

FREEDOM OF INFORMATION POLICY & PROCEDURES

Version 5.0

Purpose:	To explain and define the FOI Act, the Trust's Policy and Procedures, and Trust staff responsibilities.
For use by:	All staff responsible for holding, obtaining, recording, using and storing Trust information and who may receive or compile information for a Freedom of Information Act 2000 request.
This document is compliant with /supports compliance with:	<ul style="list-style-type: none"> • Freedom of Information Act 2000 • Re-use of Public Sector Information Regulations 2005 • Department of Health Information Governance Toolkit • Data Protection Act 1998
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SECTION 1 - INTRODUCTION

1.1 Policy Statement and Rationale

1.1.1 The Ipswich Hospital NHS Trust is committed to:

- Ensuring openness in the way it conducts its business.
- Providing advice and assistance to those members of the public who wish to make a request for information. Under the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 (pursuant to Section 45 of the FOIA)¹, every public authority should be ready to provide advice and assistance to members of the public requesting information.
- Ensuring that it meets the 20 working day deadline to deal with a request (where possible).
- Consulting with stakeholders to improve our understanding of their information requirements.

1.1.2 The Trust is committed to complying with the requirements of the FOIA and to assist this aim, has adopted the Secretary of State for Constitutional Affairs' 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 and the Lord Chancellor's Code of Practice on the 'Management of Records Issued Under Section 46 of the Freedom of Information Act 2000'. (This second code of practice is dealt with in the Trust's Records Management Policy.)

1.2 Key Principles

- All staff employed at the Trust must forward any incoming Freedom of Information requests to the Information Governance team immediately.
- The Information Governance Team will offer advice and co-ordinate the handling of Freedom of Information requests in accordance with the Freedom of Information Act (2000), which must be dealt with by Trust staff promptly and within the deadlines as prescribed by the Act.
- Trust staff are assigned various FOIA roles and responsibilities as set out in this document, which must be adhered to.
- It is the responsibility of each department to update and maintain its own documents that form part of the Trust's Publication Scheme.

1.3 Background Information

1.3.1 The Freedom of Information Act (FOIA) was passed on 30 November 2000 with the purpose of promoting greater openness by public authorities. The FOIA gives the public a general right of access to all types of recorded information held by public authorities. The FOIA is fully retrospective; therefore, all information still held by the Trust can potentially be requested. It is important that departments adhere to the Trust's Retention Policy & Procedures.

1.3.2 The FOIA does not override the requirements of the Data Protection Act 1998 or the common law of confidentiality, eg patients case notes and personnel records are still dealt with via the Subject Access Request route (see the Trust's Data Protection Policy and Access to Health Records Policy & Procedures).

¹ <http://www.dca.gov.uk/foi/reference/statCodesOfPractice.htm>

- 1.3.3 There are a number of exemptions for disclosing information which are detailed within the FOIA). Exemptions cannot be applied just because disclosing the information would be embarrassing to the hospital, or because the document is marked 'Confidential'.
- 1.3.4 The FOIA also applies to information that has been received from others outside the hospital.
- 1.3.5 Under the Lord Chancellor's Code of Practice (pursuant to Section 46 of the FOIA)² every public authority should ensure that it has implemented a robust records management strategy to provide quick and accurate access to information for the public.

1.4 Definitions

The following definitions are used throughout:

- Freedom of Information Act 2000 (FOIA)
- Information Governance (IG)
- Patient Advice and Liaison Service (PALS)
- Environmental Information Regulations 2004 (EIR)
- Appropriate limit – the limit at which the Trust can choose not to answer a request for information (see explanation further in this document)

SECTION 2 – DUTIES AND RESPONSIBILITIES

Information Governance (IG) Group

The Trust has an IG Group to assist the Trust in implementing its requirements under the Act. The IG Group's main responsibilities are:

- To develop and maintain a Freedom of Information Policy in line with legislation, national guidance and best practice.
- To be aware of and respond to new Information Governance-related legislation and best practice advice, producing guidance for use within the Trust.
- To review complex or contentious issues and exclusive arrangements relating to requests for re-use of Trust information under the Re-use of Public Sector Information Regulations 2005.
- The IG Group will approve this document and is responsible for the monitoring compliance with and effectiveness of this policy and procedures, and agreeing any remedial action with the IG Manager. The Trust Management Team will ratify this document.

FOIA Lead

The Trust's FOIA Lead is the Director of Human Resources.

FOIA Request Information Provider

When a request is forwarded to a department, the person receiving the request has the following responsibilities:

- To act on the request for information immediately and to inform the IG Team (at its email account: 'information.access@ipswichhospital.nhs.uk') without delay if the information requested does not fall within the scope of his/her department, to suggest who might hold the information, and for the sake of timeliness, copy that person in on the email.
- To provide the information to the IG Team before the deadline indicated, and in time to allow for the application of any exemptions to be considered.

² <http://www.dca.gov.uk/foi/reference/statCodesOfPractice.htm>

- In liaison with his/her Business Unit Senior Manager/Director, to identify any possible exemptions³ to disclosure of the information requested. This judgement can best be made by the staff who are familiar with the subject concerned, as they will understand the nature of any sensitivities,⁴ although the IG Team are available to advise on the interpretation and possible application of exemptions.
- To inform the IG Team of any exemptions applied, stating why the exemption applies and for qualified exemptions, why the public interest test is not in favour of disclosure (this information will be forwarded to the applicant – see templates of correspondence letters at Appendix B).
- To ensure the format and content of the response is in a format that is acceptable to be sent as the Trust's formal response. (The IG Team can only advise on the content of the request and does not have a duty to manipulate or change information supplied to it by a department in answer to a request.) Trust staff must be satisfied that they have the necessary authority before releasing information to the IG Team for onward transmission to the applicant who requested the information.
- In liaison with the FOIA Department Representative and the Directorate or Senior Manager/Director, to identify whether requests and/or responses are potentially contentious, and ensure that responses to such requests have been approved by an Executive Director on the Trust Board.

FOIA Department Representatives

The FOIA Department Representatives play a key role in ensuring that the Trust meets its obligations under the FOIA. The Representatives will use their knowledge of their departments and records to ensure that staff are aware of their responsibilities under the FOIA, and to quickly retrieve information requested by the public. The role and responsibilities of the FOIA Department Representatives are as follows:

- To act as a liaison point between the IG Team and the Representative's department.
- To disseminate FOIA matters to the department.
- To act as the point of contact for their department staff regarding queries relating to information requests from the public.
- Departments are encouraged to make full use of the Publication Scheme on the Trust's public web site to publish any frequently requested information. Representatives should ensure that any changes in Publication Scheme information are reported to the IG Manager and that the department's documents published on the Trust's web site are kept up to date.
- To assist in the retrieval of information requested by the public under the FOIA.
- To gain approval from the Business Unit Senior Manager/Director (within 15 days of the 20 day deadline) to proposed responses to requests for information under the FOIA, before they are sent to the IG Team for onward transmission to the applicant. All responses will be forwarded to the Head of Communications for comment and review before being sent to the applicant.
- To identify possible exemption(s) to all or part of the information requested and liaise with the FOIA Request Information Provider, Business Unit Senior Manager/Director, and the IG Team as to the application of such exemption(s).

In the event of the absence of a FOIA Department Representative, an alternative contact at an appropriate level of seniority must be delegated by the department to act on his/her behalf.

³ See exemptions at http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

⁴ http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handling_foi_and_eir_requests_2008_final.pdf

Business Unit Senior Manager/Director

Due to the breadth and complexity of information that the Trust holds, it is not possible for the IG Team to know which exemptions may apply to details of particular information requested. Although the IG Team will offer advice on the application of exemptions, final responsibility for the decision rests with the Business Unit Senior Manager/Director of the department concerned.

The Chief Executive must approve any Section 36 exemptions claimed.

Information Governance Team

The IG Team comprises the Information Governance Manager and the Information Governance Officer, who will oversee the implementation of the requirements of the FOIA. The IG Team's role will be:

- To monitor the FOIA Requests Database to ensure that requests are being complied with, timescales are being adhered to, and 'vexatious' applicants are identified. .
- To promote openness of Trust information as standard, including encouraging more proactive use of the Trust's website and Publication Scheme.
- To confirm receipt of the request to the applicant.
- If it is apparent at the outset that the request is exempt under the FOIA (eg it may be exempt information accessible by other means (Section 21), or Personal Data (Section 40)) to notify the appropriate department of the exemption being applied and inform the applicant within 20 working days that it is exempt information and why.
- To forward a request for information to the most appropriate FOIA Department Representative (copying in the department's Business Unit Senior Manager/Director) for information, as soon as possible after it is received.
- Alternatively, if a similar request has recently been dealt with by a department, the IG Team will forward the request to the FOIA Department Representative and the person who has most recently dealt with the similar request (copying in the Business Unit Senior Manager/Director for information), as soon as possible after it is received.
- To liaise with the FOIA Department Representative and/or Business Unit Senior Manager/Director and if requested, offer advice as to whether parts of, or an entire request may be subject to exemption(s).
- To offer advice to Trust staff about their responsibilities under the FOIA, legislation and exemptions.
- To advise the Head of Communications of requests and responses.
- To assist in the resolution of contentious or complex information requests, including consultation with third parties.
- To send the responses to requests using the appropriate standard letter template. The Trust's standard FOIA template letters must be used on each occasion the applicant is contacted in writing. Templates are held by the IG Team and departments should therefore contact applicants via the IG Team.
- To report on the handling of FOIA requests to the IG Group at its quarterly meetings.
- To assist in the resolution of complaints received regarding the handling of information requests and adherence to the Publication Scheme.
- To keep itself apprised of developments in FOIA legislation and guidance.
- To update Trust staff on their responsibilities under the FOIA via the review and update of this document, mandatory annual IG training for all staff employed at the Trust (and associated material), and FOIA leaflets and other publications produced by the Information Governance Team.
- To survey FOIA applicants regarding how the Trust handled their requests.⁵

⁵ As required by the Information Governance Toolkit (2006/07), standard 603

- To ensure that the Chief Executive has approved any Section 36 exemptions claimed by the department providing the information.

In the absence of the IG Team, the Trust Records Manager (or other delegated person) will assume the IG Team's responsibilities.

SECTION 3 – FREEDOM OF INFORMATION ACT (FOIA) POLICY & PROCEDURES

3.1 Key related documents are:

- Records Management Policy
- Data Protection Policy & Procedures
- Publication Scheme

3.2 This document has been assessed against and is compliant with the Equality Impact Assessment, and the Dignity & Respect Charter.

3.3 What is an information request?

3.3.1 It is important to draw a distinction between requests and routine correspondence. Requests for information that can be provided without any question – such as recruitment brochures, leaflets, press releases and the text of public speeches – can be treated as business as usual. Requests which are not for recorded information, but instead ask questions, such as “please explain your policy on x” or “please explain your decision to do y” are not requests for recorded information and therefore should be treated as routine correspondence. As a “rule of thumb”:

- If any information requested is held and needs to be actively considered then the request should be formally treated as a request for information under the FOIA.
- If it seems likely that the requested information cannot be disclosed, it should be formally recorded as a request for information under the FOIA.⁶

3.3.2 FOIA legislation gives an entitlement to information rather than documents. Information held in other media such as video tapes, microfiche or photographs also needs to be considered in response to a request. As the FOIA relates to the provision of *information* that the Trust holds, opinions should not be given in response to such requests.

