Freedom of Information Protocol

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| Policy Title / Reference | Author | Owner |
| Freedom of Information Protocol | Emma Cooper, Cluster DPO (Kafico) | Practice Manager |

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# Scope

This protocol has been drafted for use by customers of Kafico Ltd across Suffolk.

At the time of writing and unless alternative protocols have been adopted locally, the protocol applies to;

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| Barrack Lane | Stanton (west) | Mendlesham |
| Burlington Road | Mount Farm | Wickhambrook |
| Framlingham | Swan and Forest | Church Farm Surgery (Aldeburgh) |
| Botesdale Health Centre | Glemsford | Framfield |
| Hawthorn Drive | Lakenheath | Saxmundham |
| The Surgery, Leiston | Ixworth | Guildhall & Barrow |
| Victoria Surgery | Little St John Street | Peninsula |
| Ivry Street | Grove Medical Centre | Felixstowe Road Medical Practice |

# Definitions

**Personal Confidential Information** This term is intended to cover information captured by the Data Protection Act 2018 / GDPR (identifiable information about the living), information covered by the Common Law Duty of Confidence / Tort of Misuse of Private Information and finally, information covered by Article 8 European Convention for Human Rights.

# Introduction

This protocol supports staff to deal with requests for information so that the **Practice** complies with the requirements of the Freedom of Information Act 2000 in line with the **Practice**’s overall commitment to transparency.

# Statutory Mandatory Framework

The Freedom of Information (FOI) Act 2000 provides any person with the right to:

* Be informed in writing by the public authority whether it holds information of the description specified in the request
* If that is the case, to have that information communicated to him/her within 20 working days.
* This protocol aims to provide a general understanding of the principles of the Act and what is required of **The** **Practice** to comply with these regulations.

The Act also specifies a number of exemptions (see Appendix A) which can be provide a legal route for public authorities in denying a request.

Exemptions are either Absolute and Qualified. Qualified exemptions are subject to the Public Interest Test

# Accountable Parties

See Information Governance Policy for key roles.

All staff, whether management or administrative, who create, receive and use Personal Confidential Information have responsibilities to ensure effective reporting and management of information risk for [insert practice name]. Employees have a contractual and legal obligation to read and comply with all company policies and to attend mandatory training to support the appropriate management of information.

# Background and Requirements

The Freedom of Information Act 2000 (“the Act”) gives anyone the right to make a written request (including an e-mail request) to see information held **The Practice**.

If the information is held by **The Practice,** it must be disclosed. Any information can be requested, no matter how old it may be. This includes information contained within a variety of media such as emails, electronic filing systems and paper records.

Requests do not have to specifically quote or mention the Act, nor do they have to provide a reason for requesting the information.

Requests are “applicant blind”, meaning  **The Practice** cannot take the identity of the applicant into consideration when releasing the information. An exception to this may be made if the applicant proves vexatious see Appendix A.

**The Practice** must respond to Freedom of Information requests within 20 working days. If not  **The Practice** may be liable for action taken by the requestor.

**The Practice** must provide advice and assistance to everyone who makes a request, including where **The Practice** do not hold the information, directing the requestor to the party that does hold it, where known.

There are a small number of exemptions provided for under the Act which allow **The Practice** to withhold information – see Appendix A.

# Requests for Routine Information

If someone requests you for information that you have to hand and normally give out (e.g. an information leaflet, routine letter, etc.), you should continue to do so. These requests do not need to be logged.

# Requests for Non-Routine Information

Any employee may be contacted about an FOI request. You should be aware of the correct advice to give them and always refer to the Information Governance Lead to respond.

If you are aware that the information being requested is available elsewhere, such as on the **Practice** website, you can refer them there.

If the requestor is unable to use the website, or the information they want is not there, they must make a written request (this can be email). You should give them the **Practice** correspondence address and the name of the Freedom of Information Lead.

Requests must be made in writing. If an applicant attempts to make a request over the telephone, they should be informed how to make their request in writing (see 5.3).

All requests must contain the applicant’s name and a way of contacting them with The **Practice** ’s written response.

# Handling Written Requests

Because FOI is governed by strict timescales, it is important to refer the request to the Information Governance Lead within 24 hours.

The date of receipt is the date the request is received at the **Practice**, not the date it is passed to the FOI Lead or third party so you must act promptly.

# Supporting the Information Governance Lead

Any **Practice** employee may be contacted by the Information Governance Lead and asked for information regarding a request. If you are asked to provide information in response to a request, please do so as quickly as possible and by the date stated on the request form you have been sent.

