



*Yorkshire and the Humber*

**POLICY AND PROCEDURE FOR RESPONDING  
TO REQUESTS UNDER THE FREEDOM OF  
INFORMATION ACT, 2000**

## Policy Reference Information

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## Related Information, Policies and Legislation

Freedom of Information Act 2000	Data Protection Act 1998
NHS Yorkshire and the Humber Publication Scheme (under review)	SHA Confidentiality Code of Conduct
Information Governance Strategy and Policy	Procedure for Archiving Paper Files
Records Management Policy and Retention Schedule	Environmental Information Regulations 2005

## **Freedom of Information Act**

<b>CONTENTS</b>	<b>PAGE</b>
Introduction - Yorkshire and the Humber SHA	5
Glossary of Terms	5 - 6
 <b>SECTION</b>	
1. Freedom of Information Act	7
2. Objectives of the Policy	8
3. Scope of the Policy	8
4. Legal Obligation	8 - 9
5. Provision of Advice and Assistance to Person Making Request	9
6. Responding to Requests for Information	9 - 10
7. Good Practice	10 - 11
8. Exempt Information	11-12
9. Procedures for Handling Request	12
10. Unclear requests	12
11. FOIA Internal Reviews and Complaints to The Information Commissioner	13
12. Requests for Review	13 - 14
13. Fees	14 - 15
14. Charges	15
15. Retrieving and Collating Information	15
16. Training	16
17. Review and Monitoring Process	16
18. Related Legislation and Documents	16

## **APPENDICES**

Appendix I - Qualified Exemptions	17 - 18
Appendix II - Absolute Exemptions	19
Appendix III - Process for Responding to Information	19
Appendix IV - Request flow chart	20

## Introduction

Yorkshire and the Humber Strategic Health Authority (the SHA) was established on 1st July 2006 to be the headquarters of the local NHS, giving leadership and strategic oversight to all health services in the area.

As a public body the SHA is bound by the Freedom of Information Act 2000 and must respond to requests about the information it holds. The rights to request and access this information may be subject to exemptions, which the SHA has to take into consideration before deciding what information can be released.

This policy sets out the SHA's duties under the Act and the procedure that will be followed in responding to requests.

## Glossary of Terms

Absolute Exemption	The Framework within which a decision may be made not to disclose information that does not require the application of the public interest test
Applicant	Individual, group or organisation requesting the information
Classes of Information	Broad categories in which information is proactively made accessible
Exemption	Framework within which a decision may be made not to disclose information
Personal Information	Information relating to or potentially identifiable to an individual
Publication Scheme	A document detailing all information routinely available from the SHA
Public Authorities	Public sector organisations
Public Interest Test	A judgement as to whether the interests of the public are better served by disclosing information or by withholding it.
Qualified Exemption	Framework within which a decision may be made not to disclose information but where the balance of the public interest must be considered

Third Party

Where information is requested about someone other than the applicant

## 1. The Freedom of Information Act - Introduction

1.1. The Freedom of Information (FOI) Act 2000 came into full effect on January 1, 2005, with the Environmental Information Regulations 2005 (EIRs) the legislation giving a general right of access to all types of 'recorded' information held by public authorities, subject to certain exemptions, and placing a number of obligations on public authorities.

1.2. Yorkshire and the Humber SHA (the SHA or the Authority) recognises the importance of the FOI Act and to assist organisational compliance with the Act the Authority will endeavour to ensure that:

- The majority of information is made available through the web site [www.yorksandhumber.nhs.uk](http://www.yorksandhumber.nhs.uk)
- Other information is readily available on request
- If the information requested is potentially subject to a qualified exemption, the SHA will carefully consider the public interest test to determine whether the information should be released

1.3. The Freedom of Information Act 2000 does not provide unlimited access to all information held by public authorities. The application of the exemptions that are incorporated into the Act manage requests that may be considered to be sensitive or where the burden on the resources of public authorities are considered out of proportion to the benefits in terms of transparency and accountability. There are two particular areas where early decisions can be made which restrict the requirement of the public authority to disclose information and these are the only two exemptions which do not and should not involve any consideration of the status and content of the information concerned. These are:

- Establishing if the request is too burdensome in relation to time to locate, retrieve and collate information.
- Failure to refine request for information as suggested by the SHA or if the refined request for information still falls outside the disproportional cost of collating information.