3.3.3 It is not necessary to create new information in order to answer a request, even if this can be easily done from other information that is held. However, the hospital should provide advice and assistance so that applicants may understand what information is held and could be requested.⁷

3.4 Publication Scheme

3.4.1 Under Section 19 of the FOIA, all public organisations have a legal duty to produce and maintain a Publication Scheme that informs the public how and when it will make particular information available. The Information Commissioner has agreed the Publication Scheme, which was created using the national Model Publication Scheme for NHS Trusts.

6

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handing_foi_and_eir_requests_2008_final.pdf

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handing_foi_and_eir_requests_2008_final.pdf

3.4.2 The Trust is obliged to regularly review its Publication Scheme, update it with current contact details, and add frequently requested information to the list of routinely published information, for ease of access for the public. The IG Manager reviews the Publication Scheme on a regular basis. The review includes:

- Department contacts and information in the Publication Scheme document.
- Consideration of whether information requested by the public on a regular basis will be included in the Publication Scheme.
- Consideration of the suitability of the information listed in the Publication Scheme, ie whether it is appropriate to upload the information to the Trust's website (the IG Manager will liaise with the document owner on this point).
- Amending or adding to the Publication Scheme in relation to new national guidance, regulations or legislation.

3.4.3 The information listed in the Publication Scheme is available to members of the public should they wish to be provided with a full copy. Paper copies are available to the public on request from PALS.

3.5 Trust Responsibilities

There are a number of functions that the Trust is required to perform under the FOIA. For an unabridged version of the functions, please refer to the Secretary of State for Constitutional Affairs 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'. Some of these functions are described below.

3.6 Duty to confirm or deny

3.6.1 Upon receiving a FOIA request for information (which must be in writing, including email) the Trust must state whether it holds information of the type requested and must communicate it to the applicant (if an exemption is not applied) within 20 working days of receipt of the applicant's request (or a note of any fee, if applicable). The request does not have to mention the FOIA.

3.6.2 Confirming or denying whether information exists and is held by the public authority is itself the disclosure of information. Therefore, in certain cases, the Trust may respond to the request by neither confirming nor denying whether such information exists, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to above and would not be in the public interest. (For more information, see the Exemptions section on page 20.)

3.7 Determining the Information Required

The Trust has the right to ask for further information from the applicant in order to locate the information requested, but has no right to ask why the information is being requested.

3.8 Advice and Assistance

The Trust has a duty to provide advice and assistance to applicants 'so far as it would be reasonable to expect the authority to do so'. To comply with this the Trust will:

- Publish the procedures for dealing with requests for information.
- Draw to the attention of potential applicants their rights of access to information.
- Be flexible in offering advice and assistance most appropriate to the applicant's circumstances.

- Offer appropriate assistance to applicants to determine what information they are requesting, if it is unclear.

3.9 Format of Response to Information Requests

When releasing the information requested by the applicant the Trust should take into account any preferred means of communication indicated by the applicant and make a 'reasonable effort' to comply with the request. A fee may be appropriate if providing information in certain formats, eg CD.

3.10 Handling Requests which may be part of an Organised Campaign

If the cumulative cost of supplying information for a number of related requests from one or more applicants exceeds the cost threshold prescribed in the Fees Regulations (as described in the FOIA), the Trust will consider if the information could be disclosed in a more cost effective manner eg by publication on the Trust's website.

3.11 Timeliness in dealing with Information Requests

- 3.11.1 The Trust is required to complete all information requests as soon as possible, but in any case, within 20 working days, calculated from the day after the date the request was received by the Trust. However, there will be some instances where it will not be possible to adhere to this timescale, eg where the Trust needs to consider where the public interest lies there is no statutory time limit on the length of time it takes to make the decision. In these instances, the Trust should provide the applicant with a realistic and reasonable estimated date of when the information can be provided to him/her, and is expected to meet this deadline. If the estimated timescale is exceeded then the Trust should apologise to the applicant and explain the reasons for the delay.
- 3.11.2 If a request is sent by email and the applicant receives an automated 'Out of Office' response, the request is not held to have been 'received' by the Trust and the 20 working day deadline will not be activated. The applicant should re-send the request to the alternative contact given in the 'Out of Office' message.
- 3.11.3 There is some scope to extend the 20 working days timescale if it is necessary to assess the balance of public interest (ie if a qualified exemption is being considered). However, the Trust must still respond within 20 working days, stating whether it holds the information (unless to do so would in itself release exempt information – see Duty to Confirm or Deny above), which exemption is being considered, and giving an estimated date of response. The extended timescale must be reasonable.⁸
- 3.11.4 If clarification of the request is needed in order to identify and locate the information, this must be requested promptly and in any event by no later than 20 working days after the request was first received. The day after the clarification is received by the hospital is when the 20 working day period begins. It will often be helpful to explain what information is readily available, or to explore ways in which a request could be made more specific. This will be particularly important if the original request would be refused due to excessive cost.⁹

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handling_foi_and_eir_requests_2008_final.pdf

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handling_foi_and_eir_requests_2008_final.pdf

3.12 Charging Fees

- 3.12.1 The Act does not require that the Trust charges a fee for information, but the Trust has the discretion to charge a fee in accordance with the Fees Regulations (as described in the Act). However, these regulations do not apply:
- to information made available under the Publication Scheme
 - to information which is reasonably accessible to the applicant by other means
 - where provision is made under any enactment as to a fee that may be charged by the Trust for disclosure of that specific information.
- 3.12.2 The Trust can choose whether to send information in response to FOIA requests if it will cost the Trust more than £450 to compile¹⁰ (calculated at 18 hours charged at £25 per hour), and taking into account determining whether it holds the information, and locating, retrieving and extracting the information or a document containing it. The Trust cannot take into account the time taken to consider whether an exemption applies, or for redacting exempt information (unless they are physical costs including materials eg tape or use (rental, licensing) of specialist equipment for that specific activity).
- 3.12.3 Where the cost of compliance does not exceed the appropriate limit, the request must be complied with and the information released unless an exemption applies (or if it is a vexatious request).
- 3.12.4 Whether the appropriate limit has been reached or not, the Trust can recover the reasonable disbursements (aka 'communication costs') incurred in contacting the requester to inform them the information is held, and communicating the information to the requester. This includes, but is not limited to the costs of:
- reproducing any document containing the information, eg printing or photocopying, and
 - postage and other forms of transmitting the information, and
 - complying with the FOIA section 11 where the applicant has expressed a preference for means of communication and where this is reasonably practicable.
- 3.12.5 Although the Trust may choose not to answer a request where to provide the information requested would cost more than the appropriate limit, - the Trust should still confirm whether or not it holds the information requested, and provide advice and assistance to the applicant to re-scope the request so that it falls within the appropriate limit. There is no obligation on the Trust to provide information that will take it up to the appropriate limit.
- 3.12.6 If the Trust chooses to provide information that would take it over the appropriate limit to supply, and a fee is to be charged then the FOIA Department Representative or information provider should notify the IG Team of the cost. The IG Team will raise an invoice and contact the applicant to inform him/her of this (the 'Fee Notice').
- 3.12.7 The applicant has three months from the date the Fee Notice was sent, to pay the fee. The 20 working day deadline freezes from the date the Fee Notice is sent, and starts again on the date the payment is received. Once the payment has been received, the IG Team will instruct the FOIA Department Representative that the information should be compiled. The Trust has the remainder of the 20 working day period to send the information requested (see the Fees section).

¹⁰ The 'appropriate limit'

3.13 Transferring Requests for Information

3.13.1 The Trust can only transfer a request for information when it does not hold the information requested, but another public authority does. If the Trust holds some of the information, it must:

- disclose it, and
- then transfer the request for the remainder of the information.

3.13.2 The Trust should advise the applicant if it does not hold part or any of the information and provide the contact details of the public authority that does hold the information, if this is known. The Trust can choose to either:

- direct the applicant to the public authority that holds the information, or
- pass the request on to the public authority concerned (after ascertaining that the other public authority definitely holds the information), and advise the applicant that his/her request will be transferred.

3.14 Consultation with Third Parties

3.14.1 The FOIA also applies to information that has been received from others eg public authorities, companies, organisations and members of the public. Such information must therefore be considered when it is relevant to a request.

3.14.2 In some cases, a request for information may affect the legal rights of a third party (a person or organisation), eg where the information constitutes 'personal data' within the meaning of the Data Protection Act 1998.

3.14.3 Where disclosure cannot be made without the consent of the third party, eg disclosure would constitute an actionable breach of confidence, the IG Team should first consult the third party to seek its consent to release the information (unless the third party cannot be located or consulting them would incur a disproportionate cost). Where the interests of the third party do not give rise to legal rights, consultation may still be appropriate.

3.14.4 Consultation will take place where the views of the third party may assist the Trust:

- to determine whether an exemption applies to the requested information
- to determine where the public interest lies (see the Exemptions section).

If the cost of consultation with the third party would be disproportionate, the IG Team may consider that consultation is not appropriate and will have to consider a reasonable course of action. Consultation will be **unnecessary** where:

- The Trust does not intend to disclose the information relying on some other legitimate grounds under the terms of the FOIA
- The views of the third party can have no effect on the decision of the Trust, eg where there is other legislation preventing or requiring the disclosure
- No exemption applies and so under the FOIA's provisions, the information must be provided.

3.14.5 The fact that a third party has not responded to consultation does not relieve the Trust of its duty to disclose the information under the Act, or its duty to reply within 20 working days. If it is apparent that consultation will take longer than the 20 day deadline, a holding letter must be sent to the applicant.

3.14.6 In general, it will be necessary to consult the originators about the prospect of disclosure. Their views will be important if it is necessary to assess the balance of public interest in the disclosure of information, but **they do not have a veto** – the final decision on whether to release or withhold information rests with the Trust.¹¹ In **all** cases, it is for the Trust, not 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.

3.15 Public Sector Contracts

The Trust should ensure that all its suppliers are aware of the Trust's obligation to create an environment of openness in its business practice and it therefore may be required to release information regarding contracts in place.

3.16 Accepting Information in Confidence from Third Parties

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

3.17 Refusal of Requests

If the Trust will not release information due to an exemption¹², the applicant must be notified that the information will not be disclosed and which exemption has been applied. Unless an absolute exemption has been applied (see the Exemptions section at the Appendix on page 20), the Trust must state the reasons for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosure. The FOIA Requests database (held by the IG Team) contains administrative information about all aspects of each request.

3.18 Retention and Disposal

In accordance with the NHS Retention & Disposal Schedule, departments should keep FOIA requests and their responses for:

- 3 years after full disclosure, or
- 10 years if information is redacted or the information requested is not disclosed.

3.19 Complaints Procedure

3.19.1 The Trust is required to have a complaints procedure in place for any applicant who perceives:

- that the Trust is not complying with its Publication Scheme, or
- that his/her request for Trust information has not been properly handled, or
- is otherwise dissatisfied with the outcome of the consideration of his/her request, and where the issue cannot be resolved informally in discussion with the IG Team..

3.19.2 Complaints will be dealt with in accordance with the Trust's FOIA 2000 Complaints Procedure (see Appendix A on page 32).

3.19.3 The following points will be considered:

¹¹

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handing_foi_and_eir_requests_2008_final.pdf (Also see the Code of Practice on the discharge of public authorities' functions under Part 1 of the Act (issued under S45).

¹² http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

- Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be informed how soon this will be.
- Where the outcome of a complaint is that the procedures within the Trust have not been properly followed, the Trust will apologise to the complainant. The IG Team will ensure that whoever did not comply with the procedures is made aware of the complaint and its outcome.
- Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the Trust's favour, the complainant should be informed of their right to apply to the Information Commissioner (see 'Complaints to the Information Commissioner' section in the Complaints Procedures) and be given details of how to make an application.

