



London Ambulance Service **NHS**  
NHS Trust

**Freedom of Information and Environmental Information Regulations Policy**

## DOCUMENT PROFILE and CONTROL.

**Purpose of the document:** To set out the Trust's approach to the implementation of the FoI Act and the EIRs within the LAS.

**Sponsor Department:** Governance and Compliance

**Author/Reviewer:** Information Governance Manager. To be reviewed by May 2014.

**Document Status:** Final

<b>Amendment History</b>			
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12/03/2010	3.2	Records Manager	Reformatted
September 2009	3.1	Director of IM&T	
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**\*Version Control Note:** All documents in development are indicated by minor versions i.e. 0.1; 0.2 etc. The first version of a document to be approved for release is given major version 1.0. Upon review the first version of a revised document is given the designation 1.1, the second 1.2 etc. until the revised version is approved, whereupon it becomes version 2.0. The system continues in numerical order each time a document is reviewed and approved.

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<b>Ref. No.</b>	<b>Title</b>	<b>Version</b>
	Freedom of Information Act 2000.	
	Environmental Information Regulations 2004	

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	Data Protection Act 1998	
	Human Rights Act 1998	
TP / 009	Access to Health Records, Disclosure of Patient Information, Protection & Use of Patient Information.	
TP / 012	Data Protection Policy	
TP / 014	Procedure for Ambulance Observers	
TP / 017	Procedure for any Patient Identifiable Form Used, Generated or Stored.	

Document Status: This is a controlled record as are the document(s) to which it relates. Whilst all or any part of it may be printed, the electronic version maintained in P&P-File remains the controlled master copy. Any printed copies are not controlled nor substantive.

## 1. Introduction

This policy outlines the approach of the London Ambulance Service NHS Trust to comply with the Freedom of Information Act 2000 (Fol) and the Environmental Information Regulations 2004 (EIRs). The Fol Act and the EIRs were implemented in the UK in their entirety on 1st January 2005. It is legislation to make provision for the disclosure of information and all recorded data except personal information is covered by the Fol Act or the Environmental Information Regulations 2004. The main drivers for this information are the Government's commitment to greater openness, transparency and greater accountability in the manner in which Public Authorities conduct their affairs. It grants individuals, private or public organisations from anywhere in the world 'Rights of Access' to information held by Public Authorities.

All Public Authorities, with the exception of those deemed to be Security Bodies under the auspices of this law, must comply with this legislation. Everyone within the Trust has a legal obligation to assist an individual in making a request for information.

It is the intention of the Trust to act in accordance with the spirit as much as to adhere to its obligations under the legislation.

## 2. Scope

This document sets out the Trust's approach to the implementation of the Fol Act within the LAS. The legislation extends to all areas of operation of the Trust and affects all records generated by the Trust's various business processes with the exception of personal information..

## 3. Objectives

1. To provide corporate direction on how the Trust will implement the Fol Act and EIRs.
2. To create an awareness of the Fol Act, providing staff with details of their obligations under the Act and general guidance for the public.

## 4. Responsibilities

The **Chief Executive** has overall responsibility for ensuring that compliance with the Freedom of Information Act and EIRs is managed responsibly within the Trust.

The **Director of Corporate Services** has strategic responsibility for Information Governance including compliance with the Freedom of Information Act and EIRs throughout the Trust and will take responsibility for the application of exemptions, seeking legal advice where necessary.

The **Assistant Director Corporate Services** has responsibility for the Governance and Compliance team which includes Information Governance.

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The **Information Governance Manager** is responsible for the management of corporate processes concerning Freedom of Information and the EIRs..

The **Information Governance Group (IGG)** is chaired by the Director of IM&T who is the Senior Information Risk Owner (SIRO) and will monitor the implementation of this policy.

**Directors and Heads of departments** are responsible for ensuring that the policy is implemented in their directorates and individual departments and Directors will be accountable for performance to Senior Managers Group and the Trust Board.

