

POLICY DOCUMENT

Freedom of Information Policy

2019 – (Version 1.1)

CS>SMT>G&R>Board

Policy Review Schedule

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Policy Owner: Governance, IT & Facilities Manager

Amendment Overview

Version	Date	Pages	Comments	Actioned
2018 – 1.0	06/04/2018		Regionally developed policy adopted and amended to suit NIMDTA.	Mark Oliver
2018 – 1.0	26/04/2018		Presented to NIMDTA Board. Approved.	
2019 – 1.1	21/05/2019	10	Amendment of job title	Mark Oliver

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Role of the Northern Ireland Medical and Dental Training Agency

The Northern Ireland Medical and Dental Training Agency (NIMDTA) is an Arm's Length Body sponsored by the Department of Health (DoH) to train postgraduate medical and dental professionals for Northern Ireland. NIMDTA seeks to serve the government, public and patients of Northern Ireland by providing specialist advice, listening to local needs and having the agility to respond to regional requirements.

NIMDTA commissions, promotes and oversees postgraduate medical and dental education and training throughout Northern Ireland. Its role is to attract and appoint individuals of the highest calibre to recognised training posts and programmes to ensure the provision of a highly competent medical and dental workforce with the essential skills to meet the changing needs of the population and health and social care in Northern Ireland.

NIMDTA organises and delivers the recruitment, selection and allocation of doctors and dentists to foundation, core and specialty training programmes and rigorously assesses their performance through annual review and appraisal. NIMDTA manages the quality of postgraduate medical and dental education in HSC Trusts and in general medical and dental practices through learning and development agreements, the receipt of reports, regular meetings, trainee surveys and inspection visits. It works in close partnership with local education providers to ensure that the training and supervision of trainees support the delivery of high quality safe patient care.

NIMDTA recognises and trains clinical and educational supervisors and selects, appoints, trains and develops educational leaders for foundation, core and specialty medical and dental training programmes throughout NI.

NIMDTA is accountable to the General Medical Council (GMC) for ensuring that the standards set by the GMC for medical training, educational structures and processes are achieved. The Postgraduate Medical Dean, as the 'Responsible Officer' for doctors in training, has a statutory role in making recommendations to the GMC to support the revalidation of trainees. Revalidation is the process by which the GMC confirms that doctors are up to date and fit to practice. NIMDTA also works to the standards in the COPDEND framework for the quality development of postgraduate Dental training in the UK.

NIMDTA enhances the standard and safety of patient care through the organisation and delivery of relevant and valued career development for general medical and dental practitioners and dental care professionals. It also supports the career development of general medical practitioners and the requirements for revalidation through the management and delivery of GP appraisal.

NIMDTA aims to use the resources provided to it efficiently, effectively and innovatively. NIMDTA's approach to training is that trainees, trainers and educators should put patients first, should strive for excellence and should be strongly supported in their roles.

Executive Summary

FOI places a statutory obligation the Northern Ireland Medical and Dental Training Agency (NIMDTA) to publish details of all recorded information that it holds, except where an exemption applies. FOI is wholly retrospective and applies to all information held by public authorities regardless of its date.

The Environmental Information Regulations 2004 (EIR) gives the right to access 'environmental information' held by public authorities, and therefore requires similar measures for all environmental information held by NIMDTA.

NIMDTA has a Service Level Agreement with the Business Services Organisation (BSO) for the provision of a Shared Corporate Services function – this includes the processing of information requests on behalf of NIMDTA. This Policy details the responsibilities of both organisations in respect to FOI.

Policy Influence

This policy has been influenced by the following:

- General Data Protection Regulations
- Data Protection Act 1998
- Common Law Duty of Confidentiality
- Freedom of Information Act 2000
- Public Records Act (Northern Ireland) 1923
- Disposal of Documents Order 1925
- Re-Use of Public Sector Information Regulation 2005
- Access to Health Records (Northern Ireland) 1923
- Human Rights Act 1998
- Electronic Communications Act 2000
- Environmental Information Regulations 2004
- Equality Act 2010
- Public Interest Disclosure Act 1998
- The Investigatory Powers Act 2016
- Guidance from the Information Commissioners Office (ICO)
- The Department of Health (DoH) Good Management, Good Records

Policy Impact

This policy may have an impact on the following:

- Information Requests Procedure
- Freedom of Information Publication Scheme
- Processing and Sharing of Information Relating to Doctors and Dentists
- IT Policy
- Records Management Strategy
- Disciplinary Procedure

1. Introduction

The Freedom of Information Act 2000 (FOI) gives the public a general right of access to information held by a public authority, subject to certain conditions and exemptions. FOI promotes greater openness and accountability across the public sector, therefore facilitating a better understanding of how public bodies carry out their business and how they spend public money.

