

FREEDOM OF INFORMATION (FOI) POLICY

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Plan for Dissemination of Policy

Audience(s)	Dissemination Method	Paper or Electronic	Person Responsible
All staff	Trust Intranet for Policies	Electronic	Head of IG
Public	Trust Public Website	Electronic	Head of IG

CONTENTS

1- POLICY SUMMARY	4
2- INTRODUCTION.....	5
3- DEFINITIONS	5
4- PURPOSE AND SCOPE OF THIS POLICY	6
5- ROLES AND RESPONSIBILITIES	6
6- PROCEDURES.....	7
7- REFUSAL OF REQUESTS.....	10
8- CHARGES AND FEES	12
9- COMPLAINTS	12
10- MONITORING COMPLIANCE	13
11- IMPLEMENTATION	13
12- REFERENCES.....	14
13- ASSOCIATED DOCUMENTATION	14
14- FREEDOM OF INFORMATION ACT (2000).....	15
15- APPENDICES.....	16
APPENDIX 1 - RECEIVING AND RESPONDING TO FREEDOM OF INFORMATION REQUESTS.....	16
APPENDIX 2 - THE EXEMPTIONS OF THE FREEDOM OF INFORMATION ACT (2000).....	17
APPENDIX 3- EQUALITY IMPACT ASSESSMENT	24
APPENDIX 4- HUMAN RIGHTS ACT IMPACT ASSESSMENT	26
APPENDIX 5 - CHECKLIST FOR THE REVIEW AND APPROVAL OF A POLICY.....	27

1- Policy Summary

- 1.1 The Freedom of Information Policy outlines good practice and identifies the responsibilities of staff in terms of Freedom of Information Act (2000).
- 1.2 All Trust staff, permanent and temporary, including contractors and non-Executive Directors must be aware of and adhere to this Policy which applies to all individuals engaged in the discharge of the duties of this Trust. A failure to adhere to this Policy and relevant procedures may result in the Information Commissioner's Office taking regulatory action against the Trust and may lead to disciplinary action.
- 1.3 The Trust publication scheme is available on the internet via this link:
<http://www.slam.nhs.uk/media-and-publications/freedom-of-information.aspx>
- 1.4 The requests that fall under the general rights of access to recorded information by individual applicants must be made in writing. These requests will cover information that is not listed in the Publication Scheme.
- 1.5 All information requests under the Freedom of Information Act (2000) should be directed to the Information Governance Office.
- 1.6 All complaints, verbal or written (including those transmitted by electronic means), must be referred immediately to the Information Governance Office.
- 1.7 The Information Governance Office keeps records of all responses and notices issued. These are subject to periodic review by the Head of Information Governance to maintain consistency in decision making.
- 1.8 Compliance with the Freedom of Information Policy is monitored by the Head of Information Governance and overseen by the Freedom of Information Committee.

2- Introduction

The Freedom of Information Act (2000) (the Act) assists members of the public to question the decisions of public authorities more closely and ensuring that the services provided are efficiently and properly delivered. South London and Maudsley NHS Foundation Trust is committed to strengthening the culture of openness across the organisation.

The main features of the Freedom of Information Act (2000) are:

- a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions;
- a duty on public authorities to inform the applicant where information is exempt from disclosure or when 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.

Requests for information under the Act will arise from two main sources, through the Trust's Publication Scheme or through the general right of access to recorded information held by public authorities.

3- Definitions

3.1 Publication Scheme

Under Section 19 of the Act, all public authorities are required to adopt, publish and maintain a model Publication Scheme approved by the Information Commissioner's Office (ICO) under Section 20 of the Act. A Publication Scheme is a complete guide to the information routinely published by a public authority. It describes the classes of information about the Trust that is made publicly available.

The Trust publication scheme is available on the internet via this link:

<http://www.slam.nhs.uk/media-and-publications/freedom-of-information.aspx>

3.2 General Rights of Access

The requests that fall under the general rights of access to recorded information by individual applicants must be made in writing. These requests will cover information that is not listed in the Publication Scheme.

3.3 Lord Chancellor's Code of Practice

Section 16 of the Freedom of Information (FOI) Act places a duty on public authorities to provide advice and assistance to applicants. These procedures will facilitate compliance with this duty, which is enforceable by the Information Commissioner. In the discharge of this duty the Trust will take account of other Acts of Parliament that may be relevant to the provision of advice and assistance to applicants, e.g. the Data Protection Act (1998), Human Rights Act (1998) etc.

The Code of Practice issued by the Lord Chancellor pursuant to section 45(5) of the Freedom of Information Act (2000) supports and regulates implementation of the Act. A failure to comply with the Code of Practice may result in action against the Trust by the Information Commissioner who, under Section 47 of the act, has a duty to promote the observance of the Code by public authorities.

3.4 Information Commissioner's Office (ICO)

The ICO is an independent regulatory body reporting directly to Parliament and overseeing the DPA, the FOI Act, and the EIRs.

3.5 Environmental Information Regulations (2004) (EIRs)

This statute came into force in 2005 and gives the right of access to environmental information held by public authorities.

3.6- Exemptions

These are conditions which may be applied in circumstances in which requested data may be withheld from disclosure. There are two types of exemption: absolute and qualified.

