

FREEDOM OF INFORMATION POLICY AND PROCEDURE

Summary

The Freedom of Information (FOI) Act 2000 demonstrates a commitment to greater openness in the public sector. It enables members of the public to find out more about the activities and the decisions of public authorities and to ensure that services are delivered properly and efficiently. The Act has been in force since 1st January 2005.

The legislative framework under which environmental information is provided in the Environmental Information Regulations (EIR), has been written to be compatible with the Freedom of Information Act.

This policy is intended to provide guidance and support all Trust staff who may receive Freedom of Information requests or be required to provide data in response to requests.

CONTENTS

Section	Page
1 Introduction	2
2 General Rights of Access	2
3 Timescales for responding to Requests	2
4 Publication Scheme	2
5 Information Commissioners Office	3
6 The Environmental Information Regulations (EIR)	3
7 Scope	3
8 Roles and Responsibilities	3
9 Identifying Freedom of Information Requests	6
10 Identifying Environmental Information requests	6
11 FOI Exemptions	7
12 The Public Interest Test	7
13 The Appropriate Limit	8
14 Complaints	8
15 Personal Information and Health Records	8
16 Copyright and Re-use of information	9
17 Duty to Advise and Assist	9
18 Dissemination and Implementation	9
19 Confidentiality	9
Appendix 1 FOI Process Map	10
Appendix 2 Section 40 - personal information	11

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

1. Introduction

The Freedom of Information Act 2000 gives the public the right to request any non-personal of information by the NHS, and in particular:

- the right to be told whether the information exists; and
- the right to receive that information.

Requests to re-use Trust information received under a FOI application in accordance with the Re-use of Public Sector Information Regulations 2005 are also covered by the policy.

This policy also covers requests for information made under the Environmental Information Regulations 2004.

Requests for information about identifiable living or deceased individuals must be dealt with in accordance with the Data Protection Act 1998 (to be succeeded by new Data Protection legislation from May 2018) or Access to Health Records Act 1990, accordingly.

2. General Rights of Access

The Act gives members of the public 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.

It is a criminal offence to destroy information with the intent of preventing disclosure following a request.

3. 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 qualified exemption to withhold information then the deadline can be extended only in these circumstances to consider where the balance of the public interest test lies.

The Trust will issue an acknowledgment of receipt to the applicant within 48 hours of receiving the request.

4. Publication Scheme

The Royal Marsden NHS Foundation Trust already makes a large amount of information available in an open way. Information can be obtained through its website, leaflets and other relevant publications such as the Annual Report and Accounts.

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

The Trust is obliged to maintain a publication scheme (which is based on the Information Commissioners Model Publication Scheme) under the FOI Act. A publication scheme is a guide to the information which will routinely be made available to the public by the Trust. The Trust has a duty to regularly review its Publication Scheme as part of maintaining to ensure it is up-to-date. In liaison with the Information Governance Committee and Directors of the Trust, the Trust will routinely publish datasets on its website in order to reduce the administrative burden of FOIs.

5. Information Commissioners Office

The Act is regulated by the Information Commissioner who combines this responsibility with regulating the Data Protection Act (to be succeeded by new Data Protection legislation from May 2018). The Information Commissioner's Office's benchmark for good compliance is 90%. The Trust will publish an annual FOI report setting out its compliance rate for the financial year.

6. The Environmental Information Regulations (EIR)

In response to the European Directive on freedom of access to information on the environment, there has been a legal requirement on public authorities to provide environmental information upon request since 1992. That is, 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.

The Regulations provide general right of access to environmental information, subject to certain exemptions. Requests for environmental information will be processed by Trust in the same way as FOI requests. Further information on the application of the EIR can be found in section 10.

7. Scope

This policy provides a framework for the Trust to ensure compliance with the Freedom of Information Act 2000, Re-use of Public Sector Information Regulations 2005 and Environmental Information Regulations 2004.

This policy applies to all staff working for or on behalf of the Trust (including temporary, fixed term, honorary contract staff, prospective employees who are part-way through recruitment, contractors or sub-contractors, agency staff, and Trust Committee, Sub-Committee and advisory group members).

