

# Freedom of Information Act Policy

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## Target Audience:

<b>People who need to know about this document in detail</b>	All staff are required to comply with this policy. The term staff includes permanent, temporary, contracted and voluntary staff of the Health Board, including Independent Members and those with honorary contracts who have access to and create officially recorded information.
<b>People who need to have a broad understanding of this document</b>	All staff are required to comply with this policy. The term staff includes permanent, temporary, contracted and voluntary staff of the Health Board, including Independent Members and those with honorary contracts who have access to and create officially recorded information.
<b>People who need to know that this document exists</b>	All staff are required to comply with this policy. The term staff includes permanent, temporary, contracted and voluntary staff of the Health Board, including Independent Members and those with honorary contracts who have access to and create officially recorded information.

## Integrated Impact Assessment:

<b>Equality Impact Assessment Date &amp; Outcome</b>	<b>Date: June 2024</b>
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**Aligns to the following Wellbeing of Future Generation Act Objective**

Co-create with staff and partners a learning and growing culture



**Disclaimer:**

If the review date of this document has passed please ensure that the version you are using is the most up to date version either by contacting the author or [CTM\\_Corporate\\_Governance@wales.nhs.uk](mailto:CTM_Corporate_Governance@wales.nhs.uk)

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## **1. PURPOSE**

The purpose of this policy is to outline what Cwm Taf Morgannwg University Health Board (referred hereafter as "CTMUHB") intends to do to ensure compliance with the Freedom of Information Act, referred to hereafter as the Act. The Act, deals with access to official recorded information held by public authorities. Parallel regulations deal with access to environmental information which are only referenced within this Policy.

## **2. POLICY STATEMENT**

CTMUHB is committed to complying with the Act and recognises in full the rights and obligations established it, particularly in relation to access to the recorded information it holds. This policy and its supporting procedures and documentation is the framework by which the Health Board aims to meet its obligations.

## **3. PRINCIPLES**

CTMUHB supports a climate of openness and will take measures to help and inform the public in relation to their rights as contained within the Act, based on the following principles:

- A general right of access in relation to recorded information held by public authorities, subject to certain conditions and exemptions
- A duty on public authorities to provide a reason for refusal where access to information is refused in reliance on an exemption from disclosure
- A duty on every public authority to adopt and maintain a publication scheme, approved by the Information Commissioner, and to publish information in accordance with that scheme.

## **4. SCOPE**

This policy applies to all official recorded information held by CTMUHB, irrespective of age, format or location.

All staff are required to comply with this policy. The term staff includes permanent, temporary, contracted and voluntary staff of the Health Board, including Independent Members and those with honorary contracts who have access to and create officially recorded information.

## 5. LEGISLATIVE AND NHS REQUIREMENTS

- Freedom of Information Act 2000
- Environmental Information Regulations 2000
- General Data Protection Regulation 2016
- Data Protection Act 2018

## 6. PROCEDURE

A significant amount of information will be routinely published via the Publication Scheme ([Publication Scheme - Cwm Taf Morgannwg University Health Board \(nhs.wales\)](#)). Requests for other information will be dealt with in a timely manner as required by the Act. However, in cases where the requested information is covered by an exemption, consideration will be given as to whether or not the information should be released. Detailed procedures for dealing with Rights of Access will be followed and can be accessed at Appendix 1. Health Board staff have a duty to provide reasonable advice and assistance to applicants requesting information as outlined within the Act.

Requesters may direct a complaint to the Information Governance Department and are entitled to request an internal review of the handling of their requests. If after an internal review they remain dissatisfied they are entitled to refer the matter directly to the Information Commissioners Office.

CTMUHB acknowledges that patients and staff have a right to privacy and confidentiality and this policy does not overturn the common law duty of confidentiality 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 legislation. Requests for information relating to staff will be considered using the Guidelines on the Disclosure of Staff Information at Appendix 2.

Guidelines for the Reuse of Public Sector Information can be found at Appendix 3.

## **7. TRAINING IMPLICATIONS**

All staff must be aware of the key principles of the Act to enable CTM UHB to meet its legal responsibilities. Staff should be able to:

- identify a publication scheme request for information and give advice where the scheme can be found;
- identify a general request for information;
- direct FOI requests to the Information Governance Team; and
- understand their responsibilities where requests are made concerning their area of responsibility.

Guidance is provided via the Health Board's website and the Information Governance SharePoint pages; however bespoke training can be provided internally as required.

## **8. REVIEW, MONITORING AND AUDIT ARRANGEMENTS**

A full review of this policy will be undertaken every two years or sooner if there are changes to guidance or legislation. On-going monitoring and auditing of this policy will be undertaken by the Head of Information Governance, and the Information Governance Group who receive regular reports on compliance with the Act.

