



Freedom of Information Policy

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A = Approved D = Draft

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Associated Documentation:

YAS Publication Scheme

<https://www.yas.nhs.uk/publications/publication-scheme/>

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Staff Summary

<ul style="list-style-type: none">• The Freedom of Information Act (FOIA) 2000 provides everyone with a right of access to all recorded public information held by authorities or those providing services for public authorities.
<ul style="list-style-type: none">• Yorkshire Ambulance Service (YAS) is committed to comply with the provisions of the FOIA, ensuring that individuals know how to access information held by YAS and supporting a culture of transparency, openness and accountability.
<ul style="list-style-type: none">• This policy applies to all employees of the Trust and covers all recorded electronic and paper-based information, subject to a number of exemptions.
<ul style="list-style-type: none">• The FOIA places a responsibility on public authorities to adopt, implement and maintain an approved Publication Scheme and routinely make available a proportion of disclosable information without waiting for it to be requested.
<ul style="list-style-type: none">• All requests received under the FOIA, EIR and RPSI are received, coordinated and managed by the Legal Services Department.
<ul style="list-style-type: none">• Any information that falls within the Trust's public task must be permitted for re-use, unless the information would be exempt under FOIA or EIR. The only exception to this is if the information is exempt under Section 21 of FOIA, because it is already readily available.
<ul style="list-style-type: none">• 'Round robin' requests must be handled in the same manner as any other FOIA or EIR request.
<ul style="list-style-type: none">• The Trust does not have to comply with a request if it is considered vexatious.
<ul style="list-style-type: none">• Both the FOIA and the EIR set out a series of exemptions (FOIA) and exceptions (EIR) which amount to valid reasons why information cannot be disclosed.
<ul style="list-style-type: none">• Staff should be informed that information and documents they may have contributed to in their professional capacity may be disclosable.

1.0 Introduction

- 1.1 The Freedom of Information Act (FOIA) 2000 provides everyone with a right of access to all recorded public information held by authorities or those providing services for public authorities. This right is to help the public better understand why public authorities make the decisions they do and how they spend public money.
- 1.2 Yorkshire Ambulance Service (YAS) is committed to comply with the provisions of the FOIA which came into force on 1 January 2005, ensuring that individuals know how to access information held by YAS and supporting a culture of transparency, openness and accountability.
- 1.3 YAS has two main obligations under the FOIA and EIR:
- To publish certain information proactively;
 - To respond to requests for information.

2.0 Purpose/Scope

- 2.1 This policy applies to all employees of the Trust and covers all recorded electronic and paper-based information, subject to a number of exemptions.
- 2.2 The purpose of this policy is to set out the Trust's approach to handling requests for information under the FOIA, ensuring that the Trust is compliant with all legal requirements.
- 2.3 This policy also covers requests made under the Environmental Information Regulations (EIR) 2004 and the Re-use of Public Sector Information Regulations (RPSI) 2015.

3.0 Process

3.1 Maintaining a Publication Scheme

- 3.1.1 The FOIA places a responsibility on public authorities to adopt, implement and maintain an approved Publication Scheme and routinely make available a proportion of disclosable information without waiting for it to be requested. The Trust has adopted the Information Commissioner's Office (ICO) Model Publication Scheme which sets out the types of information the ICO would normally expect NHS Trust's to publish. This can be accessed on YAS website:

<https://www.yas.nhs.uk/publications/publication-scheme/>

3.2 Standard Process for Handling Requests

- 3.2.1 All requests received under the FOIA, EIR and RPSI are received, coordinated and managed by the Legal Services Department.
- 3.2.2 The EIR specifically covers information on the state of the environment, and can be summarised as follows:
- the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites and the interaction between these elements factors such as substances, energy, noise, radiation or waste affecting or likely to affect the elements of the environment;
 - measures such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect or protect the elements of the environment;
 - reports on the implementation of environmental legislation;
 - cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities;
 - the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment.