8. Roles and Responsibilities

Chief Executive

The Chief Executive has ultimate responsibility for adherence to the Act.

This responsibility is delegated as outlined below.

For the purposes of the Act 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 qualified exemption allows for the non-

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

disclosure of information which would prejudice the effective conduct of public affairs. Should the Chief Executive be away from the office when a section 36 approval is required the request then it would fall to the Chief Operating Officer/Deputy Chief Executive to determine whether the exemption applies to the requested information. This responsibility cannot be delegated to anyone other than to the Chief Executive or Chief Operating Officer/Deputy Chief Executive.

The Chief Operating Officer/Deputy Chief Executive

The Chief Operating Officer/Deputy Chief Executive will be the representative for Freedom of Information issues on the Trust Board and Trust Executive Board. The Chief Operating Officer/Deputy Chief Executive is responsible for approving contentious requests concerning clinical matters, SIs or information concerning complaints received by the Trust.

Director of Marketing and Communications

The Communications Team will be made aware of requests for information by media companies and the press, and any other requests that when responded to may have an adverse impact on the reputation of the Trust.

The Director of Marketing and Communications will be responsible for signing off all non-routine written responses and for all written responses to requests from the media. In his/her absence responsibility will fall to the Head of Communications.

Directors

All Directors are responsible for approving the release of draft FOI responses and updates to the Publication Scheme relating to information held by their Directorate. Directors are asked to sign off any FOI requests at least one working day before the FOI deadline.

The Trust Secretary

The Trust Secretary is responsible for:

- Ensure organisational compliance with the Act
- Reviewing the public interest test in cases of qualified exemptions
- Responding to queries and complaints over the Trust's service in handling FOI applications
- Carrying out internal reviews in liaison with the relevant Director/Chief Executive
- Ensure processes are implemented to maintain currency of this policy and the issue of a current Trust Publication Scheme
- Act as the Champion for FOI awareness throughout the organisation
- Ensure that the general public and Trust staff have access to information about their rights under the Act
- Ensure FOI applicants receive acknowledgement within 48 hours of submitting their request
- Ensure that a process is in place to assist with investigations into complaints and appeals

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

- Ensure that all requests for information are validated, recorded and co-ordinated in accordance with current procedures which allow responses to be sent to the applicant within legal timescales
- Perform a technical check of the managers' responses for completeness prior to sending to the applicant
- Advise and support staff responding to requests including the possible application of exemptions
- Provide advice and assistance to staff and those who propose to make, or have made, requests for information under the Act
- Devise and maintain standard documentation including response letters
- Create and publish a Disclosure Log
- Development and maintenance of the Trust Publication Scheme
- The Corporate Governance Manager will be responsible for providing information on FOI performance and/or issues to the Information Governance Committee and Integrated Governance and Risk Management Committee, as well as other committees as and when required.

Directorate Links

The Directorate/Divisional Links are the point of contact within each Directorate for FOI. Their role is to:-

- Provide general information on the FOI Act within their Directorate/Division;
- Receive FOI requests from the Corporate Governance Officer/Manager, source the information requested, and ensure that the response from their Directorate/Division is provided at least five working days before the FOI deadline;
- Ensure the accuracy of their Directorate's/Division's information within the publication scheme;
- Act as a point of contact to the Corporate Governance Manager.

All Staff

All employees of the Trust are obliged to adhere to this procedure. They must also ensure they are aware of the implications of this policy, and of the process for the central handling of FOI requests.

FOI requests received by staff must be forwarded to the FOI Office immediately to the Freedom of Information mailbox (foi@rmh.nhs.uk).

Where a request is received by hard copy letter, the date of receipt by the Trust should be clearly marked on the request letter and this should be either scanned and sent to the above email address or sent in the internal post and marked for the attention of the Corporate Governance Manager for central handling.

Note the Trust has only 20 working days to respond to a request for information. Where staff are unsure of whether a request for information needs to be logged as a FOI request they must contact the Corporate Governance Manager for advice.

All staff should be aware that under section 77 of the FOI Act it is a Criminal Offence to alter, deface, block, erase, destroy or conceal any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

information to the communication of which the applicant would have been entitled. To do so can result in a fine of up to £5,000 and up to two years in prison.

