

# HYWEL DDA UNIVERSITY HEALTH BOARD



## Freedom of Information and Environmental Information Policy

Policy Number:	173	Supersedes:		Classification	Corporate
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V4	2021	Sustainable Resources Committee	21.12.2021	5.4.2022	21.12.2024

Brief Summary of Document:	This policy states our commitment as a Health Board to meet the requirements of the Freedom of Information Act 2000, Environmental Information Regulations 2004 and associated guidance from the Lord Chancellor and the Information Commissioner's Office and outlines mechanisms for ensuring this takes place.
Scope:	This policy applies to those members of staff that are employed by the Hywel Dda University Health Board, both permanent and non-permanent, and for whom the Health Board has legal responsibility including contractors and those who undertake work on behalf of contractors.
To be read in conjunction with:	<a href="#">174 - Re-Use Of Public Sector Information Policy</a> <a href="#">224 - Information Classification Policy</a> <a href="#">201 – All Wales Disciplinary Policy</a> <a href="#">249 – Access to Health Records Policy</a> <a href="#">836 – AW Information Governance Policy</a>

Owning Committee	IGSC
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Executive Director:	Joanne Wilson	Job Title	Board Secretary
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# HYWEL DDA UNIVERSITY HEALTH BOARD

Reviews and updates		
Version no:	Summary of Amendments:	Date Approved:
1	New Policy	01/03/2014
2	Reviewed	14/06/2013
	Amended – added flowchart	30/07/2013
3	Reviewed	26/06/2018
	Link to the new All Wales Information Governance Policy added to front sheet	11/09/2019
4	Complete review of policy	21/12/2021

## Glossary of terms

Acronym	Term
FOI	Freedom of Information
EIR	Environmental Information Regulations 2004
GDPR	General Data Protection Regulations 2016
DPA	Data Protection Act 2018

Keywords	FOI; Freedom of Information, FOIA, EIR, Environmental Information
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# HYWEL DDA UNIVERSITY HEALTH BOARD

## 1. INTRODUCTION

This document sets out the Freedom of Information and Environmental Information Policy for Hywel Dda University Health Board (Health Board). It explains what Hywel Dda University Health Board will do to meet its obligations under the Freedom of Information Act 2000 (hereafter referred to as the Act) and Environmental Information Regulations 2004 (hereafter referred to as the Regulations).

This policy is guided by the *Code of Practice under Section 45 of the Freedom of Information Act 2000* and the *Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 issued under Regulation 16 of the Regulations*.

This policy is supported by operational procedures for help in complying with both the Act and the Regulations.

The Act replaces the Code of Practice on Openness in the NHS.

## 2. POLICY STATEMENT

The Health Board supports the Government's commitment to greater openness in the public sector. The Act will further this aim of greater openness, by enabling members of the public to be able to access key information, encouraging an open and transparent view of its activity. The Health Board will make such information available in a range of formats, as required, to meet the needs of the person requesting the information.

The Health Board believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duty of confidence or the statutory provisions that prevent disclosure of personal identifiable information. The release of such information is covered by the General Data Protection Regulations 2016 and Data Protection Act 2018 which replaced the Data Protection Act 1998, and the Access to Health Records Act 1990, and is dealt with in other relevant policies including the Health Board's 238 – Information Governance Framework and 249 - Access to Health Records documents. However, it must be noted that some personal information may be released under the provisions of the Act.

## 3. SCOPE

This policy applies to all Health Board employees, contractors and those who undertake work on behalf of contractors.

## 4. AIM

The aim of the policy will be to provide a framework within which the Health Board will operate to ensure its compliance with the statutory legislation.

## 5. DEFINITIONS

### 5.1. Freedom of Information Act 2000

"The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways:

- Public Authorities are obliged to publish certain information about their activities
- 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." ICO, 2021

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## 5.2. Environmental Information Regulations 2004

“The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities. The Regulations do this in two ways:

- Public authorities must make environmental information available proactively
- Members of the public are entitled to request environmental information from public authorities.

The Regulations cover any recorded information held by a public authority.” ICO,2021

## 6. PUBLICATION SCHEME

Section 19 of the Act makes it the duty of every public authority to adopt a Publication Scheme.

