

**Staff Procedure Manual**

**For the**

**Freedom of Information Act 2000**

*This procedure will be reviewed on 15/10/2005.  
Please check with Susan O'Connell for amendments and  
additional copies*

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## **1.0 INTRODUCTION**

### **1.1.0 Freedom of Information Act 2000**

1.1.1 The Government is committed to greater openness in the public sector, a commitment supported by the Gloucestershire Partnership NHS Trust. The Freedom of Information Act 2000 will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered.

1.1.2 The main features of the Freedom of Information Act 2000 are:

- a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions;
- in cases where the information is exempt from disclosure, except where an absolute exemption applies, a duty on public authorities to:
  - (i) inform the applicant whether they hold the information requested, and
  - (ii) communicate the information to him or her, unless the public interest in maintaining the exemption outweighs the public interest in disclosure;
- a duty on every public authority to adopt and maintain a Publication Scheme;
- a new office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
- a duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

### **1.2.0 Lord Chancellor's Code of Practice**

1.2.1 This document is based upon the Code of Practice issued by the Lord Chancellor pursuant to section 45(5) of the Freedom of Information Act 2000<sup>1</sup>. It is designed to support implementation of the Freedom of Information Act 2000, referred to hereafter as the Act, and ensure compliance with Code of Practice.

1.2.2 A failure to comply with the Code of Practice may result in action against the Trust by the Information Commissioner who, under section 47 of the act, has a duty to promote the observance of the Code by public authorities.

### **1.3.0 Duty to Provide Advice and Assistance**

1.3.1 Section 16 of the Act places a duty on public authorities to provide advice and assistance to applicants. These procedures will facilitate

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<sup>1</sup> 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

compliance with this duty, which is again enforceable by the Information Commissioner. In the discharge of this duty the Trust will take account of other Acts of Parliament that may be relevant to the provision of advice and assistance to applicants, e.g. the Disability Discrimination Act 1995 and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000).

1.3.2 The Freedom of Information and Data Protection Manager (see 1.6.0) will be responsible for the discharge of this duty in respect of this Trust.

#### **1.4.0 Aims and Scope of the Operational Manual**

1.4.1 In common with the Code of Practice, the aim of this manual is to:

- facilitate the disclosure of information under the Act by setting out good administrative practice that the Trust will follow when handling requests for information, including, where appropriate, the transfer of a request to a different authority;
- protect the interests of applicants who apply to the Trust by setting out standards for the provision of advice which it would be good practice to make available to them and to encourage the development of effective means of complaining about decisions taken under the Act;
- ensure that the interests of third parties who may be affected by any decision to disclose information are considered by the Trust by setting standards for consultation.

1.4.2 All staff must be aware of and adhere to these procedures which apply to all individuals engaged in the discharge of the duties of this Trust. All staff will be required to comply with the requirements of these procedures; failure to do so may lead to action under the Trust's disciplinary policy and procedure.

1.4.3 The Freedom of Information and Data Protection Manager (see 1.6.0) will review these procedures on at least an annual basis.

#### **1.5.0 Publication Scheme or general right of access?**

1.5.1 Requests for information under the Act will arise from two main sources, through the Trust's Publication Scheme or through the general right of access to recorded information held by public authorities.

1.5.2 Under section 19 of the Act all public authorities are required to publish and maintain such a scheme, or adopt a model Publication Scheme approved by the Information Commissioner under section 20 of the Act. A Publication Scheme is a complete guide to the information routinely published by a public authority. It describes the classes or types of information about our organisation that we make publicly available.

1.5.3 The Trust has adopted a model Publication Scheme for NHS Trusts. The Scheme is accessible through the Trust's website at [www.partnershiptrust.org.uk](http://www.partnershiptrust.org.uk). Hard copies are also available at all

public libraries, hospital libraries and Trust headquarters reception. The FoI Office (see 1.6.0) will review the Publication Scheme for the accuracy of the information it contains on an annual basis. The Information Commissioner will formally review the Publication Scheme every four years. All NHS organisations are required to have an operational Publication Scheme from 31<sup>st</sup> October 2003.

- 1.5.4 A Publication Scheme is essentially a proactive tool for the dissemination of information relating to the business of a public authority. Requests that specifically cite that the information the applicant requires has been identified in the Trust's Publication Scheme may be received verbally or in writing (including through electronic means).
- 1.5.5 The general rights of access to recorded information by individual applicants do not come into force until 1<sup>st</sup> January 2005. These requests *must be made in writing* (which includes a request transmitted by electronic means that is received in legible form and is capable of being used for subsequent reference). These requests will cover information that is not listed in the Publication Scheme.
- 1.5.6 Requests from either source will be dealt with utilising the procedures outlined below.

#### **1.6.0 Freedom of Information Contact Details**

1.6.1 The Freedom of Information and Data Protection Manager is responsible for rights of access to information under the Access to Data Protection Act 1998 and Freedom of Information Act 2000.

1.6.2 The Freedom of Information and Data Protection Manager is Susan O'Connell. She can be contacted at:

Susan O'Connell, Freedom of Information & Data Protection Manager  
Gloucestershire Partnership NHS Trust  
IT Services, Rikenel, Montpellier, Gloucester, GL11NL  
Tel: 01452 89 1060  
Fax: 01452 891014  
E-mail: [information.access@glos.nhs.uk](mailto:information.access@glos.nhs.uk)

1.6.3 Applications for information will be primarily dealt with by the FoI Office, which is managed by the Freedom of Information and Data Protection Manager.

### **1.7.0 When not to use this Manual**

1.7.1 Information is made available by the Trust to stakeholders through staff on a daily basis. It would be impractical and overly bureaucratic to attempt to record this activity for FOI purposes.

1.7.2 It is not appropriate to use this Manual and refer issues to the FOI Office where, for example:

- you are providing information leaflets and other reference material that has already been approved for use by the Trust. This would also include the Publication Scheme, Trust Board papers, Annual Reports, the Corporate Plan and service information leaflets.
- you are discussing an information leaflet or other reference material with another individual, helping them decide on their options and signposting them to a more appropriate source of help.
- you are providing information on the current care and treatment of an individual using established practice – for example, sharing care plans with the service user as part of normal clinical interactions.
- it is a request to view personal information, which should be referred to Health Records, as a subject access request under the Data Protection Act.

1.7.3 Remember that all **written** requests for information should be treated as FOI requests, so you must use this Manual for guidance. If you are in doubt at any stage about how you should deal with any information request, contact the FOI Office for help.

### **1.8.0 Sections of the Manual which Apply to All Staff**

1.8.1 Most of the subsequent sections in this manual apply to the FOI Office. However, there are a number of sections which **all staff** should adhere to. These are:

- 1.7.0 When Not to Use This Manual
- 2.1.0 Publication Scheme Applications
  - 2.1.1 Receiving enquiries
  - 2.1.2 Notifying the FOI Office
- 2.2.0 General Right of Access Applications
  - 2.2.1 Receiving enquiries
  - 2.2.2 Notifying the FOI Office
  - 2.2.3 Assisting with verbal enquiries
  - 2.2.5 All written requests
- 3.2.0 Stage 2 – Accessing the Information
  - 3.2.1 Identifying the Source of Information
  - 3.2.2 Identifying the Information
  - 3.2.3 Supplying the FOI Office with details about accessing the information
- 3.3.0 Stage 3 – Providing the Information
  - 3.3.5 Providing the Information to the FOI Office
- 9.0 Complaints and Feedback

## **2.0 PROCEDURE FOR DEALING WITH THE INITIAL APPLICATION FOR INFORMATION**

### **2.1.0 Publication Scheme Applications**

2.1.1 The Publication Scheme directs all applicants who require assistance in obtaining information from the Trust to the Publication Scheme coordinator. As the Publication Scheme also lists the contact details of other key people within the Trust, they may also receive enquiries from the Publication Scheme. Such enquiries are likely from 31<sup>st</sup> October 2003. These requests may be written or verbal.

2.1.2 In the event that a request arising from the Publication Scheme is directed to another individual other than the Fol Office (see 1.6.0) they should :

- take the name and contact details of the applicant.
- ascertain what information the applicant wants and record this.
- inform the enquirer that their request will be referred to the Freedom of Information and Data Protection Manager
- provide the enquirer with the contact details of the Freedom of Information and Data Protection Manager, and inform them that their enquiry will be responded to within a maximum of twenty working days.
- telephone the Fol Office as soon as possible and provide:
  - The applicant's name, address and phone numbers
  - Details of the information they require
  - Date received

The original written request (if appropriate) must be sent to the Fol Office as soon as possible. The reason this is required speedily is that there is a statutory requirement to respond within 20 working days.