The **Governance and Compliance team** will provide a central co-ordination function for Fol and EIR requests to ensure appropriate co-ordination within the Trust for the retrieval of information and furnish an acknowledgement and substantive response to each request made under this access mechanism.

- document each decision surrounding the administration of the response, including the application of the Prejudice test, the Public Interest Test, the application of an exemption and details of non-compliance within the 20 day limit.
- offer advice of the application of Fol/EIR and any exemptions etc
- provide a Fol/EIR activity report to the Information Governance Group.
- advise on the maintenance of the Trust's Publication Scheme in conjunction with the Communications Department .
- monitor Fol/EIR requests in line with current Equalities legislation.

**Departmental Fol representatives** are responsible for ensuring the timely and full cooperation with the Governance and Compliance team to enable a response to be completed. This will include expert clarification on any information that is the subject of a request under either the Fol Act or the EIRs and the production of any final information that may require redaction or amendment in accordance with the provisions of the legislation.

Each representative will also have a responsibility to ensure that the department's contribution to the Trust's publication scheme is completed and maintained.

**All staff** are responsible for;

- assisting in supporting a request for information. Staff should provide reasonable help in ensuring such requests are made available in a timely manner to the Governance and Compliance team.
- forwarding any written requests for information that are not in line with the normal business to the Governance and Compliance team.
- familiarising themselves, and complying, with the basic requirements of the legislation and any associated procedures and guidance.

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## 5. Statement of Intent

- 5.1 The Trust encourages a culture of openness and, therefore, welcomes the principles of the FoI Act and the EIRs. The intention is to embrace the legislation both in terms of its legal requirements as well as in spirit. It is the policy of the Trust to provide information, when properly requested, rather than finding reasons not to do so. It is however important to clearly state that the absolute requirement for patient confidentiality will not be compromised by this policy.
- 5.2 In support of the above principle, it is the intention of the Trust to publish as much information as reasonably possible. A Publication Scheme will be maintained to ensure that as much information as possible is readily available through the Trust's (public) Internet site.
- 5.3 The Trust will maintain a register of outcomes of all requests for information and complaints, and ensure compliance with the 20-day deadline for FoI requests and apply this as appropriate for EIR requests (see S.9.4).
- 5.4 The Trust will only apply exemptions where absolutely necessary in accordance with the law and based on guidance from the Ministry of Justice (MOJ) and the Information Commissioner.
- 5.5 The Trust will exercise its right to apply disbursements and fees where appropriate.
- 5.6 It is the intention of the Trust that all staff are brought to the required level of awareness on FoI, EIR, and associated issues. This would include the nomination of Departmental and/or Directorate FoI representatives who will receive appropriate training for their role (see Implementation Plan).

## 6. What is a Request for Information under FoI?

- 6.1 To make a request for information under the FoI Act, the request must be valid. For a request to be deemed valid, the requirements defined in Section 8 of the Act must be satisfied. These are that the request must:
- Be in writing (letter, fax or email) and be legible. Text messages are not acceptable.
  - Provide sufficient description to enable the Public Authority to identify and locate the requested information.
  - State the name of the applicant.
  - Provide a physical address for correspondence (not applicable to emails, as an email address will suffice).
- 6.2 The Freedom of Information Act 2000 was enacted to provide access to information and not to documents. The Act is written to recognise that there will be good reasons in some cases not to disclose or release the requested information. Provision for the exclusion of such information from a request for information is achieved through the application of exemptions to the requested information.

6.3 An exemption is a feature defined under the FoI Act that prevents the disclosure and/or release of certain categories of information. There are 23 exemptions in total. Exemptions fall broadly into 2 categories:

- Absolute exemptions
- Qualified exemptions

A Qualified exemption is subject to a Public Interest Test whilst an Absolute exemption is not (please refer to Section 10 and Appendix 1 for a further explanation).

