

# Requests for Information Procedure

Date: February 2015

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### Document Information

<b>Date of Issue</b>	February 2015	<b>Next Review Date</b>	February 2017
<b>Version:</b>	2	<b>Last Review Date</b>	January 2013
<b>Author:</b>	Information Governance Officer		
<b>Directorate:</b>	Corporate Affairs		
<b>Approval Route:</b>			
<b>Approved By:</b>		<b>Date Approved:</b>	
Management of Information Group		11 February 2015	
<b>Links or overlaps with other policies:</b>			
Linked to Website Management Policy Data Protection Policy. Overlaps with all information governance related policies.			

### Document History

<b>Dated</b>	<b>Amendment No.</b>	<b>Comments</b>	<b>Completed By:</b>
January 2013	V1	Review document in line with organisational restructure	Management of Information Group
February 2015	V2	Review of documentation and refresh of links and contact details.	Management of Information Group

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## 1. Introduction

- 1.1. This procedure supports the Trust's Website Management Policy and Data Protection Policy by setting out the procedure to be followed to ensure compliance with requests for information under the provisions of the Data Protection Act 1998 (DPA), Access of Health Records Act 1990 (AHRA), Freedom of Information Act 2000 (FOIA), Environmental Information Regulations (EIR) and the Reuse of Public Sector Information Regulations 2005.
- 1.2. Verbal requests are not considered as a formal request for information under FOIA or DPA/AHRA although verbal requests for information relating to the environment are considered as requests for information under EIR.
- 1.3. Where the request is in writing, including e-mail, these requests could technically be considered as a request for information.

**Note:** In practice, staff across the organisation are routinely asked for information by individuals and deal with such requests using their judgment to, in many cases, provide the requested information as part of their day to day business process. This procedure is not intended to replace these systems which are functioning adequately within the Trust, i.e. job application forms, information on the services we provide, leaflets, advice and guidance, direct feedback etc.

- 1.4. Where written requests for information do not include third party information and are for limited, easily defined information, it is appropriate to deal with them in an informal way, using professional judgment to release the requested information. If it is your intention not to release information, then please contact the Information Governance Team to discuss the requirements.
- 1.5. If an individual requests a copy of their care plan, an assessment form or a copy of a letter from the person who is providing their care and treatment, then providing that professional has no concerns about the disclosure, then the professional can provide a copy of that information, noting it on the records that a copy has been supplied to individual.
- 1.6. If an individual is persistent in requesting information, then advice should be sought from the Information Governance Team.
- 1.7. This procedure is intended to cover all records created or held by the Trust, including corporate, health and adult social care records, both in paper and electronic format.
- 1.8. Further information on Freedom of Information, Data Protection, Environmental Information and Re-Use of Public Information can be found on the Information Governance pages of iCare, the Trust's intranet and the external public website.

## 2. Administration

- 2.1. The administration of all matters relating to the FOIA, DPA and EIR for the Trust is the responsibility of the Head of Information Governance.

2.2. The time scale for response under the various Acts is such that the prompt co-operation of all staff will be essential to ensure compliance:

▪ FOIA	20 working days
▪ DPA	40 calendar days <sup>1</sup> ,
▪ Access to Health Records	21 days
▪ EIR	20 working days
▪ Reuse of Public Section Information	20 working days

2.3. All requests will be logged onto the Request for Information (RFI) module of the Datix database. Each stage of progress will be entered onto this system. This will enable performance reports to be produced on the activities being handled under the various legislations.

2.4. All correspondence in connection with the request for information will be filed together in numerical order by the Information Governance Team or scanned into the corporate file structure.

2.5. Once correspondence has been successfully scanned, the original can be destroyed.

2.6. Records will be retained for a period of 3 years after full disclosure, or 10 years if information is redacted or information requested is not disclosed in accordance to the organisations Retention and Disposal Schedule.

2.7. Appendix 5 contains a flow diagram “Request for Information” which should be read in conjunction with this document, together with Guidelines for Staff.

2.8. The Trust has a duty to provide advice and assistance to an applicant with regard to their request for information. If the Trust receives a particularly large request that places a burden on resources in excess of the acceptable limit outlined in Section 9 below, the Information Governance Team will discuss the request with the applicant to ascertain if a more concise request can be submitted within the time/resource limit.

2.9. Under Section 36 of the FOIA, it refers to “... in the reasonable opinion of a qualified person ...” The qualified person for the Trust is the Chief Executive of Torbay and Southern Devon Health and Care NHS Trust.

### **3. How to make a Request for Information**

3.1. All requests for information must be in writing, contain a name and contact address, and a clear description of the information that they are requesting, with the exception of environmental information which can be requested verbally. Requests by electronic means are valid as long as they are capable of being used for future reference. All requests for information must be clear and legible.

3.2. There is no requirement for the applicant to state the reason for requesting the information, or their intended use of the information.

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<sup>1</sup> For health records, we should aim for 21 days as originally required under the Access to Health Records legislation.

- 3.3. FOIA states that when responding to a request for information you cannot take into account who has requested the information. Therefore staff of the Trust will not routinely be informed of the requester.
- 3.4. All requests for information will be handled centrally by the Information Governance Team. The Team can be contacted via email at [t-sd.infogov@nhs.net](mailto:t-sd.infogov@nhs.net).

#### **4. Receiving & Validating the Request**

- 4.1. A request for information is received on the day of delivery by post or hand and the date of receipt of an email or fax.  
Note: if an email is automatically acknowledged with an out of office message, then the email is not received until the out of office message has been switched off. Whenever possible an alternative email address should be given for requests to be forwarded to in the absence of the receiving staff member.
- 4.2. All letters requesting information should be logged according to the Incoming Post Procedure, unless received direct by the Information Governance Team who will log directly within the Datix system.
- 4.3. If the request, whether by post or email, is for routine information which is normally handed out on a day to day basis, see section 1, then the person receiving the request can provide that information.
- 4.4. Any request for information that is not as described in section 1.4 and 1.5, should be passed immediately to the Information Governance Team.
- 4.5. Once received, the request will be read to establish whether it is a request for information under FOIA, DPA, EIR or Access to Health Records, and ensure there is:
- a contact name
  - a contact address (postal or email)
  - a clear description of the information requested
  - proof of identity, authority and/or consent - only for requests that fall under the DPA or AHRA.
- 4.6. Once the request for information has been validated, the request should be entered on to the Datix Database and allocated a TSD reference number.
- 4.7. The request is acknowledged using Template 1 advising the applicant that a response will be sent promptly and in any event within the timescale outlined in section 2.2. (All standard templates for letters/emails and forms can be found in Appendix 2).
- 4.8. If further information is required, then contact should be made with the applicant to ascertain the missing information by telephone or by using Template 2. Note: the 'clock stops' until the additional information is received. If no additional information is forthcoming, then the request will be closed three months after the date of last contact.

- 4.9. If the request is for GP records or hospital records, then contact the applicant advising that with their consent you will pass the request to the appropriate organisation.
- 4.10. If the request is part of a 'round robin' or circular, the NHS South West FOI Lead will be notified. As described in Section 3.3, individual names will not be shared as these constitute personal data. Organisational information is not personal and may be shared as part of this disclosure. Any advice received from NHS South West in response to this 'round robin' will be considered when making a decision to disclose information.

*Please note – Round Robin reporting processes will be subject to change following the restructure of commissioning services.*

## **5. Processing a Valid Request for Information**

- 5.1. A check will be carried out to see whether the information is already in the public domain and if so, will send Template 3 to the applicant.
- 5.2. If the information is not in public domain a search will be carried out for the information using Template 4.
- 5.3. If it is found that the information is held by another authority, the appropriate authority will be contacted to agree how the request should be handled. The applicant will be advised using Template 5.
- 5.4. If it is confirmed that the Trust does not hold the information requested, then Template 6 will be sent to the applicant. Please refer to section 8.6.
- 5.5. If the information is held by the Trust, a copy of the information should be passed to the person handling the request. If the holder has any concerns about the disclosure of the information, the reasons should be given at the same time as the information is provided. It is an important part of the process for a copy of the information to be passed to the Information Governance Team.
- 5.6. For information requested under DPA or Access to Health Records, permission for disclosure will be sought from the appropriate care professional using Template 7.