2.1.3 Once the Fol Office has received the request the procedure for processing requests for information applies.

### **2.2.0 General Right of Access Applications**

2.2.1 Applications under the general right of access to recorded information will pertain to information not listed in the Publication Scheme. These requests may be retrospective in that they may seek information held by the organisation that is no longer being actively used or has been archived. Such requests are permissible under the Act from 1<sup>st</sup> January 2005. See 1.7.0 for information requests that need not be treated as Fol Requests, but are part of normal working or should be referred to Health Records.

2.2.2 As stated above, these applications must be received in writing (which includes a request transmitted electronically). They will usually be directed to the Freedom of Information and Data Protection Manager (see 1.6.0) although another individual working with the Trust may also receive them. In such circumstances, the individual must telephone the Fol Office as soon as possible and provide:

- The applicant's name, address and phone numbers
- Details of the information they require
- Date received

The original written request must be sent to the FoI Office as soon as possible. The reason this is required speedily is that there is a statutory requirement to respond within 20 working days.

- 2.2.3 If an applicant wishes to access information under the general right of access but has not put their request in writing they should be referred to the FoI Office (see 1.6.0), for the Provision of Advice and Assistance to Applicants (see 5.0 below).
- 2.2.4 Once the FoI Office has received the applicant's request the procedures for processing requests for information will be activated.
- 2.2.5 All written requests for information to the Trust must, from 1<sup>st</sup> January 2005, be treated as if they are a FOI request.

### **3.0 PROCEDURE FOR PROCESSING REQUESTS FOR INFORMATION**

#### **3.1.0 Stage One - Upon Receipt of a Request**

3.1.1 Once the FOI Office receives an applicant's request for information the following information will be recorded by the Trust, using the Tracking System developed for the purpose:

- Request identifier (generated)
- Name of applicant
- Contact details of applicant (e.g. address, telephone numbers, email address)
- Date received by the Trust
- Date registered by FOI Office
- Description of information requested
- Class of information requested
- Initial recipient name and contact details

A summary of all the information that the Trust will record for the purposes of monitoring compliance with the Act can be found in Appendix Two.

- 3.1.2 The FOI Office will write (electronic contact is appropriate if the applicant has made contact by electronic means) to inform the applicant that their request has been received and is being processed. This will usually be done within a few days. For simple requests, the information will be provided with the acknowledgement, and the FOI request closed. A record will be kept of this contact.
- 3.1.3 If the FOI Office has sufficient information to respond to the request they will inform the applicant in the letter of acknowledgement that their request will be processed within a maximum of twenty working days. They will also inform the applicant in writing of any fees or charges, if known, that are payable for the provision of the information and that no information will be provided unless the fee or charge is paid within three months. In regard to the general right of access from 1<sup>st</sup> January 2005, this will constitute the issue of a Fees Notice as described in section 9 of the Act. The Publication Scheme will make clear whether there will be any charges for the information provided through that mechanism. Charges and fees are addressed in 8.0 below.
- 3.1.4 If the request is an application for the applicant's Health Records or other personal information, the FOI request will be treated as a Subject Access request under the Data Protection Act, and will follow procedures appropriate to that Act. A letter will be sent (see 3.4) to the applicant stating that the request will be treated as though it had been made under the Data Protection Act. The FOI request will be closed, and the Subject Access request will be processed.
- 3.1.5 If the request is not valid, and it is not clear what information is being requested, for example, where it does not contain an adequate description of the information requested, the FOI Office will act under

the Provision of Advice and Assistance to Applicants (see 5.0). If it is still not clear, the FOI Office will send a letter (see 3.4) to the applicant asking them to reformulate the request and make a new application. The FOI request will be closed at this point.

- 3.1.6 If the request is considered “vexatious or repeated”, a letter will be sent (see 3.4) stating that the request is refused. This is only to be used where there is clear evidence of a vexatious intent, or where the applicant has received the information before within a reasonable timeframe. The Trust will always try to accommodate requests unless there is a definite nuisance factor. If the applicant has previously received such a letter for the same request, no further letters will be sent.
- 3.1.7 If the information requested is not held by the Trust, but is held by another Public Body, the FOI Office may be able to transfer the request to that body (see 6.0) after confirming with the applicant. It is possible that part of the request will be transferred and part continued to be dealt with by the Trust. Where a request, or part of a request, is transferred, a letter will be sent (see 3.4) to the applicant stating that the request (or part) will be transferred to the other Public Body.
- 3.1.8 If the information requested is not held by the Trust, but is held at another Public Body, and the request cannot be transferred, a letter will be sent (see 3.4) to the applicant stating where the information is held and giving the contact details.
- 3.1.9 If the information requested is not held by the Trust, and it is not known where the information is held, a letter will be sent (see 3.4) to the applicant stating that the Trust cannot help.
- 3.1.10 If the FOI Office believes that any of the information requested is exempt from disclosure under Part II of the Act, the Procedure for Dealing with Exemptions will be invoked (see 4.0). The information requested will be assessed to see if it is exempt, or potentially exempt, from the provisions of the Act (see 4.0). The applicant will be notified of any exemptions as described in 3.4.
- 3.1.11 If the information requested is already publicly available, a letter will be sent (see 3.4) to the applicant stating that fact, and providing details of how the applicant can acquire the information.

### **3.2.0 Stage Two - Accessing the Information**

- 3.2.1 The FOI Office will identify who holds the information that the applicant has requested. They will, as quickly as possible, identify and contact the person(s) in the Trust who are most appropriately placed to meet the requirements of the applicant (usually the person in charge of the department, or the team manager). The FOI Office will keep a record

of this contact, and of any subsequent contacts. The FOI Office will ensure that the person contacted understands that the information must be complete, that withholding/altering records is a criminal offence, and that the information may subsequently be published on the Publication Scheme.

- 3.2.2 Upon receipt of an information request from the FOI Office, Trust staff will locate and determine the costs of accessing and the general content of the information requested. If there is a delay in locating the information, the FOI Office must be informed immediately, to ensure that the applicant is kept informed of any delay. The FOI Office will keep a record of these contacts.
- 3.2.3 The cost and general content, and possibly the requested information (if it is straightforward to access), will then be forwarded to the FOI Office. The Trust staff person will indicate whether there is any concern about releasing the information, e.g. contains personal information, or may be contentious. Note that in order to satisfy a request, there may be more than one items of information, possibly from different people in the Trust.
- 3.2.4 The FOI Office will review the details provided in respect of any exemptions. If any exemptions are applicable, the Procedure for Dealing with Exemptions will be activated (see 4.0).
- 3.2.6 The FOI Office will review the details in order to identify whether a 3<sup>rd</sup> party should be consulted and consent required before it can be provided. See section 7, Consultation with 3<sup>rd</sup> Parties. The applicant will be kept informed of any developments in this process, as described in section 7.
- 3.2.7 The FOI Office will review the details to determine whether any fees are payable before providing the information to the applicant. If fees are payable the applicant will be issued with a Fees Notice as described in 3.4.
- 3.2.8 In accordance with sections 12 and 13 of the Act, if the FOI Office estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations they will notify the applicant in writing of the estimated cost. The FOI Office will initiate the Provision of Advice and Assistance to Applicants (see 5.0) to investigate ways of bringing costs within appropriate limits. If it is not possible to comply with the request within appropriate limits then a Fees Notice will be issued as described in 3.4.

### **3.3.0 Stage Three - Providing the Information**

- 3.3.1 If the fee or charge is not paid within two months from the day on which the applicant receives the Fees Notice or is informed of the charge, a reminder letter is sent.