1.4. Main features of the Act

- Since January 2005 a general right of access to record information held by public authorities, subject to certain conditions and exemptions.
- A duty to inform the applicant whether the authority holds the information requested and to communicate the information, unless it is exempted from disclosure.
- A duty on every public authority to adopt and maintain a publication scheme approved by the Information Commissioner.

## **2. Objectives of the Policy**

2.1 The key objectives of this policy and procedure are:

- To ensure that non-personal information is processed in accordance with the requirements of the Freedom of Information Act 2000.
- To meet the requirements of the Information Governance Toolkit (which incorporates nationally determined standards of best practice) insofar as it relates to FOI.
- To provide guidance on the correct way to handle requests for information.

## **3. Scope of the Policy**

3.1. This policy covers all information that falls within the scope of the Act i.e. all recorded information held by the SHA, including its hosted organisations, other than personal data, which is subject to the Data Protection Act. It therefore applies to all recorded information in the possession of the SHA (not necessarily originated by or 'owned' by the SHA). It applies to information regardless of age, format, origin or classification. It covers files, letters, emails, electronic records, databases, videos, photographs, wall charts, handwritten note etc. It extends to closed files, historical/inherited and archived material as well as information in current use. It includes records created in the course of the business of the SHA (and by the organisations that it hosts), which are corporate records (minutes, agenda etc) and are also public records under the terms of the Public Records Acts 1958 and 1967. No subject matter is excluded from consideration for disclosure including information relating to contracts, financial arrangements and other sensitive areas. This policy and procedure applies to all employees of Yorkshire and the Humber SHA including permanent, temporary and contract staff, directly employed and in hosted programmes who come into contact with recorded information.

## **4. Legal Obligation**

Full implementation of the Act means that all public authorities are required to meet a number of legal obligations. These are to:

- Maintain a Publication Scheme
- Respond to requests for information
- Provide advice and assistance with regard to requests under the Act

### **4.1. Publication Schemes**

To comply with the Freedom of Information Act the Authority must have a Publication Scheme which sets out the following:

- The classes of information published, or intended to be published
- The manner in which publication is, or is intended to be made

- Whether the information is available free of charge or if payment is required
- 4.2. The Authority has completed its Scheme and made it available on-line and in hard copy (on request). The Publication Scheme is regularly reviewed and updated to ensure the currency of information contained within it: [http://www.yorksandhumber.nhs.uk/freedom\\_of\\_information/](http://www.yorksandhumber.nhs.uk/freedom_of_information/)
- 4.3. Requests for a copy of the Publication Scheme and requests for information contained within the Scheme may be made to the SHA.

## **5. Provision of Advice and Assistance to Persons Making Requests**

- The SHA has a duty to provide reasonable advice and assistance to applicants for information.
- The SHA has a duty to publish procedures for dealing with all requests for information – to be referred to in the publication scheme.
- Any requests for information under the Freedom for Information Act general right of access must be made in writing but do not need to include reference to the Act.
- Where requests for information are ambiguous, the SHA should provide assistance to an applicant to clarify the information requested.
- The SHA is not expected to provide assistance to applicants whose requests are vexatious but such designation is a formal process to be dealt with by the Associate Director – Corporate Business.

## **6. Responding to Requests for information**

- 6.1. The Freedom of Information Act confers two general rights on the public:
- A right to be informed whether a public body holds information, which has been requested and;
  - A right to see that information
- 6.2. A request for information that is not available through the Publication Scheme must be made in writing, this includes via email, and a charge may be made for supply of the information.
- 6.3. Where possible the information will be supplied in the format requested by the applicant. However, requests might be met by providing a copy of the original document, as a summary of the original or even by allowing the applicant to read the document(s) in situ depending on the format in which the information is held, the specific request from the applicant and an overarching responsibility under the Act to make information which is being provided 'reasonably' accessible.
- 6.4. It is a legal requirement that requests for information are met within 20 working days of receipt of the request.

6.5. Any written request for information should be treated as a request under the FOI Act. However, there is a distinction between FOI requests and routine correspondence. Requests for information that can be provided without any question – such as recruitment brochures, leaflets, press releases, published reports etc – should be treated as business as usual. Requests that are not for recorded information, but instead ask questions, such as ‘please explain your policy on x’, or ‘please explain your decision to do y’, are not requests for recorded information and therefore should be treated as routine correspondence. As a ‘rule of thumb’, if any information is held and active consideration needs to be given as to whether it should be released, then the request should be formally treated and recorded as a request for information under the Act, **whether or not the request makes reference to the Act.**

6.6. The following criteria must apply to define normal business:-

- Can the information which has been requested be located and disclosed within the 20 working day time limit
- Will it cost more than £450.00 at £25.00 per hour (the limit set for public bodies under the Statutory Fees Regulations under the Act) to find and collate the information
- Can all the information requested be disclosed?

