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WALES

Bwrdd Iechyd Prifysgol  
Abertawe Bro Morgannwg  
University Health Board



<b>Meeting Date</b>	<b>31<sup>st</sup> July 2018</b>		<b>Agenda Item</b>	<b>6c</b>
<b>Report Title</b>	<b>Freedom of Information Act (FOIA) Policy</b>			
<b>Report Author</b>	Kate Morgan, Corporate Services Manager			
<b>Report Sponsor</b>	Wendy Penrhyn-Jones, Head of Corporate Administration			
<b>Presented by</b>	Pam Wenger, Director of Corporate Governance			
<b>Freedom of Information</b>	Open			
<b>Purpose of the Report</b>	To seek approval of the attached ABMU FOIA Policy which has recently been revised and considered by the Information Governance Group.			
<b>Key Issues</b>	There are no significant issues to bring to the committee's attention			
<b>Specific Action Required</b> <i>(please ✓ one only)</i>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>	<b>Approval</b>
				✓
<b>Recommendations</b>	Members are asked to: <ul style="list-style-type: none"> <li>• <b>Approve the revised FOIA Policy</b></li> </ul>			

## **APPROVAL OF FOIA POLICY**

### **1. INTRODUCTION**

The audit committee is asked to ratify an amended FOIA Policy following approval from the Information Governance Board.

### **2. BACKGROUND**

This document is a statement of what ABMU Health Board will do to ensure compliance with the Freedom of Information Act 2000 (FOIA), Re-Use of Public Sector Information Regulations 2005 (PSI), the Environmental Information Regulations 2004 (EIR) and the statutory Codes of Practice issued by the Department of Constitutional Affairs. It also takes into account guidance notes which are issued from time to time by the Department of Constitutional Affairs, Information Commissioner's Office and the National Archives. It is not a statement of how compliance will be achieved; this is a matter for Operational Procedures.

The document is being presented for approval having undergone a review in line with the requirements of the Policy on Policies that all policies should undergo a review at least every three years. There have been no fundamental changes to the content apart from some clarity in terms of the role of members of the FOIA Team, a timescale has been introduced for the internal review of requests and with the advent of General Data Protection Regulations and referenced has therefore been made to this.

The revised document was recently considered by the Information Governance Board (IBG) after being shared with Delivery Units as part of the consultation process. The IBG recommend the Policy for approval by the Audit Committee.

### **3. RECOMMENDATION**

The Audit Committee is asked to note the report and approve the FOIA Policy.

Governance and Assurance							
<b>Link to corporate objectives</b> (please ✓)	Promoting and enabling healthier communities		Delivering excellent patient outcomes, experience and access		Demonstrating value and sustainability		Embedding effective governance and partnerships
							✓
<b>Link to Health and Care Standards</b> (please ✓)	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources
							✓
<b>Quality, Safety and Patient Experience</b>							
Ensuring that the health board is open and transparent in providing information is a key factor in the quality, safety and experience of patients receiving care.							
<b>Financial Implications</b>							
No financial implications							
<b>Legal Implications (including equality and diversity assessment)</b>							
The Freedom of Information Act (FOIA) came into force in 2005. It places a legal obligation on public authorities to comply with the Act.							
<b>Staffing Implications</b>							
Anyone working within the Health Board may be contacted by an individual wishing to make an FOIA request, therefore all staff need to be aware of the Act and the process for responding to such requests.							
<b>Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)</b>							
No impact identified.							
<b>Report History</b>	This policy has been submitted to the Information Governance Board in May 2018 who recommended submission to the Audit Committee for formal approval.						
<b>Appendices</b>	FOIA Policy – Appendix 1						



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# ***FREEDOM OF INFORMATION ACT 2000 POLICY***

This policy has been subject to an equality impact assessment and no impact has been identified.

