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Sussex Partnership
NHS Foundation Trust

Freedom of Information Policy

(Replaces Policy Number TP/CO/068 V.7)

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POLICY SPONSOR	Director of Corporate Affairs
POLICY AUTHOR	Corporate Governance Manager

Key Policy Issues

- Background to the FOI Act
- Responsibilities
- Fees
- Timescales
- Exemptions

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1.0 Introduction

1.1 Purpose of the Policy

The purpose of this policy is to ensure the Trust complies fully with its legal duties and adheres to its stated commitment to being an open and transparent organisation. Sussex Partnership NHS Foundation Trust recognises the importance of the Freedom of Information Act 2000 in supporting this culture of openness.

The Trust will ensure it complies with the Act by:

- Making as much information available as possible through the Trust publication scheme
- Making the provision of information a priority and aiming to comply with the twenty working day deadline
- Using the exemptions in the Act (the reasons not to provide information) as a last resort

1.2 Background

The Freedom of Information (FOI) Act was passed in 2000 and replaces the Open Government Code of Practice that has been in place since 1994. The Act gives the public a general right of access to almost all types of recorded information held by public authorities. The Act came into full effect on 1 January 2005.

The Act places a statutory obligation on all public bodies to publish details of all recorded information that they hold and to allow the general public to have access to this information on request, except where an exemption applies e.g. personal or other confidential data.

Sussex Partnership recognises the importance of the Act and it will ensure that appropriate systems are put in place to publicise what recorded information is kept by the Trust and how this information can be accessed on request by the general public.

1.3 The FOI Act

The main features of the FOI Act are:

- A general right of access to information held by public authorities.
- Sets out exemptions from the duty to provide information.
- Place a requirement on public authorities to exercise discretion; they may have to determine not only whether an exemption applies but also the extent to which it may apply (some exemptions are conditional and depend on where the balance of 'public interests lie').
- Make arrangements in respect of costs and fees.
- Places a duty on public authorities to adopt publication schemes.
- Public authorities must make arrangements for enforcement and appeal.
- Places a duty to provide advice and assistance to people who wish to make, or have made requests for information, and
- Outlines Codes of Practice.

The FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. It does not oblige public authorities to retain information which is no longer useful to the authority.

The FOI Act is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.

In the context of FOI, 'information' is defined as each item of material held by Sussex Partnership in paper or electronic form. This includes but is not limited to, all draft documents, agendas, minutes, emails, diaries, handwritten notes and all other recorded information.

1.4 Scope of the Policy

All staff of Sussex Partnership are within the scope of this policy, including staff working in or on behalf of Sussex Partnership (this includes contractors, temporary staff, embedded staff, secondees and all permanent employees).

2.0 Policy Statement

Sussex Partnership NHS Foundation Trust is committed to ensuring that the highest standards when processing Freedom of Information requests in a timely and lawful manner.

3.0 Duties

3.1 The Organisation

It is the Trust's responsibility to:

- Ensure that all requests for information are processed in accordance with the statutory requirements set out by the Act.
- Maintain a register of requests made for information pursuant to the Act and record what action was taken for each application.
- Ensure procedures are in place to systematically review the Trust's arrangements for administering and managing requests for information.
- Include systems that comply with the audit requirements of the Act.
- Maintain a register of complaints received under the Act.

3.2 Executive Manager Responsibilities

Staff operating at a Very Senior Manager level within Sussex Partnership must make provision to approve final responses to all FOI requests and internal reviews relating to their area, team, directorate or department.

This may be delegated to a senior member of staff within their directorate. All efforts must be made by all Sussex Partnership staff to consider the recommendations of an Internal Review. Where an interview review response has been completed by a nominated

member of staff, an Executive Manager may supersede these recommendations if deemed appropriate on behalf of the Trust.

3.3 Qualified Person

Under the Freedom of Information Act, only the designated qualified person may decide to withhold information under Section 36 (Prejudice to Effective Conduct of Public Affairs). The Chief Executive Officer is the Qualified Person for the Trust and the Corporate Governance Manager and FOI Officer will involve them in the process if it is felt that this exemption should be applied. If a request for an internal review is received which involved a Section 36 decision, the Chief Executive Officer will be expected to consider their decision again, taking into account the views of the complainant. Should there be an appeal against a decision under Section 36, the Chief Executive Officer who has made the original decision, will consult with a suitable member of the Board nominated by the Trust Chair.

