**PCIG Consulting Template**

**Freedom of Information Act**

**Policy and Handbook**

**Version: 2.0**

**Date: 29 April 2021**

**This template is for use by Practices to Comply with the FOIA requirement to have a policy regarding Freedom of Information Act Requests. The template is Generic in design as PCIG Consulting have clients across the UK, local sharing arrangements and area specific sharing or processing will need to be added by the practice.**

**Change Control**

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 Radford Medical Practice

**Freedom of Information Act**

**Policy and Handbook**

**Document History**

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| **Document Reference:** | … |
| **Document Purpose:** | This policy sets out what the practice, Radford Medical Practice, expect from all staff, including those working on behalf of the Practice, when dealing with requests for information under the Freedom of Information Act.  |
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| **Developed by:** | Paul Couldrey – IG Consultant |
| **Policy Sponsor:** | Practice Manager |
| **Target Audience:** | This policy applies to any person directly employed, contracted, working on behalf of the Practice or volunteering with the Practice. |
| **Associated Documents:** | All Information Governance Policies and the Information Governance Toolkit, and Data Security and Protections Toolkit 2020 |

Freedom of Information Act

Policy and Handbook

# Introduction

The Freedom of Information Act 2000 provides public access to information held by public authorities such as Radford Medical Practice.

It does this in two ways:

* public authorities are obliged to publish certain information about their activities; and
* members of the public are entitled to request information from public authorities.

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland.

Public authorities include government departments, local authorities, the NHS (including General Practice), state schools and police forces. However, the Act does not necessarily cover every organisation that receives public money. For example, it does not cover some charities that receive grants and certain private sector organisations that perform public functions.

Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a subject access request under the Data Protection Act 2018.

Radford Medical Practice is a public body as defined in section 1 of the Act

As a public body, Radford Medical Practice, spends money collected from taxpayers and makes decisions that can significantly affect many people’s lives. Access to information helps the public make public authorities accountable for their actions and allows public debate to be better informed and more productive.

Access to official information can also improve public confidence and trust. Radford Medical Practice embraces openness and is committed to be open and honest in its conduct and activities.

The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. This is sometimes described as a presumption or assumption in favour of disclosure. The Act is also sometimes described as purpose and applicant blind.

This means that:

* + everybody has a right to access official information. Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by the Act;
* an applicant (requester) does not need to give you a reason for wanting the information. On the contrary, you must justify refusing them information;
* you must treat all requests for information equally, except under some circumstances relating to vexatious requests and personal data (see [When can we refuse a request?](#_bookmark3) for details on these). The information someone can get under the Act should not be affected by who they are. You should treat all requesters equally, whether they are journalists, local residents, public authority employees, or foreign researchers; and
* because you should treat all requesters equally, you should only disclose information under the Act if you would disclose it to anyone else who asked. In other words, you should consider any information you release under the Act as if it were being released to the world at large.

This does not prevent you voluntarily giving information to certain people outside the provisions of the Act.

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# What Information is covered by FOIA?

The Act covers all recorded information held by a public authority. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information you create, so it also covers, for example, letters you receive from members of the public, although there may be a good reason not to release them.

The Act includes some specific requirements to do with datasets. For these purposes, a dataset is a collection of factual, raw data that you gather as part of providing services and delivering your functions as a public authority, and that you hold in electronic form. Your duties in relation to datasets are explained elsewhere in this Guide, where they are relevant.

Requests are sometimes made for less obvious sources of recorded information, such as the author and date of drafting, found in the properties of a document (sometimes called meta-data). This information is recorded so is covered by the Act and you must consider it for release in the normal way.

Similarly, you should treat requests for recorded information about the handling of previous freedom of information requests (meta-requests) no differently from any other request for recorded information.

The Act does not cover information that is in someone’s head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it.

 Ideas aren’t covered!!!!

The Act covers information that is held on behalf of a public authority even if it is not held on the authority’s premises.

Where you subcontract services to an external company, that company may then hold information on your behalf, depending on the type of information and your contract with them. Some of the information held by the external company may be covered by the Act if you receive a freedom of information request. The company does not have to answer any requests for information it receives, but it would be good practice for them to forward the requests to you. The same applies where you receive services under a contract, for example, if you consult external solicitors.

The Act does not cover information you hold solely on behalf of another person, body or organisation.

# Who Can make a RFI (Request for Information)

Anyone can make a freedom of information request – they do not have to be UK citizens, or resident in the UK. Freedom of information requests can also be made by organisations, for example a newspaper, a campaign group, or a company. Employees of a public authority can make requests to their own employer, although good internal communications and staff relations will normally avoid the need for this.

Requesters should direct their requests for information to the public authority they think will hold the information. The public authority that receives the request is responsible for responding.

# What are the Practice’s Obligations?

You have two main obligations under the Act. You must:

* + - publish certain information proactively. See [What information do we](#_bookmark1)  [need to publish?](#_bookmark1) for more details; and
		- respond to requests for information. See [What should we do when](#_bookmark2)  [we receive a request?](#_bookmark2) for more on this.

In addition, three codes of practice contain recommended good practice when applying the Act.

The section 45 code of practice gives recommendations for public authorities about their handling of requests. It covers the situations in which you should give advice and assistance to those making requests; the complaints procedures you should put in place; and various considerations that may affect your relationships with other public bodies or third parties. The Radford Medical Practice policy covers this area in full

The section 46 code of practice covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed.

# What does the Radford Medical Practice have to tell the public about FOIA?

Making information available is only valuable to the public if they know they can access it, and what is available. You should:

* + - publicise your commitment to proactive publication and the details of what is available. See [What information do we need to publish?](#_bookmark1);
		- publicise the fact that people can make freedom of information requests to you;
		- provide contact details for making a request, including a named contact and phone number for any enquiries about the Act; and
		- tell people who you think may want information that they can make a request and tell them how to do this.

You should communicate with the public in a range of ways. This is likely to include websites, noticeboards, leaflets, or posters in places where people access your services.

You must also make your staff, contractors, customers or others you have contact with aware of how the Act may affect them. You should make it clear that you cannot guarantee complete confidentiality of information and that as a public body you must consider for release any information you hold if it is requested. You will need to consider each request individually, but it is worthwhile having policies or guidelines for certain types of information, such as information about staff.

