

# FREEDOM OF INFORMATION POLICY

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*Think of the environment...Do you have to print this out this document? You can always view the most up to date version electronically on the Trust Intranet.*



## Executive Summary

This Policy sets out what The Walton Centre NHS Foundation Trust (WCFT) requires to ensure that staff comply with the requirements of the Freedom of Information Act 2000 and associated Codes of Practice. The Policy also includes requests under the Environmental Information Regulations 2004.

## Contents

1.	Introduction .....	3
2.	Scope .....	4
3.	Definitions .....	4
4.	Duties .....	4
5.	Process .....	5
6.	Exemptions .....	16
7.	Training .....	17
8.	Monitoring .....	17
9.	References .....	17
	Appendix 1 - Procedure for Freedom of Information Requests .....	18
	Appendix 2 - Protocol for notifying NHS England of any Round Robin FOI requests.....	19
	Appendix 3 - Equality Impact Assessment (EIA) Form.....	20
	Appendix 4 - Policy Approval Checklist.....	23
	Appendix 5 - Version Control .....	24
	Translation Service .....	25

## 1. Introduction

The Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (the Regulations) are part of the Government's commitment to greater openness in the public sector, a commitment supported by The Walton Centre NHS Foundation Trust.

Both the Act and the Regulations came into full effect on 1 January 2005 and legislate for a general right of access (subject to exemptions/exceptions) to recorded information held by public authorities. By establishing legal rights of members of the public, it will enable them to question the decisions of public authorities more closely and ensure that the services we provide are delivered efficiently and effectively.

All corporate information may be accessible under the legislation, including both electronic and paper versions. The legislation is retrospective and includes information held prior to January 2005.

It is the Policy of the Trust that no one will be discriminated against on grounds of age, disability, gender, gender re-assignment, marital status, race (including colour), nationality and ethnic or national origins, religion or belief for sexual orientations. The Trust will provide interpretation services or documentation in other mediums as requested and necessary to ensure natural justice and equality of access.

### 1.1. Freedom of information Act 2000

The main features of the Freedom of Information Act are:

- From 31st October 2003, a duty on every public authority to adopt and maintain a Publication Scheme – this is a scheme which lists the type and format of information we make public (Publication Schemes must be maintained);
- From 1st January 2005, a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions;
- In cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
  - a) Inform the applicant whether they hold the information requested;
  - b) Communicate the information to him or her, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.
- 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.

The Trust believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.

The Trust believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. For any further clarification staff should contact the Information Governance Manager.

## 1.2. Environmental Information Regulations 2004

Requests received relating to environmental issues e.g. clinical waste or incineration services, will be exempt under Section 39 of the Act and therefore processed in accordance with the Environmental Information Regulations 2004. These requests can be made verbally and must be responded to within 20 working days of receipt. The process will be the same as for Freedom of Information Act requests.

## 2. Scope

The Policy applies to all employees whether permanent, temporary, contracted or working indirectly on behalf of the Trust. Everyone has responsibility for handling requests for information appropriately. The Policy is a guide to how the Trust will manage its obligations under the Act and the Regulations.

This Policy will be available to all staff on the Trust's Intranet and the Trust's designated locations.

## 3. Definitions

As per the requirements of the Freedom of Information Act 2000.

## 4. Duties

### 4.1. Chief Executive

The Chief Executive has overall responsibility for Freedom of Information Act requests. As the Trust's accountable officer he/she is responsible for the management of the organisation and for ensuring appropriate mechanisms are in place to support service delivery and continuity.

The Trust has a particular responsibility for ensuring the adoption of internal and external governance requirements.

### 4.2. Senior Information Risk Owner (SIRO)

The SIRO is an executive director (currently the Chief Finance Officer) who highlights the impact on Trust strategy of information risks. The SIRO notifies the Board of information risks and advises on information risk in the Statement of Internal Control. Information Asset Owners (IAOs) are accountable to the SIRO. The SIRO is also the Corporate Records Executive Lead for the Trust and is responsible for signing off FOI responses before release of information.

### 4.3. Caldicott Guardian

The Caldicott Guardian is a senior clinician (currently the Deputy Medical Director) who oversees the use and sharing of patient information, championing confidentiality and information sharing within and outside the Trust. The Caldicott Guardian plays a key role in ensuring that the Trust satisfies the highest practical standards for handling patient-identifiable information.

### 4.4. IG Manager and Information Governance Security Forum

**The Trust's IG Manager, and the Information Governance Security Forum (IGSF)** are responsible for ensuring that this Policy is implemented, through the Information Governance work plan, and that the Freedom of Information system and processes are developed, co-ordinated and monitored. The Trust IG Manager is responsible for the

overall development and maintenance of Freedom of Information practices throughout the Trust, in particular for drawing up guidance for good practice and promoting compliance with this Policy in such a way as to ensure that Freedom of Information Act requests are dealt with correctly. The Freedom of Information Officer monitors Freedom of Information Act requests to ensure that the Trust is meeting the required timescales set out in the Act. FOI applicant feedback is provided through an online form located on the Trust website and this feedback will be reported annually to the Information Governance Security Forum.

#### 4.5. Local managers

Managers are responsible for ensuring that their staff are aware of the Freedom of Information Act and its implications. They are also responsible for ensuring that their staff are aware of any updates to this Policy and for leading the development of efficient office management systems.