3.4 The Director of Corporate Affairs

The Director of Corporate Affairs is responsible for:

- Ensuring organisational compliance with the Act.
- Maintaining the Freedom of Information Policy.
- Ensuring the Trust Publication Scheme is displayed on the Trust's website.
- Ensuring the general public has access to information about their rights under the Freedom of Information Act.
- Liaise and work with other employees responsible for information handling activities, e.g. Caldicott Guardian and Data Protection Officer.
- Assist with investigations into complaints and appeals.

3.5 Employee Responsibilities

Penalties can be imposed upon Sussex Partnership and staff for breaching the FOI Act.

All employees have a legal duty to preserve formal records. Employees must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication in accordance with the Management of Corporate Records Policy. Poor records management practices are not offences in themselves, however they may lead to an inability to comply with requirements of the Freedom of Information Act.

All employees will, through appropriate training and responsible management:

- Observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records in accordance with the Management of Corporate Records Policy.
- Be aware that ultimately the general public may have access to any piece of information held within Sussex Partnership and must pay due regard to how they record information as part of their normal duties.
- On receipt of Freedom of Information request, which does not need to specify that it is a 'Freedom of Information' request, immediately notify the Trust's FOI Officer. This can be done by forwarding correspondence to FOI@sussexpartnership.nhs.uk

- Understand that breaches of this Policy may result in disciplinary action, including dismissal.

3.6 Freedom of Information Lead

The Corporate Governance Manager is the nominated Freedom of Information Lead for Sussex Partnership and they are supported by the FOI Officer. Regular reports to the Information Governance and Security Assurance Group as required will be provided by the Corporate Governance Manager and FOI Officer.

3.7 Roles and Responsibilities

Sussex Partnership will:

- Ensure that there is always one person with overall operational responsibility for FOI available within standard business hours (a dedicated FOI Officer).
- Publish and maintain an online Publication Scheme.
- Provide relevant FOI training for all staff with FOI responsibilities.
- Provide clear lines of reporting and supervision for compliance with FOI.
- Develop and maintain clear procedures for recognising and responding to requests for information under FOI in a timely manner to meet the requirement to respond within twenty working days

Sussex Partnership recognises its responsibility under the Act to provide the general right of access to information held. Overall responsibility for this policy is with the Chief Executive.

The Corporate Governance Manager is responsible to oversee the implementation of this Policy and will establish systems, procedures and operational processes in conjunction with the FOI Officer to support this function as necessary.

The FOI Act makes it an offence to alter, deface, block, erase, destroy or conceal any information from disclosure which is held by Sussex Partnership.

4.0 Procedure

4.1 Time Limits for Compliance with Requests

Where possible, requests for information will be met within twenty working days of receipt of the request or fee. The FOI Officer will confirm with the applicant if longer is required, and set out the reason(s).

Sussex Partnership has systems and procedures to ensure that it complies with the duty to confirm or deny whether it holds requested information, and to provide a response to requests within the statutory timeframe of twenty working days from the point of a valid request being received.

When a request is received by email, the request is deemed to have arrived on the next working day from the date it was sent. If a request requires further clarification or a fee is to be made, the 20 days starts once the criteria have been met.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, the period from when the applicant received the fees notice to when they paid the fee is disregarded for the purposes of calculating the twentieth working day following receipt.

Sussex Partnership may choose to apply an exemption to any information, to refuse a request if it is vexatious or repeated, or exceeds the appropriate limit for costs and time of compliance. A formal refusal notice must be issued within twenty working days informing the applicant of this decision.

4.2 Publication Scheme

To comply with Freedom of Information, each Trust must have a Publication Scheme that is developed in line with the Information Commissioners Office model publication scheme. The scheme commits the Trust:

- To proactively publish or otherwise make available as a matter of routine, information which is held by the authority and falls within the classifications listed below
- To proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within the scheme
- To produce and publish the methods by which specific information is made routinely available so that it can be easily identified and accessed by members of the public
- To review and update on a regular basis the information the trust makes available under this scheme
- To produce a schedule of any fees charged for access to information which is made proactively available
- To make this publication scheme available to the public
- To publish any dataset held by the authority that has been requested, and any updated versions it holds, unless the authority is satisfied that it is not appropriate to do so