Policy approval will be sought from the relevant Board Committee.

## **9. MANAGERIAL RESPONSIBILITIES**

The Chief Executive will act as the qualified person within CTMUHB and as such will consider the application of exemptions under Section 36 of the Act: Prejudice to the Effective Conduct of Public Affairs.

CTMUHB will nominate an Independent Member of the Board to undertake the role of the FOI Act Champion, when required in respect of any investigations undertaken by the ICO in the event of any appeals.

The Director of Digital will be responsible for ensuring that there are effective arrangements in place to enable compliance with the provisions of the Act as well

as providing periodic reports to the Executive Leadership Group and the Board as required.

The Head of Information Governance will undertake the administration of this policy including the implementation of procedures to ensure compliance with the requirements of the Act. The Department will co-ordinate effective discharge of the duty to provide advice and assistance to applicants and would be applicants imposed under Section 16 of the Act.

All directors and managers are responsible for ensuring that this policy and the associated procedures are implemented in a timely manner within their area of responsibility and communicated to their staff. Further information or guidance may be sought from the Freedom of Information Officer ([CTM.FreedomOfInformation@wales.nhs.uk](mailto:CTM.FreedomOfInformation@wales.nhs.uk)).

## **10. RETENTION / ARCHIVING**

Requests for information under the Act will be retained and archived in line with National Records Management Guidance. This Policy will be subject to version control and archived as required by local policy.

## **11. NON-CONFORMANCE**

All staff are required to comply with this policy and where requested demonstrate such compliance. Failure to comply will be dealt with under the appropriate employment Policy.

It is important to note that it is an offence to alter, deface, block, erase, destroy or conceal any record held by the public authority, with the intention of preventing the disclosure and offenders may be subject to legal proceedings.

## **12. EQUALITY IMPACT ASSESSMENT STATEMENT**

Following an Equality and Welsh Language Assessment this policy is not felt to be discriminatory or detrimental in any way with regard to the equality standards.

## **13. REFERENCES**

- Freedom of Information Act 2000
- Environmental Information Regulations 2000
- General Data Protection Regulation (GDPR)

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- Data Protection Act 2018
- Human Rights Act 1998
- 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 (Nov 2002)
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Act (Nov 2002)
- Cwm Taf Morgannwg University Health Board Records Management Policy
- All Wales NHS Information Governance Policy

## **14. APPENDICES**

Appendix 1 – Right of Access Detailed Procedures

Appendix 2 – Guidelines on the Disclosure of Staff Information

Appendix 3 – Guidelines for the Reuse of Public Sector Information



# **Freedom of Information Act**

## **Right of Access**

### **Detailed Procedures**

**INITIATED BY:** Director of Digital

**APPROVED BY:** TBC

**DATE APPROVED:** TBC

**VERSION:** 6

**OPERATIONAL DATE:** September 2018

**DATE FOR REVIEW:** September 2026

**DISTRIBUTION:** All Staff via Intranet & Core Brief Message

**FREEDOM OF INFORMATION STATUS:** OPEN

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## **PROCEDURE 1: Where sufficient details are provided to locate the requested information**

The Freedom of Information Officer (FoIO) will send an acknowledgement letter within two working days of receipt of the request. The acknowledgement letter will state that the request has been received and is being processed. This contact will be recorded on the Freedom of Information request database.

Where the FoIO has sufficient information to locate and process the request, they will identify the appropriate 'link' person and forward the request to them by email within 2 working days. The email will request that a response is returned by day 10, this timescale will be closely monitored. At this stage, the link person will also be asked if they have any objection to the identified information being disclosed. This contact will be recorded on the Freedom of Information request database.

The information provided by the 'link' will need to be scrutinised and reviewed by their nominated approver within their areas to ensure the information is appropriate, that it fully answers the request prior to sending to the Team. Consideration will then given whether exemptions apply and whether fees or charges are payable. . Please note that spreadsheets are no longer accepted from 'links' due to breaches of the Act, and ICO recommendations.

If any exemptions are applicable, the Procedure: Refusal of Requests – Use of Exemptions will be activated. If the cost of retrieving the requested information exceeds the appropriate limit the Procedure: Refusal on the Grounds of Cost will be activated.

## **PROCEDURE 2: Where insufficient details are provided to locate the requested information**

The Freedom of Information Officer (FoIO) will send an acknowledgement letter within two working days of receipt of the request. The acknowledgement letter will state that the request has been received and is being processed. This contact will be recorded on the Freedom of Information requests database.

Where an applicant has not described the information sought in a way that would enable CTMUHB to identify or locate it, assistance will be provided to enable him or her to describe more clearly the information requested.

The purpose of this contact will be to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. This contact will be recorded on the Freedom of Information request database.