Absolute exemptions: exemptions that do not require a public interest test to be undertaken.

Qualified exemptions: exemptions which require a public interest test to be completed before they are applied.

3.7- Public Interest Test

A public interest test must be applied when the use of a qualified exemption is proposed. The factors for and against the disclosure of requested information are considered. In order to apply the exemption, the factors against disclosure must be seen to outweigh the factors for disclosure.

4- Purpose and Scope of this Policy

This policy is intended to cover all records created in the course of the business of South London and Maudsley NHS Foundation Trust as corporate records are also public records under the terms of the Public Records Acts 1958 and 1967. This includes e-mail messages and electronic records.

The Freedom of Information Policy outlines good practice and identifies the responsibilities of staff in terms of Freedom of Information Act (2000).

5- Roles and Responsibilities

5.1 Trust Secretary and the Freedom of Information Committee

This policy and its relevant procedures will be reviewed annually and compliance to the Policy will be monitored regularly by the Freedom of Information Committee. The

Trust Secretary has the overall responsibility in relation to the implementation of this Policy with direct accountability to the Executive Director of Finance and Corporate Governance.

5.2 Head of Information Governance

The Head of Information Governance is responsible for daily implementation of the rights of access to information under the Access to Health Records Act 1990, Data Protection Act 1998 and Freedom of Information Act 2000. The Information Governance Assurance Officer is responsible for dealing with individual requests

5.3 Clinical Academic Group Leaders

All Clinical Academic Group Service Directors and senior managers within the Trust are responsible for ensuring that the policy and its supporting standards and guidelines are built into local processes and that there is on-going compliance.

5.4 All Staff

All Trust staff, permanent and temporary, including contractors and non-Executive Directors must be aware of and adhere to this Policy which applies to all individuals engaged in the discharge of the duties of this Trust. A failure to adhere to this Policy and relevant procedures may result in the Information Commissioner's Office taking regulatory action against the Trust and may lead to disciplinary action.

6- Procedures

6.1 Incoming Applications

All information requests under the Freedom of Information Act (2000) are centrally co-ordinated by the Information Governance Office. In the event that an information request is directed to another member of staff or department other than the Information Governance Office, the request should be forwarded to the Information Governance Office **within the same working day** by e-mail (foi@slam.nhs.uk) or logged on the Trust ICT Self Service Help Desk at the following link: <http://brhnapp004/helpdesk>

The Trust FOI Office has a number of resources to identify 'round robin' type requests for information. The resources include the London FOI Group and the King's Health Partners IG Group. The Trust also uses other specialist networks that may have received such requests, such as the Mental Health Trusts Mental Health Act Network. In addition, the Trust reviews public campaign websites such as 'What Do They Know'.

6.2 Upon Receipt of a Request

6.2.1 Receipt Log:

Once information request is received by the Information Governance Office, the request will be logged on the Freedom of Information Database and the Trust ICT Self Service Help Desk within two working days of receipt.

6.2.2 Acknowledgement:

An acknowledgement of receipt will be sent to the requestor within two working days. The written acknowledgement can be in electronic format (e-mail) if the applicant has made contact by electronic means.

If sufficient information is available to respond to the request, the applicant will be informed in the letter of acknowledgement that their request will be processed within a maximum of twenty working days.

6.2.3 Request for further information:

If the applicant has not provided sufficient information for the request to be processed, a letter requesting further information or clarification will be issued. The applicant will be informed that without additional information, their information request will not be processed.

6.2.4 Applicable Fees Notice:

The applicant will be informed of any fees or charges that are payable for the provision of the information and that no information will be provided unless the fee or charge is paid within three months.

In accordance with Sections 12 and 13 of the Act, if it is estimated that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations, the applicant will be notified in writing. The applicant will be asked to review their request to investigate ways of bringing costs within appropriate limits.

Detailed guidance on the application of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 can be found at the following links:

https://ico.org.uk/media/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf

<http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

6.2.5 Exemption Notice:

There are 23 exemptions in the Act under which a request for information may be refused. The exemptions are varied in their form and in their effect, so where an exemption applies, careful consideration should be given to whether the information should be withheld.

Some of the exemptions are 'absolute', that is, if the exemption applies then there is no obligation under the Act to release the requested information (although there may be scope, or obligations, for other reasons outside the Act to do so).

The Trust is required to assess the balance of the public interest for and against disclosure. Such exemptions are referred to as 'qualified' exemptions, because they do not justify withholding information unless, on a proper assessment, the balance of the public interest is against disclosure.

The list of relevant exemptions under the Freedom of Information Act (2000) is provided at the following link:

<http://www.legislation.gov.uk/ukpga/2000/36/part/II>

A summary of all exemptions is provided in Appendix 2 of this Policy.

If the information requested is exempt from disclosure under Part II of the Act, a letter explaining why the information is exempt from disclosure will be sent to the applicant. This includes circumstances where the information requested is available from another source other than the Trust, unless that source is a public authority, in which case the request may be transferred to that authority.

6.2.6 Public Interest Test:

Where a qualified exemption applies to information that has been requested, the Trust is required to carry out a 'public interest test'.

There are three competing rights:

- The right of the public to access information
- The right of individuals to privacy
- The right of the public to expect effective public services

This requires weighing the public interest considerations in favour of release of the information and the public interest considerations in favour of protecting it from disclosure. If the public interest in withholding the information outweighs the public interest in disclosure, it should be withheld.

