

Document Title	
Freedom of Information Policy and Procedure	
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Lead Author(s)	
Name	Job Title
	Compliance and Risk Manager
	Corporate Governance Manager

Executive Director / Director / Manager			
If you are assured that the correct procedure has been followed for the consultation of this policy, sign and date below:			
Name	Director of Strategy and Improvement	Date	May 2018
Signature			

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1.0	October 2003	New Policy
2.0	July 2009	Revised
1.0	July 2011	New Policy (due to integration of Walsall Hospitals and Community)
2.0	July 2012	Minor amendments following review
3.0	August 2013	FOI process updated and sections to clarify release of personal information
3.1	August 2014	Minor amendments following review
3.2	July 2015	Minor review
4	June 2016	Minor amendments following changes to the process flowchart and rewording of paragraphs 5.2, 6.16.1 and 6.16.2
5	March 2018	Review to capture GDPR
5.1	May 2018	Minor amendments to flow chart

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Freedom of Information Act 2000	
GDPR	

Key Dates	DATE
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Executive Summary Sheet

Document Title:	Freedom of Information Policy and Procedure	
Please Tick (☑) as appropriate	This is a new document within the Trust	
	This is a revised Document within the Trust	☑
What is the purpose of this document?		
<p>The purpose of this policy is to ensure that the Trust has a robust approach to the management of Fol requests within the organisation including clarity of roles and responsibilities enabling compliance with the Fol Act.</p>		
What key Issues does this document explore?		
<p>The Freedom of Information Act Policy is a statement of what the Trust intends to do to ensure compliance with the Act.</p>		
Who is this document aimed at?		
All Staff working within Walsall Healthcare NHS Trust		
What other policies, guidance and directives should this document be read in conjunction with?		
<p>GDPR Policy and Procedures Confidentiality Policy</p>		
How and when will this document be reviewed?		
Every three years by the lead author or a deputy nominated by the lead Director.		

CONTRIBUTION LIST

Key individuals involved in developing the document

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	Corporate Governance Manager

Circulated to the following for consultation

Name/Committee/Group/	Designation
Professional Forum	Intranet Forum – wider consultation
Policies and Procedures Members	
Women’s and Children’s Divisional Quality Board	Circulated for wider consultation
Surgery Divisional Quality Board	Circulated for wider consultation
MLTC Divisional Quality Board	Circulated for wider consultation

Version Control Summary

Significant or Substantive Changes from Previous Version

A new version number will be allocated for every review even if the review brought about no changes. This will ensure that the process of reviewing the document has been tracked. The comments on changes should summarise the main areas/reasons for change.

When a document is reviewed the changes should using the tracking tool in order to clearly show areas of change for the consultation process.

Version	Date	Comments	Author
1.0	October 2003	New Policy	Information Governance Manager
2.0	July 2009	Revised	Information Governance Manager
1.0	July 2011	New Policy (due to integration of Walsall Hospitals and Community)	Information Governance Manager
2.0	July 2012	Minor amendments following review	Compliance and Risk Manager (Corporate Services)
3.0	August 2013	FOI process updated and sections to clarify release of personal information	Compliance and Risk Manager (Corporate Services)
3.1	August 2014	Minor amendments following review	Compliance and Risk Manager (Corporate Services)
3.2	July 2015	Minor review	Acting Head of Compliance and Risk
4	June 2016	Minor amendments following changes to the process flowchart and rewording of paragraphs 5.2, 6.16.1 and 6.16.2	Compliance and Risk Manager (Corporate Services)
5	March 2018	Review to capture GDPR	Compliance and Risk Manager (Corporate Services)
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FREEDOM OF INFORMATION ACT 2000

1.0 INTRODUCTION

1.1 Rationale

The Freedom of Information Act 2000 is part of the Government's commitment to greater openness in the public sector, a commitment supported by Walsall Healthcare NHS Trust, referred to hereafter as the Trust. The Freedom of Information Act 2000, referred to hereafter as the Act, will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensuring that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory *Code of Practice on Openness in the NHS*.

1.1.1 The main features of the Act are:

- a general right of access from 1st January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions;
- in cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
 - i. inform the applicant whether they hold the information requested, and
 - ii. communicate the information to him or her, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure;
- a duty on every public authority to adopt and maintain a Publication Scheme, specifically applicable to the NHS from 31st October 2003;
- a new office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
- a duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

1.1.2 The Freedom of Information Act Policy is a statement of what the Trust intends to do to ensure compliance with the Act. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures.