3.19.4 The IG Team will report complaints at each IG Group meeting.

3.20 Format of information supplied

3.20.1 If the applicant requests information in a particular format, the Trust should comply unless it is reasonable to make the information available in another format, or the information is already in the public domain (eg Section 21 Exemption).

3.20.2 If the information is not made available in the format requested, the Trust shall:

- (a) explain the reason within 20 working days (in writing, if the applicant so requests), and
- (b) inform the applicant of the right to appeal.

3.21 Information for the Public

3.21.1 Leaflets

Under the requirements of the Information Governance Toolkit¹³ and the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 (under Section 45 of the Act)¹⁴, the Trust is obliged to provide information to patients regarding access to its information. To assist with this requirement the Trust has produced a leaflet entitled "The Freedom of Information Act 2000: A guide to accessing information about The Ipswich Hospital NHS Trust". The leaflets are available on wards and reception areas and can be obtained from the IG and PALS Teams.

3.21.2 Special/different needs

The Trust must ensure that applicants with special needs are supported in their requests. The current Trust procedure to provide FOIA advice and assistance for people with special/different needs is demand-led and co-ordinated by the PALS team and the Medical Illustration Manager eg:

- A patient with a visual impairment will be provided with a copy of the relevant leaflet/poster in an appropriate format, eg audio, CD, large print, or Braille
- A patient with a hearing impairment will be provided with a copy of the relevant leaflet/poster in an appropriate format or the information explained through a Sign Language Interpreter

¹³ <https://www.igt.connectingforhealth.nhs.uk/>

¹⁴ <http://www.dca.gov.uk/foi/reference/statCodesOfPractice.htm>

- A patient who does not understand/finds difficulty in understanding English will be offered the services of a translator eg via Language Line, face-to-face Interpreter Services, or Sign Language Interpreter.

3.22 Recognising a request

3.22.1 A member of the public (the applicant) can send a request for information to any member of Trust staff. This makes it difficult to manage the requests that are received by the Trust therefore applicants are encouraged to send their requests to the IG Team via the email address at information.access@ipswichhospital.nhs.uk. (See Figure 1 - Procedure for handling FOIA Requests.) The FOIA states that an information request must:

- be made in writing (including electronically, in legible form and capable of being used for subsequent reference)
- state the name of the applicant or organisation and an address for correspondence (which may be an email address); and
- describe the information requested.

3.23 Routing of requests

3.23.1 On receipt of an information request, the IG Team will contact the appropriate FOIA Department Representative and/or Business Unit Manager via email in the first instance (and will copy in the relevant Senior Manager/Director), unless a similar request has recently been dealt with previously by an appropriate member of staff, and unless the information requested falls within the categories below:

- Both the Chief Executive and the Chairman consider requests for the closed Trust Board minutes.
- The Deputy Director of Human Resources considers requests regarding investigations into staff conduct.
- The Infection Control Team (Nurse Specialist, and Consultant Microbiologist, Pathology) consider requests regarding infection control information, with the Director of Infection Prevention & Control copied in for information.

3.23.2 If a similar request has been dealt with recently by an appropriate member of staff, the new request will be sent to that member of staff, and the FOIA Department Representative and/or Business Unit Manager will be copied in. A list of the FOIA Department Representatives is updated regularly and is available on the Information Governance pages of the Trust intranet.

3.24 Existing information

The Trust is not obliged to produce any new information to respond to an applicant's request for information, it only has to provide information it already holds. For example, if a manager is asked for statistics, then an existing report can be used to provide the information. The manager does not have to produce a new report to answer the request. However, any combination of information held on a database is not regarded as 'new information', even if a new query has to be created to extract it.

3.25 Vexatious requests

3.25.1 The Trust is not expected to provide assistance to 'vexatious' applicants. That is, where the Trust has previously complied with a request for information which was made by the applicant, it is not obliged to comply with a subsequent identical or substantially similar

request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

“While giving maximum support to individuals genuinely seeking to exercise the new right to know, the Commissioner’s general approach will be sympathetic towards authorities where a request, which may be the latest in a series of requests, would impose a significant burden and:

- *clearly does not have any serious purpose or value;*
- *is designed to cause disruption or annoyance;*
- *has the effect of harassing the public authority; or*
- *can otherwise fairly be characterised as obsessive or manifestly unreasonable.”¹⁵*

3.25.2 The IG Team will monitor the FOIA Requests Database to identify ‘vexatious’ applicants and consult with the appropriate department Senior Manager/Director and/or Chief Executive as appropriate to make a decision as to whether or not to supply the information requested. These cases will need to be investigated according to their specific circumstances.

3.26 Responding to requests

- After the information sought by the applicant has been provided to the IG Team by the department, the IG Team will forward it on to the applicant using one of its standard template letters. .
- The name of the person providing or approving the information to the IG Team (if he/she is a senior manager in the department) may be given in the letter as a contact for the applicant if further discussion or clarification is required.
- The FOIA Department Representative, and Senior Manager/Director of the department will be sent the proposed response for information and approval before it is sent. If no approval is received by the IG Team before the 20 day deadline for sending a response is reached, it will be assumed the response is acceptable, and it will be sent to the applicant.
- The Communications Team will also approve responses before they are sent.
- In the case of contentious requests, an Executive Director on the Trust Board or the Chief Executive may be asked to approve the proposed response before it is sent (regardless of the 20 day deadline).
- To fulfil a requirement of the IG Toolkit standard 603, the response will include the FOIA applicant satisfaction survey to ask the applicant how he/she feels the Trust has handled the request.

3.27 Contentious and embarrassing information

3.27.1 Information requests and responses are passed to the Head of Communications for information. For particularly contentious requests, an Executive Director on the Trust Board or the Chief Executive may be asked to approve the proposed response before it is sent. The Chief Executive has to make the final decision if a Section 36 exemption¹⁶ (Prejudice to effective conduct of public affairs) is applicable.

3.27.2 The Trust cannot refuse to disclose information on the grounds that it may be embarrassing. If the Trust holds the information requested and does not wish to disclose it, an exemption must be identified.

¹⁵ http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx - Vexatious and repeated requests

¹⁶ http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

3.27.3 A list of exemptions and guidance is available from the Information Commissioner's website at [http://www.ico.gov.uk/what we cover/freedom of information/guidance.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx).

3.27.4 The IG Team can advise the department providing the information about exemptions if the department feels that one or more exemptions are applicable to all or parts of the information.

3.28 FOI Requests Database

3.28.1 All FOIA information requests received by the Trust are recorded on a dedicated database by the IG Team.

- If an information request is received by the IG Team, the IG Team will populate the database with the request.
- If an information request is received by a FOIA Department Representative, then he/she must pass the original request to the IG Team via email to the information.access@ipswichhospital.nhs.uk mailbox immediately, or if it was received in paper format, by fax and also internal post or hand delivery.

3.28.2 Following receipt of an information request and the subsequent population of the database, the IG Team is responsible for keeping the database up to date as the request progresses and reaches its conclusion. The database is used to monitor individual requests and to report on the Trust's handling of information requests to the IG Group.

3.28.3 As any Trust responses to FOIA requests are effectively in the public domain, FOIA requests and responses will be published on the Trust's public web site.

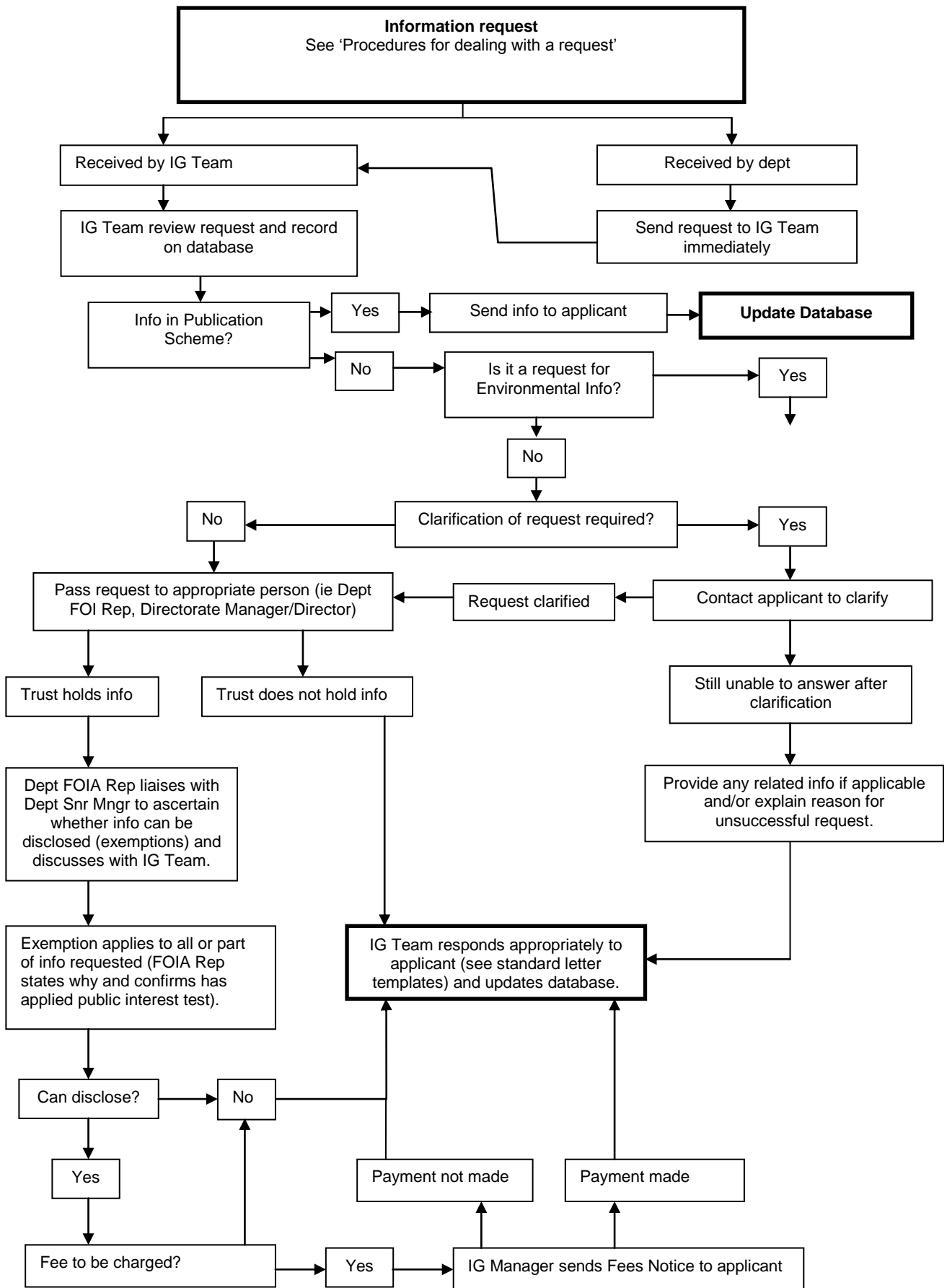


Figure 1 - Procedure for handling FOIA Requests

3.29 Exemptions

Guidance on exemptions is available at the Information Commissioner's website (http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx).