The Health Board’s Publication Scheme details the information that it has published or intends to publish in the future. It details 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 Scheme is available on the Health Board’s website <https://hduhb.nhs.wales/about-us/governance-arrangements/freedom-of-information/our-publication-scheme/> and is downloadable free of charge. The contents of the Publication Scheme will be reviewed and updated on an annual basis.

The Health Board publishes the responses to its requests for information under FOI and EIR on its disclosure log, which can be accessed via the following link:

<https://hduhb.nhs.wales/about-us/governance-arrangements/freedom-of-information/disclosure-log/>

## 7. GENERAL RIGHTS OF ACCESS

### 7.1. Freedom of Information Act 2000

The Act stipulates that requests for information under the General Rights of Access must be received in writing and include the name of the requestor, an address for correspondence and a description of the information requested. As long as the request has a valid address for acknowledgment and response, this is acceptable. The Freedom of Information Officer will be able to provide assistance, if necessary. Requests transmitted by electronic means will be treated as written requests if they are received in legible form and contain sufficient information to process the request.

Under the Act, public authorities may take up to 20 working days to respond.

### 7.2. Environmental Information Regulations 2004

The Regulations state that requests for information can be made either verbally or in writing, although as a response is always required to be in writing, a name and contact details for correspondence will be required.

Under the Act, public authorities may take up to 20 working days to respond.

## 8. EXEMPTIONS AND EXCEPTIONS

Under both the Act and the Regulations, the expectation is that the information being requested will be disclosed. However, there are certain conditions whereby information may be withheld and these are subject to an exemption under the Act and an exception under the Regulations. There are two categories of exemptions and exceptions, absolute and qualified.

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**Absolute** – The decision to apply these exemptions/exceptions is final and do not need to be balanced with the public interest test.

**Qualified** – The decision to apply these exemptions/exceptions must be balanced by the public interest test.

## **Public Interest Test**

The public interest will be considered in every case where a qualified exemption/exception may apply. Defining the public interest will vary according to the information being requested. It may often involve issues around accountability, transparent decision making and good management. When considering the public interest test in order to reach a decision on a qualified exemption/exception, the Health Board may seek appropriate professional advice (including legal advice) and comments from any third parties such as contractors, external companies etc.

Details of the exemptions/exceptions may be found on the Information Commissioner's Office website at [www.ico.org.uk](http://www.ico.org.uk).

The final decision on whether to apply an exemption/exception will be taken by the Freedom of Information Officer.

## **9. CHARGES AND FEES**

### **9.1 Freedom of Information 2000**

The Health Board will operate in accordance with the Freedom of Information (Appropriate Limit and Fees) Regulations 2004. These will determine appropriate limits on charges and fees, how they may be calculated and in what circumstances no fee should be levied. In exceptional circumstances, the Health Board may, at its own discretion, waive any applicable fees.

The following activities may be taken into account when estimating the cost of compliance, which is calculated at £25 per hour up to a limit of £450 (18 hours of staff time):

- determining whether the information is held;
- finding the requested information, or records containing the information;
- retrieving the information or records; and
- extracting the requested information from records.

### **9.2 Environmental Information Regulations 2004**

A charge can be levied for any request under the Regulations. However, any charge must be reasonable and take account of the aim of the Regulations, which is to encourage straightforward access to environmental information.

The Health Board will use its discretion on when to apply a charge, and the final decision on this shall be taken by the Freedom of Information Officer.

## **10. REFUSAL OF REQUESTS**

If the Health Board intends to refuse a request for information, the requestor will be informed of the reasons for this decision within 20 working days. The requestor will also be informed of their rights, conferred by Section 50 of the Act and Regulation 11, to appeal to the Information Commissioner against the decision, if they are not satisfied with the outcome of the Health Board's internal review procedure.

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If the Health Board decides to refuse to confirm or deny whether it holds the information requested and/or to refuse to provide that information, an exemption notice will be issued to the requestor within 20 working days which will:

- State the fact;
- Specify the exemption/exception in question; and
- Explain why the exemption/exception applies.

## 11. DUTY TO PROVIDE ADVICE AND ASSISTANCE

The Health Board will ensure that systems and procedures are in place to provide advice and assistance to members of the public who propose to make or have made requests for information. This is a duty under Section 16 of the Act and Regulation 9.