# How does FOIA interact with Data Protection?

The Data Protection Act 2018 gives rules for handling information about people. It includes the right for people to access their personal data. The Freedom of Information Act and the Data Protection Act come under the heading of information rights and are regulated by the ICO.

When a person makes a request for their own information, this is a subject access request under the Data Protection Act. However, members of the public often wrongly think it is the Freedom of Information Act that gives them the right to their personal information, so you may need to clarify things when responding to such a request.

The Data Protection Act exists to protect people’s right to privacy, whereas the Freedom of Information Act is about getting rid of unnecessary secrecy. These two aims are not necessarily incompatible but there can be a tension between them and applying them sometimes requires careful judgement.

When someone makes a request for information that includes someone else’s personal data, you will need to carefully balance the case for transparency and openness under the Freedom of Information Act against the data subject’s right to privacy under the Data Protection Act in deciding whether you can release the information without breaching the data protection principles.

See [When can we refuse a request?](#_bookmark3) for more information on the exemptions for personal data.

# Copyright Issues

The Act does not affect copyright and intellectual property rights that give owners the right to protect their original work against commercial exploitation by others. If someone wishes to re-use public sector information for commercial purposes, they should make an application under the Re-use of Public Sector Information Regulations.

When giving access to information under the Act, you cannot place any conditions or restrictions on that access. For example, you cannot require the requester to sign any agreement before they are given access to the information. However, you can include a copyright notice with the information you disclose. You can also make a claim in the courts if the requester or someone else uses the information in breach of copyright.

Although the Act does not give any right to re-use most of the information that you release in response to a request, there are specific provisions if that information is a dataset. If the dataset is a ‘relevant copyright work’ and you are the only owner of the copyright or database rights, then you must release it under a licence that permits re-use.

# Other laws impacted by FOIA

The Freedom of Information Act may work alongside other laws.

Some of the exemptions in the Act that allow public authorities to withhold information use principles from common law, for example the section 41 exemption refers to the law of confidence.

Also, section 44 of the Act allows information to be withheld when its disclosure is prohibited under other legislation, and section 21 can exempt information that is accessible to an applicant using procedures in other legislation. See [When can we refuse a request?](#_bookmark3) for more information on the exemptions.

When dealing with requests for information, you should continue to be aware of your obligations under the Equality Act 2010 (or Disability Discrimination Act 1995 in Northern Ireland) and the Welsh Language Act 1993. These Acts are not regulated by the ICO, so they are not covered in this guidance.

You should handle requests for environmental information under the Environmental Information Regulations 2004. The Regulations also require you to make environmental information available proactively by readily accessible electronic means.

What information do we need to publish?

# In brief…

As well as responding to requests for information, you must publish information proactively. The Freedom of Information Act requires every public authority to have a publication scheme, approved by the Information Commissioner’s Office (ICO), and to publish information covered by the scheme.

The scheme must set out your commitment to make certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information.

To help you do this the ICO has developed a model publication scheme. There are two versions; one for most public authorities and one for the few public authorities that are only covered for part of the information they hold.

The information you release in accordance with the publication scheme represents the minimum you must disclose. If a member of the public wants information not listed in the scheme, they can still ask you for it (see [What should we do when we receive a request?](#_bookmark2)).

Most public authorities will make their publication scheme available on their website under ‘freedom of information’, ’guide to information’ or ‘publication scheme’. If you are asked for any of this information, you should be able to make it available quickly and easily, so you should make your staff aware of the information available through your publication scheme.

If you are involved in implementing and maintaining the scheme, you will need to read the detail below.

# Charges for Information

The Act does not specify how much you can charge for information published in accordance with a publication scheme. However, you must publish a list of charges indicating when you will charge and how much. You will not be able to charge if you have not indicated this in advance.

The ICO model publication scheme requires any fee to be justified, transparent and kept to a minimum. As a general rule, you can only make the following charges:

* for communicating the information, such as photocopying and postage. We do not consider it reasonable to charge for providing information online;
* fees permitted by other legislation; and
* for information produced commercially, for example, a book, map or similar publication that you intend to sell and would not otherwise have produced.

What should we do when we receive a request for information?

Anyone has a right to request information from a public authority. You have two separate duties when responding to these requests:

* + to tell the applicant whether you hold any information falling within the scope of their request; and
	+ to provide that information.

You normally have 20 working days to respond to a request.

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 your freedom of information officer or team, 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.

This doesn’t mean you have to treat every enquiry formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures, for example, if a member of the public wants to know what date their rubbish will be collected, or whether a school has a space for their child. 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.

The request handling flowchart in the Radford Medical Practice policy provides an overview of the steps to follow when handling a request for information.

# Charges for RFI Disclosures

Yes, there can be charges in certain cases. The Act does not allow you to charge a flat fee but you can recover your communication costs, such as for photocopying, printing and postage. You cannot normally charge for any other costs, such as for staff time spent searching for information, unless other relevant legislation authorises this.

However, if the cost of complying with the request would exceed the cost limit referred to in the legislation, you can offer to supply the information and recover your full costs (including staff time), rather than refusing the request. You can find more detail about the cost limit in [When can we](#_bookmark3)  [refuse a request?](#_bookmark3).

If you wish to charge a fee, you should send the requester a fees notice. You do not have to send the information until you have received the fee. The time limit for complying with the request excludes the time spent waiting for the fee to be paid. In other words, you should issue the fees notice within the standard time for compliance. Once you have received the fee, you should send out the information within the time remaining.

If the information that you are providing is a dataset, and you have a specific statutory power to charge for re-use, you may do so. If you do not have such a power, then you may charge a re-use fee in accordance with the [Freedom of Information (Release of Datasets for Re-use) (Fees)](http://legislation.data.gov.uk/uksi/2013/1977/made/data.pdf)  [Regulations 2013 no. 1977](http://legislation.data.gov.uk/uksi/2013/1977/made/data.pdf). If you are making a charge to cover the cost of communicating the information, you cannot charge for the same activity as part of the re-use fee.

When can we refuse a request?

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

You can refuse an entire request under the following circumstances:

* It would cost too much or take too much staff time to deal with the request.
* The request is vexatious.
* The request repeats a previous request from the same person.

In addition, the Freedom of Information Act contains a number of exemptions that allow you to withhold information from a requester. In some cases it will allow you to refuse to confirm or deny whether you hold information.

