



# Walford Mill Medical Centre Freedom of Information Policy and Procedural Guidance

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## PART ONE - POLICY

### 1. RELEVANT TO

- 1.1 This policy is relevant to all employees of Walford Mill Medical Centre including staff on honorary contracts, volunteers and third-party contractors who process information.

### 2. INTRODUCTION

- 2.1 This Policy is required in order to inform on the legal obligations and exemptions which apply to this Practice under the Freedom of Information Act 2000. It provides staff with guidance on processing Freedom of Information (FOI) requests in accordance with the Freedom of Information Act (FOIA) 2000, Data Protection Act (DPA) 2018, UK General Data Protection Regulations (GDPR), Confidentiality NHS Code of Practice, Environmental Information Regulations (EIR) 2004.
- 2.2 The Freedom of Information Act (FOIA) 2000 also requires all public authorities to adopt and maintain a publication scheme. The Information Commissioner's Office introduced the model publication scheme (Appendix C) so that public authorities could produce and publish the method by which the specific information will be available, to enable it to be easily identified and accessed by members of the public.

### 3. SCOPE

- 3.1 This Policy aims to inform staff of the Practice's obligations and responsibilities under the FOIA.

### 4. PURPOSE

- 4.1 The purpose of this policy is to:
- promote best practice in response and processing of FOI requests;
  - ensure that all FOI requests are processed in a timely and appropriate manner;
  - ensure that the Practice is upholding its obligations as a Public authority under the FOIA.

### 5. MODEL PUBLICATION SCHEME

- 5.1 As well as responding to requests for information, the FOIA requires all public authorities to adopt and maintain a publication scheme, recognising the public interest in the transparency of the services provided for and paid for by the general public. It is a commitment to make information easily available to the public.
- 5.2 General Practitioners (GPs) providing medical services under most contracts within the NHS in England and Wales, are public authorities in respect of information relating to those services.
- 5.3 The Model Publication Scheme must be adopted in full and promoted alongside the guide to information. It is a short, high level document setting out the Practice's commitment to proactively publish information and consists of seven commitments and seven classes of information.
- 5.4 A public authority is in breach of the FOIA if it has not adopted the model scheme or is not publishing information in accordance with the scheme.



- 5.5 The Model Publication Scheme sets out the information that is routinely available. Information not listed within the scheme can still be requested by anyone and should be made available unless it can be legitimately withheld or refused.
- 5.6 Information available through the Publication Scheme should be readily available at a low cost or no cost to the public. If a charge is made for information, it should be justifiable, clear and kept to a minimum. Charges may be made for activities such as printing, photocopying and postage as was as information that the GP is legally authorised to charge for. Anyone requesting information must be informed of any charge before the information is provided and GPs may ask for payments to be made before providing the information.
- 5.7 If the GP charges a fee for licensing the re-use of data sets, they should state in the Publication Scheme how this is calculated and whether the charge is made under the Re-use Fees Regulations or under other legislation. The GP cannot charge a re-use fee if they make the datasets available for re-use under the Open Government Licence.

## 6. ENVIRONMENTAL INFORMATION REGULATIONS

- 6.1 Any information relating to the environment, under the definition in the Environmental Information Regulations (EIR) 2004 will apply. This includes, but is not limited to, any information about the impact on the elements, substances released into the environment, measures (including policies and plans) that might affect the environment and the state of human health and safety. This applies to information in written, visual, aural, electronic or any other material form.
- 6.2 The policy and procedure for dealing with requests under EIR is the same as those laid down for the FOIA, except for the following points:
- EIR requests do not have to be made in writing, they can be made via the phone or in person. When received in such a manner, the request will be formally documented and then processed as though made under the FOIA;
  - requests under EIR can be charged for at any time, provided the cost is reasonable. EIR requests cannot be refused on cost grounds alone;
  - the time limit for the provision of a response is 20 working days, however, it can be extended by 20 further days if the EIR request is complex and/or large;
  - there are some differences in the exemptions under EIR, when compared to the 'exemptions' in the FOIA. They are not listed in this document, but available on the ICO website.
- 6.3 As a request under EIR can be made orally, including via telephone or during a meeting, it is possible that any member of staff may be the recipient of a request. If appropriate, the individual making the request should be redirected to the Practice Manager for assistance with the request. This will not always be possible, so the staff member should take adequate steps to date and record the request along with the contact details of the individual, and forward these to Practice Manager. It is important that the date is recorded, as the 20 working day time limit starts at the point the request is received.

## 7. TRAINING

- 7.1 All staff will be made aware of their responsibilities under FOIA and EIR at their induction. This will be followed up with annual mandatory training. Specific roles may require additional training.



- 7.2 Successful compliance with FOIA obligations is dependent upon the input of staff at all levels, and their ability to recognise requests and ensure that they are received by the FOI lead.
- 7.3 Continuous communications and engagement will run throughout the year through team meetings, the GP DPO newsletter, and Best Practice and guidance on the Intranet.

## **8. CONSULTATION AND DISSEMINATION**

- 8.1 This Policy will be available to staff on the Practice shared drive and all staff will be notified of its existence upon starting in post, or when the Policy is reviewed and republished.

## **9. MONITORING COMPLIANCE AND EFFECTIVENESS OF THE POLICY**

- 9.1 Monitoring of overall compliance with FOIA obligations will be completed by the Practice Manager. The Practice will also use complaints relating to FOI requests as a monitoring tool to drive improvements in practice.
- 9.2 The Model Publication Scheme will be reviewed annually.

## **10. DOCUMENT REVIEW FREQUENCY AND VERSION CONTROL**

- 10.1 This Policy is version controlled and will be reviewed every three years, or earlier if appropriate.

