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1.0 INTRODUCTION

1.1.0 Freedom of Information Act 2000

1.1.1 The Government is committed to greater openness in the public sector, a commitment supported by Liverpool Women's NHS Foundation Trust, referred to hereafter as the TRUST. The Freedom of Information Act 2000 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.

1.1.2 The main features of the Freedom of Information Act 2000 are:

- a general right of access to recorded non-clinical and non-personal 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;
- 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.

1.2.0 Lord Chancellor's Code of Practice

1.2.1 This document is based upon the Code of Practice issued by the Lord Chancellor pursuant to section 45(5) of the Freedom of Information Act 2000. It is designed to support implementation of the Freedom of Information Act 2000, referred to hereafter as the Act, and ensure compliance with Code of Practice.

1.2.2 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.

1.3.0 Duty to Provide Advice and Assistance

1.3.1 Section 16 of the Act places a duty on public authorities to provide advice and assistance to applicants. These procedures will facilitate

compliance with this duty, which is again 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 Disability Discrimination Act 1995 and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000).

1.3.2 The *Director of Corporate Affairs* (see 1.6.0) will be responsible for the discharge of this duty in respect of this TRUST.

1.4.0 Aims and Scope of the Operational Manual

1.4.1 In common with the Code of Practice, the aim of this manual is to:

- facilitate the disclosure of information under the Act by setting out good administrative practice that the TRUST will follow when handling requests for information, including, where appropriate, the transfer of a request to a different authority;
- protect the interests of applicants to the TRUST by setting out standards for the provision of advice which it would be good practice to make available to them and to encourage the development of effective means of complaining about decisions taken under the Act;
- ensure that the interests of third parties who may be affected by any decision to disclose information are considered by the TRUST by setting standards for consultation; and

1.4.2 All Non-Executive Directors and staff must be aware of and adhere to these procedures which apply to all individuals engaged in the discharge of the duties of this TRUST.

1.4.3 The *Information Governance Committee* supported by the Director of Corporate Affairs (see 1.6.0) will review these procedures on at least an annual basis.

1.5.0 Publication Scheme or general right of access?

1.5.1 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.

1.5.2 Under section 19 of the Act all public authorities are required to publish and maintain such a scheme, or adopt a model Publication Scheme approved by the Information Commissioner 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 or types of information about our organisation that we make publicly available.

1.5.3 The TRUST has adopted a model Publication Scheme for NHS Trusts. The Scheme will be accessible through the TRUST's website at www.liverpoolwomenshospital.org.uk. Hard copies will also be made available via the PALS (Patients Advice and Liaison Services). The

Information Governance Committee (see 1.6.0) will review the Publication Scheme for the accuracy of the information it contains on an annual basis. The Information Commissioner will formally review the Publication Scheme every three years. All NHS organisations were required to have an operational Publication Scheme from 31st October 2003.

1.5.4 A Publication Scheme is essentially a proactive tool for the dissemination of information relating to the business of a public authority. Requests that specifically cite that the information the applicant requires has been identified in the TRUST's Publication Scheme may be in writing (including through electronic means).

1.5.5 The general rights of access to recorded information by individual applicants came into force on 1st January 2005. These requests *must be made in writing* (which includes a request transmitted by electronic means that is received in legible form and is capable of being used for subsequent reference). These requests may cover information that is not listed in the Publication Scheme.

1.5.6 Requests from either source will be dealt with utilising the procedures outlined below.

1.6.0 Freedom of Information Access Contact Details

1.6.1 The *Director of Corporate Affairs* is responsible for rights of access under the Freedom of Information Act 2000 on behalf of the *Information Governance Committee*. The *Director of Corporate Affairs* is responsible to the Chief Executive.

1.6.2 The *Legal Services Manager* is responsible for rights of access to information under the Access to Health Records Act 1990, Data Protection Act 1998.

1.6.3 The *Information Governance Manager* is responsible for promoting the Information Governance agenda within the Trust on behalf of the *Information Governance Committee*.

The responsible officers listed above can be contacted at:

Liverpool Women's NHS Foundation Trust
Crown Street
Liverpool
L8 7SS
Tel: 0151 708 9988

1.7.0 When not to use this Manual

1.7.1 Information is made available by the TRUST to stakeholders through staff on a daily basis. It would be impractical and overly bureaucratic to attempt to record this activity for FOI purposes.

