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RELEASE OF INFORMATION PROCEDURE

Introduction and Aim

This procedure will enable staff to assess any request for information that is received by Public Health Wales and determine the most appropriate response. It also gives some direction around the protection of information that is released

Linked Policies, Procedures and Written Control Documents

[All corporate policies and procedures are available on the Public Health Wales website](#)

[Information Governance Policy](#)

Subject Access Requests Procedure

Scope

This procedure applies to the release of information, both pro-actively and in response to requests from members of the public or other organisations. This procedure does not cover the release of personal data under Data Protection legislation, which is subject to a separate procedure. This procedure applies to all employees of Public Health Wales NHS Trust

Equality and Health Impact Assessment

This procedure is subject to the EHIA completed for the Information Governance Policy
[IG EHIA Policy](#)

Approved by

Information Governance Group

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Accountable Executive Director/Director

Rhiannon Beaumont-Wood, Executive Director Quality, Nursing and Allied Healthcare Professionals.

Author

Lisa Partridge Information Governance Manager

Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Corporate Governance](#).

Summary of reviews/amendments

Version number	Date of Review	Date of Approval	Date published	Summary of Amendments
1	22 Jan 2020	22 Jan 2020	17 May 2018	New document.
2	27 September 2022	8 th December 2022		Extensive re-write

1 Introduction

A cornerstone of any democratic society is the principle that people should have access to information held by public bodies, thus enabling them to make informed decisions about the way the country and its key public services is run.

The primary legislation for the release of information is the Freedom of Information Act 2000 (FOIA). It is a common misconception that when requesting information, the requestor has to explicitly state that their request is made under FOIA for the law to be applicable. In fact all *written* requests for any information at all, must be dealt with in line with the requirements of the FOIA. This includes everything from an email asking what time our reception desk opens in Capital Quarter, to a formal written request for minutes of an Executive STeam meeting.

This does not necessarily mean a formal response is required for all requests, but it does mean that if we hold the information requested we are obliged to provide it and we must do so within the timescales set down.

The general approach then is that all requests for information must be responded to positively and the default position is that if we hold the information requested, we will provide it on request unless there is a good reason not to.

This procedure explains the methods in which information is released, the safeguards that need to be applied and the procedure for withholding information where appropriate.

2 Legislative framework

There is a complex legal framework concerning a person's right to access information held by Public Health Wales. This is not an exhaustive list but the legislation includes:

- Freedom of Information Act 2000
- Environmental Information Regulation 2004
- Public Records Act
- Human Rights Act
- Data Protection Act 2018
- UK General Data Protection Regulation 2016
- Re-use of Public Sector Information Regulation 2015

It is essential to consult the Information Governance team as soon as any request is received so that the appropriate expert advice can be provided, which may save considerable time and effort.

Almost all requests for information however fall under FOIA and so for consistency the term FOIA is used throughout this document and should be interpreted as referring to any request, the response for which is required under legislation.

3 Roles and responsibilities

All staff will:

- Receive any written requests for information from the public and refer them to their manager or business manager

Managers and Business Managers will:

- Respond promptly and in line with this procedure to any requests for information
- Assess any request to determine whether or not it can be dealt with locally
- Where required, refer the request to the Information Governance Service
- Check the release of personal data for suitable anonymization prior to release or publication

The Head of Information Governance will:

- Maintain a Procedure for the release of information
- Carry out the Public Interest Test as required
- Approve the final release of information

The Information Governance Service will:

- Notify the Chief Executive and the Head of Communications of all requests received that will require a formal organisational response
- Assess all submitted requests and determine which legislation will apply
- Provide advice and guidance to managers
- Ensure relevant staff are informed
- Advise on the engagement of exemptions

- Collate the requested information
- Provide requested information in a standardised format
- Publish all requests and answers on the Public Health Wales internet
- Ensure that the Head of Communications is consulted prior to release of information under either the Freedom of Information Act or the Environmental Information Regulations.