The 20 working day time limit is not activated until the applicant has provided sufficient information for CTMUHB to proceed. If no response is received within three months, the request will be closed. If a response is received the appropriate procedure will be followed.

### **PROCEDURE 3: Information requested is not held**

If, after following the appropriate procedure, it is established that CTMUHB does not hold the requested information, the applicant will be informed as soon as possible within the 20 working day limit. The contact will be recorded within the Freedom of Information request database.

## **PROCEDURE 4: Requests that Exceed the Appropriate Limit**

Section 12 of the Freedom of Information Act 2000 (FOIA) provides an exemption from the obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The appropriate limit is the key concept concerning fees.

Where CTMUHB is concerned, the appropriate limit is set at £450. If the cost of complying with a request exceeds the appropriate limit, the University Health Board can:

- refuse to supply the information on the grounds of cost, or
- can offer to provide the information if the applicant is prepared to pay a fee.

Where it has been estimated that cost of compliance exceeds £450, the Health Board can charge the total amount for:

- determining whether it holds the information;
- locating the information, or documents which may contain the information;
- retrieving the information, or documents which may contain the information, and
- extracting the information from a document(s) in which the information is contained.

The four activities are sequential.

**NB:** We can take into account the costs attributable to the time that staff (and if applicable, external contractors) are expected to spend on these activities. Such costs are calculated at £25 per hour per person regardless of the actual cost or rate of pay, which means that the limit will be exceeded if these activities exceed 18 hrs.

CTMUHB is not permitted to take into account any time likely to be spent:

- considering exemptions that may apply to the information requested; and
- redacting exempt material.

**NB:** If a request is refused because the appropriate limit has been exceeded, the organisation must bear in mind the duty under Section 16 of the FOIA to advise and assist an applicant; such advice could include how to 'refine or limit' the request to bring it within the cost limit.

## **Refusal on the Grounds of Cost**

Where a decision is made to refuse a request because the cost of compliance exceeds the appropriate limit, the requester will be informed via a Refusal Notice issued at the earliest opportunity and within the twenty working day time limit.

The Refusal Notice must:

- Confirm or deny whether the information is held (unless cost of this alone would exceed the appropriate limit);
- Specify the reason for refusal;
- Quote the (Appropriate Limit and Fees) Regulations 2004;
- Provide an estimate of the cost of complying with the request; and
- Specify the exemption, (Section 12 (1)).

As set out in Section 17(7) the applicant will also be informed of the Health Board's complaints procedure and of their right to complain to the Information Commissioner.

**NB:** The Fees Regulations state that two or more requests to the Health Board can be aggregated for the purposes of calculating costs if they are:

- by one person, or by different persons who appear to the Health Board to be acting in concert or in pursuance of a campaign;
- for the same or similar information; and
- the subsequent request is received by the Health Board within 60 working days of the previous request.

The intention of this provision is to prevent individuals or organisations evading the appropriate limit by dividing a request into smaller parts.

### **Example Refusal Notice**

"Retrieval of the information requested would require a trawl of patient case notes. Whilst these case notes are held by CTMUHB, the Freedom of Information and Data Protection Acts set a limit on the cost of compliance with a request. This limit is set at £450 and we are allowed to aggregate requests, such as those referred to above, for the purposes of calculating the cost of compliance. In relation to your request Q.1 ii), taken as an example, we estimate that the cost of compliance with this element of your request alone would be in excess of £1000 because the Health Board would need to check 253 sets of casenotes, taking an estimated 15 minutes for each case note".

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Accordingly, I find that the cost of compliance with your requests would be excessive such that the exemption at Section 12 (1) of the Freedom of Information Act is engaged.”

If you are dissatisfied, either because the information has not been provided to you, or with the way your request has been handled by the Health Board, you have the right to complain and request a review. If you are still dissatisfied at the end of any review, you may ask the Information Commissioner to adjudicate.

### **Provision of the information where the applicant is prepared to pay a fee**

CTMUHB may take a decision to provide the requested information if the requester is prepared to pay the fee. Where this is the case, the requester will be issued with a Fees Notice. The Fees Notice will specify the fee, (payable in advance), provide the calculations and specify the time limit for a response.

**NB:** The period from the day the Fees Notice is issued to the day the fee is received does not count towards the 20 working day limit for response. Where the requester wishes to pay the fee, the 20 working days would resume once the cheque is cleared. CTMUHB must ensure that cheques are banked promptly.

If, following the issue of a Fees Notice, the specified fee is not paid within three months beginning on the day on which the fees notice was given to the requester, the request will be closed.

## **PROCEDURE 5: Refusal of a Request Utilising the Exemptions**

The Freedom of Information Act 2000 (the Act) recognises that there are valid reasons for withholding information by setting out a number of exemptions from the right to know. There are 23 exemptions in all, some of which are absolute exemptions, and others which 'qualified' and subject to a 'public interest test'. These exemptions mark out the limits of the right of access to information. If information is properly exempt then there is no right of access to it under the Act.