## **6. Disclosure**

- 6.1. If the holder of the information is happy for the information to be disclosed, the information will be checked to see if any:
- third party information is contained within the information. If third party information is identified then the procedure in Section 8 should be followed.
  - Fees are applicable, see section 9.
- 6.2. Where appropriate, once third party and/or fees are handled the information will be provided to the applicant using Template 8.

## **7. Partial Disclosure**

- 7.1 If the information is personal data which falls under DPA or Access to Health Records, and the care professional is unhappy to disclose some of the information, then the information agreed for disclosure will be provided to the applicant using Template 13, providing section 6 has been followed.
- 7.2 A clear record will be kept on Datix as to what information was disclosed and the reason for non-disclosure.
- 7.3 If the information falls under FOIA or EIR, the Head of Information Governance will follow the steps outlined in section 8.2 - section 8.7.

## **8. Non-Disclosure**

- 8.1 If the information is personal data which falls under DPA or Access to Health Records, the Information Governance Team will have a discussion with the appropriate care professional about the disclosure of information requested. If the professional and the Head of Information Governance cannot agree about disclosure then the matter will be referred to the Caldicott Guardian. If the agreement is not to disclose, then the applicant will be advised using Template 13.
- 8.2 If the information falls under FOIA or EIR, then the Information Governance Team will have a discussion with the information holder to understand why the information should not be disclosed and which exemptions may be used.
- 8.3 If an agreement cannot be reached between the information holder and the Head of Information Governance then the matter will be referred to the Head of Department, appropriate Director, or Senior Information Risk Owner (SIRO).
- 8.4 Once an agreement has been reached whether to disclose or not, and section 6.1 has been followed, the public interest test will need to be applied to the information that is not being disclosed. See section 11.
- 8.5 If the agreement is to disclose all information then the applicant will be provided with the information using Template 8.
- 8.6 If the agreement is to not disclose some or all of the information then the applicant will be provided with a refusal letter. See Section 12.

## **9 Fees**

- 9.1 Under the DPA/Access to Health Records legislation the Trust is entitled to make a charge when providing information. See Appendix 3 for a list of charges.
- 9.2 The Trust can refuse to supply information if the total cost exceeds £450.00, under FOIA The Trust has a duty to provide advice and assistance to applicants, and we should at all times try to provide information within the cost limit.
- 9.3 Under FOIA the Trust can make a reasonable charge for the formatting of the information as requested, for reproduction of the information and for postage and packaging. This charge will be made at the discretion of the Head of Information Governance.

- 9.4 If a fee is payable then the appropriate fees notice (Template 9) will be sent to the applicant. The request will be put on hold until the fee is received.
- 9.5 If the fee is not received, within 60 days from the date of the fees notice the request for information will be closed.
- 9.6 On receipt of fees Template 10 will be sent to the applicant.

## **10 Consultation with Third Parties**

- 10.1 If the information requested contains information provided by a third party, it is good practice to consult prior to any decision being made as to whether the information should be disclosed.
- 10.2 Under DPA third party information can be excluded from the information provided, but efforts should be made to consult with third parties to seek agreement to disclose whenever possible.
- 10.3 Under FOIA/EIR, if third party information is excluded then a refusal notice will need to be sent. See section 12.

## **11 Public Interest Test**

### **11.1 FOIA/EIR**

- 11.1.1 Under FOIA/EIR applicants have two rights which must be considered separately under the public interest test:
- The right to confirm or deny we hold the information requested
  - The right to have the information communicated to them.
- 11.1.2 In deciding whether to use some exemptions the Trust will need to consider whether there is a greater public interest in confirming or denying the existence of the information requested and providing the information to the applicant or in maintaining the exemption. Information Commissioner's Office and Ministry of Justice Guidance will provide guidance in making decisions.
- 11.1.3 If the decision is not to confirm or deny that we hold the information then a refusal letter will be sent. See section 12.
- 11.1.4 If the decision is to confirm that we hold the information, then the second right, the right to have the information communicated to them needs to be considered.
- 11.1.5 If the exemptions being used are absolute exemptions (a full list of exemptions and descriptions can be found in Appendix 3) then no further public interest test needs to be applied. A refusal letter will be sent to the applicant. See section 9.
- 11.1.6 If the exemptions being used are qualified exemptions then the public interest test must be applied. Information Commissioner's Office Guidance will assist in making this decision.

- 11.1.7 If exemption 36, prejudice to effective conduct of public affairs, is being relied upon, then the qualified person must make the decision as to whether this exemption is applicable.
- 11.1.8 If no agreement can be reached between the Head of Information Governance and the holder of the information or the appropriate Director, using the guidance available, then the matter will be brought to the attention of the Executive Team for a decision.
- 11.1.9 The Trust may extend the 20 working day period to consider the public interest test, in which case the applicant should be informed using Template 12.
- 11.1.10 Once a decision has been made the applicant will either have the full information disclosed Template 8 or a refusal letter will be sent. See section 12.

## **11.2 DPA**

- 11.2.1 Under section 7 of the DPA, there is an exemption not to disclose information to the data subject if it is likely to prejudice the carrying out of social and health work by reason of the fact that serious harm to the physical or mental health or condition of the data subject or any other person would be likely to be caused.
- 11.2.2 In deciding whether to use this exemption the Trust will need to consider whether there is a greater public interest in not disclosing the information. Any decision not to disclose under section 7 of the DPA should be referred by the Information Governance Team to the Caldicott Guardian for a decision.

## **12 Refusal Letter**

- 12.1 When refusing a request for information, a refusal letter must be sent to the applicant together with information about our complaints and internal review process.
- 12.2 Under FOIA/EIR a refusal letter must state clearly the steps that the Trust has taken in making its decision not to disclose all or some of the information and the reasons why the decision was made including the outcome of the public interest test if applicable.
- 12.3 Under DPA and Access to Health Records we do not have to state why we are not disclosing information, although it is good practice to say if third party information is removed.
- 12.4 The Information Commissioners Guidance on Refusal Notices provides a useful checklist. Template 13 provides a selection of templates for a refusal letter.

## **13 Vexatious or Repeated Requests**

### **13.1 FOIA/EIR**

- 13.1.1 The Trust is not obliged to comply with repeated and vexatious requests for information, which may be the latest in a series of requests, would impose a significant burden; and :
- the applicant makes clear his or her intention
  - we have independent knowledge of the intention of the applicant
  - the request clearly does not have any serious purpose or value;
  - the effect of deletion of text would be to render the information worthless
  - the request is for information which is clearly exempt
  - the request can fairly be characterised as obsessive or manifestly unreasonable
- is designed to cause disruption or annoyance;
  - has the effect of harassing the public authority; or
- 13.1.2 The above points will be taken into account when the Head of Information Governance considers that a request may be vexatious. Any decision to use Section 14 of FOIA will be done in consultation with the Head of Service, appropriate Director and/or SIRO.
- 13.1.3 If the request for information is considered vexatious or repeated the applicant will be advised of the decision using Template 14. The applicant will be advised of the complaint and internal review process.

## **13.2 DPA/Access to Health Records**

- 13.2.1 The Trust is not obliged to comply with a request for information unless we have received satisfactory proof of identity from the person making the request. E.g. a copy of Driving Licence, Passport, Birth Certificate etc.
- 13.2.2 The Trust is not obliged to comply with repeated or similar requests by the data subject unless a reasonable interval has elapsed since the previous request. The decision of whether a reasonable interval has lapsed may be referred to the Caldicott Guardian.

