

Mid Cheshire Hospitals NHS Foundation Trust

Freedom of Information Act and the Environmental Information Regulations (Overarching Policy)

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Persons Responsible for Update: Information Governance Manager

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	A Potential Severity (1-5)	B Likelihood of Occurrence (1-5)	C Risk Rating (A x B = C)
Raw Risk Rating	4	3	12
Final Risk Rating	4	1	4

1 Introduction

The Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (the Regulations) are part of the Government's commitment to greater openness in the public sector, a commitment supported by Mid Cheshire Hospital NHS Foundation Trust (the Trust).

Both the Act and the Regulations came into full effect on 01 January 2005 and legislate for a general right of access (subject to exemptions/exceptions) to recorded information held by public authorities. By establishing these legal rights of members of the public, it will enable them to question the decisions of public authorities more closely and ensure that the services we provide are delivered efficiently and effectively.

All non-personal information may be accessible under the legislation, including both electronic and paper versions. The legislation is retrospective and includes information held prior to the 01 January 2005.

It is the policy of the Trust that no-one will be discriminated against on grounds of age, disability, gender, gender re-assignment, marital status, race (including colour, nationality and ethnic or national origins), religion or belief or sexual orientation. The Trust will provide interpretation services or documentation in other mediums as requested and necessary to ensure natural justice and equality of access.

2 Purpose

The policy will provide a framework within which the Trust can ensure compliance with the requirements of the Act and the Regulations. The Trust understands individuals have a right to privacy and confidentiality, both the Act and the Regulations clearly explain and define the interfaces between themselves and the Data Protection Act 1998 (DPA). This policy does not overturn the common law duty of confidence or statutory provisions (including the Human Rights Act 1998 and the DPA) that prevent disclosure of personal identifiable information. The right to release personal information is covered by the right of Subject Access under DPA.

This policy applies to all employees of the Trust, including permanent, temporary and contract staff, who come into contact with information.

This Policy aims to:

- a. Ensure that all information held by the Trust is processed in accordance with the requirements of the Act and the Regulations.
- b. Meet the requirements of the Information Governance Toolkit.
- c. Provide guidance on the correct way to handle requests for information.

This policy is a guide to how the Trust will manage its obligations under the Act and the Regulations, appropriate precedent will be given to the legislation itself and any associated case law.

3 Duties

This policy applies to all employees, permanent and temporary/bank staff, consultants and secondees working within the Trust. Everyone employed by the Trust has responsibility for handling requests for information appropriately.

In order to support the Trust in ensuring compliance with its statutory obligations all Trust staff must:

- a. Forward any requests received immediately to the Information Governance Team immediately
- b. Fully assist the team with requests for information, paying particular attention to the deadline(s) specified for the provision of information.

In line with this staff must ensure they provide the Information Governance Team adequate information in order for the team to respond appropriately to a request. Furthermore, staff should be aware that under section 77 of the Act it is an offence to alter, deface, block, erase, destroy or conceal any record held by the Trust, with the intention of preventing the disclosure by the Trust of all, or any part, of the information. Repeated failure to provide the requested information, or any attempt to alter, deface, block, erase, destroy or conceal any record held by the Trust will be viewed as a disciplinary offence.

The Information Governance Department is responsible for generating and authorising responses to requests. Under no circumstances may staff respond to requests for information directly without seeking advice or approval from the Information Governance Team.

Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. They are also responsible for ensuring that staff are aware of any changes to this policy.

4 Proactive Dissemination of Information

In order to comply with the proactive dissemination requirements of the Act and the Regulations; the Trust has adopted the model Publication Scheme developed by the Information Commissioner. This is permissible under section 20 of the Act and ensures compliance with section 19 of the Act. This publication scheme is structured around the following classes of Information:

- Who we are and what we do
- What we spend and how we spend it
- What are our priorities and how are we doing
- How we make decisions
- Our policies and procedures
- List and registers
- The services we offer

Applicants are made aware via the Trust's Publication Scheme that responses to requests may be made available on website as part of our disclosure log; all personal information about the applicant will be removed prior to publication. The Information Governance Manager will assess whether it is appropriate for the Trust's response to be added to the disclosure log e.g. responses where no information is provided or very personal requests (such as those on the applicants direct care) on specific topics may be excluded. The decision in relation to exclude requests from the disclosure log will be recorded, via the Trusts request management system.

