



Document Number: IG15

## **FREEDOM OF INFORMATION ACT POLICY**



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<b>Document name:</b>	<i>Freedom of Information Policy</i>
<b>Document Classification:</b>	Corporate - Information Governance
<b>Document No:</b>	IG15
<b>Version:</b>	1.2
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<b>Policy Owner:</b>	Caldicott Guardian
<b>Date created</b>	Sep 2016
<b>Date ratified:</b>	Oct 2016
<b>Date reviewed</b>	June 2023
<b>Ratified by:</b>	Executive Board
<b>Responsible committee:</b>	IGSG
<b>Superseded policy (if applicable):</b>	
<b>Next review date:</b>	June 2025
<b>Target audience:</b>	Directors, Managers, Clinicians, Staff, public
<b>Date published:</b>	May 21

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## 1. Introduction

- 1.1 One Health Lewisham Ltd (OHL) acknowledges its responsibility to comply with the Freedom of Information (FOI) Act 2000 in respect of the services it offers under the NHS.
- 1.2 OHL supports the principle of openness. This is offset, however, by the recognition that individuals have a right to privacy and confidentiality: this policy does not overturn the common law duty of confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information will be dealt with under the provisions of the Data Protection Act 2018.

## 2. Purpose of policy

- 2.1 This policy outlines OHL's approach to dealing with requests for information about its NHS services. This includes information that is already publicly available and information that will be released only on request.
- 2.2 All information that has always routinely been given to patients as part of their normal care does not fall into this category and should still be given freely.

## 3. Roles and responsibilities

### The Board

- 3.1 The Board has overall responsibility to ensure that OHL complies with all relevant legislation and guidance in respect of FOI requests.
- 3.2 Responsibility for FOI issues is delegated to the IG Lead who will ensure that the Board is appraised as necessary and that issues decided at Board level are actioned appropriately.

### SIRO

- 3.3 The SIRO has overall responsibility for the implementation of this policy, monitoring and reviewing its effectiveness and will act as the OHL lead for the Freedom of Information Act.
- 3.4 Any advice or assistance regarding this policy or the Freedom of Information Act can be obtained from the Company Secretary.
- 3.5 The Company Secretary will decide when it is necessary to seek legal advice.

### Executive Directors

- 3.6 Executive directors are responsible for ensuring that this policy is disseminated and implemented within their area of responsibility.

### Line Managers

- 3.7 Line managers must ensure that this policy is followed by the members of staff they manage.

### All staff

- 3.8 All OHL employees are obliged to adhere to this policy. They must ensure they follow OHL procedures for responding to requests for information in a timely fashion to ensure compliance with the timescales laid down within the Act.

## 4. **Advice and assistance to applicants**

- 4.1 Under Section 16 of the Act OHL has a duty to provide advice and assistance to applicants and would-be applicants. OHL will do this taking into account other statutory duties, e.g. the Disability Discrimination Act 1995. Such issues will be explored at the point of contact with the applicant.

## 5. **Publication scheme**

- 5.1 In line with the requirements of the Act, OHL will produce a publication scheme giving details of information about the company which is publicly available.
- 5.2 The publication scheme will also be published on the OHL website and will be reviewed from time to time.
- 5.3 The documents available through the scheme will be the final, ratified versions only. Documents must not be published in draft format and information that is exempt from disclosure under the Act (see section 6) will not be published.

### **Classes of information**

- 5.4 In accordance with the requirements of the Information Commissioner, the publication scheme will include details of the following classes of information:
- Who we are and what we do
  - What our priorities are and how we are doing
  - The services we offer

### **Management of the publication scheme**

- 5.5 The Company Secretary is the formal contact point for the Information Commissioner and will manage the publication scheme.

