be kept of the date of dispatch to the applicant of the Fees Notice and of the date that payment is received.

Fees, charges and time scales

120. If a Fees Notice is issued to an applicant, the 'clock stops' for the purposes of calculating the period of twenty working days, within which information should be disclosed in response to a request made under the Act.
121. Once an applicant has paid the necessary fees, the 'clock' starts again from the point within the twenty working days that it 'stopped'. The applicant may then, subject to any exemptions, be provided with the information requested.
122. Applicants will have three months beginning on the day on which they were given the Fees Notice to pay the fee/charge in question.

Complaints and feedback

123. Comments and feedback about the discharge of the duties of the Trust in relation to the FOI Act will all be forwarded to Assistant Director for Governance.
124. All complaints, verbal or written (including those transmitted by electronic means), must be referred immediately to the Assistant Director for Governance.

Oxford Radcliffe Hospitals

125. Any complaints will be dealt with as a specific FOI complaint. The policy and procedure which will be followed will accord with the Local Resolution Stage of the Trust's Complaints Policy and Complaints Procedure save that it will be made clear to the complainant that the matter is being managed as an FOI complaint.
126. All complainants will be informed of their right to complain directly to the Information Commissioner, and will be given the Information Commissioner's contact details. Complainants who remain dissatisfied with the Trust at the end of the Local Resolution Stage will be advised to take their complaint to the Information Commissioner.
127. The FOI lead will develop a customer satisfaction/quality monitoring system for FOI enquiries.

Accessing and maintaining the publication scheme

128. Each year the FOI lead, with the assistance of other relevant staff, will review and update the Publication Scheme.
129. The Assistant Director for Governance and the FOI lead will review the Publication Scheme in terms of content annually.
130. The Information Commissioner will review the model Publication Scheme that the Trust has chosen to adopt in terms of the classes of information utilised and structure.
131. The Publication Scheme will be featured prominently on the Trust's web site.

Training and awareness raising

132. Staff awareness on the implications of the Freedom of Information Act 2000, the Trust's Freedom of Information Act 2000 Policy and this Operational Manual will be provided by the Data Protection Officer as part of the overall Information Governance training.
133. Information on the Act will also be provided to Trust staff on induction to the organisation. The Trust's Policy on the Act will be cascaded through the organisation's policy distribution system. Regular updates will also be provided through the Trust's internal communications systems.

Legal advice

134. The FOI lead will consult with the Head of Legal Services when legal advice is on FOI is sought. A record will be kept of legal advice sought.

Review

135. This document will be reviewed annually.

References

136. Freedom of Information Act 2000

137. 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 Act

138. The Oxford Radcliffe Hospitals NHS Trust, Freedom of Information Act Policy approved November 2004

Version control

Document	Operational manual for the discharge of Trust functions under Part 1 of the FOIA 2000
Date approved	November 2004
Approving body	Executive Board
Distribution	To all Executive Directors, Divisional Directors and Chairs, Directorate Managers and Chairs
Supporting procedures	FOIA Policy
Review date	October 2005
Category	Corporate
Author	Records Manager
Lead Executive	Director of Planning and Information
Lead Manager	Assistant Director for Governance

Policy reviewed by Information Governance Steering Group January 2007

Version 3 reviewed by IGG January 2009

Version 3 reviewed by IGG January 2010

Reviewed by IGG January 2011

Next review January 2012

APPENDIX 1

FREEDOM OF INFORMATION
SUMMARY OF KEY ACTIONS AND TIMESCALES ON HANDLING
REQUESTS FOR INFORMATION

Stage	Key Action	Timescale	Who	Other actions
Initial application	Details of enquiry to FOI lead by fax or e-mail. Original documentation also sent to FOI lead	1 working day	Recipient of request	Recipient informs applicant that request will be processed in 20 working days
On receipt	Acknowledge receipt of request to applicant		FOI lead	The FOI lead will: <ul style="list-style-type: none"> • keep applicant informed of the progress • provide advice and assistance if required • decide if a fee/charge is applicable • decide if request can be met within applicable limits set in Fees Regulation • decide if information is exempt • decide if request is repeated or vexatious • provide advice and assistance in the event of applicant being unable/unwilling to pay fee/charge • If an exemption is applicable the FOIC will issue a notice informing the applicant of this. • If a request is refused for any other reason, the FOIC will notify the applicant of this.
Accessing information	Identification of where information is held and relevant member of staff	2 working days		
	Locate and provide relevant information to FOI lead	10 working days	Staff	
<i>Note: Timescale suspended if insufficient information provided by applicant to identify and locate information requested.</i>				
	Additional time granted if information difficult to retrieve	2 working days	FOI lead	
	Information reviewed in respect of fees/charges and exemptions	2 working days	FOI lead	
<i>If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The 20 working day timescale is suspended until the fee/charge is paid.</i>				
Providing information	Information provided to applicant	3 working days	FOI lead	<ul style="list-style-type: none"> • The FOIC will provide the information in the format stipulated by the applicant.

FOI lead: Kathy Hulcup on Ext: 20580, Fax: 22861
E-mail: foia.@orh.nhs.uk

APPENDIX 2

Complaints

There is a separate complaints policy for dealing with complaints under the Freedom of Information Act.

APPENDIX 3

Guidance leaflet to come