

Freedom of Information requests (FOI)

Policy & Procedures

Berkshire Healthcare NHS Foundation Trust

ORG032

Please be advised that Berkshire Healthcare discourages the retention of hard copies of policies and can only guarantee that the policy on the website is the most up-to-date version.

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Company Secretary and Freedom of Information Lead

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POLICY DEVELOPMENT

ORG032 Freedom Of Information Requests

Version 10: Re-issued May 2021. Amended to reflect changes in the Berkshire Healthcare Organisational structure and minor amendments to current procedures.

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Version 6: Reviewed and minor amendments made.

Version 5: Updated to reflect CQC compliance and insert narrative on training.

Version 4: Glossary updated and ORGBPD002 Procedure for responding to requests, Best Practice Document, incorporated into the policy.

Version 3: Updated with minor amendment Version 2: Updated with minor corrections

Version 1: First published policy

Policy for Berkshire Healthcare to meet its Statutory requirements under the Freedom of Information Act 2000.

Summary

Designated Lead

Company Secretary

Policy Consultants

Freedom of Information Lead

Endorsed by

Policy Scrutiny Group – 7 May 2021

This policy has been assessed for compliance with CQC Fundamental Standards

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1. Foreword

Berkshire Healthcare NHS Foundation Trust (hereinafter referred to as Berkshire Healthcare) regards the Freedom of Information (FOI) Act 2000 as an important mechanism in achieving an honest and safe relationship with the Public in accordance with the Government's commitment to greater openness in the public sector.

The Freedom of Information Act 2000 (hereinafter referred to as the Act) gives a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions.

Freedom of Information applications must be made in writing, fax or e-mail to the Freedom of Information Officer. The application must include the name of the applicant and an address for correspondence. It must fully describe the information requested. The Berkshire Healthcare FOI email link can be accessed via the internet and intranet foi.bht@berkshire.nhs.uk

- 1.1 Requests made by individuals for information Berkshire Healthcare holds about themselves (i.e., their own personal information) are not covered by the FOI Act. Please refer to the Data Subject Access Request Policy ORG030.

2. Scope

This policy relates to all records (paper, electronic, on tape, etc.) held by Berkshire Healthcare and applies to all Berkshire Healthcare staff and to Non-Executive Directors who must adhere to this policy. Managers must ensure that employees, locums, bank nurses, agency nurses, volunteers and other contractual staff are made aware of this document.

3. Definitions

The Act contains definitions of many of the terms used within it. A list of some of the main ones is added at Appendix 1.

4. Roles and responsibilities

To assist Berkshire Healthcare in fulfilling its statutory obligations all staff must be made aware of their responsibilities.

4.1 Chief Executive

The Chief Executive is accountable for the administration of this policy. He/she has overall responsibility for the implementation of this policy and for monitoring and reviewing its effectiveness. They will: -

- (i) Ensure that senior managers and consultants fulfil their responsibility in ensuring that this policy is adhered to.
 - (ii) Ensure that full commitment and support is provided and maintained in relation to the administration of this policy.
 - (iii) Ensure a Berkshire Healthcare FOI Lead is appointed as a point of contact for all FOI matters.
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4.2 Executive Directors/Regional/Divisional Managers

Executive Directors and Regional/Divisional Directors are managerially responsible for ensuring that this policy/procedure is implemented, communicated and monitored within their area of responsibility. They will: -

- (iv) Provide support to all staff that may be faced with difficulty in implementing this policy.
- (v) Ensure Service Managers are aware of the FOI Lead.

4.3 Service Managers/Line Managers

Service Managers are managerially accountable for all staff in their area of responsibility. They will:

- (vi) Ensure locally all staff are aware of this policy.
- (vii) Ensure locally that all staff are aware of whom to go to for day-to-day advice.
- (viii) Identify the systems or databases used to record information in their service area.
- (ix) Ensure that there is an effective mechanism for training of all relevant staff towards the implementation and monitoring of this policy.