FOI places a statutory obligation the Northern Ireland Medical and Dental Training Agency (NIMDTA) to publish details of all recorded information that it holds, except where an exemption applies. FOI is wholly retrospective and applies to all information held by public authorities regardless of its date.

The Environmental Information Regulations 2004 (EIR) gives the right to access 'environmental information' held by public authorities, and therefore requires similar measures for all environmental information held by NIMDTA.

NIMDTA has a Service Level Agreement with the Business Services Organisation (BSO) for the provision of a Shared Corporate Services function – this includes the processing of information requests on behalf of NIMDTA.

2. Purpose

NIMDTA acknowledges its obligations as set out under FOI and EIR, and is committed to the principles of openness, transparency and accountability.

This policy establishes a framework which underlines the commitment. The purpose of this policy and related procedures is to ensure that NIMDTA/BSO is compliant with the FOI and EIR, and sets out the procedures for dealing with requests for information in an efficient manner.

3. Supporting Legislation

This policy has been written to support staff in compliance with the following legal requirements and best practice guidance, which includes but is not limited to:

- General Data Protection Regulations

- Data Protection Act 1998
- Common Law Duty of Confidentiality
- Freedom of Information Act 2000
- Public Records Act (Northern Ireland) 1923
- Disposal of Documents Order 1925
- Re-Use of Public Sector Information Regulation 2005
- Access to Health Records (Northern Ireland) 1923
- Human Rights Act 1998
- Electronic Communications Act 2000
- Environmental Information Regulations 2004
- Equality Act 2010
- Public Interest Disclosure Act 1998
- The Investigatory Powers Act 2016
- Guidance from the Information Commissioners Office (ICO)
- The Department of Health (DoH) Good Management, Good Records

4. Scope

The scope of this policy is to support the control and management of information. The policy will cover all information within NIMDTA and is concerned with all information systems, electronic and non-electronic information. It applies to all directorates, services and departments, all permanent and temporary staff, all agency staff, and as appropriate to contractors and third party service providers acting on behalf of NIMDTA.

This includes, but is not necessarily limited to information:

- stored on computers, paper and electronic structured records systems
- transmitted across internal and public networks such as email or Intranet/Internet

- stored within databases
- printed or handwritten
- stored on removable media such as CDs, hard disks, pen drives, tapes and other similar media
- stored on fixed media such as hard drives and disk subsystems
- held on film or microfiche
- information recording and processing systems whether paper electronic video or audio records
- presented on slides, overhead projectors, using visual and audio media
- spoken during telephone calls and meetings or conveyed by any other method

This policy covers all forms of information held, which includes but is not necessarily limited to:

- Information about members of the public
- Non- employees on organisational premises
- Staff and Personal information
- Organisational, business and operational information

5. Responsibilities

5.1 The **Board** has overall responsibility to ensure compliance in all areas of information governance.

5.2 The **Chief Executive** has ultimate responsibility for the delivery of this policy.

5.3 The **Personal Data Guardian (PDG)** (Chief Executive) is a senior person responsible for protecting the confidentiality of personal information.

- 5.4 The **Senior Information Risk Officer (SIRO)** (Governance IT and Facilities Manager) is an executive who has responsibility to ensure compliance with legislation through the development and monitoring of policy and codes of practice
- 5.5 The **Governance, IT and Facilities Manager** at NIMDTA and the **Head of Corporate Services (HoCS)** at the BSO, who will perform this function under the terms of an SLA, are responsible for ensuring compliance with FOI requirements.
- 5.6 The **Freedom of Information Officer** is responsible for ensuring that this policy and associated procedures is kept up to date. At the BSO, the HoCS has delegated day to day responsibility for the Freedom of Information Officer duties to the **Information Governance Manager (IGM)**. At NIMDTA this role is fulfilled by the **Data and Information Systems Manager (DISM)**.
- 5.7 All **Heads of Department** are responsible individually and collectively for the application of the Information Governance suite of policies within their Departments.
- 5.8 Each **Department** may be required to nominate an FOI representative to liaise with the FOI Team in the provision of information as required.
- 5.9 **Managers** are responsible for ensuring that this policy and its supporting standards and guidelines are built into local processes.
- 5.10 **All Staff** members, whether permanent, temporary or agency are responsible for ensuring that they are aware of the requirements incumbent upon them and for ensuring that they comply with these on a day to day basis. Staff are expected to familiarise themselves with, and abide by, the principles set out within this policy

6. Handling and tracking of requests

6.1 Defining a Valid FOI Request

As defined in Section 8 of the FOI Act, to meet all the requirements of a valid FOI request, a request must:

- Be in writing
- State the name of the applicant and a valid address for correspondence
- Describe the information requested
- Be received in a legible form

The term 'in writing' covers requests submitted by letter and electronic form, including those sent via Social Media. The request does not have to make any direct reference to the Act, or be the sole or main theme of the requester's correspondence.