The Trust must ensure the following classes of information are included within the publication scheme:

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

Sussex Partnership has completed its scheme and made it available on-line. The Publication Scheme can be viewed [here](#)

The Publication Scheme will be regularly reviewed and updated. Requests for a copy of the Publication Scheme and requests for information contained within the Scheme may be made in writing to:

FOI Officer
Sussex Partnership NHS Foundation Trust
Swandean
Arundel Road
Worthing
BN13 3EP

Email to: foi@sussexpartnership.nhs.uk

4.3 Exemptions and the Public Interest Test

Sussex Partnership will consistently encourage the release of recorded information to the public. Sometimes it is not appropriate or practicable for recorded information held by Sussex Partnership to be disclosed and there are twenty four exemptions (see Appendix A) under the FOI Act which may be applied to withhold information.

There are two types of Exemption; Absolute and Qualified. Absolute exemptions are not subject to a Public Interest Test; however qualified exemptions are subject to a Public Interest Test prior to their reliance to determine whether to disclose the requested information or to withhold it based upon the greater public good.

The Public Interest Test is set out in section 2 of the FOI Act. It provides that, even where the information meets the requirements of a qualified exemption, the information may only be withheld where, "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

A Public Interest Test requires Sussex Partnership to consider the competing public interest factors in disclosure and the maintenance of secrecy by weighing of competing information and circumstances. Sussex Partnership will conduct Public Interest Tests without bias, in line with guidance set by the ICO and with a view to release of the requested information unless a clear margin of public interest in maintaining the exemption exists.

The strength of the factors both in favour of disclosure and maintaining the exemption will be assessed on a case-by-case basis. Section 36 of the FOI Act enables information to be made exempt if its disclosure may inhibit the ability of an authority to conduct its business effectively. Reliance upon this exemption requires the approval of the Chief Executive in receipt of a recommendation to do so by an Executive Director.

4.4 Section 36 - Prejudice to Effective Conduct of Public Affairs

Under the Freedom of Information Act, only the designated qualified person may decide to withhold information under Section 36 (Prejudice to Effective Conduct of Public Affairs). The Chief Executive Officer is the Qualified Person for the Trust and the Corporate Governance Manager and FOI Officer will involve them in the process if it is felt that this exemption should be applied. If a request for an internal review is received which involved a Section 36 decision, the Chief Executive Officer will be expected to consider their decision again, taking into account the views of the complainant. Should there be an appeal against a decision under Section 36, the Chief Executive Officer who has made the original decision, will consult with a suitable member of the Trust Board nominated by the Trust Chair.

4.5 Vexatious and Repeated Requests

Should an applicant make a 'vexatious' or 'repeated' request for identical or substantially similar information, Sussex Partnership will inform the applicant in writing that it will not fulfil the request. When responding in this manner Sussex Partnership will offer assistance to the individual, by indicating why they consider the request is vexatious or repeated. Sussex Partnership will also indicate what recourse the applicant has if they are unhappy with this position.

4.6 Recognising a Request (Section 8)

To be valid under Section 8 of the FOI Act a request must:

- Be in writing
- Include the requester's name and an address for correspondence; and,
- Describe the information being requested
- The requester can be an individual, a company or an organisation but in each case they must provide their real name. A request made under a pseudonym will be invalid
- There is a low threshold for meeting the requirement to describe the information. A description will be valid if it contains sufficient detail for the requested information to be distinguished from other information held by the authority
- If the description of the information is unclear or ambiguous, the authority must ask the requester for further clarification in accordance with Section 1(3) of the Act
- A request defined solely by keywords will be valid. If the keywords are so common that the scope of the request is unreasonably broad, then the authority should consider whether Section 12 (cost limits) or Section 14 (vexatious requests) apply
- FOI requests made via online forums and social media will be valid provided they meet the criteria in Section 8(1). If it is not reasonably practicable for the authority to provide a response through the website concerned, it should ask the requester for an alternative address for correspondence.
- If the request does not meet the requirements of Section 8(1), then the authority should issue the requester with a timely response explaining why their request is not valid, and provide advice and assistance to help them submit a new request.

4.7 Staff Names and Details

It is acknowledged that as a public authority, some justification exists for the disclosure of employee names and contact details.

