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| Policy Title and ID number: | FREEDOM OF INFORMATION POLICY GEN 6.72 | | | |
| Sponsoring Director: | Director of Quality and Performance | | | |
| Implementation Lead: | Information Governance Manager | | | |
| Impact: | (a) To patients | No | | |
| | (b) To Staff | Yes | | |
| | (c) Financial | No | | |
| | (d) Equality Impact Assessment (EIA) | Completed: Yes | | |
| | (e) Counter Fraud assessed | Completed: Yes | | |
| (e) Other | | | | |
| Training implications: | To be incorporated into induction: No | | | |
| Date of consultation: | Approval Process | Date | Local Consultation | Date |
| | Executive Team | | Joint Partnership Forum | Dec 2010 |
| | Board Committee: | 23.02.12 | Local Negotiating Committee | |
| | • Clinical Governance | | Infection Control Committee: | |
| | • Non Clinical Governance & Risk | Feb 2012 | Health & Safety Committee | |
| | • Audit Committee | | Quality Safety Improvements & Effectiveness Board | |
| | • Finance Committee | | Investment Board | |
| | • RATS | | | |
| | Trust Board Approval / Ratification | 23.02.12 | Patients Experience Board | |
| | Other: | | Other:IGG virtual | Jan 2010 & Jan 2012 |
| Approval/Ratification at Trust Board: | February 2012 | Version Number: | 1.1 | |
| Date on Policy Warehouse: | February 2012 | Team Brief Date: | February 2012 | |
| Circulation Date: | February 2012 | Date of next review: | February 2014 | |

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| For completion by ET for <i>new</i> policies only: | | | | |
| Additional Costs | | | Budget Code: | Revenue or Non Revenue |
| | (a) Training | £ | | |
| | (b) Implementation | £ | | |
| | (c) Capital | £ | | |
| | (d) Other | £ | | |

Freedom of Information Policy

1. Introduction

Barnsley Hospital NHS Foundation Trust, as a public body, has a duty to comply with all aspects of the Freedom of Information Act 2000. The Freedom of Information Act came into force at the beginning of 2005, and deals with access to information held by public bodies, while parallel regulations deal with environmental information. The Act provides individuals or organisations with the right to request information held by a public authority.

2. Purpose

The aim of this policy is to:

- Ensure all Freedom of Information requests are dealt with consistently and receive a high quality response however and wherever the contact is made;
- Ensure that BHNFT complies with all relevant regulations, laws and guidance;
- Provide clear routes for members of the public to make contact with the service so that they can appropriately request documents and information;
- Ensure that our Publication Scheme is up to date and inclusive in order to provide access to information and to lessen the number of written requests the public have to make and the impact on the service;
- Ensure that the necessary administrative infra-structure is in place for the Act to be complied with;
- Ensure staff at all levels are aware of their responsibilities with regard to the Act, be it in directing any Freedom of Information queries in the correct direction, or in ensuring they provide any information requested in a timely fashion;
- Ensure timescales are met;
- Ensure the Board is fully informed on the operation of the Act and any implications to the service.

3. Definitions

- 3.1 **'The Act'** Refers to the Freedom of Information Act 2000.
- 3.2 **'FOI'** is an acronym for Freedom of Information.
- 3.3 **'DPA'** is an acronym for the Data Protection Act 1998.
- 3.4 **'ICO'** is an acronym for the Information Commissioner's Office. This is the UK's independent authority set up to promote access to official information and to protect personal information. The ICO covers Data Protection, Freedom of Information, privacy and electronic communications and the Environmental Information Regulations.
- 3.5 **'Exemption'** Provisions within the Act that define particular types of information that public bodies are not obliged to disclose. Exemptions can either be absolute or qualified.