1.2 Scope

1.2.1 The Freedom of Information Act Policy will apply to all Trust employees and to Non-Executive Directors.

1.2.2 The Policy will provide a framework within which the Trust will ensure compliance with the requirements of the Act.

1.2.3 The Policy will underpin any operational procedures and activities connected with the implementation of the Act.

1.3 Principles

1.3.1 The Policy supports the principle that openness and not secrecy should be the norm

in public life. The Trust wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the Trust will facilitate the development of such an environment.

- 1.3.2** Individuals also have a right to privacy and confidentiality. This policy does not overturn the Common Law Duties of Confidentiality or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the General Data Protection Regulations and is dealt with in other Trust policies.
- 1.3.3** Public Authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.
- 1.3.4** Staff will have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this knowledge.
- 1.3.5** Common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other Trust policies and procedures

1.4 Purpose of Policy

The purpose of this policy is to ensure that the Trust has a robust approach to the management of FoI requests within the organisation including clarity of roles and responsibilities enabling compliance with the FoI Act.

1.5 Statement of Intent

The Trust recognises its responsibility to be open and transparent as a public body and to meet its legal obligation to comply with the statutory requirements of FoI as detailed in this policy.

1.6 Scope and limitations

This policy is fully applicable to all aspects of FoI.

1.7 Statement of Statutory Compliance

All staff are responsible for ensuring that their conduct relating to FoI is in accordance with this policy.

1.8 Summary of substantive changes in this version

This policy does not include any substantive changes to the FoI regime other than the local accountability measures.

2.0 POLICY AIM

This policy has been developed to provide details of the obligations of the Trust under the Fol Act 2000 and to ensure compliance with such obligations.

3.0 OBJECTIVES

- To ensure that the public have a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions.
- To ensure that the Trust has robust assurance processes and systems in place to comply with the requirements of the Fol Act.
- To ensure that all staff are aware of their roles and responsibilities relating to Fol requests.
- To ensure that the Trust can respond appropriately to Fol requests within the national requirement of 20 working days from receipt by the organisation.

4.0 DEFINITIONS

FOI Freedom of Information

FOIA Freedom of Information Act (2000)

IGSG Information Governance Steering Group

CM Complaints Manager

EIR Environmental Information Regulations

RFI Request for Information

Publication Scheme – contains all published corporate information held by the Trust.

5.0 ROLES AND RESPONSIBILITIES

5.1 Chief Executive

Ultimate responsibility for data protection rests with the Chief Executive.

5.2 Medical Director (Caldicott Guardian)

Responsibility for ensuring that all patient related personal data is processed and managed in accordance with the Caldicott Principles. The Medical Director acts as the Trust's Caldicott Guardian with responsibility for patient confidentiality.

5.3 Director of Strategy and Improvement (Senior Information Risk Owner)

Responsibility for ensuring that all risks to information are identified and managed effectively in line with relevant legislation. The Director of Strategy and Improvement acts as the Trust's Senior Information Risk Owner (SIRO).

The Director of Strategy and Improvement has overall responsibility for the implementation, monitoring and compliance with the policy. This includes reporting to Trust executive groups or the Board as necessary.

In addition, the Director of Strategy and Improvement has overall responsibility for:

- Information security
- Information governance
- Data quality related to patient information

5.4 Director of Organisational Development and Human Resources

Overall responsibility for ensuring data quality related to staff information and ensuring that the Trust standard contract includes clauses relating to staff responsibilities around information governance.

5.5 Corporate Governance Manager

Responsibility for ensuring there are information governance arrangements in place to allow for the processes laid out within this policy and procedure.

5.6 Data Protection Officer

Walsall Healthcare NHS Trust have appointed a Data Protection Officer (DPO) whose role it is to identify and mitigate any risks to the protection of personal data, to act in an advisory capacity to the business, its employees and upper management and to actively stay informed and up-to-date with all legislation and changes relating to data protection.

The DPO will work in conjunction with others to ensure that all processes, systems and staff are operating compliantly and within the requirements of the GDPR and its principles.

The DPO has overall responsibility for due diligence, privacy impact assessments, risk analysis and data transfers where personal data is involved and will also maintain adequate and effective records and management reports in accordance with the GDPR and our own internal objectives and obligations.

Staff who manage and process personal or special category information will be provided with extensive data protection training and will be subject to continuous development support and mentoring to ensure that they are competent and knowledgeable for the role they undertake.