## **14 Complaints and Reviews**

- 14.1 If an applicant is unhappy about the way in which their request was handled, then in the first instance they will be encouraged to discuss this with the Head of Information Governance.
- 14.2 If the issues cannot be resolved informally, they may make a formal complaint in writing to the Complaints Officer.
- 14.3 If an applicant is unhappy about the decision not to disclose information, then they should contact the Head of Information Governance requesting an Internal Review.
- 14.4 The applicant's request for an internal review will be acknowledged using Template 15.
- 14.5 The Information Governance Team will pull together all the information in connection with the request, including any guidance referred to when the decision was made and present this information to the qualified person for a decision, using Template 16.

- 14.6 If exemption 36 (prejudice to the conduct of public affairs), has been used, see section 2.9 the Chair of the Trust will conduct the internal review in relation to this exemption.
- 14.7 A straight forward internal review will be carried out within 20 days of receiving the request for internal review. For a complex review, the aim will be for the review to be carried out within 40 days of receiving the request.
- 14.8 The applicant will be kept fully informed during the internal review process and of any delays that may occur.
- 14.9 The decision of the internal review will be communicated as soon as possible to the applicant using Template 17.
- 14.10 If the applicant is not content with the outcome of their formal complaint or the internal review they may contact the Information Commissioner's Office (ICO) direct.
- 14.11 The Information Governance Team will respond to any requests made by the ICO in relation to any reviews requested by a requester to the ICO.
- 14.12 Information about how to make a complaint or request an internal review will be included in all correspondence with the applicant.

## **15 Re-use of Information**

- 15.1 If the applicant wishes to re-use the information provided by the Trust in response to a request for information, then they will need to apply to the Trust in writing.
- 15.2 Requests for re-use of information should be directed to the Information Governance Team, stating which part or all of the information they wish to re-use and the purpose(s) that they wish to re-use the information for.
- 15.3 The request for re-use of information will be acknowledged by the Trust using Template 1.
- 15.4 If permission is granted for re-use any conditions and charges that relate to the re-use of the information in accordance with the Re-use of Public Section information Regulations 2005 will be advised to the applicant using Template 18.
- 15.5 If permission is not granted then the reasons why it was not given should be given to the applicant Template 18.

## **16 Release of Staff Details**

- 16.1 Typically where a request has been received for the names and contact details for members of staff, these will be published in accordance with the key contact list available on the public website. Further details may be released if it is appropriate to do so. E.g. staff members directly involved in patient care or details of named service leads etc.

## **17 Safeguarding / Incident Reports**

17.1 Where a request is received for disclosure of safeguarding or incident reporting minutes or reports, these documents are classed as sensitive and held in confidence. It is therefore not normal practice to release these documents in response to a request. Where appropriate, a summary report that highlights key decisions may be released only in conjunction with the approval of the Chair of the meeting and senior IG professional.

## **18 Training and Awareness**

18.1 Information on requests for information and the legislation will be provided through information governance training and made available on iCare.

18.2 The Information Governance Team will provide advice and support to ensure that all requests for information are handled in accordance with legislation.

## **19 Monitor & Review**

19.1 The Trust will monitor the information being requested, and if information is regularly requested, we will encourage publication on our website.

19.2 Monitoring information on meeting the requirements under DPA/FOIA/ EIR will be presented through the Management of Information Group to the Integrated Governance Committee.

19.3 This procedure will be reviewed, at the same time as the Management of Web Site Policy or earlier if subjected to changes in legislation, codes of practice or good working practices.

## **20 Distribution of Procedure**

20.1 An up-to-date copy of the procedure will be available on-line via the Trust's web site.

## **21 References**

Freedom of Information Act 2000 (FOIA)  
Data Protection Act 1998 (DPA)  
Access to Health Records 1990  
Environmental Information Regulations  
Reuse of Public Sector Information Regulations  
Lord Chancellors Code of Practice: Discharge of Public Functions under FOIA  
Section 45 updated July 2009  
Records management NHS Code of Practice Updated March 2009  
Information Commissioners Awareness Guidance  
Ministry of Justice Guidance  
DEFRA Guidance

## **Appendices**

Appendix 1 Standard letters/emails/forms  
Appendix 2 Exemptions  
Appendix 3 Fees  
Appendix 4 Flow Charts

## Appendix 1 – Templates

### Templates<sup>2</sup>

1. Acknowledgement Letter
2. Further Information Required
3. Reasonably Accessible
4. Internal Request for Information
5. Transfer to Another Public Authority
6. Health/Social Care Professional Permission to Disclose Form
7. No Information Held
8. All information Provided
9. Fees
  - A) FOIA/EIR
  - B) DPA/Access to Health Records
10. Fee Received
11. Consultation with Third Parties
12. Extension of Time
13. Refusal letters
  - A) Over Appropriate Fee Limit
  - B) All Information Being Withheld
  - C) Some Information Provided / Some Withheld
  - D) Neither Confirm nor Deny
14. Vexatious / Repeated Requests
15. Internal Review Acknowledgement
16. Internal Review Template
17. Outcome of Internal Review
18. Receipt of records Indemnity
19. IG01 – Request for Records Form

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<sup>2</sup> Based on DCA Guidance

## Template 1 - Acknowledgement

### Request for Information TSD ...

Thank you for your request for information regarding *subject*. Your request was received on *date* and I am dealing with it under the terms of the *Freedom of Information Act 2000/ Data Protection Act 1998/ Environmental Information Regulations/ Access to Health Records\**.

A response to your request for information will be sent to you promptly and in any event no later than *date*. *Please allow for postal time\**.

I attach for your information a copy of our leaflet "How to Access your Information" or A copy of our leaflet "How to Access your Information" can be found on our website.

Our website [www.tsdhc.nhs.uk](http://www.tsdhc.nhs.uk) provides information on how we handle requests for information and our Guide to Information can be found by following the Freedom of Information link on the home page [www.tsdhc.nhs.uk](http://www.tsdhc.nhs.uk).

If you have any queries about this *letter/email\**, please contact me, quoting the reference number above.

*\*delete as appropriate*

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## Template 2 – Further information required

### Request for Information TSD...

I am writing regarding your request for information, which I received on [date]. In that request, you asked us for *outline request*.

I am unable to identify and locate the information that you have asked for [*include explanation of why this is the case, if appropriate*]. I am unable to take this matter further without extra information from you. In particular, it would be useful to know [*give the applicant an indication of the sort of information that is required to proceed.*]

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD.

[feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

Yours sincerely

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## Template 3 – Reasonably accessible

### Request for Information TSD...

Thank you for your request for information about *subject*. Your request was received on *[date]* and we are dealing with it under the terms of the Freedom of Information Act 2000/Data Protection Act 1998/Environmental Information Regulations/Access to Health Records\*.

Under Section 21 of the Act, we are not required to provide information in response to a request if it is already reasonably accessible to you. The information you requested is available *from address, website*. If you do not have access to the Internet, you may be able to use facilities at your local public library, or you can request a paper copy by contacting me.

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

\*delete as appropriate

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## Template 4 – Internal Request

*Use email whenever possible.*

### Request for Information TSD

We have received a request for the following information under [*insert legislation*]:

*[Give details of information requested, if it is for personal data then enclose a copy of Template 6]*

Please provide the information requested by [*insert date*] so that I can respond within the appropriate deadline. When providing the information, please give an indication as to the time it has taken to collate the information.

If you do not hold the information, or have any queries about this request for information, in particular disclosure of the information, please give me a call.

A copy of the Request for Information Procedure can be found on the public website.

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## Template 5 – Transfer to another public authority

*Only use this letter once you have checked that:*

- a. they hold the information requested; and*
- b. they are happy for you to transfer the request and confirm that you hold the information*

### **Request for Information TSD...**

Further to your request for information regarding [*subject*]. We can confirm that Torbay and Southern Devon Health and Care NHS Trust does not hold the information specified in your request.