Sussex Partnership will release the names of Board members and Directors unless a valid exemption applies. Names and details of staff published on the Sussex Partnership website will also be provided without gaining additional consent.

Consent will be sought from all other staff to release their information where it is reasonably practicable to do so. The FOI Lead will decide when it may or may not be reasonably practicable to obtain consent.

Requests for salary information will be answered, if applicable, by providing Agenda for Change pay bands. Where a person falls outside of Agenda for Change pay bands, their

salary will be given in £5,000 bands. Requestors will be referred to the Annual Report if requesting information regarding Executive Director's salaries.

4.8 Specific requests

The Freedom of Information Act confers two statutory rights on applicants, a right to:

- be informed whether a public body holds certain information, if so
- to have that information communicated to them

A request for information not included within the Publication Scheme must be made in writing which can include email. Written requests can be addressed to the Freedom of Information Officer, Sussex Partnership NHS Foundation Trust, Swandean, Arundel Road, Worthing, West Sussex BN13 3EP or emailed to FOI@sussexpartnership.nhs.uk

The Trust may charge for the supply of the information in accordance with the Fees Regulations set out by the Act.

Where possible the information will be supplied in the format requested by the applicant.

4.9 Re-use of Information

Regulations apply in respect of the re-use of information where Sussex Partnership holds the intellectual property / copyright of information and where re-use has been requested by a body that is not a public authority.

The regulations around re-use require organisations to publish details of information available for re-use. Information that Sussex Partnership publishes as part of its Publication Scheme can be considered as the list of information available for re-use.

Any published document can be re-used without charge, provided Sussex Partnership is quoted as the source and retains copyright. Requests for re-use will be granted or denied by the Freedom of Information Officer in consultation with the Corporate Governance Manager. Following the completion of a response to a request for information that is not covered by the Publication Scheme, consideration will be made as to whether this information should become part of the Publication Scheme. If a request to re-use information provided by another organisation is received, Sussex Partnership will advise applicants of this and will be directed to that organisation.

4.10 Appeals and Complaints

In the first instance complaints about Sussex Partnership's Freedom of Information procedures and appeals against decisions not to supply exempt information should be made to the Freedom of Information Officer who, in the first instances will work with the internal department who dealt with the request.

If the applicant continues to remain unsatisfied with the handling of their request they have the right to ask for an internal review. Internal review requests must be submitted within two months of the date the applicant receives the response to their original request. A senior member of Sussex Partnership staff, who has not previously been involved with the request, will undertake the review. This should be a member of the Executive Management Team or nominated senior deputy.

Following the internal review, if the applicant remains unsatisfied with the outcome of the internal review they have the right to apply to the Information Commissioner directly as below:

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

Telephone: 01625 545 700

Email: mail@ico.gsi.gov.uk

4.11 The Role of the Information Commissioner

The Information Commissioner's Office (ICO) is an independent public authority which upholds Information Rights in the UK. Applicants who are not satisfied with the outcome of their FOI request may ask the ICO to review how Sussex Partnership has performed in response to the complainant's request.

4.12 Fees

Sussex Partnership is able to charge a fee for dealing with a request, in line with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. In line with these regulations, when determining whether the cost of the work to respond is estimated to be less than £450, Sussex Partnership is not able to charge a fee. Where the cost exceeds this amount, which equates to 18 hours of staff time to collate the information, Sussex Partnership will correspond with the applicant either to reduce the requirement (and therefore cost) below the threshold or to agree a fee. If an agreement cannot be reached Sussex Partnership may exempt the requested information from disclosure.

4.13 Audit

The annual Information Governance toolkit submission will provide assurance of the compliance with the Act.

4.13 Requests relating to potential media interest

Sussex Partnership will not distort its process or compile a response to an FOI request differently if it is felt that the response will prompt media interest, though the Sussex Partnership Communications Team will be sighted on the response to be aware of the media interest in the topic.

5.0 Development, Consultation and Ratification

- The Corporate Governance Team has developed this policy with reference to the FOI Act, FOI Code of Practice, Director of Corporate Affairs, Corporate Governance Manager and FOI Officer
- It will be ratified by the Information Governance and Security Assurance Group.

6.0 Equality and Human Rights Impact Assessment (EHRIA)

- The policy has been equality impact assessed in accordance with the Procedural Documents Policy.
- EHRIA Number: pending

7.0 Monitoring Compliance

Compliance with this Policy will be monitored by the Corporate Governance Manager in consultation with the FOI Officer, together with independent reviews by both internal and external audit on a periodic basis. The Corporate Governance Manager is responsible for the revision and updating of this document.