9. Identifying Freedom of Information Requests

To be classed as a FOI request the request must:

- Be made in writing (this includes by electronic means such as e-mail)
- State the applicant's name and include an address for correspondence (this can be an e-mail address)
- Describe the information being requested to enable the Trust to clearly identify the information required. Where this is not clear the Trust must seek clarification from the applicant.

It should be noted that requests do not need to mention the FOI Act or contain a reason for requesting the information or be addressed to the Corporate Governance Manager.

A distinction must be made between requests for information and routine correspondence. Requests for information that can be provided without any question (e.g. leaflets, other Trust public / patient material, recruitment brochures, press releases) should be treated as business as usual.

It is also important to point out that the Freedom of Information Act 2000 only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.

Once a FOI request has been identified and submitted, the Corporate Governance Manager will then send an acknowledgement to the applicant to confirm receipt of the request.

10. Identifying Environmental Information Requests (EIRs)

Procedures for dealing with EIRs will be the same as FOI except:

- Requests can be made verbally or in writing.
- Where made verbally, staff receiving the request must record the following:
 - The name of the applicant
 - The date
 - The information required
 - An address for correspondence and contact details

This must then be forwarded to the Corporate Governance Manager. The request will be logged as an EIR and processed under the Environmental Information Regulations 2004. Environmental information can be considered for release if the Trust is in possession of the information regardless of whether it is held on behalf of someone else. EIR response times can only be extended up to 40 days where the request is complex or voluminous. All exemptions will need to be subject to a public interest test.

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

11. FOI Exemptions

The Trust has a duty to receive all requests in a positive manner with a view to disclosing the required information. However, the Act does contain a number of exemptions from the duty to confirm or deny or to communicate information.

The Trust can only withhold a document if one or more exemptions as outlined in Part 2 of the FOI Act apply to the information being requested. If information is properly exempt then there is no right of access to it under the Act. All the exemptions operate in different ways and, when applying individual exemptions, the following factors may need to be considered:

- The content of the information
- The effect that disclosure would have (for example, the possible impact on our relations with third parties or on any ongoing investigations/legal proceedings)
- The source of the information
- The purpose for which the information was recorded

There are two categories of exemptions; **absolute** and **qualified**.

- **absolute** – there is no duty to consider the public interest test; the information need not be disclosed and the Trust is not obliged to comply with the duty to confirm or deny whether it holds the requested information.
- **qualified** – the Act requires the Trust to consider first whether or not the exemption applies (taking into account the prejudice test where applicable) and secondly, if the exemption does apply the Trust must consider the public interest test.

Only where the public interest in maintaining the exemption or exclusion from the duty to confirm or deny outweighs the public interest in communicating information, or confirming or denying that the Trust has such information, can the Trust rely upon a qualified exemption or exclusion.

The Freedom of Information team will advise and confirm if and when an exemption may be applied. In all cases a justified, clear explanation must be provided by the relevant Division to which the request relates to.

12. The Public Interest Test

Where it is intended to apply a qualified exemption, the Corporate Governance Manager in consultation with the relevant Director will undertake and document a 'public interest test'. This means balancing the considerations of disclosure and non-disclosure of information. If the public interest in withholding the information outweighs the public interest in disclosing it, it should be withheld. When a decision is made to withhold information the reasoning as to why that decision was made must be recorded e.g. a demonstration of the potential harm in disclosing the information must be made.

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

13. The Appropriate Limit

The appropriate limit is the point at which the Trust can exempt a request due to excessive costs and staff time. The appropriate limit is set at £450 for NHS organisations. Costs are calculated on the amount of time staff would take in:

- Determining whether the Trust holds the information requested;
- Locating the information or documents containing the information;
- Retrieving such information or documents, and
- Extracting the information from the documents containing it.

The rate for staff time is calculated at £25 per hour.

In all such cases the Trust will offer advice and assistance to the applicant to narrow the scope of their request and bring it within the appropriate limit, rather than opt to charge them for their request.