- 3.2.3 All other requests for non-personal information should be handled under the FOIA. The Trust has two separate duties when responding to requests:
- to tell the applicant whether any information is held that falls within the scope of the request; and
 - to provide that information.
- 3.2.4 When a request for information is received, the Legal Services Department will assess whether the request is valid (e.g. written for FOIA and RPSI, written or verbal for EIR) and under which legislation the request is to be responded to. Applicants do not have to mention the Act/Regulations for the request to be valid; however it should include the requester's real name and an address for correspondence.
- 3.2.5 If the request is clearly for personal information (of the applicant making the request i.e. data subject), the request will be dealt with as a Subject Access Request (SAR) under the provisions of the Data Protection Act 2018.
- 3.2.6 The Legal Services Department will record the request and assess whether any additional information is required from the applicant to enable the Trust to respond to the request. If further details are required, the applicant will be contacted as soon as possible and in any event no later than 20 working days.
- 3.2.7 The Legal Services Department will send a standard acknowledgement response to the applicant.
- 3.2.8 The request will then be sent to the relevant departmental manager/Information Asset Owner (IAO) to advise whether the information can be provided in whole or provided in part.
- 3.2.9 Under the FOIA, EIR and RPSI the response timeframe is 20 working days. The FOIA says public authorities can have a "reasonable" extension of time to consider the public interest test if required (see 3.6 Exemptions). 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 organisation must be able to justify it. The applicant should be informed of the extension as soon as possible. The EIR do not permit any extension beyond 20 working days to specifically consider the public interest.
- 3.2.10 An internal deadline of 10 working days is set in relation to the gathering of information, to ensure that the final checking process can be completed, any additional material/information gathered if necessary and to allow for the response to be authorised. When a request from the Legal Services Department is received it should be complied with in a timely manner, and within the timescales set. The Legal Services Department work to strict deadlines set externally within legislation whereby fines can be imposed on the Trust for failure to meet these. Any difficulties meeting the timescales should be communicated at the earliest opportunity to the Legal Services Department. Requests for information should not be ignored under any circumstance.

- 3.2.11 Before responses are sent back to the Legal Services Department, the IAO or appropriate senior manager should sign off the information as being accurate. The final response will be drafted by the Legal Services Department.
- 3.2.12 If the relevant departmental manager is unsure whether the information requested can be released, advice will be sought from the Legal Services Department or the Head of Risk & Assurance in the first instance. Further advice may be taken from the Executive Director of Quality, Governance and Performance Assurance, the Chief Executive and/or the Caldicott Guardian. A decision may also be taken to seek legal advice from the Trust's Solicitor.
- 3.2.13 All responses are to be approved by the Legal Services Manager (or delegated deputy), and in some circumstances approval will also be sought from either the Executive Director of Quality, Governance and Performance Assurance or other relevant Executive Director before being released to the requestor by the Legal Services Department.
- 3.2.14 The Corporate Communications department will be advised of any FOIA requests from journalists or those known to have links to the media and all responses will be passed to the press office for approval before issuing.
- 3.2.15 If the intended FOIA or EIR response could impact on another public body or private sector organisation, the Legal Services Department will notify the public body or private sector organisation of the request and intended response out of courtesy and at the earliest opportunity. The purpose of this is to seek their views and any concerns in relation to the intended response. A copy of the response to the applicant will be copied to the public body or private sector organisation at the same time as it is sent to the applicant.
- 3.2.16 Under RPSI, re-use means using public sector information for a different purpose to the original public task it was produced for. Any information that falls within the Trust's public task must be permitted for re-use, unless the information would be exempt under FOIA or EIR. The only exception to this is if the information is exempt under Section 21 of FOIA, because it is already readily available. Any request for the re-use of information which has not previously been disclosed must also be dealt with under FOIA or EIR. Information made available for re-use must be in the format and language of which the Trust holds it.
- 3.2.17 The Trust follows a Records Management Policy and Retention Schedule, which are in compliance with the Records Management Code of Practice for Health and Social Care 2016. This policy addresses issues of active records management, including the creation, retention, maintenance and disposal of records, according to the legal requirements placed upon the Trust.
- 3.2.18 There are certain conditions whereby the Trust is not obliged to comply with an information request.

3.3 Costs and Fees

3.3.1 No charge will be made for information provided in the form of:

- downloads or information taken from the Trust's website, although any charges for Internet Service provider and personal printing costs would have to be met by the individual;
- email – unless it is for information not routinely published in the public domain;
- leaflets and brochures;
- access to any public registers or lists of environmental information.