Some exemptions relate to a particular type of information, for instance, information relating to government policy. Other exemptions are based on the harm that would arise or would be likely arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone’s commercial interests.

There is also an exemption for personal data if releasing it would be contrary to the Data Protection Act.

You can automatically withhold information because an exemption applies only if the exemption is ‘absolute’. This may be, for example, information you receive from the security services, which is covered by an absolute exemption. However, most exemptions are not absolute but require you to apply a public interest test. This means you must consider the public interest arguments before deciding whether to disclose the information.

So, you may have to disclose information in spite of an exemption, where it is in the public interest to do so.

If you are refusing all or any part of a request, you must send the requester a written refusal notice. You will need to issue a refusal notice if you are either refusing to say whether you hold information at all or confirming that information is held but refusing to release it.

# Costs

The Act recognises that freedom of information requests are not the only demand on the resources of a public authority. They should not be allowed to cause a drain on your time, energy and finances to the extent that they negatively affect your normal public functions.

Currently, the cost limit for complying with a request or a linked series of requests from the same person or group is set at £600 for central government, Parliament and the armed forces and £450 for all other public authorities. You can refuse a request if you estimate that the cost of compliance would exceed this limit. This provision is found at section 12 of the Act.

If you wish to use section 12 (cost limit) of the Act as grounds for refusing the request, you should send the requester a written refusal notice. This should state that complying with their request would exceed the appropriate cost limit. However, you should still say whether you hold the information, unless finding this out would in itself incur costs over the limit.

There is no official requirement for you to include an estimate of the costs in the refusal notice. However, you must give the requester 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.

You should 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 you think you cannot provide the information within the cost limit;
	+ advise the requester on the wording of a narrower request but then refuse that request on the same basis; or

tell the requester to narrow down their request without explaining what parts of their request take your costs over the limit. A more specific request may sometimes take just as long to answer.

If the requester refines their request appropriately, you should then deal with this as a new request. The time for you to comply with the new request should start on the working day after the date you receive it.

If the requester does not want to refine their request, but instead asks you to search for information up to the costs limit, you can do this if you wish, but the Act does not require you to do so.

# Vexatious Requests

As a general rule, you should not take into account the identity or intentions of a requester when considering whether to comply with a request for information. You 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 Freedom of Information 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.

You can refuse to comply with a request that is vexatious. If so, you do not have to comply with any part of it, or even confirm or deny whether you hold information. When assessing whether a request is vexatious, the Act permits you to take into account the context and history of a request, including the identity of the requester and your previous contact with them. The decision to refuse a request often follows a long series of requests and correspondence.

The key question to ask yourself is whether the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.

Bear in mind that it is the request that is considered vexatious, not the requester. If after refusing a request as vexatious you receive a subsequent request from the same person, you can refuse it only if it also meets the criteria for being vexatious.

You should be prepared to find a request vexatious in legitimate circumstances, but you should exercise care when refusing someone’s rights in this way.

# Repeated Requests

You can refuse requests if they are repeated, whether or not they are also vexatious. You can normally refuse to comply with a request if it is identical or substantially similar to one you previously complied with from the same requester. You cannot refuse a request from the same requester just because it is for information on a related topic. You can do so only when there is a complete or substantial overlap between the two sets of information.

You 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 you hold changes.

This request is not repeated because a reasonable period has elapsed.

If the request is vexatious or repeated, you need only state that this is your decision; you do not need to explain it further. However, you should keep a record of the reasons for your decision so that you can justify it to the Information Commissioner’s Office if a complaint is made.

If you are receiving vexatious or repeated requests from the same person, you can send a single refusal notice to the applicant, stating that you have found their requests to be vexatious or repeated (as appropriate) and that you will not send a written refusal in response to any further vexatious or repeated requests.

This does not mean you can ignore all future requests from this person. For example, a future request could be about a completely different topic or have a valid purpose. You must consider whether the request is vexatious or repeated in each case.

# Exemptions

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.

The exemptions in Part II of the Freedom of Information Act apply to information. This may mean that you can only apply an exemption to part of the information requested, or that you may need to apply different exemptions to different sections of a document.

You do not have to apply an exemption. However, you must ensure that in choosing to release information that may be exempt, you do not disclose information in breach of some other law, such as disclosing personal information in breach of the Data Protection Act. Nor do you have to identify all the exemptions that may apply to the same information, if you are content that one applies.

You 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, you must consider the public interest arguments. This balancing exercise is usually called the public interest test (PIT). The Act requires you to disclose information unless there is good reason not to, so the exemption can only be maintained (upheld) if the public interest in doing so outweighs the public interest in disclosure.

You can have extra time to consider the public interest. However, you must still contact the requester within the standard time for compliance to let them know you are claiming a time extension.

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.

Some exemptions require you 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.

This distinction between ‘class-based’ and ‘prejudice-based’ is not in the wording of the Act but many people find it a useful way of thinking about the exemptions.

The Act also often refers to other legislation or common law principles, such as confidentiality, legal professional privilege, or data protection. In many cases, you 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 our guidance, before trying to rely on it.

The exemptions can be found in Part II of the Act, at sections 21 to 44, below are the exemptions that apply to the Radford Medical Practice.

## Section 21 – information already reasonably accessible

This exemption applies if the information requested is already accessible to the requester. You could apply this if you know that the requester already has the information, or if it is already in the public domain. For this exemption, you will need to take into account any information the requester gives you 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 tell you they don’t 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.

When applying this exemption, you have a duty to confirm or deny whether you hold the information, even if you are not going to provide it. You should also tell the requester where they can get it.

This exemption is absolute, so you do not need to apply the public interest test.

## Section 22 – information intended for future publication

This exemption applies if, when you receive a request for information, you are preparing the material and definitely intend to publish it and it is reasonable not to disclose it until then. You do not need to have identified a publication date. This exemption does not necessarily apply to all draft materials or background research. It will only apply to the material you intend to publish.

You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information.

This exemption is qualified by the public interest test.

Section 36 – prejudice to the effective conduct of public affairs

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.

This exemption is broad and can be applied to a range of situations.

## Section 38 – endangering health and safety

You 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 you can apply this exemption, you should use the same test as you would for prejudice. This exemption is qualified by the public interest test.

