

Appendix 4 – Appeals Process

1. Introduction

- 1.1. This document outlines the appeal process for someone who has requested information from Guy's and St Thomas' NHS Foundation Trust under the Freedom of Information Act.
- 1.2. This appeal process has been prepared using guidance from the Lord Chancellor's Office, which has government responsibility for information issues in the public sector.
- 1.3. This document has been designed to help you to understand how to appeal about the way a request has been handled. Using this process will not affect your right to appeal directly to the Information Commissioner, however, it will usually be quicker if matters can be resolved locally using this process.

2. Who can appeal?

- 2.1. Anyone who has requested information from the Trust in writing can appeal. If you have requested information and you are not satisfied with the way we have dealt with your request or you believe that the Trust is not complying with its Publication Scheme, you can use the appeal process to have the matter reviewed. If someone who requested information would like to appeal but cannot do so themselves you can appeal on their behalf, but it will help us if you make it clear that you are doing so.

3. What can I appeal about?

- 3.1. You can appeal about the range, amount and format of information we have sent following a request. You can also appeal about the way a request was handled – for example, the time it took to respond, or the way letters were worded.

4. How do I appeal?

- 4.1. If you are not happy with the way your request for information has been handled, please contact the Trust's Information Governance Department in the first instance at:

Information Governance Team
First Floor, North Wing
St Thomas' Hospital
Westminster Bridge Road
SE1 7EH

Tel: 020 7188 7525
Email: foi@gstt.nhs.uk

- 4.2. To enable us to deal with your appeal as quickly as possible, it will help if you can supply the original log number that would have been notified to you, and the reason for your appeal

5. **What happens to my appeal?**

- 5.1. The Trust operates a two-stage review process. **Stage one** has two elements;
 - 5.1.1. Initially the Information Governance team will work with you to try to resolve the issue in an informal manner.
 - 5.1.2. If this does not resolve the situation to your satisfaction, then following notification from yourself, a full review of your request and the area(s) of concern raised will be undertaken by the Information Governance Manager. You will be kept informed of progress and will receive a formal response within 28 days of the stage commencing.
- 5.2. If you still feel that the Trust has not provided a satisfactory response, you may request that Stage 2 of the process is invoked.
- 5.3. **Stage two** constitutes a full review, undertaken by the Senior Information Risk Owner, of the initial request for information and subsequent correspondence. The final response will be provided within 28 days of this stage commencing.
- 5.4. If we believe after completing both stages that our original response was correct, we will let you know this, and inform you of your options (see "*What if I'm still not satisfied*").
- 5.5. At any stage during the review process, if it becomes evident that the Trust has not followed proper procedures, or has failed to provide a high quality of service, we will apologise, and explain what we will do to ensure this does not happen again. If we should have provided information and have not provided it, we will send you the information immediately.

6. **What if I'm still not satisfied?**

- 6.1. If you are still not happy with the way we have dealt with the request and appeal, you can appeal to the Information Commissioner, who may investigate the matter on your behalf. This option is open to you at all times, but we would prefer to sort things out at a local level if possible, as this is likely to be quicker and easier for all concerned.
- 6.2. It is the Information Commissioner who will decide if he/she will investigate or not. If he/she does, we will make all the information available to you and to the Information Commissioner. The contact details are below:-

Information Commissioner's Office
Wycliffe House
Water Lane

Wilmslow
Cheshire SK9 5AF

www.informationcommissioner.gov.uk/.

Appendix 5 – The Environmental Information Regulations 2004 (EIRs)

1.0 The Environmental Information Regulations set out the definition of what is environmental information. It includes information recorded in any form on:

- the state of the elements of the environment, such as air, water, soil, land;
- emissions and discharges, noise, energy, radiation, waste and other such substances;
- measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment;
- reports, cost-benefit and economic analyses used in these policies, plans and agreements;
- the state of human health and safety, contamination of the food chain and cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment).

2.0 The Regulations apply to most public authorities that are covered by FOIA, including NHS trusts, but they can also apply to any organisation or person carrying out a public administration function, and any organisation or person that is under the control of a public authority and has environmental responsibilities.

3.0 Is it a request under EIR rather than FOIA?

If the information requested falls under the definition of environmental information then you must handle it in accordance with the Environmental Information Regulations. Some requests may cover both environmental and non-environmental information.

Unlike freedom of information requests, requests for environmental information do not have to be in writing. An environmental information request can be made verbally, and it is important to log such requests.

Like FOIA, the EIRs are, in general, applicant and motive blind. In other words it does not matter who the requestor is or why they want the information. Indeed under the EIRs requestors (or ‘applicants’) are not specifically required to give their name.

4.0 Responding to an EIR request

When you receive a request you must respond to the applicant in writing as soon as possible and within 20 working days. As with the Freedom of Information Act, the first day of the 20 is the first working day after the request was received. Within that time you must either:

- make the information available;
- refuse to provide it with reference to the exceptions;

Unlike the Freedom of Information Act, under the Environmental Information Regulations the time limit cannot be extended to carry out the public interest test.

As with the Freedom of Information Act, it is a criminal offence to deliberately destroy, alter or conceal a record to prevent disclosure of requested information, and to do so could lead to a fine.

If the records containing the information were already scheduled for destruction when the request was submitted you must suspend destruction while you consider the request.

5.0 Charging a fee

There is no equivalent in the EIRs to the 'appropriate limit' in FOIA – i.e. there is no specific cost limit above which you can refuse a request. You can refuse a request if it is *manifestly unreasonable* because it is exceptionally costly, but as with other exceptions in the EIRs, this is subject to a public interest test and there is a presumption in favour of disclosure.

You may charge a 'reasonable amount' for making environmental information available in response to a request. The Regulations do not define what is meant by a 'reasonable amount'. Authorities must publish their schedule of charges and information on when charges are made and make this available to applicants.

6.0 Refusing a request – the 'Exceptions'

Under EIRs the reasons for refusing a request are called 'exceptions' rather than 'exemptions'. Unlike FOIA they are all qualified and subject to consideration of the public interest test. So if you refuse access to information, you must explain to the applicant in writing which exception applies and how the public interest in maintaining the exception outweighs the public interest in releasing the information. You must also inform the applicant of their right to complain to you and to appeal to the Information Commissioner.

There should always be a general presumption in favour of disclosure. This means the Regulations presume that you will always aim to disclose information where you can, rather than withhold it. The exceptions include refusing disclosure because:

- you do not hold the information;
- the request is manifestly unreasonable;
- it is not clear what information is being requested;
- the information is unfinished or in the course of completion; or
- the request involves the disclosure of internal communications.

Other exceptions require proof of the harm that would result if the information was released. Information can, for example, be withheld if release would adversely affect:

- international relations, defence, national security or public safety;
- the course of justice;
- intellectual property rights (trade marks, copyright etc);
- the confidentiality of proceedings;
- commercial confidentiality;
- the interests of the supplier of the information, where supply was voluntary; or
- the protection of the environment.

If the requested information includes personal data about the applicant themselves, you should deal with it under the Data Protection Act 1998. In addition, personal information about a third party may be exempt if release would breach the data protection principles.