

## FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 POLICY

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### **REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW**

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**February 2022** – reference to GDPR, updating of phone numbers, new DCLA listed on front cover, reference to People Services rather than HR in the supporting procedure.

January 2019 – updated to reflect job titles. Round robin procedure removed as no longer required. Statement re: annual review of fees removed. Clockstops process amended to reflect updated ICO guidance. Social media comments added into section 5 as requested by Communications.

### **KEY WORDS**

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FOI, EIR, disclosure, access, open government

### **SUMMARY**

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This policy sets out the Trust's policy for complying with the requirements of the Freedom of Information Act 2000 and Environmental Information Regulations 2004. The detailed operational processes for managing such requests are set out in the supporting procedure at appendix 1.

## 1 INTRODUCTION AND OVERVIEW

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- 1.1 This document sets out the University Hospitals of Leicester (UHL) NHS Trust's Policy and Procedures for complying with the requirements of the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIR). The attached supporting procedure sets out the operational processes for handling and processing requests.
- 1.2 The aim of the policy is to set out how the Trust will comply with the requirements of the FOI Act 2000 and the EIR 2004, and to advise staff on what to do if they receive a request for information covered by either of these arrangements.
- 1.3 Unless specifically stated otherwise, the arrangements within the policy and supporting procedure apply equally to both FOI and EIR requests.
- 1.4 The Freedom of Information Act gives people a **general right of access to recorded information** (both paper and electronic) held by the Trust, subject to certain exemptions. This means that any person who makes a **written\*\* request** has the right to:
- be informed in writing whether the Trust holds the information requested (this is known as the 'duty to confirm or deny');
  - have access to that information which the Trust holds (subject to any exemptions which may apply).

The Act is fully retrospective, so all information held by the Trust can be requested.

*\*\* EIR requests do not need to be made in writing, but FOI requests **must** be.*

### 1.5 Key points:-

(a) a request for information does not need to be specifically marked as such - there is no need for the applicant to say explicitly that they are making a Freedom of Information request. Requests for information could be included in, for example, a compliment or complaint letter. For this reason all staff need to be broadly aware of the existence of the Freedom of Information Act 2000, the Trust's overarching policy and the supporting procedure.

(b) applicants **do not** have to say why they are requesting the information, nor should the Trust try to ascertain this.

(c) anyone can make a request for information under the FOI Act. It is a criminal offence to destroy information with the intent of preventing disclosure following a request.

- 1.6 Within the Trust, FOI and EIR requests are managed centrally by Corporate and Committee Services, supported by nominated FOI Leads in each Corporate Directorate/Clinical Management Group (CMG). **Any member of staff receiving an FOI or EIR request should forward it immediately to Corporate and Committee Services (internal mail to Belgrave House, Leicester**

General Hospital site or using the Trust's dedicated FOI email address: [foi@uhl-tr.nhs.uk](mailto:foi@uhl-tr.nhs.uk)). The statutory timescale for responding to FOI and EIR requests is within 20 working days of receipt by the Trust, so it is vital to forward requests immediately. Staff must not send a response to FOI/EIR requesters themselves.

## 2 POLICY SCOPE

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2.1 This policy applies to all UHL employees, including the Chairman, Non-Executive Directors, bank and agency staff.

2.2 This policy **does not apply** to the following types of information request:-

- *requests for information held about the requester themselves* – such requests are exempt under FOI legislation and should be directed to the Trust's Privacy Unit to be managed as subject access requests under the Data Protection Act 2018;
- *requests for medical records* – these requests should be directed to the Access to Health Records Team to be managed under the Access to Health Records Act 1990.

## 3 DEFINITIONS

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**EIR requests** - under the Environmental Information Regulations 2004, public authorities are also required to provide information on environmental issues. **Unlike FOI requests, EIR requests do not have to be made in writing.**

**Exemption** – any one of the grounds laid out in the Freedom of Information Act 2000 as to why information may not be disclosable under the Act. There are two kinds of exemption under the FOI Act – absolute and qualified. A list of the FOI exemptions is contained within the supporting procedure at appendix 1. In the Environmental Information Regulations 2004, the grounds for not disclosing information are called **exceptions**. EIR exceptions are also listed in the supporting procedure.

**Public authority** – any organisation which is covered by the Freedom of Information Act 2000. UHL is classed as a public authority under the Act.

**Publication scheme** – an externally-accessible guide to the type of information which is routinely made available by the public authority (eg policies/guidelines). Under the FOI Act, all public authorities are required to maintain a publication scheme, and the Information Commissioner's Office sets out a proposed 'model publication scheme' for use. Requests asking for information which is covered by the publication scheme are not classed as FOI requests, and the information should be made available by Corporate and Committee Services within 3 working days. More information on the publication scheme is contained within the supporting procedure.

**Qualified exemption** – an exemption where the **public interest test** is also required to be taken before deciding whether the information requested is exempt from disclosure. The person taking the public interest test must assess whether it is more in the public interest to disclose the information than to withhold it. In UHL, the Assistant Director – Head of Legal Services takes the public interest test.

**Section 36 exemption** – this exemption allows for the non-disclosure of information which would ‘prejudice the effective conduct of public affairs’. Only a “qualified person” can apply this exemption – within acute Trusts the “qualified person” is the Chief Executive.