## Section 39 – environmental information

You 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, you do not also need to consider such requests under the Freedom of Information Act.

Only public authorities that are covered by the Regulations can rely on this exemption. A small number of public authorities, including the BBC and other public service broadcasters, are not subject to the Environmental Information Regulations. They should handle requests for environmental information under the Freedom of Information Act.

This exemption is qualified by the public interest test, but because you must handle this type of request 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.

## Section 40(1) – personal information of the requester

This exemption confirms that you should treat any request made by an individual for their own personal data as a subject access request under the Data Protection Act 1998. You 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

If the information contains some of the requester’s personal data plus other non-personal information, then you will need to consider releasing some of the information under the Data Protection Act and some under the Freedom of Information Act.

This exemption is absolute, so you do not need to apply the public interest test.

## Section 40(2) – data protection

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 Data Protection Act.

If you wish to rely on this exemption, you need to refer to the Data Protection Act as the data protection principles are not set out in the Freedom of Information Act.

This exemption can only apply to information about people who are living; you cannot use it to protect information about people who have died.

The most common reason for refusing information under this exemption is that it would be unfair to the individual concerned. Section 40(2) is an absolute exemption, so you do not need to apply the public interest test. However, you may need to consider the public interest when applying the data protection principles.

Section 40 includes other provisions for people’s data protection rights, and these provisions are qualified by a public interest test.

## Section 41 – confidentiality

This exemption applies if the following two conditions are satisfied:

* you received the information from someone else; and
* complying with the request would be a breach of confidence that is actionable (further information about what is meant by actionable is provided in our detailed guidance below)

You cannot apply this exemption to information you have generated within your organisation, even if it is marked “confidential”. However, you can claim it for information you originally received from someone else but then included in your own records.

To rely on this exemption, you must apply the legal principles of the common law test of confidence, which is a well-established though developing area of law.

This exemption is absolute, so you do not need to apply the public interest test. However, you 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.

You should carefully consider how you use confidentiality clauses in contracts with third parties and set reasonable levels of expectations about what may be disclosed.

## Section 42 – legal professional privilege

This applies whenever complying with a request would reveal information that is subject to ‘legal professional privilege’ (LPP) or the equivalent Scottish rules. LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice or for ongoing or proposed legal action. These long-established rules exist to ensure people are confident they can be completely frank and candid with their legal adviser when obtaining legal advice, without fear of disclosure.

This exemption is qualified by the public interest test.

For further information, read our more detailed guidance:

## Section 43 – trade secrets and prejudice to commercial interests

This exemption covers two situations:

* when information constitutes a trade secret (such as the recipe for a branded product); or
* when complying with the request would prejudice or would be likely to prejudice someone’s commercial interests.

Both parts of this exemption are qualified by the public interest test.

# Deceased Persons

The Data Protection Act does not cover information about people who have died, so you cannot rely on a section 40 exemption to withhold this type of information.

This may be a particular issue if you are a public authority that holds sensitive information such as health or social care records. Where you receive a request for this kind of information about someone who has died, the most appropriate exemption is likely to be section 41 (confidentiality). This is because the information would originally have been provided to a healthcare practitioner or social worker in confidence, and we consider this duty of confidentiality to extend beyond death.

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 you receive a request from someone who has the right to access the records in this way, you can refuse the request under section 21 (reasonably accessible) and handle the request under the Access to Health Records Act.

# Public Interest Tests

If the exemption you wish to apply is qualified, then you will need to do a public interest test, even if you know the exemption applies.

If you think that you may need to claim an exclusion from the duty to confirm or deny, then you will need to consider the public interest test for this duty. You will need to do this separately from the public interest test for the duty to provide information.

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.

Similarly, when considering whether you should disclose information, you will need to weigh the public interest in disclosure against the public interest in maintaining the exemption. You 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.

Note that the wording of the test refers to the public interest in maintaining the exemption (or exclusion). In other words, you cannot consider all the arguments for withholding the information (or refusing to confirm whether it is held), only those which are inherent in the exemption or exclusion i.e. relate directly to what it is designed to protect.

You 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. You must follow the steps in this order, so you cannot withhold information because you think it would be against the public interest without first identifying a specific exemption.

# Pausing the clock for the public interest test?

The law says you can have a “reasonable” extension of time to consider the public interest test. We consider that this should be no more than an extra 20 working days, which is 40 working days in total to deal with the request.

To claim this extra time, you must:

* + contact the requester in writing within the standard time for compliance;
	+ specify which exemption(s) you are seeking to rely on; and
	+ give an estimate of when you will have completed the public interest test.

You must identify the relevant exemptions and ensure they can be applied in this case.

# Refusing RFI’s

You must refuse requests in writing promptly or within 20 working days (or the standard time for compliance) of receiving it.

In the refusal notice you should:

* + - explain what provision of the Act you are relying on to refuse the request and why;
		- give details of any internal review (complaints) procedure you offer or state that you do not have one; and
		- explain the requester’s right to complain to the ICO, including contact details for this.

# Internal Reviews

Under the Act, there is no obligation for an authority to provide a complaints process. However, it is good practice (under the section 45 code of practice) and most public authorities choose to do so.

If you do have a complaints procedure, also known as an internal review, you should:

* + - ensure the procedure is triggered whenever a requester expresses dissatisfaction with the outcome;
		- make sure it is a straightforward, single-stage process;
		- make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision;
		- ensure the review is done by someone who did not deal with the request, where possible, and preferably by a more senior member of staff.

**Freedom of Information Policy**

**Summary**

The purpose of this policy is to provide the Radford Medical Practice with guidance in relation to the compliance with the Freedom of Information Act 2000.

The Radford Medical Practice will use all appropriate and necessary means to ensure that they comply with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor’s Department pursuant to sections 45(5) and 46(6) of the FOIA.

It is the responsibility of all the Radford Medical Practice’s staff and Independent Committee Members to comply with the Freedom of Information Act Policy. A failure to adhere to this policy and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. Managers are also responsible for ensuring staff are updated in regard to any changes in this policy.

**Related Legislation**

* The Data Protection Act 2018
* The Access to Health Records Act 1990
* The Freedom of Information Act 2000

# Reference Documents

* Freedom of Information Act 2000
* HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities, Department of Health 1999.
* Lord Chancellor’s Code of Practice on the Discharge of Public Authorities’ Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002.
* Lord Chancellor’s Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.

