**Freedom of Information (including Environment Information Regulations Requests)**

**Policy**

**Document Control:**

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1. **Introduction**
	1. **The Freedom of Information Act**
		1. The Freedom of Information Act 2000 (the Act) provides public access to information held by public authorities. The aim of the Act is to create greater openness, transparency and accountability through access to information. It does this in two ways:
* Public authorities are obliged to publish certain information about their activities; and
* Members of the public are entitled to request information from public authorities
	+ 1. The Act came into force on 1 January 2005 and sets out the basic rights of an individual to request and receive information held by public authorities, including the NHS. The public is entitled to be informed in writing whether requested information is held (duty to confirm or deny) and, if so, to have the information communicated to them unless an exemption to withhold the information applies – see ***Appendix A***
		2. Two fundamental principles underly the Act promote its democratic purpose:
* the presumption in favour of disclosure; and
* the applicant/motive blind principle.
	+ 1. The practical result of these principles is that:
* people have a right to know about the activities of public authorities, unless there is a good reason for them not to.
* requesters do not have to justify their request or explain why they want

the information; all requests should be treated equally.

* disclosure is not just to the requester but to the wider world; public authorities should therefore consider the impact of disclosure based on the assumption that it is entering the public domain forever and for anyone to access.
	+ 1. FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. There is no duty under the Act to create new information for the purpose of answering a request, but in some cases the manipulation of data may be required. Where a degree of skill or judgment needs to be applied to existing data, then it may not be ‘held’ under the Act. The Act does not oblige public authorities to retain information which is no longer useful to the authority.
		2. The Information Commissioner’s Office (ICO) is an independent public authority which upholds Information Rights in the UK. Compliance is monitored and enforced by the ICO who has the powers to serve information and enforcement notices and initiate court proceedings to ensure compliance.
	1. **Environmental Information Regulations**
		1. The Environmental Information Regulations 2004 were originally derived from European law and came into effect on 1 January 2005.
		2. The Environmental Information Regulations 2004 (the Regulations) makes provision for the dissemination of environmental information by public authorities and for public authorities to make available environmental information in response to a request
		3. Environmental information includes any information in written, aural, electronic or any other material form about:
* the state of the elements of the environment, such as air, water, soil and land;
* factors such as substances, energy, noise, radiation or waste (including radioactive waste), emissions, discharges and other releases into the environment
* measures such as policies, legislation, plans, programmes, environmental agreements and activities likely to affect environmental elements or activities designed to protect those elements;
* cost benefit and other economic analyses and assumptions used in environmental decision-making activities; and
* the state of human health and safety, including the contamination of the food chain and conditions of human life in as much as they may be affected by the elements of the environment.
	+ 1. Unlike the Freedom of Information Act, the Environmental Information Regulations list a series of ‘exceptions’, rather than exemptions, where information may be refused. There is one ‘absolute’ exception and this applies to personal information, which means that the requested information does not need to be disclosed in any circumstances.
		2. When a request covers information that is environmental and some which is not, it may be necessary to apply both regimes to the request. Where the requirements of Environmental Information Regulations differ to that of the Freedom of Information Act, these are highlighted under the relevant sections of this policy.
		3. Similar to the FOI Act, the EIR is overseen by the Information Commissioner who has the ability to monitor organisational compliance, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.
1. **Purpose**
	1. The purpose of this policy is to set out the Practice’s legal obligation to comply with the Environmental Information Regulations 2004 and Freedom of Information Act 2000, in providing access to the public, service users, staff, journalists and anybody else who wishes to see the Practices information.
2. **Scope**
	1. This document applies to those members of staff that are directly employed by the Practice and for whom the Practice has legal responsibility, as well as any processors/contractors/sub-contractors/third parties processing Practice data or accessing systems, or anyone authorised to undertake work on behalf of the Practice. For those staff covered by a letter of authority/honorary contract or work experience, the organisation’s policies are also applicable whilst undertaking duties for or on behalf of the Practice.