1.7.2 It is not appropriate to use this Manual and refer issues to the *Information Governance Manager* where, for example:

- you are providing information leaflets and other reference material that has already been approved for use by the TRUST. This would also include the Publication Scheme, TRUST Board papers, Annual Reports, the Operational Plan and service information leaflets.
- you are discussing an information leaflet or other reference material with another individual, helping them decide on their options and signposting them to a more appropriate source of help.
- you are providing information on the current care and treatment of an individual using established practices – for example, sharing care plans with the service user as part of normal clinical interactions.

1.7.3 Remember that all written requests for information should be treated as FOI requests, so you must use this Manual for guidance. If you are in doubt at any stage about how you should deal with any information request, contact the *Information Governance Manager* for help.

2.0 PROCEDURE FOR DEALING WITH THE INITIAL APPLICATION

FOR INFORMATION

2.1.0 Publication Scheme Applications

2.1.1 The Publication Scheme directs all applicants who require assistance in obtaining information from the TRUST to the *Information Governance Manager*. As the Publication Scheme also lists the contact details of other key people within the TRUST, they may also receive enquiries from the Publication Scheme.

2.1.2 In the event that a request arising from the Publication Scheme is directed to another individual other than the *Director of Corporate Affairs or Legal Services Manager* (see 1.6.0) they must:

- Direct the enquirer to the appropriate officer
- Provide the enquirer with the contact details of the appropriate officer

If in writing, email or fax forward the request to the *Director of Corporate Affairs or Legal Services Manager* (as appropriate) within one working day.

2.1.3 All requests for information arising from the Publication Scheme must be referred to the *Director of Corporate Affairs or Legal Services Manager* within one working day of their receipt. These requests may be written or verbal. Once the appropriate officer has received the request the procedure for processing requests for information applies.

2.2.0 General Right of Access Applications

2.2.1 Applications under the general right of access to recorded information will pertain to information not listed in the Publication Scheme. These requests may be retrospective in that they may seek information held by the organisation that is no longer being actively used or has been archived. Such requests are permissible under the Act from 1st January 2005.

2.2.2 As stated above, these applications must be received in writing (which includes a request transmitted electronically). They will usually be directed to the *Director of Corporate Affairs* or *Legal Services Manager* (see 1.6) although another individual working with the TRUST may also receive them. In such circumstances, the individual must forward the request to the *Director of Corporate Affairs* or *Legal Services Manager* by fax or e-mail within one working day. If the application has been made in the form of a letter the original documentation should also be sent to the appropriate officer in addition to the facsimile or electronic copy.

2.2.3 If an applicant wishes to access information under the general right of access but has not put their request in writing they should be referred to the *Director of Corporate Affairs* (see 1.6), thus activating the systems for the Provision of Advice and Assistance to Applicants (see 5.0 below).

2.2.4 Once the *Director of Corporate Affairs* has received the applicant's request the procedures for processing requests for information will be activated.

2.2.5 All written requests for information to the TRUST, that do not fall under section 1.7.0 criteria, must from 1st January 2005, be treated as if they are a FOI request.

3.0 PROCEDURE FOR PROCESSING REQUESTS FOR INFORMATION

3.1.0 Stage One - Upon Receipt of a Request

3.1.1 Once the *Director of Corporate Affairs* receives an applicant's request for information the following information will be recorded by the TRUST:

- Request Identifier (FOI/<year>/<ascending number>)
- Initial Date Received by the TRUST
- Name and Contact Details for Initial Recipient
- Date Received by Information Governance Manager
- Name of applicant
- Contact Details
- Access route – Publication Scheme or general right of access
- Information Requested

A summary of all the information that the TRUST will record for the purposes monitoring of compliance with the Act can be found in Appendix Two.

3.1.2 The *Director of Corporate Affairs* will write (electronic contact is appropriate) to inform the applicant that their request has been received and

is being processed. The aim is to do this within two working days. A record will be kept of this contact.