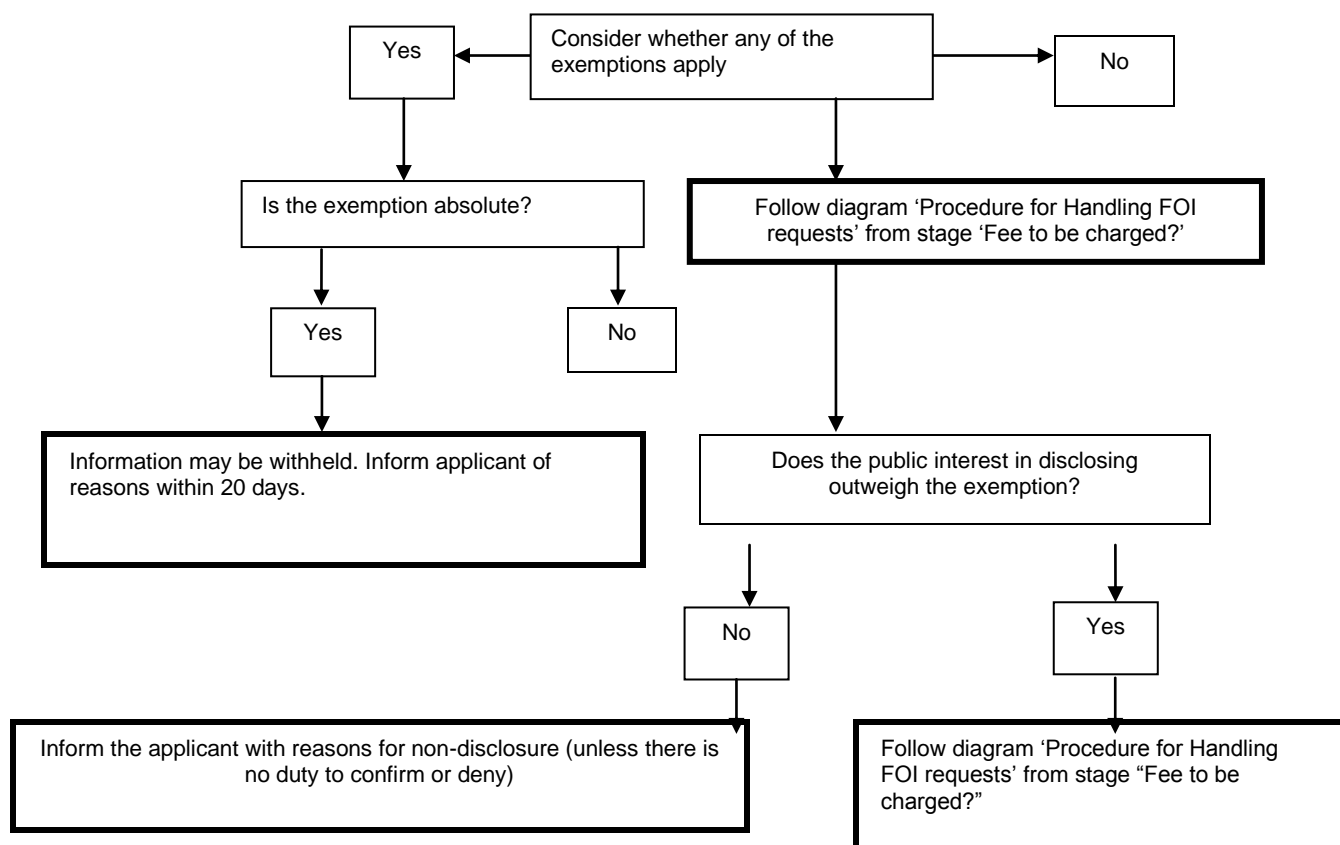


Figure 2 – Applying an exemption

3.30 Refusing a request due to an exemption

3.30.1 If an exemption is applied, the Trust should not merely paraphrase the wording of the exemption, unless to do otherwise would involve the disclosure of information which itself would be exempt information. This is reflected in the Trust's standard FOIA correspondence template letters used by the IG Team.

3.30.2 The Trust must specify to the applicant which information is exempt and why the exemption applies (and if appropriate, why the public interest is served by refusing to disclose). Where an absolute exemption¹⁷ is applied, the applicant must be informed within 20 working days. The Trust has included wording for exemptions in its standard

¹⁷ Absolute exemptions - These are cases where the right to know is wholly disapplied. In some cases there is no legal right of access at all, for instance information supplied by or relating to bodies dealing with security matters or information covered by parliamentary privilege. In other cases, for instance information available to the applicant by other means or personal information relating to the applicant, it may be possible to obtain the information by alternative means (not under the FOI Act).

letters. If sections of a document are exempt, those sections must be redacted and the remainder released.¹⁸

3.31 Investigating a non-absolute exemption

If an application of a non-absolute exemption¹⁹ is being considered and will take more than 20 working days, the IG Team will need to send a notice to the applicant which:

- Specifies the information is being considered as exempt information
- States that the Trust is considering the matter
- Provides details of any complaints procedure and of the right of appeal to the Information Commissioner once the internal complaints procedure has been exhausted.

3.32 Applying the Public Interest Test

3.32.1 Factors which are likely to argue **in favour** of disclosure will include furthering public understanding and debate on a key policy proposal or decision, or promoting accountability and transparency about a particular decision taken by a public authority or about the use of public money. There is also an accepted public interest in allowing individuals to understand the reasoning behind decisions which affect their lives or which have an effect on public health and safety. However, it is also accepted that “what the public are interested in” and “what is in the public interest” are not necessarily the same thing. Harmful effects of disclosure must also be taken into account.

3.32.2 Undesirable outcomes which could tip the balance **against** disclosure include endangering public safety, undermining effective government by discouraging frankness and candour in internal communications, and harming a public authority’s competitive position in a commercial matter.

3.32.3 When considering the application of a FOIA non-absolute exemption or any EIR exception (see the EIR Section), the public interest test must be performed²⁰. The IG Team will advise on this procedure.

3.32.4 The starting position for any public interest test is that the public interest is served by disclosure. The purpose of the public interest test is to weigh the possible adverse effect of disclosure against the positive benefit of openness.

3.32.5 An applicant has two main rights under FOIA:

- The right to be informed whether or not the information requested is held by the authority, and, if so,
- The right to have that information communicated to him/her.

3.32.6 When applying the public interest test, consideration should be given:

- first, to whether it is right to confirm or deny the existence of information, and
- second, to whether that information should be supplied.

¹⁸

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handling_foi_and_eir_requests_2008_final.pdf

¹⁹ Non-absolute exemptions are other exemptions that are not classed as Absolute Exemptions, and as such are subject to the Public Interest Test.

²⁰ http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

3.32.7 The following points must be considered when weighing up whether the public is best served by disclosing or not disclosing the information requested (these factors must be considered on a case-by-case basis):

- Transparency and open decision-making
- Accountability of decision-makers
- Furthering the understanding of and participation in the public debate of issues of the day
- Allowing individuals and companies to understand decisions made by the Trust affecting their lives and, in some cases, assisting individuals in challenging those decisions
- Financial probity
- Absence of bias
- The health of the population and/or individuals

3.32.8 These points must not be considered when applying the public interest test:

- Embarrassment to the authority/employee
- The applicant may misunderstand the information
- Incomplete information
- Loss of confidence in the authority
- Information is misleading (if this is the case, then an explanation should be sent with information to put it in context)

3.32.9 When a qualified FOIA exemption (or any EIR exception) is cited, the balance of factors for and against disclosure must be explained in the reply to the applicant.²¹

²¹

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handing_foi_and_eir_requests_2008_final.pdf

3.33 Considering Disclosure of Personal Data

This procedure for the consideration of the disclosure of personal data has been developed in accordance with the Information Commissioner's FOIA Awareness Guidance: Personal Information.²²

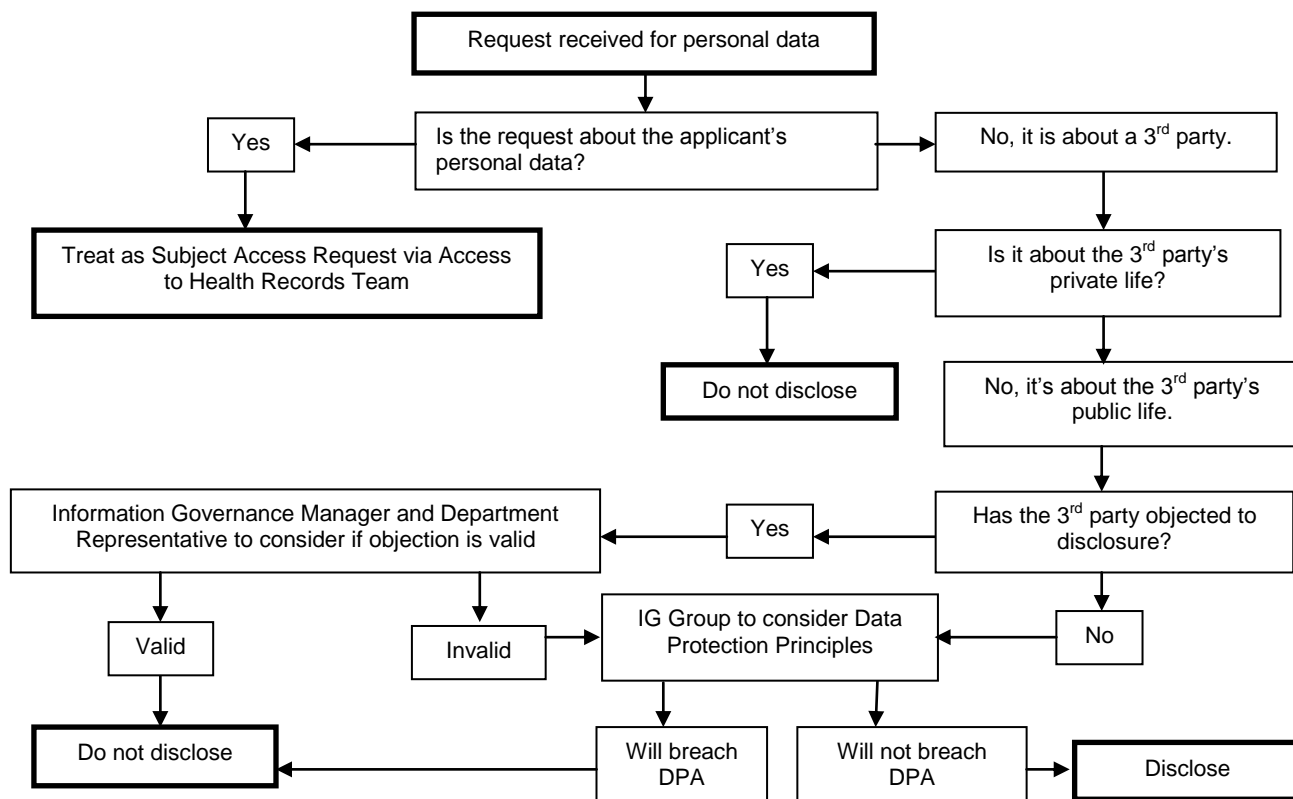


Figure 3 - Procedure for considering disclosure of personal data

3.34 Refusing requests on grounds of cost

Although there will be no charge for search and collation time for the vast majority of requests, public authorities may refuse to supply information to the applicant in cases where the information would cost more than the appropriate limit to supply. (See the Fees section in this document.)

3.35 Environmental Information Regulations

3.35.1 As a public authority, The Ipswich Hospital NHS Trust is also subject to the requirements of the EIR 2004.²³ Environmental Information is defined as information in any format about:

- Water or air, flora or fauna
- Soil
- Land or other natural site
- Any activities or measures which adversely affect or are designed to protect any of the above.

3.35.2 This includes:

²² http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

²³ <http://www.opsi.gov.uk/si/si2004/20043391.htm>

- a. The state of the elements of the environment (ie air, water, soil, land, landscape and natural sites, biological diversity) and the interactions between them.
- b. Substances, energy, noise, radiation or waste, emissions, discharges and other releases into the environment affecting or likely to affect the elements of the environment referred to in a).
- c. Measures (including administrative measures, policies, legislation, plans, programmes and environmental agreements) and activities affecting or likely to affect, or intend to protect a) and b).
- d. Reports on the implementation of environmental legislation.
- e. Cost benefit and other economic analysis and assumptions used within the framework of the measures and activities referred to in c).
- f. The state of human health and safety, conditions of human life, the food chain, cultural sites and built structures in as much as they are or may be affected by a) or through those elements by any of the matters referred to in b) and c).