- 3.6 **‘Public Interest Test’** The test a public body must apply if it feels the information requested falls under a qualified exemption
- 3.7 **‘Publication Scheme’** BHNFT has a legal duty to compile and to make available a list of documents that it has in its possession and that it will routinely and proactively provide to the public. This is called a ‘Publication Scheme’. BHNFT’s Publication Scheme can be found on the BHNFT external website. BHNFT can also make this available in hard copy should a member of the public not have access to computerised equipment.
- 3.8 **‘Duty to Confirm or Deny’** In some circumstances it may be appropriate to neither confirm nor deny whether information is held because to confirm or deny the existence of information would itself communicate sensitive and potentially damaging information, to the detriment of the public good.

4. Scope

- 4.1 This policy applies to all information held by BHNFT. This will not include non-official communications, but documents created by members of staff in the course of their duties will fall within the Act. Staff should be aware that even personal e-mails could be caught within the Act where they refer both to personal matters and also to the duties of that employee.
- 4.2 The information can be held in any form, including recordings or notes of telephone calls, file notes, the web and any other service that BHNFT will introduce in the future.
- 4.3 All BHNFT staff should have an understanding of this policy in order to direct enquirers appropriately.

5. What constitutes a Freedom of Information Request?

In order for a request to fall under the auspices of FOI, the Act sets out certain criteria that it must meet.

- It must be made in writing (Letter, Fax, E-mail)
- It must state the name of the applicant and provide an address for correspondence. (Note this can be merely an e-mail address)
- It must describe the information requested

It is important to note that the Act does not specify that the person making the request needs to mention Freedom of Information within their request; therefore something could be an FOI request, even though the requestor makes no mention of the Act.

It is also important to make a distinction between requests for information and routine correspondence. Requests for information that

can be provided without any question (recruitment brochures, press releases, leaflets) should be treated as business as usual.

Similarly requests that are not for recorded information but which pose questions (please explain your policy on Y, why do you do X?) should be treated as routine correspondence. Where it appears that they enquirer thought they were applying for information under the Act, please note in any correspondence: "The Freedom of Information Act 2000 gives a right to the public to access information held by public bodies. However, your letter dated [add] sought an explanation of [add] rather than a copy of information held by us. If you would like to make a request for information under the Freedom of Information Act 2000 please submit a request in writing, clearly identifying the documents or information that you require and supplying a return address for the delivery of the information.

6. Data Protection Act

Where an enquirer asks for information held about themselves, this is covered by the DPA and not the Act. However, even if the written request refers to the Act (or does not refer to either the Act or the DPA) it should be dealt with under the Data Protection Act 1998.

7. Roles and Responsibilities

- 7.1 The Chief Executive has overall responsibility for the management of BHNFT's response to enquiries under the Act.
- 7.2 The Trust Board is responsible for approving the Trust's FOI Policy.
- 7.3 The Information Governance Manager has responsibility for the operational management of FOI and will provide leadership in terms of how specific requests should be dealt with.
- 7.4 Managers and staff are responsible for ensuring that all enquirers receive the right information about accessing our Publication Scheme and how to apply for information should it not be available online.
- 7.5 All staff are required to work with the Information Governance Manager to ensure that any information requested from them in relation to an enquiry under the Act is supplied well within the timescales allowed.

8. Procedure for dealing with telephone enquiries

- 8.1 If a member of staff receives a telephone call regarding an enquiry
Under FOI they should advise the caller that they **must** write or e-mail in to one of the addresses below.

- 8.2 The Act makes it a requirement that all requests for information should be made in writing. The enquirer should be asked to ensure they clearly identify the documents or information that they require, and to ensure that they supply a return address for the delivery of the information.

