



GIG
CYMRU
NHS
WALES

Partneriaeth
Cydwasaethau
Shared Services
Partnership

Freedom of Information Act (2000) Protocol

*To effectively describe the organisation's
commitment to Freedom of Information practices*

Version No. v1
Status: **Final**

Author: Tim Knifton
Approver: Peter Stephenson

Date: 18/1/2018
Next Review Date: 18/1/2021

NHS Wales Shared Services Partnership
4-5 Charnwood Court,
Heol Billingsley,
Parc Nantgarw,
Cardiff
CF15 7QZ

Telephone: 01443 848569
www.nwssp.wales.nhs.uk

FREEDOM OF INFORMATION ACT PROTOCOL

Contents

1. Document history
2. Protocol Statement
3. Equality Impact Assessment
4. Purpose
5. Scope of the Protocol
6. Aims of the Protocol
7. Legislation/Standards
8. Responsibilities
9. Available Guidance
10. NHS Wales Shared Services Partnership Publication Scheme
11. Specific Requests for Information
12. Environment Information Regulations (EIR)
13. Charging for Freedom of Information Act Requests
14. Exemptions under the Act
15. Complaints
16. Codes of Practice
 - 15.1 Section 45 Code of Practice
 - 15.2 Section 46 Code of Practice
17. Copyright
18. Equality
19. Contacts

Further Information

Appendix 1.....Where costs exceed the appropriate limit

Appendix 2.....Freedom of Information Act – Exemptions

Appendix 3.....References

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

1. DOCUMENT HISTORY

1.1 Revision History

Date	Version	Author	Revision Summary
18/1/2018	V0.1	Tim Knifton	Initial draft to reflect changes to legislation under GDPR
26/4/2018	V1	Peter Stephenson	Approved
29/4/2018	V1	Tim Knifton	Formatted as final version


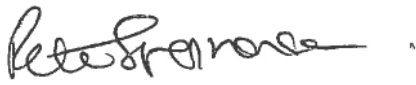
1.2 Reviewers

This document requires the following reviews:

Date	Version	Name	Position
18/1/2021	Final	IGSG	IG Steering Group to review

1.3 Authorisation

Signing of this document indicates acceptance of its contents.

Author's Name: Tim Knifton	
Role: Information Governance Manager	
Signature: 	Date: 29 April 2019
Approver's Name: Peter Stephenson	
Role: Head of Finance & Business Development	
Signature: 	Date: 26 April 2019

1.4 Document Location

Type	Location
Electronic	NWSSP Information Governance folders
Hard Copy	With the NWSSP Information Governance Manager

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

EXECUTIVE SUMMARY Freedom of Information protocol

Overview:	The Freedom of Information Protocol sets out the key areas of responsibility and affirms the NHS Wales Shared Services Partnership's (NWSSP) continued commitment to ensure openness, transparency and compliance under current legislation, the Freedom of Information Act (2000) and related statutory codes of practice.
Who is the Protocol Intended for:	All NWSSP employees (including honorary contract holders and volunteers), Senior Management Team, Senior Information Risk Owners and Information Asset Owners, including respective Directorates and Departments under the organisation including any under its control.
Key Messages included within the Protocol:	<p>The NWSSP Freedom of Information Protocol sets out the key areas of responsibility and affirms the organisation's continued commitment to ensure openness, transparency and compliance under current legislation, the Freedom of Information Act (2000) and related statutory codes of practice.</p> <p>The protocol also recognises the diversity of the respective Directorates and Departments under its control; with the key messages of the Protocol being:</p> <p>Responsibilities - NWSSP recognises its corporate responsibility under the Act to provide a general right of access to information held.</p> <p>Publication - NWSSP will make positive steps to proactively publish organisational information.</p> <p>Review process - Reviews to be conducted in line with the process contained within this Protocol.</p> <p>Key Contact Points – Staff made aware of key contact points within the organisation, its respective directorates and departments under its control.</p>
PLEASE NOTE THIS IS ONLY A SUMMARY OF THE PROTOCOL AND SHOULD BE READ IN CONJUNCTION WITH THE FOLLOWING FULL DOCUMENT	

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

2. Protocol Statement

The Freedom of Information Act Protocol sets out the key areas of responsibility and affirms NWSSP's commitment to the continued implementation of the Freedom of Information Act (2000) and compliance with the applicable codes of practice.