**Responsible Officer:** Director of Corporate Governance

**Approved By:**

**Issue Date:**

**Review Date:**

**Policy ID:** HB81

## CONTENTS

	PAGE
1. Policy Statement	2
2. Scope	2
3. Purpose	2
4. Roles and Responsibilities	3
5. Publication Scheme	4
6. General Rights of Access to Recorded Information	4
7. Processing a Request	5
8. Exemptions	5
9. Refusal of Requests	6
10. Charges, Fees and Reuse of Information	6
11. Time Limits for Compliance with Requests	6
12. Transferring Requests for Information	6
13. Consultation with Third Parties	7
14. Public Sector Contracts	7
15. Accepting Information in Confidence from Third Parties	7
16. Complaints	8
17. Records Management	8
18. Training	8
19. Equality	8
20. Legal Advice	8
21. Welsh Language Act	8
22. Audit and Review	8
23. References and Related Policies	9

## **1. POLICY STATEMENT**

- 1.1 This document is a statement of what ABMU Health Board will do to ensure compliance with the Freedom of Information Act 2000 (FOIA), Re-Use of Public Sector Information Regulations 2005 (PSI), the Environmental Information Regulations 2004 (EIR) and the statutory Codes of Practice issued by the Department of Constitutional Affairs<sup>1</sup>. It will also take into account guidance notes which are issued from time to time by the Department of Constitutional Affairs, Information Commissioner's Office and the National Archives.
- 1.2 This policy is not a statement of how compliance will be achieved; this is a matter for Operational Procedures.

## **2. SCOPE**

- 2.1 This Policy applies to all Health Board employees (including honorary contract holders and volunteers) and to Non-Officer Members.
- 2.2 This policy is applicable to all activities arising out of the daily workings of the Health Board or the bodies which it hosts including activities undertaken in conjunction with other stakeholders such as other NHS organisations, the local authority, the police, voluntary organisations, commercial suppliers and the Welsh Assembly Government. Systems for handling information requests received by or about host organisations will be detailed in the Health Boards FOIA Operational Procedures. FOIA requests received by hosted organisations (about themselves or other public bodies on which they hold information) will be classed as 'routine' and will be handled by those organisations. Complex FOIA requests may need to be handled in conjunction with the Health Board's Corporate Administration Department.
- 2.3 The Health Board accepts that individuals also have certain rights to privacy and confidentiality. The Act clearly explains and defines the interface between the Act and the The General Data Protection Regulation (GDPR). This Policy does not overturn the common law duty of confidence or statutory provisions (including the Human Rights Act 1998 and the GDPR) that prevent disclosure of personal identifiable information. The right to release of personal information is still covered by the subject access provisions of the GDPR and is dealt with in relevant ABMU Health Board policies.

## **3. PURPOSE**

- 3.1 The Policy: -
- explains the principles which underpin the Health Board's commitment to openness and transparency in the decisions which it makes about the provision of health care to the local community
  - sets out commitment to full implementation of the Freedom of Information Act and to compliance with the Codes of Practice issued under Sections 45 and 46 of the Act<sup>2</sup>.

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<sup>1</sup> under sections 45 and 46 of the FOIA

<sup>2</sup> Code of practice on the Discharge of Public Authorities' Functions under Part 1 of the Freedom of Information Act and the Code of Practice on the Management of Records issued under sections 45 and 46 of the FOIA 2000 respectively by the Department of Constitutional Affairs

- Considers the implications of the re-use of information in accordance with the Office of Public Sector Information Guidance.
- Deal with all requests for environmental information in accordance with the Secretary of State's Code of Practice on the Discharge of obligations of Public Authorities under the Environmental Information Regulations 2004.
- emphasises the importance of effective training, which will meet the needs of all staff throughout the organisation at appropriate levels.
- explains how the Health Board will pro-actively implement it's duty to provide advice and assistance to members of the public.<sup>3</sup>
- reinforces the commitment of the Health Board to take into account the practical guidance on the interpretation and implementation of their statutory obligations issued from time to time by the Department of Constitutional Affairs, the Information Commission and the National Archives Office.