3.3.2 Charges *may* be incurred for the following:

- information provided on CD or similar medium;
- multiple copies of documents;
- archived copies of documents that are no longer available on the Trust's website;
- any information held by the Trust that is not routinely published into the public domain.

3.3.3 The relevant departmental manager will advise whether a fee would be payable for the information requested. The Legal Services Department will calculate the cost using the criteria stated in the Trust Publication Scheme.

3.3.4 The duty to comply does not arise if the estimated cost of supplying the information exceeds the appropriate limit established in statutory Fees Regulations (£450.00 for NHS Trusts). Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

All public authorities should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour.

This means that the appropriate limit will be exceeded if it would require more than 18 hours work for public authorities, including NHS Trusts. The Trust will work with the applicant to explore ways to make the request more reasonable and keep costs to a minimum but reserves the right to refuse or charge for the communication of information that exceeds the limit.

3.3.5 If a fee is required, the Legal Services Department will write to the applicant, issuing a fees notice, and the information will only be released on receipt of payment. The deadline of 20 working days is suspended until the payment has been received. If the fee is not received within three months, the request can be closed.

3.3.6 If the applicant refines their request appropriately, the Trust should then deal with this as a new request. The time for the Trust to comply with the new request should start on the working day after the date it is received.

3.3.7 Under the EIR, there is no cost limit; the Trust can charge for making information available to an applicant in some circumstances. Any charge should be 'reasonable' – it should not exceed the costs you incur in making the information available or act as a deterrent to the right to request information. It may cover the cost of the paper for photocopying or printing the information and a covering letter and the cost of postage. It may also include the cost of staff time in identifying, locating or retrieving the information from storage.

3.3.7 No charge will be made for permitting the re-use of information under the Open Government Licence (OGL). Once information has been permitted under OGL it would be difficult to impose a charge at a later date. It is therefore important to be clear about the basis in which information is being permitted for re-use. Charges may be incurred for the marginal costs of reproducing, providing and disseminating the information.

3.4 Handling Round Robin Requests

3.4.1 A 'round robin' request is one that has been sent to a number of different organisations by the same person. In some cases it may not be immediately obvious that the request has been sent to other organisations.

3.4.2 'Round robin' requests must be handled in the same manner as any other FOIA or EIR request, however, on receipt:

- the Legal Services Manager should be informed that such a request has been received, and
- to help achieve consistency of responses, FOI leads in other ambulance services will be contacted to share views of how the request may be interpreted.

3.5 Vexatious and Repeated Requests for Information

3.5.1 The Trust does not have to comply with a request if it is considered vexatious. The key question to ask is whether the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.

3.5.2 The Trust will log all requests for monitoring purposes and will be able to identify repeated or vexatious requests. On these occasions a written refusal notice will be issued.

3.6 Exemptions

3.6.1 In response to a request we will normally confirm whether or not the information is held and either provide the information or explain that part or all of the information is being withheld due to an exemption. There are also some circumstances where the Trust can neither confirm nor deny (NCND) whether the information is held.

- 3.6.2 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.
- 3.6.3 Both the FOIA and the EIR set out a series of exemptions (referred to as Exceptions under EIR) which amount to valid reasons why information cannot be disclosed. The exemptions are separated into 'absolute' and 'qualified', whilst the exceptions are all 'qualified'.
- 3.6.4 Qualified exemptions (FOI and EIR) require the 'public interest test' to be applied to them. Information that falls within this particular category will have to be disclosed unless it can be successfully argued that the public interest in withholding it is greater than the public interest in releasing it. The principle behind the FOIA is to release information unless there is a good reason not to.
- 3.6.5 In addition to the public interest in transparency and accountability, there is further public interest in disclosing environmental information because it supports the right of everyone to live in an adequate environment, and ultimately contributes to a better environment. Normally, public interest arguments in favour of the exception have to be specifically related to what that exception is protecting, but this is a general public interest argument for disclosure, and it does not have to be related to the specific exception.
- 3.6.6 Under the EIR, when more than one exception applies to the information, the public interest arguments in maintaining the exceptions can be combined against the public interest in disclosure. This is different from the approach required under the Freedom of Information Act.
- 3.6.7 Absolute exemptions (FOI only) do not contain the above requirement. Where information falls within the terms of an absolute exemption, the Trust may withhold this without applying the public interest test.
- 3.6.8 Personal information contained within disclosures under the FOIA and EIR should be redacted if they relate to the private life of the individual detailed, which is in accordance with the Data Protection Act 2018. However, some personal information pertaining to an individual who is mentioned in their official capacity may be released.
- 3.6.9 Personal information should not be released if there is any evidence that damage or distress may be caused to the individual being named, or their safety may be compromised. However, this does not include withholding details to prevent potential embarrassment being caused as a result of the disclosure.
- 3.6.10 Staff should be informed that information and documents they may have contributed to in their professional capacity may be disclosable.
- 3.6.11 Where information has been obtained from a third party in confidence, the Trust will make every effort to consult with the third party with a view to obtaining consent for disclosure. However, if a third party does not respond or they refuse to consent, this does not automatically mean information will be withheld. The final decision as to whether the information should be disclosed will lie with the Trust.