# **Responsibilities**

* 1. **Senior Information Risk Owner**
		1. The SIRO is accountable for information risk within the Practice. The Practice’s SIRO is Deepa Gnanasundaram, the Practice Manager.
	2. **Caldicott Guardian**
		1. The Caldicott Guardian has responsibility for overseeing the implementation of the laws that govern personal information and ensuring that good practice in relation to access and reuse is implemented within the Practice.
		2. The Caldicott Guardian is the Practice champion in respect of the Caldicott Principles and as such is obligated to always make Caldicott decisions in the best interests of the patient. The Practice’s Caldicott Guardian is Deepa Gnanasundaram, the Practice Manager.
	3. **Data Protection Officer**
		1. The Data Protection Officer (DPO) has responsibility for informing and advising and monitoring compliance with data protection principles. The DPO for the Practice is held by the NHS Informatics Merseyside Data Protection Officer as a Service.

DPO: Head of Information Governance, NHS Informatics Merseyside, Information Governance Team, Hollins Park, Winwick, Warrington, WA2 8WA.

* + 1. The DPO will:
* Provide advice to the Practice and its employees on compliance obligations with data protection law
* Advise on when data protection impact assessments are required
* Monitor compliance with data protection law and organisational policies in relation to data protection law
* Co-operate with, and be the first point of contact for the Information Commissioner
* Be the first point of contact within the organisation for all data protection matters
* Be available to be contacted directly by data subjects
* Take into account information risk when performing the above
	1. **All Staff**
		1. It is the responsibility of all staff to:
* Adhere to this policy
* To know where to access further support
* Complete annual Data Security Awareness mandatory training
1. **Definitions**
	1. ‘**The Act/FOIA’**

Freedom of Information Act 2000.

* 1. **Applicant (or Requester)**

The individual(s), group or organisation requesting access to information under the FOIA or EIR.

* 1. **Data Protection Act 2018 (DPA 2018)**

The Data Protection Act 2018 is an Act of Parliament which updates data protection laws in the UK. It is a national law which complements the UK General Data Protection Regulation (GDPR) and replaces the Data Protection Act 1998.

* 1. **Data Protection Principles**

The Data Protection Act 2018 and the UK General Data Protection Regulation set out seven key principles that should lie at the heart of our approach to processing personal data.

* 1. **Duty to confirm or deny**

The FOIA and EIR require a public authority to inform a requester whether it holds the information specified in the request - this is known as 'the duty to confirm or deny'.

* 1. **Environmental Information Regulations 2004 (EIR)**

The legislation that provides a statutory right of access to environmental information held by public authorities.

* 1. **Exceptions**

Similar to FOIA exemptions, the Environmental Information Regulations have 14 exceptions that prevent the disclosure of information.

* 1. **Exemptions**

Under the FOIA some information held by the Practice does not need to be provided to an applicant because one or more of 23 exemptions outlined in the Act apply.

* 1. **Information**

In the context of FOI and EIR, information is defined as each item of material held by the Practice in paper or electronic form and includes documents, computer files, letters, emails, photographs, notes and sound or video recordings.

* 1. **Information Commissioner’s Office (ICO)**

The Information Commissioner oversees and enforces the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the UK General Data Protection Regulation and Data Protection Act 2018.

* 1. **Publication Scheme**

A document from the Information Commissioner’s Office specifying the 7 classes of information that public bodies are expected to routinely make available to the public.

* 1. **Personal Data**

Personal Data is any information relating to an identifiable person who can be directly or indirectly identified:

* Key identifiable information includes:
* Person’s name, address, full post code, date of birth;
* Pictures, photographs, videos, audio-tapes or other images of a person;
* NHS number and local patient identifiable codes;
* Anything else that may be used to identify a person directly or indirectly e.g. rare diseases, drug treatments or statistical analyses which have very small numbers within a small population may allow individuals to be identified.
	1. **Public Authority**

 Authorities with a public function, such as the Practice.

* 1. **Public Interest Test (PIT)**

A test used to determine whether disclosure of information is in the greater public interest. The test must be carried out where the Practice is considering applying a ‘qualified’ exemption under the FOIA or exceptions under the EIR.