5 General Rights of Access

The Trust will use all appropriate and necessary means to ensure that it complies with the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 and associated Codes of Practice issued by the Ministry of Justice pursuant to sections 45(5) and 46(6) of the Act.

It is the Trust's duty to ensure that it maintains a pro-disclosure stance when providing information. In the case of the Regulations, the starting point is always a presumption in favour of disclosure. The Trust will endeavour to provide advice and assistance to the public in order to ensure they receive the information they are seeking.

Information Held

The Trust is required to provide recorded information under the Act and the Regulations, staff should be aware recorded information includes internal emails.

5.1 The Freedom of Information Act 2000

Section 1 of the Act gives a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act.

Any person making a request for information to the Trust is entitled:

- a. to be informed in writing whether the Trust holds the information of the description specified in the request, and
- b. if the Trust does hold the information to have that information communicated to them.

In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describing the information requested. Enquirers may approach divisions or departments directly and the requesting party should be referred to the Information Governance Department immediately.

The Trust shall respond to requests for information in the simplest, most cost effective way. This will usually be by email in the standard form of a letter.

5.2 The Environmental Information Regulations 2004

The Regulations give a general right of access to environmental information held by the Trust, subject to certain conditions and exceptions contained in the Act.

Definition of Environmental Information

Environmental information covers information on the state of the environment, such as:

- Air, water, soil, land, flora and fauna, diversity, genetically modified organisms.
- Information on emissions and discharges, noise, energy, radiation, waste and other such substances.
- Measures and activities such as policies, plans and agreements.
- Reports, cost benefit and economic analyses.
- The state of human health and safety, contamination of the food chain.
- Cultural sites and built structures (as they may be affected by environmental factors).

Request can be made under the EIR either verbally or in writing. Where a request is made verbally, the Information Governance Team will write to the applicant asking them to confirm the scope of their request.

Upon receipt of a valid request under the Regulations the Trust shall respond to requests for information in the simplest, most cost effective way. This will usually be by email in the standard form of a letter.

6 Charges and Fee's

The Act and the Regulations are subject to different fee's Regulations, under the Regulations the Trust is able to make reasonable charges for making information available, whereas under the Act no charges apply to information which can be provided with the appropriate limit of 18 hours except for costs incurred in contacting the requester to inform them the information is held, and communicating the information to the requester. As an open and transparent organisation the Trust will not generally charge for the provision of information, in particular:

No charge will be made for information provided in the form of:

- Downloads or information taken from the Trusts website, although any charges for Internet Service provider and personal printing costs would have to be met by the individual.
- Emails
- Trust Issued Leaflets and brochures

However, charges *may* be incurred for the following:

- Information provided on CD Rom or similar medium
- Multiple copies of documents
- Archived copies of documents that are no longer available on the Trust website

Charges for information will be reviewed regularly; and will be made in line with the legislation and national guidance. In all cases where the Trust chooses to charge for information, a fees notice will be issued to the applicant. Applicants will be required to pay any fees within a period of three months from the day on which the fees notice is given to them.

7 Time Limits for Compliance with Requests

As required by the Act, the Trust has established systems and procedures to ensure compliance with the duty to confirm or deny and to provide the information requested within **20 working days** of a request. The only circumstance where it is permissible of the Trust to take longer than 20 days to respond is where an exemption merits the consideration of the public interest test; if this is the case the Trust will notify the applicant as soon as possible.

The Trust has established systems and procedures to ensure compliance requirement to respond to a request under the Regulations within **20 working days**, or within **40 working days** where the Trust reasonably believes that due to the complexity and volume of the information requested it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.

If the information requested by the applicant incurs a charge or a fee; charges will be advised in advance and payment will be required before the information is released.

8 Exemptions and Exceptions

Where the Act or the Regulations permit the Trust to refuse to either confirm or deny, or respond to a request, the Trust will issue an appropriate refusal notice, setting out the reasons for its decision.