The exemptions operate in different ways and, when considering applying individual exemptions, CTMUHB will need to consider the following factors:

- The content of the information
- The effect disclosure would have
- The source of the information
- The purpose for which the information was recorded

The Act provides two distinct, but related rights of access to information, which impose corresponding duties on the Health Board, these are:

- the duty to inform the requester whether or not information is held by the Health Board (the duty to confirm or deny), and if so,
- the duty to provide that information to the requester.

Both of these elements are subject to exemptions contained within FOIA.

### **The Duty to Confirm or Deny in Relation to Exempt Information**

This element will be managed by the FoIO, referring to Information Commissioner's Office (ICO) [Awareness Guidance 21](#).

### **Refusal of a Request where the Information Requested is Exempt from Disclosure under Part II of FOIA (the Exemptions)**

The exemptions, listed below, are contained within Sections 21 – 44 of the Act. The ICO has issued guidance on the application of each of the exemptions. This element will be managed by the FoIO referring to the guidance. Exemptions may be absolute or qualified.

- 21. Information accessible to applicant by other means (absolute)
- 22. Information intended for future publication (qualified)

- 23. Information supplied by, or relating to, bodies dealing with security matters (absolute)
- 24. National security (qualified)
- 25. Certificates under ss. 23 and 24: supplementary provisions.
- 26. Defence (qualified)
- 27. International relations (qualified)
- 28. Relations within the United Kingdom (qualified)
- 29. The economy (qualified)
- 30. Investigations and proceedings conducted by public authorities (qualified)
- 31. Law enforcement (qualified)
- 32. Court records, etc. (absolute)
- 33. Audit functions (qualified)
- 34. Parliamentary privilege (absolute)
- 35. Formulation of government policy, etc. (qualified)
- 36. Prejudice to effective conduct of public affairs (qualified)
- 37. Communications with Her Majesty, etc. and honours. (qualified)
- 38. Health and safety (qualified)
- 39. Environmental information (qualified)
- 40. Personal information (qualified)
- 41. Information provided in confidence (absolute)
- 42. Legal professional privilege (qualified)
- 43. Commercial interests (qualified)
- 44. Prohibitions on disclosure (absolute)

Where a decision has been taken to withhold requested information utilising one (or more) of the exemptions, a notice will be issued within twenty working days (Section 17 of the Act). 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.

When it is anticipated that the 20 working day limit will be exceeded when considering exemptions, the applicant will:

- a. be informed that an exemption is being considered and that a decision has not yet been reached; and
- b. be provided with an estimated date by which they may expect a decision (the estimate should be realistic and reasonable and must be complied with unless there are extenuating circumstances).

If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the FoIO.

If the FoIO/ Information Governance Manager finds that the estimate is proving unrealistic, the applicant will be kept informed. A record will be kept of instances where estimates are exceeded, and where this happens more than occasionally, steps will be taken to identify the problem and rectify it.

## **Public Interest Test**

In applying a qualified exemption CTMUHB must consider whether the public interest in maintaining the exemption is greater than that in confirming or denying the existence of the information requested and providing the information to the applicant.

If a qualified exemption is being applied, the FoIO will, either in the notice issued, (see above) or in a separate notice, state the reasons for claiming:

- a. that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Health Board holds the information, or
- b. that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement will not involve the disclosure of information which would itself be exempt information.

The FoIO will record all information request refusal notices. These will be subject to periodic review to maintain consistency in decision making. When considering exemptions, the FoIO will consult with the appropriate Executive Director or Senior Managers and the final decision on the application of the public interest test will rest with the Board level champion for information governance issues.

## **PROCEDURE 6: Refusal of Requests that are Deemed Vexatious or Repeated (Section 14)**

The Information Commissioner's general approach is that a request (which may be the latest in a series of requests) can be treated as vexatious where it would impose a significant burden on the Health Board in terms of expense or distraction and meets at least one of the following criteria:

- it clearly does not have any serious purpose or value;
- it is designed to cause disruption or annoyance;
- it has the effect of harassing the public authority; and
- it can otherwise fairly be characterised as obsessive or manifestly unreasonable.

This is not, however, intended to be a formulaic approach for every request, and each specific request should be looked at and assessed individually.

A request for information which should be available through CTMUHB's Publication Scheme cannot be refused on the grounds that it is vexatious. Requests which may be deemed vexatious or repeated will be dealt with using [Freedom of Information Act Awareness Guidance: Number 22](#) as the reference document.

If a decision is made to refuse a request on the grounds that it is vexatious or repeated, a Section 17 Refusal Notice will be issued. If the Health Board is relying on a claim that the request is vexatious or repeated under Section 14 of the Act, and a notice under Section 17 has already been issued to the applicant stating this fact, a further notice is not required.