## DEFINITIONS, LEGISLATION AND GUIDANCE

### Definitions:

**Data set** – as per s.11(5) FOI Act, a “dataset” means information comprising a collection of information held in electronic form, where most or all of the information in the collection has been obtained or recorded for a public authority in connection with the service or function that authority provides. The information must be factual and not the product of interpretation or an official statistic within definition of s.6(1) Statistics and Registration Service Act 2007

**An official statistic** – as per s.6(1) of the Statistics and Registration Service Act 2007, an official statistic is one which is produced by the Statistics Board, a government department, Scottish, Welsh or Northern Irish administration/authority or any other person acting on behalf of the Crown

**Publication scheme** – a scheme which relates to the publication of information by the authority, approved by the Commissioner, and includes classes of information published or intended to be published, the manner in which information of each class is published or intended to be published and whether the information is free or carries a charge

**Open Government Licence** – OGL is a simple set of terms and conditions that facilitates the re-use of a wide range of public sector information free of charge, developed and maintained by the National Archives and is akin to a Common Open Licence

**Specified licence** – as per s.11A(8) FOIA, a specified licence is the licence specified by the Minister of the Cabinet Office in a code of Practice issued under s.45 FOIA

**Relevant copyright work** – as per s.11A(8) FOIA, is a copyright work or database subject to a database right but excludes a relevant Crown work or Parliamentary work. “Copyright work” and “copyright owner” are given the same definitions as in Part 1 of the Copyright, Designs and Patents Act 1988.

### Legislation and Guidance:

- Freedom of Information Act 2000
- Data Protection Act 2018
- UK General Data Protection Regulations
- Confidentiality NHS Code of Practice
- Environmental Information Regulations 2004
- Constitutional Reform and Governance Act 2010
- Public Records Act 1958
- The Freedom of Information (release of Datasets for Re-use) (Fees) Regulations 2013



## **ROLES AND RESPONSIBILITIES**

### **The Information Commissioner**

The Information Commissioner is the UK Independent Supervisory Authority for Data Protection and Freedom of Information. The role exists to promote good practice and oversee and enforce compliance with the Data Protection Act 2018 and Freedom of Information Act 2000. The Information Commissioner has the power to impose monetary penalties for a serious breach or misuse of data, and for failure to report such an incident. The ICO can also investigate and issues enforcement notice and act as an independent advisor for consultation.

### **The Practice**

The Practice is the public authority with respect to information and data sets available under the Freedom of Information Act 2000. General Practitioners (GPs) providing medical services under most contracts within the NHS in England and Wales are public authorities in respect of information relating to those services.

### **All NHS employees**

All NHS employees whether clinical or non-clinical are responsible for the records that they create, receive or use during the course of their duties; staff and patient records alike. All employees have an obligation to comply with the principles set out in the Data Protection Act 2018 and Confidentiality NHS Code of Practice, as per their contract of employment.

## PUBLICATION SCHEME

### Model Publication Scheme

#### Fees and charging

Information available through a publication scheme should be readily available at a low cost or at no cost to the public. If a Practice does charge for this information, the charges will be justifiable, clear and kept to a minimum.

Charges may be made for activities such as printing, photocopying and postage as well as information that the Practice is legally authorised to charge for. Anyone requesting information must be informed of any charge before the information is provided. Practices may ask for payment before providing the information. Guidance on the ICO website: [Charging for information in a publication scheme](#) provides more details.

#### FOI requests and the publication scheme

##### **Information available from *the* Practice Manager under the Freedom of Information Act model publication scheme.**

Information covered by this scheme is only about the primary medical services we provide under contract to the National Health Service.

It is important to note that a publication scheme simply sets out the information that is routinely available. Information that is not listed in the guide to information can still be requested and should be made available unless it can be legitimately withheld.



Information to be published	How the information can be obtained  (e.g. hard copy, website)	Cost
<b>Class 1 - Who we are and what we do</b> Organisational information, structures, locations and contacts <i>This will be current information only</i>		
Doctors in the Practice	Website	Nil
Contact details for the Practice (named contacts where possible with telephone number and email address [if used])	Website	Nil
Opening hours	Website	Nil
Other staffing details	Website staff page	Nil
Meetings specifically with pharmaceutical companies	Nil – the practice does not meet with pharmaceutical companies	Nil
<b>Class 2 – What we spend and how we spend it</b> Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit <i>Current and previous financial year as a minimum</i>		
Details on NHS funding received by the Practice.	Record kept in the annual accounts.	Nil



Audit of NHS income	Record kept in the annual accounts.	Nil
Details of expenditure items over £10,000	Record kept in the annual accounts.	Nil
List and value of contracts awarded by the Practice. The ICO would normally only expect the Practice to publish details of contracts that are of sufficient size to have gone through a formal tendering process.	Record kept in contracts folder.	Nil
Declaration of GPs' NHS income.  The information made available as part of GP's contractual obligation to publish their net income relating to NHS contracts.	Practice Website	Nil
<b>Class 3 – What our priorities are and how we are doing</b>  Strategies and plans, performance indicators, audits, inspections and reviews  <i>Current and previous year as a minimum</i>		
Plans for the development and provision of NHS services	Audit and Action Plans saved on Shared drive.	Nil
Performance data including performance against targets – QOF, IIF etc	Data extraction TPP	Nil
Inspection reports by regulators: the CQC	CQC Webpage, ratings displayed in Practice	Nil
<b>Class 4 – How we make decisions</b>  Decision making processes and records of decisions  <i>Current and previous year as a minimum</i>		



Records of decisions made in the practice affecting the provision of NHS services.	Email to Practice Manager for appropriate meeting minutes.	Nil
<b>Class 5 – Our policies and procedures</b>		
Current written protocols, policies and procedures for delivering our services and responsibilities		
<i>Current information only</i>		
Policies and procedures about customer service	Shared drive	Nil
Internal instructions to staff and policies relating to the delivery of services	How do I folders	Nil
Policies and procedures about the recruitment and employment of staff	Shared drive	Nil
Equality and diversity policy	Shared drive	Nil
Health and safety policy	Shared drive	Nil
Complaints procedures (including those covering requests for information and operating the publication scheme)	Website or hard copy in practice	Nil
Records management policies (records retention, destruction and archive)	Shared drive	Nil
Data protection policies	Shared drive	Nil
Policies and procedures for handling requests for information	Shared drive	Nil
<b>Class 6 – Lists and Registers</b>		
<i>Currently maintained lists and registers only</i>		
<b>None held</b>		Nil
<b>Class 7 – The services we offer</b>		



Information about the services offered by the Practice, including leaflets, guidance and newsletters produced for the public		
<i>Current information only</i>		
The services provided under contract to the NHS	Website/new patient leaflet	Nil
Charges for any of these services	Website/hard copy in practice	Nil
Information leaflets	Website/hard copy in practice	Nil
Out of hours arrangements	Opening hours sign/website	Nil



## PART TWO – PROCEDURAL GUIDANCE

### 1. RECEIVING A REQUEST

1.1 Anyone has a right to request information from a public authority. When responding to those requests, public authorities must:

- tell the applicant whether they hold the information falling within the scope of their request; and
- provide that information.