The Head of Communications will:

- Raise any issues with the Information Governance Service on first sight of the request
- Brief the Chief Executive as appropriate
- Approve the final response from a communications perspective to the Information Governance Service

Executive Directors and members of the Executive Team will:

- Approve the release or the engagement of relevant exemptions for information requested from the Directorate for which they are responsible.

The Chief Executive Officer will:

- Act as the Public Health Wales 'Qualified Person' for the purposes of Section 36 of the FOIA, and provide a reasonable opinion in the event that an exemption under Section 36 of the Act is proposed.

4 Procedure

4.1 Receiving a request

It is important to note that for a request to be considered to fall under FOIA it must be in writing¹. That said, 'in writing' has been held to include not just letters and emails but also tweets, text messages and posts on social media platforms. Requests must also provide a name and address for the response (which may be an email address, or a website such as 'whatdotheyknow.com').

It is important to note that often quite legitimately requests are made by a person or organisation using a pseudonym. Requests made under FOIA

¹ Certain requests, notably for Environmental Information can be made verbally. If in doubt, contact the Information Governance Service for advice

are said to be 'requestor and motive blind', meaning that it is not permissible under FOIA to question the responder as to who they are or why they want the information. It is then essential that all requests are treated the same whether they are suspected to come from a student researcher, a government minister, a journalist or another organisation.

Most simple requests will be received by email and those received within Directorates can usually be dealt with by a simple answer.

There will be occasions however where requests **must** be referred to the Information Governance Service so that a formal organisational response can be provided. These include:

- Any requests that explicitly or implicitly refer to rights under the FOIA;
- Dealing with the request would necessitate exceptional levels of work beyond departmental capacity;
- Any request where consideration is being given to refusing to release the information requested.

4.2 Information 'held' by Public Health Wales

Information which is in our possession either physically or electronically is 'held' by us. This applies even if it not 'our' information (e.g. minutes of meetings held by Welsh Government). If we hold the information, the responsibility is on us to decide whether or not to release it.

In circumstances such as above, where other organisations or people are involved in the information, we have a duty to consult them prior to release and they may make representations if they do not want us to release it. The final decision on whether or not to release or withhold however always remains with Public Health Wales.

Note that the duty is to release information that is held, but there is no requirement to produce or generate new information. For example, we may be asked for an analysis that we have not yet considered doing. Whilst we may hold the raw data, we are not required under the Act to create new information by carrying out an analysis of it.

4.3 *Types of information that fall under the Act*

Almost all information that is held by the organisation falls within the scope of the FOIA. This includes, but is not limited to;

- Reports, papers, minutes and notes of meetings, including drafts, whether held electronically or in hard copy;
- Recordings and transcripts of meetings;
- Emails;
- Posts, messages and text messages on organisational equipment or organisational social media accounts such as Teams, Facebook, Twitter and Whats App.

An important point to note that there is no exemption available for information that we think might be embarrassing or compromising to the organisation or staff because it is incorrect, inaccurate or full of typing errors. A good example that is heard frequently is where a meeting is being recorded on Services, and a participant says something like '*Not for the minutes, but...*' In a case such as this if the recording or transcript exists and is requested, it is disclosable under FOIA unless there is an appropriate exemption to be engaged.

Any and all information that we hold falls under the Act and must be considered for release. This includes any drafts of documents that have been created and are still held in our systems.

4.4 *Information on Bring your Own Devices (BYOD)*

Increasingly, staff are using their own devices, particularly smart phones for work purposes. It must always be remembered that whilst personal devices are your own property, if you use it for work related matters there may be occasions when the information stored on it may belong to Public Health Wales and so may be disclosable under legislation. This will apply again to material such as social media accounts owned or controlled by the organisation and to emails and text messages.

4.5 *Responding to a request for information*

Where a request is received locally and does not require a formal response then there is no standard organisational response and the matter can be dealt with according to local / Directorate communication protocols.

Where a formal organisational response is required, this must be on the organisation's template letter and the Information Governance

team will be responsible for completing the response, seeking any required approval to release the information, and sending it to the requestor.