## **PROCEDURE 7: Transfer of requests for information**

Where CTMUHB receives a request for information which it does not hold, but which it believes may be held by another public authority, the FoIO will consult with that authority to ascertain whether it holds the information requested. If held by the other public authority, consideration will be given to whether the request should be transferred. If appropriate, the FoIO will oversee the transfer of that request.

If CTMUHB holds some of the information requested, a transfer will be made in respect of the information that it does not hold (but is held by another public authority).

When it becomes apparent that CTMUHB does not hold all or part of the information requested, they will advise the applicant of this fact. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. If this course of action is pursued, the applicant will be informed of this and updated on progress.

Before transferring a request for information to another authority, the FoIO will consider whether a transfer is appropriate. If this is the case, they will consult with the applicant to determine whether they have any objections to the transfer.

If appropriate, they will transfer the request to the other authority if the applicant consents. If the applicant refuses to give consent, the FoIO will advise that he or she can submit a new request to the other authority.

All transfers of requests should take place as soon as practicable, and the applicant should be informed as soon as possible following the transfer. All transfers must be processed within the twenty working day timescale. A record will be kept of all activity associated with the transfer of requests for information to other public authorities.

**NB:** Where a request, or part of a request, is transferred from one public authority to another, the receiving authority has an obligation under Part I of the Act to treat the transferred application as it would a request received directly from an applicant.

## **PROCEDURE 8: Consultation with Third Parties**

There will be occasions when requested information will contain information that relates to third parties. Disclosure of such information may affect the interests of the third parties and in some instances may also affect their legal rights.

CTMUHB will take appropriate steps to ensure that such third parties, and those who supply public authorities with information, are aware of the Health Board's duty to comply with the Freedom of Information Act, and that information will have to be disclosed upon request unless an exemption applies.

In some cases it will be necessary to consult with third parties in order to establish their views on disclosure of requested information or in order to help determine whether or not an exemption applies to the information requested. The views of the third party may also assist the Health Board to determine where the public interest lies under Section 2 of the Act.

Where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 2018 (DPA), unless a FOIA exemption applies, the Health Board is obliged to disclose that information. Where it is determined that the requested information constitutes "personal data" within the meaning of the DPA, the FoIO will have regard to Section 40 of the Act.

In some cases 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 the disclosure of the information without their consent would constitute an actionable breach of confidence (such that the exemption at Section 41 of the Act would apply). In such cases the FoIO will consult the third party seeking their consent to the disclosure, unless this is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.

A record will be kept of all contacts with third parties regarding consultations and decision making on the disclosure of information that may affect their legal rights.

### **Consultation with a number of third parties**

Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on their behalf, the FoIO could, if consultation is considered appropriate, decide that it would be sufficient to consult that representative organisation.

If there is no representative organisation, the FoIO may consider that it would be sufficient to consult a representative sample of the third parties concerned. A record will be kept of all contacts with representative organisations or representative samples of third parties in respect of consultations and decision making on the disclosure of information.

**Where there is no response or there is a refusal to consent by the third party**

If a third party has not responded to consultation, CTMUHB is not relieved of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act.

Similarly, a refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

In all cases, it is for CTMUHB, through the FoIO, not the third party (or representative of a third party) to determine whether or not information should be disclosed under the Act. A record will be kept of all responses to consultations and the decision making processes that arise from them.

## **Procedure 9: Freedom of Information Complaints and Feedback**

Requesters may direct an appeal to the Freedom of Information Team and are entitled to request an internal review of the handling of their requests.

All appeals, verbal or written (including those transmitted by electronic means), must be referred immediately to the FoIO / Head of Information Governance and received within 40 working days of the initial response.

Comments and feedback about the discharge of duties of CTMUHB in regard to the Act and Regulations will all be forwarded to the Lead Officer.

All appeals will be dealt with in accordance with the Freedom of Information Act. The FoI Officer will issue a letter of acknowledgement stating that the complaint will be reviewed and responded to within 20 working days. The FoI Officer will then forward details of the complaint to the Information Governance manager to initiate the local resolution stage.

The local resolution stage will involve a review of the request handling process. This will be carried out by a manager usually the Head of Information Governance who has not been involved with the collating and drafting of the initial request), but who has a well-developed understanding of the legislation, including the exemptions and public interest test.

The Head of Information Governance will consider the submissions of the requester and may consult with other persons, departments or third parties, or take legal advice as they consider appropriate.

The Head of Information Governance will discuss the outcome of the review with the Executive Director of Digital and will produce a report outlining findings, conclusion and any recommendations to be made to the internal process.

The Head of Information Governance will notify the requester in writing within 20 working days of the outcome of the appeal process, giving reasons for the decision.