* 1. **Special Category Data**

Data held about an individual which contains both personal and sensitive information. Information categories detailed in the UK General Data Protection Regulations that are deemed as special categories of personal data:

* Racial or ethnic origin;
* Religious or philosophical beliefs;
* Political opinions;
* Trade union membership;
* Genetic data (for the purpose of uniquely identifying a person) ;
* Biometric data (for the purpose of uniquely identifying a person);
* Physical or mental health;
* Sexual life/sexual orientation
1. **Laws & Regulations**
	1. This Freedom of Information Policy will ensure that the Practice complies with all relevant laws, legislation and regulation. This will include (but is not limited to):
* [Data Protection Act 2018](https://www.gov.uk/data-protection)
* [UK General Data Protection Regulations (UK GDPR)](https://www.legislation.gov.uk/eur/2016/679)
* [Freedom of Information Act 2000](https://www.legislation.gov.uk/ukpga/2000/36/contents)
* [Health & Social Care Act 2012](https://www.legislation.gov.uk/ukpga/2012/7/contents)
* [Common Law Duty of Confidentiality](https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/a-guide-to-confidentiality-in-health-and-social-care/hscic-guide-to-confidentiality-references/section-2)
* [Confidentiality: NHS Code of Practice](https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice)
* [Records Management Code of Practice for Health and Social Care 2021](https://transform.england.nhs.uk/media/documents/NHSX_Records_Management_CoP_V7.pdf)
1. **Publication Scheme**
	1. The Freedom of Information Act Section 19 makes it a duty for every public authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner. It is also a duty to publish information detailed in the scheme and to review the scheme from time to time.
	2. Information that the Practice publishes as part of its publication scheme and website will be the list of information available for re-use. Any published document can be re-used without charge, provided the Practice quoted as the source and retains copyright where appropriate. This will be noted on the publication scheme.
	3. The scheme must specify the classes of information, the manner of publication and whether the material will be provided free of charge or on payment.
	4. The general headings of the scheme are as follows:
* Who we are and what we do
* What we spend and how we spend it
* What our priorities are and how are we doing
* How we make decisions
* Our policies and procedures
* Lists and registers
* The services we offer

The publication scheme of the practice can be found on its website:

* 1. The Practice Manager is responsible for ensuring the review of the scheme on at least an annual basis, seeking revised approval from the Information Commissioner’s Office if classes are added or deleted from the scheme. The Publication Scheme will also state what sort of information is regarded as exempt, outlining the nature of the exemption applied.
	2. The Practice will publish FOI request responses on its website.

[**https://www.langbankmc.nhs.uk/**](https://www.langbankmc.nhs.uk/)

1. **Managing Requests for Information**

The Practice Manager/Senior Partner will ensure that the Practice has a full and efficient process for responding to requests received. This will include awareness for all staff of how the Practice will manage a request.

## Defining a Valid FOI Request

* + 1. As defined in Section 8 of the FOI Act, to meet all the requirements of a valid FOI request, a request must:
* be received in writing
* contain the name and correspondence address for the applicant
* include sufficient information to enable the Practice to identify the information
* requested.
* be received in a legible form
* be capable of being used for subsequent reference
	+ 1. The term “in writing” covers requests submitted by letter and electronic form, including those sent via social media (e.g., Twitter). The request does not have to make a direct reference to the Act or be the sole or main theme of the requester’s correspondence.
		2. When determining whether or not a name and/or address is valid, where a requesters name is an obvious pseudonym or only includes a part of their real name then the request will only be valid if their real name is visible elsewhere in the body of the request.
		3. The Practice, under Section 16 of the Act, is under a duty to provide advice and assistance to members of the public making a request and will take all reasonable steps to advise anyone whose request does not fulfil the above criteria about what is required by the Practice to progress their request. The timing for response does not commence until the Practice has sufficient detail to consider its response. Any communications to clarify a request will be undertaken without unnecessary delay.
		4. Any requester whose request has been refused will be informed of this decision within twenty working days and be informed that they may request an internal review of the decision.

## Request Log

* + 1. All FOI requests received into the Practice will be logged and monitored via a request log.

## Repeat Requests

* + 1. Under section 14(2) of the Act, the Practice does not have to comply with a request which is identical or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between the requests. The reasonable period is dependent on whether the information caught within the scope of the request has substantially changed since the information was provided previously. When responding in this manner the Practice will offer assistance to the individual by indicating why they consider the request is a ‘repeat’ under Section 14 of the Freedom of Information Act. They will also indicate what recourse the applicant has if they are unhappy with this position.