1.2 For a request to be valid under the Freedom of Information Act, it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff. It is good practice to provide the contact details of a designated individual, if you have one, but you cannot ignore or refuse a request simply because it is addressed to a different member of staff. Any letter or email to a public authority asking for information is a request for recorded information under the Act. The Practice has 20 working days to respond to requests.

1.3 Requests are valid under the FOIA if they:

- are in writing; this could be a letter, email, or request via the web including social networking sites;
- include the requester's real name. The Act treats all requesters the same so you should not normally seek to verify the requester's identity. However, you may decide to check their identity if it is clear they are using a pseudonym (e.g. Minnie Mouse, Harry Potter), or if there are legitimate grounds for refusing their request and you suspect they are trying to avoid this happening, for example, because their request is vexatious or repeated. Remember that a request can be made in the name of an organisation, or by one person on behalf of another, such as a solicitor on behalf of a client;
- include an address for correspondence. This need not be the person's residential or work address, it can be any address at which you can write to them, including a postal address or email address;
- describe the information requested. Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way. The Act covers information, not documents, so a requester does not have to ask for a specific document (although they may do so). They can, for example, ask about a specific topic, and expect you to gather the relevant information to answer their enquiry. Or, they might describe other features of the information (e.g. author, date or type of document).

1.4 The bar for a valid request is not a high one to meet, and almost anything in writing which asks for information will count as a request under the Act, even if it does not specifically mention to Act itself. This doesn't mean the Practice has to treat every enquiry as a formal request under the Act. It will often be sensible to deal with some enquiries informally. The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away; or



- the requester makes it clear they expect a response under the Act.
- 1.5 Even if a request is not valid under the Freedom of Information Act, this does not mean it can be ignored. Requests for 'environmental information', for example, can be made verbally. The Practice also has an obligation to provide advice and assistance to requesters. Where somebody seems to be requesting information but has failed to make a valid freedom of information request, the Practice should draw their attention to their rights under the Act and tell them how to make a valid request.
- 1.6 Questions can be a valid request for information. It is important to be aware of this so that you can identify requests and send them promptly to the correct person. Under the Act, if you have information in your records that answers the question, it should be provided in response to the request. The Practice is not required to answer a question if the relevant information is not already in a recorded form.
- 1.7 It can be difficult to answer questions asked under FOIA. Many of those who ask questions just want a simple answer, not all the recorded information you hold. It can be frustrating for applicants to receive a formal response under the Act stating that you hold no recorded information, when this doesn't answer their simple question. However, requesters do have a right to all the relevant recorded information you hold, and some may be equally frustrated with a less formal approach and failure to provide recorded information.
- 1.8 The best way is usually to speak to the applicant, explain to them how the Act works, and find out what they want. It should be remembered that even though the Act requires recorded information to be provided, this doesn't prevent answers or explanations being provided as well, as a matter of normal customer service.
- 1.9 The Practice can deal with many requests by providing the requested information in the normal course of business. If the information is included in the publication scheme, it should be given out automatically, or provide a link to where the information can be accessed. If the Practice needs to deal with a request more formally, it is important to identify the relevant legislation:
- if the person is asking for their own personal data, you should deal with it as a data protection subject access request;
  - if the person is asking for 'environmental information', the request is covered by the Environmental Information Regulations 2004.
- 1.10 Any other non-routine request for information the Practice holds should be dealt with under the Freedom of Information Act.
- 1.11 The main obligation under the Act is to respond to requests promptly, with a time limit acting as the longest time to take. Under the Act, most public authorities may take up to 20 working days to respond, counting the first working day after the request is received as the first day. Certain circumstances may allow extra time. However, in all cases you must give the requester a written response within the standard time limit for compliance.
- 1.12 Requests are often ambiguous, with many potential interpretations, or no clear meaning at all. If the Practice is unable to answer the request because they are unsure of what is being requested, the requester must be contacted as soon as possible for clarification.
- 1.13 The Practice does not have to deal with the request until clarification has been received. However, the Practice must consider whether the requester can be provided with advice and assistance to



enable them to clarify or rephrase their request. For example, the options that may be available to them could be explained to determine whether any of these would adequately answer their request.

- 1.14 The Act does not allow extra time for searching for information. However, if finding the information and drawing it together to answer the request would be an unreasonable burden on Practice resources, and exceed a set costs limit, the Practice may be able to refuse the request. Likewise, the Practice may not have to confirm whether or not they hold the information, if it would exceed the costs limit to determine this.
- 1.15 The Practice has two duties when responding to requests for information: to let the requester know whether they hold the information, and to provide the information. If the Practice is giving out all the information they hold, this will fulfil both these duties. If the Practice refuses all or part of the request, they will normally still have to confirm whether they hold (further) information. The Practice does not need to give a description of this information; they only have to say whether they have any (further) information that falls within the scope of the request.
- 1.16 In some circumstances, the Practice can refuse to confirm or deny whether information. For example, if a requester asks the Practice about evidence of criminal activity by a named individual, saying whether such information is held could be unfair to the individual and could prejudice any police investigation. This is called a 'neither confirm nor deny' (NCND) response.
- 1.17 The Act covers recorded information, whether or not it is accurate. The Practice cannot refuse a request for information simply because the information is out of date, incomplete or inaccurate. To avoid misleading the requester, the Practice should normally be able to explain to them the nature of the information, or provide extra information to help put the information into context.
- 1.18 When considering complaints against a public authority, the ICO will normally reject arguments that inaccurate information should not be disclosed. However, in a few cases there may be strong and persuasive arguments for refusing a request on these grounds if these are specifically tied to an exemption in the Act. It is therefore best for the Practice to identify such arguments.
- 1.19 The Practice should normally disclose the information held at the time of the request. Practices are allowed to make routine changes to the information whilst dealing with the request, as long as these would have been made regardless of the request. However, it would not be good practice to go ahead with a scheduled deletion of information if it is known to have been requested. Changes or deletions must not be made as a result of the request, for example, because of concerns that some of the information could be embarrassing if it were to be released. This is a criminal offence.
- 1.20 Disclosures under the Act are 'to the world'. However, the Practice can restrict the release of information to a specific individual or group at their discretion, outside the provisions of the Act. If the Practice makes a restricted disclosure, it should be made very clear to the requester that the information is for them alone; many requesters are satisfied with this. However, if the requester has made it clear that they want the information under the Act and are not satisfied with receiving it on a discretionary basis, the Practice can give them the information, but may also need to give them a formal refusal notice, explaining why it has not been released under the Act.