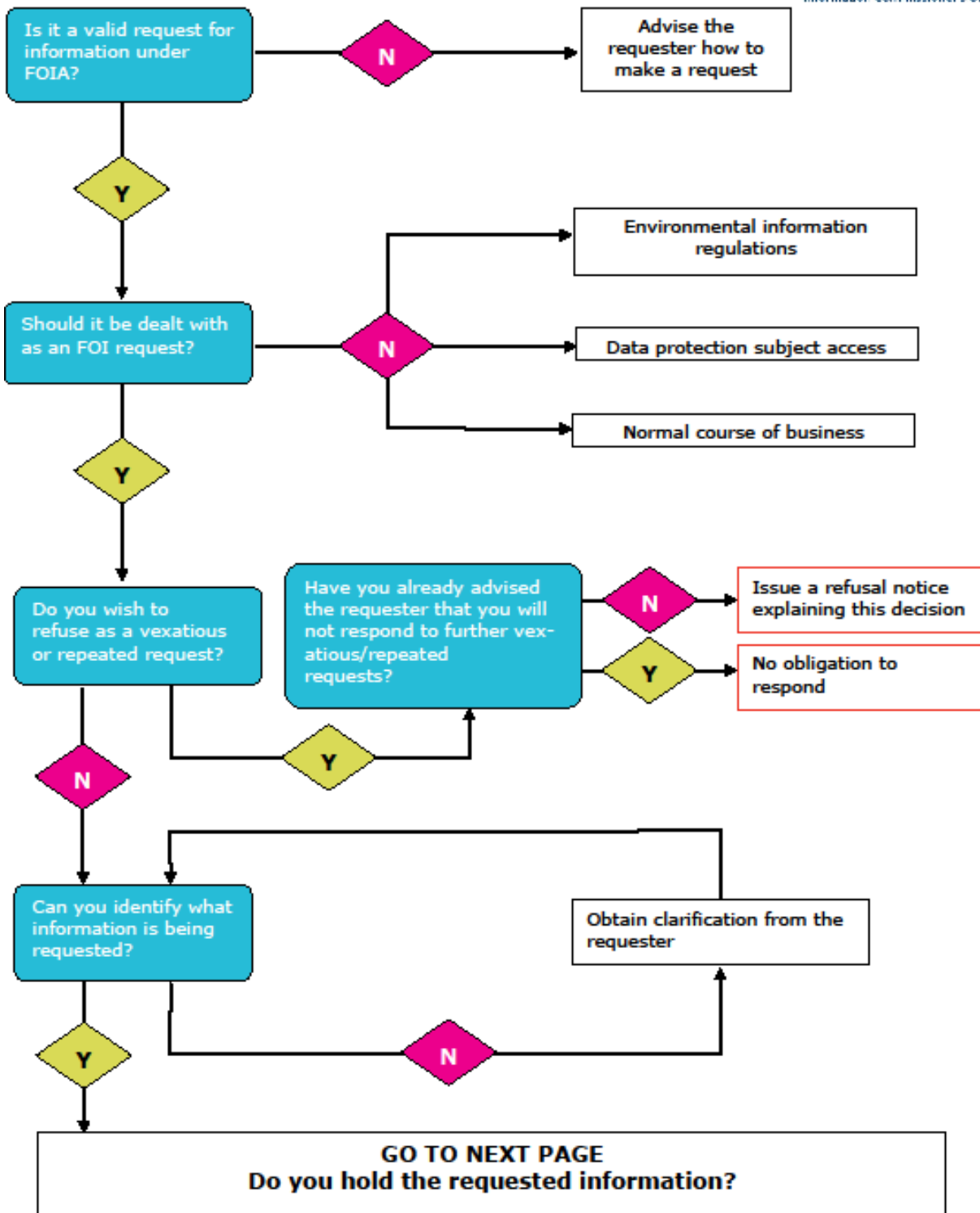
4.4 Employees and Non-Executive Directors