We are writing to advise you that, having reviewed your request for information, we have identified that your request would be more appropriately addressed to [*Name of Public Authority*]. Please make your request for information in writing to: [*give contact name, address, telephone number and e-mail if known*].

Or

We are writing to advise you that, having reviewed your request for information, we have identified that your request would be more appropriately addressed to [*Name of Public Authority*]. Consequently, we propose to transfer your request to that organisation. However, before we transfer the request, we request your permission to notify the recipient organisation of your name and contact details.

If you agree, please can you provide a response to this letter / email accordingly.

Thank you

Yours sincerely,

**Template 6 - information not held.**

*Before sending this letter, just check that we have taken into account whether or not it is appropriate/necessary for us to neither confirm nor deny whether you hold the information before confirming that we do not hold the information.*

**Request for Information TSD...**

We refer to your request under Freedom of Information Act for information regarding [subject].

We are writing to advise you that following a search of our paper and electronic records, I have established that the information you requested is not held by Torbay and Southern Devon Health and Care NHS Trust.

*[If appropriate, provide advice and assistance as to the sort of information that you do hold and which the applicant may be interested in]*

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.tsd@nhs.net](mailto:feedback.tsd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

**Template 7 – Request for Information to health & social care professional**

Form IG03

**Request for Access to Care Records**

**Ref: [insert TSD number]**

To: ..... Date: .....

Location: .....

Full Name: .....

NHS Number (if known) .....

PARIS Number (if known) .....Date of Birth: .....

The above named has applied under the [insert legislation] to access his/her care records.

Please respond by [insert date] so that I can respond within the appropriate timescale.

The applicant wishes to have:

- Photocopies of their records from ..... to .....
- An appointment to view their records

Would you please advise whether you hold any records in relation to the above applicant, assess the records and decide whether you consider disclosure (either partial or total) is appropriate in accordance with the legislation.

Many thanks.

*Note: This information should be transmitted by secure email whenever possible to speed up the process.*

Form IG04

**Request for Access to Care Records**

**Ref:** *[insert TSD number]*

To: Information Governance Team, Torbay and Southern Devon Health and Care NHS Trust,

From:

Full Name:

.....

NHS Number (if known)

.....

PARIS Number (if known) ..... Date of Birth: .....

**Part 1**

- I confirm that **I do not hold** any records<sup>3</sup> relating to the above. Please sign the form at the bottom and return to the Information Governance Team.
- I confirm that **I do hold** any records<sup>1</sup> relating to the above. Please complete Part 2.

**Part 2**

I have considered the care records held on the above and

- Access can be given to the whole care record
- Partial access should be given for the following reasons  
.....  
.....
- Access can be given but only if a health and/or social care professional is present
- Access should not be given for the following reasons  
.....  
.....
- Enclose photocopies of the records to be handed to the applicant.

Signature: ..... Date: .....

Please print name: ..... Tel. No. ....

**Please return this form to**

Information Governance Team, Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD  
Tel: 01803-210507 Email: t-sd.infogov@nhs.net

<sup>3</sup> Health and/or social care record

## IMPORTANT INFORMATION

### Notes to accompany Forms IG03 & IG04 – Request for Access to Care Records

Legislation gives individuals the right to request access to personal information, held by the Trust, both paper and electronic, about an individual, subject to certain conditions and exemptions

**Data Protection Act** gives an individual or their representative the right to request access to any personal record held about them that is held by the Trust.

**Access to Health Records** gives individuals the right, in certain circumstances, to access the health record of a deceased person.

**Freedom of Information Act** gives individuals the right to request information of a deceased person's social care record.

In all cases, the opinion of the appropriate care professional will be taken into account. Please note that reasons need to be clearly stated when refusing to disclose information under Freedom of Information Act.

**Form IG03** is sent by the Information Governance Office to the person who holds the care record providing information on the request that has been received and what information is required and by when.

**Form IG04** is used by the appropriate care professional to advise whether they hold the information or not and if they do, to advise the Information Governance Team on whether

- this information can be shared with the applicant
- partial access should be given to the applicant
- access should not be given to the applicant.
- you are happy to share the information with the applicant
- the information can be shared with the applicant without a professional person being available (in order to provide any explanation or counseling).
- Whether you are providing photocopies/print out from the applicants records.

### Disclosing Information

When making a decision to disclose information, you need to bear the following points in mind:

- whether the access would be in accordance with the best interests of the wishes of the individual;
- whether in connection with an applicant for access to a child's record, is the child capable of understanding the nature and purpose of the application;
- if it is for a child's record, does the applicant have parental responsibility;
- whether to prevent the disclosure of seriously harmful information or information may identify third party individuals.

## Template 8 - All Information being provided

### Request for Information TSD...

I am writing to confirm that we have now completed our search for the information you requested on [date]. A copy of the information *is enclosed [in the format requested, or if not, why] or is available for you to view. Please telephone me to make the necessary arrangements.*

#### FOR FOIA/EIR requests

If you wish to re-use the information supplied, in whole or in part, for any other purpose e.g. commercial publications, please can you clearly reference Torbay and Southern Devon Health and Care NHS Trust as the owner of the document.

#### FOR DPA requests by applicant

Please note that, in accordance with the Data Protection Act 1998, all third party information has been removed. (Add if appropriate)

#### FOR DPA request by representative or Access to Health Records

Please ensure that the contents of these files are not disclosed to any other individual (including the client) without our express, written permission.

Please note that all third party information has been removed (add if appropriate).

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

**Template 9a – Fees Notice FOIA/EIR (Note: clock stops on the date this letter is sent)****Request for Information TSD...**

Further to your request for information, received on [date]. We can confirm that the Trust holds the information that you described in your request. However, the Trust has estimated that it will cost more than the appropriate limit to consider your request.

The appropriate limit is specified in regulations and for the NHS is set at £450. This represents the estimated cost of one person spending 2.5 working days in determining whether the Trust holds the information, locating, retrieving and extracting the information. Consequently, the Trust is not obliged by the Freedom of Information Act 2000 to respond to your request (see section 12(1)). However, we are still happy to do so if you pay the fee as set out in this notice.

The estimated cost of processing your request is £ [xx]. This charge has been calculated in accordance with section 13 of the Freedom of Information Act 2000 and the Freedom of Information Fees Regulations.

We will be unable to continue processing your request until the fee is paid. If you wish us to continue to deal with your request you should pay the fee requested within 60 days by [insert date]. If we do not receive payment of the fee by this date, we shall take it that you do not wish to pursue this request and will consider the request closed.

If you narrow the scope of your request, we may be able to provide the information free of charge because it would cost less than the appropriate limit to do so. For instance if you [provide appropriate advice and assistance]. Any reformulated request the Trust receives from you will be treated as a fresh FOI request.

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.tsd@nhs.net](mailto:feedback.tsd@nhs.net)

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If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

## Template 9b – Fees Notice DPA/Access to Health Records

### Request for Information TSD...

Further to your request for information, received on [date] we can confirm that the Trust holds the information that you described in your request. However, the Trust has estimated that it will cost £ [xx] to process your request. This charge has been calculated in accordance with section 26 of the Data Protection Act 1998.

We will be unable to continue processing your request until the fee is paid. If you wish us to continue to deal with your request you should pay the fee requested within 60 days by [insert date]. If we do not receive payment of the fee by this date, we shall take it that you do not wish to pursue this request and will consider the request closed.

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

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**Template 10 – Fee Received** (Note: clock starts on the date payment is received)**Request for Information TSD...**

We are writing to confirm that we have received £xx in respect of your fee payment on [date].

The search and retrieval work to be carried out will now begin and you can expect to receive my response by [date]. If the actual cost of complying with the request is less than the estimate, the balance will be returned to you. If you do not receive a response by then, please contact the Information Governance Team and we will investigate the matter further.