NWSSP supports the principles of openness and transparency and welcomes the rights of access to information that the Freedom of Information Act (2000) provides. NWSSP seeks to create a climate of openness and by providing improved access to information about the organisation will facilitate the development of such an environment.

This Protocol sets out the high-level intent of NWSSP and recognises the diversity of the respective directorates and departments under its control.

3. Equality Impact Assessment

An Equality Impact Assessment has been undertaken that involved assessing the likely or actual effects of decisions, policies or services on people in respect of age, disability, gender and racial equality, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It helps us to make sure the needs of people are taken into account when we develop and implement a new policy or service or when we make a change to a current policy or service.

4. Purpose

The purpose of this protocol is to ensure that the provisions of the Freedom of Information Act (2000) (herein referred to as "the Act") are adhered to and in particular that:

- A significant amount of routinely published information about NWSSP is made available to the public as a matter of course through the website and its Model Publication Scheme (MPS);
- Other information not included on the NWSSP's website is readily available on request and such requests for information are dealt with in a timely manner; and
- Where the information requested is covered by a public interest non-disclosure exemption, the organisation carefully considers the public interest test as defined by the Act.

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

5. Scope of the Protocol

This Protocol applies to all information that NWSSP directorates and departments hold regardless of how it was created or received. It applies no matter what media the information is stored in and whether the information is current or archived and held on paper or electronic.

This Protocol is written in conjunction with Velindre University NHS Trust Information Governance policies and procedures, which aim to provide guidance to all employees of NWSSP.

6. Aims of the Protocol

The aims of the Protocol is to detail how NWSSP meets its legal obligations and its continued commitment under the Act to ensure timely access to information held by the organisation, its directorates and departments in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence.

These aims will be balanced against the need to ensure the confidentiality of some information NWSSP, its directorates and departments hold relating to such areas as personal privacy, commercial sensitivity and where disclosure would not be in the public interest.

The Protocol also aims to provide all employees of NWSSP with a framework in which to ensure any request for information they receive is dealt with in accordance with the Act and in conjunction with this Protocol.

7. Legislation/Standards

NWSSP and its staff will comply with all existing and new requirements, both legislative and provided as guidance by the Welsh Government (WG), Department of Health, the Information Commissioner's Office (ICO) and other professional bodies.

This Protocol is written in accordance with current legislation including, but not restricted to, the Act as well as key pieces of guidelines and current NWSSP and divisional/associated organisational protocols and procedures where they overlap with this Protocol. This Protocol should be considered in conjunction with any relevant policies and procedures and not read in isolation.

NWSSP recognises that specific procedures within divisions and associated organisations may vary. However, the requirement to maintain the provisions of the Act and the need to ensure timely access to information whilst promoting openness and transparency will always remain the same.

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

8. Responsibilities

NWSSP recognises its corporate responsibility under the Act to provide a general right of access to information held. The person with overall responsibility for this Protocol is the NWSSP Information Governance Manager.

Divisions and associated organisations that fall under the remit of NWSSP are responsible for promoting compliance with this Protocol in such a way as to ensure the easy, appropriate and timely retrieval of information.

All NWSSP employees (including agency, bank staff, contractors, honorary contract holders and volunteers) are subject to this Protocol and have responsibilities to ensure that any request for information they receive and/or asked to assist with are dealt with in a timely manner in accordance with the Act and in compliance with this Protocol; failure to comply may result in disciplinary procedures being instigated.

To ensure compliance, training provisions within the directorates and departments of NWSSP will provide members of staff with a short briefing and training on the Act and its procedures as part of a wider Information Governance training session. This will provide guidance on who is responsible for information requests and the legal duties for the organisation.