All requesters will also be informed of their right to complain directly to the Information Commissioner if they are dissatisfied with the outcome of the internal review, and will be given the Information Commissioner's contact details.

When the Head of Information Governance is of the opinion that the procedures or processes for handling requests can be improved, they will make a recommendation to the Director of Digital accordingly.

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## **Guidelines on the Disclosure of Staff Information under the Freedom of Information Act 2000**

<b>INITIATED BY:</b>	Head of Information Governance
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## **1. Background**

The Freedom of Information Act 2000 gives the public the right to access official information held by Public Authorities. The Health Board is committed to public openness and routinely publishes information under the Publication Scheme as well as dealing with individual requests for information.

## **2. Purpose**

The purpose of these guidelines is to:

- Advise staff that information may be disclosed about them under the Freedom of Information Act 2000;
- Explain the types of information covered;
- Explain the factors that will be taken into consideration when deciding whether or not to disclose any requested information.

These guidelines do not cover aggregated or anonymised data where individuals cannot be identified.

## **3. Principles**

CTMUHB holds a great deal of information about its staff some of which may be sensitive, personal or information provided in confidence. In most cases it would not be appropriate to release this type of information. Personal information is exempt from disclosure under the Freedom of Information Act 2000, if disclosure would lead to a breach of the data protection principles, for example, if disclosure would be unfair to the employee. This exemption is intended to ensure public openness does not compromise personal privacy.

In addition, there may be other exemptions to be considered that could protect personal information from disclosure. For example, if disclosure constitutes a breach of confidence or would endanger an employee. CTMUHB is also bound by human rights principles to respect employees' rights to respect for their private and family life when deciding whether to disclose information about them.

CTMUHB will inform any staff concerned prior to deciding whether to disclose any information about them. Should an staff member object to the disclosure, this will be taken into account, however it may not prevent the disclosure if it is in the public interest to do so and there is no breach of the data protection or human right principles.

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In line with guidance from the Information Commissioner, the Health Board would consider the following principles to assist in deciding whether or not information should be disclosed:

- Whether the information requested is about an employees' professional or personal life.
- Whether the information requested can be edited to remove personal information.
- Whether employees would expect information to be disclosed. In general more senior staff and those carrying out public functions should expect information to be disclosed.
- Whether the information requested relates to a disciplinary matters. Generally arguments for disclosure are stronger for more serious matters such as serious allegations of impropriety or criminality.
- Whether the employee has objected to disclosure or where disclosure could be damaging to the employee.
- The sensitivity of the information requested.

CTMUHB will generally disclose work-related information about senior staff or those in a public facing role. Genuinely personal, sensitive and non work-related information will not normally be disclosed. It is less likely that information about more junior staff or those not dealing directly with the public will be disclosed.

**Annex A** describes some of the staff information held by the Health Board and lists which information would normally and not normally be disclosed categorised by senior or public facing staff and junior staff.

#### **4. Review**

A review of content will take place within 2 years of the approval date or sooner if required by legislation or policy.

#### **5. Summary**

These guidelines will be distributed to all staff using the team brief mechanism, intranet and induction processes. Staff are asked to familiarise themselves with the content and direct any queries to the Head of Information Governance, Ynysmeurig House, Navigation Park, Abercynon, Tel. 01443 744800 or via: [CTM.FreedomOfInformation@wales.nhs.uk](mailto:CTM.FreedomOfInformation@wales.nhs.uk) .

## 6. Annex A - Employee Information for Disclosure

This is a generic list of information held by the Health Board about its staff, although the list is not exhaustive. It provides advice for staff on the types of information that may or may not be disclosed.

	<b>Information that will normally be disclosed</b>	<b>Information that will NOT normally be disclosed</b>
<b>Senior or Public Facing Staff</b>	<ul style="list-style-type: none"> <li>• Information already published by the Health Board in Annual Reports, such as Executive Director salaries.</li> <li>• Photographs and biographical information relating to staff whose role may be the subject of publicity.</li> <li>• Names, job titles, work e-mail addresses and work telephone numbers.</li> <li>• Years in post, previous positions held in the NHS.</li> <li>• Position within organisational structures, role, duties, work-related responsibilities.</li> <li>• Salary levels or pay bands (not net salary).</li> <li>• Summaries of expense claims, amounts claimed by named employees.</li> <li>• Vocational training or secondments undertaken whilst employed within the Health Board.</li> <li>• Qualifications relevant to carrying out duties.</li> <li>• Business-related entries in office diaries or schedules.</li> </ul>	<ul style="list-style-type: none"> <li>• Personal details obtained as part of the recruitment process, e.g. CVs, application forms, references, etc.</li> <li>• Photographs and biographical information relating to staff whose role is not likely to be the subject of publicity, unless they have consented.</li> <li>• Non-work related information, e.g. personal financial details, sickness records, medical information, family information.</li> <li>• Details of PDRs or other staff interviews, e.g. disciplinary proceedings.</li> <li>• Net salaries or specific information about salaries, pensions or financial benefits.</li> <li>• Home addresses/contact details, next of kin, non-work related information.</li> <li>• Non-work related exams, qualification or training.</li> <li>• Annual leave records, flexi or special leave.</li> <li>• Security clearance information.</li> <li>• Private entries in office diaries or schedules.</li> <li>• Photographs and other details maintained as part of the staff directory.</li> </ul>