3.35.3 Regulations require the Trust to progressively make available environmental information to the public by electronic means which are easily accessible. The Trust uses its external website for this purpose (ie its Publication Scheme). The Trust should offer reasonable advice and assistance to applicants or prospective applicants.

3.36 Provisions for Accessing Environmental Information

3.36.1 These are the provisions for access to Environmental Information:

- Requests may be in any format (including verbal).
- The Trust must supply information in a reasonable format.
- The request must be answered in 20 working days (or 40 working days if a case is particularly complex or voluminous).
- A reasonable charge may be imposed.
- A refusal to comply with the request must be made in writing and include reasons for refusal.

3.36.2 A refusal can be made if:

- The information is not held by the Trust.
- The request is manifestly unreasonable
- The request is too general. In this case the Trust will ask the applicant (within 20 working days), to provide more particulars in relation to the requested information, and the Trust must assist the applicant in providing those particulars, if possible.
- The request is for unfinished documents or data (in which case an estimated time for completion must be given).
- The request involves the disclosure of internal communications (this could be dealt with under FOIA request handling procedures contained in this document).

3.37 Environmental Information Access Exceptions (ie exemptions)

There are a number of exceptions to disclosing information described in the regulations, which the Trust may consider before releasing the information. All exceptions are subject to a public interest test and there are no absolute guarantees of exemption. The Trust should consider if the public interest in withholding the information outweighs the public interest in disclosing the information. However, the Trust must apply a presumption in favour of disclosure.

3.38 Exceptions

3.38.1 The Trust may refuse (advising the applicant within 20 working days) to disclose information to the extent that its disclosure would adversely affect:

- (a) international relations, defence, national security or public safety
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature
- (c) intellectual property rights
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
- (f) the interests of the person who provided the information where that person:
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

3.38.2 In addition, the Trust may refuse to disclose personal information where the individual has not consented to its disclosure. Where the applicant has requested access to his/her own data, it shall be dealt with under the Data Protection Act 1998 (Subject Access Request) procedures – refer to the Trust’s Data Protection Policy and Procedures.

3.38.3 The Trust is not allowed to refuse to disclose information relating to emissions under Exceptions (d) to (g) above. If information requested is not reasonably capable of being separated from information that should be withheld, then all of the information can be withheld.

3.38.4 If an information request is made for Environmental Information then it must be treated under the provisions of these regulations and not as a Freedom of Information Act 2000 request.

3.39 Offences under the regulations

It is an offence under the EIR regulations for a person to alter, deface, block, erase, destroy or conceal any record held by the Trust with the intention of preventing the disclosure to an applicant.

3.40 Format of information supplied

If the applicant requests information in a particular format, the Trust should comply unless it is reasonable to make the information available in another format, or the information is already in the public domain. If the information is not made available in the format requested, the Trust shall:

- (c) explain the reason within 20 working days (in writing, if the applicant so requests) and
- (d) inform the applicant of the right to appeal.

3.41 Fees

Fees will be charged under the procedures outlined at the Appendix - Fees.

3.42 EIR Complaints

An applicant may complain to the Trust if it appears that it has not complied with the requirements of the EIR regulations. EIR complaints will be dealt with in the same way as FOIA requests, with the exception that EIR complaints must be received within 40 days of completion of the request.

3.43 Offences under the EIR

It is an offence under the EIR for a person to alter, deface, block, erase, destroy or conceal any record held by the Trust with the intention of preventing the disclosure to an applicant.

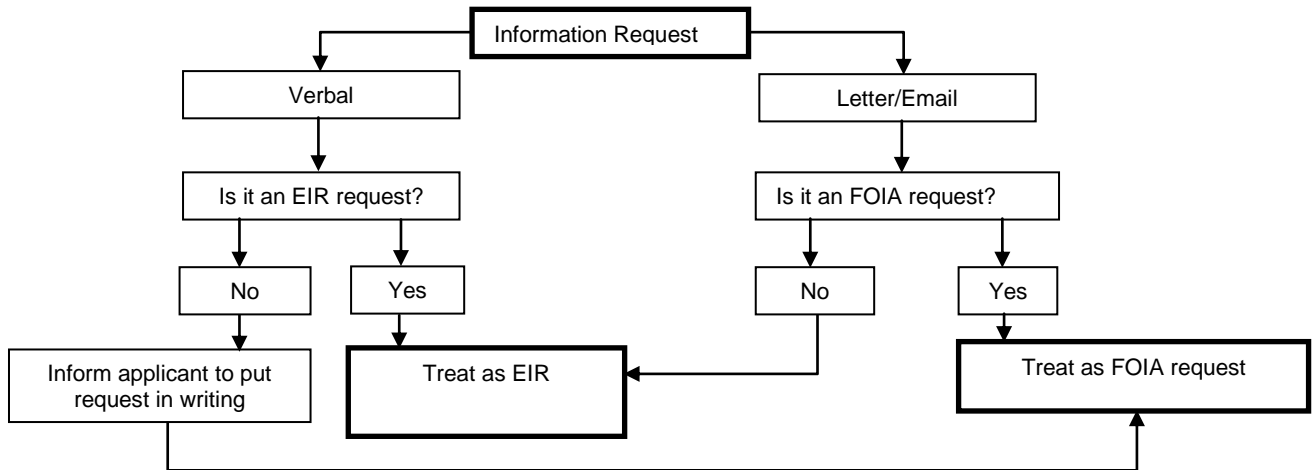


Figure 4 – Distinguishing type of request

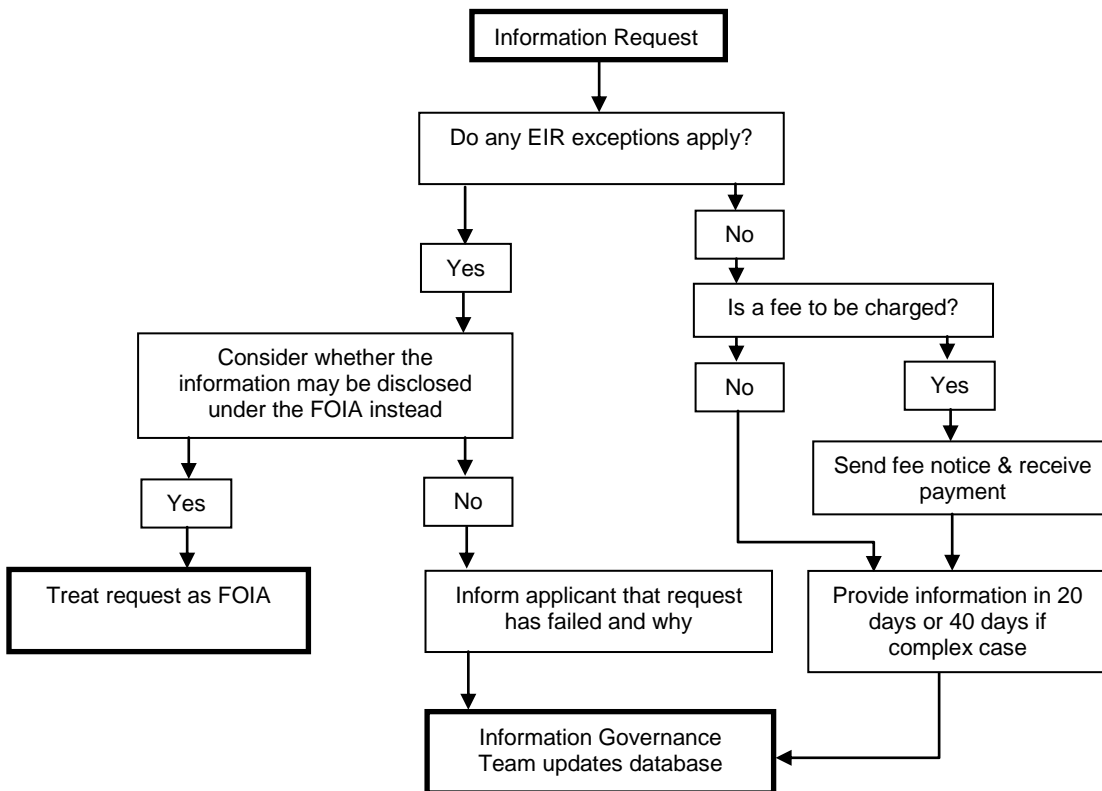


Figure 5 - Dealing with a request under the Environmental Information Regulations

(See definition in previous section above)

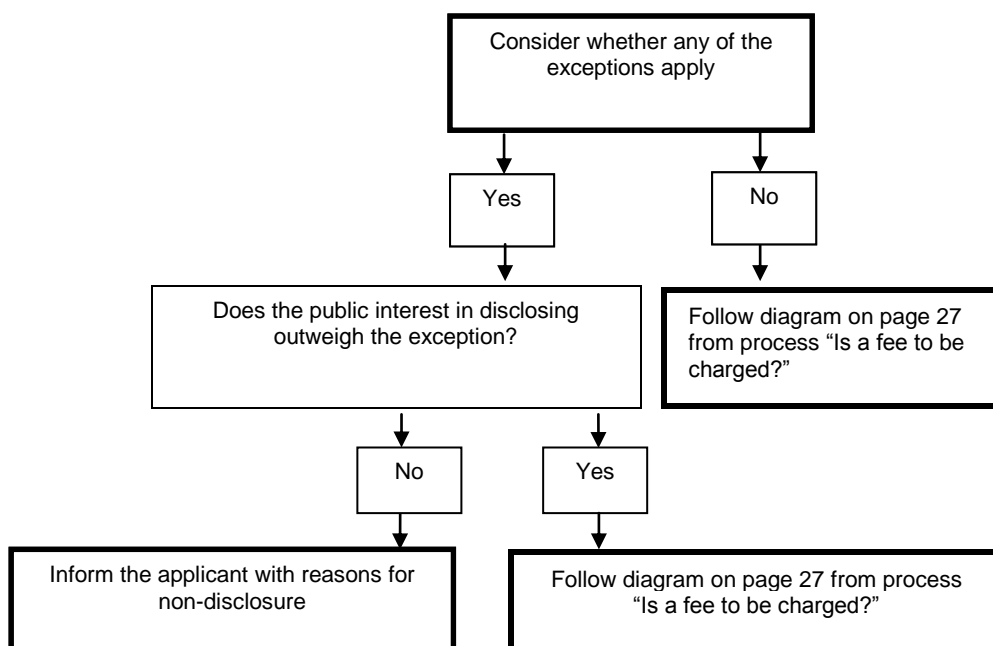


Figure 6 - Considering EIR Exemptions

3.44 PUBLIC RECORDS ACT 1958

3.44.1 There is an interaction between the Public Records Act 1958²⁴ (PRA) and the FOIA. The existing provisions of the PRA (pre FOIA) are as follows:

- Public records are in the care of Keeper of Records under the Minister for the Department for Constitutional Affairs.
- As a general rule, public records are opened after 30 years and public authorities are encouraged to make the records available before the 30 years expires.
- There are wide discretions for withholding access.
- There are provisions for consultation with the organisation that generated the record over disclosures in the public interest before the 30 years expires.

3.44.2 The new provisions in accordance with the FOIA are:

- All records are subject to FOIA from the time of creation (subject to the exemptions).
- The selection of records for permanent preservation remains unchanged.
- After 30 years, some FOIA exemptions become inapplicable.
- After 60 and 100 years, other exemptions become inapplicable.