The Health Board will ensure that the systems and procedures to provide advice and assistance also conform to the Code of Practice under Section 45 of the Freedom of Information Act 2000 and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 issued under regulation 16 of the Regulations.

## 12. TRANSFERRING REQUESTS FOR INFORMATION

When responding to requests for information, The Health Board can only provide information that it holds. If it receives a request for information which it does not hold (or holds only in part) but which is held by another public authority, then it will consider what would be the most helpful way of assisting the requestor with their request. This is likely to involve:

- Informing the requestor that the information requested may be held by another public authority;
- Suggesting that the requestor re-applies to that authority;
- Providing the requestor with contact details for that authority;
- Transferring a request to the other body where they hold information relating to part of a request made to the Health Board, and vice versa, in line with this policy. Any transfer of the request must be with the consent of the requestor.

## 13. CONSULTATION WITH THIRD PARTIES

There will be instances where information requested under the Act and the Regulations will include information relating to third parties (i.e. references to organisations or individuals other than the Health Board). Such information will normally be disclosed unless:

- It is “personal data”, as defined by the UK GDPR and in guidance issued by the Information Commissioner;
- Where disclosure without consent would constitute an actionable breach of confidence as described in Section 41 of the Act;
- Where a common law duty of confidence is owed (e.g. information concerning a deceased patient).

Where none of the conditions described above apply and where there are no other exemptions, the Health Board will normally be obliged to disclose the information requested. The Health Board will write to third parties to advise them of what information is being released and ask them to notify any concerns. However, the final decision rests with the Health Board.

The Health Board 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 their functions and it would not be otherwise provided.

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The Health Board will not agree to hold information received from third parties “in confidence” unless the information has the necessary quality of confidence. Acceptance of any confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

## 14. MANAGING CONTRACTS

When entering into contracts, the Health Board will refuse to include contractual terms which seek to restrict the disclosure of information relating to the contract, beyond the restrictions permitted by the Act and the Regulations. Unless an exemption provided for under the Act or an exception provided under the Regulations is applicable in relation to any particular information, the Health Board will retain the right to disclose that information in response to a request, regardless of the terms of the contract.

When entering into contracts with non-public authority contractors, the Health Board may be asked to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance are exempt from disclosure. Such clauses will be rejected wherever possible. Where exceptionally, it is necessary to include non-disclosure provisions in a contract, the Health Board will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. When drawing up any such schedule, the Health Board will be mindful that any restrictions on disclosure could potentially be overridden by obligations under the Act and that such confidentiality provisions must be for good reasons and be capable of being justified to the Information Commissioner’s Office.

In order to avoid unnecessary secrecy, any such constraints on disclosure will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Health Board will not impose terms of secrecy on contractors.

## 15. INTERNAL REVIEW PROCESS

The requestor has a right to request the Health Board to undertake an internal review if they are dissatisfied with the response. Internal reviews will be investigated by an Executive Director and the outcome of the review will be formally documented and communicated to the requestor in writing within 20 working days.

When conducting an internal review of an FOI response, the following key factors will be considered:

- Whether the requestor was given adequate advice and guidance about their request for information;
- Whether the procedures for responding to requests for information were followed correctly in this instance;
- Whether, if an exemption/exception was applied, the reasons were explained adequately to the requestor.

Where information has been withheld, the application of any exemption/exception will be re-examined, as will any application of the public interest test in the case of a qualified exemption/exception.

When responding to requests for information, the Freedom of Information Officer will inform the requestor of the procedure for an internal review, as well as advising them of their right of appeal to the Information Commissioner’s Office.



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If the requestor is still dissatisfied following the internal review process, the individual can appeal further to the Information Commissioner's Office if they feel that the Health Board has not complied with its obligations under the Freedom of Information Act 2000 or Environmental Information Regulations 2004.

## 16. RECORDS MANAGEMENT

The Health Board has systems and processes in place for managing its corporate records in both electronic and paper format in order to respond effectively to requests for information.

## 17. TRAINING

Freedom of Information and Environmental Information training is available to all staff via the corporate induction programme. The Senior Corporate Information Officer is responsible for arranging any additional specific training for staff groups.