9. Available Guidance

Guidance on the procedures necessary to comply with this Protocol should be made available to all directorates and departments of NWSSP including on its web pages. Links to the Information Commissioner's Office (ICO) website also provide a valuable source of information and should be quoted at every opportunity.

10. NHS Wales Shared Service Partnership Publication Scheme

NWSSP has a duty as prescribed by the Act to adopt and maintain a publication scheme. A publication scheme places a responsibility on NWSSP to routinely and proactively publish seven types (classes) of information to the general public and to ensure this information can be easily identified and accessed. These seven classes are:

1. Who we are and what we do
2. What we spend and how we spend it
3. What are our priorities now and how are we doing
4. How we make decisions
5. Our policies and procedures
6. Lists and registers

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

7. The services we offer

11. Specific Requests for Information

Information that is not already made available on the NWSSP's website or through its publication scheme may be accessible through a specific request for information.

Where members of the public have a general right of access to information but are unable to access any electronic medium such as email or internet, alternative methods of supplying information must always be considered.

The right of access to information held by NWSSP can be exercised by any person, worldwide. Specific requests for information that are not listed in the publication scheme will be dealt with by the NWSSP's Information Governance Manager in direct liaison with respective leads from within the various directorates and departments of the organisation, depending on the requirements or focus of that request.

Any request for information under the Act must be made in a permanent form (i.e. in writing – either by text, letter, fax, social media channels or by email) and a charge may be made for dealing with a request.

NWSSP, respective divisions and associated organisations must respond to all requests for information within 20 working days with any response including the need to confirm or deny whether the information is held. Furthermore, and in light of there being the need at times to seek clarification from the applicant in order to identify and locate the information, this timeframe may cease as a result and only re-commence upon receipt of the necessary clarification.

In addition and should a fee notice be issued to the applicant, the period of 20 working days can be extended up to a reasonable set period of time, and will only ever resume at the point at which the fee has been paid. Further time can be allocated to the request if NWSSP is applying an exemption (see section 11) to all or part of the requested information. In this situation the requestor should be informed immediately of any time extension to be applied.

For further advice on the application of the Act, its time compliance provisions and potential usage of any of the Acts exemptions please contact the NWSSP's Information Governance Manager.

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

12. Environmental Information Regulations (EIR)

In addition, the Environmental Information Regulations (EIR), which in general terms relate to requests regarding topics such as environmental matters (air, water, land, etc), noise, activities affecting the environment, and some aspects of health and safety, also allows for requests to be made verbally.

Where necessary, divisions and associated organisations should engage with the NWSSP's Information Governance Manager for further advice and guidance.

13. Charging for Freedom of Information Act Requests

In maintaining a culture of openness and transparency, NWSSP and its respective directorates and departments will not normally charge for the provision of information that is provided as a result of a request. However, it is recognised that should it be estimated the request for information exceeds the appropriate fee limit as set down under [section 12 of the Act](#) then the organisation is not obligated to comply with the request for information.

In cases when the information is exempt because the appropriate fee limit has been met, then wherever possible and in line with the duty to provide advice and assistance enshrined within the Act, NWSSP, its directorates and departments, will work with the applicant to try to reduce the amount of work involved so that some of the information can be provided.

In certain circumstances the applicant can be offered the option of paying for the information. In this instance, the applicant would have to pay the full cost.

In addition to this and under the Act, charges can be applied to cover more administrative tasks such as photocopying/translation of documents, etc. In most circumstances, applying charges for such disbursements may be waived; however, NWSSP, via the Corporate Services function reserve the right to apply these charges especially in exceptional instances where the request requires an unrealistically large amount of photocopying, or substantial effort to translate or perform a transition of documents into other formats. If disbursements are charged, they will be kept to a reasonable level.

Appendix 1 provides information on the rules in place for charging for the supply of information under the Act with further advice available via the NWSSP Information Governance Manager.

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

14. Exemptions under the Act

NWSSP, its directorates and departments are obliged to disclose all information in response to a request unless an exemption contained within the Act applies. The Act provides a number of exemptions that may allow the information not to be disclosed.