- 3.3.2. If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge the FOI Office will activate the Provision of Advice and Assistance to Applicants (see 5.0). If the applicant still refuses to pay a Fees Notice after advice and assistance is offered, a letter will be sent stating that the request is closed because of failure to pay (see 3.4).
- 3.3.3 Details of fees paid will be received from Accounts Receivable. (to be checked).
- 3.3.4 If the fee has been received, or no further fees or charges are payable (see 8.0), and the request has not been refused for any reason, the FOI Office will assemble the information requested by the applicant and send it directly to them.
- 3.3.5 The person in the Trust who holds the information (see 3.2.1) will be contacted and will provide the information to the FOI Office.
- 3.3.6 The FOI Office will provide information to applicants by any one or more of the following means, namely:
- (a) as a copy of the information in permanent form or another form acceptable to the applicant.
  - (b) through the provision of a reasonable opportunity to inspect a record containing the information.
  - (c) the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.
- 3.3.7 The FOI Office will consider all the circumstances of the request for the communication of information by a particular means, including the cost of doing so. If the FOI Office determines that it is not reasonably practicable to comply with any preference for the provision of the information as requested by the applicant in their request, they will notify the applicant of the reasons for this determination. The information will then be provided by such means as which the FOI Office deems to be reasonable. In the discharge of this function the FOI Office will have regard for other statutory obligations upon the Trust such as those established under the Disability Discrimination Act 1995.
- 3.3.8 The FOI Office will record:
- (a) the date upon which the information was provided to the applicant and
  - (b) the form in which the information was requested

(c) the format in which the information was provided.

3.3.9 The FOI Office will review the information provided and assess whether it should be included on the Publication Scheme. If so, the FOI Office will note it for inclusion.

### **3.4.0 Communications with the Applicant**

3.4.1 At all appropriate points in the process, communications will be made to the applicant to inform them of actions required by them (e.g. fee payment), decisions made (e.g. exemption applied), and to generally keep them informed of progress.

3.4.2 The Communication will be by whatever method is indicated by the Applicant. This will usually be by letter or email.

3.4.3 Information about all communications with applicants will be recorded. Where possible (e.g. for letters and emails), the actual communication will be recorded, to provide a history of correspondence with the applicant.

3.4.4 Communications will follow the templates determined for the Trust, but will be amended where necessary in the light of the circumstances of the request.

3.4.5 The following is a list of anticipated communications. Note this list is not exhaustive:

- Acknowledgement, *to acknowledge receipt of request*
- Request Reformulation, *to state that the request for information is not understood, or is too broad, and should be reformulated*
- Data Protection Request, *to state that the request is exempt under FOI, but will be treated as a Data Protection Subject Access Request*
- Refusal of Request due to vexatious / repeated, *to state that the request for information is exempt, because the requestor has made the request before or is being vexatious*
- Refusal of Request as information is already publicly available, *to notify applicant that the information requested is publicly available, so will not be provided, and where it can be found*
- Refusal of Request as 3<sup>rd</sup> Party refused to disclose, *to notify applicant that the information requested concerns a third party and that they have refused to disclose*
- Fee Notice, *to notify applicant that the information requested is subject to a fee, and that they should send it*
- Refusal of Request due to Exemption, *to notify applicant that the information requested is subject to an absolute exemption under the FOI Act, and will not be provided*

- Refusal of Request due to Exemption, following review, to *notify applicant that the information requested is subject to an exemption under the FOI Act, has been assessed under the Public Interest, but will not be provided*
- Refusal of Request as another Authority holds the information, to *notify applicant that the information requested is held by another authority and that they should contact them*
- Request Transferred to another Authority, to *notify applicant that the information requested is held by another authority and has been automatically transferred to them*
- Provision of Information, to *notify applicant that the information requested is included*
- Excessive costs notification, to *notify applicant that the information requested is difficult to provide, so the cost will be excessive*
- Response to Complaint, to *notify applicant that the complaint has been reviewed, and the results*
- Fee Reminder Letter, to *notify applicant that the fee has not yet been received, and that the request will be closed if no fee is received*
- Delay in Response Letter, to *notify applicant that information will not be available in the timeframe anticipated, and is still being assembled*

#### **4.0 PROCEDURE FOR DEALING WITH EXEMPTIONS**

- 4.1 The FOI Office may determine that the information requested is subject to an Exemption under the FOI Act. Certain absolute exemptions may have already been dealt with elsewhere in this Procedure guide, such as “Information accessible to applicant by other means” (section 21 of the Act), or “Personal Information (where disclosure may contravene the Data Protection Act 1998)” (section 40 of the Act).
- 4.2 If this is an absolute exemption, or a qualified exemption where there is no doubt of its application, a letter will be sent to the applicant stating the reason for the refusal, the exemption in question and why it applies, and the Trust’s complaints procedures and of their right to complain to the Information Commissioner (see 9.0). The FOI Request will be closed.
- 4.3 If the FOI Office anticipates that it will take more than twenty working days to reach a decision as to whether any part of the information requested by the applicant is exempt under Part II of the Act they will notify them that no decision as to the application of an exemption has been reached. They will provide a realistic and reasonable estimate of the date by which they expect that a decision will have been reached. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology. If the FOI Office finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. A record will be kept of instances where estimates are exceeded, and where this happens more than occasionally, steps will be taken to identify the problem and rectify it.
- 4.4 If a qualified exemption is being applied the FOI Office will, either in the notice issued under 4.3 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Trust holds the information, or
  - (b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- The statement will not involve the disclosure of information which would itself be exempt information.
- 4.5 If the FOI Office believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit or the request is demonstrably repeated or vexatious, the notice will state that fact. If the Trust is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17

has already been issued to the applicant stating this fact, a further notice is not required.

- 4.6 The FoI Office will keep records of all notices issued to refuse requests for information. These will be subject to periodic review to maintain consistency in decision making.
- 4.7 When implementing this procedure, the FoI Office will seek advice from those person(s) who hold the information that the applicant has requested. If it appears contentious, more senior managers (e.g. care group managers, etc) will be contacted, stating the information has been requested. If one of them states the information should not go out, then a more senior assessment is required, e.g. from the executives

## **5.0 PROVISION OF ADVICE AND ASSISTANCE TO APPLICANTS**

### **5.1.0 Freedom of Information and Data Protection Manager**

5.1.1 The Freedom of Information and Data Protection Manager (see 1.6.2) will act as the key contact point for applicants for the Trust. :

5.1.2 The FoI Office will provide advice and assistance to potential and actual applicants for information under the Act. The advice and assistance will include:

- guidance on how to access information from the Trust under the general right of access and the Publication Scheme,
- informing the applicant of the progress of their request,
- explaining the basis upon which any charges or fees have been levied or exemptions applied (this is in addition to Fees Notices and notice issued under s17 of the Act),
- suggesting other routes through which applicants may wish to access information, including from other public authorities,
- obtaining additional information to assist the Trust in meeting the information needs of the applicant,
- consulting with third parties as required,
- identifying sources of independent help for applicants, and,
- directing applicants to the complaints procedure and/or Information Commissioner if they are dissatisfied with the discharge of the duties of the Trust under Part I of the Act.

The text below explores some specific areas in which the FoI Office may provide advice and assistance to applicants.

5.1.3 A record will be kept of all instances, including those described below, where the FoI Office has provided advice and assistance to (potential) applicants.

5.1.4 The FoI Office will also act as a source of advice and support for Trust staff in regard to the Act.

### **5.2.0 Additional Advice and Assistance for Applicants under the General Right of Access**

5.2.1 Where a potential applicant is unable to frame their request in writing, the FoI Office will take reasonable steps to ensure that appropriate assistance is given to enable that individual to make a request for information.

5.2.2 Appropriate assistance might include:

- advising the person that another person (including Trust staff) or agency (such as a Citizens Advice Bureau or other provider of information, advice or advocacy) may be able to assist them with the application, or make the application on their behalf;
- referring the individual to the Trust's Patient Advice and Liaison Service (PALS);

- in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

5.2.3 This list is not exhaustive, and the FoI Office will discuss the options available to the potential applicant with them, ensuring flexibility offering the advice and assistance most appropriate to the circumstances of the potential applicant.

### **5.3.0 Applicant has provided insufficient information to fulfil their request**

5.3.1 Where the applicant has not described the information sought in a way that would enable the Trust to identify or locate it, or the request is ambiguous, the FoI Office will contact them. They will provide assistance to the applicant to enable him or her to describe more clearly the information requested.

5.3.2 The purpose of this contact will be to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. The FoI Office will take care not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, or even in a face-to-face contact where more information is needed to clarify what is sought.

5.3.3 Appropriate assistance in this instance might include:

- providing an outline of the different kinds of information which might meet the terms of the request;
- providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
- providing, wherever possible, identifiers such as a file reference number, or a description of a particular record so that an applicant can decide if the information is appropriate for their needs;
- providing a general response to the request setting out options for further information which could be provided on request.
- disclosing any information relating to the application which has been successfully identified and found for which the Trust does not wish to claim an exemption

5.3.4 This list is not exhaustive, and the FoI Office will be flexible in offering advice and assistance most appropriate to the circumstances of the applicant. The Trust recognises that applicants cannot reasonably be

expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.

