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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board

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: Management Board

Approval Date:

Review Date:

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Amendments made to policy April 2021 – changes from ABMU to Swansea Bay Health Board, FOIA team management structure and changes to incorporate the Welsh Language Standards

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1. POLICY STATEMENT

- 1.1 This document is a statement of what the Health Board will do to ensure compliance with the Freedom of Information Act 2000 (FOIA), Re-Use of Public Sector Information Regulations 2015 (PSI), the Environmental Information Regulations 2004 (EIR) and the statutory Codes of Practice issued by the Department of Constitutional Affairs¹. 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 local Standard Operational Procedures managed by the Corporate Services team.

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 applies to all official recorded information held by the Health Board, irrespective of age, format or location.
- 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 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 Act².
 - 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.

¹ under sections 45 and 46 of the FOIA

² 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

FOIA Policy

- 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.³
- 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 Commissioner 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. This position will have Board level responsibility for FOIA.

4.3 Corporate Services Manager/FOIA Lead

This post is responsible for ensuring that there are effective arrangements in place within the Health Board to enable compliance with the provisions of the Act. They will also provide periodic reports on implementation and progress to Board Committees and as part of the organisational Annual Report as necessary. They will also be accountable for the management of the day-to-day application of the policy and reporting compliance on it.

4.4 Freedom of Information Officer

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

4.5 Operational Leads

The local leads for FOIA will be notified of requests by the central Corporate Services Team based at health board HQ and will have responsibility for replying to the central corporate 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 team within the stated timescales.

4.6 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.

³ Section 16 of FOIA
FOIA Policy

- 4.7 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 contacting the Corporate Services Team via FOIA.requests@wales.nhs.uk.

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.SBUhb.nhs.wales).
- 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 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 Corporate Services 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 1st 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 National Records 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 Corporate Services Team have 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 A Standard Operating Procedure (SOPs) have been developed for processing requests. All FOIA/EIR requests are responded to centrally via the Corporate 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 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 discloseable 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. 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 2015'.

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 discloseable 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 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 Anyone who has made a request for information to the Health Board under FOIA is entitled to request an internal review if they are unhappy with the way their request has been handled. The review will be undertaken by the Chair of the Health Board who was not involved with the original decision.
- 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 outcome of the Health Boards internal review. 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 Requests for information under the Act will be retained and archived in line with the National Records Management Guidance.

18. TRAINING AND AWARENESS

- 18.1 All staff must be aware of the key principles of the Act to enable the Health Board to meet its legal responsibilities. Staff should be able to:

- Identify a publication scheme request for information and advise where the scheme can be found.
- Identify a general request for information
- Direct FOIA requests through to the Corporate Services Department
- Understand their responsibilities where request are made concerning their area of responsibility.
- Staff awareness and training will be provided by a variety of methods including formal training, departmental induction and information provided on the Information Governance and Corporate Services intranet pages.

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 corporate team.

21. WELSH LANGUAGE (WALES) MEASURE 2011

- 21.1 This policy acknowledges the need to comply with the Welsh Language Standards

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 2015
- 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
- Complaints Procedures
- FOI SOP
- Procurement Policy
- Welsh Language Scheme/ Welsh Language Standards
- Standing Orders