#### **4. ROLES AND RESPONSIBILITIES**

##### **4.1 Chief Executive**

The Chief Executive must ensure that the Health Board complies with its statutory obligations under FOIA and is ultimately responsible for all processes and procedures put in place to support provisions of the Act.

##### **4.2 Board Secretary/Director of Corporate Governance**

The Board Secretary/Director of Corporate Governance is the Health Board Champion for FOIA. He/she will have Board level responsibility for FOIA.

##### **4.3 Head of Corporate Administration**

The Head of Corporate Administration is responsible for ensuring that there are effective arrangements in place within the Health Board to enable compliance with the provisions of the Act. He/she will also provide periodic reports on implementation and progress to Board Committees and as part of the organisational Annual Report as necessary.

##### **4.4 Corporate Administration Manager**

The Corporate Administration Manager is accountable for the management of the day-to-day application of the policy and reporting compliance with it.

##### **4.5 Freedom of Information Co-ordinator**

The Freedom of Information Co-ordinator is accountable for the acknowledging and despatching of requests and co-ordinating the gathering of information for completing responses. The role also involves collecting data regarding compliance with targets.

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<sup>3</sup> Section 16 of FOIA  
FOIA Policy

4.6 Operational Leads at Service Delivery Level

The local leads for FOIA will be notified of requests by the central FOIA team based at health board HQ and will have responsibility for replying to the central FOIA team (not the requestor) confirming whether information is held or not (and if not who else may hold it) and for supplying the relevant information to the central FOIA team within the stated timescales. Local leads are also responsible for proactively publishing information linked to the Publication Scheme (see FOI Procedure for details) with a view to reducing the number of requests that need to be made (see 5.2).

4.7 Other Directors and Managers

All Directors and Managers are responsible for ensuring that this policy, and any associated procedures are communicated and implemented within their area or responsibility.

4.8 All Health Board Staff are required to adhere to this policy. Further information about the Act and its provisions is available via the Health Board's intranet site, or by telephone via 01639 683312 during normal office hours. New staff will receive information about FOIA as part of Corporate Induction and local induction processes.

**5. PUBLICATION SCHEME**

5.1 The Health Board is required to publish information held, by setting up and maintaining a Publication Scheme. This sets out categories of information available via the website ([www.abm.wales.nhs.uk](http://www.abm.wales.nhs.uk)).

5.2 The Health Board aims to publish as much information as is reasonably practical to publish about its services so that members of the public can seek to satisfy any need for information via the website in the first instance. To this end, local leads will be responsible for maintaining information published on the internet ensuring it remains timely. If the information is not published the person seeking information can then make contact by telephone, email the enquiries email address or email to: [FOIA.Requests@wales.nhs.uk](mailto:FOIA.Requests@wales.nhs.uk) to seek it. The more that is published, the fewer such requests are likely to be.

5.3 The Health Board's Publication Scheme is a living document and will be kept under continuing review by the FOIA Team although its content will remain the responsibility of the respective departments.

**6. GENERAL RIGHTS OF ACCESS TO RECORDED INFORMATION**

6.1 Section 1 of the Act gives a general right of access from 1<sup>st</sup> January 2005 to recorded information held by the Health Board, subject to certain conditions and exemptions contained in the Act, and notably the term 'exemptions' in the case of Environmental Information Regulations (EIR). Any person making a request for information to the Health Board is entitled:

- (a) to be informed in writing whether the Health Board holds the information of the description specified in the request (this is referred to as the "duty to confirm or deny"); and