The Data Protection Officer has assumed the below duties in compliance with GDPR Article 39: -

- To inform and advise Walsall Healthcare NHS Trust and any employees carrying out processing, of their obligations pursuant to the GDPR, the Supervisory Authorities guidelines and any associated data protection provisions
- To monitor compliance with the GDPR, associated data protection provisions and Walsall Healthcare NHS Trusts own data protection policies, procedures and objectives
- To oversee the assignment of responsibilities, awareness-raising and training of staff involved in processing operations
- To carry out and review audits of the above-mentioned policies, procedures, employee duties and training programs
- To cooperate with the Supervisory Authority where required
- To act as the point of contact for the Supervisory Authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter

- In accordance with Article 35 (type of processing is likely to result in a high risk to the rights and freedoms of natural persons), the DPO will provide advice where requested with regards to any data protection impact assessment and monitor its performance pursuant
- Have due regard to, and be aware of, the risk associated with processing operations, considering the nature, scope, context and purposes of processing

5.7 Designated Data Protection Officer

NAME: Sharon Thomas

POSITION: Corporate Governance Manager

ADDRESS: Walsall Healthcare NHS Trust, Town Wharf, Block 3, Cavell Close, Walsall

EMAIL: sharon.thomas@walsallhealthcare.nhs.uk or
data.protection@walsallhealthcare.nhs.uk

TEL: 01922 721172 ext 5806

5.8 Health Records Manager

Overall responsibility for ensuring the appropriate records retention and destruction standards are adhered to.

5.9 Information Asset Owners

Any member of staff who has assigned responsibility for an information asset within the Trust (i.e. any system (electronic or paper based) that holds Trust information) is designated an Information Asset Owner for the purposes of information governance.

5.10 Privacy Officers

It is the responsibility of the Trust's Privacy Officer's to investigate any breaches of confidentiality regarding information accessed via the Spine.

5.11 Information Governance Steering Group

The Information Governance Steering Group (IGSG) will have overall responsibility for:

The updating and amending of this, and all over information governance policies

Monitoring the action plans for the Information Governance Toolkit (IGT) and the information governance work plan

Ensuring the statutory regulations around information governance are adhered to

5.12 Data Quality Team

The Data Quality Team are notified of the data subjects request to update personal data and are responsible for validating the information and rectifying errors where they have been notified.

5.13 Divisional Directors (DD; or equivalent)

Managers are considered to be equivalent to DD's for the purpose of responsibilities under policies if they are responsible for management of a significant service and report directly to an Executive or Associate Director.

Responsibilities include implementation, monitoring and compliance within the Division; particularly by way of responding to requests for information by the Fol

Team in a timely manner and ensuring staff within the division adhere to the requirements of the policy.

5.14 Matrons, Senior Sisters (with day to day responsibility for ward management), Departmental Managers or equivalent

This group will be responsible for day to day implementation of the policy.

Also included will be responsibility for ensuring:

- All staff are aware of their role under the policy
- Staff complete their mandatory annual information governance training
- Records are kept as specified
- Incidents / issues are reported
- Information is provided to support the request in a timely manner (7 days) to ensure that the Trust can respond appropriately within the national requirement of 20 working days from receipt by the organisation.

5.15 All Staff

All staff must ensure they understand and adhere to the requirements of this policy.

6.0 POLICY DETAIL

FREEDOM OF INFORMATION ACT 2000 POLICY

6.1 Policy Statement

The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act.

6.2 Publication Scheme

6.2.1 The Trust has adopted a model Publication Scheme in line with the requirements of the Information Commissioner. This is permissible under section 20 of the Act and ensures compliance with section 19 of the legislation.

6.2.2 The Trust's Publication Scheme is a prospective document, detailing the information that the Trust publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Scheme is available in hard copy on request and through our website.

6.3.3 Applications for information listed in the Publication Scheme may be received verbally or in writing. The Trust will establish systems and procedures to process applications arising from the Publication Scheme.

6.3 General Rights of Access

6.3.1 Section 1 of the Act gives a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information (see 5.3.2) to the Trust is entitled:

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

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to the certain conditions and exemptions. The Trust will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

6.3.2 In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describes the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

6.4 Conditions and Exemptions

6.4.1 The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where the Trust:

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement.