## **4 ROLES AND RESPONSIBILITIES**

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### **4.1 Chief Executive**

The Chief Executive has ultimate responsibility for adherence to the FOI Act. This responsibility is delegated as outlined below, however there is one specific responsibility which cannot be delegated:-

*An acute Trust’s Chief Executive is the Department of Health-nominated “qualified person”, responsible for considering whether a section 36 exemption applies to any requested information. This exemption allows for the non-disclosure of information which would prejudice the effective conduct of public affairs.*

### **4.2 Director of Corporate and Legal Affairs**

The Director of Corporate and Legal Affairs is the representative for Freedom of Information issues on the Trust Board, and is the Executive Lead for this policy.

### **4.3. Assistant Director - Head of Legal Services**

The Assistant Director – Head of Legal Services is responsible for applying the public interest test in cases of qualified exemptions. He will also be responsible for responding to queries and complaints over the Trust’s handling of FOI applications.

The Assistant Director – Head of Legal Services will also provide in-house refresher FOI training to the Corporate and Committee Services team and appropriate general FOI training to each new Corporate/CMG FOI Lead.

### **4.4 Clinical/Executive Directors**

Clinical and Executive Directors are responsible for identifying a nominated FOI Lead for their area, and advising the Assistant Director – Head of Legal Services and the Corporate and Committee Services Manager accordingly.

### **4.5 Corporate and Committee Services Manager and Corporate and Committee Services Officers**

Corporate and Committee Services are responsible for the central management of requests, identifying the area covered by the request and contacting the relevant FOI Lead (see 4.6 below), advising on the use of the exemptions, providing FOI/EIR advice and assistance, and for reviewing the Publication Scheme on a regular basis. The Corporate and Committee Services Manager is responsible for providing FOI performance management reports to the Executive Team, and for providing training to the FOI Publishers on how to load information onto the publication scheme.

## 4.6 FOI Leads

Each Corporate Directorate/Clinical Management Group has a nominated FOI Lead, who is the named point of contact for FOI within their Directorate/CMG. Their role is to:-

- provide general information on the FOI Act to staff within their Directorate/CMG;
- source the information requested in FOI requests, and ensure that the response from their Directorate/CMG is returned to Corporate and Committee Services in the timeframe stated, together with a view on whether any of the information requested is considered to be exempt from disclosure;
- ensure the accuracy of their Directorate/CMG information within the publication scheme.

## 4.7 FOI publishers

Each Corporate Directorate/CMG also has a nominated FOI Publisher, who is responsible for populating the FOI publication scheme with appropriate information from their Corporate Directorate/CMG. **Training on how to do this is available from the Corporate and Committee Services Manager.**

## 4.8 All Managers

All managers are responsible for ensuring that this policy is communicated and implemented within their area of responsibility. Any advice or assistance regarding this policy or the Freedom of Information Act can be obtained from Corporate and Committee Services.

## 4.9 All Staff

All employees of the Trust are obliged to adhere to this policy. They must also ensure they are aware of the implications of this policy, and of the process for the central handling of FOI/EIR requests, including the need to send any FOI/EIR requests received by them to Corporate and Committee Services immediately, for a central response.

## 5 POLICY IMPLEMENTATION

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- 5.1 All FOI/EIR requests received anywhere in the Trust must be forwarded to Corporate and Committee Services immediately, to enable a centrally-coordinated response to be provided within the statutory 20-working days.
- 5.2 The FOI Act 2000 is part of the Government's commitment to greater openness in the public sector. It enables members of the public to scrutinise the decisions of public authorities more closely and to ensure that services are delivered properly and efficiently. The Act has been fully in force since 1 January 2005, replacing the non-statutory Code of Practice on Openness in the NHS. Under the Environmental Information Regulations, public authorities are also required to provide information on environmental issues (information relating to the state of air, water, flora, fauna, health, soil or the state of any natural site or other land, or any activities which do [or may] adversely affect the environment).

- 5.3 The Trust supports the principle that openness should be the standard in public life.
- 5.4 The Trust also believes that individuals have a right to privacy and confidentiality. This policy does not override the provisions of the General Data Protection Regulation 2016 covering the release of personal information, which must be taken into appropriate account when responding to FOI/EIR requests.

**5.5 Requests for information via social media**

Any member of staff setting up a social media account (either in their own name, in the name of a team, or service) should be aware that they could receive an FOI request via that social media channel. The Information Commissioner confirms that FOI requests made via messages to accounts operated by public bodies on sites such as Twitter or Facebook can trigger those organisations' duties to disclose information under the FOI Act.

Any such request should be forwarded to Corporate and Committee Services to deal with formally. Staff should make clear to the respondent that this has been done. Staff are not expected to respond to requests individually. As a public body the Trust is obliged to fulfil its duty to provide advice and assistance to those wishing to make a request, by advising the requester to resubmit the request using their real name. For example, if a request is received where the requester's username is an obvious pseudonym (for example @catfriend) or only includes a part of their real name (for example @john3453 or @smith6474) then the request will only be valid if their real name is visible elsewhere on their user profile. However the Information Commissioner urges public bodies to remain mindful of the applicant and motive blind principles behind the Act in any case where they are not satisfied as to the requester's identity but would still be content to disclose the information. The Trust also has an obligation to use the same medium to release the information if at all possible, pending any technical constraints. Advice is available from Corporate and Committee Services (0116 502 7137).