#### 4.6. All staff

All Trust staff, whether clinical or administrative have a duty to adhere to this Policy. If any member of staff receives a Freedom of Information Act request, the request must be passed to the Freedom of Information Officer for processing immediately.

Trust staff are asked general questions regarding the Act during routine compliance checks undertaken by the IG Team. If they do not answer the questions correctly in line with this Policy, they will be advised of the right answers, as part of staff awareness.

### 5. **Process**

The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act.

#### 5.1. What the Trust does to comply with the Freedom of Information Act

##### 5.1.1 Publish a Publication Scheme

Under Section 19 of the Act, all public authorities are required to publish and maintain a Publication Scheme.

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 the Trust that we routinely publish, which bypasses the need for individuals to make FOI requests for certain classes of information. The Trust has adopted a Publication Scheme, which is available on the Trust's website; hard copies are also available on request. The Publication Scheme was introduced in March 2003 and amended in 2008 and November 2009 in line with guidance produced by the Information Commissioner. The Publication scheme will be reviewed again during 2022/23.

Much of the information published through the Publication Scheme is accessible via the Trust's website, with the remainder available on request.

Applications for information listed in the Publication Scheme may be received verbally or in writing, including email and the Publication Scheme gives clear information on who to contact to access the information.

Applications for information listed in the Publication Scheme can be made from the Trust's website via an email link to a dedicated 'Enquiries' mailbox. The 'Enquiries' mailbox is a shared mailbox which the Information Governance Team have access to. This ensures that for periods of annual leave and absences that all freedom of information requests will be dealt with. Alternatively, members of the public may put a request in writing. A log of all information requested is maintained for monitoring purposes.

#### 5.1.2 Plan for general rights of access

Section 1 of the Freedom of Information Act gave a general right of access from 1st January 2005 to recorded information held by the Trust subject to certain conditions and exemptions. This information includes, for example:

- Minutes of meetings;
- Written correspondence – but not person identifiable information which is protected by the General Data Protection Regulation (GDPR), Data Protection Act 2018, as well as Section 40 of the Freedom of Information Act 2000;
- Drafts of documents and policies (although once a further draft of a document is in existence the previous version is not available for disclosure);
- Emails – apart from person identifiable information which is protected by the Data Protection Act 2018/GDPR.

Anyone making a request for information is entitled:

- To be informed in writing whether the Trust holds the information of the description specified in the request;
- If the Trust holds the information, to have that information communicated to them.

The Trust will ensure it complies with the duty to confirm or deny (if necessary) and to provide the information requested in 20 working days of receipt of a request, in accordance with Section 10 of the Act. Therefore, any requests received at department level must be notified immediately to the Freedom of Information Officer for timescale purposes.

#### 5.2. Implementation and compliance

##### 5.2.1 Office management systems

It is essential that all staff maintain efficient and effective office management systems. This means:

- Keep your files and records in order;
- Remember that whatever you write – minutes, emails etc. are disclosable;
- The Act is fully retrospective. The public are able to access any information, including that which was created prior to 1st January 2005.

Please remember that there is a chance that the e-mail you thought to be confidential may be seen by people for whom it was not originally intended. So, when you are using e-mail:

- Make sure that the content is verifiable, evidence based and capable of being subjected to public scrutiny;
- Make sure you are sending the information only to those people who need the information;
- Be responsible about your use of e-mail; be aware that the e-mail you send may be forwarded on without your consent or knowledge;
- Take care when forwarding an email, ensuring that they are entitled to receive the string of emails and any attachments;

- Remember that inappropriate or excessive use of e-mail for personal reasons may result in disciplinary action and / or removal of facilities. Both private and business use of e-mail may be subject to monitoring;
- Manage your e-mails and delete unwanted messages on a regular basis from the active folder and from the `trash' folder so that they are no longer recoverable from your system.

The following message appears as an AutoSignature at the bottom of all messages

*This e-mail and any attachments may contain confidential and / or proprietary Trust information, some or all of which may be legally privileged, and may be subject to public disclosure under the NHS Code of Openness or the Freedom of Information Act 2000. The information held herein should only be used for its initial intended purpose(s) and exclusive use of the intended recipient(s). If you are not the intended recipient then please notify the author by replying to this e-mail and then destroy any copies. Any views or opinions expressed in this e-mail are those of the author and do not necessarily represent those of the Trust. All incoming and outgoing e-mails and other forms of telecommunication may be monitored.*

### 5.3. Charges and fees

The Trust will generally not charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM.

An “appropriate limit” for the purposes of Section 12 of the Freedom of Information Act has been set at £450 for public bodies such as the health service.

The appropriate limit has to be applied, separately, to the duty under Section 1 (1) (a) of the FOI Act to confirm or deny whether the information is held. It is only if it would cost more than the appropriate limit to confirm or deny, by itself, that the obligation to do so is removed.

It will often be immediately obvious that the cost will not exceed the appropriate limit. But if a request is more complicated and likely to take longer to answer, the Trust will have to consider on a case by case basis if it wishes to estimate whether the appropriate limit would be exceeded in advance.