6.2.7 Vexatious or Repeated Requests:

While giving maximum support to applicants genuinely seeking to exercise the right to know, an information request can be treated as vexatious where:

- it would impose a significant burden on the public authority in terms of expense or distraction;

and meets at least one of the following criteria.

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

If there is evidence to demonstrate that the request is vexatious or repeated as defined under Section 14 of the Act, a letter will be sent to the applicant informing the refusal of their request. Further guidance on dealing with vexatious or repeated requests can be found on the Information Commissioner's Office website at the following links

Dealing with vexatious requests

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

Dealing with repeated requests

<https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

6.3 Accessing Information

The Information Governance Office will identify the relevant department that is likely to hold the information that the applicant has requested and contact the relevant senior manager in the relevant department within two working days to notify them of the information requested.

Upon receipt of an information request notification from the Information Governance Office, Trust staff should give priority to locate and provide the information requested to the Information Governance Office. If it is not possible to provide the information within a reasonable time, the Head of Information Governance must be informed immediately. The Information Governance Office will keep a record of these contacts.

Once collated, the information that the applicant has requested will be forwarded to the Information Governance Office, where the information will be reviewed in respect of any exemptions and/or fees payable before providing the information to the applicant. If any exemptions are applicable, a refusal notice will be sent to the applicant. If fees are payable the applicant will be issued with a Fees Notice. If there are additional queries that cannot be resolved by the Information Governance Office, guidance and advice will be sought from the Information Commissioner's Office or contracted external consultants, who will be approached by the Information Governance Team for an external review as early as possible.

6.4 Providing the Information

Once the information is ready for disclosure, the final response will be reviewed by the Head of Information Governance prior to dispatch. The purpose of this initial review is to ensure that the response drafted is in line with the requirements of the Freedom of Information Act (2000). Following the information governance review, the response will be reviewed by the relevant service lead (e.g. service director or a deputy they may assign). If there are outstanding concerns, these concerns will be clarified with the relevant department (e.g. Communications, Contracting, Finance etc.) and/or a senior officer of the Trust (e.g. the Trust Secretary, a Service Director) for additional review when necessary.

If no fees or charges are outstanding, or if no exemptions are applicable, the Information Governance Office will provide the information requested by the applicant directly to them in writing. Information will be provided to applicants in the format the request was received, i.e. hard copy (postal response) or electronic format (e-mail) unless otherwise stated by the applicant or practical to do so.

Once the response is sent to the requestor, the request will be closed on the Freedom of Information Database and the Trust ICT Self Service Help Desk on the same day.

7- Refusal of Requests

A refusal of a request may apply to all the information requested by an applicant or a part thereof. A request for information may be refused if:

- The information is exempt from disclosure under Part II of the Act (see 6.2.5 and Appendix 2)
- A fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant/the applicant was notified of the charge (see 6.2.4).
- The cost of compliance exceeds the appropriate limit set by the Ministry of Justice.
- The request is demonstrably vexatious or repeated (see 6.2.7).

The Information Governance Office will seek advice from the senior management team, who hold the information that the applicant has requested and the Head of Information Governance before taking the decision of refusal.

If a request for information is refused 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) of the Act, the applicant will also be informed of the Trust's complaints procedures and of their right to complain to the Information Commissioner's Office. The refusal notice will state the reasons for claiming:

- 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
- that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

If it is anticipated due to extenuating circumstances that it will take more than twenty working days to reach a decision as to whether any part of the information requested by the applicant is exempt under Part II of the Act, the applicant will be notified that no decision as to the application of an exemption has been reached. A reasonable and realistic estimate of the date by which the applicant can expect a decision will be provided.

If the information requested is exempt as either the cost of compliance exceeds the appropriate limit set by the Ministry of Justice or the request is demonstrably repeated or vexatious, the refusal 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.

All refusal notices will be reviewed by the Head of Information Governance and additional advice and review will be obtained from the relevant contracted consultants or the Information Commissioner's Office. If there are legal concerns, Trust Legal Services will be notified as early as possible and advice will be sought.

The Information Governance Office will escalate refusal notices to the Head of Information Governance. The Head of Information Governance will decide whether the relevant Director, the Communications Department, the Trust Secretary and the Chief Executive needs to be notified about sensitive refusal decisions.

8- Charges and Fees

Most reasonable information requests will be provided free of charge. In circumstances, where the collation of the response puts excessive demands on Trust staff and the way the information is made available is an extra cost to the Trust, a reasonable charge may be applicable.

In such circumstances, the Information Governance Office will inform the applicant in writing of the cost and the charges that will have to be paid in advance. The notification of charges and the date the applicant pays the charge will be recorded.

If a Fees Notice has been issued to an applicant, or they have been informed of a charge for information listed in the Publication Scheme, the 'clock stops' in regard to compliance with the twenty working day timescale. Once an applicant has paid their fees or charges, the 'clock' starts again from the point within the twenty working days that it 'stopped'. The applicant will then be provided with the information they requested.

Applicants will have three months beginning on the day on which they were notified of the charge to pay the fee. A request will be considered withdrawn if no response is received from the applicant to a Fees Notice within three months of notification.