 **Distribution**

This Policy will be available for all staff to view on the Radford Medical Practice’s intranet. Managers of staff without direct access to the Radford Medical Practice’s intranet must provide access to an up to date paper copy of the policy within the department.
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1.1 The Freedom of Information Act 2000 (FOIA) is part of the Government’s commitment to greater openness in the public sector, a commitment supported by the Radford Medical Practice. The FOIA will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory *Code of Practice on Openness in the NHS*.

 1.2 The main features of the FOIA are:

1. a general right of access from 1st January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions. This places on the Radford Medical Practice a duty to;
2. inform the applicant whether they hold the information requested, and
3. communicate the information to them, except in certain circumstances. Those circumstances include where information is exempted from disclosure because an absolute exemption applies or the public interest in maintaining a non-absolute exemption in question outweighs the public interest in disclosure
4. a duty on every public authority to adopt and maintain a Publication Scheme, specifically applicable to the NHS from 31st October 2003;
5. an office of the Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
6. a duty on the Lord Chancellor to publish Codes of Practice for guidance on specific issues

1.3 The Freedom of Information Act Policy is a statement of what the Radford Medical Practice intends to do to ensure compliance with the Act.

**2.0 Scope**

2.1 The Freedom of Information Act Policy will apply to all Radford Medical Practice employees and to Non-Executive Directors.

2.2 The Policy will provide a framework within which the Radford Medical Practice will ensure compliance with the requirements of the Act.

2.3 The Policy will underpin any operational procedures and activities connected with the implementation of the FOIA.

**3.0 Principles**

3.1 The Policy supports the principle that openness and not secrecy should be the norm in public life. The Radford Medical Practice wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the Radford Medical Practice will facilitate the development of such an environment.

3.2 The Radford Medical Practice believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 2018 and the Access to Health Record Act 1990 and is dealt with in the Radford Medical Practice separately from this policy.

3.3 The Radford Medical Practice believes that public authorities should be allowed to discharge their functions effectively. This means that the Radford Medical Practice will use the exemptions contained in the FOIA where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.

3.4 The Radford Medical Practice believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the FOIA. The Policy sets out a framework to provide this knowledge.

3.5 The Radford Medical Practice believes that common standards are required to ensure that the Radford Medical Practice is compliant with the FOIA. The Policy outlines the areas in which common standards will be established through other Radford Medical Practice policies and procedures.

##

## **4.0 Publication Scheme**

4.1.1 The Radford Medical Practice will adopt the model Publication Scheme as developed by the Information Commissioner’s Office (ICO) and link to Radford Medical Practice and constituent organisations’ website as appropriate. The Information Commissioner approved the original Publication Scheme in March 2003, the Scheme must be updated in accordance with ICO guidance. The Publication Scheme has been formally monitored by the ICO from April 2009 onwards. This is permissible under section 20 of the FOIA and ensures compliance with section 19 of the legislation.

4.1.2 The Radford Medical Practice’s Publication Schemes will be constantly updated with documents, detailing the information that the Radford Medical Practice publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Schemes will be available in hard copy by contacting the Practice Manager.

4.1.3 Access to documents contained within the Publication Scheme are directly available via the website. Due to this, reference to staff members names, job titles and contact information may be made available within the documents displayed on the website. Any documents that are loaded onto the Publication Scheme for the public to access must be within a PDF format to ensure that these cannot be altered.

4.1.4 The Publication Scheme will be subject to regular review in terms of content and accessibility. Documents that are automatically added to the publication scheme include policies, procedures and patient information documents.

4.1.5 All correspondence regarding new documents for the Publication Scheme should be sent to the following email address. Karen.murch@nhs.net

4.1.6 Once the Practice Manager has been informed about a new or updated document, this is then checked against the exemptions set within the Freedom of Information Act 2000. If an exemption applies to part of the document this may be redacted and the document can then be loaded onto the Publication Schemes. Prior to loading onto the Publication Schemes the document will be formatted into a PDF document so that it can be viewed easily, so that the document is secure, and so that it cannot be altered and resaved onto the website.

4.1.7 The documents loaded onto the Publication Scheme will be saved in accordance with the month that they are uploaded.

4.1.8 Any queries in relation to the Publication Schemes should be directed to the Head of Communications.

**4.2 Disclosure Log**

4.2.1 The disclosure log provides information which has been released via requests made to the Radford Medical Practice for information under the FOIA. The disclosure log forms part of the publication scheme and can link to documents available on the scheme.

4.2.2 Within the Publication Scheme the Cluster must maintain the disclosure log. The disclosure log provides information that has been released under a Freedom of Information Request. The Practice Manager must ensure that information from multiple requests regarding the same subject is available via the disclosure log. If there has been a request made for information which is currently part of a public debate, for example the subject is within the Media, this information must be published within the disclosure log.

4.2.3 By having an up to date disclosure log this can reduce the amount of time spent answering FOI requests as the information can be made readily available on the log. The disclosure log also benefits public understanding of information released, for example, if information released via a FOI request was published within the Media, the public will be able to check the information available within the Media with the information provided by the Radford Medical Practice.

4.2.4 The requests within the disclosure log must remain anonymous and so the requester’s details must not be made available. The only information provided on the disclosure log are the questions asked and the answers to these questions. The reference numbers will also be provided to provide a reference if a member of the public contacts the Radford Medical Practice regarding the information contained within the disclosure log.

**5.0 General Rights of Access**

5.1 Section 1 of the FOIA gives a general right of access from 1st January 2005 to recorded information held by the Radford Medical Practice, subject to certain conditions and exemptions. Any person making a written request for information to the Radford Medical Practice is entitled:

a) to be informed in writing whether the Radford Medical Practice holds the information of the description specified in the request, and

b) if the Radford Medical Practice holds the information, to have that information communicated to them. This is referred to as the ‘duty to confirm or deny’. These provisions are fully retrospective in that if the Radford Medical Practice holds the information, it must provide it, subject to certain conditions and exemptions. The Radford Medical Practice will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

5.2 A request for information under the general rights of access (section 8) must be received in writing, stating the name of the applicant and an address for correspondence, and a description of the information requested. For the purposes of general rights of access, a valid request is to be treated as made in writing if it is transmitted by e-mail or fax, is received in legible form and is capable of being used for subsequent reference. It would facilitate processing of the request if applicants could also provide a daytime contact telephone number when making their written application for information. However, this is not a requirement under the Act and applicants can refuse to give this information.