By Post:
Information Governance Manager
BHNFT
Gawber Road
Barnsley
S75 2EP

By email:
Information.governance@nhs.net

9. General Procedure for the receipt of a written request

- 9.1 BHNFT has two working days to acknowledge receipt of the request, and 20 working days, from date after receipt of the request, to provide the response. A working day is defined by the ICO as Monday to Friday (Saturdays, Sundays and Bank Holidays are not classed as working days)
- 9.2 As the clock begins ticking from the moment a request is received by BHNFT, and not when it is received by the Information Governance Department, it is essential that any written FOI requests received by the organisation be forwarded as directly and as quickly as possible to the Information Governance Department. As receipt of the forwarded request could take several days, there is also a need to contact the Information Governance Manager and alert them to the received request using the email address information.governance@nhs.net or by calling extension 2017. This should be done immediately, so the Information Governance Department can then put in place search procedures for the documents/information required if necessary and arrange for the acknowledgement of the request to be dispatched.
- 9.3 When a written request is received, the details must be entered immediately into the FOI register (database).
- 9.4 The Information Governance Manager needs to then make a decision as to the validity of the request and that he/she has enough information to be able to provide the documents/information requested.
- 9.5 Once the register is complete, and the issues in 9.4 have been considered, an acknowledgement needs to be sent to the enquirer.
- 9.6 If the Information Governance Manager deems the request to be invalid or that they need further information to be able to complete the request then this should be noted to the

requestor as soon as possible. If it is the case that the request requires further clarification then the 20 working days time limit will pause when the requestor is notified, and will not restart until a clarified response is received from the enquirer. If no clarification is received from the enquirer within 3 months then the Information Governance Manager will deem this request closed. However, if the enquirer responds at a later date the information request will be deemed to be re-opened and the running of the 20 working day period will restart.

- 9.7 The Information Governance Manager will request necessary documents/information from the appropriate department(s) to answer the request.
- 9.8 The Information Governance Manager will then monitor the return of the information from the relevant directorates, sending out reminders, on a regular basis, to the departments concerned if nothing has been received.
- 9.9 On receipt of the information the Information Governance Manager will determine if any exemption applies.
- 9.10 Any non-exempt information should be sent to the enquirer, using the medium they requested if possible. The enquirer should be informed of their right to complain if they are not happy with the response received. The register must then be completed.

10. Responding to a request when an exemption is used to block the disclosure of information

- 10.1 When it is felt that information should not be provided, the directorate concerned should discuss with the Information Governance Manager to see which, if any, exemptions can be used. If necessary, legal advice should be sought for the decision.
- 10.2 If it is felt that a qualified exemption applies, then the 'public interest test' must be applied.
- 10.3 If the directorate concerned thinks it is appropriate to use an exemption to withhold some or all of the information requested then they should endeavour to inform the Information Governance Manager within 2 working days of the initial request. This is to ensure there is sufficient time remaining within the 20 working day timeframe for discussions around exemptions, contacting relevant third parties to canvas their views, applying the public interest test, or taking legal advice.

11. The Public Interest Test

- 11.1 Where a qualified exemption applies to information that has been requested, public authorities are required to carry out a 'public interest test'. This requires weighing the public

interest considerations in favour of release of the information and the public interest considerations in favour of protecting it from disclosure. If the public interest in withholding the information outweighs the public interest in disclosure, it should be withheld. Where the interests are evenly balanced, the Information Commissioner would usually expect the information should be disclosed.

12. Complaints and/or requests by the enquirer for a review of the request

- 12.1 There needs to be a clear demarcation between complaints about the handling of a request, and requesting a review of the decision re: an FOI request.
- 12.2 If the enquirer wishes to make a complaint about the Information Governance Manager and/or the way in which their request was handled where the complaint relates to the enquirer not having been given proper advice and help or not being given the information within 20 days, at the conclusion of the complaints and feedback policy the enquirer must be informed that they have a right to complain to the Information Commissioner.
- 12.3 If the enquirer wishes to ask for an internal review specifically of the information provided or of the decision to exempt some or all of the information then the request should be made in writing to the Information Governance Manager who will ensure that an internal review is instigated.
- 12.4 The review must be conducted by a staff member who was not involved in the original decision whether to release the information. Ideally the review should be conducted by a Director.
- 12.5 The internal review stage is an opportunity to consider a case completely afresh and should be a fair and impartial review of decisions made during the original consideration of whether to release information.
- 12.6 The timescale for an internal review is 20 working days from the time the request for a review came in. In exceptional circumstances involving a complex review it may be possible to extend this to 40 days. The enquirer should be informed of the time-scale within which the internal review will take place.
- 12.7 Whatever the outcome of the review, the enquirer must be advised of the decision.
- 12.8 If the internal review overturns the original decision to withhold information, the said information should be released to the enquirer as soon as possible after the internal review is completed.
- 12.9 If the internal review upholds the original decision to withhold information, then BHNFT is not obliged to undertake any further review. However the enquirer must be apprised of their right of appeal to the Information Commissioner.