The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

6.4.2 Under section 2 of the Act the Trust does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information. The Part II exemptions are listed in Appendix A of this Policy. The Trust will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

6.4.3 The duty to confirm or deny does not arise if a fees notice (see 2.5.3) has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

- 6.4.4 The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication of information that exceeds this limit.
- 6.4.5 The Trust is not obliged to comply with a request for information if the request is vexatious. Where the Trust has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

6.5 Charges and Fees

- 6.5.1 The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. The Publication Scheme and the procedures that support this Policy will provide further guidance on charging.
- 6.5.2 The Trust will follow, if ever they are published, the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied. At present no costs for complying with a request, unless over 2.5 days work, can be levied other than for the cost of the physical media (i.e. copying, disks etc).
- 6.5.3 In all cases where the Trust chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

6.6 Time limits for compliance with requests

- 6.6.1 The Trust will establish systems and procedures to ensure that organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.
- 6.6.2 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with section 9(2), the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day

following receipt.

- 6.6.3 If the Trust chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued with twenty working days informing the applicant of this decision (see 2.8.0 below).

6.7 Means by which information will be conveyed

- 6.7.1 When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,
- (d) the Trust shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.

- 6.7.2 In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If the Trust determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

- 6.7.3 The Trust will establish systems and procedures to monitor the provision of information arising from requests under the Act.

6.8 Refusal of requests

- 6.8.1 As indicated above, the duty to confirm or deny does not arise if the Trust:

- (a) using section 2 of the Act applies an exemption under Part II of the Act, as illustrated in Appendix A,
- (b) has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant,
- (c) under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit,
- (d) can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

6.8.2 If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust under the Act and of the right conferred by section 50 of the Act (see 2.10.0).

6.8.3 If the Trust is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information a notice will be issued within twenty working days under s17 of the Act. The notice will:

- (a) state that fact,
- (b) specify the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

6.8.4 Where the Trust is relying on a claim:

- (a) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) of the Act as an absolute exemption is relevant to the request, or
- (b) that the information is exempt only by virtue of a qualified exemption, a provision not specified in section 2(3),

and at the time when the notice under 5.8.3 above is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 of the Act – the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Trust expects that a decision will have been reached.

6.8.5 As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the Act, such estimates as described in 5.8.4 should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Trust will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

6.8.6 If applying a qualified exemption under subsection (1)(b) or (2)(b) of section 2 of the Act the Trust will, either in the notice issued under 5.8.3 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information, or
- (b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement should not involve the disclosure of information which would itself be exempt information.

6.8.7 If the Trust is relying on a claim that section 12 or 14 of the Act apply, the notice will state that fact. If the Trust is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

6.8.8 The Trust will keep a record of all notices issued to refuse requests for information.

6.9 Duty to provide advice and assistance

6.9.1 The Trust will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Trust to do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the Act.

6.9.2 The Trust will ensure that the systems and procedures that are deployed to meet the section 16 duty also conform to the Code of Practice issued under section 45 of the Act.

6.10 Transferring Requests for Information

6.10.1 A request can only be transferred where the Trust receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If the Trust is in receipt of a request holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Trust recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).

6.10.2 Upon receiving the initial request for information, the Trust will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Trust will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Trust must be certain as to the extent of the information relating to the request which it holds itself.

6.10.3 If the Trust believes that some or all of the information requested is held by

another public authority, the Trust will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

- (a) contacting the applicant and informing him or her that the information requested may be held by another public authority;
- (b) suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
- (c) providing him or her with contact details for that authority.

6.10.4 If the Trust considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Trust will consider:

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

If the Trust reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so.

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

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

6.11 Consultation with Third Parties

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

6.11.2 Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their

consent would constitute an actionable breach of confidence such that the exemption at section 41 of the Act would apply), the Trust will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

6.11.3 Where information constitutes "personal data" within the meaning of the DPA, the Trust will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

6.11.4 The Trust will undertake consultation where:

- (a) the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- (b) the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

6.11.5 The Trust may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Trust will consider what is the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- (a) the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- (b) the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- (c) no exemption applies and so under the Act's provisions, the information must be provided.

6.11.6 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

6.11.7 The fact that the third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

6.12 Public Sector Contracts

- 6.12.1 When entering into contracts the Trust will refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
- 6.12.2 When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. The Trust will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.
- 6.12.3 The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.
- 6.12.3 It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor information which the authority has provided to the contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

6.13 Accepting Information in Confidence from Third Parties

- 6.13.1 The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided.
- 6.13.2 The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

6.14 Complaints about the discharge of the duties of the Trust

6.14.1 The Trust will implement a procedure for dealing with complaints about the discharge of the duties of the Trust under the Act, including the handling of requests for information.