3.45 Public Records Office and Trust Information

3.45.1 If information has been transferred to a Public Records Office (PRO) (or another place of deposit appointed by the Lord Chancellor under the PRA) and that office receives a request for Trust information then the PRO will send a copy of the request to the Trust within 20 working days if:

- The duty to confirm or deny is excluded only by a non-absolute exemption or
- The information is exempt information only by virtue of a non-absolute exemption

3.45.2 The Trust will then perform the public interest test to decide if the information will be disclosed or not.

²⁴ <http://www.nationalarchives.gov.uk/policy/act/>

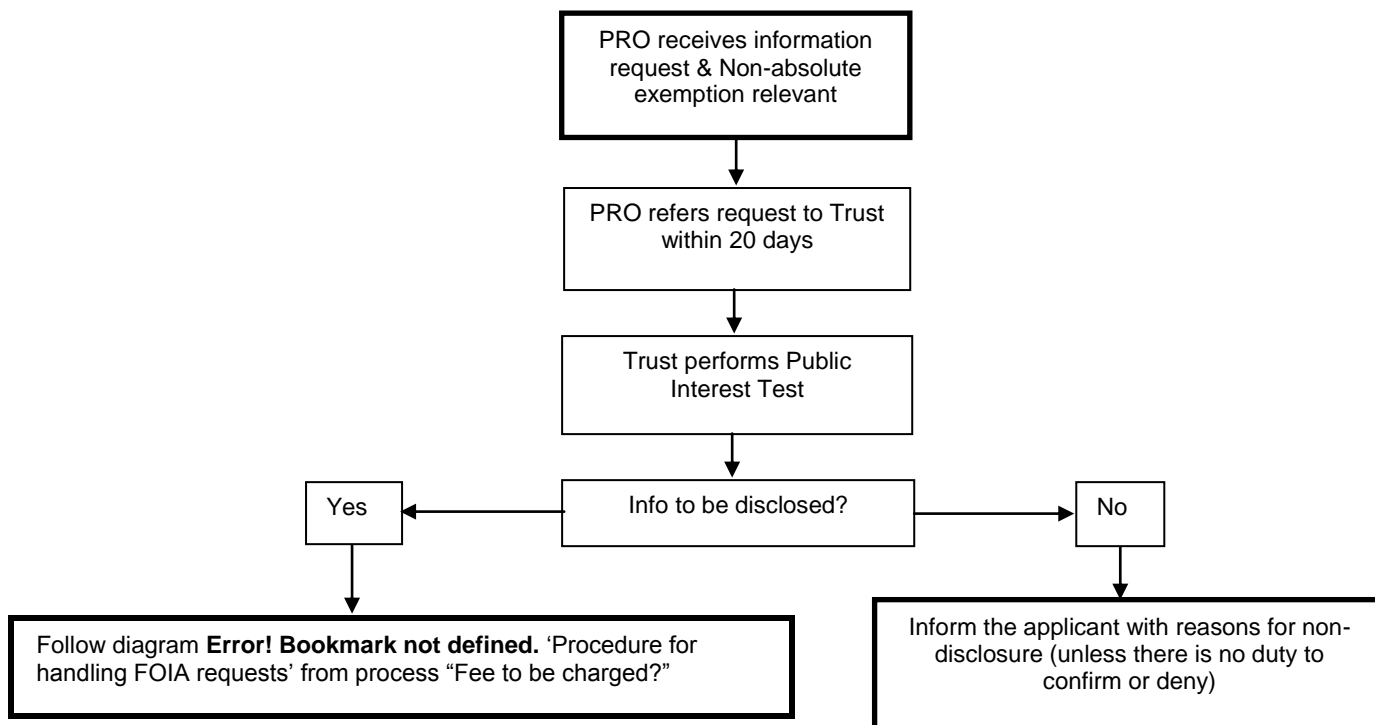


Figure 7 - Public Records Office & Trust Information

SECTION 4 – TRAINING AND EDUCATION

4.1 Training

4.1.1 IG training is mandatory for all staff employed on Trust premises, at induction and annually thereafter. The training includes:

- An explanation of the FOIA
- Trust responsibilities
- Employee responsibilities, including what to do when a request is received
- Criminal offences

4.1.2 Training material is reviewed annually by the IG Manager, and is available via presentations and the Trust intranet, as is other information regarding the FOIA.

4.2 Other sources of advice

4.2.1 For advice and assistance, staff can:

- Contact his/her FOIA Department Representative
- Contact the IG Team
- Look on the Trust intranet for guidance.

4.2.2 The IG Team provides advice and assistance regarding staff responsibilities under the Act. If the IG Manager is unable to resolve a request for advice using the FOIA or its accompanying Codes of Practice, then he/she will:

- Contact the Information Commissioner for advice (see the website for contact details: www.informationcommissioner.gov.uk).
- Communicate with the member of staff to inform them that the Information Commissioner has been contacted.

- Communicate with the member of staff informing them of the Information Commissioner's advice, once received.
- Take the Information Commissioner's advice to the IG Group to decide if Trust procedures need to be amended.

4.2.3 Staff have been made aware of the existence of this Policy & Procedures, which is available on the hospital intranet.

SECTION 5 – DEVELOPMENT AND IMPLEMENTATION INCLUDING DISSEMINATION

5.1 The IG Manager has developed this document, which is implemented by FOI request representatives in each directorate, and by other hospital staff and the IG Team.

5.2 The existence of this Policy & Procedures will be broadcast by email to all Trust staff, and this document will be uploaded to the Trust Intranet.

5.3 This document has been written in accordance with the terms of the Development and Management of Strategies, Policies & Procedures, Protocols, Guidelines and Other Guidance Material Policy v7.0.

5.4 The following have been involved in the review of this version of this Policy:

- The IG Group (membership includes the Trust's Caldicott Guardian and representation from Legal Services)
- The IG Manager (Responsible Officer)
- The Local Counter Fraud Officer

SECTION 6 – MONITORING COMPLIANCE AND EFFECTIVENESS

6.1 The IG Team monitors the FOIA database, which (inter alia) tracks the progress of FOIA requests and logs when the request came in to the Trust, which FOIA Department Representative it was sent to, and when it is due to be answered. The IG Team also monitors complaints received regarding FOIA requests (which are logged on the FOIA Requests database) on an ongoing basis. Statistics regarding number of FOIA requests received, number breaching the 20 working day deadline, etc are reported to the IG FOIA Department Representatives and the IG Group at its quarterly meetings. A summary of the quarterly statistics is contained within the IG Annual Report which is sent to the Trust Board via the IGG and Trust Management Team.

6.2 The NHS Connecting for Health IG Toolkit standard 603 requires that the Trust has a FOIA Policy and Procedures, and evidence to support this standard may be subject to scrutiny by an independent auditor.

6.2 The IG Group will approve this document and is responsible for monitoring compliance with and the effectiveness of this guidance and agreeing any remedial action, the outcome of which will be reported to the next meeting.

SECTION 7 – CONTROL OF DOCUMENTS INCLUDING ARCHIVING ARRANGEMENTS

7.1 Once ratified by the IG Group this Policy & Procedures document will be forwarded to the IG Team for a document index number to be assigned. All Trust documents will be recorded onto a master index. It is the responsibility of the IG Team to ensure that these

indexes are kept up to date. A copy of the master index will be available to all Trust staff upon request.

7.2 This document will be made available on the hospital intranet.

7.3 The IG Manager is responsible for ensuring that this procedure adheres to the Trust's Record Management Policy, including retention and archiving arrangements.

SECTION 8 – SUPPORTING COMPLIANCE AND REFERENCES

This document will support the Trust's compliance with:

- Its legal obligations as set out in the Freedom of Information Act 2000 and Environmental Information Regulations 2004
- The Re-use of Public Sector Information Regulations 2005
- The NHS Connecting for Health Information Governance Toolkit standards
- The Data Protection Act 1998.

APPENDIX A - FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 COMPLAINTS PROCEDURE

Background

This complaints procedure has been developed in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the FOIA 2000 Issued under Section 45 of the Act.²⁵

Why Have a Complaints Procedure in Place?

Under FOIA a public authority is not obliged to have a complaints procedure in place, but it is considered good practice to have one. However, EIR legislation stipulates a procedure must be in place.²⁶

Recognising a complaint

Any written correspondence from the applicant (including email) should be treated as a complaint if:

- The applicant perceives that the Trust is not complying with its Publication Scheme.
- The applicant is expressing dissatisfaction with the Trust's response to a valid request for information.

Even if the applicant does not express a desire for the Trust to review its decision or the handling of his/her application, the correspondence should be dealt with in accordance with this complaints procedure.

See overleaf for procedural diagram.

In any cases, information relating to complaints will be logged onto the FOIA Request database. The IG team will write a letter to the complainant using the IG Team's complaints letter templates.

Procedure for handling complaints

1. Any complaints must be passed on to the IG Team in the first instance.
2. It is good practice to deal with a complaint swiftly, and on an informal basis if possible. The complaints procedure should be made available to the complainant by the IG Team.²⁷
3. Once an informal discussion has taken place, if the requester still wishes to make a formal complaint, it must be made in writing (which includes electronic format), and he/she must direct it to the IG Team. There is no obligation on the applicant to make an informal approach to the Trust before making a formal complaint.
4. If the nature of the complaint is in relation to a decision to withhold requested information, the IG Team will inform the senior person in the department(s) responsible.²⁶
5. The senior person will then investigate and undertake a thorough review of any handling issues and any decisions that were made to withhold the requested information within his/her department, and advise the IG Team of the outcome of his/her review.

²⁵ <http://www.dca.gov.uk/foi/reference/statCodesOfPractice.htm>

²⁶ ICO FOIA and EIR Guidance – Internal Reviews

²⁷ Department for Constitutional Affairs – People's Rights - FOI

6. The IG Team will then advise the FOIA representative of the department who handled the original request of the senior person's decision. Where appropriate, the IG Team may consult with the IG Group in an attempt to resolve any issues. The final decision regarding the outcome of the complaint must come from a senior person in the department which dealt with the original request.
7. The applicant will then be contacted in writing with the outcome of the internal review. Where the outcome of a complaint is a decision that the information requested should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable.
8. All letters explaining the outcome will be signed by the Chief Executive.
9. If after exhausting the Trust's FOIA Complaints procedure, the applicant is still dissatisfied, he/she has the right to complain to the Information Commissioner. The contact details of the Information Commissioner will be provided to the applicant at the same time as the results of the internal review. (These details are also given to the applicant in all standard correspondence template letters.)

Timescales

Under FOIA there is no time limit for a complainant to submit a request for a review of the Trust's decision or procedures in relation to his or her request. However, under the EIR the complainant must have requested the internal review within 40 working days of the alleged failure to comply.²⁶

For FOIA complaints, all internal reviews should aim to be completed within 20 working days. If the Trust estimates it may take longer, the IG Team must inform the applicant of the delay and provide a target date for a decision. Under EIR, internal reviews must be completed within 40 working days on receipt of a complaint.²⁷

If a complaint is regarding procedure eg the Trust did not respond to a request within 20 working days, the IG Team will inform the relevant department which originally provided the information. The department should then take appropriate steps to prevent similar errors occurring in the future.²⁷

Complaints to the Information Commissioner

A complainant is entitled to contact the Information Commissioner once the Trust's FOIA Complaints Procedure has been exhausted.

If a person makes a complaint in respect of the Publication Scheme the Information Commissioner may investigate the matter at his/her discretion, but will not make a decision under Section 50 of the Act as described below.