- 5.6 This policy is supported by a procedure for Corporate and Committee Services staff, detailing the operational process for managing and responding to FOI and EIR requests.

Procedure / Process / Standard	Appendix
Supporting procedure, providing detailed information on:- <ul style="list-style-type: none"> <li>• the publication scheme</li> <li>• charges</li> <li>• exemptions/exceptions and refusing a request</li> <li>• complaints</li> </ul>	1

**6 EDUCATION AND TRAINING REQUIREMENTS**

- 6.1 Freedom of Information is covered in the Trust's induction programme for all new staff, within the section on Information Governance. For existing staff, FOI is covered in the HELM mandatory cybersecurity/data protection e-learning module.
- 6.2 New starter Corporate and Committee Services staff will receive detailed in-house training on all elements of the Act and its exemptions, followed by in-

house refresher training provided by the Assistant Director – Head of Legal Services. Upon their nomination, Corporate Directorate/CMG FOI Leads will receive in-house training on appropriate FOI Act requirements from the Assistant Director – Head of Legal Services. FOI publishers will receive training on how to load documents on to the publication scheme, from the Corporate and Committee Services Manager.

6.3 Information on how to make a Freedom of Information Act or Environmental Information Regulations request is available on the Trust’s external website.

## **7 PROCESS FOR MONITORING COMPLIANCE**

<b>Element to be monitored</b>	<b>Lead</b>	<b>Tool</b>	<b>Frequency</b>	<b>Reporting arrangements</b>
FOI requests being responded to within 20 working days	Corporate and Committee Services Manager	KPI reports to Director of Corporate and Legal Affairs. Annual performance management reports to the Executive Team.	Bi-monthly  Annual	Corporate and Legal Affairs SMT meetings  Executive Team (also reported in the Trust’s overall Annual Report)
FOI performance and compliance	Corporate and Committee Services Manager	Reports to the Information Governance Steering Group (IGSG)	Quarterly	IGSG

## **8 EQUALITY IMPACT ASSESSMENT**

8.1 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.

8.2 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

## **9 SUPPORTING REFERENCES, EVIDENCE BASE AND RELATED POLICIES**

UHL Data Protection Act Policy (A6/2006)

UHL Access to Information Policy (B19/2006)

Cabinet Office: Freedom of Information code of practice:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)



***Useful contacts:-***

Corporate and Committee Services – 0116 502 7137. Belgrave House, Leicester General Hospital.

UHL Privacy Unit – 0116 258 6053.

Information Commissioner’s Office website [www.ico.org.uk](http://www.ico.org.uk)

**10 PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING AND REVIEW**

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This document will be uploaded into the UHL policy and guideline library, accessible by staff through the red button on Insite. It will be stored and archived through this system.

The policy will be reviewed every 3 years (or sooner in the event of significant organisational or legislative change).

## Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (Supporting Procedure)

Authors: Helen Stokes - Corporate and Committee Services Manager

Directorate: Corporate and Legal Affairs

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21 December 2009 Policy & Guideline Committee  
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Next review date: April 2025

This procedure supports the UHL FoI/EIR Policy (**A9/2004**) approved by the Trust Board on 4 November 2004



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### **Change Control – Amendment History**

<b>Version</b>	<b>Date</b>	<b>Amendments</b>
1	March 2006	First version following reorganisation of FoI Policy and establishing this procedure as a separate document.
2	December 2009	Appendix B amended to advise that an up to date list of Directorate links is available from Corporate and Committee Services.
3	October 2010	Appendix D included – protocol for notifying NHS East Midlands of any round robin FOI requests received by UHL NHS Trust.
4	October 2013	Amendments to job titles, contact details and to reflect the change in organisational structure. This version was not formally approved.
5	February 2016 (approved March 2016 PGC)	Update of procedure to accompany rewrite of overarching FOI Policy. Removal of roles and responsibilities as now contained in the overarching procedure, and general update.
6	January 2019	Removal of round robin request procedure, amendment to clockstop process to reflect updated ICO guidance, removal of statement that fees will be reviewed annually. Update of job titles
7	February 2022	Updating of telephone numbers, reference to People Services rather than HR in section 3.10.1

## **1. Introduction**

This procedure sets out the operational processes used by the Trust to manage Freedom of Information Act 2000 and Environmental Information Regulations 2004 requests for information. This procedure supports the UHL Freedom of Information Act 2000 and Environmental Information Regulations 2004 Policy (A9/2004).

This procedure applies to both pieces of legislation unless specifically stated otherwise, and is primarily for the use of Corporate and Committee Services staff.

Roles and responsibilities are as set out in the Trust's Freedom of Information Act 2000 and Environmental Information Regulations 2004 Policy.