- 12.10 It is important that full records are kept on the progress of the review and any outcomes as a result of the review. This will assist in any further investigations by the Information Commissioner.

13. Personal Information and medical records

- 13.1 Requests by an enquirer for their own personal information (as defined by the DPA) and medical records will not be disclosed under this procedure.
- 13.2 Requests for medical records will be handled by the Head of Health Records and requests for employee records will be dealt with by the Information Governance Departments.
- 13.3 All other requests for personal information of the enquirer will be dealt with under the DPA.
- 13.4 Requests for someone else's personal information and medical records will be dealt with under this FOI policy.

14. Re-use regulations

- 14.1 If there are concerns about information reaching a wider audience, without sufficient briefing relating to the circumstances surrounding the production of the data/document, or its context, then the Trust may indicate that the information is being supplied only for the use of the initial enquirer, and cannot be re-used or reproduced in any format, or relayed on to other people, without the consent of the Trust.

15. Copyright

- 15.1 Any information supplied under FOI continues to be protected by the Copyright, Designs and Patents Act 1988. A copy of the below wording must be included whenever information is released under FOI.

15.2 Re-use of Public Sector Information

All information supplied by the Trust in answering a request for information (RFI) under the Freedom of Information Act 2000 or Environmental Information Regulations is the copyright of Barnsley NHS Foundation Trust, and is subject to the terms of the Re-use of Public Sector Information Regulations 2005, Statutory Instrument 2005 No.1515 which came into force on 1st July 2005.

Under the terms of the Regulations, the Trust will not license the re-use of any or all information supplied if it is being used in a form and for a purpose other than which it was originally supplied.

This license for re-use will be in line with the requirements of the Regulations and the licensing terms and fees as laid down by the Office of Public Sector Information (OPSI). Most licenses will be free; however the Trust reserves the right, in certain circumstances, to charge a fee for the re-use of some information which it deems to be of commercial value.

Further information can be found at where a sample licence terms and fees can be found with guidance on copyright and publishing notes and a Guide to Best Practice and regulated advice and case studies, at www.opsi.gov.uk/advice/psi-regulations/index.htm

16. Charging

- 16.1 BHNFT will not normally charge for the provision of information that is provided as a result of an FOI request.
- 16.2 However, a public authority is not obliged to comply with a request for information if it estimates that the cost of determining if it holds the relevant information, locating and retrieving the information and, where necessary, extracting the information from a document would exceed the appropriate limit set down under section 12 of the Act. The appropriate limit has been set as a figure of £450 for public authorities. This figure is calculated at a rate of £25 per hour and therefore any request that exceeds 18 hours of work will normally be rejected.
- 16.3 Wherever possible BHNFT will work with the enquirer to try to reduce the amount of work involved so that some of the information can be provided. In certain circumstances BHNFT can offer the enquirer the option of paying for the information.

17. Duty to assist

- 17.1 All public bodies have a duty to assist enquirers in the quest for information. Therefore whilst asking that their request be specific, BHNFT staff must also ensure that we enter into some dialogue with the enquirer where requests are made that are broader than we would be able to deal with, in order to identify the correct information. This could include, for instance, suggesting information that is available and where we think they may be asking for the wrong data. In cases where we do not hold the information requested we should give them contact details for other organisation's if we are aware of the information being held elsewhere.

18. Data Protection Act 1998 and the NHS

- 18.1 Many people contacting BHNFT do not understand the difference between the Freedom of Information Act 2000 and the Data Protection Act 1998. The Information Governance Manager will undertake to explain these differences to enquirers where appropriate in a helpful manner and will do their best to assist the person in finding the right regulations or organisation to provide the information required.
- 18.2 If somebody applies for information under the wrong Act, BHNFT will inform the enquirer and give them guidance on the purpose of the various Acts. The request will still be acknowledged but will be dealt with under the correct Act.