If a person makes a complaint in respect of a request under the Act's 'general right of access', the Information Commissioner will consider the application under Section 50 of the Act. Where the Information Commissioner receives such a complaint, he/she could:

- Notify the complainant that he/she has not made any decision and of his/her grounds for not doing so eg undue delay in making the complaint, frivolous or vexatious complaints.
- Issue the Trust with a 'decision notice' which specifies the steps which must be taken by the Trust to comply with the requirement (including the timescale for completion).

There is a right of appeal regarding the Information Commissioner's decision.

Standard documentation

When communicating any decision made in relation to a request under the FOIA's 'general right of access', public authorities are obliged to notify the applicant of their rights of complaint.

The Trust has ensured that this information is included on all standard documentation regarding FOIA information requests.

After a complaint is resolved

If the complainant is dissatisfied with the Trust's response, he/she has 4 weeks from the date the response was received to reply to the Trust detailing why he/she is still dissatisfied.

The Trust will regularly publish information on its website regarding how successful it has been in meeting its complaints deadlines.

A record will be kept of all complaints and their outcomes on the FOIA Requests Database.

This information may be reviewed by the IG Manager to ascertain if information request procedures need to be revised to prevent similar complaints occurring in the future.

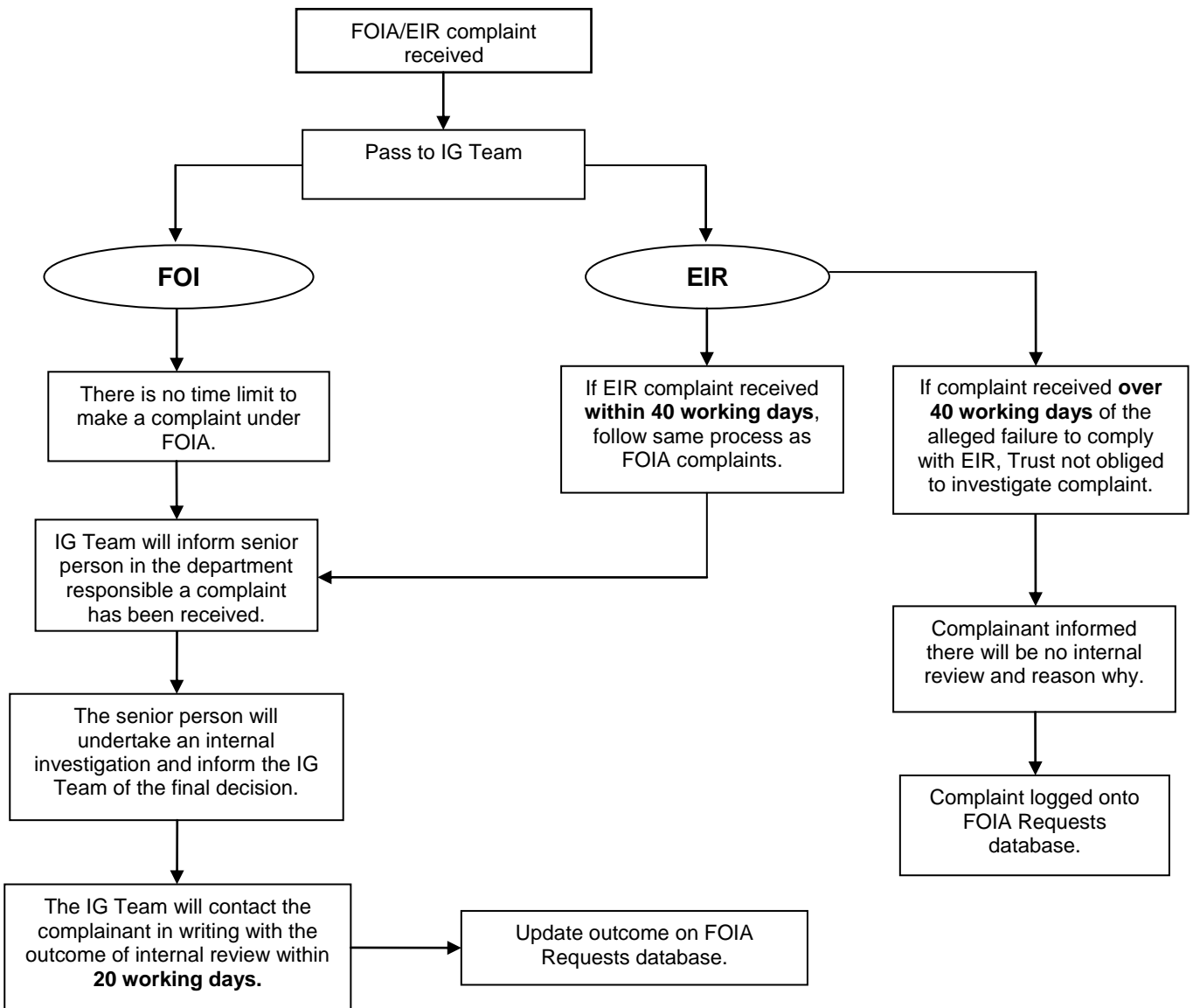


Figure 8 - Complaints Procedure

APPENDIX B – FEES

These fees procedures have been produced in line with the statutory instrument ‘The Freedom of Information (Fees and Appropriate Limit) Regulations’. These procedures will be reviewed on a regular basis.

1. Fees for Information Listed in the Publication Scheme

For the most part, the Trust will charge disbursements only for paper copies or copying onto media (eg CD). Some information is available free, but for others there may be a cost and/or disbursement charge for the item (see individual items below). The charges will vary according to how information is made available. Charges are as follows:

- a) **Via the Trust’s Web Site** – free of charge, although any charges for Internet Service provider and personal printing costs would have to be met by the individual.

For those without Internet access, a single printout as on the website would be available free of charge by post or by personal application from the Patient Advice and Liaison Services Team at the hospital.

However, requests for multiple printouts, or for archived copies of documents which are no longer accessible or available on the web, may attract a charge (see costs incurred section below). We will let you know the cost and charges that will have to be paid in advance. We will not provide printouts of other organisations’ websites.

- b) **Leaflets and brochures** - free of charge for leaflets or booklets on, for example, services we offer to the public. These are available from Medical Illustration (Paul Bayliss paul.bayliss@ipswichhospital.nhs.uk ☎ 01473 702560).
- c) **“Glossy”** or other bound paper copies, or in some cases a CD Rom, video or other mediums, may attract a charge.
- d) **E-mail** - will be free of charge.

2. Fees Process

If the disbursements are calculated below £15, the applicant will not be charged for the information, as it is not cost effective for the Trust to do so. The IG Team will contact the Finance Department to identify which cost code will receive the payment for the information.

The person dealing with the request is required to raise an invoice (called a Fees Notice under the FOIA) for the full amount and send it with a covering letter) to the applicant, before the information requested is prepared for the applicant.

If a Fees Notice (invoice) is raised, the person dealing with the request needs to provide the IG Team with the following information:

- Fees charged, and
- The date the fee notice was sent.

The applicant has 3 months to pay the fees before his/her request is classed as lapsed. The 20 working day time period for compliance with a request is suspended from the date the invoice is sent until the date it is paid (and the cheque has cleared, if appropriate).

The IG Team must be informed of the date the Fees Notice is paid and the date the information is sent to the applicant. (See Figure 9 - Charging Fees on page 37 for a flowchart of the process.)

3. Too expensive to retrieve the information

The right to access information needs to be balanced by the need of public authorities to carry out their core duties. For this reason, the Act allows for public authorities to decline to comply with certain requests for information on the grounds of cost where these would be particularly expensive, even if the applicant is willing to pay for the information.

Public bodies can only refuse to answer a request on the grounds of cost if it would cost more than £450 searching time, which equates to 18 hours work at £25 per hour (the 'appropriate limit')²⁸. When calculating whether answering a request would exceed the appropriate limit, authorities can take account of the costs involved in the following activities:

- Determining whether the information is held
- Locating and retrieving it, and
- Extracting the information (including editing).

Authorities cannot take account the costs of considering whether information is exempt under the FOIA.

4. Supplying information although cost is over appropriate limit

If supplying the information requested would cost more than the appropriate limit (ie it will take more than 18 hours actual work to comply with, for example when the information is archived or is not held in a structured filing system²⁹), and the authority is not otherwise obliged by law to answer it, the authority may charge a fee if it chooses to answer the request. The fee will not exceed the sum of:

- the prescribed costs,³⁰ for such costs over £450, plus disbursements; or
- the disbursements,³¹ where the prescribed costs are calculated at under £450 and the disbursements are calculated at over £15.

The person dealing with the request must therefore contact the IG Team with an estimate of the time it will take to find the information.

The IG Team will calculate the cost utilising the Finance Department's FOIA Fees spreadsheet.

Where the fee would be particularly high (for example, if the cost of complying with a request would exceed the appropriate limit), the Trust should discuss with the applicant whether he or she would prefer to modify the request to reduce the cost.

If the applicant does not agree with the proposed fee, he/she can appeal to the Information Commissioner.

5. Fees where a request would cost less than the appropriate limit

If a request would cost less than the appropriate limit, and there is no other basis on which it may be refused or otherwise dealt with, authorities must answer the request. The maximum fee that can be charged in these cases is limited to the specified costs of postage, printing and photocopying – most of the costs in these cases will be met by the public authority.

²⁸ Department for Constitutional Affairs

²⁹ A structured filing system contains readily accessible information eg a Data Protection Folder containing a Training section in surname order. Data not held in a structured filing system could include documents filed in a box file in no particular order ie the information would not be readily retrievable.

³⁰ Any costs (calculated at £25 per hour regardless of the grade of the employee retrieving the information) reasonably incurred by the Trust in determining whether it holds information requested, in locating and retrieving the information and if possible, providing information in the format preferred by the applicant.

³¹ Any costs directly and reasonably incurred by the Trust in informing the applicant whether it holds the information and communicating the information to him/her (by means of postage, printing and photocopying).

The Department for Constitutional Affairs recommends that where the cost of communicating the information to the applicant is low, authorities should waive the charge for postage, printing and photocopying.