In all cases, the organisational response must be provided within 20 working days of receiving the request.

4.6 Responding to a request from the Information Governance Service

Where a request comes in that requires a formal response, the Information Governance Service will contact the department responsible and request the information for disclosure. In order to ensure compliance with the legal requirements, the department will respond within 15 days and either;

- Provide the information requested and confirm its suitability for release;
- Confirm that the information requested is not held, or

If the department responsible feels that the information should not be released, then the response must be within 10 days and:

- Confirm that the information is held, but provide an explanation for why it cannot be released.

The Information Governance Service will then assess the response, liaise with the responder if there is a requirement to withhold the information requested and arrange for any necessary documentation to be completed.

4.7 Refusing a request for information

Refusing a request for information will be the exception rather than the rule. Although the intention of the FOIA is to make information available to people wherever possible, the legislators also recognised that there would be occasions where this would not be possible or desirable. As a result a number of exemptions are provided, which the organisation can engage should it feel that release of information is not appropriate.

In certain circumstances, information can be refused if the cost of complying with the request would be too expensive and we do not have to respond to requests that can be classes as 'vexatious'.

The subject of exemptions is complex and there are a large number of exemptions available, some of which require a 'public interest test' and one which requires the specific approval of the Chief Executive. Should you be considering refusing to release information, expert advice will be provided by the Information Governance Service.

4.8 Release or publication of personal data

Public Health Wales frequently publishes and releases personal data relating to individuals under FOIA and other legislation, provided that it is treated in such a way as to make the identification of the data subjects impossible.

There are three ways in which we generally carry this out.

- Anonymised information
- Anonymised views of information
- Pseudonymised information

For information or data to be truly anonymised, the anonymization must be *irreversible*. That means that we as the data controller for the information, must anonymise it to the extent that it is impossible (even for us) to reconstruct it and link the data to the individuals.

Once information is truly anonymised, then data protection law no longer applies and there is no restriction on publishing or releasing it.

In practice it is extremely difficult to anonymise information to this extent and so in reality what we normally do is to provide *anonymised views* of information. A typical example of this is a spreadsheet containing personal data, where to release it we simply delete the column containing the identifiers (usually the name or email address). This is not anonymised because Public Health Wales as the data controller still holds all the identifiable information.

The other alternative is to provide pseudonymised information. This is done by replacing the usual identifier (name or NHS number for example) with a pseudonym, which is then kept separate from the dataset. Pseudonymised information however is still classed as personal data for the purposes of data protection law and must be treated as such.

Anyone intending to release personal data in any of these cases must have the data for release checked by their manager prior to release. This is to provide a second check or a 'fresh pair of eyes' to ensure

that the information has been suitably treated and that no identifiable personal data remains.

4.9 Complaints from requestors

When a requestor is not satisfied with the response from the organisation, they have the right to complain and request an Internal Review of the decision making in relation to the request. All such requests will be referred to the Assistant Director of Integrated Governance (ADIG), who will review the request and the response provided. If the complaint is upheld the ADIG will direct that the information should be released without further delay. If the complaint is not upheld, then the ADIG will write to the requestor and notify them.

5 Training requirements

The Head of Information Governance will ensure that training is provided to staff on the Procedure in accordance with the Document Control Procedures.

6 Monitoring compliance

The Head of Information Governance will monitor this procedure to ensure it is compliant with current legislation and to ensure it is effectively implemented.

7 Publication

Anonymised responses to Freedom of Information and Environmental Information Regulation requests are published on the Public Health Wales internet as part of the Publication Scheme.

8 Further information

The Information Commissioner's Office publishes detailed advice on Freedom of Information, Environmental Information Regulation and Subject Access Requests. Anyone wanting more detailed information can consult the Information Commissioner's Office guidance by following the links below.

For Freedom of Information & Environmental Information Regulation requests:

<https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>

Appendix A – FOIA request flow chart

