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1 Introduction

1.1 Policy Statement

The purpose of this document is to ensure that staff and patients at Ledbury Health Partnership are aware of the ways in which the organisation adheres to the Freedom of Information (FoI) Act 2000¹ (referred to as the Act herein). The Act enables the public to access information held by public authorities in two ways:²

- Public authorities are obliged to publish certain information about their activities
- Members of the public are entitled to request information from public authorities who, in turn, are required to provide the requested information within 20 working days, unless it is [exempted](#)

Ledbury Health Partnership will use all appropriate and necessary means to ensure that they comply 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 FOIA (see [Appendix A](#) and [Appendix B](#)).

It is important to note that the Act does not give individuals access to their own personal data, ie. healthcare records. This is processed by means of a subject access request.

1.2 Status

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment.

1.3 Training and Support

Ledbury Health Partnership will provide guidance and support to help those to whom it applies to understand their rights and responsibilities under this policy. Additional support will be provided to managers and supervisors to enable them to deal more effectively with matters arising from this policy (see [Appendix C](#)).

2 Scope

2.1 Who it applies to

The Freedom of Information Act policy applies to all employees, non-executive directors and partners of Ledbury Health Partnership. Other individuals performing functions in relation to the organisation, such as agency workers, locums and contractors, are also encouraged to use it.

Furthermore, it applies to clinicians who may or may not be employed by the organisation but working under the Additional Roles Reimbursement Scheme (ARRS).

¹ [The Freedom of Information Act 2000](#)

² [What is the Freedom of Information Act?](#)

2.2 Why and how it applies to them

This policy will provide a framework within which Ledbury Health Partnership will ensure compliance with the requirements of the Act and will underpin any operational procedures and activities connected with the implementation of the FOIA.

Ledbury Health Partnership aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the Equality Act 2010. Consideration has been given to the impact this policy might have regarding the individual protected characteristics of those to whom it applies.

A failure to adhere to this policy and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. Managers are also responsible for ensuring staff are updated in regard to any changes in this policy.

3 Overview

The Freedom of Information Act 2000 (FOIA)¹ is part of the Government's commitment to greater openness in the public sector, a commitment supported by Ledbury Health Partnership. The FOIA will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory *Code of Practice on Openness in the NHS*.

The main features of the FOIA are:

- a general right of access from 1st January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions. This places on Ledbury Health Partnership a duty to:
 - inform the applicant whether they hold the information requested, and
 - communicate the information to them, except in certain circumstances. Those circumstances include where information is exempted from disclosure because an absolute exemption applies or the public interest in maintaining a non-absolute exemption in question outweighs the public interest in disclosure
- an office of the 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 publish Codes of Practice for guidance on specific issues

4 Principles

The policy supports the principle that openness and not secrecy should be the norm in public life. Ledbury Health Partnership wants to create a climate of openness and dialogue with all stakeholders and improved access to information about Ledbury Health Partnership will facilitate the development of such an environment.

Ledbury Health Partnership believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the [common law duties of confidence](#) or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data

Protection Act 2018³ and the Access to Health Record Act 1990⁴ and is dealt with separately from this policy.

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

Ledbury Health Partnership believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the FOIA. The policy sets out a framework to provide this knowledge.

Ledbury Health Partnership believes that common standards are required to ensure that Ledbury Health Partnership is compliant with the FOIA. The policy outlines the areas in which common standards will be established through other Ledbury Health Partnership policies and procedures.

5 Roles and Responsibilities

- **Caldicott Guardian** – The Caldicott Guardian has ultimate responsibility for Ledbury Health Partnership’s compliance with the FOIA and is responsible for providing advice and support to all staff.
- **Practice Manager** – The Practice Manager in their role as Senior Information Risk Owner, is responsible for the administration, including the day to day processing of all FOIA requests and for reporting on Ledbury Health Partnership’s performance against our responsibilities. The Practice Manager is also responsible for providing advice and guidance to all staff and they are also the nominated person to carry out an internal review of a response to an FOI enquiry. The Practice Manager will ensure the Ledbury Health Partnership internet site complies with our requirements to publish our Disclosure Log.
- **Data Protection Officer** – The Data Protection Officer will provide expert advice with regard to the information request, the response and appeal process, if appropriate.
- **All staff** - All staff, including contractors, are responsible for ensuring that any requests for information that cannot be considered to be “business as usual” and therefore fall under the FOIA are forwarded to the Practice Manager immediately to ensure that Ledbury Health Partnership is able to comply with its responsibility to acknowledge all FOIA requests within 2 working days, and to respond within 20 working days.
- **All staff**, including contractors, are responsible for responding to requests for information in order to comply with the FOIA received from the Practice Manager in a timely manner in order to ensure that requests for information that they have access to can be completed within the statutory timescale of 20 working days.

6 General Rights of Access

Section 1 of the FOIA gives a general right of access from 1st January 2005 to recorded information held by Ledbury Health Partnership, subject to certain conditions and exemptions. Any person making a written request for information to Ledbury Health Partnership is entitled:

³ <https://www.gov.uk/government/collections/data-protection-act-2018>

⁴ <https://www.legislation.gov.uk/ukpga/1990/23/contents>

- to be informed in writing whether Ledbury Health Partnership holds the information of the description specified in the request, and
- if Ledbury Health Partnership holds the information, to have that information communicated to them. This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if Ledbury Health Partnership holds the information, it must provide it, subject to certain conditions and exemptions. Ledbury Health Partnership will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

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 a description of the information requested. For the purposes of general rights of access, a valid request is to be treated as made in writing if it is transmitted by e-mail, is received in legible form and is capable of being used for subsequent reference. It would facilitate processing of the request if applicants could also provide a daytime contact telephone number when making their written application for information. However, this is not a requirement under the Act and applicants can refuse to give this information.