A staff guide to Freedom of Information and Environmental Information requests is available on the intranet or on request from the Freedom of Information team. Additionally, a short guide to FOI and EIR is accessible to the public, via the Health Board's website, as well as being issued as an attachment with all acknowledgements.

## 18. RESPONSIBILITIES

### 18.1. Health Board

The Health Board needs to have secure and robust information governance processes in place to ensure it meets its statutory responsibilities. Information Governance encompasses all aspects of information handling including Freedom of Information and Environmental Information.

### 18.2. Chief Executive

The Chief Executive has ultimate responsibility for the organisation's compliance with the Act and the Regulations. Responsibility for bringing FOI/EIR issues to the Board is delegated to the Board Secretary.

### 18.3. Executive Team

The Executive Team is responsible for managing the internal review process, with a named Executive Director allocated to investigate internal reviews.

### 18.4. Board Secretary

The Board Secretary has overall responsibility for the corporate function of the Health Board, including FOI and EIR requests.

### 18.5. Senior Corporate Information Officer

The Senior Corporate Information Officer will provide support and guidance to the Freedom of Information Officer, to ensure that the Health Board remains compliant with its duties under the Act and Regulations.

The Senior Corporate Information Officer will also ensure that all processes and procedures put in place have been tested to ensure they meet the requirements of the Act and the Regulations.

### 18.6. Freedom of Information Officer

The Freedom of Information Officer will manage the day to day FOI/EIR function, and ensure that all requests are fulfilled in accordance with the Health Board's statutory duty.

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## 18.7. Information Governance Sub-Committee

The Information Governance Sub-Committee reports to the Sustainable Resource Committee and comprises of key staff from the Health Board. The Information Governance Sub-Committee will oversee the development and updating of this policy and related procedures and ensure that awareness of FOI/EIR is maintained across the Health Board.

## 18.8. All staff, Independent Board Members and Contractors

All staff, Independent Board members, contractors and those who undertake work on behalf of contractors are obliged to adhere to this policy. They should be familiar with the requirements of the Act and the Regulations and be aware of their personal responsibilities under the legislation.

## 18.9. Line managers

Line managers must ensure that their staff are aware of this policy and how to deal with Freedom of Information and Environmental Information requests should they receive one.

## 19. IMPLEMENTATION

It will be the responsibility of the Senior Corporate Information Officer to ensure that this policy is implemented effectively across the Health Board, through training.

Information Governance issues, including Freedom of Information and Environmental Information, will be highlighted on a routine basis through the Information Governance Sub - Committee to the Sustainable Resource Committee.

## 20. STANDARDS AND KEY PERFORMANCE INDICATORS

The Senior Corporate Information Officer will regularly assess performance in meeting the standards and statutory timeframes of the *Code of Practice under Section 45 of the Freedom of Information Act 2000 and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 issued under regulation 16 of the Regulations.*

## 21. MONITORING COMPLIANCE

The Health Board will review the Freedom of Information and Environmental Information arrangements to ensure compliance with this policy.

The FOI Officer will maintain records of all FOI/EIR requests for monitoring purposes in accordance with the Codes of Practice.

The Senior Corporate Information Officer will produce quarterly reports to the Information Governance Sub-Committee under delegated authority from Strategic Development and Operational Delivery Committee, to assess performance in meeting the statutory timeframes.

## 22. REFERENCES

Freedom of Information Act 2000 –

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

Information Commissioners Office Freedom of Information Act webpage -

[http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information.aspx)

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Code of Practice under Section 45 of the Freedom of Information Act 2000 -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

Environmental Information Regulations 2004 -

<https://www.legislation.gov.uk/ukxi/2004/3391/made>

Information Commissioners Office Environmental Information Regulations webpage –

<http://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>

Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 issued under regulation 16 of the Regulations –