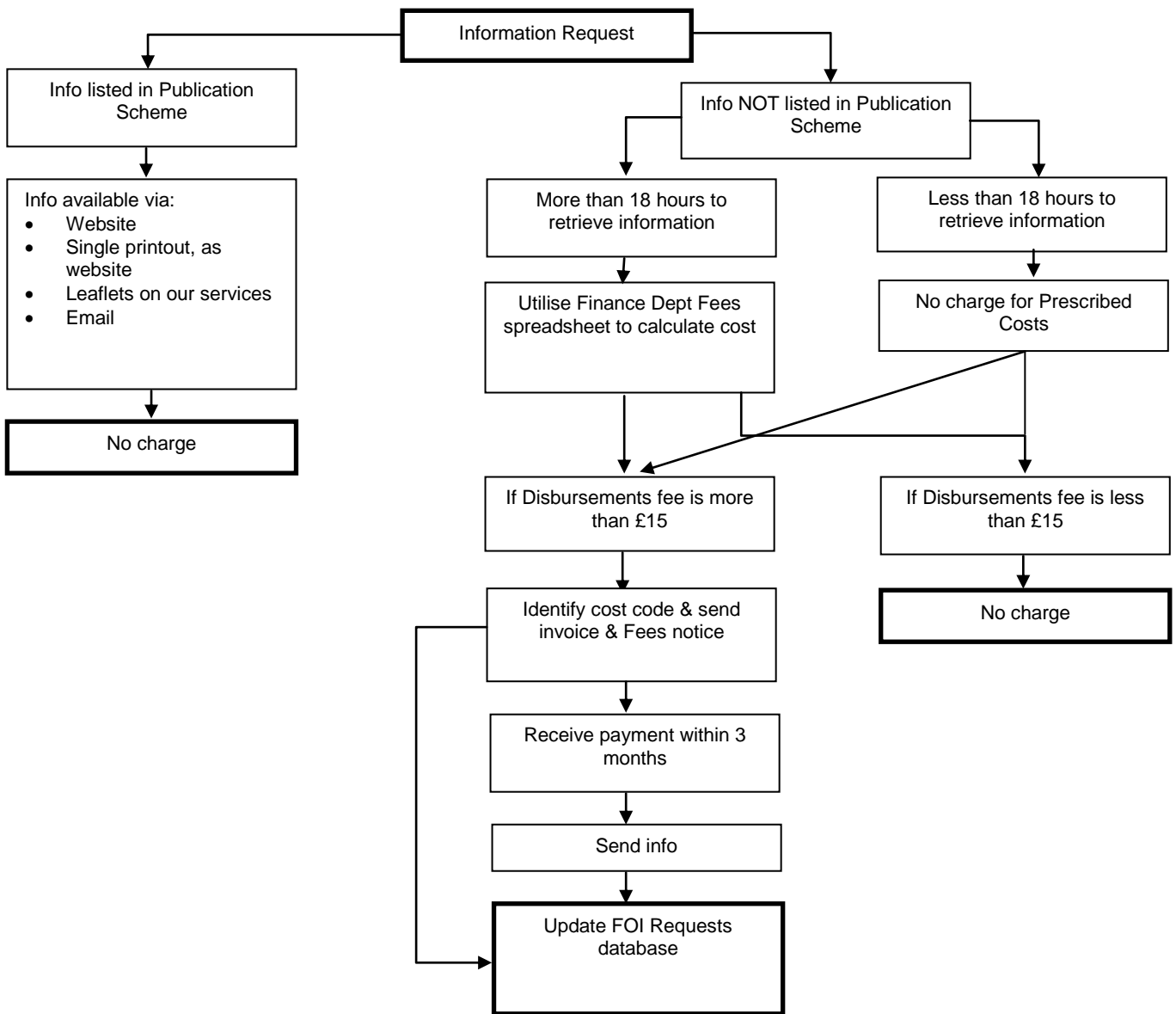


Figure 9 - Charging Fees

APPENDIX C - THE RE-USE OF PUBLIC SECTOR INFORMATION REGULATIONS 2005

1. Introduction

The FOIA requires public bodies to produce publication schemes outlining the information they currently make available to individuals. The Re-Use of Public Sector Information Regulations 2005 (the Regulations) came into force 1st July 2005 and aim to achieve an easily accessible route for private sector organisations to be able to re-use information and documents they have accessed, either via a Publication Scheme or ad-hoc Freedom of Information request.

The Trust does not have to permit re-use of information but it must be able to justify its decision, because an irrational or unfair decision not to permit re-use could be the basis for a judicial review.

2. Information published by the Trust

The Trust must publish the following information in its Freedom of Information Act Publication Scheme:

- Any applicable conditions for re-use
- Any standard charges for re-use
- A list of main documents for re-use
- Details of the means to [redress](#) available to an applicant relating to any decision or practice affecting him under the Regulations
- Any [exclusive](#) arrangements to re-use documents.

The Publication Scheme is maintained by the IG Manager and is available on the Trust's public website.

3. Requirements

The Trust is required to:

- Create and publish a list of available assets and indicate whether those assets are available for re-use. (The FOIA audit database is utilised for this purpose internally and the Publication Scheme used for this purpose externally).
- Create standard re-use licences. (Each request will be assessed on its own merits via the Trust Management Accountant and the Intellectual Property Lead, in accordance with the Trust's Intellectual Property Policy. The Trust will consider the use of the Office of Public Sector Information Click-use licence if appropriate).

4. Exclusions

The Regulations do not apply to a document where:

- The activity of supplying the document is one which falls outside the public task of the Trust; or
- A third party owns the intellectual property rights in the document.

The Regulations do not apply to a document unless it:

- has been identified by the Trust as being available for re-use;
- has been provided to the applicant; or
- is otherwise accessible by means other than making a request for it within the meaning of the Data Protection Act 1998, the FOIA or the EIR.

The Regulations do not apply in any situation in which a person is under a legal obligation to prove an interest in order to gain access to documents.

5. Request Procedure

A request for re-use shall:

- be in writing;
- state the name of the applicant and an address for correspondence;
- specify the document requested; and
- state the purpose for which the document is to be re-used.

6. Request Handling Procedure

The Trust must respond to a request within 20 working days, beginning the day after receipt of the request.

Where documents requested for re-use are extensive in quantity or the request raises complex issues the Trust may extend the period for responding by such time as is reasonable in the circumstances. Where this occurs, the Trust must notify the applicant in writing:

- that no decision on re-use has been reached; and
- of an estimated date by which it expects to respond to the request for re-use.

The Trust must respond to all requests for re-use by either:

- [refusing](#) the request for re-use;
- making the requested document [available](#) to the applicant for re-use; or
- where [conditions](#) are to be imposed on re-use (see Conditions section below), finalising the offer to the applicant of the conditions on which re-use will be permitted.

See also Figure 1 - Procedure for handling FOIA Requests.

7. Refusal of Request for Re-use

The Trust must notify the applicant in writing of the reason for the refusal within 20 working days of the request being received. The notification must include reference to the means of [redress](#) available to the applicant.

Where the Trust does not own the intellectual property rights of the document, the Trust must provide the name of the person:

- who owns the relevant intellectual property rights; or
- from whom the Trust obtained the document.

8. Format of Documents

The Trust may make a document available to an applicant in the format and language in which it exists on the date of response to the request for re-use.

Where possible the Trust shall make the document available for re-use by electronic means.

The Trust does **not** have to:

- create or adapt a document in order to comply with a request for re-use;
- provide an extract from a document where to do so would involve disproportionate effort;
- continue to produce a certain type of document for the purposes of re-use by another person.

9. Conditions

The Trust may impose conditions on re-use, however they shall not unnecessarily restrict:

- the way in which a document can be re-used; or
- competition.

Any conditions imposed must not discriminate between applicants who make a request for re-use for comparable purposes.

If the Trust wishes to re-use the document for activities which fall outside the scope of its public task, the same conditions shall apply to that re-use as would apply to re-use by any other applicant for comparable purposes.

10. Exclusive Arrangements

The Trust shall not enter into an exclusive arrangement with any person including an applicant unless it is necessary for the provision of a service in the public interest.

The IG Group must review the validity of the reason for granting any exclusive arrangement at least once every three years.

All exclusive arrangements must be published in the Trust's Publication Scheme.

11. Charging

The Trust can charge for allowing re-use within the following limits:

- The total income from any charge shall not exceed the sum of:
 - (a) the cost of collection, production, reproduction and dissemination of documents (using the Freedom of Information Policy, 'Charging Fees' Appendix and
 - (b) a reasonable return on investment (this will be assessed by the Trust Management Accountant and the Intellectual Property lead on a case-by-case basis and in accordance with the Trust's Intellectual Property Policy)
- An applicant will not be charged for costs described in (a) above if the same applicant has been charged in respect of those same activities by the Trust for access to the same document under information access legislation.

The Trust shall specify in writing the basis on which a charge has been calculated if requested to do so by an applicant.

12. Complaints

The Trust will follow the Freedom of Information Complaints Procedure when processing a complaint from an applicant.

Where an applicant has exhausted the Trust's complaints procedure or where the Trust has failed to deal with a complaint within a reasonable time, the applicant may refer the complaint to the Office of Public Sector Information (OPSI). Any complaint to OPSI must:

- be in writing
- state the nature of the complaint; and
- include a copy of the Trust's response, where one exists.

OPSI will send the Trust a written response to the complaint, suggesting the actions the Trust needs to perform to resolve the issue. However, OPSI do not have the powers to enforce compliance with the actions suggested.

If the applicant is unsatisfied with OPSI's response then the matter can be referred to the Advisory Panel on Public Sector Information (the Panel). The Panel will send the Trust a written response to the complaint suggesting the actions the Trust needs to perform to resolve the issue. The Panel does not have the powers to enforce compliance with the actions suggested.

If the applicant is still dissatisfied, a judicial review can be sought to determine if the Trust must comply with the suggested actions by OPSI and/or the Panel.

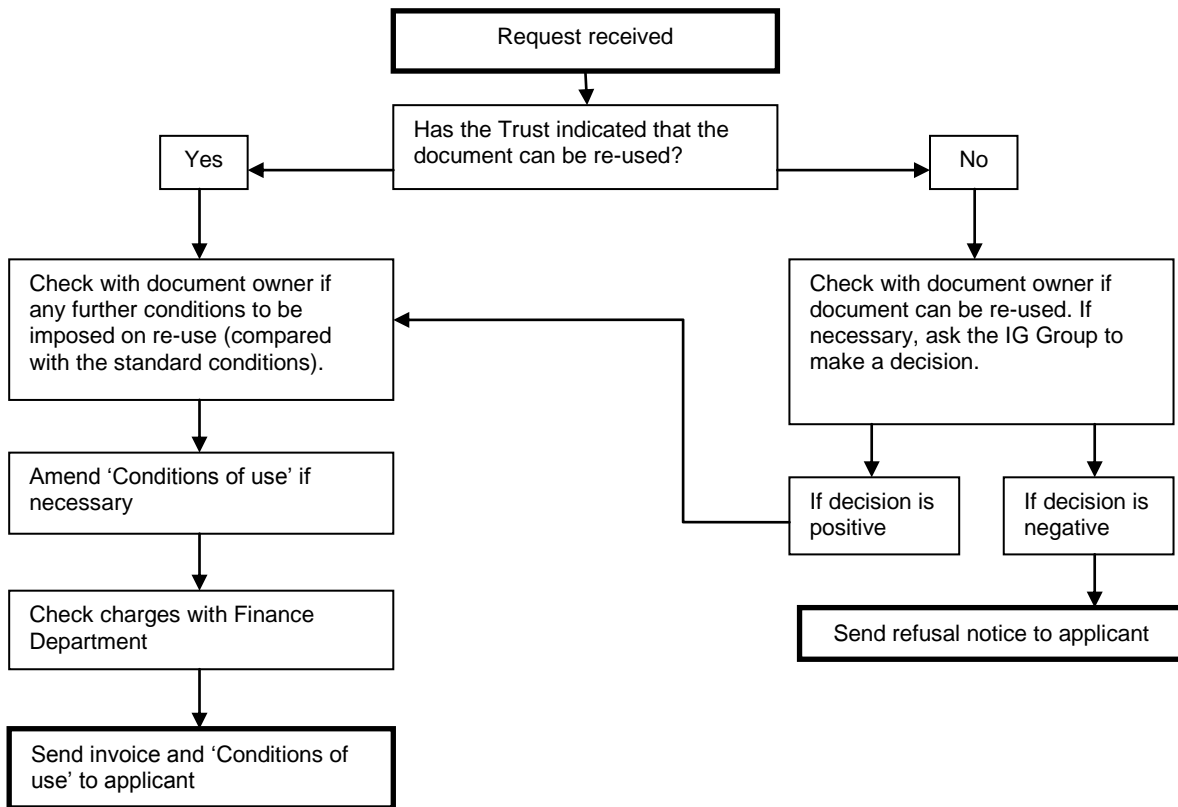


Figure 10 - Request Handling Procedure for Re-use of Public Sector Information

All requests must be dealt with within 20 working days. If more time is required to research the request then the applicant must be informed within 20 working days and given an approximate date for the final decision to be communicated to them.