If you cannot provide information promptly, tell the FOI Lead as soon as possible as they may need to advise the requestor

Under section 16 of the Act,  **The Practice** has a duty to provide advice and assistance to applicants. The **Practice** will ensure it meets the duty of providing advice and assistance, so far as it would be reasonable to expect The **Practice** to do so. If you cannot provide the exact information asked for, you may be able to suggest an alternative. You should discuss this with the FOI Lead.

If we do not hold the information within the **Practice**, but you know which organisation does hold the information (ie, a Trust, the council, etc) you should inform the FOI Lead as this part of the request may be able to be transferred.

# Transferring a Request

This will be done by the FOI Lead.

If the **Practice** receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, the FOI Lead will transfer the request and advise the applicant that it does not hold part, or all, of the requested information.

# Processing a Request

If the information is not available through the publication scheme, and the FOI Lead does not already hold the information, the request will be passed to the relevant department to locate and provide the information requested.

If the information is not exempt, it will be collated, removal of Personal Confidential Data will be undertaken and the final response will be sent to the requestor within 20 working days of receipt.

If the information is exempt from disclosure, the applicant will be informed (in writing) which exemption applies. They will be given the right to appeal the decision.

If the applicant is requesting a copy of their own health records they will be informed that their request is exempt under Section 40(1) of the Act, and advised how to make a Subject Access Request under the Information Rights and Access Protocol.

Where the use of a qualified exemption is proposed, a Public Interest Test will be completed and approved by the FOI Lead.

Consultation on the use of a qualified exemption must take place and be communicated to the requestor within the 20-working time limit.

# Charges and Fees

Information on **The Practice** website is available to view online or download free of charge.

Charges may be levied for hard copies of requested information, multiple copies, or copying onto media such as a CD-ROM. Charges will be in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

# Information Media

If a requestor asks for information in a specified format, this will be met where practicable.

# Appeals

If a requestor wishes to appeal they should write or email to **The Practice**.

If, after the requestor has appealed to **The Practice**, they are still not satisfied they may appeal to the FOI/ EIR Case Reception Unit, Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

# Appendix A – Exemptions

**FOI Absolute Exemptions**

Section 21 – Information accessible by other means (this often means it is already in the public domain, in which case the authority is obliged to direct you to where it is held.)

Section 23 – National Security – Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals mechanism against such certificates)

Section 32 – Court Records

Section 34 – Parliamentary Privilege – a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliament, in respect of the House of Lords is conclusive proof that the exemption is justified.

Section 36 – Effective Conduct of Public Affairs – so far as relating to information held by the House of Commons or the House of Lords

Section 40: Personal Information – where the applicant is the subject of the information. The applicant already has the right of ‘subject access’ under the Data Protection Act 1998; where the information concerns a third party and disclosure would breach one of the data protection principles

Section 41 – Information provided ‘In Confidence’

Section 44 – Prohibitions on disclosure – where a disclosure is prohibited by an enactment or would constitute contempt of court.

**FOI – QUALIFIED EXEMPTIONS**

Exemptions where the public interest test applies:

Section 22: Information Intended For Future Publication Exemption

Section 24: National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not apply)

Section 26: Defence

Section 27: International relations

Section 28: Relations within the United Kingdom

Section 29: UK Economic Interests

Section 30: Investigations and Proceedings Conducted By Public Authorities

Section 31: Law Enforcement

Section 33: Audit Functions

Section 35: Formulation of government policy and Ministerial Communications

Section 36: Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)

Section 37: Communications with Her Majesty, the Royal Family or concerning honours

Section 38: Health and Safety

Section 39: Environmental Information – as this can be accessed through the Environmental Information Regulations

Section 40: Personal information relating to a third-party access request

Section 42: Legal Professional Privilege

Section 43: Commercial Interests

# Information Incidents

Any suspected or actual incidents involving Personal Confidential Information must be reported immediately in line with the Information Incident Protocol.

# Associated Protocols

This protocol should be read in conjunction with;

* Risk Management Policy
* Change Management Policy
* Information Governance Policy
* Information Rights and Access Protocol
* Information Sharing and Privacy Protocol
* Information Lifecycle and Data Quality Protocol
* Information / Cyber Security Protocol
* Information Incident Protocol
* Information Risk and Audit Protocol
* Data Protection Impact Assessment Protocol
* Freedom of Information Protocol

# Audit Schedule

Outcomes of the protocol will be fed into the Plan, Do, Check, Act cycle as referenced in the Information Risk and Audit Protocol.

# Review

This protocol will be reviewed every year or sooner where necessary