	<b>Information that will normally be disclosed</b>	<b>Information that will NOT normally be disclosed</b>
<b>Junior Staff</b>	<ul style="list-style-type: none"> <li>Names, job titles, work e-mail address and work telephone numbers of staff in a public-facing role.</li> <li>Salary levels or pay bands (not net salary)</li> <li>Summaries of expense claims, amounts claimed by named employees.</li> </ul>	<ul style="list-style-type: none"> <li>Names, job titles, work e-mail addresses and work telephone numbers of staff NOT in a public-facing role.</li> <li>Personal details obtained as part of the recruitment process, e.g. CVs, application forms, references, etc.</li> <li>Photographs and biographical information, unless they have consented.</li> <li>Non-work related information, e.g. personal financial details, sickness records, medical information, family information.</li> <li>Details of PDRs or other staff interviews, e.g. disciplinary proceedings.</li> <li>Net salaries or specific information about salaries, pensions or financial benefits.</li> <li>Home addresses/contact details, next of kin, non-work related information.</li> <li>Non-work related exams, qualifications or training.</li> <li>Annual leave records, flexi or special leave.</li> <li>Security clearance information.</li> <li>Private entries in office diaries or schedules.</li> <li>Years in post, previous positions held within the NHS.</li> <li>Position within organisational structures, role, duties, work-related responsibilities of staff NOT in public facing role.</li> <li>Vocational training or secondments undertaken whilst employed within the University University Health Board.</li> <li>Qualifications even if relevant to carrying out NHS duties.</li> <li>Photographs and other details maintained as part of the staff directory.</li> </ul>



## **Guidelines for the Reuse of Public Sector Information**

<b>INITIATED BY:</b>	Head of Information Governance
<b>APPROVED BY:</b>	TBC
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## 1. Purpose

This guidance states our commitment to meet the requirements of the Re-use of Public Sector Information Regulations and any associated guidance from the Lord Chancellor's and the Information Commissioner's Office and outlines mechanisms for ensuring this takes place.

## 2. Objectives

To outline the requirements for Cwm Taf Morgannwg University Health Board (hereafter "CTMUHB") to provide or permit re-use of information held (in any particular media format) and to ensure that all requests for information received are processed in accordance with the provisions of the Re-use of Public Sector Information Regulations 2005 ('RPSI').

## 3. Principles

CTMUHB will comply with the requirements of the RPSI, and in particular will:

- Identify public sector information documents that are available for re-use
- Assess whether to charge for re-use of its documents
- Provide a licence, listing the conditions of re-use
- Provide information categories of published and unpublished material available for re-use, for example, databases, statistics and research. The Health Board's Freedom of Information Publication Scheme lists the broad categories of published materials
- Respond to written requests for information as quickly as possible, and in any event within the statutory timescales
- Follow the appeals procedures detailed within the Freedom of Information Act Policy
- In exceptional circumstances, where CTMUHB cannot respond fully within the statutory timescale (for example, where the public interest test must be considered), the Health Board will:
  - Advise the requester, and give an estimated date by which the information will be provided; and
  - Provide as much of the information as possible within the earlier timescale
  - Apply exclusions appropriately and consistently
  - Provide training to users

## 4. Scope

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This guidance applies to the following:

- Staff, including permanent, temporary, contractual and agency
- Independent Board members
- People, partner agencies, 3rd party suppliers and organisations contracted to work or process any information on behalf of the University Health Board
- Volunteers, students or any other authorized people working with or for the University Health Board.
- Hosting arrangements

The group will also consider issues in respect of the roles and responsibilities of any Committees or bodies hosted by the Health Board on behalf of NHS Wales as appropriate. This being the NHS Wales Joint Commissioning Committee and the National Imaging Academy.

## **5. Rights of Access**

Rights of access will apply to all types of information held by the Health Board regardless of the date of the information:

- Any person or organisation may apply. Access is not confined to UK citizens and permanent residents; foreign nationals may also apply;
- The request must be in writing;
- The requester must state their full name (pseudonyms are not valid) in writing;
- The requester must specify the document requested;
- The requester must state the purpose for which the document is to be re-used;
- The Health Board must acknowledge receipt of the request within two working days;
- A request for information must be answered within 20 working days of receipt of the request. This period may be extended where the request is extensive or complex; and the requester must be informed of this in writing; and
- Information will be reusable subject to changes on a case-by-case basis, except where it is produced for statutory reasons. Each response will detail any conditions for re-use.