19. Environmental Information Regulations (EIR)

- 19.1 These regulations give members of the public the right to access environmental information held by public authorities. The request can be made by letter, email, telephone or in person.
- 19.2 EIR requests should be directed to the Information Governance Manager in the same way as FOI requests.

20. Audit Process

Regular reports will be submitted to the Barnsley Information Governance Group on Freedom of Information. This report will detail the number of FOI requests submitted, the number where information is provided and the number where an exemption is used. This report will also detail average and maximum time taken to fulfill a request. In addition random audits may be carried out on departments as part of a wider mystery shopper programme to ensure that awareness of the FOI process is engrained within the culture of BHNFT.

22. Records Management Retention of FOI Requests

FOI requests should be retained for a minimum of three years where full disclosure has been made. If the information requested is not disclosed, or is in anyway redacted, then the request should be retained for 10 years.

23. Updating

This policy will be updated bi-annually, or in the event of any significant guidance or policy change within BHNFT from the Department of Health, or from the Information Commissioner's Office.

The >>**Quick**>> guide to Freedom of Information

What is the Freedom of Information Act?

- The Freedom of Information Act (the Act) applies to all public bodies.
- The Act deals with access to information held by public bodies.
- Individuals or organisations have the right to request information held by BHNFT.
- If we hold the information we must supply it within 20 working days.
- Failure to supply information could lead to sanctions being taken against BHNFT.

What constitutes an FOI query?

- Any request for information held by BHNFT that is made in writing via letter, fax, or email. Requests **cannot** be made over the phone.
- The request can come from absolutely anyone but it must have a return address/email address.
- Where the request relates to information about the enquirer, this should be dealt with as a request under the Data Protection Act.

Some examples of FOI queries

Accounts – Board Minutes – Organisational Structures – Performance statistics – Contact details of senior managers – Policy documents – Number of complaints – Annual expenditure...