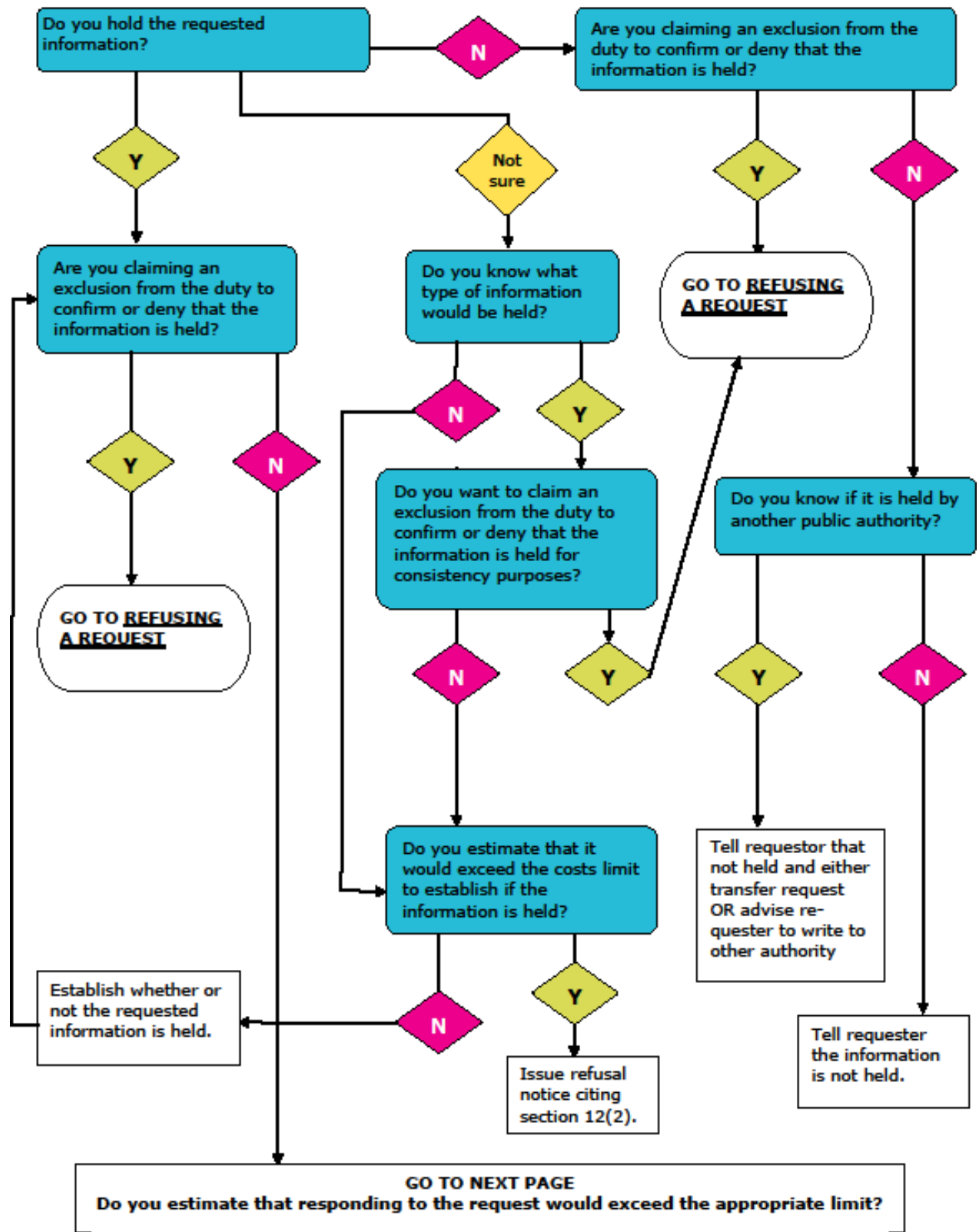
All staff are obliged to adhere to this policy. A failure to adhere to this policy and its associated procedures may result in disciplinary action.