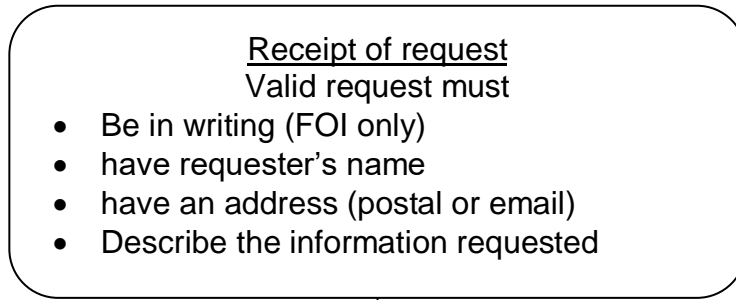
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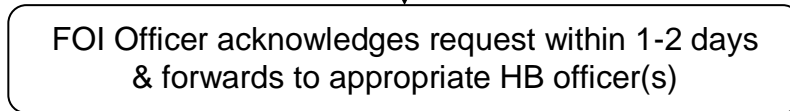
## 23. APPENDIX A – [OBJ]

### DAY 1

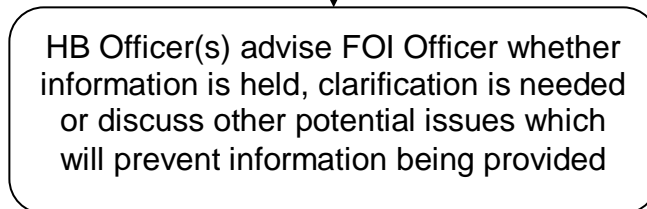
*Day 1 is the first day it arrives in the organisation not in the FOI Office*



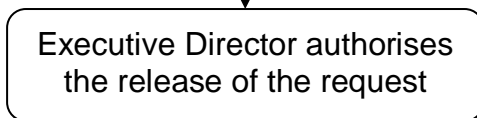
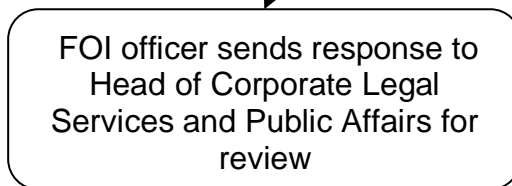
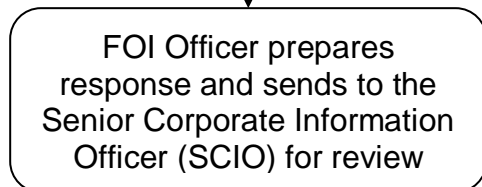
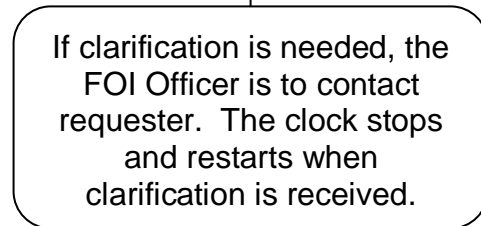
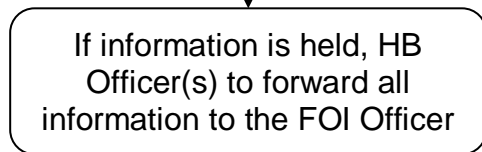
### BY DAY 2



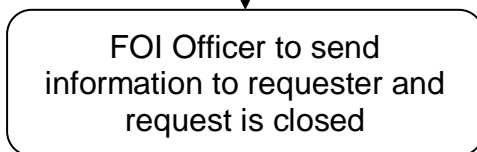
### BY DAY 4



### BY DAY 10



### BY DAY 20



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## 24. APPENDIX B – INTERNAL REVIEW PROCESS FLOWCHART

### DAY 1

*Day 1 is the first day it arrives in the organisation not in the FOI Office*

#### Receipt of internal review

- Requestor dissatisfied with Health Board response, appeal to Health Board received.
- Must be in writing (FOI only)
- Must include requester's name
- Must include an address (postal or email)
- Must contain the reasons for appealing the response

### BY DAY 2

FOI Officer acknowledges internal review within 1-2 days and forwards to named Executive Director

### BY DAY 10

Board Secretary conducts a review to establish:

- The procedures for responding to the request were followed correctly.
- All information, relevant to the request, held by the Health Board, was provided to the requestor.
- Where any information was withheld, the application of exemption/s used was done so correctly and explained fully.

### BY DAY 20

Following completion of the review, the named Executive Director drafts the appeal response and sends to the requestor