- 3.6.12 In deciding whether any information may be exempt from disclosure because it may involve a breach of confidentiality imposed by a third party or it may breach a trade secret or it may prejudice the commercial interest of any party, the Trust will take into account current guidance issued by the Information Commissioner's Office or the Department of Constitutional Affairs. Contractors should be advised to include FOIA or EIR disclosure clauses within their contracts.
- 3.6.13 Where the Trust intends to rely upon an exemption for either part or the whole of the request, advice may be sought from the Legal Services Department or the Head of Risk & Assurance. Where an exemption is relied upon, the department who holds the information must provide sufficient information as to the reasons why it applies, including the completion of a public interest test where required.
- 3.6.14 When information is withheld due to an exemption, the applicant will be informed of this through a Refusal Notice within the standard timeframe for compliance, specifying which exemption the Trust is relying on and why.
- 3.6.15 If the Trust has done a public interest test, they should explain why they have reached the conclusion that the public interest in maintaining the exemption outweighs the public interest in disclosure.

3.6.16 A full list of exemptions can be found in Appendix A.

3.6.17 A full list of exceptions can be found in Appendix B.

3.7 Requests for an Internal Review

- 3.7.1 If a requestor is not satisfied with the Trust's response they have the right to request an internal review. This request may be made in writing, by email or letter.
- 3.7.2 The Head of Risk & Assurance will review the way the request was handled and whether the response was fair under the requirements of the relevant legislation.
- 3.7.3 Under EIR the applicant's request for an internal review must be made within 40 working days of the date of the refusal letter. The appeal must then be dealt with within 40 working days by the Trust. There are no such timelines dictated under the FOIA. However, good practice would be to follow the same timescales as under the EIR.
- 3.7.4 The Trust will aim to respond to all internal reviews within 20 working days.
- 3.7.5 If the applicant remains dissatisfied with the outcome, they may refer the matter to the Information Commissioner's Office (ICO) who will investigate the issue and advise accordingly. The Trust reserves the right to seek legal advice if deemed necessary.

4.0 Training expectations for staff

- 4.1 All new staff undertake information governance induction training via the Trust's Statutory and Mandatory training workbook. This training includes awareness of the FOI and how to direct enquiries under the Act. All staff receive annual information governance training which includes a reminder of the legislation and directing requests.

4.2 Staff handling FOIA requests will receive appropriate training, development and support to allow them to discharge their responsibilities.

5.0 Implementation Plan

5.1 The latest approved version of this Policy will be posted on the Trust Intranet site for all members of staff to view. New members of staff will be signposted to how to find and access this guidance during Trust Induction.

6.0 Monitoring compliance with this Policy

6.1 Compliance reports are presented by the Legal Services Manager throughout the year to a range of executive committees, including regular updates to the Quality Committee. The committees review the reports, note any deficiencies and remedial actions in their minutes. Progress against actions will be monitored as part of routine business and will be subject to the Trust's performance management process.

6.2 The effectiveness of this policy is monitored against adherence to external timescales set by the various legislation and judiciary. Key Performance Indicators (KPI) based on the legislative timeframes have been agreed, and performance against these KPIs is monitored through reports to executive committees and Trust board via the monthly Integrated Board Report.

6.3 Every six months there is to be a review of the requests received in the past six months. This is to determine if there have been numerous requests for the same information. Where there have been numerous requests for the same information, that information can be added to the publication scheme to reduce the number of similar requests.