## **2. The Publication Scheme**

### **2.1 Principles of the Publication Scheme**

- (a) All public authorities covered by the Freedom of Information Act 2000 are obliged to have a Publication Scheme. The Scheme is essentially an index of the information which the Trust will routinely make available to the public. UHL's publication scheme follows the requirements of the model publication scheme for health bodies, as developed by the Information Commissioner's Office. A list of the specific classes of information covered by the Publication Scheme is provided in section 2.2.
- (b) The documents available through the Publication Scheme will be the final, approved versions only. It is the Trust's approach not to include draft documents in this Scheme.
- (c) Where the Scheme contains agendas and Minutes of appropriate meetings, the version available through the Publication Scheme will be the most up to date.
- (d) The Scheme covers a wide range of information from all areas of the Trust. It is the responsibility of the Corporate Directorate and Clinical Management Group (CMG) FOI leads to ensure that up to date information is provided to their FOI Publishers so that the Scheme can be kept up to date.
- (e) The Publication Scheme will be an evolving document and, as a result, staff are encouraged to put forward information for inclusion. Such suggestions should be made to Corporate and Committee Services.
- (f) Information will also be added to the Scheme if the information is the subject of a significant number of requests made under the general rights of access.
- (g) Requests for information covered by the Publication Scheme are not classed as FOI requests because they are for information which should already be routinely available. Such information should be provided within 3 working days.

## 2.2 Classes of Information on the Publication Scheme

The Trust's Publication Scheme will contain information in the following classes:-

- **Who we are and what we do**
- **What we spend and how we spend it**
- **What are our priorities and how are we doing**
- **How we make decisions**
- **Our policies and procedures**
- **Lists and registers**
- **The services we offer**

## 2.3 Publication Scheme Charges

The Trust is committed to providing information through the Scheme at the minimum possible cost.

However, the Trust may charge for copying on to media (e.g. CDROM), requests for multiple print-outs, glossy or bound paper copies, retrieval from archive, photocopying and postage. This list is not definitive.

The charges are set out in Appendix B and are in line with national guidance.

## 2.4 Responsibility for the Publication Scheme

Corporate and Committee Services will be responsible for oversight of the Publication Scheme (telephone contact 0116 502 7137). This responsibility includes:

- Ensuring that Corporate policies and procedures are available;
- Promoting the inclusion of other relevant Trust information within the scheme;
- Providing advice to the Corporate Directorate/CMG FOI Publishers on what should be loaded onto the Publication Scheme for their areas;
- Reviewing the contents of the scheme;
- Answering queries relating to the scheme.

## 3. Handling Requests for Information

### 3.1 Requests for Information

FoI requests can be received by any member of staff within the Trust. However, wherever they are received, all FoI requests should then be passed to the Corporate and Committee Services Office for central handling. It is important that any requests are passed through as soon as they are received, because of the time limit on responses.

There is also a dedicated e-mail address for FoI requests, which feeds directly in to the Corporate and Committee Services Office:- [foi@uhl-tr.nhs.uk](mailto:foi@uhl-tr.nhs.uk)

Under the Freedom of Information Act, a request for information **must be made in writing**, providing return contact details for the applicant and a description of the information requested. "In writing" can include requests transmitted by e-mail or fax, provided they are legible and capable of subsequent reference/reply. The requester must include a name and response address.

**Requests under EIR do not have to be made in writing**, but if received verbally the Trust will place them in writing to confirm precisely the request with the applicant. This will not extend the 20-working day response timeframe.

### **3.2 Timescale for responding to requests**

The Act requires that the requested information is provided to the applicant within 20 working days following receipt of the request. If the Trust decides to make use of a condition or exemption to withhold information, the applicant will be informed within 20 working days.

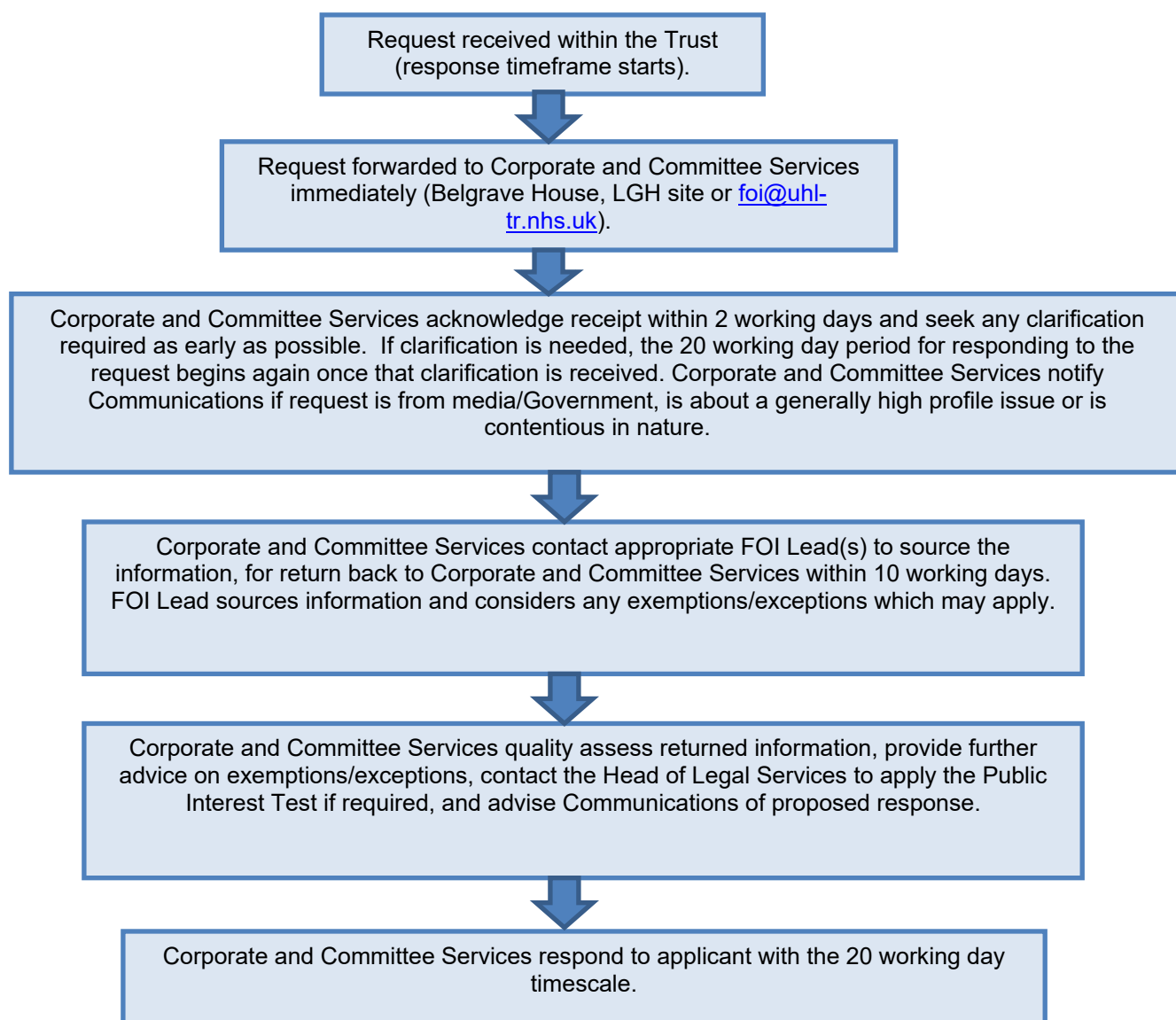
An overview of the Trust's process for handling and responding to FoI requests is shown in section 3.3 below.