A request is deemed as 'received' when it is delivered to NIMDTA (for example, to the inbox of a member of staff), and not the date the request is forwarded for onward processing¹. Any requests for information under FOI must therefore be forwarded to informationrequest.nimdt@hscni.net immediately for onward processing.

6.2 Identity of the applicant and reasons for the request

The ICO has advised that, as FOI enables disclosure on grounds of public interest, responses should be applicant and motive blind. BSO will therefore assess all requests on the understanding that applicant identity is not a relevant consideration. Possible exceptions to this include:

¹ *In respect of emails, however, where an automated 'out of office' message provides instructions on how to re-direct a message, the request would not be 'received' until it was re-sent to the alternative contact.*

- a request is deemed to be repeated;
- if disclosure would be contrary to Data Protection principles or would be likely to endanger the health and safety of any other person;
- aggregated costs in line with Fees Regulations

6.3 Time Limits for Compliance with Requests

BSO has, and continues to develop, systems and procedures to ensure that it complies with its duties to provide a response to requests within the statutory timeframe of twenty working days from the point of a valid request being received.

If it becomes clear at any stage that the above timescales cannot be met, BSO will inform the applicant in writing and give a revised deadline for completion.

6.4 Means by which information will be conveyed

When an applicant expresses a preference for communication by particular means, BSO so far as is reasonably practicable, will give effect to that preference.

In determining whether it is reasonably practicable, BSO will consider all the circumstances, including the cost of doing so. If it is determined that it is not reasonably practicable to comply with any preference expressed by the applicant, the applicant will be notified of the reasons for its determination and will provide the information by such means as which is deemed reasonable.

6.5 Approval and Signature

A draft will be sent to the Governance, IT and Facilities Manager for approval and signature or, in their absence, the Chief Executive for final signature.

Signed responses will be issued to applicants via the BSO Shared Corporate Services Team.

7. Refusing requests

The duty to confirm or deny does not arise if:

- an exemption under FOI is applicable;
- the request is considered vexatious and/or repeated;
- a fees notice has been issued and the fee has not been paid

7.1 Exemptions

There are 24 exemptions from the right of access. Some are designated 'absolute', meaning that the duty to provide the information does not apply. Most are designated 'qualified' exemptions and require a public interest test to be applied, to decide whether the public interest in withholding the information outweighs the public interest in disclosing it.

In determining whether disclosure would be likely to prejudice the effective conduct of public affairs (Section 36 of FOI), the designated Qualified Person will decide on the exemption's engagement. In NIMDTA's case, this is the Chief Executive Officer.

Where an exemption is deemed to apply to some or all of the information requested, the applicant will be notified in writing. The relevant exemption will be cited and any information that is not exempt will be provided.

If legal opinion is deemed necessary, it will be sought by the BSO Freedom of Information Officer.

7.2 Vexatious and Repeated Requests

A request can be treated as vexatious where BSO/NIMDTA can demonstrate an affirmative response to one or more of the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the organisation or causing distress to staff?
- Would complying impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

Section 14(2) of FOI states that a request can be refused as repeated if:

- It is made by the same person as a previous request;
- It is identical or substantially similar to the previous request; and
- No reasonable interval has elapsed since the previous request

Should an applicant make a vexatious request or 'repeated' request for identical or substantially similar information, BSO will inform the applicant in writing that they will not fulfil the request, by indicating the reason(s) why. If the request is for information recently refused, the organisation will treat the request as a request for internal review of the original decision.

7.3 Cost

BSO/NIMDTA will follow the appropriate Regulations² in determining cost of complying with a request. Accordingly, all requests that cost less than the 'appropriate limit' of £450 (calculated at £25 per hour) to process will be complied with free of charge.