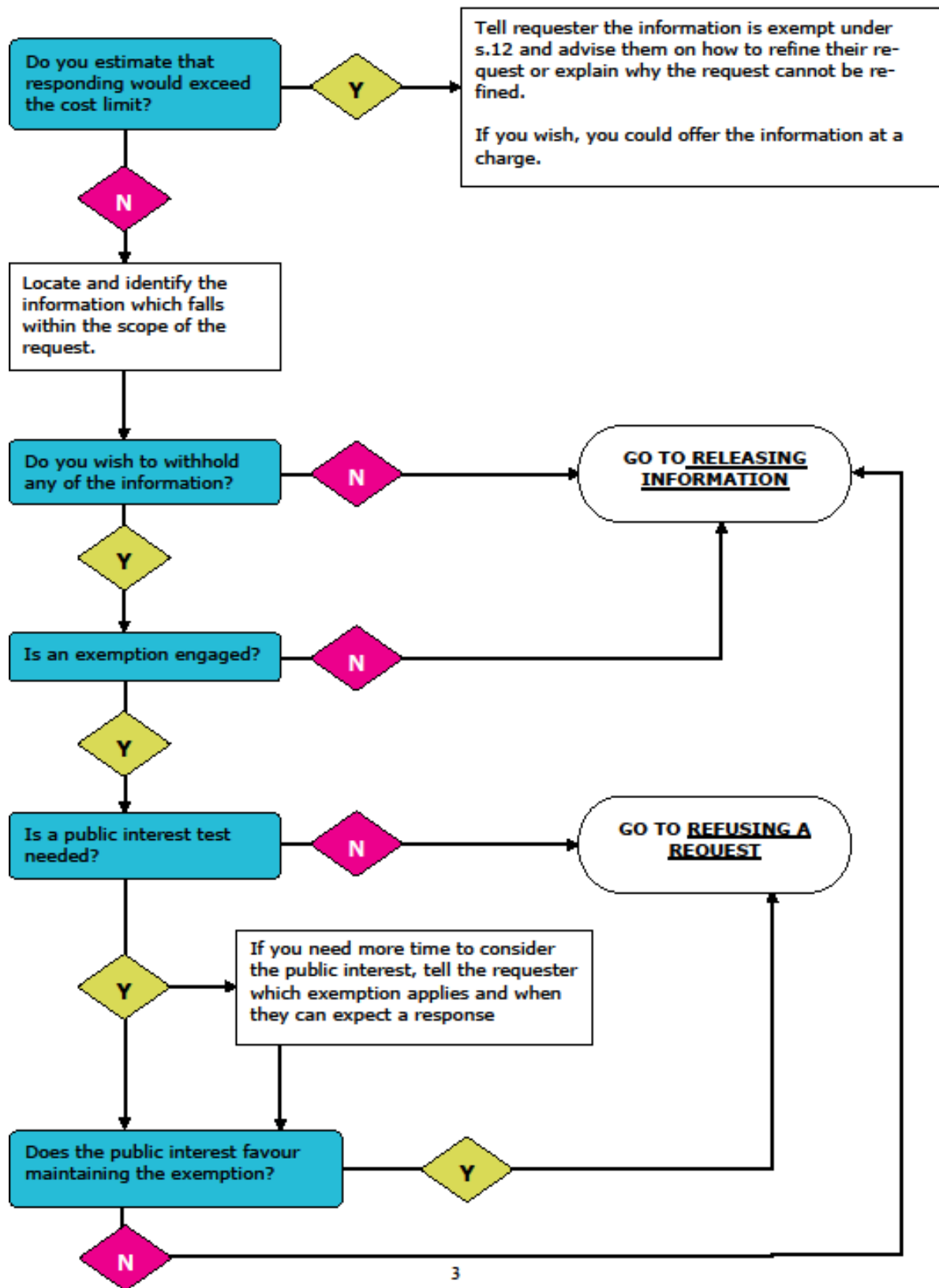
5. Flow Chart Guide – Handling FOI Requests

Please see Flowcharts issued by the Information Commissioners Office, on the following pages.