5.3.5 If the applicant still fails to describe the information requested in a way which would enable the Trust to identify and locate it, the FoI Office will explain to the applicant why the Trust cannot take the request any further and provide details of the complaints procedure (see 9.0) and the applicant's rights under section 50 of the Act.

5.3.6 The twenty working day time limit is not activated until the applicant has provided sufficient information for the Trust to supply them with the information they require.

#### **5.4.0 Applicant is unprepared or unable to pay a charge or fee or fees exceed appropriate limit**

5.4.1 In some circumstances an applicant may indicate that he or she is not prepared or is unable to pay the fee notified in any fees notice or the charge levied for the information they have requested (see 8.0). In such cases the FoI Office will consider whether there is any information that may be of interest to the applicant that is available free of charge. They will contact the applicant and explore ways in which the fee or charge may be reduced. For example by:

- providing information electronically instead of in hard copy or
- inviting the applicant to view the information and take their own notes or to select the information they feel to be most relevant

5.4.2 Under section 12(1) and regulations made under section 12(4) of the Act the Trust is not obliged to comply with a request for information because, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold). In such circumstances, the Trust has three options:  
(a) to refuse the request on the basis that it exceeds the cost threshold;  
(b) to charge, under section 13 of the Act, for the provision of the information;  
(c) to seek a means by which information could be provided within the cost ceiling.

5.4.3 In the event of a request exceeding the cost ceiling, the FoI Office will, with the applicant, seek a way in which the information can be provided within the cost ceiling and/or examine with them what information could be provided within the cost ceiling. If this is not possible or if the applicant still wishes to pursue their original request, the FoI Office will ask the applicant whether or not they would be willing to pay the full fees for the information they requested.

5.4.4 If the applicant is willing to pay the full fees for the information they have requested a Fees Notice will be issued. If the applicant is unwilling to pay the full fees a letter stating that the information cannot be provided will be sent. The applicant will also be informed of their

rights to appeal under the complaints procedure and section 50 of the Act (see 9.0).

**5.5.0 Vexatious or repeated requests**

5.5.1 The FoI Office will not provide assistance to applicants whose requests are vexatious or repeated, as defined by section 14 of the Act.

5.5.2 In such circumstances, the FoI Office should be able to demonstrate that the applicant's request is vexatious or repeated based upon the monitoring data that they have collected.

**5.6.0 Requests which appear to be part of an organised campaign**

5.6.1 The Trust may receive a number of related requests that, under section 12(1) and regulations under section 12(4), take the cumulative cost of compliance over the "appropriate limit" as prescribed in Fees Regulations.

5.6.2 In such circumstances as described in 5.6.1, the FoI Office will consider whether the information could be disclosed in another, more cost effective, manner. For example, the information that has been requested could be published on the Trust's website, with the applicants being notified of this, thus bringing the cost within the appropriate limit.

## **6.0 TRANSFERRING REQUESTS FOR INFORMATION**

- 6.1 If the Trust 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 another public authority, the FoI Office will oversee the transfer of that request to the other public authority. If, after investigation, the FoI Office finds that the Trust holds some of the information requested, a transfer will be made in respect of the information that the Trust does not hold (but is held by another public authority).
- 6.2 The "holding" of information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act). In short, if the Trust holds the information, whether or not the Trust has produced it, the obligation to confirm or deny and to subsequently provide the information remains the same as if the Trust had produced the information.
- 6.3 The Trust will deal with all initial requests for information in accordance with the procedure described in 3.1.0 above. When it becomes apparent to the FoI Office that the Trust does not hold all or part of the information requested they will advise the applicant of this fact.
- 6.4 If the FoI Office believes that some or all of the information requested is held by another public authority, they will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:
- contacting the applicant and informing him or her that the information requested may be held by another public authority;
  - suggesting that the applicant re-applies to the authority which the Trust believes to hold the information;
  - providing him or her with contact details for that authority.

These will be the options that will be offered first to applicants whose information requests cannot be fulfilled in full or in part by the Trust.

- 6.5 In some cases the FoI Office may consider it to be more appropriate to transfer the request to another authority in respect of the information which the Trust does not hold. In such cases, the FoI Office will consult the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether they should transfer the request to it. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information. If this course of action is appropriate and is pursued, the applicant will be informed of this, and if they consent to the transfer, will be updated on the progress of the transfer by the FoI Office. The applicant will also be informed that they reserve the right to make an application to the other authority themselves, as described in 6.4.

- 6.6 Where a request or part of a request is transferred from one public authority to another, the receiving authority must comply with its obligations under Part I of the Act in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the receiving authority receives the request.
- 6.7 All transfers of requests should take place as soon as is practicable, and the applicant should be informed as soon as possible once this has been done. The target time for such transfers by the Trust to another public authority will be twenty working days.
- 6.8 Where the FoI Office is unable either to advise the applicant which public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority they will should consider what advice, if any, they can provide to the applicant to enable him or her to pursue his or her request. This may include referral to not-for-profit sector information and advice providers, such as the Citizens Advice Bureau, or to the Information Commissioner.
- 6.9 A record will be kept of all activity associated with the transfer of requests for information to other public authorities.

## **7.0 CONSULTATION WITH THIRD PARTIES**

### **7.1.0 Where a request affects legal rights of a third party**

7.1.1 In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party. This may arise where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998 ("the DPA"). Unless an exemption provided for in the Act applies in relation to any particular information, the Trust is obliged to disclose that information in response to a request.

7.1.2 In some cases disclosure of information cannot be made without the consent of a third party. For example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption at section 41 of the Act would apply. In such cases the FoI Office will consult the third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.

7.1.3 Where information constitutes "personal data" within the meaning of the DPA, the FoI Office will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

7.1.4 A record will be kept of all contacts with third parties in regard to consultations and decision making on the disclosure of information that may affect their legal rights.

### **7.2.0 Consultation in non-legal circumstances**

7.2.1 Where the interests of the third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate. The FoI Office will lead any consultation where:

- the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

7.2.2 The FoI Office may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, they will consider what is the most reasonable course of action to take in light of the requirements of the Act and the individual circumstances of the request.

7.2.3 Consultation will be unnecessary where:

- the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- no exemption applies and so under the Act's provisions, the information must be provided.

7.2.4 A record will be kept of all contacts with third parties in regard to consultations and decision making on the disclosure of information.

### **7.3.0 Consultation with a number of third parties**

7.3.1 Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on behalf of those parties, the FoI Office will, if they consider consultation appropriate, consider that it would be sufficient to consult that representative organisation. For example, a consultation may take place with the Staffside Representatives in regard to the views of the Trust's workforce.

7.3.2 If there is no representative organisation, the FoI Office may consider that it would be sufficient to consult a representative sample of the third parties in question.

7.3.3 A record will be kept of all contacts with representative organisations or representative samples of third parties in regard to consultations and decision making on the disclosure of information.

### **7.4.0 Where there is no response or a refusal to consent by the third party**

7.4.1 The fact that a third party has not responded to consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act.

7.4.2 In all cases, it is for the Trust, through the FoI Office, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

7.4.3 A record will be kept of all response to consultations and the decision making processes that arise from them.

## **8.0 CHARGES AND FEES**

### **8.1.0 Publication Scheme Charges**

8.1.1 The Trust will charge only for hard copies or copying onto media (e.g. CD ROM). Most information will be available for free, also some information may incur a charge. The charges will vary according to how information is made available.

8.1.2 Information that is available from the Trust's website will be free of charge, although any charges for Internet Service provider and personal printing costs would have to be met by the individual. For those without Internet access, a single print-out of the information as on the website will be available by post or personal application to the Freedom of Information and Data Protection Manager.

Requests for multiple printouts, or for archived copies of documents that are no longer accessible or available on the web, may attract a charge for the retrieval, photocopy, postage and so on. In such circumstances, the FoI Office will inform the applicant in writing of the cost and the charges that will have to be paid in advance.

The Trust will not provide printouts of other organisation's websites.

8.1.3 Leaflets and brochures produced by the Trust will be provided free of charge.

8.1.4 Any "glossy" or other bound paper documents, or in some cases a CD ROM, video or other mediums, will be subject to a charge as determined by the costs of production to the Trust. A price will be given on application to the applicant.

8.1.5 Any information that can be transmitted by e-mail will be provided free of charge, unless otherwise stated.

8.1.6 The charges will be reviewed regularly by the FoI Office.

### **8.2.0 Fees under general right of access**

8.2.1 The Trust will levy a fee in accordance with Fees Regulations made under the Act in respect of requests made under the general right of access.