6.14.2 The procedure will refer applicants to the right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint.

6.15 Records Management

6.15.1 The Trust has a separate policy with supporting systems and procedures that will ensure compliance with Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 and the Records Management :-NHS Code of Practice.

6.15.2 The policy and associated procedures address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Trust.

6.16 Requests Relating to Personal Information

6.16.1 The Trust will not release personal information relating to members of staff below Director level and will only release information regarding Directors which is already in the public domain.

6.16.2 It is Trust policy to not release any information (i.e. redundancy payments, reported conditions, claims made) affecting 2 individuals or less to prevent breaches of the General Data Protection Regulation.

7.0 IMPACT ASSESSMENT

An equality impact assessment has been completed with regard to this policy (using HR Department Impact Assessment tool) and has not demonstrated any areas of impact or concern.

7.1 Financial implications

There are no financial penalties associated with failure to provide information on request or failure to publish information; however following a complaint to the Commissioner for non-disclosure, he may issue a decision notice, enforcement notice, or information notice. Failure to comply with this could lead to a significant fine being levied against the Trust by the Information Commissioner.

7.2 Risk Implications / Risk Assessment

There are no risk implications associated with this policy subject to successful implementation and compliance. The implementation of this policy mitigates risk around non compliance with our statutory duties associated with the FOI Act.

7.3 Discrimination or other adverse effects on population groups

The impact of this template has been assessed. It will not lead to any discrimination or other adverse events on population groups in relation to:

Ethnicity / Gender / Age / Sexuality / Religion or Belief / Disability / Status as Transgender or Transsexual Person.

8.0 LINKS TO OTHER POLICIES

8.1 Overarching Policy

Development and Ratification of Policies Guidelines and Procedures Policy

8.2 Subsidiary Policies

Freedom of Information Publication Scheme

8.3 Related Policies

None

9.0 LINKS TO EXTERNAL STANDARDS

Compliance with the FOI Act is monitored as part of the Information Governance Toolkit and is assessed both internally and via the Information Commissioners Office.

10.0 MONITORING, CONTROL AND AUDIT

Monitoring Process	Requirements
Who	Compliance and Risk Department
Standards Monitored	<ul style="list-style-type: none">• legal requirement to respond to FOIs within 20 working days• Logs are kept of all requests and on a quarterly basis the ability to respond within the 20 working days will be assessed• If the requester is dissatisfied with the outcome of their request for information they are advised to use the Trust's Complaints' Procedures in the first place to seek a review. Any such complaints will be monitored on a quarterly basis.• The further level for complaint is to take the issue to the Information Commissioner (IC). A notice from the IC to comply will be assessed and reported immediately.
When	Quarterly
How	<ul style="list-style-type: none">• Compliance with FOI will be audited as part of the Information Governance Toolkit on a quarterly basis and through the Information Governance Steering Group on a bi monthly

	<p>basis.</p> <ul style="list-style-type: none"> • Day to day responsibility for auditing compliance and quality of FOI responses will be undertaken by the Head of Governance, Compliance and Risk
Presented to	Information Governance Steering Group
Monitored by	Quality and Safety Committee
Completion/Exception reported to	Quality and Safety Committee

11.0 Training

Training and information will be made available to staff via the Trust intranet. For advice staff should contact ext. 5813.

12.0 BEST PRACTICE, EVIDENCE AND REFERENCES

- General Data Protection Regulation
- Freedom of Information Act 2000
- HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities, Department of Health 1999.
- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002.
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.
- Confidentiality Policy
- Data Protection Policy
- Information Governance Policy
- Procedures for the processing of FOI Requests

APPENDIX 1

EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:

- (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 of public interest to not disclose information.

With the exception of s21 (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 it is reasonable to withhold.