² The Relevant Fees Regulation is *The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004*

In calculating cost, BSO/NIMDTA may only take into account the time taken to determine whether it holds the information, and to locate, retrieve and extract it. It may not take into account the time taken to consider exemptions, to seek and obtain legal advice, to consider whether a request is vexatious, to obtain authorisation to provide the information, to calculate fees or to perform any redactions.

If the estimated cost of compliance exceeds the appropriate limit, the duty to comply with the request does not arise. However, in keeping with the duty to provide advice and assistance, BSO/NIMDTA will first seek to refine the request with the applicant in order to provide relevant and useful information within the limit appropriate limit.

If BSO/NIMDTA is intending to charge a fee, it must issue a fees notice to the applicant. In the event of a fees notice being issued, the twenty working day compliance period is placed 'on hold' from the date of issue until the fee is received. If no fee is received, the request will be closed three months from the date of fees notice.

No 'appropriate limit' is set by EIR. However, BSO/NIMDTA reserves the right to refuse to comply with requests under Section 12(4) of EIR which are 'manifestly unreasonable' or 'too general'. As with FOI, BSO/NIMDTA has a duty to advise the applicant on how to re-focus the request to one that would be acceptable.

8. Internal Review

Applicants may ask BSO/NIMDTA to conduct an Internal Review of its handling of FOI / EIR requests.

Internal Reviews consider decisions made, rationale, public interest, timeliness and all other relevant aspects of the request.

Internal Review Panels will consist of two BSO/NIMDTA members of staff with no involvement in the original handling of the request, and preferable:

- An Executive Director
- A Non-Executive Director

BSO/NIMDTA will conduct internal reviews within 20 working days or 40 working days where a review is shown to be particularly complex.

The review panel will reserve the right to interview members of staff involved in the original decision, in order to better inform their decision. A response will be signed by both members of the review panel, and issued to the applicant via Corporate Services.

Applicants who may remain unsatisfied with the outcome of an Internal Review will be advised that they may exercise their right to appeal to the Information Commissioner.

9. Transferring Requests for Information

It is BSO/NIMDTA policy not to contact another authority on the applicants' behalf to transfer the request. However, in circumstances where BSO/NIMDTA believe that the information requested is held by another public authority, it will:

- advise the applicant that BSO/NIMDTA will not be taking the request further;
- provide contact details of that authority

10. Consultation with Third Parties

Where disclosure cannot be made without the consent of a third party and would constitute an actionable breach of confidence such that an exemption would apply, BSO/NIMDTA will consult that third party with a view to seeking

their consent, unless such consultation is not practicable. BSO/NIMDTA may also undertake consultation where the views of the third party may assist in determining:

- whether an exemption applies, or
- where the Public Interest lies

BSO/NIMDTA may consider that consultation is not appropriate where:

- the cost of consulting with the third party would be disproportionate;
- the view of the third party can have no effect on the decision as to whether to disclose;
- an exemption applies

In such cases it will consider the most reasonable course of action to take in light of the requirements of FOI. Equally, a refusal to consent to disclosure by, or lack of response from, a third party does not automatically mean information will be withheld. At all times, BSO/NIMDTA will consider its duty under FOI.

11. Publication Scheme

FOI makes it a duty for NIMDTA to adopt and maintain a scheme relating to the publication of its information. NIMDTA has adopted the 'approved model' Publication Scheme introduced by the Information Commissioner's Office, and can be found on its website.

In addition to updating its Publication Scheme, NIMDTA will maintain an online disclosure log that lists responses to requests made to us under FOI and EIR.

12. Performance and Monitoring Compliance

The effectiveness of this policy will be assessed on a number of factors:

- compliance with legislation in respect of FOI;
- performance against agreed standards on an annual basis

13. Non-Compliance

A failure to adhere to FOI³, this policy and any associated procedures may result in disciplinary action. In relation to the use of ICT Equipment including the use of the Internet and Email, staff should be aware that they might be personally liable to prosecution if their actions are found to be in breach of the law.

Serious breaches may be reported to the PSNI, ICO or other public authority for further investigation.

14. Review

This policy and any associated procedures will be reviewed no later than 2 years from approval, to ensure their continued relevance to the effective management of Information Governance within NIMDTA.

15. Equality Statement

In accordance with NIMDTA's Equality of Opportunity Policy, this policy will

³ It should also be noted that Section 77 of FOI states that *"any person ... is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing a disclosure ... of all, or any part, of the information to the communication of which the Applicant would have been entitled"*.

not discriminate, either directly or indirectly, on the grounds of gender, race, race, colour, ethnic or national origin, sexual orientation, marital status, religion or belief, age, union membership, disability, background or any other personal characteristics