5.3 The Practice Manager must monitor the provision of information arising from requests under the Act. If a trend occurs, this information should be made available within the disclosure log section under the publication scheme.

## **6.0 Conditions and Exemptions**

6.1 The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where the Radford Medical Practice:

a) reasonably requires further information in order to identify and locate the information requested, and

b) has informed the applicant of that requirement. The Radford Medical Practice will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

6.2 Under section 2 the Radford Medical Practice does not have to comply with the duty to confirm or deny if an absolute exemption is applied. The Radford Medical Practice will consider the duty to confirm or deny in relation to non-absolute exemptions in all circumstances of the case, the public interest test in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Radford Medical Practice holds the information.

a) absolute exemptions do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

b) qualified exemptions or non-absolute exemptions involve a test of establishing prejudice as to whether harm or prejudice would result from the disclosure of information and/or whether it is in the balance of public interest to not disclose information. A qualified exemption may be applied if, in all circumstances, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Radford Medical Practice holds the information. The Part II exemptions are listed in Appendix A of this Policy. The Radford Medical Practice will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

6.3 The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

6.4 The duty to comply with a request for information does not arise if the Radford Medical Practice estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. The Radford Medical Practice will work with applicants to keep compliance costs to a minimum but reserves the right to either refuse or charge for the communication of information that exceeds this limit. If upon agreement between the applicant and the Radford Medical Practice, it is agreed to process an application that has been estimated by the Radford Medical Practice to exceed the national Fees Regulations limit, the portion of cost over and above this limit will be notified to the applicant in a fees notice. The costs will be required to be paid in advance of the search for the information taking place. Applicants will be required to pay the fees within a period of three months beginning on the day on which the fees notice is given to them to maintain the validity of the request for information.

6.5 The Radford Medical Practice is not obliged to comply with a request for information if the request is vexatious. Where the Radford Medical Practice has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Radford Medical Practice will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

## **7.0 Charges and Fees**

7.1. The Radford Medical Practice will generally not charge for information that it has chosen to publish in its Publication Scheme once linked documents make information available direct to applicants over the Internet. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM.

7.2 The Radford Medical Practice will follow the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.

7.3 The fee calculation should be completed with the prior knowledge of the Practice Manager. The first £450 worth of information/staff time must be provided free. If the cost of providing information comes to more than £450 the FOI Lead or Deputy must complete a fees calculation. In order to complete a fees calculation, the FOI Lead or Deputy must complete part of the request in order to establish the time required to complete. A calculation is then made from the time taken in relation to the amount of information required. The fees calculation is then made by the £25 per hour of staff’s time.

7.4 In all cases where the Radford Medical Practice chooses to charge for information published as a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

7.5 Charges for information detailed in the Publication Scheme

**8.0 Time limits for compliance with requests**

8.1 The Radford Medical Practice must ensure its compliance with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All staff and Non-Executive Directors will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

8.2 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this within three months of receiving the fees notice, the working days in the period from when the Radford Medical Practice issued the fees notice to when the fee is received by the Radford Medical Practice will be disregarded for the purposes of calculating the twentieth working day following receipt. In essence, once the applicant has been requested to pay a fee the twenty working day clock is paused until the fee is paid.

8.3 If the Radford Medical Practice chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision (refusals will be in accordance with section 10.0).

8.4 Once a FOI request has been received and processed by the Practice Manager the request will be forwarded to the relevant FOI Lead or Deputy who will be given a time scale to respond by the Practice Manager.

## **9.0 Means by which information will be conveyed**

9.1 When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the Radford Medical Practice shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.

9.2 In determining whether it is reasonably practicable to communicate information by a particular means, the Radford Medical Practice will consider all the circumstances, including the cost of doing so. If the Radford Medical Practice determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Radford Medical Practice will notify the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.

## **10.0 Refusal of requests**

10.1.1 As indicated previously, the provision of information does not arise if the Radford Medical Practice:

a) applies an absolute exemption under Part II of the Act, as illustrated in Appendix A, with the exclusion of section 21, or in all exemption circumstances of the case, if the public interest in maintaining the exclusion to provide the information outweighs the public interest in disclosing the information and in disclosing whether the Radford Medical Practice holds the information.

b) has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant,

c) under section 12 of the Act, estimates that the cost of compliance with the request for information exceeds the appropriate limit,

d) can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

10.1.2 If the Radford Medical Practice chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days by issue of a refusal notice. The applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Radford Medical Practice under the Act.

10.1.3 If the Radford Medical Practice decides that an exemption applies, a refusal notice will be issued within twenty working days. The notice will:

a) state that fact,

b) specify the exemption in question, and

c) state (if that would not otherwise be apparent) why the exemption applies.

d) include a copy of the complaints process

10.1.4 Where it is not possible to confirm that an exemption applies, the Radford Medical Practice will inform the applicant that the issue remains under consideration and will estimate the date at which a firm judgement will be made. This will be notified to the applicant by issue of an exemption pending notice.

10.1.5 If the Radford Medical Practice finds, while considering the public interest, that the estimate is proving unrealistic, the Radford Medical Practice will endeavour to keep the applicant informed.

10.1.6 If the Radford Medical Practice claims that the request is vexatious or repeated, and a refusal notice has already been issued to the applicant stating this fact, a further notice is not required.

10.1.7 The Practice Manager will keep a record of all notices issued to refuse requests for information and any information regarding the Public Interest Test process.

**10.2 Public Interest Test**

10.2.1 The Public Interest Test (PIT) is a meeting which is held to discuss whether or not a qualified exemption applies to the information. The PIT panel should be made up of the following:

* The Practice Manager– to provide the information about the request and the exemption.
* The relevant Manager, Head of or Director of the department which holds the information – to agree the final decision and provide any reasons for or against disclosure.

10.2.2 The PIT panel should consider the following when debating whether an exemption applies:

* The current public debate.
* Health and safety.
* How the information may affect third parties.
* What information is already available to the public?
* Media interests.
* Does it show any decision-making processes?
* Does the information give a greater understanding of services provided by the Radford Medical Practice?
* Is the information confidential?