6.7. If the answer to all of these questions is ‘yes’ then the request should be dealt with by the relevant responsible department and need not be referred to the FOI lead (Associate Director – Corporate Business).

6.8. If, the answer to any of the questions is ‘no’ the recipient of the request should refer it immediately to the FOI lead. This should usually be on the day of receipt. The request will then be processed as a formal FOI request.

## **7. Good Practice**

Responsibility for dealing with requests for Information under the FOI Act lies within the responsibility of the Director of Communications and Public Relations and responsibility for internal review in the event of a complaint, with the Chief Executive.

7.1. If the cost limit (£450 – as set by the Statutory Fees Regulations) is anticipated to be an issue, the applicant should be contacted at the earliest opportunity and the situation explained. A request should not be refused at this stage however, because of the requirement to exercise the duty established under section 16 of the Act to provide the applicant with advice and assistance. The purpose of approaching the applicant is to :

- advise that their request as submitted may be refused on the grounds of disproportionate cost
- ask them to refine the request so that it can be dealt with within the cost limits

7.2. If clarification (or refinement) is needed in order to identify and locate the information, this must be requested promptly and certainly within the 20 working day timescale set out in the Act. In these circumstances the 20 working day time period resumes the day after clarification (or refinement) is received.

## **8. Exempt Information**

8.1. The rights conferred by the FOI Act may be limited by the applicability of the exemptions. Several sections of the Act confer an absolute exemption on the disclosure of information (see section 2(3) of the Act). These may have the effect of exempting the SHA from confirming or denying that the information exists, or from disclosing the information.

8.2. Other sections require the SHA to exercise judgement as to whether the public interest in maintaining the exemption is greater than the public interest in disclosing the information.

8.3. There are certain conditions whereby the SHA is not obliged to comply with requests for information.

- The duty to disclose information on request does not arise if the estimated cost of supplying the information exceeds the appropriate limit established in the Statutory Fees Regulations. In these circumstances the SHA will work with the applicant to keep costs to a minimum but reserves the right to refuse or charge for the communication of information that exceeds the limit.
- The SHA does not have to comply with a request if it is considered vexatious. The SHA will log all requests for monitoring purposes and to identify repeated vexatious requests.
- The duty to comply does not arise if a Fees Notice has been issued to an applicant and any fee is not paid within three months of the date of the Notice.
- The SHA will redact material which cannot be disclosed by virtue of the engagement of an exemption when it appears within the content of an otherwise disclosable document.
- Part 11 of the Act sets out a series of exemptions which, if applicable, mean that information cannot be disclosed. These are distinguished into 'absolute' and 'qualified' exemptions.

### **8.4. Qualified Exemptions**

These are exemptions that require the 'public interest test' to be applied to them. Information that falls within this category will have to be disclosed unless it can successfully be argued that the public interest in withholding it is greater than the public interest in releasing it. (See appendix II).

### **8.5. Absolute Exemptions**

Where the information falls in the terms of the 'Absolute Exemptions', the SHA will decline to release it without considering the public interest (See appendix III)

## 8.6. Disproportionate exemption

If it is considered that the disproportionate exemption might apply, then the relevant department will be asked for an estimate of cost – no effort should be made to find the information at this stage. The estimate should instead be completed as a matter of urgency and the results should be notified to the FOI Manager within 48 hours. The applicant will then be contacted if the costs exceed the limit.

## 9. Procedure for Handling Requests

9.1. Requests for information must be put in writing to the SHA. Verbal requests for information may be dealt with but are not bound by the Freedom of Information Act and the requirements set out in the Act do not apply. Requests may be made by letter to the SHA or by e-mail via the Authority's website:

[http://www.yorksandhumber.nhs.uk/freedom\\_of\\_information](http://www.yorksandhumber.nhs.uk/freedom_of_information)

On receipt of a valid request under the terms of the Act, the FOI process is commenced and the deadline for completion of requests is 20 working days.