The Act sets out what may be taken into account when Trusts are estimating whether the appropriate limit has been exceeded. The costs are limited to those that a Trust reasonably expects to incur in:

- Determining whether it holds the information requested;
- Locating the information or documents containing the information;
- Retrieving such information or documents, and;
- Extracting the information from the document containing it. However, it excludes:
  - Considering exemptions
  - Time taken to redact exempt information
  - Time to carry out the Public Interest Test

The Trust may take into account the costs attributable to the time that persons are expected to spend on these activities. In order to achieve consistency, all Trusts should use the same hourly rate when estimating staff-time costs, regardless of the actual costs. The hourly rate is set at £25 per person per hour. If the costs attributable to the collective

time spent on these activities, at £25 per person per hour, would cost more than the appropriate limit of £450 to answer, the Trust is not obliged to answer it. However, as per Section 16 of the Freedom of Information Act 2000, you must give the requester reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the appropriate limit would be exceeded and what information, if any, may be available within the limits.

In all cases where the Trust chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by Section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

#### 5.4. Operating the rights to access

##### 5.4.1 When requests are received

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the Trust holds the information it must provide it, subject to certain conditions and exemptions. The duty to confirm or deny is also subject to certain conditions and exemptions. Under Section 1(3) the duty to confirm or deny does not arise where the Trust:

- Reasonably requires further information in order to identify and locate the information requested;
- Has informed the applicant of that requirement.

The Trust will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

Under Section 2 of the Act, the Trust does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44.

These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all 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. The Part II exemptions are listed in Section 6 of this Policy.

The Trust will seek to use the qualified exemptions sparingly and will, in accordance with Section 17 of the Act justify the use of such exemptions.

The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

The duty to comply with a request for information does not arise if the Trust estimates that the cost of compliance with the request would exceed the appropriate limit. Details of charges and fees can be found in [Section 5.3](#). The Trust will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication of information that exceeds this limit.

The Trust is not obliged to comply with a request for information if the request is vexatious. Where the Trust has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or



subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Trust will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

In accordance with Section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describes the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

All requests will be logged onto the Freedom of Information Request Manager system. The Medical Director/Caldicott Guardian will have input for requests involving clinical information.

#### 5.4.2 Police requests

Police requests for non-confidential information will be processed as a routine Freedom of Information Act request. For confidential information requests please see the Confidentiality Policy which includes a form for the Police to complete.

#### 5.4.3 MP letters

MP letters which are requesting corporate, non-confidential information will be processed as routine Freedom of Information Act requests.

#### 5.5. Time limits

The Trust will ensure it complies with the duty to confirm or deny and to provide the information request in 20 working days of a request, in accordance with Section 10 of the Act. All staff at every level in the organisation will be required to comply with these requirements. Failure to do so may result in disciplinary action. The Trust will enforce a 10 day internal deadline for response. [See appendix A](#) for internal process.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with Section 9(2), the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.

If the Trust chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision.

#### 5.5.1 Stopping the clock

If further clarification is required before a formal response can be provided, the clock may be “stopped” on the date clarification is requested and re-started when clarification has been received. The requestor should be informed of the intention to “stop the clock” and informed of the re-calculated deadline for response when the clock is re-started. If this deadline for the requester to respond (90 days) is not met then the request will automatically be closed by the FOI Officer.

#### 5.5.2 Extension of deadline

An extension of the deadline may be requested under the Freedom of Information Act, if the Trust genuinely needs more time to consider the public interest in disclosing or withholding the information. The extension should not exceed 40 working days from the

original date of request. Extensions to the time limit can only be granted in certain circumstances and these must be agreed with the requestor as soon as possible. The Trust will aim to request an extension within 10 days following receipt of the original request.

### 5.5.3 Escalation

The Trust enforces a 10 day internal deadline for responses from the department who is providing the information. If a response has not been received by the internal deadline, a reminder will be sent informing of the formal deadline and requesting the information as soon as possible. A further reminder will be sent if no response is received within 3 days. If a response is still not received following reminders and the breach date is nearing, notification should be sent to the Senior Manager of the relevant service. If there is still no response and there is likelihood of breach, this will be escalated to the SIRO.

If a breach occurs, a DATIX must be completed by the Information Governance Team and an internal investigation is to be undertaken incorporating reasons for the breach and the lessons learned.

### 5.6. How information will be conveyed

When an applicant, on making their request for information, expresses a preference for a communication by any one or more of the following means, the Trust shall so far as reasonably practicable give effect to that preference in accordance with Section 11 of the Act, namely:

- The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant;
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information;
- The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

In determining whether it is reasonably practicable to communicate information by a particular means, the Trust will consider all the circumstances, including the cost of doing so. If the Trust determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Trust will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

The Trust will monitor the provision of information arising from requests under the Act by means of a Freedom of Information Act log of requests.

**Note:** any requests received at department level must be notified immediately to the Trust Freedom of Information Officer.

### 5.7. Refusal of requests

As indicated above, the duty to confirm or deny does not arise if the Trust:

- Using Section 2 of the Act applies an exemption under Part II of the Act;
- Has issued a fees notice under Section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant;
- Under Section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit;

- Can demonstrate that the request for information is vexatious or repeated, as indicated by Section 14 of the Act.

If the Trust chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in Section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Trust under the Act and of the right conferred by Section 50 of the Act.

If the Trust is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information, a notice will be issued within twenty working days under Section 17 of the Act. The notice will:

- State that fact;
- Specify the exemption in question, and;
- State (if that would not otherwise be apparent) why the exemption applies.