7.0 References

7.1 Legislation:

- Freedom of Information Act 2000;
- The Environmental Information Regulations 2004;
- The Re-use of Public Sector Information Regulations 2015.

7.2 External Guidance:

- Information Commissioners Office: Guide to Freedom of Information. Available at: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>
- Information Commissioners Office: Guide to Environmental Information Regulations. Available at: <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>
- NHS Digital's Data Security and Protection Toolkit. Available at: <https://www.dsptoolkit.nhs.uk/>

7.3 Internal Guidance and Support:

- Legal Services Department: yas.foi@nhs.net
- Information Governance Team: yas.yasinformationgovernance@nhs.net

8.0 Appendices

8.1 Appendix A – Exemptions (FOIA)

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

8.2 Appendix B – Exceptions (EIR)

Regulation 12(4)(a)	Information not held
Regulation 12(4)(b)	Manifestly unreasonable requests
Regulation 12(4)(c)	Requests formulated in too general a manner
Regulation 12(4)(d)	Material in the course of completion, unfinished documents and incomplete data
Regulation 12(4)(e)	Internal communications
Regulation 12(5)(a)	International relations, defence, national security or public safety
Regulation 12(5)(b)	The course of justice and inquiries exception
Regulation 12(5)(c)	Intellectual property rights
Regulation 12(5)(d)	Confidentiality of proceedings
Regulation 12(5)(e)	Confidentiality of commercial or industrial information
Regulation 12(5)(f)	Interests of the person who provided the information to the public authority
Regulation 12(5)(g)	Protection of the environment
Regulation 12(9)	Information on emissions
Regulation 13	Personal information

8.3 Appendix C - Definitions

Applicant	The individual, group or organisation making the request for information.
Exemption	A valid reason for non-disclosure of information under the Freedom of Information Act 2000.
Exception	A valid reason for non-disclosure of information under the Environmental Information Regulations 2004.
Publication Scheme	A publication detailing all the information routinely available from the organisation.
Public Interest Test	Determining whether the interests of the public are better served by withholding or disclosing the information.
Personal Information	Information from which an individual's identity can be obtained.
Third Party	Someone other than the applicant.

8.4 Appendix D - Roles & Responsibilities

Executive Director of Quality, Governance and Performance Assurance (Senior Information Risk Owner)

The Executive Director of Quality, Governance and Performance Assurance has responsibility for ensuring that adequate arrangements are in place to effectively manage requests made under the FOIA and EIR, ensuring that an appropriate system is in place to manage risks arising from these processes. The Director has the responsibility for providing the Trust Executive Group and Trust Board with updates on significant developments and assurance on the management of these processes.

Legal Services Manager

The Legal Services Manager has operational responsibility for the management of the Legal Services Department, which includes the management of FOI and EIR requests. The Legal Services Manager has responsibility for the collation and analysis of data and for providing detailed reports to Trust Committees. The Legal Services Manager will approve non-contentious FOI and internal review responses before they are sent out externally and can provide advice and guidance on the handling of requests including the application of exemptions.

Head of Risk & Assurance

The Head of Risk & Assurance is responsible for ensuring appropriate information governance policy and procedure is in place providing advice and guidance on handling of requests under FOIA, EIR and RPSIR and the application of exemptions. Head of Risk & Assurance will carry out internal reviews.

Legal Services Department

The Legal Services Department consists of a number of coordinators and administrators, each of which is allocated specific aspects of Legal Services responsibilities. They support the Legal Services Manager in the operational delivery of departmental objectives and in the achievement of mandated performance standards. The administrator responsible for handling FOI requests will follow the process as set out within section 3.0 of this policy.

All Trust Managers

All managers are required to co-operate with the Legal Services Manager and the Legal Services Department, by responding in a timely manner to requests for any information or support required in handling requests made under FOIA, EIP and RPSIR. It is the responsibility of the departmental manager to ensure the information is accurate when responding to any such request.

All Staff

All Trust staff should be aware that FOIA, EIR and RPSIR requests are to be handled by the Legal Services Department and details should immediately be notified to yas.foi@nhs.net. All staff should ensure that correspondence through Trust communication channels is carried out in a professional manner and staff should understand that it may be disclosable under the FOIA and EIR.