8.2.2 The Fees Regulations do not apply:

- to material made available under a publication scheme under section 19 (covered in 8.1.0 above);
- to information which is reasonably accessible to the applicant by other means within the meaning of the exemption provided for at section 21; or
- where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosure of the information as provided in sections 9(5) and 13(3) of the Act".

8.2.3 The Trust will ensure that any charges made in cases falling outside those covered by the Fees Regulations are in accordance with any relevant legislation and are within the terms of any relevant guidance which has been issued or approved by HM Treasury and which is applicable to the Trust.

8.2.4 A record will be kept of the date of despatch to and receipt and payment by the applicant of Fees Notices.

**8.3.0 Fees, Charges and Timescales**

8.3.1 If a Fees Notice has been issued to an applicant, or they have been informed of a charge for information listed in the Publication Scheme, the 'clock stops' in regard to compliance with the twenty working day timescale.

8.3.2 Once an applicant has paid their fees or charges, the 'clock' starts again from the point within the twenty working days that it 'stopped'. The applicant will then be provided with the information they requested.

8.3.3 Applicants will have three months beginning on the day on which they were given the Fees Notice/notified of the charge to pay the fee/charge.

**9.0 COMPLAINTS AND FEEDBACK**

- 9.1 Comments and feedback about the discharge of the duties of the Trust in regard to the FOI Act will all be forwarded to the Freedom of Information and Data Protection Manager.
- 9.2 All complaints, verbal or written (including those transmitted by electronic means), must be referred immediately to the Complaints Manager.
- 9.3 All complaints will be dealt with in accordance with the Local Resolution stage of the Trust's Complaints Policy and Complaints Procedure.
- 9.4 All complainants will be informed of their right to complain directly to the Information Commissioner, and will be given the Information Commissioner's contact details. Complainants who remain dissatisfied with the Trust will be advised to take their complaint to the Information Commissioner.
- 9.5 The Freedom of Information and Data Protection Manager will develop a customer satisfaction/quality monitoring system for FOI enquiries and make an annual report to the Information Governance group.

**10.0 ACCESSING AND MAINTAINING THE PUBLICATION SCHEME**

- 10.1 The Fol Office, with the assistance of the Trust's Project Group and other relevant parties, will update the Publication Scheme on a regular basis.
- 10.2 The Fol Office will review the Publication Scheme in terms of content annually.
- 10.3 The Information Commissioner will review the model Publication Scheme that the Trust has chosen to adopt in terms of the classes of information utilised and structure in 2007.
- 10.4 The Publication Scheme will be featured prominently on the Trust's website. The Trust's Web Manager will assist the Fol Office in achieving this.
- 10.5 Hard copies of the Publication Scheme will be available from:
- Freedom of Information and Data Protection Manager
  - Reception, Trust Headquarters, Rikenel.
  - All Hospital Libraries and County Libraries

The Fol Office will also arrange for an electronic, read only copy of the Publication Scheme to be forwarded to anyone who requests a copy of the Scheme and has access to e-mail.

## **11.0 TRAINING AND AWARENESS**

- 11.1 The Trust's Freedom of Information and Data Protection Manager in conjunction with the Training Department and Line Managers will ensure that all staff are aware of the Trust's policies and procedures regarding Fol, and ensure that that staff are familiar with these.

The Trust's Fol Office will periodically produce and send out staff guides on Data Protection and Confidentiality. Information on the Act will also be provided to Trust staff on induction to the organisation. The Trust's Policy on the Act will be cascaded through the organisation's policy distribution system. Regular updates will also be provided through the Trust's internal communications systems.

## **12.0 LEGAL ADVICE**

- 12.1 The Freedom of Information and Data Protection Manager will be the conduit through which legal advice on FOI is sought and given.
- 12.2 The Freedom of Information and Data Protection Manager will decide with the Fol Executive Lead when legal advice is required from the Trust's solicitors. A record will be kept of the advice sought from and given by the Trust's solicitors.

## **13.0 REVIEW**

- 13.1 This document will be reviewed annually. The first review will be held late 2004 for publication early 2005.

## **14.0 REFERENCES**

- Freedom of Information Act 2000
- 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.
- Gloucestershire Partnership NHS Trust, Freedom of Information Act Policy

## APPENDIX ONE – SUMMARY OF KEY ACTIONS AND TIMESCALES

Stage	Key Action	Who?	Other Actions
<b>Initial Application</b>	Details of enquiry to Freedom of Information and Data Protection Manager or FOI Office by phone. Original documentation also sent, by fax or e-mail. (See below for contact details).	Recipient of request.	Recipient informs applicant that request will be processed in 20 working days.
<b>Processing Request</b>			
On Receipt	Acknowledge receipt of request to applicant.	FOI Office	The FOI Office: <ul style="list-style-type: none"> <li>• keeps applicant informed of progress.</li> <li>• provides advice and assistance if required.</li> <li>• decides if a fee/charge is applicable.</li> <li>• decides if request can be met within applicable limits set in Fees Regulations.</li> <li>• decides if information is exempt.</li> <li>• decides if request is repeated or vexatious.</li> </ul>
Accessing information	Identification of person(s) holding relevant information.	FOI Office	
	Locate and provide relevant information to FOI Office.  <i>Note: Timescale suspended if insufficient information provided by applicant to identify and locate information requested.</i>	Staff	
	Additional time granted if information difficult to retrieve.	FOI Office	

Stage	Key Action	Who?	Other Actions
Accessing Information (cont.)	<p>Information reviewed in respect of fees/charges and exemptions.</p> <p><i>If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The twenty working day timescale is suspended until the fee/charge is paid.</i></p>	FOI Office	<p>FOI Office provides advice and assistance in the event of applicant being unable/unwilling to pay fee/charge.</p> <p>If an exemption is applicable the FOI Office will issue a notice informing the applicant of this.</p> <p>If a request is refused for any other reason, the FOI Office will notify the applicant of this.</p>
<b>Providing Information</b>	Information provided to applicant.	FOI Office	The FOI Office will consider the preferences of the applicant in regard to the format in which they wish to receive the information they have requested.

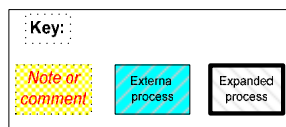
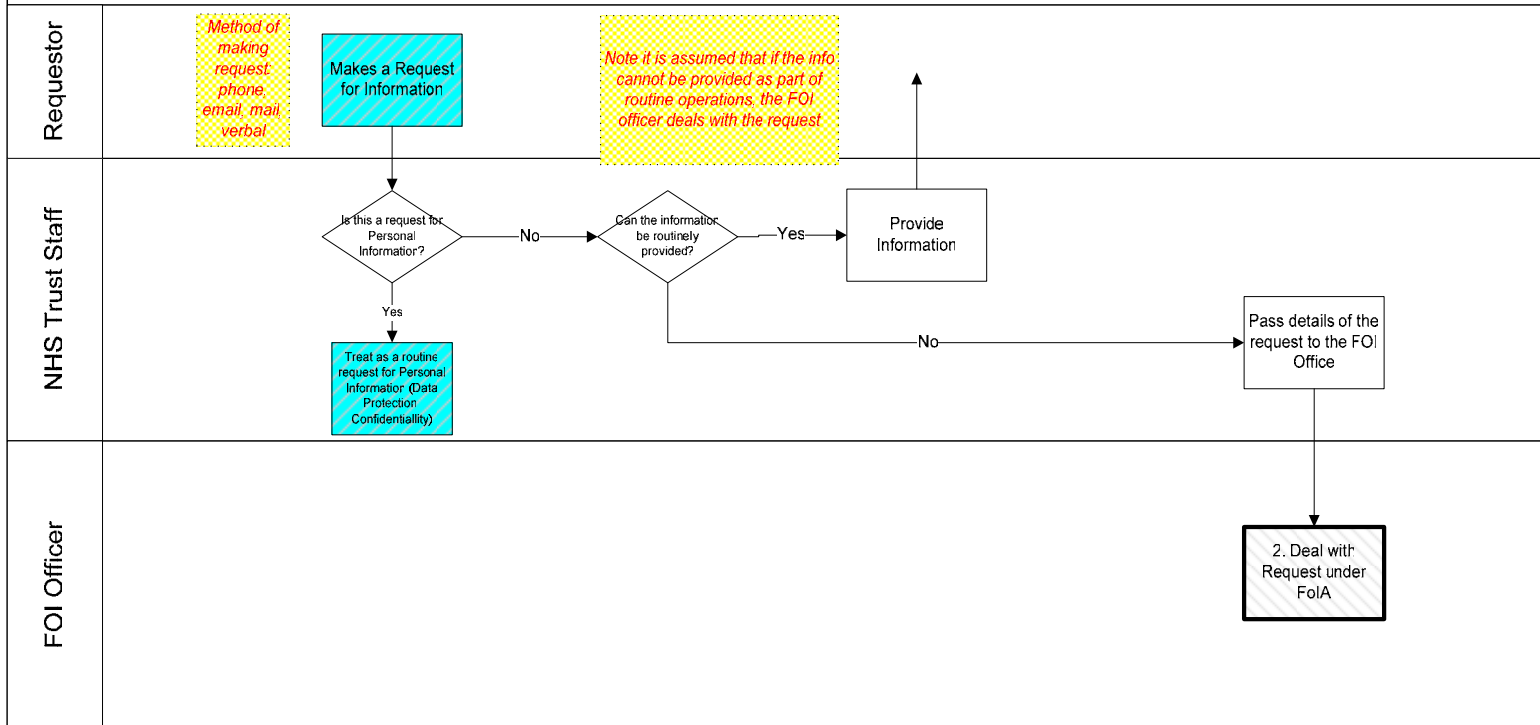
Susan O'Connell, Freedom of Information & Data Protection Manager  
 Gloucestershire Partnership NHS Trust, IT Services, Rikenel, Montpellier, Gloucester, GL1 1NL.  
 Tel: 01452 89 1060 Fax: 01452 891014 e-mail: [information.access@glost.nhs.uk](mailto:information.access@glost.nhs.uk)