Where the Trust is relying on a claim:

- that any provision of Part II which relates to the duty to confirm or deny and is not specified in Section 2(3) of the Act as an absolute exemption is relevant to the request, or;
- that the information is exempt only by virtue of a qualified exemption, a provision not specified in Section 2(3).

and at the time when the notice under 2.8.3 above is given to the applicant has not yet reached a decision as to the application of subsection (1) (b) or (2) (b) of Section 2 of the Act – the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Trust expects that a decision will have been reached.

As indicated by the Lord Chancellor's Code of Practice issued under Section 45 of the Act, such estimates should be reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Trust. If the Trust finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed.

The Trust will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

If applying a qualified exemption under subsection (1)(b) or (2)(b) of Section 2 of the Act the Trust will, either in the notice issued under 2.8.3 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

- 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
- That, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**The statement should not involve the disclosure of information which would itself be exempt information.**

If the Trust is relying on a claim that Section 12 or 14 of the Act apply, 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.

The Trust will keep a record of all notices issued to refuse requests for information.

#### 5.8. Duty to provide advice and assistance

In accordance with Section 16 of the Act the Trust will make every reasonable effort to assist the public with making a request, for example if the request is made verbally by someone who is unable to read or write. In this case assistance will be given to the applicant to write down their request and encourage him/her to verify with a friend or family member that the written request is in fact what is required. A similar approach will be taken with applicants who do not speak English as a first language and require assistance to write down their request.

The Trust will ensure that the systems and procedures that are deployed to meet the Section 16 duty also conform to the Code of Practice issued under Section 45 of the Act.

#### 5.9. Transferring requests for information

A request can only be transferred where 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. If the Trust in receipt of a request holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Trust recognises that "holding" 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).

Upon receiving the initial request for information, the Trust will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Trust will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Trust must be certain as to the extent of the information relating to the request which it holds itself.

If the Trust believes that some or all of the information requested is held by another public authority, the Trust 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 original authority believes to hold the information;
- Providing him or her with contact details for that authority.

If the Trust considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Trust will consider:

- Whether a transfer is appropriate; and if so

- Whether the applicant is likely to have any grounds to object to the transfer.

If the Trust reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so.

Where there are reasonable grounds to believe an applicant is likely to object, the Trust will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Trust is unable either to advise the applicant which it holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

#### 5.10. Consultation with third parties

The Trust recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidentiality or where it constitutes "personal data" within the meaning of the Data Protection Act 2018 ("the DPA").

Unless an exemption provided for in the Act applies in relation to any particular information, the Trust will be obliged to disclose that information in response to a request.

Where a 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), the Trust will consult that 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. Where the interests of the third party, and which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

Where information constitutes "personal data" within the meaning of the DPA, the Trust 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.

The Trust will undertake 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.

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

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 Trust will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Trust may consider that it would be sufficient to consult a representative sample of the third parties in question.

The fact that the 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. In all cases, it is for the Trust, 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.

#### 5.11. Public sector contracts

When entering into contracts the Trust will refuse to include contractual terms which purport to restrict the disclosure of information held by the Trust and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Trust will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

When entering into contracts with non-public authority contractors, the Trust may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Trust will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Trust will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. The Trust will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

The Trust will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in Section 41 only applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.

It is for the Trust to disclose information pursuant to the Act, and not the non-public authority contractor. The Trust will take steps to protect from disclosure by the contractor information which the authority has provided to the contractor which would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and

according to the individual circumstances of the case. Apart from such cases, the Trust will not impose terms of secrecy on contractors.

#### 5.12. Accepting information in confidence from third parties

The Trust will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided.

The Trust will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

#### 5.13. Complaints about the discharge of the duties of the Trust under the Act

In accordance with Section 45 of the Code of Practice (Secretary of State for Constitutional Affairs Code of Practice on the discharge of public authorities functions under Part 1 of the Freedom of Information Act 2000. Issued under Section 45 November 2004) the Trust will undertake an internal review following a complaint to the Trust in relation to how the Trust has discharged its duties under the Act. The internal review will analyse and review how the Trust managed the Freedom of Information Act request and be undertaken by a senior member of staff e.g. executive, who has not been directly involved in the processing of the request.

The Trust has an internal review process in place for those occasions whereby a requester may be discontent with the outcome of their request and ask for the Trust to review the proceedings led to the decision made on their request. The Trust's internal review process is intended to be a clear and simple procedure; where practical, and aim to resolve the requester's concerns informally by explaining in more detail the grounds for refusal to disclose any/all of the information requested; or clarifying the exemptions being relied upon.

If the requester asks the Trust for an internal review of our decision, we will acknowledge the appeal, which will be treated as a formal complaint and will be subject to the internal review procedure.

Possible outcomes following an internal review are:

- The original response is upheld; or
- The original response is reversed in part or in full; or
- The original response is modified.

There is no statutory deadline for undertaking internal reviews, but the Information Commissioners Office (ICO) has published guidance saying that internal reviews should take no longer than 20 working days, depending upon the complexity of the case.

The final decision will be made by the Chief Executive or another senior member of staff who was not involved in making the original decision.

Under Section 50 of the Act complainants have the right to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Trust following attempts at local resolution of their complaint via an internal review.

The FOI internal review standard operating procedure can be provided by the IG department for further information.

## 5.14. Records management

The Trust has a separate policy with supporting systems and procedures that will ensure compliance with Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000 and the Code of Practice for Health and Social Care 2021.