Furthermore it is also recognised that in some cases the disclosure of information may affect the legal rights of a third party (i.e. where information is subject to the common law duty of confidence, impacts on an industrial partner with whom NWSSP is under contract (for example, a pharmaceutical company), etc.). In such situations, it will be necessary to engage with these third parties to seek their opinion on any potential release.

However any decision to release or not, and where required, subsequent application of an exemption under the Act, rests with NWSSP, its directorates or departments. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

Should it be determined that the information held could be regarded as exempt information under the Act and requires the need to consider non-disclosure and potential issuing of a refusal notice, the NWSSP's Information Governance Manager and respective organisational leads must be engaged in this process.

Appendix 2 provides a full list of all the exemptions that can be found under the Act.

15. Complaints

The NWSSP Information Governance Manager is responsible for the co-ordination of any complaints or requests for review received in respect of this Protocol.

To progress and ensure there is no delay in the handling of any complaint or request for internal review the following process should be adhered to:

- The complaint or request for review should be addressed to NWSSP marked as a request for a review in the first instance. The complaint will be acknowledged immediately and every reasonable effort will be made to offer a more comprehensive reply in line with ICO guidance and local FOI review procedures.
- The request for review will then be forwarded to a neutral party not connected to NWSSP (previous examples include the use of NHS Wales Informatics Service (NWIS)) and will be dealt with in accordance with

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

official guidance. This will include the request details; the decision made, and will result in an independent opinion that would consider whether the original decision was a correct one or whether there are recommendations.

- A reply based on the outcome would be then provided to the applicant with the decision made, and any information that may have had to be supplied as a positive outcome.
- If the applicant is not satisfied with the reply following the review then they should inform the NWSSP's Information Governance Manager within 21 calendar days. If applicants are dissatisfied with the outcome of NWSSP's internal review, they may then seek an independent review from the Information Commissioner's Office (ICO).

Requests for review by the Information Commissioner should be made in writing to either one of the following addresses:

Information Commissioner's Office – Wales
2nd Floor
Churchill House
Churchill Way
Cardiff CF10 2HH

Tel: 029 2067 8400
Fax: 029 2067 8399
Email: wales@ico.gsi.gov.uk

The Information Commissioner's Office – Head Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Tel: 01625 545700
Fax: 01625 545510

16. Codes of Practice

The Act sets provisions for the Lord Chancellor and Secretary of State to issue codes of practice to which NWSSP should adhere. The applicable codes of practice are detailed below:

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

16.1 Section 45 Code of Practice

The [Section 45 code of practice](#) sets out recommended processes, which public authorities should follow when dealing with requests for information under the Act. It provides clear guidance that includes providing advice and assistance to applicants, how to transfer requests to other public authorities, consultation with third parties, how to use confidentiality clauses in contracts and the provision of internal complaints procedures.

16.2 Section 46 Code of Practice

The [Section 46 code of practice](#) sets out recommended processes, which public authorities should adopt in relation to the creation, storage and management of records, and additionally the end-life and destruction of these records. It also describes the arrangements, which public record bodies should follow in reviewing public records and transferring them to the Public Record Office (PRO) or to pre-arranged places of archival.

17. Copyright

Information provided by NWSSP, its directorates and departments in response to a request under the Act remains copyrighted and can only be used for the applicant's personal use or for other specific uses permitted in the Copyright, Designs and Patents Act (1988).

If an applicant wishes to use information provided for commercial purposes (including the sale of the information to a third party) they must seek written permission from NWSSP via the Information Governance Manager or Corporate Services under the directive on the '[Re-use of Public Sector Information Regulations 2005](#)'. [link]

18. Equality

In accordance with the NWSSP's Equality Protocol, this Protocol will not discriminate, either directly or indirectly, on the grounds of gender, race, colour, ethnic or national origin, sexual orientation, marital status, religion or belief, age, union membership, disability, carer's status, offending background or any other personal characteristic.