3.1.3 If the *Director of Corporate Affairs* has sufficient information to respond to the request they will inform the applicant in the letter of acknowledgement that their request will be processed within twenty working days. They will also inform the applicant in writing of any fees or charges, if known, 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 regard to the general right of access from 1st January 2005, this will constitute the issue of a Fees Notice as described in section 9 of the Act. The Publication Scheme will make clear whether there will be any charges for the information provided through that mechanism. Charges and fees are addressed in 8.0 below.

3.1.4 If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge the systems for the Provision of Advice and Assistance to Applicants (see 5.0) will be activated. If the applicant still refuses to pay a Fees Notice after advice and assistance is offered, the Procedure for Refusal of a Request will be activated (see 4.0).

3.1.5 If the applicant has not provided sufficient information for the request to be processed the systems for the Provision of Advice and Assistance to Applicants (see 5.0) will be activated.

3.1.6 In accordance with sections 12 and 13 of the Act, if the *Director of Corporate Affairs* estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations they will notify the applicant in writing of the estimated cost. The systems for the Provision of Advice and Assistance to Applicants (see 5.0) will be initiated to investigate ways of bringing costs within appropriate limits. If it is not possible to comply with the request within appropriate limits then a Fees Notice will be issued as described in 3.1.3.

3.1.7 If the *Director of Corporate Affairs* believes that any of the information requested is exempt from disclosure under Part II of the Act the Procedure for Refusal of a Request will be invoked (see 4.0). 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 (see 6.0).

3.1.8 If the *Director of Corporate Affairs* has evidence to demonstrate that the request is vexatious or repeated as defined under section 14 of the Act then the Procedure for Refusal of a Request (see 4.0) will be activated.

3.2.0 Stage Two - Accessing the Information

3.2.1 The *Director of Corporate Affairs* will identify who holds the information that the applicant has requested. They will, within two working days, identify and contact the person(s) in the TRUST who are most appropriately placed to meet the requirements of the applicant. The *Director of Corporate Affairs* will keep a record of this contact.

3.2.2 Upon receipt of an information request from the *Director of Corporate Affairs* TRUST staff will have five working days to locate and provide the information requested to the *Director of Corporate Affairs*. If it is not possible to meet this deadline the *Director of Corporate Affairs* must be informed immediately, up to five additional working days may then be allowed to comply with the initial request. The *Director of Corporate Affairs* will keep a record of these contacts.

3.2.3 The information that the applicant has requested will be reviewed by the Trust's Key Decision Makers in respect of any exemptions and/or fees payable within two working days before providing the information to the applicant. If any exemptions are applicable, the Procedure for the Refusal of Requests will be activated (see 4.0). If fees are payable the applicant will be issued with a Fees Notice as described in 3.1.3 above.

3.3.0 Stage Three - Providing the Information

3.3.1 If no fees or charges are either payable or outstanding (see 8.0), or if no exemptions are applicable, the *Director of Corporate Affairs* will provide the information requested by the applicant directly to them within 20 working days.

3.3.2 Information will be provided to applicants by any one or more of the following means, namely:

- (a) a copy of the information,
- (b) an opportunity to inspect a record containing the information,
- (c) a digest or summary of the information,

3.3.3 The *Director of Corporate Affairs* will consider all the circumstances of the request for the communication of information by a particular means, including the cost of doing so. If the *Director of Corporate Affairs* determines that it is not reasonably practicable to comply with any preference for the provision of the information as requested by the applicant in their request, they will notify the applicant of the reasons for this determination. The information will then be provided by such means as which the *Director of Corporate Affairs* deems to be reasonable. In the discharge of this function the *Director of Corporate Affairs* will have regard to other statutory obligations upon the TRUST such as those established under the Disability Discrimination Act 1995.

3.3.4 The *Director of Corporate Affairs* will record:

- (a) the date upon which the information was provided to the applicant and the form in which the information was requested the format in which the information was provided.

4.0 PROCEDURE FOR REFUSAL OF REQUESTS

4.1 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:

- (a) the information is exempt from disclosure under Part II of the Act.
- (b) 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 8.0).
- (c) the cost of compliance exceeds the appropriate limit.
- (d) the request is demonstrably vexatious or repeated.

4.2 If the Trust's Key Decision Makers choose 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 TRUST's complaints procedures and of their right to complain to the Information Commissioner (see 9.0).

4.3 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 Section 17 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.