## 6. Exemptions

Exempt information under part II of the Freedom of Information Act 2000

There are two types of class exemption:

- **Absolute**, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure;
- **Qualified** by the public interest test, which require the public body to decide whether it is in the balance of public interest to disclose information, by weighing up factors for and against disclosure of information.

With the exception of Section 21 (information accessible to applicant by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the Act are:

- Section 21, Information accessible to applicant by other means;
- Section 23, Information supplied by, or relating to, bodies dealing with security matters;
- Section 32, Court Records;
- Section 34, Parliamentary Privilege;
- Section 36, Prejudice to 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 disclosure may contravene the Data Protection Act 2018) Note: applicants may apply for information which contains both personal data and non-personal data e.g. internal reports. The Trust must make clear which act the information is being disclosed under i.e. DPA or FOI. If disclosing under FOI only information may be disclosed which would be disclosed to any member of the public;
- Section 41, Information provided in confidence;
- Section 44, Prohibitions on disclosure.

The exemptions that are **qualified** by the public interest test are:

- Section 22, Information intended for future publication;
- Section 22A, Research Data
- Section 24, National Security;
- Section 26, Defence;
- Section 27, International Relations;
- Section 28, Relations within the United Kingdom;
- Section 29, The Economy;
- Section 30, Investigations and proceedings conducted by public authorities;
- Section 31, Law Enforcement;
- Section 33, Audit Functions;
- Section 35, Formulation of Government Policy;



- Section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords);
- Section 37 Communications with Her Majesty, etc. and honours;
- Section 38, Health and Safety;
- Section 39, Environmental Information;
- Section 42, Legal Professional Privilege;
- Section 43, Commercial Interests.

More detail on exemptions can be found on the Information Commissioner's website [www.ico.gov.uk](http://www.ico.gov.uk)

If The Walton Centre NHS FT is to apply exemption Section 36 of the Act, the Chief Executive of the Trust has to provide sign off when applying this. The Act states that when a public authority is applying Section 36 'Prejudice to effective conduct of public affairs' the highest ranking person within the public authority has to provide approval/sign off on the response which will be provided to the requester.

## **7. Training**

Mandatory training on the Freedom of Information Act will be carried out as part of the Trusts mandatory induction process. Raising awareness for all staff will also take place throughout the year utilising the Trust's Intranet site, Team Brief and Weekly Newsletter.

## **8. Monitoring**

The efficiency of this Policy will be monitored through the Information Governance Security Forum, who in turn formally report to Business Performance Committee (a sub-committee of the Trust Board). Bi annual reports will be provided by the Freedom of Information Officer to the IGSF and then annually to Trust Board.

## **9. References**

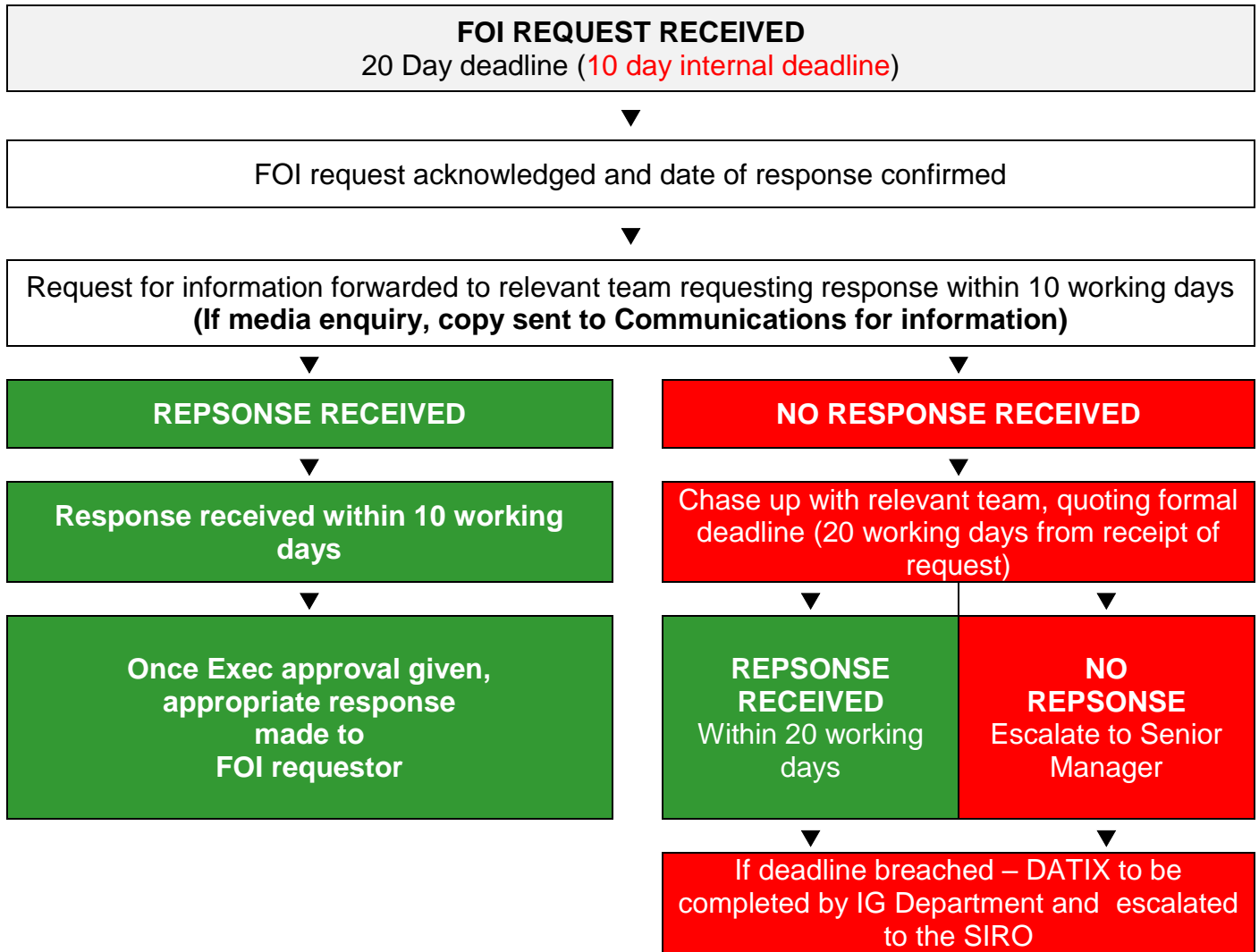
- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Lord Chancellor's Codes of Practice
- Data Protection Act 2018
- General Data Protection Regulation 2018