## **2. REFUSALS TO RESPOND**

- 2.1 A requester may ask for any information that is held by any public authority. However, this does not mean we are always obliged to provide the information. In some cases, there will be a good reason why we should not make public some or all of the information requested.



- 2.2 The Practice can refuse an entire request in the following circumstances:
- it would cost too much, or take up too much staff time to deal with the request;
  - the request is vexatious;
  - the request repeats a previous request from the same person.
- 2.3 In addition, the Freedom of Information Act contains a number of exemptions that allow the Practice to withhold information from a requester. In some cases, it will allow the Practice to refuse to confirm or deny whether it holds information.
- 2.4 The Practice can automatically withhold information because an exemption applies only if the exemption is 'absolute'. This may be, for example, information received from the security services, which is covered by an absolute exemption. However, most exemptions are not absolute but require a public interest test. This means the public interest arguments must be considered before deciding whether to disclose the information. The Practice may have to disclose information, despite an exemption, where it is in the public interest to do so.
- 2.5 If all or any part of a request is being refused, the requester must be sent a written refusal notice. The Practice will need to issue a refusal notice if it is either refusing to say whether the information is held at all, or confirming that information is held but the Practice is refusing to release it.
- 2.6 The Act recognises that FOI requests are not the only demand on the resources of a public authority. They should not be allowed to cause a drain on time, energy and finances to the extent that they negatively affect normal public functions.

#### **COST LIMIT**

- 2.7 Currently the cost limit for complying with a request, or a linked series of requests from the same person or group, is £450 for NHS services. When calculating the cost of compliance, the Practice can aggregate the costs of all related requests received within 60 working days from the same person or from a group of people who appear to be working together. The Practice can refuse a request if the estimates cost of compliance would exceed this limit, under s.12 FOIA. A request can be refused if deciding whether the Practice holds the information would exceed the cost limit, for example because it would require an extensive search in a number of locations. Otherwise, the Practice should state whether it holds the information, even if it cannot be provided under the cost ceiling.
- 2.8 The Practice is only required to reasonably estimate whether the limit would be exceeded. It does not have to do the work covered by the estimate before deciding to refuse the request. When estimating the costs, only the following activities can be taken into account:
- determining whether the information is held;
  - finding the requested information, or records containing the information;
  - retrieving the information or records; and
  - extracting the requested information from records.
- 2.9 The biggest cost is likely to be staff time. Staff time will be rated at £25 per person per hour, regardless of who does the work, including external contractors. This totals at 18 hours of staff time. The Practice cannot take into account the time it is likely to need to decide whether exemptions apply, to redact exempt information, or to carry out the public interest test. However, if the cost and resources required to review and remove any exempt information are likely to be so



great as to place the organisation under a grossly oppressive burden then the Practice may be able to consider the request under Section 14 (vexatious or repeated requests) instead.

- 2.10 If the Practice wishes to use Section 12 (cost limit) of the Act as grounds for refusing the request, the requester should be sent a written refusal notice. This should state that complying with their request would exceed the appropriate cost limit. However, the Practice should still say whether it holds the information, unless finding this out would in itself incur costs over the limit.
- 2.11 There is no official requirement for the Practice to include an estimate of the costs in the refusal notice. However, the requester must be given reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit would be exceeded and what information, if any, may be available within the limits. The Practice will not:
- give the requester part of the information requested, without giving them the chance to say which part they would prefer to receive;
  - fail to let the requester know why the information cannot be provided within the cost limit;
  - advise the requestor on the wording of a narrower request but then refuse that request on the same basis; or
  - tell the requestor to narrow down their request without explaining what parts of their request take costs over the limit. A more specific request may sometimes take just as long to answer.
- 2.12 If the requester refines their request appropriately, the Practice will deal with this as a new request. The time to comply with the new request will start on the working day after the date it is received. If the requester does not want to refine their request, but instead asks the Practice to search for information up to the costs limit, the Practice can do this, but the Act does not require it to do so.
- 2.13 If complying with a request would cost the Practice more than the £450, the request can be refused outright, or the work can be done for an extra charge. If the Practice chooses to comply with a request costing over £450, it can charge:
- the cost of compliance (the costs allowed in calculating whether the appropriate limit is exceeded); plus
  - the communication costs; plus
  - £25 an hour for staff time taken for printing, copying or sending the information.
- 2.14 The Practice will not do this work without receiving written agreement from the requester that they will pay the extra costs. The requester will also be given the option of refining their request rather than paying extra. The 'time for compliance' clock is paused in these circumstances, until payment is received.

## VEXATIOUS REQUESTS

- 2.15 As a general rule, the Practice will not take into account the identity or intentions of a requester when considering whether to comply with a request for information. The Practice cannot refuse a request simply because it does not seem to be of much value. However, a minority of requesters may sometimes abuse their rights under the Act, which can threaten to undermine the credibility of the freedom of information system and divert resources away from more deserving requests and other public business.