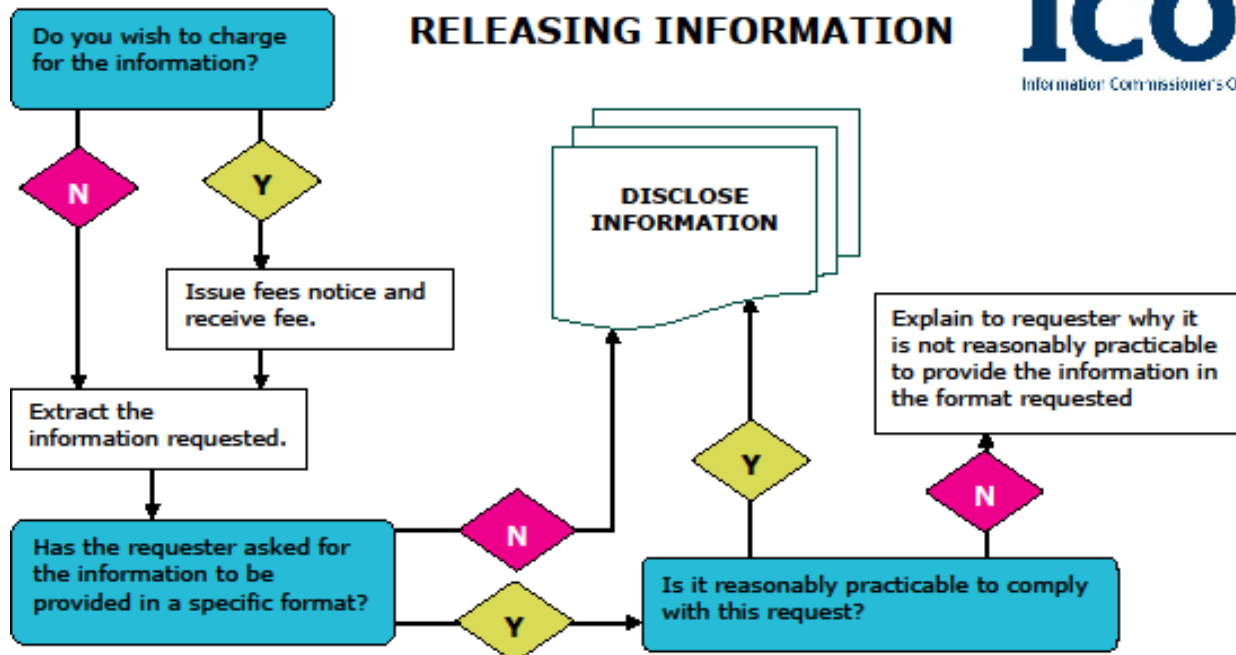
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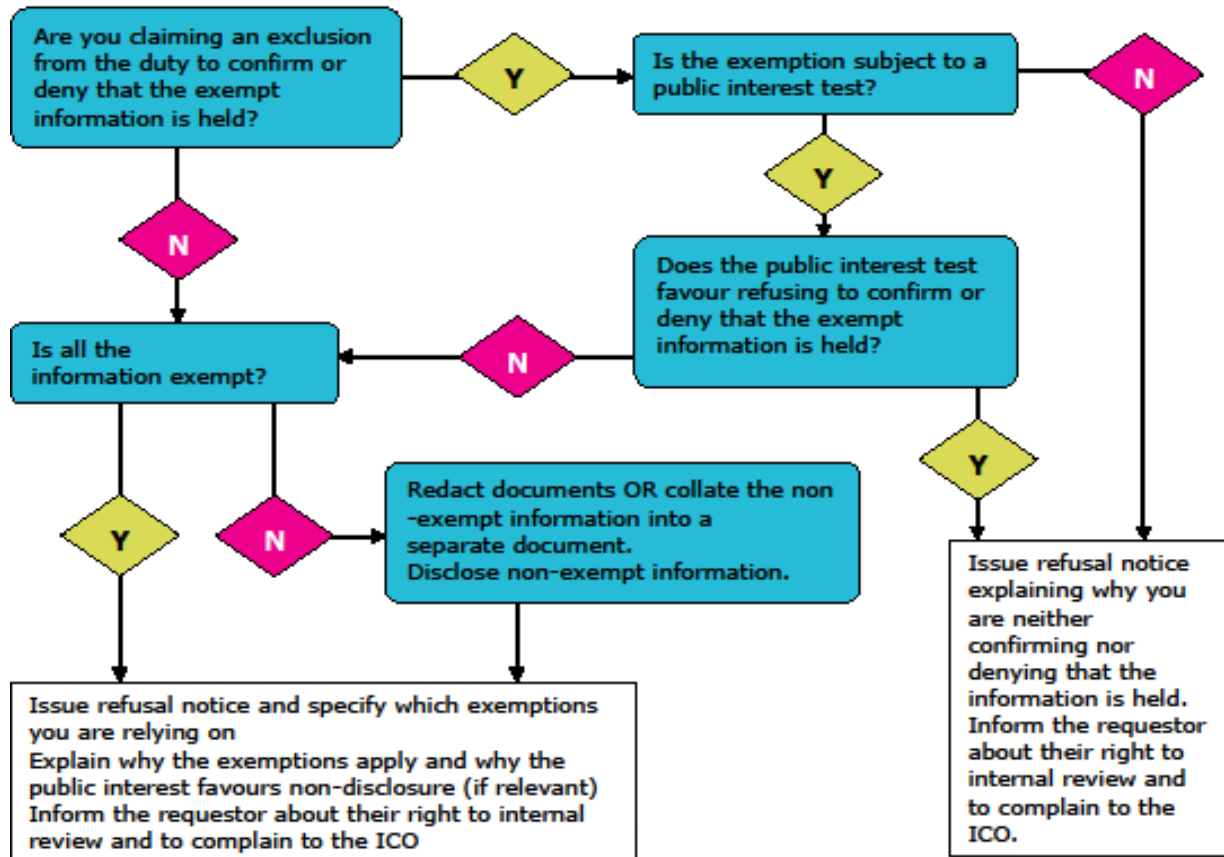