If you have any queries about this letter, please contact me, quoting the TSD reference number above in any future communications.

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## Template 11 – Consultation with Third Parties

### Request for Information TSD...

We are writing to you in connection with a request for information received by the Torbay and Southern Devon Health and Care NHS Trust which is being considered under the Freedom of Information Act. Part of the information requested [*was supplied by/relates to*] you. [*If possible, the third party should be given the terms of the request and if appropriate a description of the information held. It is essential that this is fact-sensitive*].

The FOI Act requires us to disclose the information in response to a request unless an exemption applies. There are two types of exemption in the FOI Act. The first type is an 'absolute' exemption, whereby disclosure may be withheld if the information falls within the terms of the exemption in question. However, where the exemption in question is only covered by a 'qualified' exemption, we can only withhold the information if the balance of the public interest, in all the circumstances of the case, favours maintaining the exemption of the information.

*[In light of the fact that you provided this information to us / in light of your interest in this information],* we are informing you of this request. If you wish to notify us of any particular issues or considerations that you consider relevant to the question of disclosure of this information, please do not hesitate to contact me. All relevant factors will be taken account of in our decision on whether the information is required to be disclosed, in particular the relevant public interest considerations both in favour of and against disclosure.

*[In particular to note – if there are concerns regarding the applicability of section 40, 41 or 43 this letter will have to be more detailed as the views of the person in question may be much more crucial to the question of disclosure of the information – suitable legal advice should be taken in such cases].*

We would be grateful if you could respond to me by [*date*] to enable us to consider all relevant factors in taking a decision on whether the Freedom of Information Act 2000 requires this information to be disclosed.

If you have any queries about this letter, please contact me, quoting the reference number above.

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## Template 12 – Extension of time

### Request for Information TSD...

Thank you for your request for information which we received on [date]. We can confirm that the Trust does hold (insert details of information) falling within the terms of your request.

The Freedom of Information Act obliges us to respond to requests promptly and in any case no later than 20 working days after receiving your request. However, when a qualified exemption applies to the information and the public interest test is engaged, the Act allows the time for response to be longer than 20 working days, and a full response must be provided within such time as is reasonable in all circumstances of the case. We do, of course, aim to make all decisions within 20 working days, including cases where we need to consider where the public interest lies in respect of a request for exempt information. In this case, however, we have not yet reached a decision on where the balance of the public interest lies.

In your case, we estimate that it will take an additional [*insert number of days*] to take a decision on where the balance of the public interest lies. We plan to let you have a response by [date]. If it appears that it may take longer to reach a conclusion, we will keep you informed.

The specific exemption(s) which apply in relation to your request is/are: *List unless you are not required to by virtue of section 17(4).*

We have also considered that the exemption(s) provided under section(s) xx of the Act (*where this is an absolute exemption*) apply to the information requested. (*must state why unless obvious*)

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>

## Template 13a – Refusal Letter – over appropriate fee limit

### Request for Information TSD ...

We are writing regarding your request for information, which we received on *[date]*. In that request, you asked us for *outline of request*.

We can confirm that Torbay and Southern Devon Health and Care NHS Trust holds the information described in your request. However, we estimate that it will cost more than the appropriate limit to consider your request. The appropriate limit has been specified in regulations and for the NHS it is set at £450.00. This represents the cost of one person spending 2.5 working days in determining whether the Trust holds the information, locating, retrieving and extracting the information. We are therefore not obliged under Section 12(1) of the Freedom of Information Act to respond to your request.

If you narrow the scope of your request, we may be able to provide the information as it may be under the fees limit to do so. For instance if you *[provide appropriate advice and assistance]*, although I cannot guarantee that this will be the case. Any reformulated request we receive from you will be treated as a fresh FOI request.

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

## Template 13b – All Information being withheld

*It may be necessary when withholding information to neither confirm nor deny that we hold the information – may need to seek legal advice.*

### Request for Information TSD...

Further to your request for information dated [date] we wish to advise you that the information you requested is being withheld under the Freedom of Information Act 2000. The exemptions which apply to this information are: section(s) xx of the Freedom of Information Act.

You requested [brief summary of the information requested]

*We will need to explain why*

- a.) *any of the information requested falls into the terms of any absolute exemption (stating why unless this is not already apparent) before*
- b.) *explaining which qualified exemptions apply to the information and why the balance of the public interest test determines that the information is exempt from release.*

*[NB. We are not obliged to explain why an exemption applies if this is already apparent and we are not obliged to explain why an exemption applies or why the balance of the public interest favours non-disclosure if to do so would involve the disclosure of exempt information (section 17(4))]*

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

## Template 13c – Some information provided some withheld

### Request for Information TSD...

We are writing to confirm that we have now completed our search for the information you requested on [date].

*[Give details of the information which is being disclosed, either in the body of the letter or as an attachment.]*

The remainder of the information that falls within the terms of your request is exempt from the right of access under the Act.

*[List the exemption(s), stating why, unless apparent that the information has not been disclosed and if applicable explain why balance of the Public Interest favours non-disclosure]*

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1998. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting.

If you wish to re-use the information supplied, in whole or in part, for any other purpose e.g. commercial publications, please can you clearly reference the owner of the document.

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

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## Template 13d - Neither confirm nor deny

*Seek legal advice when considering a neither confirm nor deny the holding of information*

### Request for Information – TSD

We are writing in response to your letter of [date] requesting information regarding [subject].

Torbay and Southern Devon Health and Care NHS Trust neither confirms nor denies that it holds information falling within the description specified in your request. The duty in s.1 (1) (a) of the Freedom of Information Act 2000 does not apply, by virtue of s.XX of that Act. This should not be taken as an indication that the information you requested is or is not held by the Trust.

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.tsd@nhs.net](mailto:feedback.tsd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

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## Template 14 – Vexatious/Repeated Requests

*Suggested wording – wording will obviously have to reflect the reasons why the request is considered vexatious and/or repeated.*

### Request for Information TSD

Further to our letter dated *[insert date]* we write to advise you that we are not obliged to comply with your request for information under section 14 of the Freedom of Information Act.

*[We consider that the series of requests for information we have received from you imposes a significant burden on the organisation. We feel that these requests do not have any serious purpose of value with the exception of causing disruption and annoyance to effect that we consider you are harassing the Trust, or similar wording.]*

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

## Template 15 – Internal Review Acknowledgement

### Request for Information TSD...

We acknowledge receipt of your letter dated *[insert date]* which we received on *[insert date]*. As requested we are carrying out an internal review of our decision not to disclose the information requested. A response to your request for an internal review will be sent to you promptly and in any event no later than *[insert date]*. Please allow for postal time.

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you are unhappy with the way in which we have handled your request, please contact the Head of Information Governance in the first instance. If you wish to make a formal complaint, you should write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your complaint or the internal review, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

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## Template 16 – Internal Review Template

### FOIA Internal Review

**TSD... – request dated [insert date]**

**Request for:**

a) *[give a description of the information requested]*

**Persons involved in the original decision**

*[insert those consulted upon when the original decision was made]*

**Response [insert date]:**

*[give the response, i.e. the exemptions being used and the reasons why, including public interest test is appropriate]*

**Reason for decision:**

1. *[list the reasons on which the decision was based. Attach any relevant paperwork, i.e. ICO/DCA guidance.]*

**Reason given from Internal Review by applicant**

1. *[provide information, if provided by the applicant as to why they feel the information should be disclosed]*

**Options:**

1. Disclose information as requested
2. Partial disclosure of information.
3. Uphold the decision not to disclose made on *[insert date]*

Independent Review to be carried out by *[insert name and job title of person carrying out review<sup>4</sup>]*.

*[insert name of person compiling the information]*

Date:

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<sup>4</sup> Independent review to be carried out by the appointed person (Chief Executive) unless section 36 is used then it will be carried out by the Chair of the Trust.