9- Complaints

All complaints, verbal or written (including those transmitted by electronic means), including requests for the review of decisions of non-disclosure must be referred immediately to the Information Governance Office.

All incoming complaints will be logged on the IG Complaints Module and an acknowledgement will be sent to the complainant within two working days. All complaints will be dealt with in accordance with the Local Resolution Stage of the Trust's Complaints Policy and Complaints Procedure.

All complainants will be informed of their right to complain directly to the Information Commissioner, and will be given the Information Commissioner's contact details. Complainants who remain dissatisfied with the Trust at the end of the Local Resolution Stage will be advised to take their complaint to the Information Commissioner's Office.

All complaints taken to the Information Commissioner's Office will be notified to the Trust Secretary, Head of Communications and the Director of ICT upon receipt of notification from the Information Commissioner's Office. Where necessary, unresolved complaints with the Information Commissioner's Office will be escalated to the Director of Corporate Governance and Finance and the Trust Chief Executive.

Complaints resolution performance figures will be presented to the Chief Executive Review on a monthly basis.

10- Monitoring Compliance

The compliance with the Freedom of Information Policy is monitored by the Head of Information Governance and overseen by the Freedom of Information Committee.

The Information Governance Office keeps a library of all responses and notices issued. The database is subject to monthly review by the Head of Information Governance and the ICT Compliance Manager to maintain consistency in decision making. These reviews will be presented to the Chief Executive on a monthly basis and any issues arising will be discussed at the FOI Committee quarterly.

The DH Information Governance Toolkit and the annual Information Governance Assurance Programme is a programme of internal and independent audits led by the Head of Information Governance. The programme reviews compliance with Trust information governance policies (including the Freedom of Information Policy) and national NHS corporate records management and information governance standards. The progress on the recommended actions is monitored by the Freedom of Information Committee.

The Trust Executive receives regular updates on the Information Governance Assurance Programme and monitors Trust compliance with the Information Governance Toolkit.

The FOI Annual Report features Trust compliance with the Freedom of Information Act (2000) and this Policy and is presented to the Trust Board by the Trust Secretary. The report is made public through the Trust Publication Scheme.

All information risks related to corporate records are identified by the FOI Committee. The identified risks are escalated by the Trust Secretary, Director of Corporate Governance and Finance, Director of ICT Strategy, Head of Information Governance and reviewed regularly by the Risk Management Committee for their likelihood and impact.

All incidents that involve corporate records that breaches this Policy are reviewed and regularly reported to the FOI Committee by the Head of Information Governance.

11- Implementation

11.1 Training

All Trust staff must attend the compulsory induction training when they start their employment with the Trust. During the induction training, all staff attends Confidentiality Induction Session, where information on the implications of the Freedom of Information Act (2000) and the procedures are given. This training is also available to existing staff as and when requested. All in-service training requests should be sent to the Information Governance Manager.

Freedom of Information e-learning module is available to all Trust staff at this link: <https://www.igt.hscic.gov.uk/igte/index.cfm> . The e-training module is highly recommended at Tier 2 level.

11.2- Support and Advice

The main point of contact for further information and advice on issues relating to the Freedom of Information Act (2000) is the Information Governance Office.

e-mail: foi@slam.nhs.uk

Tel : 020 3228 3860

Fax : 020 3228 3132

Further information is available on Trust intranet FOI site at this link:

<http://sites.intranet.slam.nhs.uk/ICT/Services/TeamPortfolio/informationgovernance/foi/default.aspx>

The Information Commissioner's Office is the independent authority set up to promote access to official information and protect personal information. Further information and help on issues relating to the Freedom of Information Act (2000) can be found on their website at <http://www.ico.gov.uk/>

12- References

1. 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
2. Lord Chancellor's Code of Practice on the management of records issued under Section 46 of the Act, July 2009
3. HMSO (2000) Freedom of Information Act 2000
4. HMSO (1998) Data Protection Act 1998

13- Associated Documentation

The issues covered in this Policy have relevant interactions with other areas covered by the following Trust Policies and must be read in conjunction:

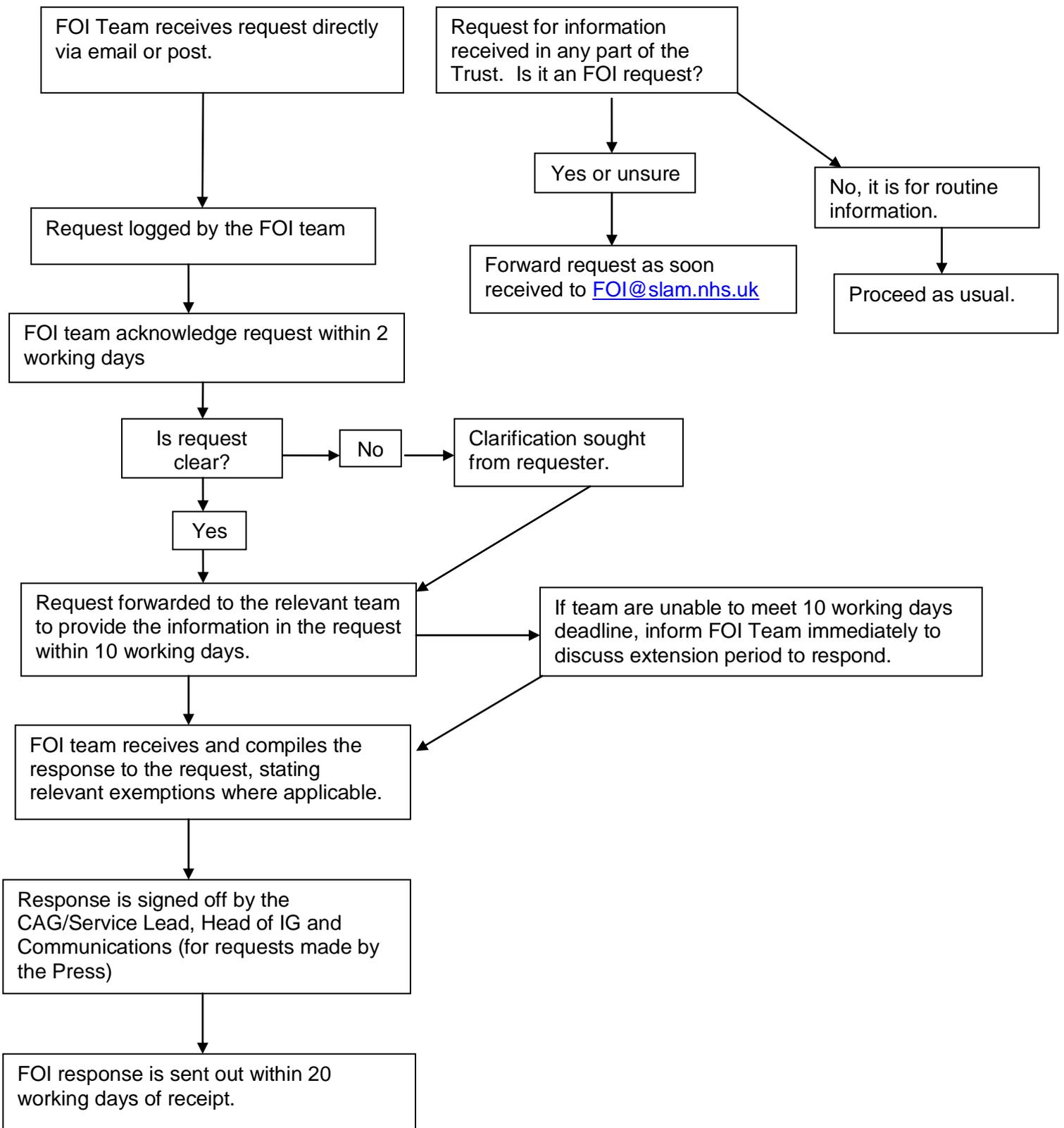
- Information Governance Policy
- Corporate Records Policy
- ICT Security Policy
- Information Governance Communications Plan
- Information Governance Strategy

14- Freedom of Information Act (2000)

All Trust policies, including this Policy are public documents. They will be listed on the Trusts Fol document schedule and may be requested by any member of the public under the Freedom of Information Act (2000).

15- Appendices

Appendix 1 - Receiving and responding to Freedom of Information requests



Appendix 2 - The Exemptions of the Freedom of Information Act (2000)

1 - Introduction

The Freedom of Information Act (2000) (the Act) gives a general right of access to all types of recorded information held by public authorities, sets out exemptions from that right and places a number of obligations on public authorities. Subject to the exemptions, any person who makes a request to a public authority for that information, must be informed whether the public authority holds that information. If it does, that information must be supplied, subject to certain conditions, which may exempt the information from disclosure under the Act.

The objective of this document is to outline the exemptions under the Freedom of Information Act (2000)

2- Exemptions

There are 23 exemptions in the Act under which a request for information may be refused. The exemptions are varied in their form and in their effect, so where an exemption applies, careful consideration should be given to whether the information should be withheld.

Some of the exemptions are 'absolute', that is, if the exemption applies then there is no obligation under the Act to release the requested information (although there may be scope, or obligations, for other reasons outside the Act to do so).

The Trust is required to assess the balance of the public interest for and against disclosure. Such exemptions are referred to as 'qualified' exemptions, because they do not justify withholding information unless, on a proper assessment, the balance of the public interest is against disclosure.

It is expected that exemptions will be used both sparingly and with great care. Not all of the exemptions in the Act lead to the withholding of information. Some simply refer the applicant to another means of obtaining what is sought.

Section 21: Information Accessible by Other Means

Section 21 exempts information that is already reasonably accessible to the applicant by other means. Section 21 may apply even if a fee is charged for supplying the information. Section 21 is **not** subject to any public interest test.

Section 22: Information Intended for Future Publication

Section 22 exempts information requested by an applicant if it is intended for future publication. Section 22 is subject to the public interest test.

Section 22 may apply even if the specific date for publication has not yet been determined, but the proposed publication timetable must be **reasonable** in all the circumstances. It is only applicable if a public authority has decided, before the request is received, to publish the information concerned.

Section 22A – Research Information (came into force in 2014)

Section 22A provides exemption for information obtained in the course of, or derived from, a programme of research. It has a wide scope that includes material not necessarily intended for publication itself.