### **9.1. Supporting policies/documents**

This Policy should be read in conjunction with the following policies and guidance which are available on the Trust's Intranet:

- Corporate Records Policy
- Clinical Records Management Policy
- Information Security and IT Acceptable Use Policy
- Data Sharing Agreement Policy
- Lifecycle Management Strategy
- Disclosure of Employees contact details to a third party Guidelines
- Confidentiality: NHS Code of Practice
- Records Management Code of Practice for Health and Social Care 2016
- Information Security: NHS Code of Practice

## Appendix 1 - Procedure for Freedom of Information Requests



Full departmental standard operating procedures can be located in the Information Governance Department.

## Appendix 2 - Protocol for notifying NHS England of any Round Robin FOI requests

This protocol is to be followed in the event that the Walton Centre NHS FT receives a Freedom of Information (FOI) Act request which is known (or believed) to be a 'round robin' request.

A round robin request is a request which has been sent to a wide number of public authorities or to a number of other NHS Trusts at the same time, seeking the same information.

In some cases the circulation list or wording of the request will make it clear that it is a round robin request in other cases, it may be that FOI contacts in other organisations have highlighted its existence as such a request.

On receipt of a known or suspected round robin FOI request, the FOI Officer will notify the FOI Communications Team at NHS England by email.

It is not always obvious if requests have been sent to other organisations; the Trust should be alert to the possibility that this may be the case. In order to ensure compliance with the Data Security and Protection Toolkit (DSPT) requirement, the Trust shall action requests as follows:

- If a circular questionnaire - or any other round robin request for information - identifies the requester (which can include a corporate name) and provides an address for an answer, you must consider your responsibilities under the FOI Act. (If the request is for environmental information, the requester does not have to provide a name and you need to consider the provisions of the EIR).
- Identify and apply the appropriate Act to the information requested.
- Identify which questions amount to requests for information held on record.
- Notify NHS England Information Governance lead of any 'Round Robin' requests which in their consideration may have significant implications at regional or national level so they can provide coordination and support - [england.contactus@nhs.net](mailto:england.contactus@nhs.net)
- Consider any guidance given by NHS England when coordinating your response and whether any part of a response can be shared with other Trusts.
- NHS England Freedom of Information Lead shall in turn alert the Department of Health
- Approve content and release of any journalist or media response.

The Walton Centre NHS FT will respond to the FOI request in line with standard FOI procedures.

Further information can be found on the following link at the Information Commissioner's Office:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

### Appendix 3 - Equality Impact Assessment (EIA) Form

This section must be completed at the development stage i.e. before ratification or approval. For further support please refer to the EIA Guidance on the Equality and Diversity section of the Intranet.

#### Part 1

1. Person(s) Responsible for Assessment: *IG Manager*

2. Contact Number: [REDACTED]

3. Department(s): *Information Governance*

4. Date of Assessment: 11/7/2022

5. Name of the policy/procedure being assessed: *Freedom of Information Policy*

6. Is the policy new or existing?

*Existing*

7. Who will be affected by the policy (*please tick all that apply*)?

Staff  Patients  Visitors  Public

8. How will these groups/key stakeholders be consulted with?

*Fair processing Notice, leaflets, Intranet, Team Brief and Internet.*

9. What is the main purpose of the policy?

*This policy sets out what The Walton Centre NHS Foundation Trust (WCFT) requires to ensure that staff comply with the requirements of the Freedom of Information Act 2000 and associated Codes of Practice. The policy also includes requests under the Environmental Information Regulations 2004.*

10. What are the benefits of the policy and how will these be measured?

*Staff knowledge and compliance with legal and regulatory obligations.*

11. Is the policy associated with any other policies, procedures, guidelines, projects or services? *If yes, please give brief details*

*Data Sharing Policy, Code of Conduct for Employees in Respect of Confidentiality, Data Protection Impact Assessment Policy, Data Protection Policy, Access to Health Records Policy, Information Governance Strategy Framework and Policy.*