Re-use can be refused if the information requested falls within one or more of the exclusions permitted by the Re-use of Public Sector Information (RPSI) :

Where requests are refused, the applicant will be advised of the decision and has a right to ask for that decision to be reviewed under the Board's FOIA and Environmental Information Regulations (EIR) appeals procedures. If the information is still not released, the applicant will be advised of their right to ask the Office for Public Sector Information (OPSI) to review the decision.

## **6. Risks**

CTMUHB recognises that there are risks associated with non-compliance with the law. This guidance aims to mitigate risks such as:

- Significant risk to CTMUHB, its customers, partner agencies and stakeholders;
- Inappropriate use or disclosure of information, leading to major incidents;
- Breach of the University Health Board's or other's copyright;
- Legislative or financial penalties; and
- Loss of reputation and damage to the Health Board's corporate image.

## **7. Charging**

Although there is no obligation on CTMUHB to make a charge it retains the right to charge, and where a charge is made it will be noted in the Publication Scheme. This will also apply where existing statutory charging arrangements apply

Where the requests are made through other regimes of access, such as EIR and FOI, charging mechanisms will apply, for obtaining this information as well as for disbursements (e.g. postage, printing and photocopying).

CTMUHB will strive to work together and share information with other public sector bodies.

CTMUHB will reserve the right to impose conditions on the re-use of information and levy a charge where this has involved a considerable amount of officer time in either the preparation or release of the information.

Where a number of other public sector organisations are interested in the work of CTMUHB, officers would be encouraged to present seminars, chargeable at prices that are benchmarked in line with other Health Boards.

Where charges are made, the total income should not exceed the cost of collection, production, reproduction and dissemination of documents and a reasonable return on investment.

Users must ensure that any future contracts with external organisations clearly states which party owns copyright to information.

## **8. Legislative and NHS Requirement**

All policies and procedures must provide clarity to meet external legislative and NHS requirements such as Health and Safety, European legislation and Health Care Inspectorate Wales.

The following legislation and national guidance must be considered in the development and maintenance of this guidance and its supporting documents:-

- Data Protection Act 2018
- General Data Protection Regulation
- The Human Rights Act 1998
- The Common Law Duty of Confidentiality
- The Freedom of Information Act 2000
- NHS Wales Caldicott and its requirements
- Welsh Language Act 1993
- Equality Act 2010
- Environmental Information Regulations.

## **9. Training**

To enable users to comply with this guidance and with the RPSI, the Health Board will:

- Establish and maintain an RPSI framework and promote compliance with the legislation;
- Provide adequate and appropriate training and guidance to all users;
- Maintain a register of requests;
- Ensure that audit trails of all written correspondence in relation to a request for information are maintained;
- Monitor application of guidance; and
- Revise guidance and training as appropriate.

## **10. Review, Monitoring and Audit Arrangements**

This guidance will be continually monitored and will be subject to review at two yearly intervals.

An earlier review may be warranted if one or more of the following occurs:-

- As a result of regulatory / statutory changes or developments;
- Due to the results / effects of critical incidents; and
- For any other relevant or compelling reason.

## **11. Managerial Responsibilities**

The Chief Executive has overall responsibility for RPSI within the Health Board. The Executive Director of Digital has delegated responsibility for the corporate implementation, co-ordination and monitoring of compliance with the legislation.

All users will:

- Understand and adhere to their responsibilities for handling RPSI requests in line with policy and procedures; and
- Respond to both written and verbal requests in line with CTMUHB procedures and guidelines.

The Executive Director of Digital is responsible for the strategic elements, taking into account all related legal and NHS requirements.

The Head of Information Governance is the senior professional lead for the development and coordination of effective governance within the Health Board and with its partners.

Managers at all levels within the Health Board are responsible for continuing compliance within their areas, and ensuring that this guidance is built into local processes.

## **12. Retention or Archiving**

In cases of incidents, / complaints / claims and other legal processes it is often necessary to demonstrate the guidance in place at the time of the investigation. Therefore this guidance will be archived and stored in line with the Records Management Policy.

## **13. Non Conformance**

The Health Board views RPSI compliance seriously. Compliance is monitored by, but not limited to, regular quality checking and ad hoc audits of Directorates as required. The nature of non-compliance will dictate the course of action to be taken, for example:

- Employees may be subject to the disciplinary process;
- Issues involving Independent Board members will be referred to the Chairman; and
- Third Party issues will be handled via contractual arrangements.