## **APPENDIX TWO - Procedure for Handling Freedom of Information Requests**

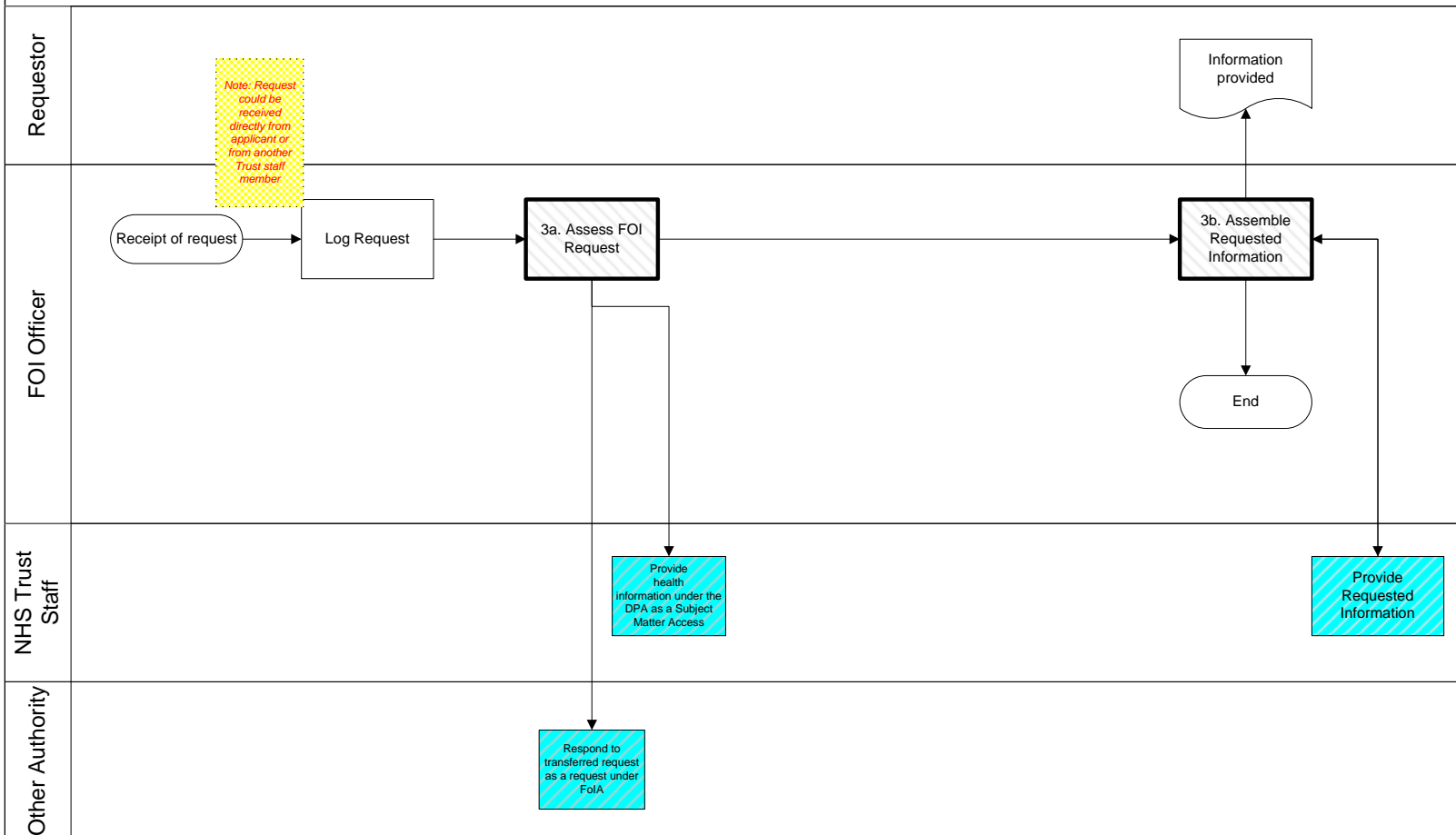
The diagrams below show the procedure to handle FOI Requests, as described in the text of this document.

# 1. Overview of FOI Request

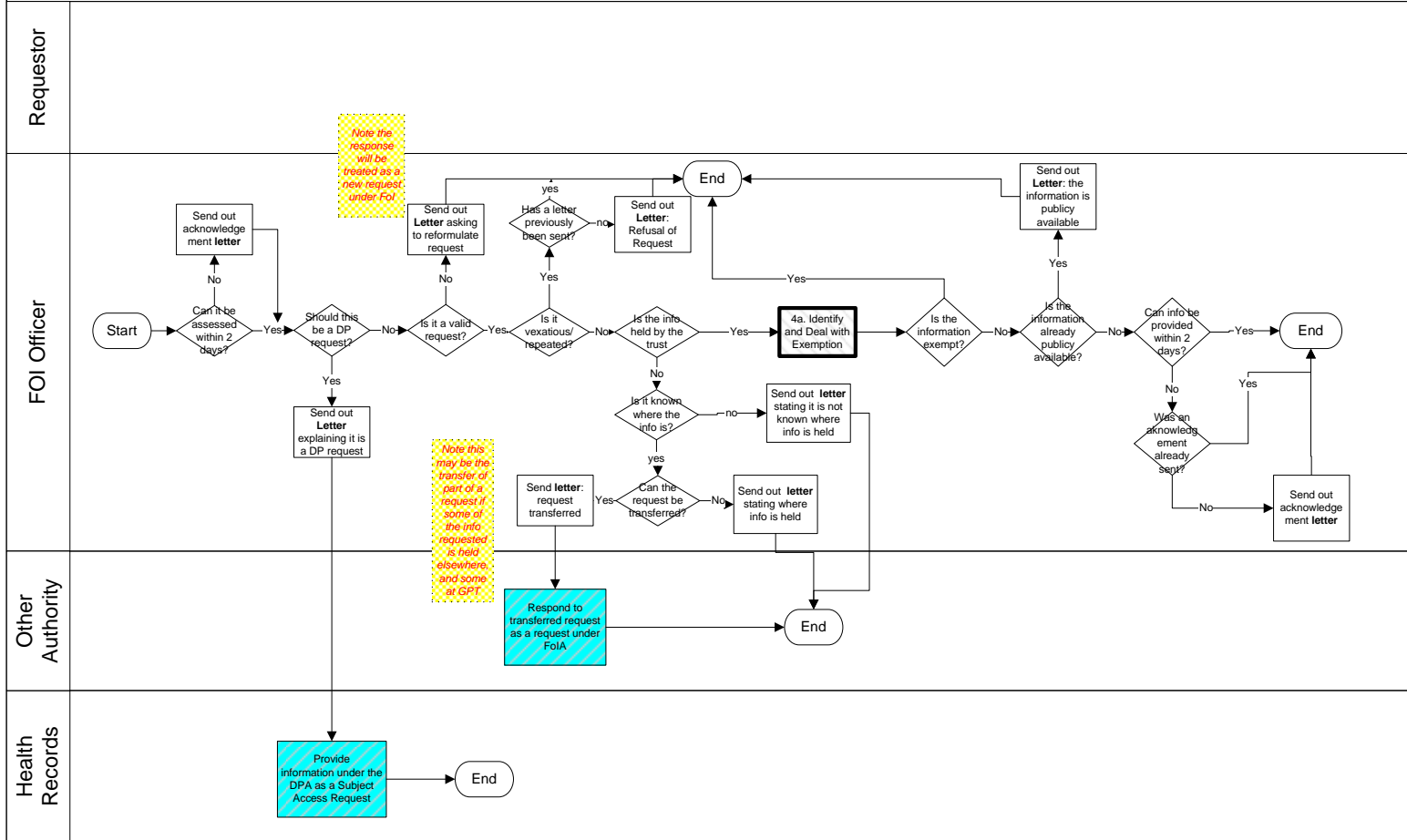
NHS Trust Staff member receives initial request, and, if they cannot deal with it, passes to appropriate place for handling