RELEASING INFORMATION



REFUSING A REQUEST



6. Guidelines on the procedure

6.1 Receiving Applications

Section 1 of the Act has given a general right of access since 1st January 2005 to recorded information held by Berkshire Healthcare, subject to certain conditions and exemptions contained in the Act. Any applicant making a request is entitled:

- to be informed in writing whether Berkshire Healthcare holds the information described in the request and
- if Berkshire Healthcare holds the information to have that information communicated to them.

This is known as the “duty to confirm or deny” and is fully retrospective in that if Berkshire Healthcare holds the information it must, subject to certain terms and conditions, provide it.

Applications must be made in writing or e-mail to the Freedom of Information Officer. The application must include the name of the applicant and an address for correspondence. It must fully describe the information requested. The Berkshire Healthcare FOI email link can be accessed via the internet and intranet foi.bht@berkshire.nhs.uk

See Appendix 4 - procedure for responding to requests.

6.2 Administering a Fee

Generally, Berkshire Healthcare will not charge a fee for information it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as CD-ROM.

The costings for the applicant, will be in line the guidelines issued by the Ministry of Justice and the Information Commissioner’s Office (ICO). This is so that they can be informed in advance of providing the material, of how much in total their request may be charged. This will allow the applicant to make the necessary payment for their request to be processed.

6.3 Conditions and Exemptions

A list of conditions and exemptions are shown in Appendix 2.

6.4 Exempt Information

There are two classes of exemptions - Absolute and Qualified - detailed under Part II of the Act. Details of these are shown in Appendix 3.

6.5 Timetable for Requests

Responses to requests shall be responded to within the 20-working day limit set by the Act, if all the criteria set for the request, sufficient information, name, address, fee, etc. have been satisfied.

6.6 Arranging Information

When responding to a request for information consideration must be given to any preferences expressed in the request for method of communication of the reply. Berkshire Healthcare will so far as be reasonably practicable give effect to that preference in accordance with Section 11 of the Act.

6.7 Refusal of Applications

Berkshire Healthcare may refuse an application for information for several valid reasons, some examples are:

- **Exemptions** - there are a number defined by the Act by which Berkshire Healthcare does not have to disclose to the applicant.
- **Data Protection Act (DPA)** - the applicant's request is not part of FOI but a DPA Subject Access Request.
- **Publications Scheme** - the applicant's request may already be part of an existing publication that is already available.

Where an application for information has been refused, the applicant must be informed of the refusal and reason why, in writing, within the time defined by the Act.

6.8 Requests for Documents due for Destruction

Documents can be legitimately destroyed as part of a planned programme within Berkshire Healthcare Records Management Policy. However, if a request for a document is received for a document due for destruction, the destruction must be suspended until such time as the request has been fully satisfied. It is criminal offence under the Act (Section 77) to knowingly destroy a document which you know has been requested.

6.9 Complaints Procedure

Complaints shall be handled in line with the Berkshire Healthcare Freedom of Information complaints procedure. This formal process for complaints shall address the most common issues, such as:

- Non-disclosure of information
- Undue delay in responding
- The application was frivolous or vexatious

If Berkshire Healthcare and applicant are unable to resolve the complaint, the applicant should be informed to refer their complaint to the ICO.

Details of the FOI complaints process are available via foi.bht@berkshire.nhs.uk to staff and applicants or to staff with access to the Integrated Governance shared drive/ FOI Requests.

6.10 Advice and Assistance

Section 16 of the Act means Berkshire Healthcare has a duty to provide advice and assistance to applicants and would-be applicants. Berkshire Healthcare will do this considering other statutory duties, e.g., the Disability Discrimination Act 1995.

7. Training and awareness

The Company Secretary will agree an appropriate level of Information Governance training for staff at corporate induction and FOI will be included in training materials and delivered. FOI training is also to be included in the statutory and mandatory Information Governance training.