Where an applicant is unable to provide a request in writing, they may seek assistance by telephoning the SHA's Corporate Business team (0113-2952051 or by contacting the Patient Advice and Liaison Service (PALS) <http://www.pals.nhs.uk/cmsContentView.aspx?ItemID=932>

9.2. The procedure follows the diagram in Appendix IV.

## 10. Unclear requests

10.1. In the event the request is unclear the respondent will be asked to refine their request along with a timescale for them to respond. This should be within a few days and certainly in time to process the request within the 20 working day limit, if the request is refined. If it is not refined, or if there is no response, the request will be refused, engaging the exemption under S.12 (1).

10.2. FOI requests received by the Corporate Business team will be forwarded to the relevant directorate or hosted programme as soon as possible after receipt (usually within 48 hours). Where advice or assistance is needed by the receiving department, this should be sought from the Corporate Business team as soon as possible (ideally within 48 hours of the request being referred) to allow time, where appropriate, for

additional specialist advice (e.g. legal advice) to be obtained within the timescale for response. See Appendix I for responsibilities of individuals and groups.

## **11.FOIA Internal Reviews and Complaints to the Information Commissioner**

11.1. It is a requirement of the Freedom of Information Act 2000 (FOIA) that all public authorities bound by the Act implement arrangements for reviewing decisions and inform applicants of these arrangements. Requests for review (which are not complaints and therefore are not to be dealt with under the NHS Complaints Procedure) usually relate to refusals to disclose information but may also relate to the failure to confirm information is held or indeed any other part of the process. The process of review and right of recourse to the Information Commissioner must be included in any correspondence sent to the applicant, but in particular in any Refusal Notice under S.17 (1) of the Act which is sent to the applicant.

## **12.Requests for Review**

12.1. Any complaints from applicants about the Authority's Freedom of Information procedures or requests for review/ appeals against decisions not to supply information should be made in writing to the Chief Executive:

Bill McCarthy, Chief Executive, Yorkshire and the Humber SHA, Blenheim House, West One, Duncombe Street, Leeds LS1 4PL. Complaints will be dealt with in accordance with the principles and procedures set out in the SHA's Complaints Procedure

<http://www.yorksandhumber.nhs.uk/document.php?o=5131>

12.2. Applicants may request a formal internal review of any part of the process, including a decision not to disclose information, or to confirm whether information is held. Internal reviews will be undertaken by the Chief Executive, or a nominated director with no prior involvement in the handling of the original request. Every effort will be made to conduct an internal review within 20 days of the date of the request for review. In exceptional circumstances, where this is not possible, the applicant will be informed why additional time is needed.

12.3. Part VI of the Code of Practice made under Section 45 of the FOI Act sets out the procedure to be followed when an applicant complains about the Authority's response to a request. The Section 45 Code provides detailed guidance, in particular:

*The review procedure should provide 'a fair and thorough review of handling issues and of decisions taken pursuant to the Act...'*

The review should be impartial and undertaken by someone senior to the person who took the original decision where practicable, or if not, by someone different to the original decision maker, but who is trained and understands Freedom of Information.

It should enable a fresh decision to be taken on a reconsideration of all factors relevant to the issue.

The review should be as prompt, thorough, clear and simple as possible – a one stage procedure.

Records should be kept of all complaints and their outcomes and performance in handling complaints should be monitored.

Any action required as a result of the review should be carried out promptly.

If the original decision is upheld, the applicant must be informed of their right of appeal to the Information Commissioner.

12.4. Where applicants remain dissatisfied after the SHA has responded to a complaint or undertaken an internal review, in accordance with S.50 of the Act, they may apply to the Information Commissioner for a decision as to whether in any specified respect, the request for information has been dealt with in accordance with the Act.  
[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

12.5. Complaints about any aspect of the discharge of the SHA's obligations under the Act will be reported on a quarterly basis to the SHA's Information Management and Technology Strategy Group.

### **13. Fees**

13.1. The Freedom of Information Act 2000 requires public authorities to publicise its policies in relation to the charging of Fees and Disbursement under the Act.

13.2. Yorkshire and the Humber SHA operates according to the following principles:-

- Unless the amount of information requested clearly falls outside the limit set by the Freedom of Information Act 2000 and the Data Protection Act 1998 then the SHA will not normally levy any Fee for dealing with the request. (However see below)
- Where the statutory cost limit as established in the Regulations is clearly exceeded, then the SHA will provide the applicant with an estimate of costs and will normally ask the applicant to refine their request so as to fall within the cost limit. Where an applicant fails to

respond to such a request, or the request still falls outside the cost limit, the request will normally be refused under the exemption provided by S.12.(1) of the Act.