If the Trust expects to be unable to meet the required response timescales, the applicant will be informed of the time period by which the Trust expects to be able to comply with the request.

### **3.3 Responding to Requests**

- (a) The Trust has adopted a centralised model for handling requests (through Corporate and Committee Services). An overview of the FoI handling process is represented diagrammatically as follows:-

## Overview of the request process



- (b) Immediately upon receipt, requests for information must be forwarded to Corporate and Committee Services where they will be logged, and the progress in responding monitored. Where necessary, Corporate and Committee Services will contact the applicant to clarify the information requested. This must be done as soon as possible, as the 20-working day period restarts once that clarification is received.
- (c) It is likely that Corporate and Committee Services themselves will not hold the requested information in every case. They will identify which FOI Lead will hold the information and contact them accordingly.
- (d) FOI Leads receive in-house training on FOI and exemptions to the FOI Act (and on broad EIR requirements in relevant areas such as Facilities) and act as an FOI point of contact in their areas.
- (e) Detailed knowledge of the FOI Act, its exemptions and Trust obligations will reside within Corporate and Committee Services.

In order to provide sufficient time for Corporate and Committee Services to perform the QA check, FOI Leads must provide information within **10 working** days of their receipt.

### 3.4 Charging for requests under the general right of access

National guidelines on the charges Trusts are entitled to make have been issued.<sup>1</sup> The Trust will endeavour to provide information freely or at minimum cost.

Where a fee is to be charged for locating the information, the applicant will be informed of this and given 3 months to pay the required fee, at which point the request will be closed if payment has not been received. The 20-working-day timescale for provision of the information begins from the date that payment is received. Where disbursements are to be charged (eg covering the cost of photocopying, postage and packaging etc), the applicant will be informed and payment sought in advance of issuing the information. These costs can usually only be calculated once the information has been gathered.

The schedule for fees and disbursements is documented in **Appendix B**.

### 3.5 Refusing a request

Information requested may be subject to certain exemptions under the FoI Act, which will affect whether it can be released to the applicant (either in total or in part). The grounds for refusing to disclose information under the Environmental Information Regulations 2004 are known as **exceptions**. The exemptions and exceptions are listed in **Appendix A**.

There are 2 classes of exemptions: “**absolute**” and “**qualified** (or non-absolute/conditional)”. Qualified exemptions are also subdivided into those which are either ‘prejudice based’ (disclosure would or would be likely to cause harm) or ‘class based’ (the information is of the type which is exempt). Whenever a qualified exemption is used, as a further step the “public interest test” must then **also** be applied in deciding whether to disclose the information (see section 3.6 below). Further guidance on prejudice and class based exemptions is available on the ICO website <https://ico.org.uk>

If the information requested is covered by an absolute exemption (such as ‘personal information’), then the public interest test does not need to be applied. In addition to the exemptions, requests can be refused on other grounds which are also mentioned in section 3.5.1 below.

#### 3.5.1 A request for information may be refused if:

- the information is exempt under Part II of the Act (which sets out the various exemptions). See **Appendix A** for a list of exemptions;
- a fees notice or charge has not been paid within the 3 months time period (see section 3.4 above);
- the cost of compliance exceeds the FOI Act section 12 “appropriate limit” of £450 (18 hours at £25 per hour) for non-Government Department public authorities [see **appendix B**]. If using section 12, the Trust’s response must offer the requester the opportunity to refine their request;
- the request can be demonstrated to be vexatious or repeated.