14. Complaints

Where the applicant wishes to ask for an Internal Review of the information disclosed or the decision is not to disclose some or all of the information, the request should be made in writing to the Corporate Governance Manager who will raise the Internal Review request with the Trust Secretary.

Internal Reviews should be completed within 20 working days from the time the request for the review was received. In exceptional circumstances where the review is deemed complex, this may be extended to 40 days. The applicant should be informed of the timescale within which the review will be undertaken.

The applicant must be informed of the outcome of the review. Where the review overturns an original decision to withhold the information, the information should be disclosed to the applicant as soon as possible after the completion of the review.

To ensure the Internal Review stage is fair and impartial, the Trust Secretary will conduct a review of the decisions made during the original consideration for the release of information.

Where the original decision is upheld, the Trust is not obliged to undertake any further review. However the applicant must be informed of their right of appeal to the Information Commissioners Office.

Full records of the progress of the review must be kept and any outcomes as a result of the review recorded. This will be subject to review and inspection by the Information Commissioner in any further investigations.

15. Personal Information and Health Records

Requests made by an applicant to review their own personal information and/or health records will not be disclosed under this procedure. All requests for personal information will be dealt with under the Data Protection Act 1998 (to be succeeded by new Data Protection legislation from May 2018) or Access to Health Records Act 1990 as appropriate. See the Trust's Access to Health Records Policy for guidance.

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

16. Copyright and Re-use of Information

Trust information is subject to copyright protection unless stated otherwise. If any person uses the Trust's copyright material, the source of the material must be quoted and copyright status acknowledged. Unless expressly indicated on the material to the contrary, it may be reproduced free of charge for sole use, including for non-commercial research purposes, news reporting, in any format or medium, provided it is reproduced accurately, is not used in a misleading manner and is not used for commercial gain.

For information where the copyright is owned by another person or organisation, applications must be made to the copyright owner to obtain their permission.

Publishing the information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2005 and will require permission of the Trust and may require a fee.

17. Duty to Advise and Assist

All public bodies have a duty to assist applicants in requesting information. This could involve assisting applicants in making their requests by suggesting what information is available and/or contacting applicants who have made broad requests in order to specify information required so that it may be identified.

In circumstances where the Trust does not hold the information requested, where known, applicants should be advised of the organisation that does hold the information and contact details supplied to them or if the applicant prefers, the Trust can transfer the request to the organisation on the applicant's behalf.

18. Dissemination and Implementation

This policy will be available to all staff via the Trust intranet. Training will be given to all staff as part of mandatory Information Governance training at the Trust.