## Time Limits for Compliance with Requests

* + 1. The Practice has procedures in place to ensure that it complies with the duty to respond to requests within the statutory timeframe of twenty working days from a valid request being received. The time limit applies where the Practice refuses a request if repeated or if it exceeds the appropriate limits for costs of compliance. In most circumstances the 20 working day, time limit applies where the Practice has applied an exemption.
		2. Section 10(3) of the Act enables an authority to extend the 20 working day limit up to a ‘reasonable’ time where:
* It requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; or
* It needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held
	+ 1. The extension will therefore only apply to requests where the Practice considers a ‘qualified exemption’. The Act does not define a ‘reasonable’ time, however the Information Commissioners Office view is that the authority should not exceed an additional 20 working days meaning that the request should not exceed 40 working days. In any case, the Practice will provide a written response within 20 days to explain the extension and which exemptions the public interest test is being applied to.

## Fees for Providing Information and Charges for Re-Use

* + 1. The Practice is able to charge a fee for dealing with a request, in line with the 'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004’.
		2. In line with these regulations, when determining whether the cost of the work to respond is estimated to be less than £450, the Practice is not able to charge a fee. Where the cost exceeds this amount, the Practice will correspond with the applicant either to reduce the requirement (and therefore cost) below the threshold or to agree a fee. If an agreement cannot be reached the Practice may exempt the requested information from disclosure.

## Information Provided by Other Organisations

* + 1. In deciding whether to disclose information provided by another organisation that is held by the Practice in response to a request, the Practice will apply the same process with regard to exemptions and will if required involve staff from the source organisation in discussion about possible exemptions. If the response to a request is that the Practice does not hold any relevant information, then the Practice will endeavour to direct the applicant to organisations who may hold the information they seek.

## Redaction of Information

* + 1. Redaction is carried out in order to exempt specific information from a document so that it can be released without an exemption being applied. This is achieved by blocking out individual words, sentences, or paragraphs or by removing whole pages or sections prior to the release of the document. If the document is deemed unreadable following redaction, then the document should be withheld.
		2. When responding to the requester with a redacted response, the response will state which exemption the information has been redacted under.

## Exemptions

* + 1. Whilst the FOI Act provides for the right of access to information held, it also affords a number of exemptions from this right in order to permit public authorities to withhold some or all of the information requested where justifiable.
		2. The exemptions (***see Appendix A***) fall into two categories:
* those that are ‘absolute’ where the Practice may withhold the information without considering any public interest arguments, and
* those that are ‘qualified’ i.e., that, although an exemption may apply to the information, it will nevertheless have to be disclosed (unless the public interest in withholding it is greater than the public interest in releasing it)
	+ 1. In respect of the absolute exemptions, the Practice does not have to confirm or deny that it holds the information if, to do so, would in itself provide exempt information.
		2. The ‘public interest test’ requires that the information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing it.

## Internal Review

* + 1. Requesters may ask the Practice to conduct an Internal Review of its handling of FOI requests and/or the response received. The Internal Review process will be enacted when a requester communicates in writing that they are unhappy with a response or the way the Practice has handled the request. The communication does not need to mention internal review or complaint. The Internal Review process is outlined in ***Appendix B*** of this policy.
		2. The Practice will conduct Internal Reviews within 20 working days or 40 working days where a review is shown to be particularly complex.
		3. Requesters who are not satisfied with the outcome of the internal review may ask the Information Commissioners Office (ICO) to review how the Practice has performed in response to the request. Should the Practice receive any notices served by the Information Commissioner it will make all endeavours to comply unless it feels the need to appeal to the Information Rights Tribunal.
1. **Review of the Policy**
	1. This policy will be reviewed every 12 months.

**Appendix A**

**Information Exempt from Disclosure under the**

**Freedom of Information Act**

There are a number of exemptions under the Freedom of Information Act, some of which are absolute exemptions and others which are subject to a public interest test. The exemptions are:

|  |  |  |
| --- | --- | --- |
| **Exemption** | **Description** | **Absolute or Qualified** |
| **Section 21**  | Information accessible to applicant by other means | Absolute |
| **Section 22**  | Information intended for future publication and research information | Qualified |
| **Section 23** | Information supplied by, or relating to, bodies dealing with security matters | Absolute |
| **Section 24** | National security | Qualified |
| **Section 26**  | Defence | Qualified |
| **Section 27**  | International relations | Qualified |
| **Section 28**  | Relations within the United Kingdom | Qualified |
| **Section 29**  | The economy | Qualified |
| **Section 30**  | Investigations and proceedings conducted by public authorities | Qualified |
| **Section 31**  | Law enforcement | Qualified |
| **Section 32**  | Court records, etc. | Absolute |
| **Section 33**  | Audit functions | Qualified |
| **Section 34**  | Parliamentary privilege | Absolute |
| **Section 35**  | Formulation of government policy, etc. | Qualified |
| **Section 36**  | Prejudice to effective conduct of public affairs | Qualified |
| **Section 37**  | Communications with Her Majesty etc. and honours | Qualified |
| **Section 38**  | Health and safety | Qualified |
| **Section 39**  | Environmental information | Qualified |
| **Section 40**  | Personal information | Absolute |
| **Section 41** | Information provided in confidence | Absolute |
| **Section 42**  | Legal professional privilege | Qualified |
| **Section 43**  | Commercial interests | Qualified |
| **Section 44**  | Prohibitions on disclosure | Absolute |

In addition, there are several sections of the Freedom of Information Act that are a bar to compliance, such as **Section 12** (where cost of compliance exceeds the appropriate limit) and **Section 14** (vexatious or repeated requests).

**Appendix B**

**Internal Review Process**

In this procedure, ‘complaint’ refers to an expression of dissatisfaction with Langbank Medical Centre’s compliance with the above legislation, or a request for an internal review which seeks to challenge the request handling process or the outcome of a request to access recorded information held by the Practice.

A review can be requested in the following circumstances:

|  |  |
| --- | --- |
| **Complaint about the way a request handled has been handled** | * Failure to respond within permitted time limits (up to 20 working days) or to explain why longer than 20 working days was required.
* Failure to provide proper advice and assistance
* Failure to provide information in the requested format
* Failure to explain whether or not we hold the information requested.
* Failure to properly explain reasons for refusing the request or correctly apply an exemption under the Act or an exception under the Regulations i.e. we refused to disclose information for the wrong reason
* If the requester disagrees with the Practices interpretation of the request.
 |
| **A request for an internal review about the following decisions** | * Refusing access to information, withholding some, or all, of the information requested
* Charging a fee for providing information.
 |

* All complaints will be acknowledged promptly, usually within 2 working days of receipt
* The acknowledgment letter will confirm a target date for a response
* Requests for reviews of responses to, or the handling of EIR requests will be dealt with as soon as possible, and in any event, within 40 working days of receipt, in accordance with the Information Commissioner’s guidance
* Requests for reviews of responses to, or the handling of, FOI requests will be dealt with within 20 working days of receipt
* If an internal review into an FOI request is complex, requires consultation with third parties or the relevant information is of a high volume, it may be necessary to extend the deadline for a response by up to a further 20 working days. An explanation for the delay, and a new deadline will be confirmed (which will not exceed a total of 40 working days).
* The review of responses to, or the handling of, requests will be dealt with in a fair and impartial manner. As such the review will be undertaken by a reviewing officer (the reviewer) who will assess the merits of the review request and who did not deal with the original request
* The reviewer will have an understanding of FOI and EIR legislation
* The reviewer will request copies of all material (documents, emails etc) connected with the processing of the request whether or not it was disclosed in the original response. Other staff may also be involved before reaching a decision
* The reviewer will make a fresh decision based on all available evidence at the date of your request. As part of this process, the reviewer may need to consult with the responding officer and the team(s) that provided the information originally
* The review panel will make a decision about the validity of any exemptions / exceptions applied. This includes decisions taken about where the public interest lies if a qualified exemption / exception was used or whether the Practice has complied with its statutory duties. The panel may also apply different or additional exemptions / exceptions.
* The reviewer will let the requester know, in writing, the outcome of the review, giving a full explanation

|  |  |
| --- | --- |
| **Possible Outcome** | **Action that will be taken**  |
| **Information that was previously withheld should be disclosed** | The information in question will be provided, usually at the same time as the review decision, or, if that is not possible, the requester will be informed how soon this will be provided |
| **Procedures have not properly followed by the Practice**  | * Complaint upheld and an apology will be offered.
* Appropriate steps will be taken to learn lessons and prevent similar errors occurring in future.
* Any recommendations to improve internal processes to prevent a future occurrence will be made to the Practice and / or the team holding the information
 |
| **The initial decision to withhold information is Upheld, or for this. otherwise, in the Practice’s favour** | The requester will be informed of the decision and the reasons for this |