## **7. Key Aspects of the FoI Act**

7.1 The Act:

- Grants members of the public or organisations (public or private) statutory rights to request information held by Public Authorities. This extends also to information which the Trust holds about other organisations or individuals (in some instances).
- Confers on members of the public a legal right to request information in a specific form.
- Puts Public Authorities under a legal obligation to comply with requests for the information it holds unless an exemption from disclosure applies.
- Legally obliges Public Authorities to adopt, implement and maintain a Publication Scheme.
- Expects Public Authorities to follow the guidance provided in the Codes of Practice issued under Part III of this Act. Namely:
  1. Section 45 Code of Practice on Discharge of Public Authorities' Functions defined under Part I of the Freedom of Information Act 2000.
  2. Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000.

7.2 The FoI Act is chiefly governed by the 'Right to Know' i.e. to know how Public Authorities manage their organisation's affairs.

## **8. Obligations of the Trust (LAS) under the FoI Act**

8.1 On receipt of a written request, the Act confers on the Trust two principal statutory obligations with respect to the disclosure and release of information. These are:

- A requirement to adopt, implement and maintain a Publication Scheme.
- A requirement to respond to requests for information. There are 2 key aspects to this second requirement. There is:

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1. In the first instance, a 'Duty to Confirm or Deny' whether the Trust indeed holds the requested information.
2. Secondly, if the information is held by the Trust, there is a 'Duty to Provide' the requested information to the applicant within 20 working days.

## **9. Requests under the Environmental information Regulations**

9.1 'Environmental information' can be summarised as:

- the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites and the interaction between these elements
- factors such as substances, energy, noise, radiation or waste affecting or likely to affect the elements of the environment
- measures such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect or protect the elements of the environment
- reports on the implementation of environmental legislation
- cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities
- the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment

9.2 Any request for 'environmental information' will be answered in accordance with the Environmental Information Regulations rather than the FoI Act and where dealing with a mixed request where both the FoI Act and the EIR apply the Trust will clearly apply the correct exemption or exception (see section 11) if information has to be withheld.

9.3 The EIRs do not specify that requests must be in writing which means that the Trust will also accept telephone requests for environmental information.

9.4 The EIRs also require requests to be answered within 20 working days although there is a provision to extend the response time to 40 working days, but only for complex and voluminous requests.

## **10. Management of Requests for Information**

10.1 Where the Trust has existing processes for providing information to members of the public (and external organisations), these should remain. Therefore, requests for information generated as part of a Department's existing processes should be treated as non-FoI/EIR requests. They should be logged and managed accordingly. This Policy will not apply to such requests. The overriding principle should, wherever possible, be 'business as normal'.

10.2 All requests for information outside of normal business processes, or those specifically defined as FoI/EIR requests, will be centrally managed by the Governance and Compliance team and should be forwarded to them. Further guidance for staff and details of the process for handling requests can be found on the Trust intranet site, the Pulse.

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- 10.3 Each department will be required to nominate a FoI representative who will liaise with the Governance and Compliance team in the provision of information as required in order to comply with the 20 day response time.
- 10.4 Under the legislation the Trust is not obliged to deal with vexatious requests. These are determined by the information requested and not by the individual. The question at hand is whether the request is a genuine endeavour to access information or whether it is aimed at disruption of the service or harassment of a specific member of staff.
- 10.5 The Trust is under no obligation to comply with a repeated request from the same person, unless a reasonable period has elapsed. In this situation, a corporate decision will be made taking into account the overall cost of the repeated request(s) and the lapse in time between each of them.
- 10.6 The Trust will notify the NHS London FoI Lead of any 'round robin' requests received which are believed to have been sent to a number of organisations including the LAS.