- 2.16 The Practice can refuse to comply with a request that is vexatious. If so, it does not have to comply with any part of it, or even confirm or deny whether the information is held. When assessing whether a request is vexatious, the Act permits the Practice to take into account the context and history of a request, including the identity of the requester and any previous contact with them. The decision to refuse a request often follows a long series of requests and correspondence.
- 2.17 The Practice will bear in mind that it is the request that is considered vexatious, not the requester. If after refusing a request as vexatious a subsequent request from the same person is received, it can only be refused if it also meets the criteria for being vexatious.
- 2.18 The Practice should be prepared to find a request vexatious in legitimate circumstances, but should exercise care when refusing someone's rights in this way. Further guidance on vexatious requests can be obtained from the ICO.
- 2.19 The Practice can refuse requests if they are repeated, whether or not they are also vexatious. Requests can normally be refused if they are identical or substantially similar to ones previously complied with from the same requester. The Practice cannot refuse a request from the same requester just because it is for information on a related topic, unless there is a complete or substantial overlap of the information.
- 2.20 However, the Practice cannot refuse a request as repeated once a reasonable period has passed. The reasonable period is not set down in law but depends on the circumstances, including, for example, how often the information held by the Practice changes. Further guidance on repeat requests can be obtained from the ICO.
- 2.21 If the request is vexatious or repeated, a written refusal notice will be sent to the requester. This only needs to state that this is the decision; it does not need to be explained further. However, the Practice will keep a record of the reasons for refusal decisions so they can be justified to the Information Commissioner's Office if a complaint is made.
- 2.22 If vexatious or repeated requests are received from the same person, the Practice can send a single refusal notice to the applicant, stating that their requests have been found to be vexatious or repeated (as appropriate) and that a written refusal will not be sent in response to any further vexatious or repeated requests.
- 2.23 This does not mean all future requests from this person can be ignored. For example, a future request could be about a completely different topic, or have a valid purpose. The Practice will consider whether the request is vexatious or repeated in each case.

### **3. EXEMPTIONS**

- 3.1 Exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest.
- 3.2 Exemptions do not have to be used where they apply however, in choosing to release information that may be exempt, the Practice must ensure that it does not disclose information breach of some other law, such as disclosing personal information in contravention of the UK GDPR or the DPA 2018. The Practice does not have to identify all the exemptions that may apply to the same information, if there is certainty that one applies.
- 3.3 The Practice can automatically withhold information because an exemption applies only if the exemption is 'absolute'. However, most exemptions are not absolute but are 'qualified'. This



means that before deciding whether to withhold information under an exemption, the public interest arguments must be considered.

- 3.4 In some cases, even confirming that information is or is not held may be sensitive. In these cases, it may be possible to provide a 'neither confirm nor deny' (NCND) response. Whether a NCND response is provided should usually depend on how the request is worded, not on whether the information is held. The Practice will apply the NCND response consistently, in any case where either confirming or denying could be harmful.
- 3.5 Some exemptions apply only to a particular category or class of information, such as information held for criminal investigations or relating to correspondence with the royal family. These are called class-based exemptions.
- 3.6 Some exemptions require the Practice to judge whether disclosure may cause a specific type of harm, for instance, endangering health and safety, prejudicing law enforcement, or prejudicing someone's commercial interests. These are called prejudice-based exemptions.
- 3.7 The Act also often refers to other legislation or common law principles, such as confidentiality, legal professional privilege, or data protection. In many cases, the Practice may need to apply some kind of legal 'test' - it is not as straightforward as identifying that information fits a specific description. It is important to read the full wording of any exemption, and, if necessary, consult the ICO guidance before trying to rely on it.
- 3.8 For the purposes of the Act, 'prejudice' means causing harm in some way. Many of the exemptions listed below apply if disclosing the information held would harm the interests covered by the exemption. In the same way, confirming or denying whether the Practice has the information can also cause prejudice. Deciding whether disclosure would cause prejudice is called the prejudice test.
- 3.9 To decide whether disclosure (or confirmation/denial) would cause prejudice:
- the Practice must be able to identify a negative consequence of the disclosure (or confirmation/denial), and this negative consequence must be significant (more than trivial);
  - the Practice must show a link between the disclosure (or confirmation/denial) and the negative consequences, showing how one would cause the other; and
  - there must be at least a real possibility of the negative consequences happening, even if you cant say it is more likely than not

More information on the prejudice test can be obtained from the [ICO](#).

## SECTION 21 – INFORMATION ALREADY REASONABLY ACCESSIBLE

- 3.10 This exemption applies if the information requested is already accessible to the requester. This could apply if it is known that the requester already has the information, or if it is already in the public domain. For this exemption, the Practice will need to take into account any information the requester gives about their circumstances. For example, if information is available to view in a public library in Southampton, it may be reasonably accessible to a local resident but not to somebody living in Glasgow. Similarly, an elderly or infirm requester may not have access to the internet at home and find it difficult to go to their local library, so information available only over the internet would not be reasonably accessible to them.



- 3.11 When applying this exemption, the Practice has a duty to confirm or deny whether it holds the information, even if they are not going to provide it. The Practice should also tell the requester where they can get the information.
- 3.12 This exemption is absolute, so the public interest test does not need to be applied. More information on s.21 exemptions can be obtained from the ICO.

#### **SECTION 22 – INFORMATION INTENDED FOR FUTURE PUBLICATION**

- 3.13 This exemption applies if, when receiving a request for information, the material is being prepared with the intention of it being published, and it is reasonable not to disclose it until then. A publication date does not need to have been set. This exemption does not necessarily apply to all draft materials or background research. It will only apply to the material intended for publication.
- 3.14 The Practice does not have to confirm whether the information requested is held, if doing so would reveal the content of the information. This exemption is qualified by the public interest test.

#### **SECTION 22A – RESEARCH INFORMATION**

- 3.15 This exemption applies if, when the Practice receives a request for information:
- the Practice holds the information in an ongoing programme of research;
  - there is an intention by someone – individual or organisation, private or public sector – to publish a report of that research; and
  - disclosure of the information would, or like be likely to, prejudice the research programme, the interests of the participants in the programme, or a public authority holding or intending to publish a report of research.
- 3.16 As long as the research programme is continuing, the exemption may apply to a wide range of information relating to the research project. There does not have to be any intention to publish the particular information that has been requested, nor does there need to be an identified publication date.
- 3.17 The Practice does not have to confirm whether it holds the information requested if doing so would reveal the content of the information. This exemption is qualified by the public interest test. More information on Section 22 and 22A can be obtained from the ICO.