## Template 17 – Outcome of Internal Review

### Request for Information TSD...

Further to our letter dated *[insert date]* we have now carried out an internal review of our decision *[insert information about the decision made]*

The internal review was carried out by *[insert name of reviewer]* in consultation with the appropriate members of staff within the Trust.

*[State whether the decision has been upheld or not upheld in total or in part. Give as much detail as possible as to why the decision was upheld, and if not upheld provide the information that is agreed to be disclose]*

If you wish to discuss any of the above, please contact me, quoting the TSD reference number above.

If you wish to make a formal complaint about the way we have handled your request for information, please write to our Complaints Officer at Torbay and Southern Devon Health and Care NHS Trust, Bay House, Riviera Park, Nicholson Road, Torquay, TQ2 7TD. [feedback.t-sd@nhs.net](mailto:feedback.t-sd@nhs.net)

If you are not content with the outcome of your internal review or complaint, you may apply directly to the Information Commissioner for a review. Generally, the Information Commissioner will only make a decision once you have exhausted the complaints and/or internal review process provided by us. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. <http://www.ico.gov.uk/complaints.aspx>.

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## Template 18 – Release of Records

### Release of Care Records

I hereby confirm receipt of [*insert details of records being shared*] records from Torbay and Southern Devon Health and Care NHS Trust (TSDHCT).

I understand that TSDHCT can accept no responsibility for these records whilst they are in our possession.

I understand that where applicable, all third party information has been removed from these notes in accordance with the Data Protection Act 1998. [add if appropriate]

Signed: .....

Name: .....

Please print .....

Contact Telephone No: .....

For and on behalf of: .....

Date: .....

Template 19 - Form IG01

Application for Subject Access Request Data Protection Act 1998

Please complete this form if you want us to supply you with a copy of personal information, which we hold about you. You are entitled to receive this information under the Data Protection Act 1998.

We will endeavour to respond promptly and in any event within 40 days of receipt of a clear application. Torbay and Southern Devon Health and Care NHS Trust, reserves the right to make the final decision as to what form of access is appropriate.

Under the terms of the Data Protection Act 1998 we may not release information to you unless Torbay and Southern Devon Health and Care NHS Trust is satisfied as to your identity and the appropriate charge has been paid. Furthermore, there are also other conditions where access to some information may be restricted.

a) I make this application for data about me [ ]

b) I would like my representative Mr/s ..... to deal with this application on my behalf. I attach a signed Authorisation of Representative for Subject Access Form IG02. [ ]

1. Data Subject:

Title: ..... Forename(s): ..... Surname:.....

Your address: .....

.....

..... Postcode: .....

Daytime Telephone Number: .....

Date of Birth: .....

NHS Number (if known): .....

SSID Number (if known): .....

If you have moved house, or changed your name within the last twelve months, please give your previous name and/or address:

.....

.....

..... Postcode: .....

Please state the date of any previous subject access request made by yourself or an representative <sup>5</sup>:

.....  
.....  
.....  
.....  
.....  
.....  
.....

2. **Please describe the information you seek, stating whether it is health and/or social care information, electronic and/or manual, together with any other relevant information.** This will assist us in identifying the information you require<sup>6</sup> (Use separate sheet if necessary)

.....  
.....  
.....  
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.....  
.....

3. **Please identify the purpose for which the application is made:**

(Please mark appropriate box)

- To obtain a better understanding of the care I am receiving
- To take record to another country
- To obtain a second opinion
- To consider litigation.  
If 'yes' is litigation against Torbay and Southern Devon Health and Care NHS Trust
- To pursue litigation  
If 'yes' is litigation against Torbay and Southern Devon Health and Care NHS Trust

**Note:**

<sup>5</sup> The Trust is not obliged to comply with a request if the Trust has recently complied with an identical request.

**<sup>6</sup>Important Information:**

1. Under the Data Protection Act 1998 you do not have to give a reason for applying for your access to your care records. However, to help us save time and resources, if you wish, it would be helpful if you could provide details here, informing us of periods and parts of your health and/or social care records you require, along with details which you may feel have relevance i.e. health/social care professional and location, etc.
2. We reserve the right, in accordance with section 8(2) of the Act, not to provide you with copies of the information requested if to do so would take "disproportionate effort".

**4. State how you would like the reply to this request to be dealt with:** (Please mark appropriate box)

- Sent to your home address by post
- Collected from our offices (You must bring evidence of confirm your identity)
- Sent to your authorised representative (if appointed) by post

**5. Declaration:**

**Please complete the following and return this form to:**

Information Governance Team,  
 Torbay and Southern Devon Health and Care NHS Trust  
 Bay House, Nicholson Road  
 Torquay, TQ2 7TD

I confirm that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health and/or social care record referred to under the terms of the Data Protection Act 1998. (Please mark appropriate box).

- I am the data subject
- I have been asked to act on behalf of the data subject and attach an Authorisation of Representative Subject Access Form IG02.
- I am acting in loco parentis and the patient is under 16 years of age and \*is incapable of understanding the request/has consented to my making this request (\*delete as appropriate).

**Deceased Records** (to be completed only when requesting records for someone who is now deceased. (Please mark appropriate box).

- I am the deceased data subject’s personal representative and attach confirmation of my appointment.
- I have a claim arising from the data subject’s death and wish to access health information relevant to my claim on the grounds that

.....  
 .....  
 .....  
 .....

I confirm that I have read and understood the terms of this subject access form.

Signed: ..... Dated: .....

*If you have any queries, please contact our Information Governance Team on 01803 (210509)*

**Note:** It is essential to enclose proof of identify when submitting your request for records. (e.g. copy of birth certificate, driving licence, passport, bank statement or utility bill with correct name and address)

## **Charges**

The charges are as follows:

### **To provide copies of care records the maximum costs are:**

Records held totally on a computer, a maximum charge of £10.00

Records held in part on computer and in part manually (paper based casefiles), up to a maximum of £50.00

Records held totally manually (paper based casefiles) up to a maximum of £50.00

### **To view care records (where no copy is required) the maximum costs are:**

Records held totally on a computer, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.

Records held manually, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.

Records held in part on computer and in part manually, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.

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Form IG02

**Authorisation of Representative for Subject Access**  
 Data Protection Act 1998

**This application for Subject Access is made on behalf of:**

**1. Data Subject:**

Title: ..... Forename(s): ..... Surname:.....

Your address: .....

.....

..... Postcode: .....

Daytime Telephone Number: .....

Date of Birth: .....

NHS Number (if known): .....

SSID Number (if known): .....

I am the above-named person and authorise Torbay and Southern Devon Health and Care NHS Trust to give the information requested in this application to my representative whose name and address is given below.<sup>7</sup>:

Signature of mark of person giving authority:  
.....

Name (use block capitals):  
.....

Date: .....

**<sup>7</sup> Important Information:**

Please ensure that you have read the accompanying application notes and discussed any queries you have regarding the release of your care records with your representative.

You should also understand that failing to provide information at section 2 of Form IG01, your representative would be applying for access to the whole of your health and social care record history held with Torbay and Southern Devon Health and Care NHS Trust. Subject to certain safeguards, they could be provided with details of your full health and social care history that may not be relevant for your case with your representative.

You should be aware that your representative could use your care records for legal proceedings and therefore make them available to all other parties to the litigation.

**To be completed by the Representative**

Title: ..... Forename(s): ..... Surname:.....

Your address: .....

.....

..... Postcode: .....

Daytime Telephone Number: .....

What is your relationship to the Data Subject?

.....  
.....  
.....  
.....  
.....

I declare that I make this application on behalf of and solely in the interest of the named Data Subject. To ensure confidentiality I accept that you may need to make further enquiries to validate this authorisation.

Signature of representative: .....

Name (use block capitals) .....

Date: .....