The applicant will be informed in writing of the decision within 20 working days of the request and will be told the following :

- the exemption(s) applied;

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<sup>1</sup> [Following Statutory Instruments 2004 No. 3244](#) ,



- the justification for the use of the exemption/s (if the exemption is a qualified one, the response must also cover the consideration of the public interest test);
- details of the Trust's complaints procedure if they are not satisfied with the Trust's response;
- details of the right to appeal to the Information Commissioner.

### 3.5.2 The 'duty to confirm or deny' in cases when the information being requested is itself exempt from disclosure

In certain circumstances, **the Trust may also be exempt from the duty to confirm or deny** (that is, the duty to tell the applicant whether or not the Trust actually holds the information. This applies where confirming or denying that information is held would in itself serve to reveal the actual exempt information being requested). In such cases, the applicant will be informed within 20 working days of the following:-

- the fact that the Trust is exempt from the duty to confirm or deny (eg issuing a 'neither confirm or deny' response);
- specify the exemption in question;
- state why the exemption applies (unless it is already clear).

ICO guidance on when to refuse to confirm or deny information is held can be found at: [https://ico.org.uk/media/1166/when\\_to\\_refuse\\_to\\_confirm\\_or\\_deny\\_section\\_1\\_foia.pdf](https://ico.org.uk/media/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf)

## 3.6 Qualified Exemptions and the Public Interest Test

If the information is covered by a qualified exemption the Trust will apply the public interest test when considering disclosure. Decisions on the public interest test will be taken by the **Assistant Director – Head of Legal Services**.

### 3.6.1 What is the Public Interest Test ?

The Information Commissioner states that "In effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information." See also appendix A.

**The public interest will vary with each request and the exemption being considered.** It may often include ensuring honesty, accountability, transparent decision making and the absence of bias. The Trust will consider the public interest on a case by case basis. It may involve seeking advice from relevant professionals as necessary. The public interest test does not include protecting an authority or individual from embarrassment. There is no exemption under the Freedom of Information Act 2000 for embarrassment.

## 3.7 Timescales for Considering Exemptions

It is acknowledged that it can take more than 20 working days to reach a decision as to whether all or some of the information is exempt, if the public interest has to be considered. As a result the Trust will inform the applicant of this delay and give a reasonable estimate of the date by which a decision is expected. Where environmental information has been requested, this will be provided under the EIRs rather than FoI, although the process for sourcing and disclosing that information will be the same.

### 3.8 Transferring a request

If the Trust believes that some or all of the information requested is held by another public authority, the Trust will consider the most helpful way of assisting the applicant with the 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 the applicant with contact details for that authority.

However, in some cases the Trust may consider it to be more appropriate to transfer the request directly to another Authority in respect of the information not held by the Trust. In such cases, the Trust will contact the other Authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information.

Before transferring a request for information to another authority, the Trust will consider whether the applicant is likely to have any grounds to object to the transfer. If the Trust reasonably concludes that the applicant is not likely to object, the Trust may transfer the request without going back to the applicant, but will inform the applicant it has done so.

If the Trust considers the applicant is likely to object to a transfer, the Trust will seek consent before doing so.

If a transfer takes place, the receiving Authority is then responsible for replying to the applicant and has 20 days to respond the request.

### 3.9 Consultation with third parties – Information held (but not generated) by the Trust

The Trust is mindful of its relationship with its contractors and suppliers and will consult with them **if:-**

- the views of the third party may assist in determining if an exemption to the Act applies, or
- the views of the third party may assist the Trust in determining where the public interest lies where the disclosure of information is subject to the public interest test.

Examples of such information could include reports from Royal Colleges.

Consultation is **unnecessary** where:-

- the views of the third party can have no effect on the Trust's decision to disclose;
- no exemption applies and the information **must** therefore be provided.

**The Trust will endeavour to work with third parties where information may be disclosed, but the decision to withhold or disclose information ultimately lies with the Trust.**

### 3.10 Personal Information

- Personal data is ***information about a living individual from which that individual can be identified.***

The personal data of deceased patients is protected by the common law duty of confidentiality.

### 3.10.1 Data Protection Issues

- If the person requesting the information is the **subject** of the information, then it is absolutely exempt under section 40(1) of the Freedom of Information Act 2000, and the request should therefore be refused under FOI and processed instead as a subject access request via the Privacy Unit.

Subject access requests for health records are processed by the Access to Health Records Department, who also process requests for access to records of deceased patients.

Subject access requests for personnel information are dealt with through People Services.

- If the personal data is about **someone other than the applicant**, it is handled through the FOI route. **There is an absolute exemption if disclosure would breach any of the Data Protection principles.** In these cases, the subject also has the right to object to the disclosure.

### 3.11. Public Sector Contracts – Confidentiality Issues

The Trust should not hold information marked as ‘in confidence’ which is not truly confidential in nature. **The ‘confidential information’ exemption under the FOI Act (section 41) only applies if the release of such information constitutes a breach of confidence actionable in a court of law.**

Contractors may put pressure on the Trust to accept confidentiality clauses covering information about the terms of the contract, its value and performance. Where it is necessary to include a non-disclosure provision in a contract (exceptional circumstances only) an option could be to agree a schedule with the contractor that clearly identifies the information that should not be disclosed. The Trust would have to be aware that any restrictions on disclosure in such a schedule could be overridden by the obligations of the FOI Act.