8.1 Exemptions under the Act

There are two types of class exemption:

Absolute, these do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure; these exemptions are as follows:

- 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

Qualified, these exemptions require the public body to decide whether it is in the balance of public interest to not disclose the information; these exemptions are as follows:

- 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

With the exception of section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that the Trust considers it is reasonable to withhold.

8.2 Exceptions under the Regulations

- Reg. 12 (4) (a)** Does not hold that information when an applicant's request is received
- Reg. 12 (4) (b)** Is manifestly unreasonable
- Reg. 12 (4) (c)** Is formulated in too general a manner
- Reg. 12 (4) (d)** Relates to unfinished documents or incomplete data
- Reg. 12 (4) (e)** Would involve disclosure of internal communications

If disclosure would adversely affect:

- Reg.12 (5) (a)** International relations, defence, national security or public safety
- Reg.12 (5) (b)** Justice, fair trial, conduct of a criminal or disciplinary inquiry
- Reg.12 (5) (c)** Intellectual property rights
- Reg.12 (5) (d)** Confidentiality of public authority proceedings when covered by law
- Reg.12 (5) (e)** Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest
- Reg.12 (5) (f)** Interests of the person who provided the information
- Reg.12 (5) (g)** Protection of the environment
- Reg.13** Personal data

All exceptions under the Regulations are subject to the public interest test and if the information requested is information relating to emissions, exceptions 12(5)(d) to (g) cannot be used.

9 Refusal of a Request and Right to Appeal

A request for information may be refused if:

- The information is not held by the Trust,
- The information is exempt under any exemptions or exception,
- A fees notice or charge has not been paid within the 3 month time period,
- The cost of responding exceeds the appropriate limit under the Act,
- The request can be demonstrated to be vexatious or repeated under the Act.
- The request may be refused under regulation 12(4) of the Regulations to the extent that:
 - request for information is manifestly unreasonable,
 - the request is formulated in too general a manner,
 - the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
 - the request involves the disclosure of internal communications.

The Trust will keep a record of all relevant correspondence regarding FOI requests including refusal notices, for the period of time as required by the Department of Health's Records Management Code of Practice.

If a request for information has been refused or the applicant is not satisfied with the information disclosed to them, they have the right to appeal. In the first instance, the applicant should write to the Governance Manager who will conduct a review of the request. In complex cases the complaint may be escalated to the Trusts Caldicott Guardian who will review the decision.

If the applicant remains dissatisfied with the outcome, they may refer the matter to the Information Commissioner. The Trust reserves the right to seek legal advice if deemed necessary.

10 Advice and Assistance

The Trust will endeavour to provide advice and assistance to anyone requesting information when it is unclear what is requested or if the cost to provide the information exceeds the statutory fee Regulations.

11 Transfers of Requests

A request can only be transferred where the Trust receives a request for information which it does not hold, but which is held by another public authority.

The Trust will also advise the applicant that it does not hold part of the some or all the requested information. If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider what would be the most helpful way of assisting the applicant with his or her request.

In most cases this is likely to involve:

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

If the Trust considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it.

A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Trust will consider:

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

Where there are reasonable grounds to believe an applicant is likely to object, the Trust will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Trust is unable either to advise the applicant which it holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

12 Third Parties

The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the Common Law Duty of Confidentiality or where it constitutes "personal data" as defined in the Data Protection Act 1998 ("the DPA"). Unless an exemption or exception applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party the Trust will make every effort to consult with the third party with a view to obtaining consent for disclosure. However, if a third party does not respond or they refuse to consent, this does not automatically mean information will be withheld. The final decision as to whether the information should be disclosed will be in line with the Act and the Regulations.

In deciding whether any information may be exempt from disclosure because it may involve a breach of confidentiality imposed by a third party or it may breach a trade secret or it may prejudice the commercial interest of any party the Trust will take into account current guidance issued by the Information Commissioner or the Ministry of Justice.

13 Public Sector Contracts

When entering into contracts the Trust will refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust. Unless an exemption or exception provided under the Act or the Regulations is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

When entering into contracts with non-public 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 for disclosure. As recommended by the Lord Chancellor's Department, the Trust should reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. There must be awareness that any restrictions on disclosure could potentially be overridden by obligations under the Act. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

The Trust will not agree to hold '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 of the Act only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, other than under the Act would constitute a breach of confidence.