- (b) if the Health Board holds the information, to have that information communicated to them.
- 6.3 There is no requirement for the applicant to specify that the request is being made in accordance with the provisions of the Act. Nevertheless the provisions of the Act will apply to all requests. The request must be in written form whether in 'hard' copy or by electronic mail and give the name of the applicant, an address for correspondence and a description of the information requested. Requests for information under EIR do not necessarily have to be in writing. The request can be made in writing, by email, orally over the telephone or during a meeting, or by some other means of communication, for example, by sign language. When a request is for environmental information the request will be handled in accordance with the requirements of the Environmental Regulations 2004.
- 6.4 It is not appropriate to ask the applicant for the reason or purpose for the request, although the Health Board can request further detail about the information required to narrow down what might otherwise be a vague or broad request. The Act is fully retrospective and will apply to all information held by the Health Board at the time the request is made. The importance of an effective record management strategy is paramount so that staff are able to swiftly establish if the information being sought is held or not. Where information has been destroyed this needs to be compliant with the Policy for the management and destruction of records.
- 6.5 The provision of advice and assistance to members of the public is part of the day to day business process of the Health Board. A key element of the Health Board's policy is that the release of information does not become cumbersome, time consuming or resource intensive. The Health Board therefore expects that written requests for information which are part of the day to day business of the Health Board will continue to be handled in the normal way.
- 6.6 The FOIA Team has produced a guidance leaflet to help any applicant who may wish to make a request for information. Copies of the leaflet are available through the Health Board's website and are issued in response to a FOI request.

## **7. PROCESSING A REQUEST**

- 7.1 Detailed operational procedures have been developed for processing requests and are published on the Health Board's website. All FOIA/EIR requests are responded to centrally via the FOIA team and NOT by any other staff/departments. This will still be the case even where the nature of the request does not fall under the remit of the FOI Act. Upon receipt of such requests, the FOIA team will arrange for a suitable response explaining why the matter does not fall under the FOI Act suggesting how the requestor can redirect their request.

## **8. EXEMPTIONS**

- 8.1 In determining whether an exemption may apply, the Health Board will still provide any other information which can be disclosed. The Health Board's

procedures provide for the redaction (i.e. deletion) of material which cannot be disclosed when it appears within the content of an otherwise disclosable document.

- 8.2 There are two categories of exemption, absolute and non-absolute. An absolute exemption means that the Health Board is exempt from the need to confirm or deny that it holds the information requested. A non-absolute exemption means that the Health Board has to consider the public interest before making a decision. The Health Board will use these exemptions responsibly.

## **9. REFUSAL OF REQUESTS**

- 9.1 If the Health Board chooses to refuse a request for information under any of the exemptions, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) of the Act the applicant will also be informed of procedures for making a complaint about discharge of its duties under the Act and of the right to complain to the Information Commissioner.

## **10. CHARGES, FEES AND REUSE OF INFORMATION**

- 10.1 Generally, the Health Board will not charge for information that it has chosen to publish on its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as CD-ROM. The Publication Scheme and the procedures that support this policy provide further guidance on charging.
- 10.2 The Health Board will follow the statutory *Fees Regulations* for general rights of access made under the Act.
- 10.3 In all cases where the Health Board chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by Section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.
- 10.4 Access to a document under FOIA does not give an automatic right to re-use the document. Re-use includes the following – copying, adapting, developing, adding value, broadcasting and commercially exploiting. Some material will need re-use approval and will be highlighted accordingly. This will be determined in line with the 'Re-use of Public Sector Information Regulations 2005'.

## **11. TIME LIMITS FOR COMPLIANCE WITH REQUESTS**

- 11.1 The Health Board has systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request or within a reasonable period of time where the public interest test has to be considered.

## **12. TRANSFERRING REQUESTS FOR INFORMATION**

- 12.1 A request can only be transferred to another public body where the Health Board receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by that other public authority. If the Health Board receives a request and holds some but not all of the information requested, a transfer may be made only in respect of Health Board information which it does not hold (but which is held by another public authority).
- 12.2 All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Health Board is unable either to advise the applicant which other public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

## **13. CONSULTATION WITH THIRD PARTIES**

- 13.1 The Health Board recognises that in some cases the decision as to the disclosure of information to an applicant may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes “personal data” within the meaning of the GDPR. Unless an exemption provided for in the Act applies in relation to any particular information, the Health Board will be obliged to disclose that information in response to a request. Wherever possible the Health Board will attempt to advise the party who provided the disclosable information that this has been requested. The Health Board will take into account current guidance/decisions issued by the Information Commissioner or the Department of Constitutional Affairs.