When entering into contracts the Trust will limit the contractual terms which are intended to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. The Trust cannot ‘contract out’ its obligations under the Act. The Lord Chancellor’s Codes of Practice state that “unless an exemption provided for under the Act is applicable in relation to any particular information, a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract”.

### 3.12 Duty to Advise and Assist Requesters

Under section 16 of the Freedom of Information Act 2000, public authorities are required to ensure that they “advise and assist” requesters when responding to their requests.

## 4. Complaints

The Trust has established a complaints handling system for FOI requests which is outside the usual NHS complaints procedure.

See the Freedom of Information and Environmental Information Regulations Complaints Procedure (hyperlinked at appendix C of this procedure).

## 5. Records Management

Good records management is key to complying with this Act, and also enables the Trust to deal with requests in an efficient and accurate manner.

## 6. Environmental Information Regulations (EIRs)

The new Regulations became effective on 1 January 2005. The revised Regulations are in harmony with FoI and fall in line with EC Directive 2003/4/EC.

The Trust aims to process requests for information under EIR and FoI in as similar a manner as possible. **The main differences between EIR and FoI are highlighted as follows:-**

- requests for environmental information need not be in writing;
- the information held by public bodies includes holding information held on behalf of another person;
- the duty to provide advice and assistance requires a public authority to respond within 20 working days when requesting more particulars from the applicant;
- the time limits for responding to a request apply to all requests including those involving consideration of the public interest test. EIR Regulation 7 allows for an extension from 20 to 40 working days for complex and high volume request;
- there is no specified 'appropriate limit' in place for EIR requests. Public authorities are required to ensure that any charges put in place are "reasonable" and **within UHL, the FOI 18-hour (£450) 'appropriate limit' is therefore also used for EIR requests;**
- the grounds for withholding information differ. **Exemptions under the EIRs are called 'exceptions' and as they are all conditional (or 'qualified/non-absolute'), are all subject to the public interest test.** A list of EIR exceptions is shown within appendix A;
- the requirement for public authorities to have a complaints and reconsideration procedure to deal with representations alleging non-compliance with the EIR is mandatory.

## ***Appendix A – FOI Exemptions and EIR Exceptions***

### **A1 Freedom of Information Act 2000**

#### **A1.1 Class based exemptions**

There are two types of class exemption:

- (a) those which are **absolute\*** and do not therefore require the public interest test to be taken
- (b) those which are **qualified** and which therefore require the public authority to decide whether it is in the balance of public interest to not disclose information.

\* all absolute exemptions are class based

With the exception of s21 (information available by other means) absolute exemptions apply not only to the communication of information but also to the duty to confirm or deny, **if that itself would disclose information that it is reasonable to withhold** (see section 3.5.2 above).

#### **A1.2 Prejudice based exemptions**

Some FOI exemptions are 'prejudice based'. This means that to engage those exemptions, there must be a likelihood that disclosure would cause prejudice (or 'harm') to the interest protected by the exemption.

Further information on engaging prejudice based exemptions is available from the Information Commissioner's Office at:

[https://ico.org.uk/media/fororganisations/documents/1214/the\\_prejudice\\_test.pdf](https://ico.org.uk/media/fororganisations/documents/1214/the_prejudice_test.pdf)

#### **A1.3 list of Qualified exemptions (which therefore require the public interest test also to be taken)**

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

## **A1.4 The Public Interest Test**

The public interest must be considered in every case where a non-absolute exemption applies. The Information Commissioner states that “In effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.” The public interest will vary with each request and the exemption being considered. It may often include ensuring honesty, accountability, transparent decision making and the absence of bias. The Trust will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary. The public interest does not include protecting an authority or individual from embarrassment. There is no exemption under the Freedom of Information Act 2000 for embarrassment.

## **A1.5 Absolute exemptions (no requirement therefore to take the public interest test)**

- section 21, Information accessible to applicant by other means
- section 23, Information supplied by, or relating to, bodies dealing with security matters.
- section 32, Court Records
- section 34, Parliamentary Privilege
- section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- section 41, Information provided in confidence
- section 44, Prohibitions on disclosure

## **A2 Environmental Information Regulations 2004**

The following **exceptions** exist in the Environmental Information Regulations, **all of which are subject to the public interest test.** (Part 3 of the Regulations)

A public authority may refuse to disclose information to the extent that its disclosure would adversely affect:-

- international relations, defence, national security or public safety;
- the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- intellectual property rights;
- the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- the interests of the person who provided the information where that person:

- i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
- ii) did not supply it in circumstances such that they or any other public authority is entitled apart from these Regulations to disclose it, and
- iii) has not consented to its disclosure; or

- the protection of the environment to which the information relates.

**NB: where information requested relates to emissions, there is no exemption from disclosure.**

Authorities will not disclose personal data if that disclosure would

- i) contravene any of the data protection principles or
- ii) would cause an individual “damage or distress” (subject to the public interest test).

## Appendix B - Fees

### Freedom of Information Act (Fol) and Environmental Information Regulations (EIR) – Fees Procedure for UHL

#### 1. **Introduction**

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>2</sup> have been agreed by Parliament.

These Fees Regulations lay down the **costs** (regulation 4) and **disbursements** (regulation 6) which may be charged by public authorities when responding to Fol requests.