8. Monitoring and reviewing

The monitoring of the policy will take place by the FOI Lead, analysing the types of and numbers of questions asked by staff will assist in identifying the effectiveness of the policy. Any amendments to this document will be agreed by the Information Governance Committee and approved by the Non-Clinical Risk Committee. This policy will be reviewed every 2 years. The FOI Lead will review the effectiveness of this policy.

Appendix 1

Definitions

Absolute Exemption – applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of nondisclosure. 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 is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

Fees Notice – a written notification issued to an applicant stating that a fee is payable and exempts public authorities 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 their request lapses.

Fees Regulations – national regulations that will prohibit a fee about certain types of requests, set an upper limit on amounts that may be charged and prescribe the way 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 information.

General right of access - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant 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's Office (ICO) - The Information Commissioner's Office enforces and oversees the Data Protection Act 2018 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.

Ministry of Justice - The Ministry of justice is responsible for the efficient administration of justice in England and Wales. Broadly speaking they 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:

- 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.
- by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
- 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
- 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 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 2

Conditions and exemptions

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 Berkshire Healthcare:

- reasonably requires further information in order to identify and locate the information requested, and
- has informed the applicant of that requirement. Berkshire Healthcare will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

Under section 2 of the Act, Berkshire Healthcare 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 Berkshire Healthcare holds the information. The Part II exemptions are listed in Appendix 3 of this Policy. Berkshire Healthcare will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

The duty to confirm or deny does not arise if a fees notice 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.

The duty to comply with a request for information does not arise if Berkshire Healthcare estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. Berkshire Healthcare will work with applicants to keep compliance costs to a minimum but reserves the right to either:

- refuse, or
- charge for the communication of information that exceeds this limit.

Berkshire Healthcare is not obliged to comply with a request for information if the request is vexatious. Where Berkshire Healthcare 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. Berkshire Healthcare will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

Appendix 3

Exempt information

There are two types of class exemption:

- **Absolute**, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- **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 Data Protection Act 1998)
- 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)
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- 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.gov.uk/ukpga/2000/36/contents

Appendix 4

Procedure for responding to a request for information under the freedom of information act 2000

1. A request for information under the Act must be made in writing, this can be to any member of staff in Berkshire Healthcare, or direct to the Berkshire Healthcare HQ.
 - i) If a written request is received by a member of staff other than the Freedom of Information Officer, it must be sent **immediately** to the Freedom of Information Officer at foi.bht@berkshire.nhs.uk. This is essential because of the timetable for replying to requests. All replies must be sent within 20 working days from receipt of the written request. It is important that there are no delays in the system.
 - ii) If a verbal request is made to a member of staff they must inform the applicant that it must be put in writing to: -

Assistant Company Secretary Berkshire Healthcare Headquarters 2nd Floor
Fitzwilliam House Skimped Hill Lane Bracknell
RG12 1BQ

Or email foi.bht@berkshire.nhs.uk

Berkshire Healthcare staff have a duty to assist requestors that are unable to make a written request.

- iii) If a verbal request relates to Environmental issues then it may be a request under the Environmental Information Regulations 2004 and therefore a verbal request is acceptable. Please refer such requests to the FOI Lead or Head of Estates.
 3. On receipt, the FOI Officer will handle the request for information in line with the Freedom of Information Request Policy.
 - i. If the request for information relates to another NHS organisation, that request will be passed to the FOI Lead in that organisation for them to action. A letter noting the referral will be sent to the person requesting the information.
 - ii. The request will be logged showing applicant, date received, action taken.
 - iii. If the information requested is in line with the Publication Scheme the FOI Officer will copy/download and respond on that basis.
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- iv. If the initial determination is that the request cannot be answered due to an exemption under the Act this will be passed to the Freedom of Information Lead for validation and authorisation.
 - v. If a request is considered outside the Act, the FOI Lead will reply to the applicant immediately giving reasons.
 - vi. If the information requested is not immediately available under the Publication Scheme, the FOI Administrator will forward the request to the appropriate department manager.
 - vii. The appropriate manager will be required to provide the requested data ASAP (remember Berkshire Healthcare must respond within 20 days from receipt of request). Managers will return the Information to the FOI Officer at foi.bht@berkshire.nhs.uk
 - viii. The Freedom of Information Officer will draft the reply ensuring that all replies are in a standard format. All responses will be passed to the Freedom of Information Lead for review prior to being sent to the applicant.
 - ix. A quarterly report will be made to the Information Governance Committee indicating the number and nature of the requests, and performance relating to dealing with the application.
-