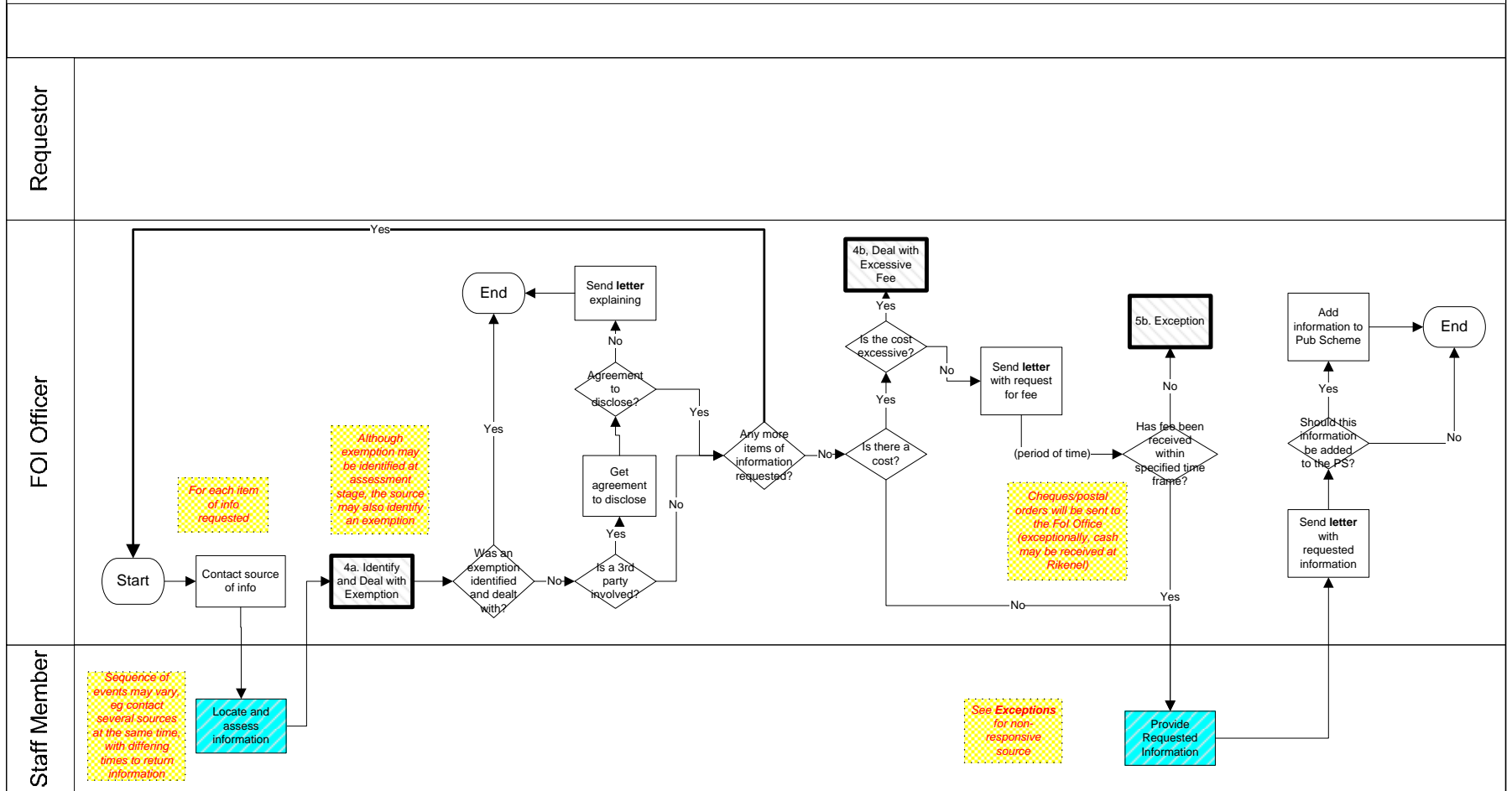
## 2. Deal with Request under FoIA



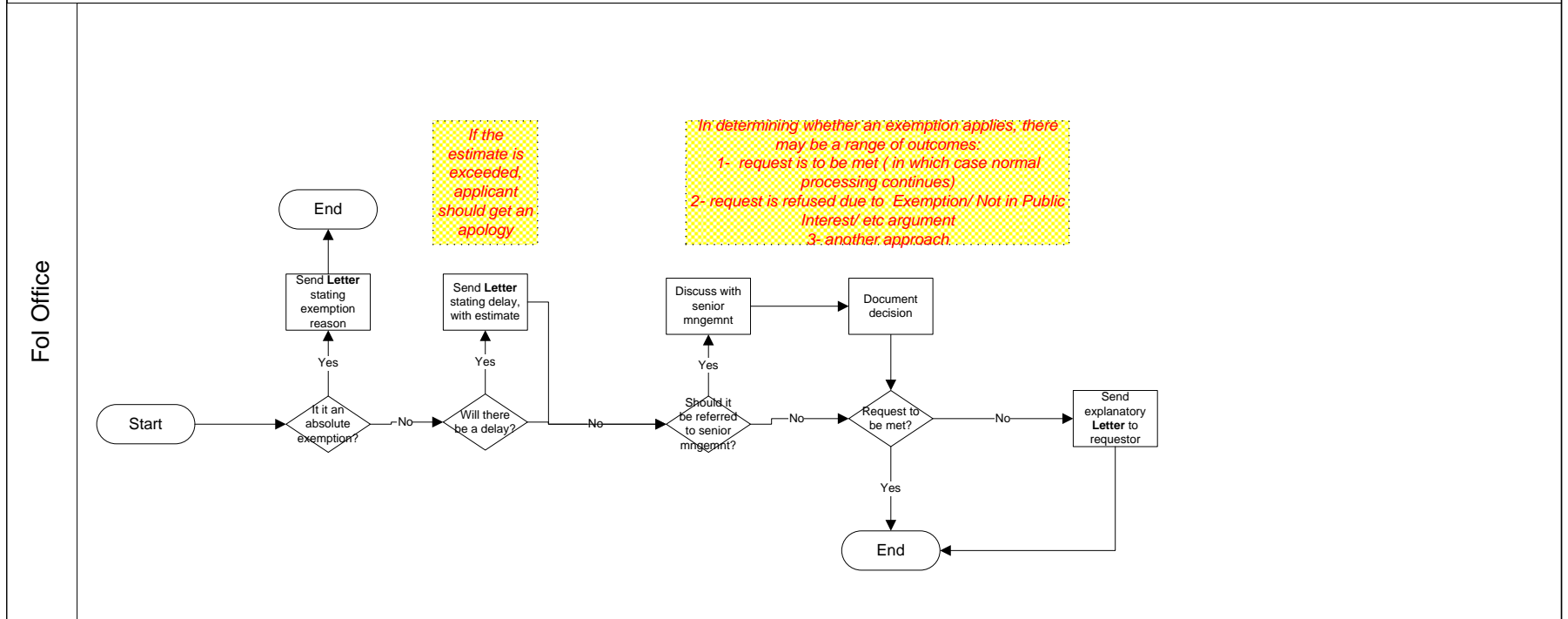
### 3a. Assess FOI Request



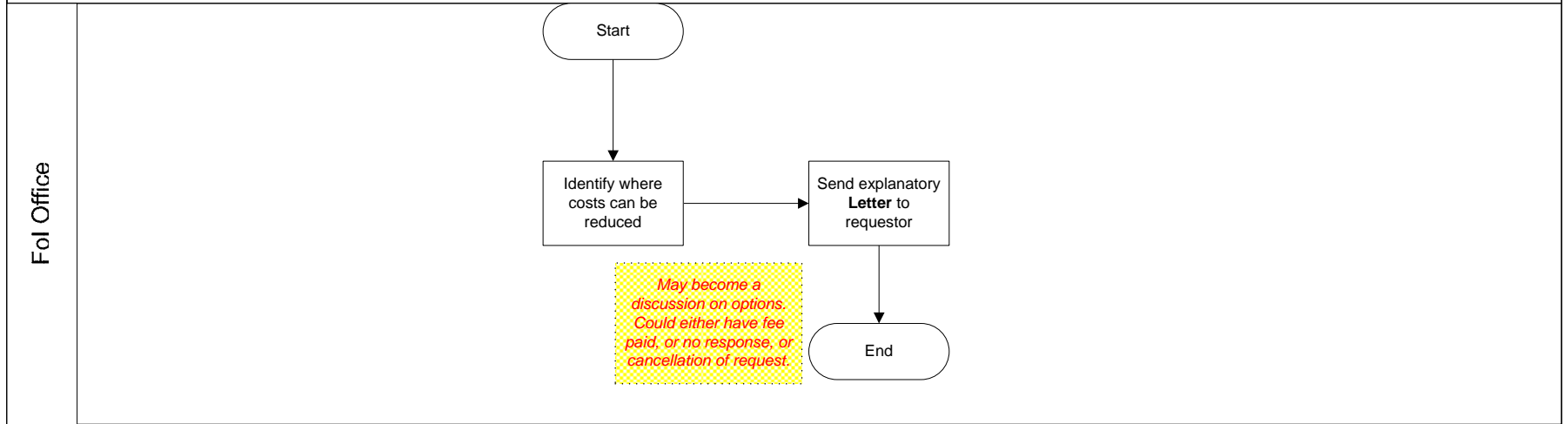
### 3b. Assemble Requested Information



## 4a - Identify and Deal with Exemption



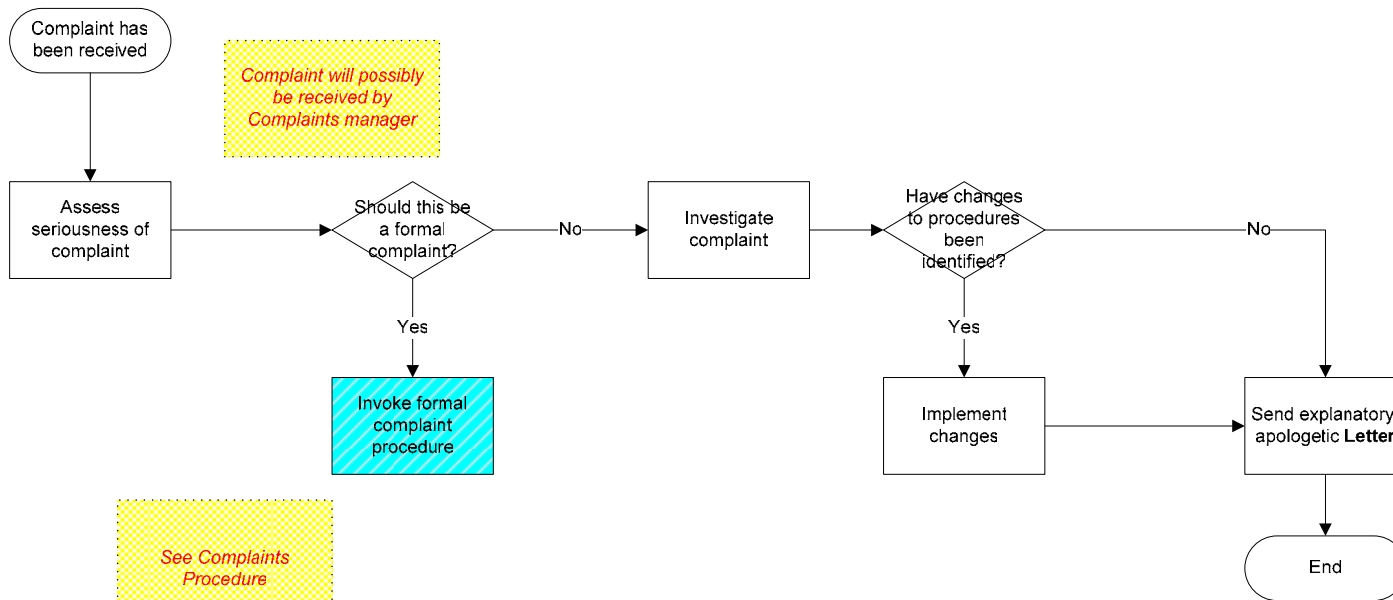
#### 4b. Deal with Excessive Fee



## 5a. Complaint Handling

### Complaints

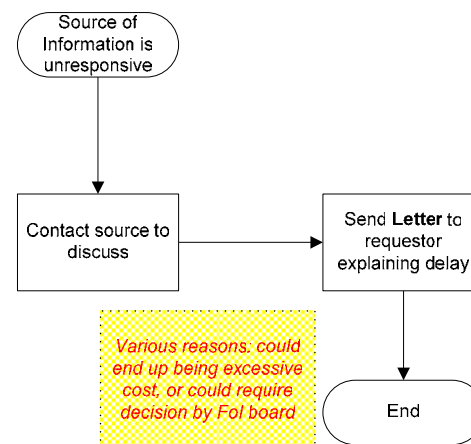
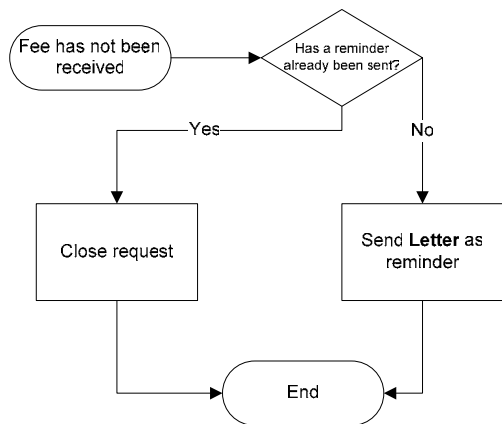
FOI Officer



## 5b. Exceptions

Fee not received, source of info not responsive

FOI Officer





## **APPENDIX THREE - RECORD KEEPING TO MONITOR FOI COMPLIANCE**

The Trust will record the following information for the purposes of compliance with FOI. This is not an exhaustive list, but describes the main data items.

### **Initial Application/Upon Receipt of a Request**

*When received by Freedom of Information and Data Protection Manager*

- Request Identifier – generated
- Initial date received by the Trust.
- Name and contact details of initial recipient of request.
- Date registered by FOI Office.
- Name of applicant and contact details.
- Summary of information requested.

### **Accessing Information**

*Internal Contacts*

- Name and contact details of person(s) holding information.
- Date information requested from person(s) holding information.
- Notes, e.g. extensions granted due to difficulties in locating or retrieving information.

*Contacts with applicant*

- Type of communication (e.g. letter, email, telephone call)
- Date sent
- Actual letter/email sent
- Notes
- Information in communication includes:
  - Letter/e-mail acknowledging receipt of request to applicant.
  - Information given on progress of request to applicant.
  - Advice and assistance given by FOI Office to applicant.
  - Fees Notices/notification of charges.
  - Decision making processes leading to application of exemptions or the refusal of requests.
  - Exemption notices and notifications of a refusal of a request issued to applicants.

*Contacts with other individuals/organisations*

- Notes, to include:
  - Activity associated with transfers of requests to other public authorities.
  - Activity associated with consultation and decision making with third parties on the disclosure of information.

### **Providing the Information**

- Date upon which the information was provided to the applicant.
- Notes, to include:
  - Form in which the information was requested.
  - Format in which the information was provided.

- Any reasons for a difference between the format in which the information was provided and the form in which it was requested.

**Complaints**

The Trust already maintains a record of the complaints that it receives and investigates. The same system will be used for FOI, with a record of referrals to the Information Commissioner also being kept.

**Legal Advice**

A record will be kept of any legal advice sought and received by the Trust.