The Trust must disclose information pursuant to the Act and the Regulations, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor, information which that organisation has provided to the contractor which would clearly be exempt from disclosure under the Act or the Regulations, 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.

14 Accepting Information in Confidence from Third Parties

The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any organisational functions and it would not otherwise be provided.

The Trust will not agree to hold information received from third parties 'in confidence' which is not confidential in nature. Again, any acceptance of confidentiality provisions must be justifiable to the Information Commissioner.

15 Implementation

This policy is already implemented across the Trust, this revised version will be implemented through the Information Governance Departments existing protocols and work plans.

16 Education and Training

Awareness of this document will be made via the Information Governance Departments Training; this includes handouts, inductions and regular updates.

17 Monitoring and Review

The table below must be completed to demonstrate effective monitoring of all documents

Standard/process/issue	Monitoring and Audit			
	Method	By	Committee	Frequency
Compliance with the Act and the Regulations.	Information Governance Committee Report Integrated Governance Quarterly Report Divisional Report	Information Governance Officer / Manager	Information Governance Committee	Monthly and Quarterly

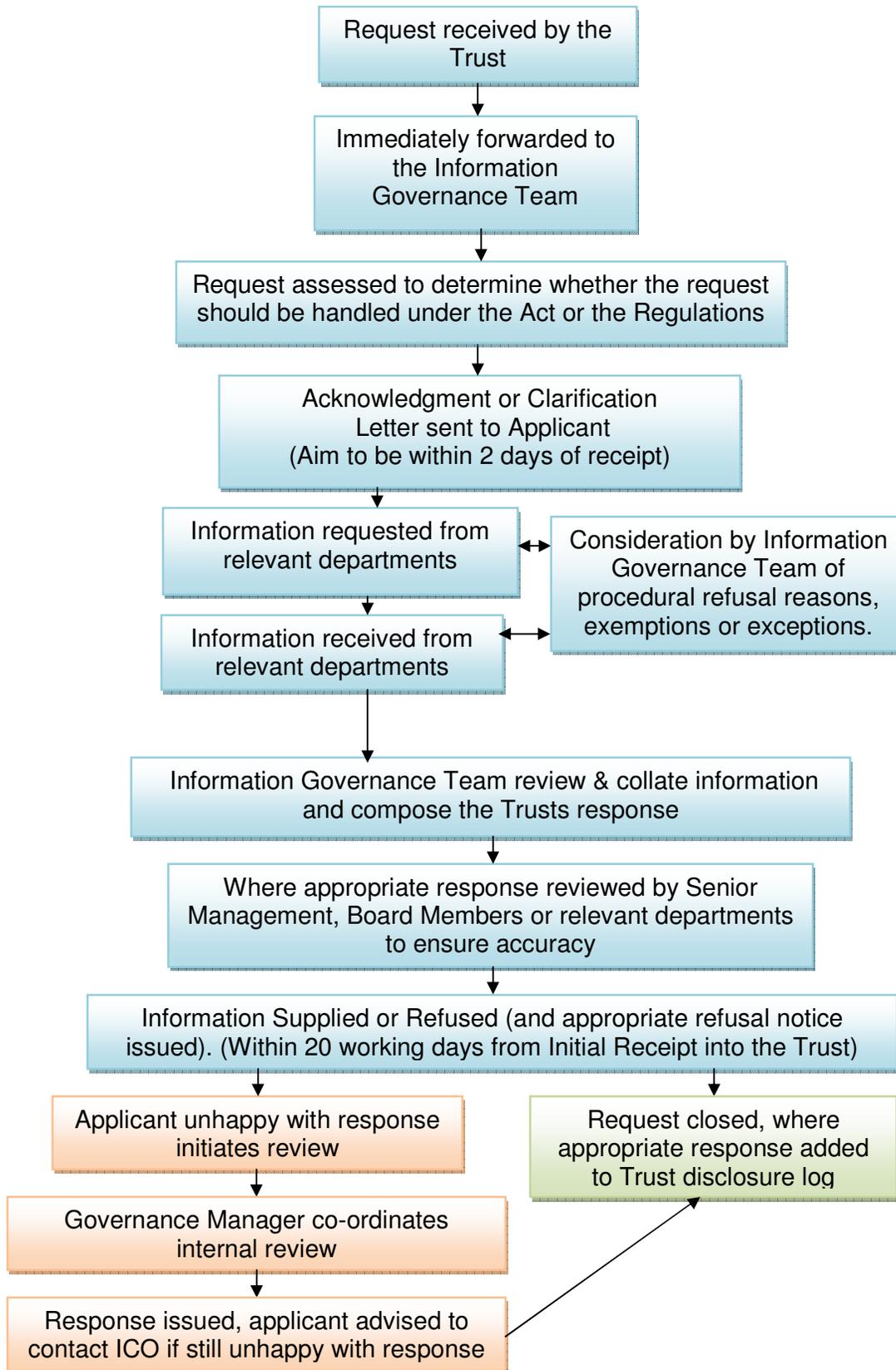
18 References

- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- East Cheshire NHS Trust FOI & EIR Policy
- Department of Health, Corporate Retention Schedule
- Data Protection Act 1998
- Walsall Teaching Primary Care Trust, FOI Act 200 Policy
- East Midlands Ambulance Service Trust, FOI Policy and Procedure

19 Appendices

- 1 Request for Information Process**
- A Equality Impact and Assessment Tool**
- B Version Control Document**
- C Communication / Training plan**

Appendix 1- Request for Information Process



APPENDIX A - Form 1

Equality Impact Screening Assessment

POLICY/DOCUMENT/SERVICE Freedom of Information Act and the Environmental Information Regulations (Overarching Policy)

		Yes/ No	Justification and Data Sources
A	Does the document, proposal or service affect one group less or more favourably than another on the basis of:		