**IMPORTANT INFORMATION**

**Application Notes to Accompany  
Form IG02 - Authorisation of Representative for Subject Access**

The Data Protection Act 1998 gives an individual, or their representative, with consent, the right to apply for access to their personal care records<sup>8</sup>. The health records of the deceased are governed by the Access to Health Records Act 1990. Social records of the deceased are governed by the Freedom of Information Act.

Any request for access to care records must be made in writing or electronically as follows:

<b>Type of Record</b>	<b>Contact</b>
Community Health and/or Social Care Records	Information Governance Team Bay House, Nicholson Road Torquay, TQ2 7TD
Hospital Record	<p><i>Torbay</i> Data Protection Officer South Devon Healthcare NHS Foundation Trust Lawes Bridge Torquay, TQ2 7AA</p> <p><i>Exeter</i> Data Access Office Room Q101 Royal Devon &amp; Exeter NHS Foundation Trust Barrack Road Exeter, EX2 5DW</p> <p><i>Plymouth</i> Legal Department Plymouth Hospitals NHS Trust Central Records Library Bush Park Plymouth, PL6 7RG</p>
GP Records	Practice Manager at your GP Surgery.

<sup>8</sup> Definitions: 'Care Record' refers to community health and/or adult social care records held by Torbay and Southern Devon Health and Care NHS Trust.

Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, your representative may be charged to view your health records or to be provided with a copy of them. Below are the maximum fee costs. **The fees are the same whether it is an individual applying for access or a representative i.e. solicitor applying on their behalf.**

To provide copies of care records the maximum costs are:

- Records held totally on a computer, a maximum charge of £10.00
- Records held in part on computer and in part manually (casefiles), up to a maximum of £50.00
- Records held totally manually (casefiles) up to a maximum of £50.00

To view care records (where no copy is required) the maximum costs are:

- Records held totally on a computer, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.
- Records held manually, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.
- Records held in part on computer and in part manually, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.

Under the Data Protection Act 1998, there is no obligation to comply with an access request unless the care professional<sup>9</sup> has such information as he/she needs to identify the applicant and locate the information and unless the required fee has been paid. Torbay and Southern Devon Health and Care NHS Trust will advise you what the fee will be and when it is due prior to the information being disclosed.

Once the care professional has all the relevant information and fee where relevant, they should comply with the request promptly, within 20 days and by no later than 40 days after the request has been made. In exceptional circumstances if it is not possible to comply within the 40 day period the applicant will be informed.

Under the Data Protection Act 1998 care professionals have a duty to read through the care records of an individual before they are released. Access may be denied, or limited, where the information might cause serious harm to the physical or mental health or condition of the individual, or any other person, or where giving access would disclose information relating to or provided to a third person who had not consented to the disclosure. The care professional would only provide the appropriate parts of the care records to the representative as he/she would to the individual.

When or if the care records are released, if the information is not readily intelligible, an explanation (e.g. of abbreviations, medical terminology) will be given by the Data Controller.

You should be aware that the Application Form IG01 asks you to provide details of specific parts/period of your care records you require, i.e. information relating to a specific incident, you would eliminate the need for your representative to see irrelevant matters of

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<sup>9</sup> 'Care Professional' refers to a community health professional and/or adult social care professional employed by Torbay and Southern Devon Health and Care NHS Trust

your care record. There is also the added benefit of saving time and resources which may reduce the cost of your access request.

Finally please ensure you have filled in the details on the form and before you sign please discuss with your representative any uncertain issues regarding the release of your care records before you do so.

If you have any queries, in particular, with completing the form, please contact the Information Governance Team on (01803) 210507 or by email [t-sd.infogov@nhs.net](mailto:t-sd.infogov@nhs.net) who will be able to assist you.

Thank You.

## Appendix 2 - Exemptions

This Appendix outlines the exemptions under the various legislations covered by this procedure. When considering the use of these exemptions in making a decision whether to disclose or not disclose any information, no decision should be made without full consultation with the Head of Information Governance.

### Exemptions under Freedom of Information Act

There are two types of class exemption:

- (a) Absolute, which do not require a test of prejudice or the balance of public interest to be in favor of non-disclosure?
- (b) Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

With the exception of s21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the Act are:

- section 21, Information accessible to applicant by other means
- Section 23, Information supplied by, or relating to, bodies dealing with security matters.
- section 32, Court Records
- section 34, Parliamentary Privilege
- section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- section 41, Information provided in confidence
- section 44, Prohibitions on disclosure

The exemptions that are qualified by the public interest test are:

- section 22, Information intended for future publication
- section 24, National Security
- section 26, Defense
- section 27, International Relations
- section 28, Relations within the United Kingdom
- section 29, The Economy
- section 30, Investigations and proceedings conducted by public authorities
- section 31, Law Enforcement
- section 33, Audit Functions
- section 35, Formulation of Government Policy
- section 36, Prejudice to effective conduct of public affairs
- section 37 Communications with Her Majesty, etc. and honors
- section 38, Health and Safety
- section 39, Environmental Information
- section 42, Legal Professional Privilege
- section 43, Commercial Interests

More information on the exemptions and guidance on their use can be found on the [Information Commissioner's website](#).

## **Exceptions under Environmental Information Regulations**

There is a presumption under the regulations that environmental information must be released, unless there are reasons to withhold it.

All the exceptions are subject to a public interest test.

A request for information can be refused (or part of the information withheld) if:

- Information is not held (then there is a duty to refer the request on)
- The request is manifestly unreasonable
- The request is too general (after fulfilling duty to advise and assist)
- The request is for unfinished documents or data (in which case estimated time for completion must be given)
- The request is for internal communications

A public authority may also refuse to disclose information or withhold part of it in order to protect the following:

- Confidentiality of proceedings
- International relations / public security / defense
- The course of justice and right to fair trial
- Commercial confidentiality
- Intellectual property rights
- Personal / voluntary data
- Environmental protection

If information relates to emissions, a public authority cannot refuse to disclose it on grounds of confidentiality of proceedings, commercial confidentiality, personal/ voluntary data or environmental protection.

Further information on EIR can be found on the DEFRA website.

## **Exemptions under the Data Protection Act**

1. Third party information, unless you have the consent to disclose from the third party.

Further exemptions can be found in Part IV of DPA. Further information can be obtained from the Information Commissioner's website.

## **Appendix 3 - Charges that can be made under Legislation**

### **Data Protection Act / Access to Health Records**

To provide copies of care records the maximum costs are:

- Records held totally on a computer, a maximum charge of £10.00
- Records held in part on computer and in part manually (case files), up to a maximum of £50.00
- Records held totally manually (case files) up to a maximum of £50.00

To view care records (where no copy is required) the maximum costs are:

- Records held totally on a computer, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.
- Records held manually, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.
- Records held in part on computer and in part manually, up to a maximum of £10, unless the records have been added to in the last 40 days when access is free.