4.4 If the *Director of Corporate Affairs* anticipates 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 they will notify them that no decision as to the application of an exemption has been reached. They will provide an estimate of the date by which they expect that a decision will have been reached.

4.5 Such estimates as described in 4.4 should be realistic and reasonable and compliance 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 *Director of Corporate Affairs*. If the *Director of Corporate Affairs* finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. A record will be kept of instances where estimates are exceeded, and where this happens more than occasionally, steps will be taken to identify the problem and rectify it.

4.6 If a qualified exemption is being applied the *Director of Corporate Affairs* will, either in the notice issued under 4.3 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 will not involve the disclosure of information which would itself be exempt information.

4.7 If the *Director of Corporate Affairs* believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit or the request is demonstrably repeated or vexatious, 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.

4.8 The *Director of Corporate Affairs* will keep records of all notices issued to refuse requests for information.

4.9 When implementing this procedure, the *Director of Corporate Affairs* will seek advice from those person(s) who hold the information that the applicant has requested and from key decision makers, particularly the *Caldicott Guardian*.

5.0 Provision of Advice and Assistance to Applicants

5.1.0 Roles and Responsibilities

5.1.1 The *Information Governance Manager* will act as the key contact point for the Information Governance agenda in the TRUST. The TRUST's *Information Governance Manager* is Liz Edzes, who can be contacted at:

Liverpool Women's NHS Foundation Trust
Crown Street
Liverpool
L8 7SS
Tel: 0151 702 4369

5.1.2 The *Director of Corporate Affairs* will act as the key contact for all requests under the Freedom of Information Act made to the TRUST, on behalf of the Information Governance Committee and provide advice and assistance to potential and actual applicants for information under the Act. The advice and assistance will include:

- guidance on how to access information from the TRUST under the general right of access and the Publication Scheme,
- informing the applicant of the progress of their request,

- explaining the basis upon which any charges or fees have been levied or exemptions applied (this is in addition to Fees Notices and notice issued under Section 17 of the Act),
- suggesting other routes through which applicants may wish to access information, including from other public authorities,
- obtaining additional information to assist the TRUST in meeting the information needs of the applicant,
- consulting with third parties as required,
- identifying sources of independent help for applicants, and,
- directing applicants to the complaints procedure and/or Information Commissioner if they are dissatisfied with the discharge of the duties of the TRUST under Part I of the Act.

The text below explores some specific areas in which the *Director of Corporate Affairs* may provide advice and assistance to applicants.

5.1.3 A record will be kept of all instances, including those described below, where *the Director of Corporate Affairs* has provided advice and assistance to (potential) applicants.

The *Director of Corporate Affairs* is Erica Saunders who can be contacted at:

Liverpool Women's NHS Foundation Trust
 Crown Street
 Liverpool
 L8 7SS
 Tel: 0151 702 4037

5.2.0 Additional Advice and Assistance for Applicants under the General Right of Access

5.2.1 A request for information under the Act's general right of access must be made in writing (which includes a request transmitted by electronic means which is received in legible form and is capable of being used for subsequent reference). Where a potential applicant is unable to frame their request in writing, the *Director of Corporate Affairs* will take reasonable steps to ensure that appropriate assistance is given to enable that individual to make a request for information.

5.2.2 Appropriate assistance might include:

- advising the person that another person (*including the Patient Advice and Liaison Service*) or agency (such as a Citizens Advice Bureau or other provider of information, advice or advocacy) may be able to assist them with the application, or make the application on their behalf;

- referring the individual to the TRUST's *Patient Advice and Liaison Service (PALS)*;
- in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

5.2.3 This list is not exhaustive, and the *Information Governance Manager* will discuss the options available to the potential applicant with them, ensuring flexibility offering the advice and assistance most appropriate to the circumstances of the potential applicant.

5.3.0 Applicant has provided insufficient information to fulfill their request

5.3.1 Where the applicant has not described the information sought in a way that would enable the TRUST to identify or locate it, or the request is ambiguous, the *Director of Corporate Affairs* will contact them. They will provide assistance to the applicant to enable him or her to describe more clearly the information requested.

5.3.2 The purpose of this contact will be to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. The *Director of Corporate Affairs* will take care not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, or even in a face-to-face contact where more information is needed to clarify what is sought.