#### **SECTION 32 – COURT RECORDS**

- 3.18 This exemption applies to court records held by any authority. To claim this exemption, the Practice must hold the information only because it was originally in a document created or used as part of legal proceedings, including an inquiry, inquest or arbitration.
- 3.19 This exemption is absolute, so the public interest test does not need to be applied. The Practice also does not have to confirm or deny whether it holds any information that is or would fall within the definition above. More information on Section 32 can be obtained from the ICO.

#### **SECTION 38 – ENDANGERING HEALTH AND SAFETY**

- 3.20 The Practice can apply the section 38 exemption if complying with the request would or would be likely to endanger anyone's physical or mental health or safety. In deciding whether this exemption can be applied, the same test should be used as would be used for prejudice.



- 3.21 This exemption is qualified by the public interest test. More information about section 38 can be obtained from the ICO.

#### **SECTION 39 – ENVIRONMENTAL INFORMATION**

- 3.22 The Practice should deal with any request that falls within the scope of the Environmental Information Regulations 2004 under those Regulations. This exemption confirms that, in practice, such requests do not also need to be considered under the Freedom of Information Act.
- 3.23 This exemption is qualified by the public interest test, but because this type of request must be handled under the Environmental Information Regulations, it is hard to imagine when it would be in the public interest to also consider it under the Freedom of Information Act. More information about section 39 can be obtained from the ICO.

#### **SECTION 40(1) – PERSONAL INFORMATION OF THE REQUESTER**

- 3.24 This exemption confirms that the Practice should treat any request made by an individual for their own personal data as a subject access request. The Practice should apply this to any part of the request that is for the requester's own personal data. They should not be required to make a second, separate subject access request for these parts of their request.
- 3.25 If the information contains some of the requester's personal data plus other non-personal information, then the Practice will need to consider releasing some of the information under the UK GDPR or the DPA 2018, and some under the Freedom of Information Act.
- 3.26 This exemption is absolute, so the public interest test does not need to be applied. The requested information may involve the personal data of both the requester and others. More information on section 40(1) can be obtained from the ICO.

#### **SECTION 40(2) – PERSONAL INFORMATION**

- 3.27 This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the UK GDPR or DPA 2018. This exemption can only apply to information about people who are living; it cannot be used to protect information about people who are deceased.
- 3.28 The most common reason for refusing information under this exemption is that disclosure would contravene UK GDPR principle (a) because there is no lawful basis for processing. Section 40(2) is an absolute exemption, so the public interest test does not need to be applied. However, public interest arguments may need to be included when considering lawfulness under principle (a).
- 3.29 Section 40 includes other provisions for individual data protection rights, and these provisions are qualified by a public interest test. More information on section 40(2) can be obtained from the ICO.

#### **SECTION 41 – CONFIDENTIALITY**

- 3.30 This exemption applies if the following two conditions are satisfied:
- the information is received from someone else; and
  - complying with the request would be a breach of confidence that is actionable.



- 3.31 The Practice cannot apply this exemption to information generated within the Practice, even if it is marked “confidential”. However, it can be claimed for information originally received from someone else but then included within Practice records.
- 3.32 To rely on this exemption, the legal principles of the common law test of confidence must be applied, in accordance with the Confidentiality NHS Code of Practice.
- 3.33 The UK GDPR and the DPA 2018 do not cover information about people who have died, so a section 40 exemption cannot be relied on to withhold deceased information. Where a request for personal information about someone who has died is received, the most appropriate exemption is likely to be section 41. This is because the information would originally have been provided to a healthcare practitioner or social worker in confidence, and the duty of confidentiality extends beyond death.
- 3.34 Information about people who have died is likely to be covered by an exemption, because the Freedom of Information Act is about disclosure ‘to the world’, and it would often be inappropriate to make this type of information public. 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 (e.g. the executor of their will) the right to access their medical records. If the Practice receives a request from someone who has the right to access the records in this way, the request can be refused under section 21 (reasonably accessible), and handled under the Access to Health Records Act.
- 3.35 This exemption is absolute, so the public interest test does not need to be applied. However, the Practice will still need to consider the public interest in disclosure, because the law of confidence recognises that a breach of confidence may not be actionable when there is an overriding public interest in disclosure. More information on section 41 can be obtained from the ICO.

#### SECTION 42 - LEGAL PROFESSIONAL PRIVILEGE

- 3.36 This applies whenever complying with a request would reveal information that is subject to ‘legal professional privilege’ and protects information shared between a client and their professional legal advisor (solicitor or barrister, in-house lawyers) for the purposes of obtaining legal advice or for ongoing or proposed legal action. These rules exist to ensure people are confident they can be open and honest with their legal adviser when obtaining legal advice, without fear of disclosure.
- 3.37 This exemption is qualified by the public interest test. More information on section 42 can be obtained from the ICO.

#### SECTION 43 – TRADE SECRETS AND PREJUDICE TO COMMERCIAL INTERESTS

- 3.38 This exemption covers two situations:
- when information constitutes a trade secret (such as the recipes for the branded product);
  - when complying with the request would prejudice or would be likely to prejudice someone’s commercial interests.
- 3.39 This exemption is qualified by the public interest test. More information on section 43 can be obtained from the ICO.

#### SECTION 44 – PROHIBITIONS ON DISCLOSURE

- 3.40 This exemption can be applied when refusing a request for information that:



- is not allowed under law;
- would be contrary to a retained EU obligation; or
- would constitute contempt of court

3.41 The Freedom of Information Act does not override other laws that prevent disclosure, which we call ‘statutory bars’. This exemption is absolute, so the public interest test does not need to be applied, but Practices should bear in mind that some statutory bars may refer to the public interest. More information on section 44 can be obtained from the ICO.