Section 23: Information Supplied by, or Related to, Bodies Dealing With Security Matters

Section 23 exempts information received from, or related to, the security bodies listed in section 23(3) of the Act. This includes the Security Service, the Secret Intelligence Service, Government Communications Headquarters and the Serious Organised Crime Agency.

It will often be appropriate to 'neither confirm nor deny' that the requested information is held, as the fact that a public authority does or does not hold information supplied by one of the security bodies can itself be information relating to those bodies. The interaction between section 23 and section 24 (national security) is complex and needs to be considered carefully in order to ensure that the relevant public interests are protected.

Section 23 is **not** subject to any public interest test. A ministerial certification procedure exists where it becomes necessary to rely on this exemption.

Section 24: National Security

The section 24 exemption applies to information that must not to be disclosed in order to safeguard national security.

To apply section 24, it will be necessary to decide whether any harm to national security might result from disclosure of the requested information. In some circumstances it may be appropriate to 'neither confirm nor deny' whether the requested information is held.

Section 24 is subject to a public interest test. A ministerial certification procedure exists where it becomes necessary to rely on this exemption.

Section 26: Defence

Section 26 applies to information where disclosure would be likely to prejudice:

- the defence of the British Islands or any colony
- the capability, effectiveness or security of the armed forces of the Crown or any forces co-operating with them

To apply section 26, it will be necessary to establish how exactly defence matters would be prejudiced by disclosure of the information.

Section 26 is subject to the public interest test. In some circumstances it may be appropriate to 'neither confirm nor deny' whether the requested information is held.

Section 27: International Relations

Section 27 applies to the following two categories of information:

- information whose disclosure would be likely to prejudice international relations

- confidential information obtained from another state, an international organisation or an international court

Section 27 is subject to the public interest test. In some circumstances, section 27 may be used to 'neither confirm nor deny' that information is held.

Section 28: Relations within the UK

Section 28 applies to information whose disclosure would be likely to prejudice relations between two or more administrations in the United Kingdom. The relevant administrations are the government of the United Kingdom, the Scottish Executive, the Executive Committee of the Northern Ireland Assembly and the Welsh Assembly Government.

Section 28 is subject to the public interest test. You are not required to 'confirm or deny' whether the requested information is held if to do so would be likely to prejudice relations between UK administrations.

Section 29: The Economy

Section 29 applies to information where disclosure would be likely to prejudice the economic or financial interests of the United Kingdom or of any administration in the United Kingdom. Departments should consult with HM Treasury when considering this exemption.

Section 29 is subject to the public interest test. Public authorities can 'neither confirm nor deny' whether they hold information, using section 29(3).

Section 30: Investigations and Proceedings Conducted by Public Authorities

Section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations conducted by public authorities. There are two ways in which the application of section 30 may be triggered:

- where information has at any time been held for the purpose of specified criminal and other investigations or proceedings
- where information relates to the obtaining of information from confidential sources and was obtained or recorded for specified investigations or proceedings.

Section 30 can only be relied on by an authority which itself exercises one of the investigation or litigation functions that are specified in the exemption.

Section 30 is closely linked to section 31 (law enforcement). The two exemptions cannot apply to the same information and it is important that the correct exemption is applied.

Section 30 is subject to the public interest test. It may be necessary to 'neither confirm nor deny' that requested information is held, as the success of an investigation can often depend on ensuring that information is not disclosed prematurely.

Section 31: Law Enforcement

Section 31 is concerned with protecting a wide range of law enforcement interests and its application turns on whether disclosure would be likely to prejudice those interests.

Section 31 only applies in cases where the information does **not** fall within section 30. The structure of section 31 is complex and it will be necessary to give careful consideration to the important differences in which the various categories of information are framed. The categories within section 31 may overlap and consideration should be given to all categories that may apply.

Section 31 is subject to the public interest test.

Section 32: Court Records

Section 32 exempts information contained in particular types of litigation documents and court, tribunal and inquiry records, and will apply regardless of the content of the information. There are separate and specific regimes for gaining access to court and tribunal records and section 32 ensures that the Freedom of Information Act does not supersede those regimes.

Section 32 will apply only if the public authority concerned holds the information solely because it was contained in one of the specified documents. The application of section 32 is **not** subject to any public interest test.

Section 33: Audit Functions

Section 33 can only be used by public authorities which have audit functions in relation to other public authorities or whose functions include examining the efficiency, effectiveness and economy with which other public authorities use their resources. Section 33 applies to information whose disclosure would be likely to prejudice the exercise of these audit functions. It does not apply where a public authority has such functions in relation to private sector bodies, nor does it cover internal audit and monitoring.

Section 33 is subject to the public interest test.

Section 34: Parliamentary Privilege

Section 34 applies to information where disclosure would be an infringement of the privileges of either House of Parliament. Section 34 needs to be considered where a public authority is required to lay information before Parliament before disclosing it to anyone else. If privileged information has been published by Parliament then section 34 will not apply.

Section 34 is **not** subject to any public interest test.

Section 35: Formulation of Government Policy

Section 35 is aimed at protecting the government policy-making process in order to maintain the delivery of effective government and applies to information that 'relates to':

- the formulation and development of government policy
- communications between ministers (including Cabinet proceedings)
- the provision of advice by the Law Officers (or any request for advice)
- the operation of any ministerial private office

Section 35 can only be used by government departments.