The absolute exemptions under the Act are:

- section 21, Information accessible to applicant by other means
- section 23, Information supplied by, or relating to, bodies dealing with security matters.
- section 32, Court Records
- section 34, Parliamentary Privilege
- section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- section 40, Personal Information (where disclosure may contravene the General Data Protection Regulation)
- section 41, Information provided in confidence
- section 44, Prohibitions on disclosure

The exemptions that are qualified by the public interest test are:

- section 22, Information intended for future publication
- section 24, National Security
- section 26, Defence
- section 27, International Relations
- section 28, Relations within the United Kingdom
- section 29, The Economy
- section 30, Investigations and proceedings conducted by public authorities
- section 31, Law Enforcement
- section 33, Audit Functions
- section 35, Formulation of Government Policy
- section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- section 37, Communications with Her Majesty, etc. and honours
- section 38, Health and Safety
- section 39, Environmental Information
- section 42, Legal Professional Privilege
- section 43, Commercial Interests

More information on the exemptions can be found on the HMSO website at www.legislation.hmso.gov.uk/acts/en/2000en36.htm.

APPENDIX 2 GLOSSARY OF TERMS

Absolute exemption – applied to information that does not have to be released to the applicant either through a Publication Scheme (q.v.) or through the general right of access (q.v.) under the Act. Information to which an absolute exemption applies does not require a public authority (q.v.) to take a test of prejudice or the balance of public interest to be in favour of non-disclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

Applicant - the individual(s), group or organisation requesting access to information under the Act.

Duty to confirm or deny - any person making a request for information to a public authority (q.v.) is entitled to be informed in writing by that authority whether the public authority the information specified in the request or not.

Fees Notice – a written notification issued to an applicant (q.v.) stating that a fee is payable and exempts public authorities (q.v.) from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses.

Fees Regulations – national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

General right of access - Section 1 of the Act confers a general right of access to information held by public authorities (q.v.). An applicant (q.v.) has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

Information Commissioner - The Information Commissioner enforces and oversees the General Data Protection Regulation and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

Lord Chancellor's Department - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts.
- The appointment of judges, magistrates and other judicial office holders.
- The administration of legal aid.

- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

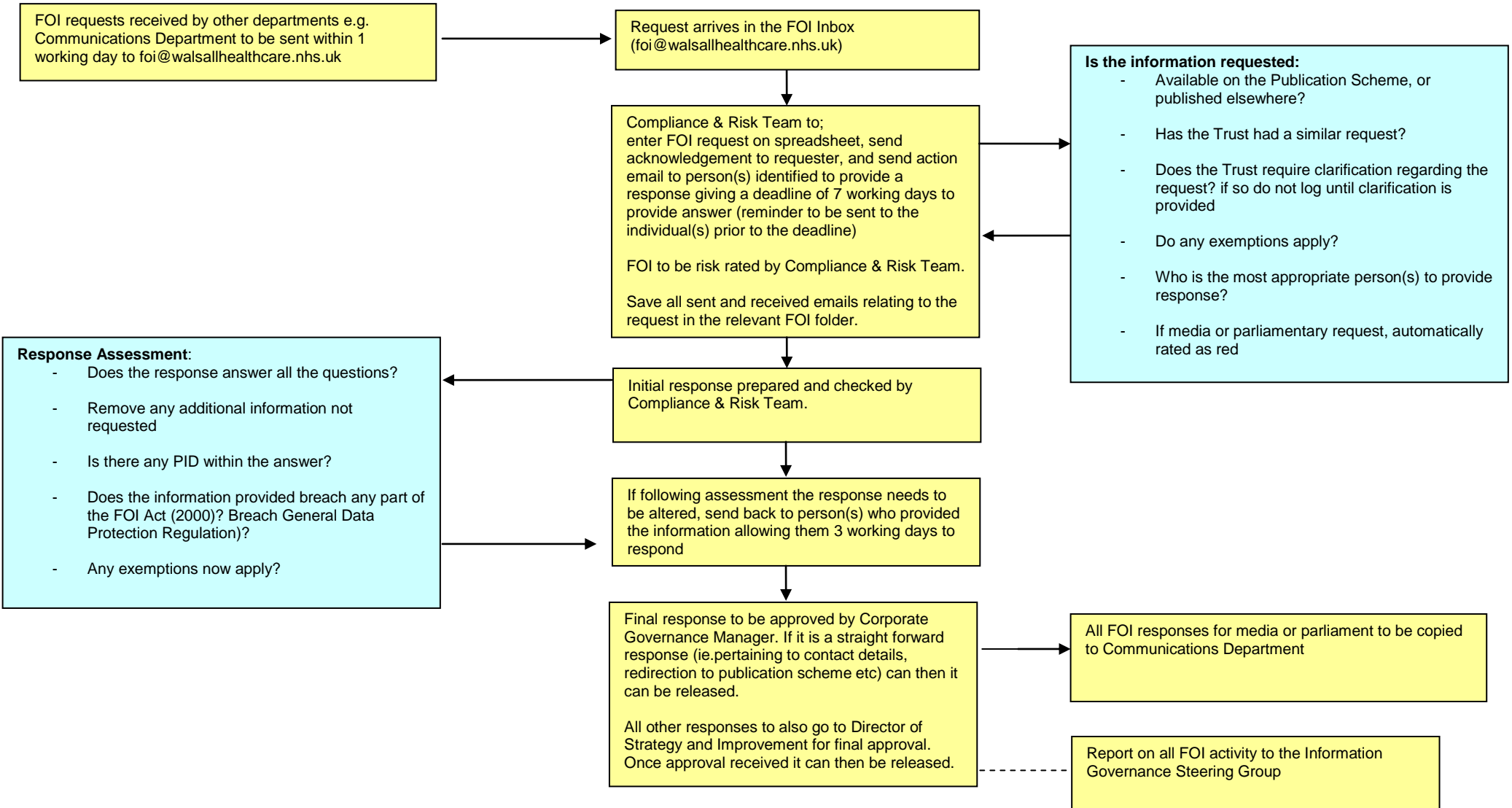
Public authority - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