#### 4. PUBLIC INTEREST TEST

- 4.1 If the exemption that the Practice aims to apply is qualified, then a public interest test will need to be carried out, even if it is known that the exemption applies.
- 4.2 If the Practice thinks that an exclusion from the duty to confirm or deny may need to be claimed, then the public interest test will need to be considered for this duty. The Practice will need to do this separately from the public interest test for the duty to provide information.
- 4.3 For ‘neither confirm nor deny’ cases (NCND), the public interest test involves weighing the public interest in confirming whether or not information is held against the public interest in refusing to do this. The public interest in maintaining the exclusion from the duty to confirm or deny would have to outweigh the public interest in confirming or denying that information is held, in order to justify an NCND response.
- 4.4 Similarly, when considering whether information should be disclosed, the public interest in disclosure will need to be weighed against the public interest in maintaining the exemption. The Practice must bear in mind that the principle behind the Act is to release information unless there is a good reason not to. To justify withholding information, the public interest in maintaining the exemption would have to outweigh the public interest in disclosure.
- 4.5 The Practice can withhold information only if it is covered by one of the exemptions and, for qualified exemptions, the public interest in maintaining the exemption outweighs the public interest in disclosure. The Practice must follow the steps in this order, so information cannot be withheld because it is felt that this would be against the public interest, without first identifying a specific exemption. More information on the public interest test can be obtained from the ICO.
- 4.6 The law says that there can be a “reasonable” extension of time to consider the public interest test. The ICO considers that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and the Practice must be able to justify it.
- 4.7 To claim this extra time, the Practice must:
- contact the requester in writing within the standard time for compliance;
  - specify which exemption(s) it is seeking to rely on; and
  - give an estimate of when the public interest test will have been completed.
- 4.8 The Practice must identify the relevant exemptions and ensure they can be applied in this case, for example, by considering the prejudice test before this is done. The Practice cannot use the extra time for considering whether an exemption applies. Any information that is not covered by an exemption should be released within the standard time.



4.9 Once a conclusion has been reached on the balance of the public interest, the Practice will:

- disclose the information; or
- write to the requester explaining why it has been found that the public interest favours maintaining the exemption

4.10 Certain exemptions do not apply to historical records. Originally, a historical record was a record over 30 years old, although this has now been amended to 20 years by the Constitutional Reform and Governance Act 2010. This reduction has been phased in gradually over 10 years and will reach 20 years at the end of 2022. Other exemptions expire after 60 or 100 years. A full list of these can be found in section 63 of the Act.

4.11 When deciding whether or not an exemption applies, the Practice will need to consider what information is already in the public domain. If the requested information or similar information is already publicly available, then this may affect:

- whether the requested disclosure will still cause prejudice;
- whether the test for applying a class-based exemption is still met;
- where the balance of the public interest lies.

## 5. EXPLAINING EXEMPTIONS AND REFUSAL NOTICES

5.1 If the Practice is relying on an exemption, a written refusal notice must be issued within the standard time for compliance, specifying which exemptions are being relied on and why.

5.2 If a public interest test has already been done, it should be explained why the Practice has reached the conclusion that the public interest in maintaining the exemption outweighs the public interest in disclosure.

5.3 If the Practice is claiming extra time to consider the public interest test, a final refusal notice will not be provided at this stage, but the Practice should explain which exemptions are being relied on. If the final decision is to withhold all or part of the information, a second refusal notice will need to be sent to explain the conclusion on the public interest test.

5.4 If the Practice is withholding information but is still required to reveal that the information is held, it must also remember to do this.

5.5 The Practice must refuse requests in writing promptly or within 20 working days (or the standard time for compliance) of receiving it. In the refusal notice the Practice must:

- explain what provision of the Act it is relying on to refuse the request and why;
- Give details of any internal review (complaints) procedure we offer or state that we do not have one; and
- Explain the requester's right to complain to the ICO, including contact details

5.6 Often information can be withheld only some of the information requested. In many cases, some sections of a document can be disclosed but not others, or it may be possible to release documents after redacting.

5.7 The Act does not lay down any rules about redaction. The following are guidelines for good practice:



- make sure redaction is not reversible. Words can sometimes be seen through black marker pen or correction fluid. On an electronic document, it is sometimes possible to reverse changes or to recover an earlier version to reveal the withheld information. Ensure that staff responding to requests understand how to use common software formats, and how to strip out any sensitive information;
- in particular, care should be taken when using pivot tables to anonymise data in a spreadsheet. The spreadsheet will usually still contain the detailed source data, even if this is hidden and not immediately visible at first glance. Consider converting the spreadsheet to a plain text format (such as CSV) if necessary;
- give an indication of how much text has been redacted and where from. If possible, indicate which sections were removed using which exemption;
- provide as much meaningful information as possible. For example, when redacting names it may still be possible to give an indication of the person's role, or which pieces of correspondence came from the same person;
- as far as possible, ensure that what is provided makes sense. If so much has been redacted that the document is unreadable, consider what else can be done to make the information understandable and useful for the requester.
- keep a copy of both the redacted and unredacted versions so it is known what has been released and what has been refused, should the requester complain.

## 6. COMPLAINTS

6.1 Under the Act, there is no obligation for an authority to provide a complaints process. However, it is good practice under the Section 45 of the Code of Practice.

6.2 The Practice will ensure that:

- the procedure is triggered whenever a requester expresses dissatisfaction with the outcome;
- it is a straightforward, single-staged process;
- a fresh decision will be made based on all the available evidence that is relevant to the date of the request, not just a review of the first decision;
- the review is carried out by someone who did not deal with the original request, where possible, and preferably by a more senior member of staff; and
- the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.

6.3 When issuing a refusal notice, the Practice will state whether it has an internal review procedure and how to access it. If a requester complains even when a request has not been refused, the Practice should carry out an internal review if they:

- disagree with the Practices interpretation of their request;
- believe that the Practice holds more information than disclosed; or
- are still waiting for a response and are unhappy with the delay

6.4 Even if the internal review upholds the original decision (that, as at the date of the request, the information was exempt from disclosure) the Practice may wish to release further information if circumstances have changed and original concerns about disclosure no longer apply. The Practice



is not obliged to do this, but it may resolve matters for the requester and reduce the likelihood of them making a complaint to the Information Commissioner.