5.3.3 Appropriate assistance in this instance might include:

- providing an outline of the different kinds of information which might meet the terms of the request;
- providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
- providing, wherever possible, identifiers such as a file reference number, or a description of a particular record so that an applicant can decide if the information is appropriate for their needs;
- providing a general response to the request setting out options for further information which could be provided on request.

5.3.4 This list is not exhaustive, and the *Director of Corporate Affairs* will be flexible in offering advice and assistance most appropriate to the circumstances of the applicant. The TRUST recognises that applicants cannot reasonably be expected to possess identifiers such as a file reference

number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.

5.3.5 Once the *Director of Corporate Affairs* has provided such assistance, and the applicant still fails to describe the information requested in a way that enables the TRUST to identify and locate it, the *Director of Corporate Affairs* will seek further clarification. The *Information Governance Manager* will disclose any information relating to the application which has been successfully identified and found for which the TRUST does not wish to claim an exemption. The *Director of Corporate Affairs* will explain to the applicant why the TRUST cannot take the request any further and provide details of the complaints procedure (see 9.0) and the applicant's rights under section 50 of the Act.

5.3.6 The twenty working day time limit is not activated until the applicant has provided sufficient information for the TRUST to supply them with the information they require.

5.4.0 Applicant is unprepared or unable to pay a charge or fee or fees exceed appropriate limit

5.4.1 In some circumstances an applicant may indicate that he or she is not prepared or is unable to pay the fee notified in any fees notice or the charge levied for the information they have requested (see 8.0). In such cases the *Director of Corporate Affairs* will consider whether there is any information that may be of interest to the applicant that is available free of charge. They will contact the applicant and explore ways in which the fee or charge may be reduced. For example by:

- providing information electronically instead of in hard copy or
- inviting the applicant to view the information and take their own notes or to select the information they feel to be most relevant to them.

5.4.2 Under section 12(1) and regulations made under section 12(4) of the Act the TRUST is not obliged to comply with a request for information because, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold). In such circumstances, the TRUST has three options:

- to refuse the request on the basis that it exceeds the cost threshold;
- to charge, under section 13 of the Act, for the provision of the information;
- to seek a means by which information could be provided within the cost ceiling.

5.4.3 In the event of a request exceeding the cost ceiling, the *Director of Corporate Affairs* will, with the applicant, seek a way in which the information can be provided within the cost ceiling and/or examine with them what information could be provided within the cost ceiling. If this is not possible or if the applicant still wishes to pursue their original request, the *Director of*

Corporate Affairs will ask the applicant whether or not they would be willing to pay the full fees for the information they requested.

5.4.4 If the applicant is willing to pay the full fees for the information they have requested a Fees Notice will be issued. If the applicant is unwilling to pay the full fees the Procedure for Refusal of a Request (see 4.0) above. The applicant will also be informed of their rights to appeal under the complaints procedure and section 50 of the Act (see 9.0).

5.5.0 Vexatious or repeated requests

5.5.1 The *Director of Corporate Affairs* will not provide assistance to applicants whose requests are vexatious or repeated, as defined by section 14 of the Act.

5.5.2 In such circumstances, the *Director of Corporate Affairs* should be able to demonstrate that the applicant's request is vexatious or repeated based upon the monitoring data that they have collected.

5.6.0 Requests which appear to be part of an organised campaign

5.6.1 The TRUST may receive a number of related requests that, under section 12(1) and regulations under section 12(4), take the cumulative cost of compliance over the "appropriate limit" as prescribed in Fees Regulations.

5.6.2 In such circumstances as described in 5.6.1, the *Director of Corporate Affairs* will consider whether the information could be disclosed in another, more cost effective, manner. For example, the information that has been requested could be published on the TRUST's website, with the applicants being notified of this, thus bringing the cost within the appropriate limit.

6.0 TRANSFERRING REQUESTS FOR INFORMATION

6.1 If 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, the *Director of Corporate Affairs* will oversee the transfer of that request to the other public authority. If, after investigation, the *Director of Corporate Affairs* finds that the TRUST holds some of the information requested, a transfer will be made in respect of the information that the TRUST does not hold (but is held by another public authority).

6.2 The "holding" of 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). In short, if the TRUST holds the information, whether or not the TRUST has produced it, the obligation to confirm or deny and to subsequently provide the information remains the same as if the TRUST had produced the information.