1	Race, ethnic origins (including gypsies and travellers) or nationality	Yes	Alternative Language versions of the Policy / Procedure, provisions for requests from abroad or in other languages
2	Sex	No	No issues identified
3	Transgender	No	No issues identified
4	Pregnancy or maternity	No	No issues identified
5	Marriage or civil partnership	No	No issues identified
6	Sexual orientation including lesbian, gay and bisexual people	No	No issues identified
7	Religion or belief	No	No issues identified
8	Age	No	No issues identified
9	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	Yes	Alternative formats, i.e. Braille, audio, large print etc
10	Economic/social background	Yes	Provision for assistance with fees
B	Human Rights – are there any issues which may affect human rights		
1	Right to Life		No
2	Freedom from Degrading Treatment		No
3	Right to Privacy or Family Life		No
4	Other Human Rights (see guidance note)		No

NOTES

If you have identified a potential discriminatory impact of this document, proposal or service, please complete form 2 or 3 as appropriate.

Date: 24/08/2011

Name: Jessica Pickup

Signature: J Pickup

Job Title: Information Governance Manager

Date: 24/08/2011

Name: Patrick Wilkinson

Signature: P Wilkinson

Job Title: Governance Manager

Version Control Sheet

This must be completed and form part of the document appendices each time the document is amended / reviewed.

VERSION CONTROL SHEET			
Date dd/mm/yy	Version	Author	Reason for changes
18/01/10	1	Information Governance Manager	Combined 3 policies into 1
24/08/11	2	Information Governance Manager	Addition of processes in relation to the Environmental Information Regulations 2004

Training needs analysis

Communication/Training Plan (for all new / reviewed documents)	
Goal/purpose of the communication/training plan	Notify all staff our obligations under the Freedom of Information Act
Target groups for the communication/training plan	All Staff
Target numbers	All
Methodology – how will the communication or training be carried out?	Included in Information Governance Training, Announcement on Intranet & by Email to Risk and Governance Managers
Communication/training delivery	
Funding	
Measurement of success. Learning outcomes and/or objectives	Raised awareness of Freedom of Information Act, more efficient request handling
Review effectiveness – learning outputs	
Issue date of Document	
Start and completion date of communication/training plan	Document approval date
Support from Learning & Development Services	n/a

For assistance in completing the Communication / Training Plan please contact the MCHFT Learning and Development Services