12. What is the potential for discrimination or disproportionate treatment of any of the protected characteristics? *Please specify specifically who would be affected (e.g. patients with a hearing impairment or staff aged over 50). Please tick either positive, negative or no impact then explain in reasons and include any mitigation e.g. requiring applicants to apply for jobs online would be negative as there is potential disadvantage to individuals with learning difficulties or older people (detail this in the reason column with evidence) however applicants can ask for an offline application as an alternative (detail this in the mitigation column)*

Protected Characteristic	Positive Impact (benefit)	Negative (disadvantage or potential disadvantage)	No Impact	Reasons to support your decision and evidence sought	Mitigation/adjustments already put in place
Age			✓		
Sex			✓		
Race			✓		
Religion or Belief			✓		
Disability			✓		
Sexual Orientation			✓		
Pregnancy/maternity			✓		
Gender Reassignment			✓		
Marriage & Civil Partnership			✓		
Other			✓		

If you have identified no negative impact for all please explain how you reached that decision and provide reference to any evidence (e.g. reviews undertaken, surveys, feedback, patient data etc.).

*The purpose of this Policy is to ensure that staff comply with the requirements of the Freedom of Information Act 2000 and associated Codes of Practice.*

13. Does the policy raise any issues in relation to Human Rights as set out in the Human Rights Act 1998? *See Guidance for more details (NB if an absolute right is removed or affected the policy will need to be changed. If a limited or qualified right is removed or affected the decision needs to be proportional and legal).*

No

If you have identified negative impact for any of the above characteristics, and have not been able to identify any mitigation, you **MUST** complete Part 2, please see the full EIA document on the Equality and Diversity section of the Intranet and speak to Andrew Lynch ED&I Lead for further support.

Action	Lead	Timescales	Review Date

**Declaration**

I am satisfied this document/activity has been satisfactorily equality impact assessed and the outcome is:

**No major change needed** – EIA has not identified any potential for discrimination/adverse impact, or where it has this can be mitigated & all opportunities to promote equality have been taken



**Adjust the policy** – EIA has identified a need amend the policy in order to remove barriers or to better promote equality  
*You must ensure the policy has been amended before it can be ratified.*



**Adverse impact but continue with policy** – EIA has identified an adverse impact but it is felt the policy cannot be amended.  
*You must complete Part 2 of the EIA before this policy can be ratified.*



**Stop and remove the policy** – EIA has shown actual or potential unlawful discrimination and the policy has been removed



Name: ██████████

Date: 11/7/22

Signed:

## Appendix 4 - Policy Approval Checklist

The Freedom of Information Policy is presented to the Information Governance Security Forum for Approval.

**In order for this Policy to be approved, the reviewing group must confirm in table 1 below that the following criteria is included within the Policy. Any policy which does not meet these criterion should not be submitted to an approving group/committee, the policy author must be asked to make the necessary changes prior to resubmission.**

### Policy review stage

Table 1

<b>The reviewing group should ensure the following has been undertaken:</b>	<b>Approved?</b>
The author has consulted relevant people as necessary including relevant service users and stakeholders.	Yes
The objectives and reasons for developing the documents are clearly stated in the minutes and have been considered by the reviewing group.	Yes
Duties and responsibilities are clearly defined and can be fulfilled within the relevant divisions and teams.	Yes
The policy fits within the wider organisational context and does not duplicate other documents.	Yes
An Equality Impact Assessment has been completed and approved by the HR Team.	Yes
A Training Needs Analysis has been undertaken (as applicable) and T&D have been consulted and support the implementation	N/A
The document clearly details how compliance will be monitored, by who and how often.	Yes
The timescale for reviewing the policy has been set and are realistic.	Yes
The reviewing group has signed off that the policy has met the requirements above.	Yes
<b>Reviewing group chairs name: ██████████</b>	<b>Date: 17/07/20</b>

### Policy approval stage

<input checked="" type="checkbox"/> <b>The approving committee/group approves this policy.</b> <input type="checkbox"/> <b>The approving committee/group does not approve the policy.</b>	
<b>Actions to be taken by the policy author:</b>	
<b>Approving committee/group chairs name:</b>	<b>Date:</b>

## Appendix 5 - Version Control

Version	Section/Para/ Appendix	Version/description of amendments	Date	Author/Amended by
2	All	Review of full document and transfer to new template	09.12.15	
2	1	Updated wording in the introduction	09.12.15	
	3.4	Removal of wording and link to email policy	09.12.15	
	4.2	Added wording to reflect SIRO duties	09.12.15	
	4.4	Update to round robin process	09.12.15	
	5.5.1	Added stopping the clock process	09.12.15	
	5.5.2	Added extension of deadline process	09.12.15	
	5.5.3	Added Escalation process	09.12.15	
	8	Update to reflect current reporting to BPC	09.12.15	
	9	Added references and supporting documents	09.12.15	
	Appendix 1	Updated to include reference to departmental standard operating procedures.	09.12.15	
2.1	Front page	Author details and version	08/12/16	
	4.4	Removal of wording for round robin	08/12/16	
	5.1.1	Changed individual IG job titles to IG Team.	08/12/16	
	5.5.3	Updated wording on escalation.	08/12/16	
	9.1	Updated name of disclosure of Employees contact details to a third party	08/12/16	
	9.1	Added Records Management Code of Practice for Health and Social Care 2016.	08/12/16	
3.1	Front Page	Author Details and Version updated	28/11/18	
	1	Introduction wording updated	28/11/18	
	1.1	Point of contact updated	28/11/18	
	1.2	Section of FOIA added into wording	28/11/18	
	4.1	Role of Chief Executive updated	28/11/18	
	4.4	Feedback wording amended	28/11/18	
	4.6	Staff compliance checks are noted to make staff aware of FOI	28/11/18	
	5.1.2	DPA 1998 changed to DPA 2018	28/11/18	
	5.1.2	Duty to confirm/deny wording changed as it is not always necessary	28/11/18	
	5.3	Fees Notice referenced	28/11/18	
	5.3	Section 9a of DPA 1998 removed, the old Act has been repealed.	28/11/18	
	5.1.1	Clarification deadline added	28/11/18	
	5.5.3	Wording updated	28/11/18	
	5.13	Internal Review Process added and references internal SOP	28/11/18	
	6	Qualified exemption wording updated	28/11/18	
	9	Updated reference to reflect DPA 2018	28/11/18	
4	Whole Document	General DPO review – minor amendments and updates	July 2020	
5	Front page	Author Details and Version Updated. Responsible Director Job Title Updated	11/07/22	
	1.1	Updated Job Titles	11/07/22	