Section 35 is closely related to section 36, which protects the effective conduct of public affairs. However, the two exemptions cannot apply to the same information, although they can be cited in the alternative.

Section 35 is subject to the public interest test.

Section 36: Prejudice to Effective Conduct of Public Affairs

Section 36 relates to information that if disclosed would adversely affect the delivery of effective central government and other public services. Section 36 exempts information whose disclosure would be likely to:

- prejudice collective Cabinet responsibility
- inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation
- prejudice the effective conduct of public affairs

Section 36 can only be used if section 35 does not apply to the information.

Section 36 is subject to the public interest test.

Section 37: Communications with Her Majesty, with Other members of the Royal Household - the Conferring by the Crown of any Honour or Dignity

Section 37 applies to two categories of information:

- information relating to communications with Her Majesty, other members of the Royal Family or the Royal Household
- information relating to the conferring by the Crown of any honour or dignity.

It is a fundamental constitutional principle that communications between the Queen and the government are essentially confidential in nature. In only the most exceptional situations will the public interest in disclosure outweigh the public interest in maintaining the exemption for this type of information. Section 37 is subject to the public interest test.

Section 38: Health and Safety

Section 38 applies to information whose disclosure would be likely to endanger the physical or mental health or the safety of any individual. The individual concerned does not have to be identifiable. Section 38 can apply where there is a group or class of persons.

Section 38 is subject to the public interest test. It may be appropriate to 'neither confirm nor deny' whether the requested information is held, if confirming whether or not information is held would itself risk endangering the health or safety of any person.

Section 39: Environmental Information

Section 39 exempts environmental information whose disclosure must be considered under the Environmental Information Regulations 2004: a specific regime to enable individuals to access environmental information, which includes its own exceptions from that right of access.

If information is environmental information and is exempt under section 39, public authorities must consider its disclosure under the Environmental Information Regulations 2004. All the exceptions in the EIRs are subject to a public interest test.

Section 40: Personal Information

Section 40 concerns personal data within the meaning of the Data Protection Act 1998. Section 40 applies to:

- requests for the personal data of the applicant him or herself
- requests for the personal data of someone else (a third party)

When an individual asks for **his or her own personal data** under the Freedom of Information Act, this should be treated as a 'subject access request' under the Data Protection Act. Requests for one's own data are exempt under section 40(1) of the Freedom of Information Act. This is an absolute exemption. The applicant should be advised of the procedure for making a subject access request.

In most circumstances, for requests for the **personal data of a third party** (someone other than the applicant), the application of section 40 will turn on whether disclosure of the information to a member of the public would be 'fair', under the Data Protection Principles in the Data Protection Act.

Section 41: Information Provided in Confidence

Section 41 provides an exemption to the right of access if the requested information was provided to the public authority in confidence.

Section 41 is **not** subject to the public interest test. The application of section 41 may require detailed consideration of the law of breach of confidence and legal advice will often be necessary.

Section 42: Legal Professional Privilege

Section 42 applies to information that would be subject to legal professional privilege if litigation were in progress. Legal professional privilege covers confidential communications between lawyers and clients and certain other information that is created for the purposes of litigation. Section 42 ensures that the confidential relationship between lawyer and client is protected.

Section 42 is subject to the public interest test. However, given the very substantial public interest in maintaining the confidentiality of legally professionally privileged material, it is likely to only be in exceptional circumstances that this will be outweighed by the public interest in disclosure.

Section 43: Commercial Interests

Section 43 exempts information where disclosure would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets. Section 43 protects not only the commercial interests of third parties but also the commercial interests of the public authority that holds the information. Public authorities will need to bear in mind that the commercial sensitivity (particularly the market sensitivity) of information may decrease with time.

Section 43 is subject to the public interest test.

Section 44: Prohibitions on Disclosure

Section 44 applies to three distinct categories of information:

- if there is an existing statutory bar to the disclosure of information by a public authority then that information will be exempt

- if disclosure would be incompatible with a European Community obligation then the information will be exempt
- if disclosure would constitute or be punishable as a contempt of court at common law (for example because it would breach a court order) then it will be exempt.

The Human Rights Act (1998) can be a statutory bar to the disclosure of information if to do so would breach one of the Convention rights that have been incorporated into domestic law.

Section 44 is **not** subject to any public interest test.

Appendix 3- Equality Impact Assessment

1. Name of the policy / function / service development being assessed?
Freedom of Information (Fol) Policy

2. Name of person responsible for carrying out the assessment?
Murat Soncul

3. Describe the main aim, objective and intended outcomes of the policy / function / service development?
 Aim:
 The Fol Policy is intended to cover all records created in the course of business of the South London and Maudsley NHS Foundation Trust as corporate records are public records under the terms of the Public Records Act.
 Objective:
 To outline good practice, responsibilities of staff and an effective monitoring framework to ensure compliance with the standards set out in this Policy.
 Intended outcomes:
 - Improved management of corporate records.
 - Improved organisational transparency and accountability to the public.
 - Improved awareness of the Freedom of Information Act among staff.
 - Best compliance with the provisions of the Fol Act.