Equality Analysis – Template

‘Helping you deliver person-centred care and fair employment’

<p>1. Title of policy/ programme/ service being analysed</p> <p>FREEDOM OF INFORMATION REQUESTS</p>	
<p>2. Please state the aims and objectives of this work and what steps have been taken ensure that the Trust has paid <u>due regard</u> to the need to eliminate discrimination, advance equal opportunities and foster good relations between people with protected characteristics.</p> <p>This policy is an important mechanism in achieving honest and safe relationships with the public sector. It outlines the process and gives guidance on releasing information held by the Trust, subject to certain conditions and exemptions.</p>	
<p>3. Who is likely to be affected? e.g., staff, patients, service users</p> <p>This policy applies to all Trust staff and to Non-Executive Directors who must adhere to this policy. Managers must ensure that employees, locums, bank nurses, agency nurses, volunteers and other contractual staff are made aware of this document.</p>	
<p>4. What evidence do you have of any potential adverse impact on groups with protected characteristics?</p> <p>Include any supporting evidence e.g., research, data, or feedback from engagement activities</p>	
<p>4.1 Disability <i>People who are learning disabled, physically disabled, people with mental illness, sensory loss, and long-term chronic conditions such as diabetes, HIV)</i></p>	<p><i>Consider building access, communication requirements, making reasonable adjustments for individuals etc.</i></p> <p>No adverse impact identified.</p>
<p>4.2 Sex <i>Men and Women</i></p>	<p><i>Consider gender preference in key worker, single sex accommodation etc.</i></p> <p>No adverse impact identified.</p>
<p>4.3 Race <i>People of different ethnic backgrounds, including Roma Gypsies and Travelers</i></p>	<p><i>Consider cultural traditions, food requirements, communication styles, language needs etc.</i></p> <p>No adverse impact identified.</p>
<p>4.4 Age <i>This applies to people over the age of 18 years. This can include safeguarding, consent and child welfare</i></p>	<p><i>Consider access to services or employment based on need/merit not age, effective communication strategies etc.</i></p> <p>No adverse impact identified.</p>

<p>4.5 Trans People who have undergone gender reassignment (sex change) and those who identify as trans</p>	<p><i>Consider privacy of data, harassment, access to unisex toilets & bathing areas etc.</i></p> <p>No adverse impact identified.</p>
<p>4.7 Religion or belief Includes religions, beliefs or no religion or belief</p>	<p><i>Consider holiday scheduling, appointment timing, dietary considerations, prayer space etc.</i></p> <p>No adverse impact identified.</p>
<p>4.8 Marriage and Civil Partnership Refers to legally recognised partnerships (employment policies only)</p>	<p><i>Consider whether civil partners are included in benefit and leave policies etc</i></p> <p>No adverse impact identified.</p>
<p>4.9 Pregnancy and maternity Refers to the pregnancy period and the first year after birth</p>	<p><i>Consider impact on working arrangements, part-time working, infant caring responsibilities etc</i></p> <p>No adverse impact identified.</p>
<p>4.10 Carers This relates to general caring responsibilities for someone of any age.</p>	<p><i>Consider impact on part-time working, shift-patterns, options for flexi working etc</i></p> <p>No adverse impact identified.</p>
<p>4.11 Other disadvantaged groups This relates to groups experiencing health inequalities such as people living in deprived areas, new migrants, people who are homeless, ex- offenders, people with HIV.</p>	<p><i>Consider ease of access, location of service, historic take-up of service etc</i></p> <p>No adverse impact identified.</p>
<p>5 Action planning for improvement</p> <p>5.1 Please outline what mitigating actions have been considered to eliminate any adverse impact?</p> <p>5.2 If no mitigating action can be taken, please give reasons.</p> <p>5.3 Please state if there are any opportunities to advance equality of opportunity?</p> <p>An Equality Action Plan template is appended to assist in meeting the requirements of the general duty</p>	

Sign off

Name of person who carried out this analysis: FOI Lead

Date analysis completed: January 2019

Date analysis was approved by responsible Director: Ratified by the Safety, Experience and Clinical Effectiveness Group on 2nd April 2019