## **11. Exemptions and Exceptions**

- 11.1 Whilst it is not the intention of the Trust to employ the use of exemptions as a means to prevent the disclosure or release of information, exemptions will be applied where warranted. This is subject to the outcome of the Prejudice Test and/or the Public Interest Test (these are explained in Appendix 1).
- 11.2 Each decision surrounding the application of the Prejudice test, the Public Interest Test, an exemption and details of non-compliance (with the 20 day deadline) will be documented by the Governance and Compliance team.
- 11.3 Exemptions, the Prejudice Test and the Public Interest Test will be applied centrally, under the direction of the Director of Corporate Services, by the Governance and Compliance team. Specialised expertise or further advice will be sought as appropriate, where required.
- 11.4 The Environmental Information Regulations have exceptions rather than exemptions and these are listed in Appendix 2.
- 11.5 The Trust by virtue of its day-to-day business and tendering processes is privy to information that relates to various organisations. This information is categorized as third party information and it should be recognised that this could pertain to both Public and Private organisations. The Trust believes that commercially sensitive third party information should remain confidential and will, within the confines of the legislation, make every effort to protect this information and adhere to confidentiality.
- 11.6 In instances where the request for information relates to that which the Trust holds about a third party, the Trust, will prior to disclosure seek consultation with the organisation(s) to whom the request relates. However, should the outcome of the Public Interest Test favour disclosure, the Trust will have no option other than to comply and disclose the requested information.

## **12. Fees and Charges**

In accordance with the MOJ guidelines:

- Requests for information to the value of £450.00 (based on the cost of staff time at a rate of £25.00/hr) will be provided free of charge.
- A fee may be levied for requests costing over and above £450.00 (i.e. the fee levied will be the total cost minus £450.00).
- Where disbursements are over and above the cost of a first class stamp, (as a guideline, between 8-10 sheets of paper) consideration will be given to making relevant charges.

## **13. Recourse**

- 13.1 In the event that an information requester is dissatisfied with the outcome of a request for information they have the right to seek a review. In the first instance, this should be addressed to the Assistant Director of Corporate Services who will provide a response within 20 Days of receiving the review request.
- 13.2 Should the Information Requestor remain dissatisfied with the outcome of the review by the Assistant Director of Corporate Services then a final review request should be addressed to the Director of Corporate Services who will arrange for a panel of Non-Executive Directors to review the case.
- 13.3 If all of the above actions fail, the final recourse is for an approach to the Information Commissioner.

<b>IMPLEMENTATION PLAN</b>	
<b>Intended Audience</b>	All LAS Staff
<b>Dissemination</b>	Available to all staff on the Pulse and to the public on the LAS website.
<b>Communications</b>	Revised Policy and Procedure to be announced in the RIB and a link provided to the document.
<b>Training</b>	All staff will complete basic online IG training or complete the IG training part of a core training workbook, both of which include Fol. Refresher training will be provided to all staff every three years and more advanced training will be provided to departmental Fol representatives and any other staff who will be regularly handling Fol requests.
<b>Monitoring</b>	<p>A quarterly and annual report which describes activity, emerging themes and performance will be made to the Information Governance Group (IGG) by the Information Governance Manager. The IGG reports through to the Risk Compliance and Assurance Group which will monitor the outcomes of any recommendations made in the reports.</p> <p>The annual report will also be made available to the Trust Board.</p>

**The Prejudice Test and the Public Interest Test**

With respect to both the Prejudice Test and the Public Interest Test, each case must be considered on its individual merits in accordance with the guidance from the Information Commissioner. All decisions will be documented.

**The Prejudice Test**

The Prejudice Test is one that is applied to certain elements of an exemption. This is to assess whether prejudice may be caused to the 'interests' (defined within the scope of the exemption) through the release and/or disclosure of the requested information.

A number of exemptions are identified under the Act where the Prejudice Test should be considered, namely:

- Relations within the United Kingdom; Section 28.
- The Economy; Section 29.
- Law Enforcement, Section 31.
- Audit Functions; Section 33.
- Prejudice to the effective conduct of public affairs; Section 36.
- Health & Safety; cited at Section 38.
- Commercial Interests; Section 43.

It is the 'interest(s) represented within the elements of a particular exemption that is/are tested for prejudice. In each case, where disclosure would prejudice any of the elements defined within the scope of the exemption, the Prejudice Test will apply. For example, under Section 31, where the disclosure of information may prejudice the prevention or detection of a crime, the information will be withheld without the need to apply the Public Interest Test.

The elements subject to the Prejudice Test differs for each exemption. Once it is ascertained that there is no risk of prejudice, the Public Interest Test can be applied. In all cases, the Prejudice Test will always precede the application of the Public Interest Test.