8.0 Dissemination and Implementation of the Policy

This policy will be uploaded onto the Trust website and publication will be announced via the Communications e-bulletin to all staff.

9.0 Document Control Including Archive Arrangements

This policy will be stored and archived in accordance with the Trust Procedural Documents Policy.

10.0 Reference documents

- Freedom of Information Act 2000
<https://www.legislation.gov.uk/ukpga/2000/36/contents>
- Freedom of Information Code of Practice, July 2018
<https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>
- Data Protection Act 2018
<http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

11.0 Appendices

Appendix A - Exempt Information under Part 2 of the FOI Act

APPENDIX A - Exempt Information under Part 2 of the Act

The Exemptions

There are two types of class exemption identified within the Freedom of Information Act 2000:

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

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 is reasonable to withhold.

Absolute Exemptions:

- **Section 21 - Information accessible to the applicant by other means**
Information which is already in the public domain, such as that which is published in the Publication Scheme
- **Section 23 - Information supplied by, or relating to, bodies dealing with security matters**
This applies only to information supplied by or relating to security bodies
- **Section 32 - Court Records**
Information that is only held as part of the documentation for a court, tribunal case or a statutory inquiry
- **Section 34 - Parliamentary Privilege**
Where disclosure would infringe the privileges of either House of Parliament
- **Section 40 - Personal Information**
Information which is personal to the person making the request
- **Section 41 - Information provided in confidence**
An actionable breach of confidence where disclosure would constitute a breach of confidence which would lead to legal action being taken
- **Section 44 - Legal Prohibitions on Disclosure**
Where disclosure of information is prohibited by any other law or regulation, or if it would be a contempt of court

Qualified Exemptions:

- **Section 22 - Information intended for future publication**
Where publication was planned at the time the request was made, for example, an annual report, or the results of an investigation. Applicants will be advised when the information will be published and how it can be obtained
- **Section 24 - National Security**
Information that is not covered by Section 23 under the Absolute Exemption category above, but exemption is needed to safeguard national security
- **Section 26 - Defence**
Information likely to prejudice national defence or the activities of our armed forces, or those of allies
- **Section 27 - International Relations**
Information likely to prejudice the United Kingdom's international relations or interests, for example, information obtained in confidence from another State or international court
- **Section 28 - Relations within the United Kingdom**
Information likely to prejudice relations between the United Kingdom Government, Wales, Scotland or Northern Ireland
- **Section 29 - The economy**
Information likely to prejudice the economic interests of the United Kingdom or part of the United Kingdom, or the financial interests of the government
- **Section 30 - Investigations and proceedings conducted by public authorities**
Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them
- **Section 31 - Law enforcement**
Information not covered by Section 30 above, and which is likely to prejudice a wider range of investigative activities
- **Section 33 - Audit**
Applies to information held by public authorities which have functions relating to audit (for example, the National Audit Office), or which examine the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions
- **Section 35 - Formulation of Government Policy**
Information held by a government department or the National Assembly for Wales, relating to the creation of government policy
- **Section 36 - Prejudice to the effective conduct of public affairs**
Information that may inhibit the ability of the authority to conduct its business effectively should that information be made freely available in the public domain - Use of this exemption requires sign off from the Chief Executive

- **Section 37 - Communication with Her Majesty etc. and honours**
This applies to information that relates to communications with Her Majesty, members of the Royal family or Royal household, or the conferring of honours, for example, recommendations for individuals to receive an honour in the New Year's Honours List
- **Section 38 - Health and Safety**
Information that would, or would be likely to, endanger the physical health, mental health or safety of an individual
- **Section 39 - Environmental Information**
Exempted under Freedom of Information but the request will be dealt with in accordance with the Environmental Information Regulations
- **Section 40 - Personal information about a third party**
Information which is personal to the applicant or someone other than the person making the request
- **Section 42 - Legal Professional Privilege**
This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings, for example advice provided by a lawyer to his client, or information relating to ongoing legal proceedings
- **Section 43 - Commercial Interests**
Such as trade secrets and to information which if disclosed could harm / prejudice the commercial interests of any person, including the authority holding it