- (a) on the face of the Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
- (b) by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
- (c) by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or
- (d) by reference to the definition of a publicly-owned company in section 6.

Publication Scheme - a scheme specifying the classes of information which it publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

Qualified exemption - Information to which a qualified exemption applies requires a public authority (q.v.) to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

Appendix 3: Freedom of Information Process



Risk Matrix		Consequence				
		Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
Likelihood	1 rare < 0.1%	1	2	3	4	5
	2 unlikely 0.1 - 1%	2	4	6	8	10
	3 possible 1 - 10%	3	6	9	12	15
	4 likely 10 - 50%	4	8	12	16	20
	5 almost certain >50%	5	10	15	20	25

Consequence					
	1	2	3	4	5
Descriptor	Insignificant	Minor	Moderate	Major	Catastrophic
Breach of Confidentiality	Minor breach of confidentiality only a single individual affected No significant reflection on any individual or body, media interest very unlikely	Potentially serious breach up to 20 people affected Damage to an individual or teams reputation. Possible media interest	Serious breach of confidentiality e.g. up to 100 people affected Damage to a services reputation. Low key local media coverage	Serious breach with either particularly sensitive e.g. sexual health details, or up to 1000 people affected Damage to an organisations reputation. Local media coverage	Serious breach with potential for ID theft or over 1000 people affected Damage to NHS reputation. National media coverage
Contractual Value	£1000 - £20,000	£20,000 - £100,000	£100,000 - £500,000	£500,000 - £2.5m	Above £2.5m
Adverse Publicity / Reputation	Rumours	Local Media - short term Minor effect on staff morale	Local Media - long term Significant effect on staff morale	National Media < 3 Days	National Media > 3 Days MP Concern (Questions in House)

Checklist for the Review and Approval of Procedural Documents

To be completed and attached to any procedural document that requires ratification

	Title of document being reviewed:	Yes/No	Comments
1.	Title		
	Is the title clear and unambiguous? It should not start with the word policy.	Yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
2.	Rationale	Yes	
	Are reasons for development of the document stated? This should be in the purpose section.	Yes	
3.	Development Process		
	Does the policy adhere to the Trust policy format?	Yes	
	Is the method described in brief? This should be in the introduction or purpose.	Yes	
	Are people involved in the development identified?	Yes	
	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?	Yes	
	Is there evidence of consultation with stakeholders and users?	Yes	
4.	Content		
	Is the objective of the document clear?	Yes	
	Is the target population clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
	Are the statements clear and unambiguous?	Yes	
	Are all terms clearly explained/defined?	Yes	
5.	Evidence Base		
	Has a comprehensive literature search been conducted to identify best evidence to inform the policy?	Yes	
	Have the literature search results been evaluated and key documents identified?	Yes	
	Have the key documents been critically appraised?	Yes	
	Are key documents cited within the policy?	Yes	