4. Is there reason to believe that the policy / ~~function / service development~~ could have a negative impact on a group or groups?
 No, maintaining accountability to the public via compliance with the rights of access under the Freedom of Information Act and maintaining a Publication Scheme that shows the commitment of the Trust to proactively publish key corporate information is an expectation of all service users and the public.
 Which equality groups may be disadvantaged / experience negative impact?

Race	NO
Disability	NO
Gender	NO
Age	NO
Sexual orientation	NO
Religion / belief	NO
Other (e.g. refugees, behavioural difficulties)	NO

5. What evidence do you have and how has this been collected?
None
 Some

Substantial

6. Have you explained your policy / ~~function / service development~~ to people who might be affected by it?
Yes
If 'yes' please give details of those involved
This is a revised policy that has been updated as part of its regular review cycle. The policy was consulted with CAGs and Corporate Departments via the Freedom of Information Committee

7. If the policy / ~~function / service development~~ positively promotes equality please explain how?
N/A

8. From the screening process do you consider the policy / function / service development will have a positive or negative impact on equality groups? Please rate the level of impact and summarise the reason for your decision.

Positive:	High (highly likely to promote equality of opportunity and good relations)	Medium (moderately likely to promote equality of opportunity and good relations)	Low (unlikely to promote equality of opportunity and good relations)
Negative:	High (highly likely to have a negative impact)	Medium (moderately likely to have a negative impact)	Low (probably will not have a negative impact)

Neutral: High (highly likely)

Reason for your decision:
This is a revised policy to provide best practice guidance to staff in relation to compliance with the Freedom of Information (FoI) Act. There is no direct impact on equality and diversity issues from this policy.

Date completed:

Signed Print name Murat Soncul

If the screening process has shown potential for a high negative impact you will need to carry out a full equality impact assessment

Appendix 4- Human Rights Act Impact Assessment

HRA Act 1998 Impact Assessment	Yes/No	If Yes, add relevant comments
The Human Rights Act allows for the following relevant rights listed below. Does the policy/guidance NEGATIVELY affect any of these rights?		
Article 2 - Right to Life [Resuscitation /experimental treatments, care of at risk patients]	No	
<ul style="list-style-type: none"> Article 3 - Freedom from torture, inhumane or degrading treatment or punishment [physical & mental wellbeing - potentially this could apply to some forms of treatment or patient management] 	No	
<ul style="list-style-type: none"> Article 5 – Right to Liberty and security of persons i.e. freedom from detention unless justified in law e.g. detained under the Mental Health Act [Safeguarding issues] 	No	
<ul style="list-style-type: none"> Article 6 – Right to a Fair Trial, public hearing before an independent and impartial tribunal within a reasonable time [complaints/grievances] 	No	
<ul style="list-style-type: none"> Article 8 – Respect for Private and Family Life, home and correspondence / all other communications [right to choose, right to bodily integrity i.e. consent to treatment, Restrictions on visitors, Disclosure issues] 	No	
<ul style="list-style-type: none"> Article 9 - Freedom of thought, conscience and religion [Drugging patients, Religious and language issues] 	No	
<ul style="list-style-type: none"> Article 10 - Freedom of expression and to receive and impart information and ideas without interference. [withholding information] 	No	
<ul style="list-style-type: none"> Article 11 - Freedom of assembly and association 	No	
<ul style="list-style-type: none"> Article 14 - Freedom from all discrimination 	No	

Name of person completing the Initial HRA Assessment:	Murat Soncul
Date:	
Person in Legal Services completing the further HRA Assessment (if required):	n/a

Date:	n/a
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Appendix 5 - Checklist for the Review and Approval of a Policy

	Title of document being reviewed:	Yes/No/Unsure	Comments
1.	Style and Format		
	Does the document follow The South London and Maudsley NHS Foundation Trust Style Guidelines? i.e.: <ul style="list-style-type: none"> The Trust logo is in the top right corner of the front page only and in a standard size and position as described on the Intranet Front page footer contains the statement about Trust copyright in Arial 10pt Document is written in Arial font, size 11pt (or 12pt) Headings are all numbered Headings for policy sections are in bold and not underlined Pages are numbered in the format Page X of Y 	Yes	
2.	Title		
	Is the title clear and unambiguous?	Yes	
3.	Document History		
	Is the document history completed?	Yes	
4.	Definitions		
	Are all terms which could be unclear defined?	N/A	
5.	Policy specific content		
	Does the policy address, as a minimum, the NHSLA Risk management Standards at Level 1 where appropriate	Yes	
6.	Consultation and Approval		
	Has the document been consulted upon?	Yes	
	Where required has the joint Human Resources/staff side committee (or equivalent) approved the document?	N/A	
7.	Dissemination		
	Does the document include a plan for dissemination of the policy?	Yes	
8.	Process for Monitoring Compliance		
	Is it explicit how compliance with the policy will be monitored?	Yes	
9.	Review Date		
	Is the review date identified on the cover of the document?	Yes	
10.	References		
	Are supporting references cited?	Yes	
11.	Associated documents		
	Are associated SLAM documents cited?	Yes	

	Title of document being reviewed:	Yes/No/ Unsure	Comments
12.	Impact Assessments		
	Is an Equality Impact Assessment included as the appendix of the document?	Yes	
	Is a HRA Assessment included as an appendix of the document?	Yes	