- As a matter of policy, the SHA does not normally allow applicants to pay for information where costs exceed the regulatory limit. In the exceptional circumstance that payment is agreed, a Fees Notice will be issued and the complete cost of dealing with the request in accordance with the provisions of the FOIA and the Fees Regulations will be charged.
- If a Fees Notice is issued and no response is received, within 12 weeks the request for information will be considered to have lapsed.

## 14. Charges

14.1. It is the SHA's responsibility to disclose information in the format it is held and there will be no charge for information which can be accessed via our website, can **be readily provided electronically** or where it is provided in a single hard copy. However where other formats or copies are requested then the following charges will apply which must be paid for before the information is provided:-

### Photocopying

- |   |               |
|---|---------------|
| 1. One hard copy of the requested information | Free          |
| 2. Multiple copies                            | 10p per sheet |

### Reformatting

- |                        |                     |
|------------------------|---------------------|
| 1. Re-formatting on CD | £5.00 per CD        |
| 4. Other formats       | Cost on application |

## 15. Retrieving and collating information

15.1. For lengthy burdensome requests for information that would exceed the statutory limit under which public authorities are expected to provide information without charge, the SHA estimates costs based on £25.00 per hour. If the estimate exceeds £450.00 in total (18 hours at £25.00 per hour) then the exemption can be claimed.

15.2. Should the SHA decide in exceptional circumstances that an applicant should be allowed to pay for information that exceeds the cost limit, it is the complete cost of location, retrieval, collation etc which is chargeable not that which falls outside the £450.00 cost limit.

## 16. Training

16.1. The SHA has **mandated and** provided **annual** training for all staff on Information Governance, including responsibilities under the Freedom of Information Act.

## 17. Review and Monitoring Process

17.1. This Policy will be reviewed **annually**.

## 18. Related Documents

- Freedom of Information Act 2000
- Data Protection Act 1998
- Environmental Information Regulations 2005
- Yorkshire and the Humber SHA's Publication Scheme
- SHA Records Management Policy and Retention Schedule
- SHA Information Governance Strategy & Policy
- SHA Procedure for Archiving Paper Files
- SHA Code of Conduct in Respect of Confidentiality (under review – to be replaced by Confidentiality Policy Statement)
- NHS Code of Practice on Openness
- Lord Chancellors Code of Practice on the Management of Records under FOI Act 2000
- NHS Confidentiality Code of Practice

## Appendices

- |     |   |
|-----|---|
| I   | Responsibilities                                    |
| II  | Qualified Exemptions                                |
| III | Absolute Exemptions                                 |
| IV  | Flow Chart - Process for Responding to FOI requests |

## **Appendix I**

### **Responsibilities for the Discharge of Obligations under the FOI Act**

#### **Chief Executive**

- As Accountable Officer, the Chief Executive is responsible for ensuring that the Authority is compliant with its duties under the FOI Act;
- Receives and responds to complaints about any aspect of the SHA's processes in support of the FOI Act;
- As required, undertakes internal reviews of the response to FOI requests in accordance with procedures set out in Part VI of the Code of Practice made under Section 45 of the FOI Act.

#### **SHA Board**

- Receives an annual report on the discharge of obligations under the Act

#### **Director of Communications and Public Relations**

- Lead director for FOI
- Ensures that organisational policies and procedures are in place to enable compliance with all aspects of the Act
- Ensures that all staff are aware of their personal responsibilities for compliance with the Act and adhere to policies and procedures

#### **FoI Lead**

- Receives and responds to requests for information
- Develops and maintains the Publication Scheme and Guide to Information
- Participates in the network of SHA FOI leads and liaises with other NHS organisations' FOI leads, for example in respect of 'round robin' requests for information
- Liaise and work with other functions responsible for information activities, including Caldicott Guardian and Information Governance lead
- Undertakes annual training identified by the SHA as appropriate for FoI staff
- Informs all SHA staff of the organisation's responsibilities in respect of the FOI Act and assists them to comply
- Prepares quarterly reports to the IM&T Strategy Group and annual reports to the SHA Board highlighting resource, performance and compliance issues

#### **IM&T Strategy Group**

- Receive regular FOI performance reports that highlight:
  - Numbers of FOI requests received
  - Numbers responded to within the 20 day limit and the reasons for any exceeding the statutory deadline
  - The justification for the application of any exemptions
  - Details of any complaints made about any response or the process itself
  - Details of any requests that have been escalated to the Information Commissioner's Office by the applicant.