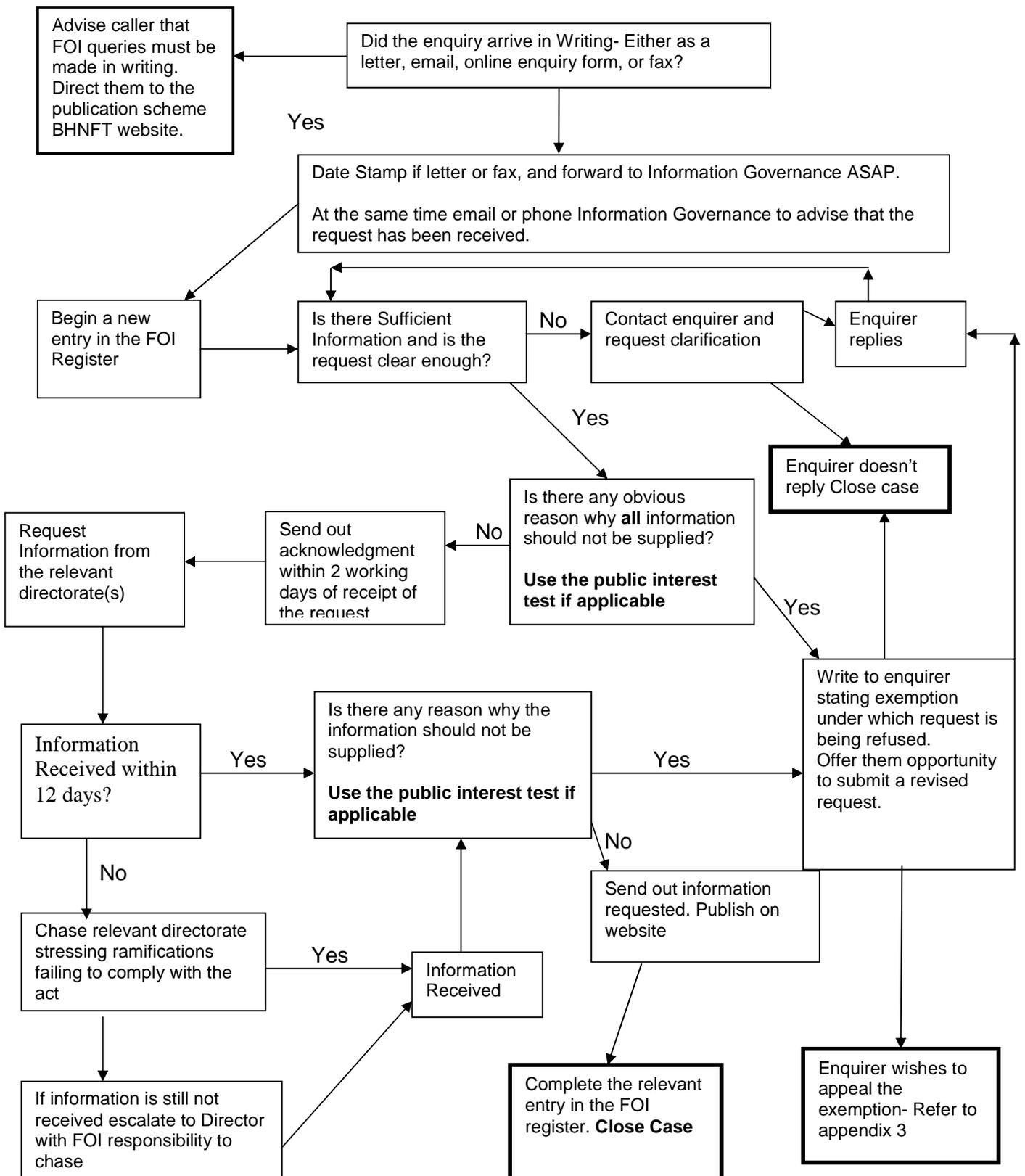
What to do if you think you've got an FOI request?

If it is over the telephone then advise the caller that they **must** write or email in to one of the addresses below (you cannot do it for them!):