- 6.5 The ICO has a general duty to investigate complaints from members of the public who believe that an authority has failed to respond correctly to a request for information. If someone makes a complaint against the Practice, the ICO's complaints handling process gives the Practice an opportunity to reconsider their actions and put right any mistakes without taking any formal action.
- 6.6 If the complaint is not resolved informally, the ICO will issue a decision notice. If the ICO finds that the Practice has breached the Act, the decision notice will say what the Practice needs to do to put things right. The ICO also have powers to enforce compliance if the Practice has failed to adopt the publication scheme or has not published information as it should, whether or not a complaint has been received about this.
- 6.7 The Practice may be breaching the Freedom of Information Act if it does any of the following:
  - fails to respond adequately to a request for information;
  - fails to adopt the model publication scheme, or does not publish the correct information; or
  - deliberately destroys, hides or alters requested information to prevent it being released.
- 6.8 This last point is the only criminal offence under the Act that individuals and public authorities can be charged with.
- 6.9 Other breaches of the Act are unlawful but not criminal. The ICO cannot fine the Practice if it fails to comply with the Act, nor can the ICO require the Practice to pay compensation to anyone for breaches of the Act. However, any mistakes should be corrected as soon as the Practice is made aware of them.

## Appendix A Part Two – Additional Exemptions

### SECTION 23 and 24 – SECURITY BODIES AND NATIONAL SECURITY

The section 23 exemption applies to any information received from, or relating to, any of a list of named security bodies such as the security service. The Practice does not have to confirm or deny whether it holds the information, if doing so would reveal anything about that body or anything received from it. A government minister can issue a certificate confirming that this exemption applies.

The section 24 exemption applies if it is “required for the purpose of safeguarding national security”. The exemption does not apply just because the information relates to national security. This exemption is absolute, so the public interest test does not need to be considered. More information on [s.23](#) and [s.24](#) can be obtained from the ICO.

### SECTIONS 26 TO 29

These exemptions are available if complying with the request would prejudice or would be likely to prejudice the following:

- defence and the effectiveness of the armed forces ([section 26](#));
- international relations, including confidential information obtained from other states, courts or international organisations ([section 27](#));
- relations between the UK government, the Scottish Executive, the Welsh Assembly and the Northern Ireland Executive ([section 28](#));
- the economy and financial interests of the UK, Scottish, Welsh or Northern Irish administrations ([section 29](#)).

All these exemptions are qualified by the public interest test.

### SECTIONS 30 AND 31 – INVESTIGATIONS AND PREJUDICE TO LAW ENFORCEMENT

Section 30 exemption applies to a specific category of information that a public authority currently holds or has ever held for the purposes of criminal investigations. It also applies to information obtained in certain other types of investigations, if it relates to obtaining information from confidential sources.

When information does not fall under either of these headings, but disclosure could still prejudice law enforcement, section 31 is the relevant exemption. Section 31 applies where complying with the request would prejudice or would be likely to prejudice various law enforcement purposes (listed in the Act) including preventing crime, administering justice, and collecting tax. It also protects certain other regulatory functions, for example those relating to health and safety and charity administration. Both exemptions are qualified by the public interest test. More information on [section 30](#) and [section 31](#) can be obtained from the ICO.

### SECTION 33 - PREJUDICE TO AUDIT FUNCTIONS

This exemption can only be used by bodies with audit functions. It applies where complying with the request would prejudice or would be likely to prejudice those functions.

This exemption is qualified by the public interest test. More information on section 33 can be obtained from the [ICO](#).

## SECTION 34 - PARLIAMENTARY PRIVILEGE

This exemption can be used to avoid an infringement of parliamentary privilege. Parliamentary privilege protects the independence of Parliament and gives each House of Parliament the exclusive right to oversee its own affairs. Parliament itself defines parliamentary privilege, and the Speaker of the House of Commons can issue a certificate confirming that this exemption applies; the Clerk of the Parliaments can do the same for the House of Lords.

This exemption is absolute. More information on section 34 can be obtained from the [ICO](#).

## SECTION 35 AND 36 – GOVERNMENT POLICY AND PREJUDICE TO THE EFFECTIVE CONDUCT OF PUBLIC AFFAIRS

The section 35 exemption can only be claimed by government departments or by the Welsh Assembly Government. It is a class-based exemption, for information relating to:

- the formulation or development of government policy;
- communications between ministers;
- advice from the law officers; and
- the operation of any ministerial private office.

Section 35 is qualified by the public interest test. For policy-related information held by other public authorities, or other information that falls outside this exemption but needs to be withheld for similar reasons, the section 36 exemption applies.

The section 36 exemption applies only to information that falls outside the scope of section 35. It applies where complying with the request would prejudice or would be likely to prejudice “the effective conduct of public affairs”. This includes, but is not limited to, situations where disclosure would inhibit free and frank advice and discussion. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised qualified person for that public authority. A list of qualified people is given in the Act, and others may have been designated. If the qualified person’s opinion has not been obtained, then this exemption cannot be relied on. The qualified person’s opinion must also be a “reasonable” opinion, and the Information Commissioner may decide that the section 36 exemption has not been properly applied if she finds that the opinion given isn’t reasonable.

In most cases, section 36 is a qualified exemption. This means that even if the qualified person considers that disclosure would cause harm, or would be likely to cause harm, you must still consider the public interest. More information on [section 35](#), [section 36](#) and [qualified persons](#) can be obtained from the ICO.

## SECTION 37 – COMMUNICATIONS WITH THE ROYAL FAMILY AND THE GRANTING OF HONOURS

This exemption covers any information relating to communications with the royal family and information on granting honours. This exemption is absolute in relation to communications with the monarch, the heir to the throne, and the second in line of succession to the throne, so the public interest test does not need to be applied in these cases.

All other information under the scope of this exemption is qualified, so the public interest test must be applied. More information about section 37 can be obtained from the [ICO](#).