The Fees Regulations also confirm that if the **costs** of complying with a request amounts to more than £450\* (for NHS Trusts), then it is deemed to have exceeded the 'appropriate limit' for complying. Trusts can then take a view on whether or not to provide the requested information.

*\*this figure does not include any disbursements – it is just the costs incurred (see below for definition).*

#### 2. **Costs**

These relate to the **staff time** incurred in:-

- Determining if the Trust holds the information requested;
- Locating the information;
- Retrieving the information;
- Extracting the information from a document (if necessary).

Within the Fees Regulations, the staff time is estimated at £25 per person per hour (ie 18 hours of effort before reaching the £450 limit).

**NB:** Trusts **cannot** charge for staff time in determining whether the Trust is obliged to disclose the information.

**See section 4 below for the Trust's approach to charging once the appropriate limit has been reached.**

#### 3. **Disbursements**

The Trust is obliged to draw up a schedule of disbursement fees (Regulation 6(1)).

These are the fees for:-

- Informing the applicant if the Trust holds the information
- Providing that information to the applicant, taking into account
  - Photocopying;
  - Providing the information in the format required by the applicant (e.g. transferring information to CD);
  - Producing a summary or digest (if acceptable to the applicant);
  - postage and packaging etc.

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<sup>2</sup> Statutory Instruments 2004 No. 3244



The Trust **can** charge for disbursements irrespective of whether the costs **fall below or exceed** the £450 limit. The proposal for UHL is as detailed below:-

UHL will:-

- make a **charge of 10p per sheet** for the provision of **more than 50 pages** of paper and **charge the cost of postage and packaging**;
- make a flat-rate **charge of £5 for copying and despatch of information onto a CD**;
- **make no charge** where the disbursements are less than £5.

The acknowledgement letter sent to FoI requesters will refer to the fact that charges may be made.

Income from any costs and/or disbursements will be credited to the specific Corporate Directorates/CMGs incurring those costs.

The question then arises whether the Trust pursues charges for disbursements which have been raised. The applicant may not be aware of the scale of the charges which have been incurred, and may choose not to pay them. It would be difficult to chase fees when the service has been provided. Chasing fees also has an administrative cost.

It is proposed that:-

- there will be no charge where disbursement charges total **less than £5** (see above);
- for all disbursement charges **above £5**, reimbursement will be sought from the applicant **in advance of sending the information**. The information will then be sent following the Trust's receipt of the disbursement fee.

#### 4. ***Appropriate limits***

Within the Fees Regulations, if the **costs** of complying with a request are estimated to be over £450 (excluding disbursements), they are deemed to exceed the "appropriate limit" for compliance, and the Trust does **not therefore have to process that particular application**. Issues to be taken into account when calculating the costs of compliance are detailed in paragraph 2.

However, even if this "appropriate limit" of £450 has been reached, the Trust **can choose** to process the application and also to charge for the cost of doing so. This may apply to particularly sensitive/political requests, for example. The total charge in these cases will be the sum of the number of hours of **costs** (at £25 per hour) + **disbursements**. Although there is no 'ceiling' on this charge (if the Trust is prepared to process the request and the applicant is prepared to pay the fee), the fee charged should not exceed the total of:-

- the staff costs involved in determining whether the information is held, locating, retrieving and extracting the information, and
- the disbursements and any staff costs involved in informing the applicant that the information is held and in communicating the information to the applicant.

Where the cost of finding the requested information exceeds the "appropriate limit" of £450, UHL will consider:-

- (a) whether to process the application even though that limit has been reached, and

- (b) whether to charge the requester for the information sought, using the fee mechanism above. Any charges will also include disbursement costs (over £5) where applicable.

Should an applicant wish to proceed on this basis, the 20-day response time is halted until the fee has been received.

***The Trust cannot profit on processing applications deemed to be over the appropriate limit.***

5. ***Aggregation of related requests***

The Fees Regulations allow that where two or more requests are received from one person (or from different people who appear to be part of a campaign) for similar information within sixty consecutive working days of each other, the costs of responding to them can be aggregated to determine the appropriate limit.

Where a legitimate request for information has already been answered within the last 60 days and the Trust does not have to search for the information again, the applicant will only be charged disbursements.

Where a request for information exceeds the 'appropriate limit' of £450, aggregation will prevent multiple requests for similar information being used to circumvent the appropriate limit.

6. ***Environmental Information Regulations - Fees***

For EIR requests there is no 'upper ceiling' above which the Trust will not have to provide the information (see section 4 above). The guidance states that except in specific limited circumstances, all EIR requests must therefore be dealt with, and that charges must be reasonable.

**It is proposed therefore that the same arrangements for EIR costs and disbursements be applied as for FOI requests** (see paragraphs 2 and 3 above).

7. ***Publication Scheme***

It is proposed that:-

The disbursement charges outlined above (paragraph (3)) will also be adopted for information which is provided through UHL's Publication Scheme.

## ***Appendix C – FOI and EIR Complaints Procedure***

All public authorities are required to have a complaints process in respect of FOI/EIR requests, and to make the requester aware of this complaints process when responding to the request.

The Trust's FOI/EIR complaints process is available on UHL's external public website at:

**<http://www.leicestershospitals.nhs.uk/aboutus/freedom-of-information/making-complaints>**