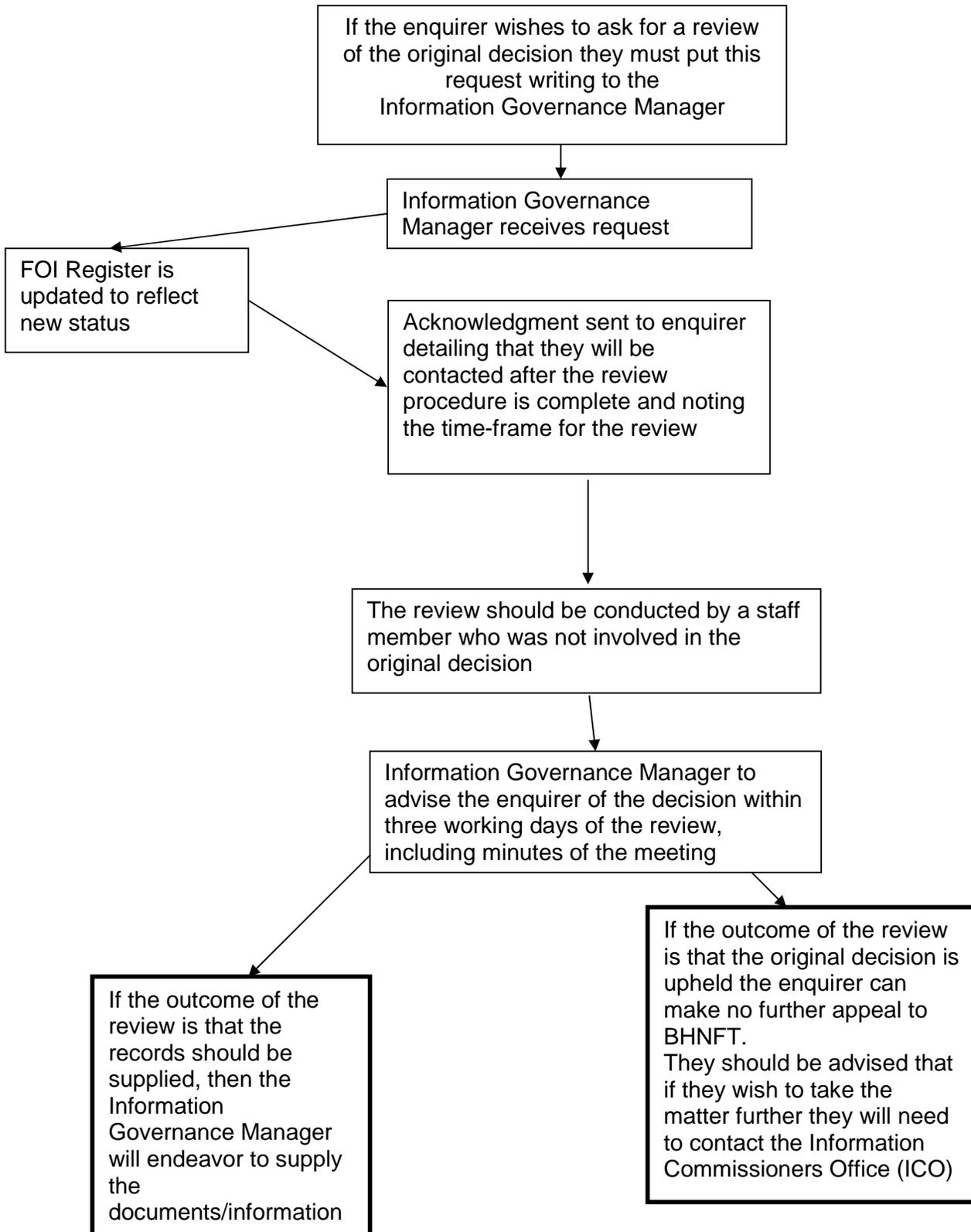
- **Post:**
Information Governance Manager
BHNFT
Gawber Road
Barnsley
S75 2EP
- **Email:**
Information.governance@nhs.net

If a written request comes in that you think may be an FOI query (even if it doesn't specify FOI) then please let the FOI team know as soon as possible on information.governance@nhs.net as the Act specifies that we must acknowledge the request within **2 working days** of receiving it.

FOI Process



Review Process



The Exemptions

Absolute Exemptions

| | |
|-------------|--|
| s.21 | Information reasonably accessible by other means. |
| s.23 | Information supplied by, or relating to, bodies dealing with security matters. |
| s.32 | Court Records |
| s.34 | Parliamentary Privilege |
| s.36 | Prejudice to the effective conduct of public affairs (only absolute in relation to information held by the Commons of House of Lords. |
| s.40 | Personal Information |
| s.41 | Information provided in confidence (but only if this would constitute an actionable breach of confidence) |
| s.44 | Information whose disclosure is prohibited by law |

Qualified Exemptions

| | |
|-------------|---|
| s.22 | Information intended for future publications |
| s.24 | National security |
| s.26 | Defence |
| s.27 | International relations |
| s.28 | Relations within the UK |
| s.29 | The Economy |
| s.30 | Investigations and proceedings conducted by public authorities |
| s.31 | Law enforcement |
| s.33 | Audit functions |
| s.35 | Formulation of government policy |
| s.36 | Prejudice to the effective conduct of public affairs |
| s.37 | Communications with Her Majesty etc. and honors |
| s.38 | Health and Safety |
| s.39 | Environmental information |
| s.42 | Legal professional privilege |
| s.43 | Commercial interests |

In addition to the above there are also provisions to refuse disclosure under two further sections of the Act

| | |
|-------------|--|
| s.12 | Where the cost of compliance is excessive |
| s.14 | Vexatious requests |

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1. In the main. Some personal information is a qualified exemption.
 2. Whether there is an actionable breach of confidence involves looking at similar considerations to those of the public interest test.