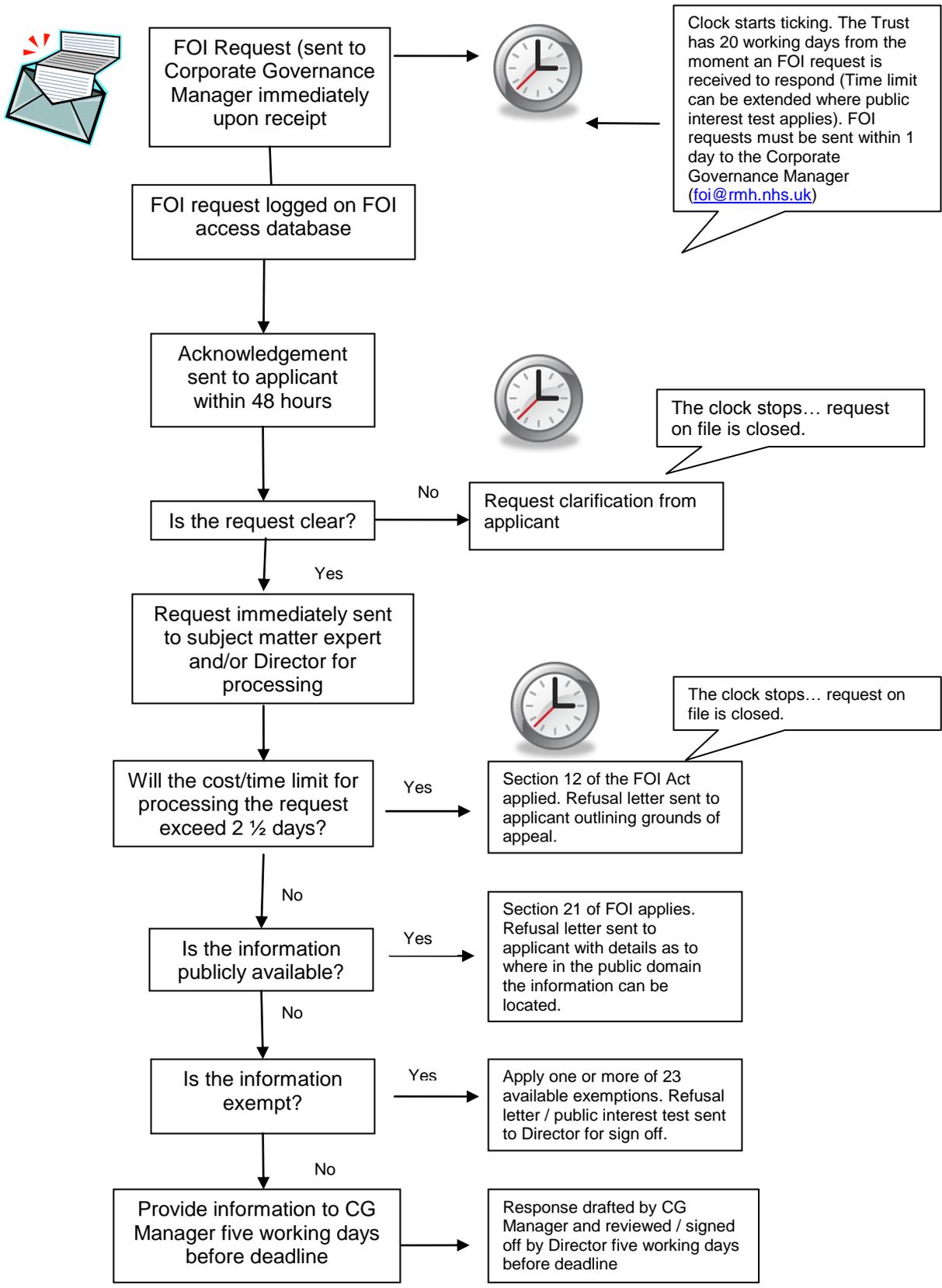
19. Confidentiality

Whilst the purpose of the Act is to ensure that the Trust is as transparent as possible the Trust has a duty to maintain confidentiality relating to those who request information and to any request for information that falls under the confines of the Data Protection Act (to be succeeded by new Data Protection legislation from May 2018).

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

Appendix 1

FOI Process Map



Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41

Uncontrolled if printed

Appendix 2

Section 40 – Personal Information

Definition of 'Personal data':

Data which relates to a living individual who can be identified:

- a) From that data, or
- b) From that data and other information which is in the possession of, or likely to come into the possession of the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

Definition of 'Sensitive Personal Data':

1. Race or ethnic origin
2. Political opinions
3. Religious or other beliefs of a similar nature
4. Trade union membership
5. Physical or mental health
6. Sex life
7. Commission of offences
8. Criminal proceedings

FOIA Section 40 Exemption:

Under Section 40 of the Freedom of Information Act (FOIA), public authorities are, in general, exempt from the Act's duty to provide access to personal data as defined above.

Where an application for information constituting 'personal data' is made by the 'data subject' (i.e. the person who is the subject of the data), that information will be covered by the exemption in Section 40(1) and will automatically be channelled through the Subject Access Request (SAR) procedures established under the Data Protection Act 1998.