10.2.3 If the arguments against disclosure outweigh the arguments for disclosure then the exemption in question can be applied. If the argument against and for disclosure is equal the Trust must favour disclosure.

## **11.0 Duty to provide advice and assistance**

11.1 The Radford Medical Practice will ensure that systems and procedures are in place to meet the duty of a public authority to provide reasonable advice and assistance to persons who make requests for information.

11.2 The Radford Medical Practice must ensure that the systems and procedures employed conform to the Code of Practice issued under section 45 of the Act.

11.3 Should applicants or potential applicants need information about Freedom of Information or need assistance to produce a written request for information, they must be given the contact details of the Practice Manager. Freedom of Information Leaflets must be regularly updated in line with the FOIA and changes within contact details or Radford Medical Practice policy. The leaflets must be made available in all Radford Medical Practice buildings. The information must also be available on the Radford Medical Practice’s Publication Schemes.

**12.0 Transferring Requests for Information**

12.1 A request can only be transferred where the Radford Medical Practice receives a request for information that it does not hold but which is held by another public authority. If the Radford Medical Practice is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Radford Medical Practice recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person).

12.2 Upon receiving the initial request for information, the Radford Medical Practice will process it in accordance with the Act in respect of information it holds. The Radford Medical Practice will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Radford Medical Practice must be certain as to the extent of the information relating to the request which it holds itself.

12.3 If the Radford Medical Practice believes that some or all of the information requested is held by another public authority, the Radford Medical Practice will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

a) contacting the applicant and informing him or her that the information requested may be held by another public authority;

b) suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;

c) providing him or her with contact details for that authority.

12.4 If the Radford Medical Practice considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Radford Medical Practice will consider:

a) whether a transfer is appropriate; and if so

b) whether the applicant is likely to have any grounds to object to the transfer;

12.5 If the Radford Medical Practice reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant but will inform the applicant that it has done so by issues of a transfer notice.

12.6 Where there are reasonable grounds to believe an applicant is likely to object, the Radford Medical Practice must only transfer the request to another authority with the applicant’s consent. If there is any doubt, the applicant will be contacted with a view to suggesting that they makes a new request to the other authority.

12.7 All transfers of requests will take place as soon as is practicable, and the applicant must be informed as soon as possible once this has been done. Where the Radford Medical Practice is unable to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable they o pursue their request.

12.8 Where a request or part of a request is transferred from another public authority to the Radford Medical Practice, the Radford Medical Practice will comply with its obligations under Part I of the Act in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the Practice receives the request.

## **13.0 Consultation with Third Parties**

13.1 The Radford Medical Practice recognises that in some cases the disclosure of information may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the definition of the Data Protection Act 1998 (DPA). Unless an exemption provided for in the Act applies in relation to any particular information, the Radford Medical Practice will be obliged to disclose that information in response to a request.

13.2 Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that an exemption would apply), the Radford Medical Practice must consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party who may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

13.3 If information constitutes "personal data" within the definition of the DPA, the Radford Medical Practice must comply with section 40 of the FOI Act that makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA.

 13.4 The Radford Medical Practice will undertake consultation where:

a) the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or

b) the views of the third party may assist the Radford Medical Practice to determine where the public interest lies.

13.5 The Radford Medical Practice may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Radford Medical Practice will consider what is the most reasonable course of action for it to take in light of the requirements of the Act, and the individual circumstances of the request. Consultation will be unnecessary where:

a) the Radford Medical Practice does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;

b) the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;

c) no exemption applies and so under the Act's provisions, the information must be provided.

13.6 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation that can express views on behalf of those parties, the Radford Medical Practice will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Radford Medical Practice may consider that it would be sufficient to consult a representative sample of the third parties in question.

13.7 The fact that the third party has not responded to consultation does not relieve the Radford Medical Practice of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Radford Medical Practice, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. If a request for the disclosure of information to which the third party has previously objected is received, under the Act, the Radford Medical Practice must review the decision to accept the objection and must provide the information unless it is satisfied that the objection was in fact a valid one.
**14.0 Public Sector Contracts**

14.1 When entering into contracts the Radford Medical Practice must refuse to include contractual terms that attempt to restrict the disclosure of information held by the Radford Medical Practice and relating to the contract beyond the restrictions permitted by the Act. With the inclusion of existing contracts, unless an exemption provided for under the Act is applicable in relation to any particular information, the Radford Medical Practice may be obliged to disclose that information in response to a request, regardless of the terms of any contract.

14.2 When entering into contracts with non-public authority contractors, the Radford Medical Practice may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor’s Department, the Radford Medical Practice will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Radford Medical Practice will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. The Radford Medical Practice will take care when drawing up any such schedule and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

14.3 The Radford Medical Practice will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor’s Department indicates that the exemption provided, only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public (otherwise than under the Act) would constitute a breach of confidence actionable by that, or any other person.

14.4 It is for the Radford Medical Practice to disclose information as required by the Act, and not the non-public authority contractor. The Radford Medical Practice will take steps to protect from disclosure by the contractor information that the Radford Medical Practice has provided to the contractor that would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the Radford Medical Practice will not impose terms of secrecy on contractors.

14.5 When entering into contracts with non-public authority contractors, the Radford Medical Practice will include information that the Act empowers the Lord Chancellor to designate as public authorities for the purposes of the Act, persons (or bodies) who provide under a contract made with the Radford Medical Practice, any service whose provision is a function of that Organisation. Thus, some non-public authority contractors will be regarded as public authorities within the meaning of the Act, although only in respect of the services provided under the contract. As such, and to that extent, the contractor will be required to comply with the Act like any other public authority.

**15.0 Accepting Information in Confidence from Third Parties**

15.1 The Radford Medical Practice will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Radford Medical Practice’s functions and it would not otherwise be provided.

15.2 The Radford Medical Practice must not agree to hold information received from third parties "in confidence" which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Office of the Information Commissioner.

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## **16.0 Complaints about the discharge of the duties of the Radford Medical Practice under** **the** **Act**

16.1 The Radford Medical Practice will implement a procedure for dealing with complaints about the discharge of the duties of the Radford Medical Practice under the Act, including the handling of requests for information.

16.2 The procedure will refer applicants to the right (under section 50 of the Act) to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Radford Medical Practice following attempts at local resolution of their complaint.