Based on these reports the IM&T Strategy Group will agree any necessary improvement plans and where appropriate, make recommendations to the SHA's Senior Management Team, for example regarding resource needs.

### **All SHA Staff**

- Undertake Information Governance training relevant to their role as mandated by the SHA and which includes summary of the rights and duties conferred by the FOI Act.
- Be aware of the SHA's process for dealing with FOI requests and where to refer any requests
- Comply with the SHA's Records Management policies and procedures and be aware of their own responsibilities for the creation of records (information) that is liable to disclosure
- Respond promptly and comprehensively to any requests from the Corporate Business Team in respect of information held within their business area

## Appendix II

### Qualified Exemptions (require the application of the Public Interest test)

<b>Section 22</b>	Information intended for future publication
<b>Section 24</b>	National Security
<b>Section 26</b>	Defence
<b>Section 27</b>	International Relations
<b>Section 28</b>	Relations within the United Kingdom
<b>Section 29</b>	The economy
<b>Section 30</b>	Investigations and proceedings conducted by public authorities
<b>Section 31</b>	Law enforcement
<b>Section 33</b>	Audit functions
<b>Section 35</b>	Formulation of Government Policy etc.
<b>Section 36</b>	Prejudice to effective conduct of public affairs
<b>Section 37</b>	Communications with Her Majesty etc and honours
<b>Section 38</b>	Health and safety
<b>Section 39</b>	Environmental information as this can be accessed through the Environmental Information Regulations
<b>Section 40</b>	Personal information
<b>Section 42</b>	Legal professional privilege
<b>Section 43</b>	Commercial interests

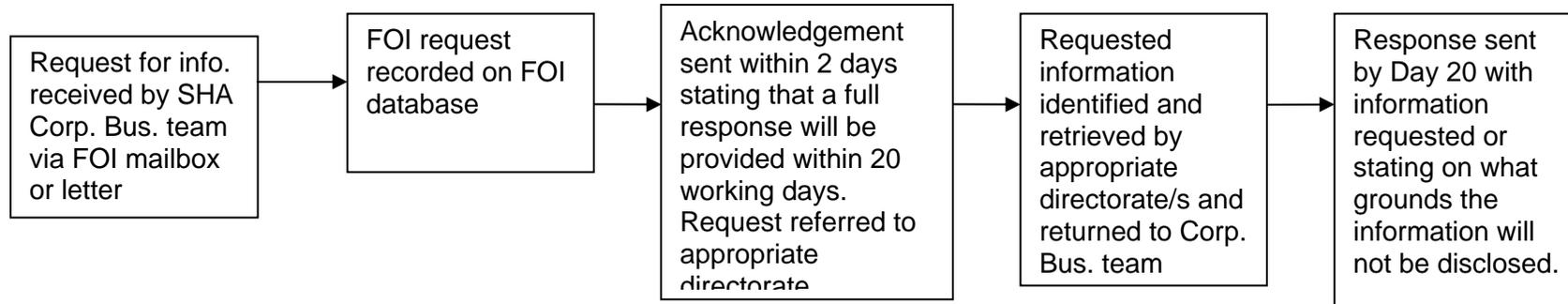
## Appendix III

### Absolute Exemptions

<b>Section 21</b>	Information accessible to applicant by other means
<b>Section 23</b>	Information supplied by, or relating to, bodies dealing with security matters
<b>Section 32</b>	Court records etc.
<b>Section 34</b>	Parliamentary privilege
<b>Section 36</b>	Prejudice to effective conduct of public affairs
<b>Section 40</b>	Personal Information
<b>Section 41</b>	Information provided in confidence
<b>Section 44</b>	Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute a contempt of court.

## Appendix IV

### Process for responding to a request under the Freedom of Information Act



#### **Note**

FOI Requests must be made in writing.

If the request is 'normal business' as defined in the FOI Policy, the appropriate individual directorate should deal with it themselves.

FOI requests received within the SHA or by any hosted organisation must be notified and forwarded to the Corporate Business team immediately on receipt.

**Note:** It is the responsibility of the relevant directorate to produce the information requested as soon as possible within the timescale set by the Corp. Business Team.

The Corp. Business team will produce the final letter for sign off by the Director of Communications & Public Relations.