## 6. **Refusing a request for information**

- 6.1 OHL may choose not to release information which is exempt from disclosure under the Act. See appendix 1 for the types of information this may include.
- 6.2 When choosing not to release exempt information, OHL will consider which of the two following categories this information falls under.
- An absolute exemption – OHL does not need to confirm or deny to the applicant that they hold the information.
  - A qualified exemption – OHL must consider the public interest before making a decision to publish or not. More time to consider the public interest can be taken in response times.
- 6.3 OHL will endeavour to ensure these exemptions are not misused.
- 6.4 Any decision to use the exemptions will be taken by the Company Secretary after consultation with other colleagues as appropriate. A written refusal notice will be issued by the Company Secretary and state which exemption is being applied; and what the requestor can do if they wish to appeal against the decision.

### **Public interest test**

- 6.5 The public interest must be considered in every case where a qualified exemption applies.
- 6.6 In accordance with guidance from the Information Commissioner's Office, OHL will consider "whether in any particular case it serves the interests of the public better to withhold or to disclose information."<sup>1</sup>
- 6.7 The public interest will vary with each request and the exemption being considered. OHL will consider the public interest on a case-by-case basis and seek advice from relevant professionals as necessary (this may include colleagues, solicitors and the Patients and Engagement Sub-committee).
- 6.8 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.

## 7. **Complaints**

- 7.1 Complaints about the handling of a request for information under the Act will be dealt with using the OHL complaints procedure.
- 7.2 If an applicant remains dissatisfied with the outcome of this process, they are entitled to complain to the Information Commissioner. In cases where, following an investigation, a complaint has been rejected, complainants will be given the details of the Office of the Information Commissioner and advised of their right to take their complaint to that office.

## 8. **Charges for supplying information**

- 8.1 OHL does not normally charge for providing information requested under the FOI & Data Protection Acts, although it may choose to do so if providing the information requested will incur cost to OHL or is likely to be particularly onerous.
- 8.2 A charge may be levied for information which takes several working hours to gather. Applications for information which seems likely to exceed 18 hours' work to obtain will be referred back to the applicant for discussion.
- 8.3 Under the provisions of the publication scheme, information asked for in a different format to that in which it has been originally published (eg a printed copy of information normally only available electronically) a charge will be made. This will be set out in the publication scheme.
- 8.4 Where the cost of supplying information under an FOI request is likely to exceed the 'appropriate limit' (ie to be excessive), OHL will refuse a request for information.
- 8.5 Under Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, the 'appropriate limit' has been set at 450.00.

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<sup>1</sup> *Freedom of Information Act Awareness Guidance No 3*, Information Commissioner's Office, April 2006

## 9. **Related Policies**

IG07 Records Management Policy

IG02 Information Governance Policy

IG03 Confidentiality & Data Protection Policy

IG06 Incident and Near Miss Events Policy

## Appendix 1: Information which is exempt from disclosure

A request for information under the Freedom of Information Act 2000 may be refused if:

- It would cost too much or take too much staff time to deal with the request.
- The request is vexatious.
- The request repeats a previous request from the same person.

There are also a number of exemptions to the information which must be disclosed. Those most likely to apply to OHL are:

- Information already reasonably accessible.
- Information intended for future publication.
- Information which may endanger anyone's physical or mental health or safety.
- Information covered under the Environmental Information Regulations 2004
- Personal information about the requester. This should be dealt with under the Data Protection Act 2018.
- Personal data about third parties. This should be dealt with under the Data Protection Act 2018. (*See note below*)
- Information which has been supplied to OHL in confidence by someone else.
- Information relating to trade secrets or which would prejudice commercial interests if released.
- Information which must not be disclosed by law

### Information about someone who has died

The Data Protection Act does not cover information about people who have died, so it cannot be used to refuse to give out information.

However, it may be appropriate to refuse to release the information under Section 41 (confidentiality). This is because the information would originally have been provided to OHL in confidence, and we consider this duty of confidentiality to extend beyond death.

However, some requesters may have rights that allow them personally to access the information. For instance, the Access to Health Records Act 1990 gives the personal representative of the deceased (eg the executor of their will) the right to access their medical records. Any such request should be dealt with under the Access to Health Records Act.

For more information see:

[http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information/guide/refusing\\_a\\_request.aspx](http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/refusing_a_request.aspx)