6.3 The TRUST will deal with all initial requests for information in accordance with the procedure described in 3.1.0 above. When it becomes apparent to the *Director of Corporate Affairs* that the TRUST does not hold all or part of the information requested they will advise the applicant of this fact.

6.4 If the *Director of Corporate Affairs* believes that some or all of the information requested is held by another public authority, they 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:

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

These will be the options that will be offered first to applicants whose information requests cannot be fulfilled in full or in part by the TRUST.

6.5 In some cases the *Director of Corporate Affairs* may consider it to be more appropriate to transfer the request to another authority in respect of the information which the TRUST does not hold. In such cases, the *Director of Corporate Affairs* will consult the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether they should transfer the request to it. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information. If this course of action is pursued, the applicant will be informed of this and updated on progress by the *Director of Corporate Affairs*. The applicant will also be informed that they reserve the right to make an application to the other authority themselves, as described in 6.4.

6.6 Before transferring a request for information to another authority, the *Director of Corporate Affairs* will consider:

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

The *Director of Corporate Affairs* will transfer a request to another authority with the applicant's consent. If the applicant refuses to give consent, the *Director of Corporate Affairs* will suggest that he or she should make a new request to the other authority.

6.7 Where a request or part of a request is transferred from one public authority to another, the receiving authority must comply with its obligations under Part I of the Act in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the receiving authority receives the request.

6.8 All transfers of requests should take place as soon as is practicable, and the applicant should be informed as soon as possible once this has been done. The target time for such transfers by the TRUST to another public authority will be twenty working days.

6.9 Where the *Director of Corporate Affairs* is unable, either to advise the applicant which public authority holds, or may hold, the requested information, or to facilitate the transfer of the request to another authority, they should consider what advice, if any, they can provide to the applicant, to enable, him

or her, to pursue, his or her request. This may include referral to not-for-profit sector information and advice providers, such as the Citizens Advice Bureau, or to the Information Commissioner.

6.10 A record will be kept of all activity associated with the transfer of requests for information to other public authorities.

7.0 CONSULTATION WITH THIRD PARTIES

7.1.0 Where a request affects legal rights of a third party

7.1.1 In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party. This may arise where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998 ("the DPA"). Unless an exemption provided for in the Act applies in relation to any particular information, the TRUST is obliged to disclose that information in response to a request.

7.1.2 In some cases 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. In such cases the *Director of Corporate Affairs* will consult the 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.

7.1.3 Where information constitutes "personal data" within the meaning of the DPA, the *Director of Corporate Affairs* 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.

7.1.4 A record will be kept of all contacts with third parties in regard to consultations and decision making on the disclosure of information that may affect their legal rights.

7.2.0 Consultation in non-legal circumstances

7.2.1 Where the interests of the third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate. The *Director of Corporate Affairs* will lead any consultation where:

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

7.2.2 The *Director of Corporate Affairs* may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, they will consider what is the most

reasonable course of action to take in light of the requirements of the Act and the individual circumstances of the request.

7.2.3 Consultation will be unnecessary where:

- the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- 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;
- no exemption applies and so under the Act's provisions, the information must be provided.

7.2.4 A record will be kept of all contacts with third parties in regard to consultations and decision making on the disclosure of information.

7.3.0 Consultation with a number of third parties

7.3.1 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 *Director of Corporate Affairs* will, if they consider consultation appropriate, consider that it would be sufficient to consult that representative organisation. For example, a consultation may take place with the Staff Representatives in regard to the views of the TRUST's workforce.

7.3.2 If there is no representative organisation, the *Director of Corporate Affairs* may consider that it would be sufficient to consult a representative sample of the third parties in question.

7.3.3 A record will be kept of all contacts with representative organisations or representative samples of third parties in regard to consultations and decision making on the disclosure of information.

7.5.0 Where there is no response or a refusal to consent by the third party

7.4.1 The fact that a 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.

7.4.2 In all cases, it is for the TRUST, through the *Director of Corporate Affairs* 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.

7.4.3 A record will be kept of all response to consultations and the decision making processes that arise from them.

8.0 CHARGES AND FEES

8.1.0 Publication Scheme Charges

8.1.1 The TRUST will charge only for hard copies or copying onto media (e.g. CD ROM). Most information will be available for free, although some information may incur a charge. The charges will vary according to how information is made available.