It is important to note that the Test of Prejudice does not always apply to every element of an exemption. Therefore, reference should always be made to the FoI legislation to check where this is applicable.

## **The Public Interest Test**

The Public Interest Test in each case determines whether the interest of the public is better served by the release of the requested information or whether it is better served by the withholding or non-disclosure of that information.

The objective of the Public Interest Test is to make reasoned judgments as to whether the information is disclosed or not for the benefit of the general public. In principle, the following favour disclosure:

- Accountability.
- Public Participation.
- Public Awareness.
- Justice to an Individual.
- Research.

Whilst the following favour non-disclosure:

- Exemption Provisions.
- Interests of 3rd Parties.
- Efficient and Effective Conduct of Service.
- Flow of Information to Service.
- Fair Treatment of an Individual.

In relation, to the Public Interest Test, the following considerations are not valid reasons for non-disclosure:

- High Office.
- Policy Development.
- Candour & Frankness.
- Disclosure of Confusing or Misleading Information.
- Information / Record do not / does not reflect the reason for the decision (e.g. Minutes).
- Draft Documents.
- Government Protective Marking Scheme.
- Embarrassment.

## Exemptions List

### Absolute Exemptions includes Information:

- S.21 Reasonably Accessible by other means.
- S.23 Supplied By, Or Concerning Certain Security Bodies.
- S.32 Contained in Court Records.
- S.34 Disclosures that would infringe Parliamentary Privilege.
- S.36 Disclosures Prejudicing the Effective Conduct of Public Affairs.
- S.40 Personal Information.
- S.41(1) Information Provided in Confidence.
- S.44 Information Covered by Prohibitions on Disclosure.

### Qualified Exemptions include information:

- S.22(1) Information intended for Future Publication.
- S.24 National Security.
- S.26 Defence.
- S.27 International Relations.
- S.28 Relations within the UK.
- S.29(1) The Economy.
- S.30(1) Investigations & Proceedings: Criminal Investigations & Proceedings by Public Authorities.
- S.30(2) Information relating to the obtaining of information from confidential sources.
- S.34 Parliamentary Privilege.
- S.35 Formation of Government Policy.
- S.36\* Effective Conduct of Public Affairs.
- S.37 Royalty / Honours.
- S.38(1)(a) Health & Safety: where disclosure would be likely to endanger the physical or mental health of any individual.
- S.38(1)(b) Health & Safety: where disclosure would be likely to endanger the safety of any individual.
- S.39 Environmental Information.

- S.40\* Personal Information.
- S.42 Legal Professional Privilege.
- S.43 Commercial Interests -Trade Secrets.

### **Hybrid Exemptions**

\*These exemptions have a mixture of absolute and qualified access rights conferred on them

- S.36 Effective Conduct of Public Affairs.
- S.40 Personal Information.

## EIR Exceptions subject to the public interest test

- **reg. 12 (4) (a)** Does not hold that information when an applicant's request is received
- **reg. 12 (4) (b)** Is manifestly unreasonable
- **reg. 12 (4) (c)** Is formulated in too general a manner (provided assistance has been given to the applicant with a view to re-framing the request)
- **reg. 12 (4) (d)** Relates to unfinished documents or incomplete data
- **reg. 12 (4) (e)** Would involve disclosure of internal communications

And if disclosure would adversely affect:

- **reg.12 (5) (a)** International relations, defence, national security or public safety
- **reg.12 (5) (b)** The course of justice, fair trial, conduct of a criminal or disciplinary inquiry
- **reg.12 (5) (c)** Intellectual property rights
- **reg.12 (5) (d)** Confidentiality of public authority proceedings when covered by law
- **reg.12 (5) (e)** Confidentiality of commercial or industrial information, when protected
- by law to cover legitimate economic interest
- **reg.12 (5) (f)** Interests of the person who provided the information
- **reg.12 (5) (g)** Protection of the environment

NB If the information requested is information on emissions, exceptions 12(5)(d) to (g) cannot be used

- **reg.13** Personal data