## **14. PUBLIC SECTOR CONTRACTS**

- 14.1 The Health Board’s procurement processes will be compliant with any applicable EC procurement regulations and also with the Act. This Policy should be read in conjunction with the Health Board’s Standing Orders. Partnership agencies and commercial suppliers of goods and services need to be aware of the Health Board’s obligations under the Act and under the Section 45 Code. In deciding whether any information may be exempt from disclosure because it may involve a breach of confidentiality imposed by a third party or it may breach a trade secret or it may prejudice the commercial interest of any party. The Health Board will take into account current guidance/decisions issued by the Information Commissioner or the Department of Constitutional Affairs.

## **15. ACCEPTING INFORMATION IN CONFIDENCE FROM THIRD PARTIES**

- 15.1 The Health Board will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Health Board’s functions and it would not be otherwise provided.
- 15.2 The Health Board will not agree to hold information received from third parties “in confidence” which is not confidential in nature. Again, acceptance of any

confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

- 15.3 Internal Health Board documents/correspondence cannot be classed as 'in confidence' for the purposes of FOIA. Prior to the release of any documents/correspondence they will be reviewed and redaction undertaken as necessary in line with FOIA principles.

## **16. COMPLAINTS**

- 16.1 A procedure for dealing with complaints will be contained in the FOIA Operational Procedures. These will set out the process referred to as an Internal Review.
- 16.2 The procedure for complaints will refer applicants to their right under Section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Health Board following attempts at local resolution of their complaint. In any correspondence with the Applicant giving any decision in respect of which the applicant has a right of, the Applicant will be notified of the right to complain under the Health Board's internal procedure and of the right to write to the Information Commissioner.
- 16.3 The Health Board will maintain a register of all complaints received and will ensure that any learning points that arise from such complaints are used to improve related policies, standards, procedures and guidance.

## **17. RECORDS MANAGEMENT**

- 17.1 The Health Board will have a separate policy with supporting systems and procedures that will ensure compliance with Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 and Records Management Strategy and Minimum Retention and Destruction Policy.

## **18. TRAINING AND AWARENESS**

- 18.1 The FOIA is publicised within the Health Board's induction training programme and via the intranet/internet. Updates are reported formally through the Health Board's Information Governance Board to ensure Managers and Directors are kept up to date.

## **19. EQUALITY**

- 19.1 This policy has been subject to a full equality impact assessment and no impact has been identified.

## **20. LEGAL ADVICE**

- 20.1 Occasions will arise when there is a need for legal advice, and this will be co-ordinated through the FOIA team.

## **21. WELSH LANGUAGE ACT**

- 21.1 This policy acknowledges the need to comply with the Health Board's Welsh Language Scheme.

## **22. AUDIT AND REVIEW**

- 22.1 Performance under this policy will be measured by auditing.
- 22.2 This policy will be reviewed regularly to ensure that it remains up to date, effective and takes account of emerging good practices. Where new legal directions come into force, the policy will be reviewed in line with the commencement date of that legislation.

## **23. REFERENCES AND RELATED POLICIES**

- The General Data Protection Regulation (GDPR)
- Environmental Information Regulations 2004
- Re-use of Public Sector Information Regulations 2005
- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.
- Department of Constitutional Affairs web site
- Information Commission web site
- National Archives web site
- ABMU Records Management Strategy
- ABMU Complaints Procedures
- ABMU FOI Operational Procedures
- ABMU Procurement Policy
- ABMU Welsh Language Scheme/ Welsh Language Standards
- ABMU Standing Orders