8.1.2 Information that is available from the TRUST's website will be free of charge, although any charges for Internet Service provider and personal printing costs would have to be met by the individual. For those without Internet access, a single print-out of the information as on the website will be available by post or personal application to the *Director of Corporate Affairs*.

Requests for multiple printouts, or for archived copies of documents that are no longer accessible or available on the web, may attract a charge for the retrieval, photocopy, postage and so on. In such circumstances, the *Director of Corporate Affairs* will inform the applicant in writing of the cost and the charges that will have to be paid in advance. The notification of charges will be through the 'Recorded Signed for' service so that the TRUST has a record of the charge levied, the date the notification was received by the applicant and the date the applicant pays the charge.

The TRUST will not provide printouts of other organisation's websites.

8.1.3 Leaflets and brochures produced by the TRUST will be provided free of charge.

8.1.4 Any "glossy" or other bound paper documents, or in some cases a CD ROM, video or other mediums, will be subject to a charge as determined by the costs of production to the TRUST. A price will be given on application to the applicant.

8.1.5 Any information that can be transmitted by e-mail will be provided free of charge, unless otherwise stated.

8.1.6 The charges will be reviewed regularly by the Director of Finance.

8.2.0 Fees under general right of access

8.2.1 The TRUST will levy a fee in accordance with Fees Regulations made under the Act in respect of requests made under the general right of access.

8.2.2 The Fees Regulations do not apply:

- to material made available under a publication scheme under section 19 (covered in 8.1.0 above);
- to information which is reasonably accessible to the applicant by other means within the meaning of the exemption provided for at section 21; or
- where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosure of the information as provided in sections 9(5) and 13(3) of the Act".

8.2.3 The TRUST will ensure that any charges made in cases falling outside those covered by the Fees Regulations are in accordance with any relevant legislation and are within the terms of any relevant guidance which has been issued or approved by HM Treasury and which is applicable to the TRUST.

8.2.4 The TRUST will issue Fees Notices by the 'Recorded Signed for' service to ensure that the TRUST has a record of the date upon which the applicant is given the notice.

8.2.5 A record will be kept of the date of dispatch to and receipt and payment by the applicant of Fees Notices.

8.3.0 Fees, Charges and Timescales

8.3.1 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.

8.3.2 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.

8.3.3 Applicants will have three months beginning on the day on which they were given the fees notice/notified of the charge to pay the fee/charge.

9.0 COMPLAINTS AND FEEDBACK

9.1 Comments and feedback about the discharge of the duties of the TRUST in regard to the FOI Act will all be forwarded to :-

Liz Edwards
Assistant Director of Patient Quality
Liverpool Women's NHS Foundation Trust
Crown Street
Liverpool
L8 7SS

0151 702 4160

Liz.edwards@lwh.nhs.uk

9.2 All complaints, verbal or written (including those transmitted by electronic means), must be referred immediately to the Assistant Director of Patient Quality.

9.3 All complaints will be dealt with in accordance with the Local Resolution Stage of the TRUST's Complaints Policy and Complaints Procedure.

9.4 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.

10.0 ACCESSING AND MAINTAINING THE PUBLICATION SCHEME

10.1 The *Director of Corporate Affairs* on behalf of the Information Governance Committee will update the Publication Scheme on an ongoing basis.

10.2 The Information Governance Committee will review the Publication Scheme in terms of content annually.

10.3 The Information Commissioner will review the model Publication Scheme that the TRUST has chosen to adopt in terms of the classes of information utilised and structure every three years.

10.4 The Publication Scheme will be featured prominently on the TRUST's website. The TRUST's Web Manager will assist the *Director of Corporate Affairs* in achieving this.

10.5 Hard copies of the Publication Scheme will be available from:

- The *PALS Manager*, Liverpool Women's NHS Foundation Trust
- The *Director of Corporate Affairs*, Liverpool Women's NHS Foundation Trust

The *Director of Corporate Affairs* will also arrange for an electronic, read only copy of the Publication Scheme to be forwarded to anyone who requests a copy of the Scheme and has access to e-mail.