## **17.0 Records Management**

17.1 The Radford Medical Practice has a separate Records Management Policy that will promote development of local procedures that will ensure compliance with Lord Chancellor’s Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 and the Department of Health’s Guidance HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities.

17.2 The policy and associated procedures will address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Radford Medical Practice.

**18.0 Responsibilities of Departmental Managers**

18.1 Departmental Managers (which broadly includes Senior Managers and Heads of Services) will identify a named FOI Lead person and a FOI Deputyfor their work area. The Departmental Manager will ensure that this policy and its associated processes are accessible, up to date, implemented and adhered to. Under supervision of the Departmental Manager the named FOI Lead or Deputy will arrange any necessary training for colleagues with respect to the FOI Act, process requests for information received within that department in liaison with the Practice Manager when necessary and will maintain up-to-date departmental documents linked to the Radford Medical Practice’s Publication Schemes. The Departmental Manager in conjunction with the named FOI Lead will ensure any new documents created are assessed for inclusion within the Publication Schemes and if deemed appropriate for inclusion, documents will be forwarded for consideration to the Practice Manager who will check the document for exemptions and load onto the scheme if necessary.

18.2 All documents forwarded to be considered for the Radford Medical Practice’s Publication Schemes must be forwarded to the following email address; Radford Medical Practice???

## **19.0 Corporate Oversight**

19.1 The FOI Champion at the Radford Medical Practice will oversee the implementation of this Policy, they have delegated responsibility for the Freedom of Information Act 2000 from the Chief Executive. Individual Departmental Managers will ensure that the policy is implemented fully within their areas of responsibility.

## **20.0 Training**

20.1 The Practice Manager will ensure that regular training sessions on the FOIA are available for persons who require it.

**21.0 Monitoring Compliance**

21.1 Staff are expected to comply with the requirements set out within the Freedom of Information Policy and related Policies. Compliance will be monitored via Manager and Information Governance reports, spot checks, completion of staff questionnaires, incidents reported, electronic audit trails and submission of Information Governance Toolkit.

21.2 No adherence to the Freedom of Information Policy and related Policies will result in local Disciplinary Policies being implemented.

# Appendix A - Exempt Information Under Part II of The

# Freedom of Information Act 2000

There are two types of class exemption:

(a) absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

(b) non absolute exemption qualified by the public interest test, which require the Radford Medical Practice to decide whether it is in the balance of public interest to not disclose information.

With the exception of Section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the Act are:

**Section 21**, Information accessible to applicant by other means

**Section 23**, Information supplied by, or relating to, bodies dealing with security matters.

**Section 32**, Court Records

**Section 34**, Parliamentary Privilege

**Section 36**, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)

**Section 40**, Personal Information (where the applicant is the data subject)

**Section 41**, Information provided in confidence

**Section 44**, Prohibitions on disclosure

The exemptions that are non-absolute exemptions qualified by the public interest test are:

**Section 22**, Information intended for future publication

**Section 24**, National Security

**Section 26**, Defence

**Section 27**, International Relations

**Section 28**, Relations within the United Kingdom

**Section 29**, The Economy

**Section 30**, Investigations and proceedings conducted by public authorities

**Section 31**, Law Enforcement

**Section 33**, Audit Functions

**Section 35**, Formulation of Government Policy

**Section 36**, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)

**Section 37** Communications with Her Majesty, etc. and honours

**Section 38**, Health and Safety

**Section 39**, Environmental Information

**Section 40**, Personal Information (where the applicant is not the data subject)

**Section 42**, Legal Professional Privilege

**Section 43**, Commercial Interests

A full copy of the Act including further information on the exemptions can be found on the HMSO website at:-

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

# Appendix B - Glossary of terms

**Absolute exemption** – applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of nondisclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

**Applicant** - the individual(s), group or organisation requesting access to information under the Act.

**Duty to confirm or deny** - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

**Exemption Pending Notice** – a written notification issued to an applicant stating it is not possible to confirm that an exemption applies, and the issues remains under consideration within the Organisation. An estimated date at which a firm judgement will be made will be stated.

**Fees Notice** – a written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before the request lapses.

**Fees Regulations –** national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

**General right of access** - Section 1 of the Act confers a general right of access to information held by public authorities An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

**Information Commissioner** - The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK, the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

**Lord Chancellor’s Department** - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

 The effective management of the courts.

 The appointment of judges, magistrates and other judicial office holders.

 The administration of legal aid.

 The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

**Public authority** - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities include the principal authorities in national and local government, together with the principal authorities relating to the armed forces, National Health Service, education, the police and other public bodies and offices.

**Publication Scheme** - a scheme specifying the classes of information which a public authority publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

**Qualified exemption** - Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

**Refusal Notice** – a written notification issued to an applicant stating reasons for the decision to refuse the information requested including specification of any exemption that applies and providing information why the exemption applies if this is not already clear by statement of the exemption applied. It will include information about procedures for making a complaint and how to contact the Information Commissioner’s Office (ICO) if the applicant remains dissatisfied with the outcome of the Organisation’s investigation of the complaint.

**Transfer Notice** – a written notification issued to an applicant to inform of one/some of the following:

* advising the applicant that it does not hold part of the requested information, or all of it, whichever applies
* informing the applicant that the information requested may be held by another public authority suggesting that the applicant re-applies to the authority which the original authority believes to hold the information and where reasonable providing him or her with contact details for that authority
requesting for consent to transfer of a request for information to another authority
* the date a transfer has been made of a request for information to another authority

 Appendix C: Flow Chart for processing a FOI Request

Forward to relevant leads

 **NO**

 **YES**

 Response

 Audit trail

 developed

Acknowledgement sent

 **Request**

 **Received**

Request logged

Provide the information.

Action to complete disclosure log if necessary.

If no response is given the request and last correspondence will be given to the Senior Partner

Reminder sent to FOI leads twice per week

Reply accordingly to confirm they are dealing with the request and will get back to PM on the date given

Phone Call

If no information is

received the Practice Manager will give the request in person asking for a prompt response

 **Information**

 **received**

Reminder sent to FOI leads twice per week and 2 days before the given completion date

 PM formulates

 response

Response forwarded to FOI leads to confirm information is correct and the response can be sent.