	4.2	Updated Job Titles	11/07/22	
	4.3	Updated Job Titles	11/07/22	
	4.4	Updated Job Titles	11/07/22	
	5.1.1	Noted that Publication Scheme will be updated in 2022/2023	11/07/22	
	5.3	Qualified Exemption Updated	11/07/22	
	5.14	Updated Records Management Code of Practice for Health and Social Care 2021	11/07/22	
	Appendix 3	Updated Job Titles	11/07/22	

## Translation Service

If you require this in any other language or format, please contact the Patient Experience Team on [REDACTED] stating the leaflet name, code and format you require.

### Arabic

المرضى ت جارب م تابعة ب فريقي الاتصال ف يرجى آخر، ت نسبق أو لغة ب أي ال نشرة هذه إلى ب حاجة كنت اذا الرقم على

ت طلبه الذي والشكل والرمز، ال نشرة، اسم موضحاً patientexperienceteam@thewaltoncentre.nhs.uk

**Chinese** 如果你想索取本传单的任何其他语言或格式版本，请致电 [REDACTED] 络「病人经历组」，或发电邮至 [REDACTED] 说明所需要的传单名称、代码和格式。

### Farsi

شماره باب بیمار ت جربه ت یم بالظ فادید نگرى زیدان یا هوف رم به به روشور این به نه یاز صورت در ۰۱۵۱۵۵۶۳۰۹۱

ب گ یرد زید رت ماس ایمیل ب ای ای ۳۹۰۳۶ خود نه یاز مورد قالب و ک د، ب روشور نام ذکر ب ا

### French

Si vous avez besoin de ce dépliant dans une autre langue ou un autre format, veuillez contacter Patient Experience Team (équipe de l'expérience des patients) au [REDACTED], ou envoyez un e-mail à [REDACTED] en indiquant le nom du dépliant, le code et le format que vous désirez.

**Polish** Jeśli niniejsza ulotka potrzebna jest w innym języku lub formacie, należy skontaktować się z zespołem ds. opieki nad pacjentem (Patient Experience Team) pod numerem telefonu [REDACTED] lub wysłać wiadomość e-mail na adres [REDACTED], podając nazwę ulotki, jej kod i wymagany format.

### Punjabi

ਜੇ ਤੁਹਾਨੂੰ ਇਹ ਕਿਤਾਬਚਾ ਕਿਸੇ ਹੋਰ ਭਾਸ਼ਾ ਜਾਂ ਫਾਰਮੈਟ ਵਿੱਚ ਚਾਹੀਦਾ ਹੈ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਪੇਸ਼ੇਂਟ ਐਕਸਪੀਰੀਅਂਸ ਟੀਮ ਨਾਲ 0151 556 3091 ਜਾਂ 3093 'ਤੇ ਸੰਪਰਕ ਕਰੋ, ਜਾਂ [REDACTED] 'ਤੇ ਈਮੇਲ ਕਰੋ ਅਤੇ ਪਰਚੇ ਦਾ ਨਾਮ, ਕੋਡ ਅਤੇ ਆਪਣਾ ਲੋੜੀਂਦਾ ਫਾਰਮੈਟ ਦੱਸੋ।

### Somali

Haddii aad u baahan tahay buug-yarahan oo luqad kale ku qoran ama isaga oo qaab kale ah, fadlan Kooxda Waayo-arragnimada Bukaanka kala soo xiriiir [REDACTED], ama email-ka [REDACTED] oo sheeg magaca iyo summadda buug-yaraha iyo qaabka aad u rabtid.

## Urdu

ایک سپیریٹو ڈانس پریڈنٹ کے رہبر اور توجہ دہندگان میں شکل یا زبان دیہنگ کے سی کے تاپ چہ یہ کہ و آپ اگر  
کا شکل طلبو ہم اپنی اور کے وڈ نام، کا کا تاپ چہ یا کریں، رابطہ پر [REDACTED] سے ڈیم  
کریں۔ میل ای پر [REDACTED] ہوئے کرتے ذکر

Welsh Pe byddech angen y daflen hon mewn unrhyw iaith neu fformat arall, byddwch cystal â  
chysylltu gyda'r Tîm Profiadau Cleifion ar [REDACTED], neu ebostiwch  
[REDACTED] gan nodi enw'r daflen, y cod a'r fformat sydd ei  
angen arnoch.