11.0 TRAINING AND AWARENESS RAISING

11.1 Training on the implications of the Freedom of Information Act 2000, will be provided by the *Information Governance Manager*.

11.2 The *Information Governance Manager* will work with the *Training Manager* to organise and deliver a training programme on the use of the Freedom of Information Policy and Manual. Information on the Act will also be provided to TRUST staff on induction to the organisation. The TRUST's Policy on the Act will be cascaded through the organisation's policy distribution system. Regular updates will also be provided through the TRUST's internal communications systems.

12.0 LEGAL ADVICE

12.1 The *Legal Services Manager* will be the conduit through which legal advice on FOI is sought and given.

12.2 The *Legal Services Manager* will decide with the *Director of Finance* when legal advice is required from the TRUST's solicitors. A record will be kept of the advice sought from and given by the TRUST's solicitors.

13.0 REVIEW

13.1 This document will be reviewed annually. The next review will be held in November 2010.

14.0 REFERENCES

- Freedom of Information Act 2000
- 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.
- Liverpool Women's NHS Foundation Trust's, Freedom of Information Act Policy

APPENDIX ONE – SUMMARY OF KEY ACTIONS AND TIMESCALES

Stage	Key Action	Timescale	Who?	Other Actions
Initial Application	Details of enquiry to <i>Director of Corporate Affairs</i> (by fax or e-mail). Original documentation.	1 working day.	Recipient of request.	Recipient informs applicant that request will be processed in 20 working days.
Processing Request				
On Receipt	Acknowledge receipt of request to applicant.	2 working days.	DCA	
Identification of person(s) holding relevant information.	2 working days.	DCA		
Locate and provide relevant information to Information Governance Co-ordinator. <i>Note: Timescale suspended if insufficient information provided by</i>	5 working days.	Staff		

<i>applicant to identify and locate information requested.</i>				
Additional time granted if information difficult to retrieve.	5 working days.	DCA		
Accessing Information (cont.)	<p>Information reviewed in respect of fees/charges and exemptions.</p> <p><i>If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The twenty working day timescale is suspended until the fee/charge is paid.</i></p>	2 working days.	DCA	<p>DCA provides advice and assistance in the event of applicant being unable/unwilling to pay fee/charge.</p> <p>If an exemption is applicable the DCA will issue a notice informing the applicant of this.</p> <p>If a request is refused for any other reason, the DCA will notify the applicant of this.</p>
Providing Information	Information provided to applicant.	3 working days.	DCA	The DCA will consider the preferences of the applicant in regard to the format in which they wish to receive the

				information they have requested.
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APPENDIX TWO - RECORD KEEPING TO MONITOR FOI COMPLIANCE

The TRUST will record the following information for the purposes of compliance with FOI.

Initial Application/Upon Receipt of a Request

When received by Director of Corporate Affairs

- Request Identifier – FOI/<year>/<ascending number.
- Initial date received by the TRUST.
- Name and contact details of initial recipient of request.
- Date received by Information Governance Manager.
- Name of applicant and contact details.
- Access route – Publication Scheme or general right of access.
- Summary of information requested.
- Letter/e-mail acknowledging receipt of request to applicant.

Accessing Information

Internal Contacts

- Name and contact details of person(s) holding information.
- Date information requested from person(s) holding information.
- Extensions granted due to difficulties in locating or retrieving information.

Contacts with applicant

- Information given on progress of request to applicant.
- Advice and assistance given by FOIAM to applicant.
- Date of issue, receipt and payment by applicant of Fees Notices/notification of charges.
- Decision making processes leading to application of exemptions or the refusal of requests.
- Exemption notices and notifications of a refusal of a request issued to applicants.

Contacts with other individuals/organisations

- Activity associated with transfers of requests to other public authorities.
- Activity associated with consultation and decision making with third parties on the disclosure of information.

Providing the Information

- Date upon which the information was provided to the applicant.
- Form in which the information was requested.
- Format in which the information was provided.
- Any reasons for a difference between the format in which the information was provided and the form in which it was requested.

Complaints

The TRUST already maintains a record of the complaints that it receives and investigates. The same system will be used for FOI, with a record of referrals to the Information Commissioner also being kept.

Legal Advice

A record will be kept of any legal advice sought and received by the TRUST.