	Title of document being reviewed:	Yes/No	Comments
	Are cited documents referenced?	Yes	
6.	Approval		
	Does the document identify which committee/group will approve it?	Yes	
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	No	
	For Trust wide policies has the appropriate Executive lead approved the policy?	Yes	
7.	Dissemination and Implementation		
	Is there an outline/plan to identify how this will be done?	Yes	
	Does the plan include the necessary training/support to ensure compliance?	Yes	
8.	Document Control		
	Does the document identify where it will be held?	Yes	
	Have archiving arrangements for superseded documents been addressed?	Yes	
9.	Process to Monitor Compliance and Effectiveness		
	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Yes	
	Is there a plan to review or audit compliance with the document?	Yes	
10.	Review Date	Yes	
	Is the review date identified?	Yes	
	Is the frequency of review identified? If so is it acceptable?	Yes	
11.	Overall Responsibility for the Document		
	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the documentation?	Yes	

Reviewer			
If you are assured that the correct procedure has been followed for the consultation of this policy, sign and date it and forward to the Compliance and Risk Department for ratification.			
Name		Date	

Signature		Approving Committee/s	IGSG/Policies and Procedures Group and Trust Executive Committee
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Lead Manager (Local Policies) / Director (Trust Wide Policies)

If you are assured that the correct procedure has been followed for the consultation of this policy, sign and date it and forward to the Compliance and Risk Department for ratification.

Name	Corporate Governance Manager	Date	May 2018
Signature		Approving Committee/s	IGSG/Policies and Procedures Group and Trust Executive Committee

Ratification Committee Approval

Quality Board minute number:
PPG minute number:
TMB minute number:

Service Overview & Improvement Action Plan: Equality Analysis Form

Title: Confidentiality Policy	<p>What are the intended outcomes of this work?</p> <p>The purpose of this policy is to outline the principles related to confidentiality and to support staff in applying these principles.</p>
Who will be affected? All staff	Evidence: N/A

ANALYSIS SUMMARY: considering the above evidence, please summarise the impact of the work based on the Public Sector equality duty outcomes against the 9 Protected characteristics

<i>Public Sector Duty</i>	Eliminate discrimination, harassment and victimisation	Advance equality of opportunity	Promote good relations between groups
<i>Protected Characteristics</i> (highlight as appropriate)			
AGE / DISABILITY/ RACE	<i>This may refer to vulnerable adults and vulnerable safeguarding children</i>	<i>The General Data Protection Regulations includes provisions that promote accountability and governance and as such Walsall Healthcare NHS Trust has put comprehensive and effective governance measures into place to meet these provisions. The aim of such measures is to promote equality of opportunity to all groups.</i>	<i>The General Data Protection Regulation will promote positive relations between all groups.</i>
SEX (Gender)/ GENDER REASSIGNMENT	<i>Refer to Gender Recognition Act 2004</i>	<i>The General Data Protection Regulations includes provisions that promote accountability and governance</i>	<i>The General Data Protection Regulation will promote positive relations between all groups.</i>

		<i>and as such Walsall Healthcare NHS Trust has put comprehensive and effective governance measures into place to meet these provisions. The aim of such measures is to promote equality of opportunity to all groups.</i>	
RELIGION or BELIEF/ SEXUAL ORIENTATION	<i>This may refer to vulnerable adults and vulnerable safeguard children</i>	<i>The General Data Protection Regulations includes provisions that promote accountability and governance and as such Walsall Healthcare NHS Trust has put comprehensive and effective governance measures into place to meet these provisions. The aim of such measures is to promote equality of opportunity to all groups.</i>	<i>The General Data Protection Regulation will promote positive relations between all groups.</i>
PREGNANCY & MATERNITY	<i>This may refer to vulnerable adults and vulnerable safeguarding children</i>	<i>The General Data Protection Regulations includes provisions that promote accountability and governance and as such Walsall Healthcare NHS Trust has put comprehensive and effective governance measures into place to meet these provisions. The aim of such measures is to promote equality of opportunity to all groups.</i>	<i>The General Data Protection Regulation will promote positive relations between all groups.</i>
MARRIAGE & CIVIL PARTNERSHIP	<i>No impact</i>	<i>Not applicable at present</i>	<i>Not applicable at present</i>
What is the overall impact? There are no negative implications associated with this policy. The implementation promotes positive opportunities and relationships between all groups and is in accordance with the new General Data Protection Regulations.			
Any action required on the impact on equalities? <i>Impact of this policy has been assessed and it will not lead to any discrimination or other adverse events on any population groups, as described above.</i>			

Name of person completing analysis	<i>Corporate Governance Manager</i>	Date completed	<i>May 2018</i>
Name of responsible Director	<i>Director of Strategy and Improvement</i>		
Signature			