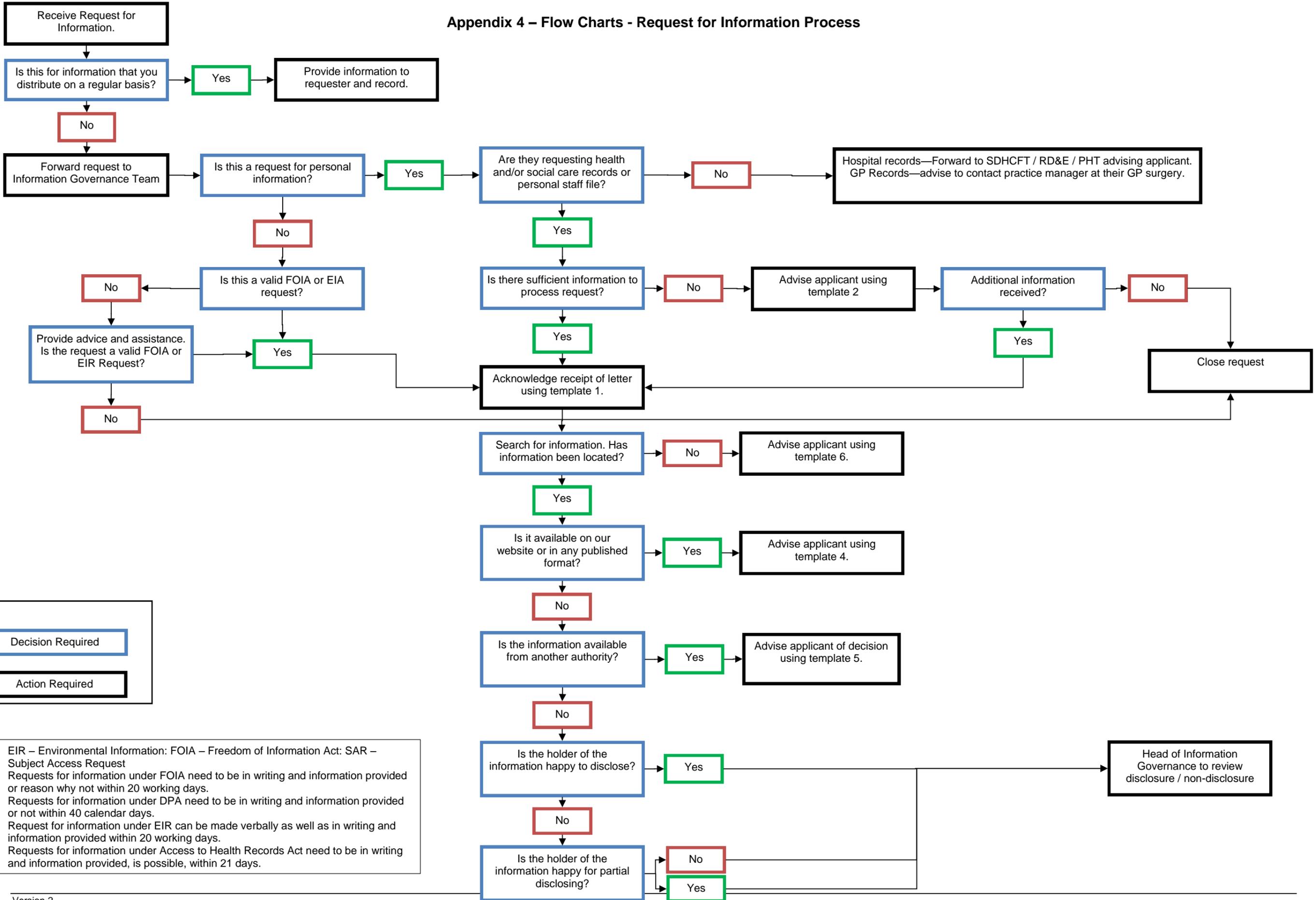
### **Freedom of Information /Environmental Information Regulations**

For the most part, Torbay and Southern Devon Health and Care NHS Trust will charge you only for hard copies or copying on to media (e.g. CD). The majority of information is available free of charge, but for others there may be a charge. The charges will vary according to how information is made available. Charges are published on our web site.

Under FOIA/EIR, if the cost of examining, considering and any reasonable consultation time exceeds £450.00, for one single request or the aggregated cost of related requests then the Trust can refuse the request on grounds of cost.

The Trust will at all times provide advice and assistance to ensure that requests for information do not exceed the £450.00 threshold, and reserve the right to disclose the information with or without a fees notice being issued to the applicant.

### Appendix 4 – Flow Charts - Request for Information Process

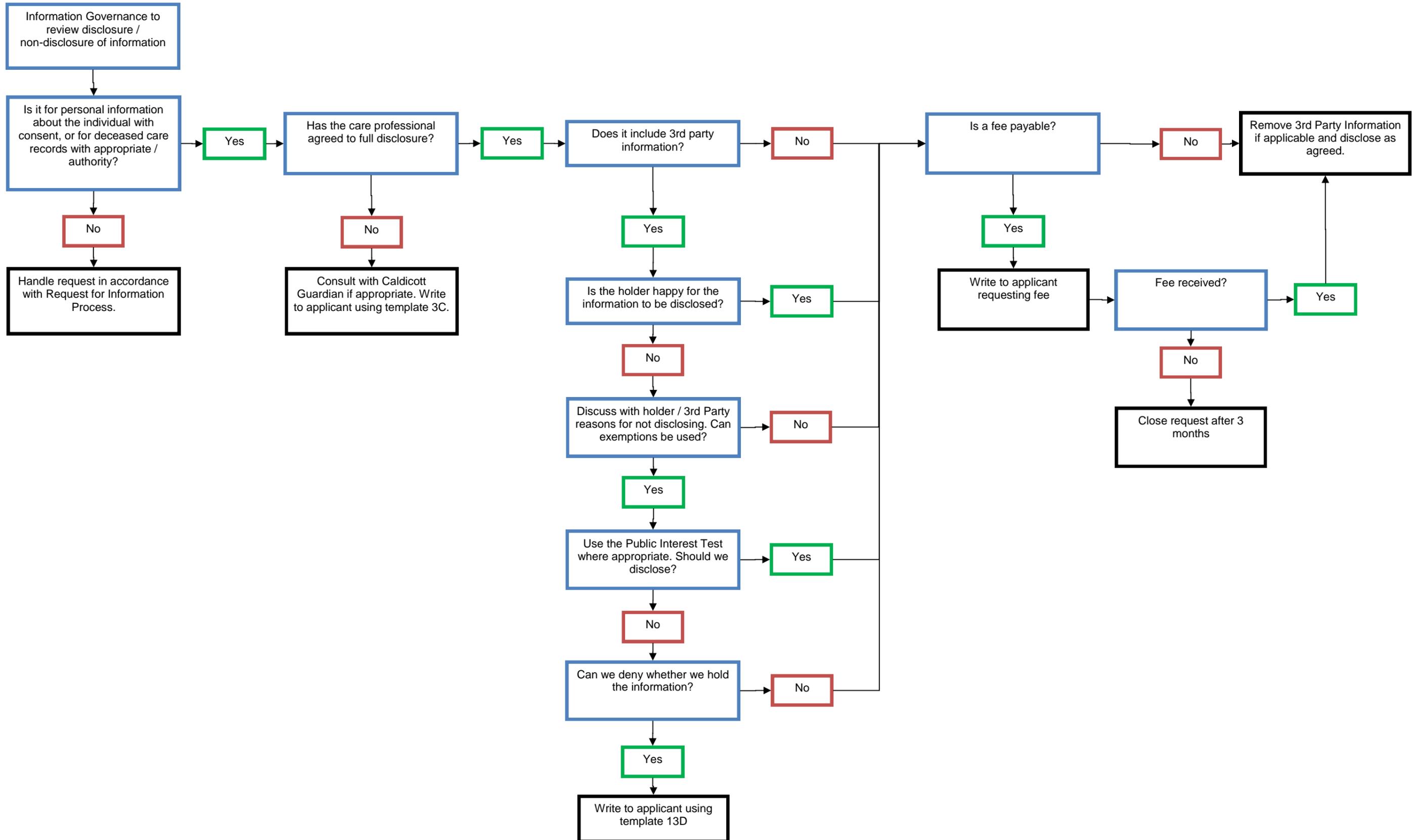


**Key**

- Decision Required
- Action Required

\* EIR – Environmental Information: FOIA – Freedom of Information Act: SAR – Subject Access Request  
 \* Requests for information under FOIA need to be in writing and information provided or reason why not within 20 working days.  
 \* Requests for information under DPA need to be in writing and information provided or not within 40 calendar days.  
 \* Request for information under EIR can be made verbally as well as in writing and information provided within 20 working days.  
 \* Requests for information under Access to Health Records Act need to be in writing and information provided, is possible, within 21 days.

Disclosure of Information Process



### Internal Review Process