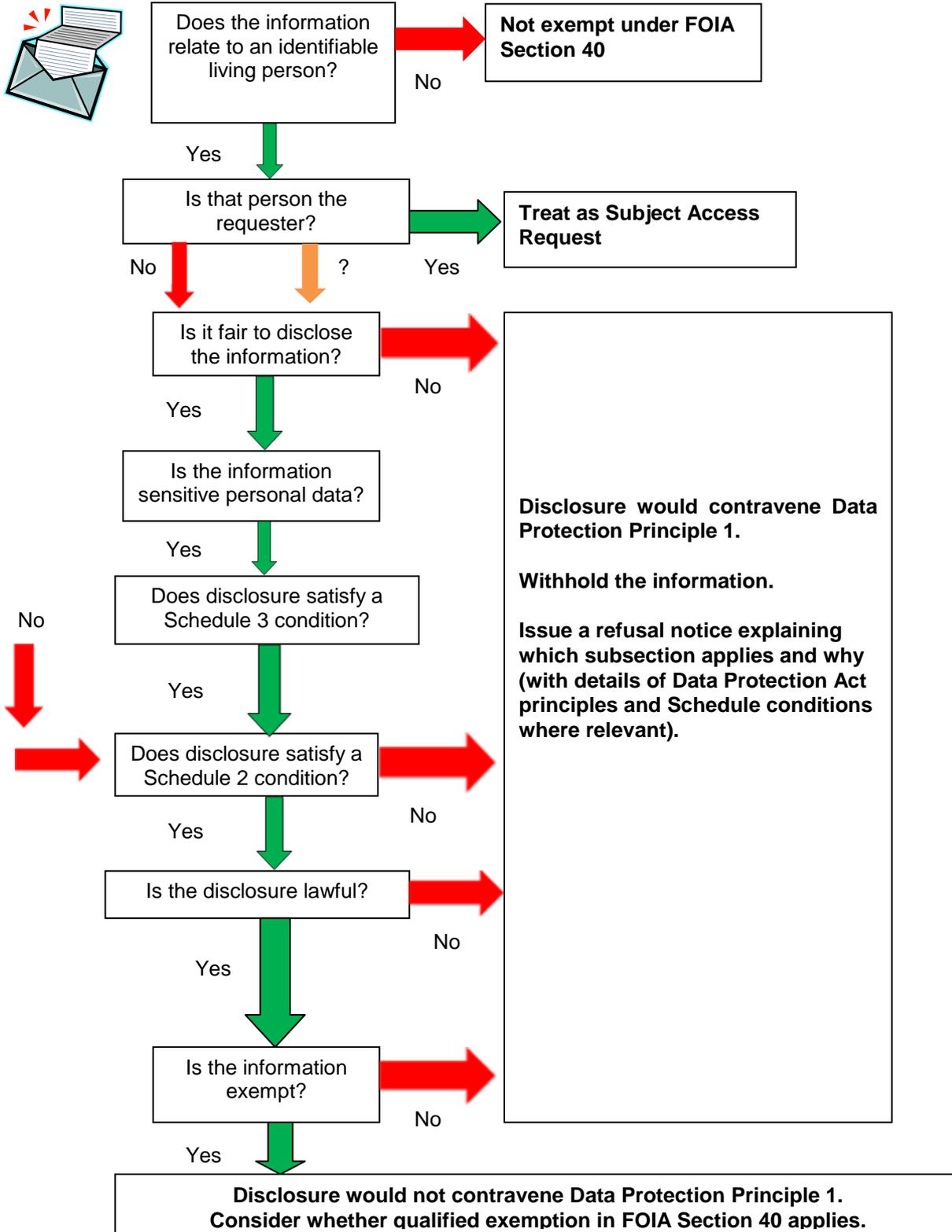
For patients at The Royal Marsden, this should be directed to the Medical Records Department and for staff this is the HR Department.

Where an application for information is made by someone other than the 'data subject', disclosure of that information will often constitute a breach of the Data Protection Act and consequently the public authority will usually be exempt from its duties under the Freedom of Information Act as a result of Section 40(2).

Generally the exemptions in both sections 40(1) and 40(2) are absolute exemptions.

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41
Uncontrolled if printed			

Please see below an ICO flowchart outlining the process of dealing with such requests:



[End of Document - Do Not Delete]

Authoring Department:	Corporate Governance	Version Number:	11
Author Title:	Corporate Governance Manager	Published Date:	13/12/2017 12:05:41
Ratified By:	IG Committee, IGRM	Review Date:	13/12/2018 12:05:41

Uncontrolled if printed