19. Contacts

For further advice and/or assistance on how to ensure individual, directorate or departmental organisational compliance with the Act or to obtain lead officer details, then please contact the NWSSP's Information Governance Manager:

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

Tim Knifton

Information Governance Manager

NHS Wales Shared Services Partnership (NWSSP)

Companies House

Crown Way

Cardiiff

CF14 3UZ

Tel: 02920 902272

20. Further Information

This Protocol should be read in conjunction with the following NWSSP protocols:

- Information Governance Protocol
- Data Protection & Confidentiality Protocol
- Records Management Protocol
- FoI Reuse of Public Sector Information guidance

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

Appendix 1

Where costs exceed the appropriate limit

When determining whether or not the requested information exceeds the appropriate fee limit under the Act, NWSSP and/or its directorates and departments are only permitted to include the following activities within their estimation:

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

Calculating the costs of the activities

£25 is the standard hourly rate; the limit is £450 equating to 18 hours of staff time, in which NWSSP and/or its associated organisations must use to calculate the staff costs of answering requests.

Staff time spent redacting exempt information cannot be taken into account if an initial estimation into whether the appropriate limit is exceeded is undertaken.

Fees Notices

As a matter of good practice, if NWSSP and/or its associated organisations are offering to provide the information for a fee then a fees notice should be issued to the applicant. There is no statutory requirement to do this because there is no obligation on the organisation to comply under section 12 of the Act. However, it is recommended, as this would inform the applicant they have the option of receiving information upon the payment of a necessary fee. A fees notice should be issued as soon as possible or at least within the 20 working day time period.

Statutory obligations to provide Information

A fee cannot be charged where there is a statutory obligation to supply information in a particular format, such as in the Welsh language (Welsh Language Act 1993) or in Braille, large print or on an audio tape to make reasonable adjustments for disabled persons (Equality Act 2010). The cost of supplying information by the preferred means of communication however is chargeable.

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

Payment

Should NWSSP and/or its associated organisations fail to receive payment within three months of issuing a fees notice, the Information Commissioner's Office would consider that the organisation is no longer obliged to respond to the request. It is also helpful to mention this deadline in the fees notice.

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

Appendix 2

Freedom of Information Act 2000 – Exemptions

Absolute Exemptions

Section 21: Information accessible by other means

Section 23: National Security - Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals mechanism against such certificates)

Section 32: Court Records

Section 34: Parliamentary Privilege - a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliament, in respect of the House of Lords is conclusive proof that the exemption is justified.

Section 36: 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 subject of the information. The applicant already has the right of 'subject access' under the Data Protection Legislation; where the information concerns a third party and disclosure would breach one of the principles

Section 41: Information provided 'In Confidence'

Section 44: Prohibitions on disclosure - where a disclosure is prohibited by an enactment or would constitute contempt of court.

Qualified Exemptions

Section 22: Information Intended for Future Publication

Section 24: National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not apply)

Section 26: Defence

Section 27: International relations

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

Section 28: Relations within the United Kingdom

Section 29: UK Economic Interests

Section 30: Investigations and Proceedings Conducted by Public Authorities

Section 31: Law Enforcement

Section 33: Audit Functions

Section 35: Formulation of government Protocol and Ministerial Communications

Section 36: Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)

Section 37: Communications with Her Majesty, the Royal Family or concerning honours

Section 38: Health and Safety

Section 39: Environmental Information - as this can be accessed through the Environmental Information Regulations

Section 42: Legal Professional Privilege

Section 43: Commercial Interests - where NWSSP, its divisions and/or associated organisations consider that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must inform the applicant of its reasons, unless to do so would mean releasing the exempt information.

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY

Appendix 3

References

Office of Public Sector Information - <http://www.opsi.gov.uk>

Information Commissioner's Office - <http://www.ico.org.uk/>

Ministry of Justice - <http://www.justice.gov.uk/information-access-rights>

The National Archives - <http://www.nationalarchives.gov.uk>

Department of Health - <http://www.dh.gov.uk>

- INTERNAL -

IF PRINTED THIS DOCUMENT BECOMES AN UNCONTROLLED COPY