The Caldicott Guardian and SIRO must review and monitor the provision of information arising from each request under the Act. If a trend occurs, this information should be made available within the disclosure log section under the publication scheme.

7 Time Limits for Compliance with Requests

Ledbury Health Partnership must ensure its compliance with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act (see [Appendix D](#)). All staff will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this within three months of receiving the fees notice, the working days in the period from when Ledbury Health Partnership issued the fees notice to when the fee is received by Ledbury Health Partnership will be disregarded for the purposes of calculating the twentieth working day following receipt. In essence, once the applicant has been requested to pay a fee the twenty working day clock is paused until the fee is paid.

If Ledbury Health Partnership 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 (refusals will be in accordance with section 10.0).

Once a FOI request has been received and processed by the Practice Manager the request will be discussed with the Caldicott Guardian, with a time scale to respond within ten working days.

8 Response Process

8.1 Assessment of Request

On receipt of an FOI request, the Practice Manager will assess the request to ensure it is valid and clear. All requests should be submitted in writing and should contain the proper name of the applicant. Should a request be submitted verbally or under a

pseudonym, the Practice Manager will contact the applicant to advise them how to submit a valid FOI request.

Where an applicant is unable by reason of disability to put their request in writing, they are entitled to verbally list their request to the Practice Manager. The Practice Manager will write down their request on their behalf and confirm that they have recorded their request accurately. This will then count as an enquiry in writing for the purposes of the FOIA. As with all requests, such an enquirer is entitled to indicate their preferred format for a response. Where no preferred format has been indicated, a written response will be provided.

Should a request be unclear, the Practice Manager will contact the applicant to request clarification. Clarification may include a request to provide a request in English, to ensure that the Practice Manager clearly understands the questions that have been asked.

Ledbury Health Partnership must ensure its compliance with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act (see [Appendix D](#)). All staff will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

The 20 working day “clock” does not start until a valid request is received, and clarification (if necessary) has been received.

If clarification is requested but not received within 20 working days, the request will be considered to have been withdrawn. Should the applicant re-submit their request after this point, it will be treated as a new FOI.

8.2 Acknowledgement and Logging of Requests

All valid requests for information under the FOIA should be acknowledged within 2 working days using the appropriate template as in [Appendix F](#), with an indicated response date (20 working days) stated in the acknowledgement. Requests should be logged and the timeline calculated for responding.

8.3 Request for Clarification

If, on attempting to answer the questions, it is apparent that clarification is required, the Practice Manager will then request clarification of that question from the applicant. The 20 working day “clock” will be stopped at this point. The appropriate template as in [Appendix G](#) should be used.

Once clarification is received, Section 1 (3) of the FOIA states that the time for compliance with the request will reset to 20 working days. The Practice Manager should acknowledge the clarified request, quoting the new deadline for response, and forward the clarified request on to the appropriate service leads for response.

8.4 Allocation of Request for Draft Response

All valid requests should be initially reviewed using the Public Interest Test. The Public Interest Test (PIT) is a meeting which is held to discuss whether or not a qualified exemption applies to the information using the Freedom of Information Request Checklist (see [Appendix E](#)). The PIT panel should be made up of at least two of the following:

- The Caldicott Guardian (or Deputy)

- The Senior Information Risk Officer – to provide the information about the request and the exemption.
- The relevant Manager of the department which holds the information – to agree the final decision and provide any reasons for or against disclosure.

The PIT panel should consider the following when debating whether an exemption applies:

- The current public debate
- Health and safety.
- How the information may affect third parties.
- What information is already available to the public?
- Media interests.
- Does it show any decision-making processes?
- Does the information give a greater understanding of services provided by Ledbury Health Partnership?
- Is the information confidential?

The PIT panel are encouraged to discuss all FOI requests with the organisation's Data Protection Officer in order to gain expert advice and guidance prior to drafting a response to the applicant (see [Appendix H](#)).

8.5 Conditions and Exemptions

The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where Ledbury Health Partnership:

- reasonably requires further information in order to identify and locate the information requested, and
- has informed the applicant of that requirement. Ledbury Health Partnership will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

Under section 2 Ledbury Health Partnership does not have to comply with the duty to confirm or deny if an absolute exemption is applied (see [Appendix B](#)). Ledbury Health Partnership will consider the duty to confirm or deny in relation to non-absolute exemptions in all circumstances of the case, the public interest test in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether Ledbury Health Partnership holds the information.

- absolute exemptions do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- qualified exemptions or non-absolute exemptions involve a test of establishing prejudice as to whether harm or prejudice would result from the disclosure of information and/or whether it is in the balance of public interest to not disclose information. A qualified exemption may be applied if, in all circumstances, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether Ledbury Health Partnership holds the information. The Part II exemptions are listed in [Appendix B](#) of this Policy. Ledbury Health Partnership will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

If the arguments against disclosure outweigh the arguments for disclosure then the exemption in question can be applied. If the argument against and for disclosure is equal Ledbury Health Partnership must favour disclosure.

Once the PIT is completed, the request should be forwarded to the Practice Manager, who must confirm within 2 working days whether or not they are likely to be able to provide the requested information.

8.6 Vexatious or Repeated Request

Ledbury Health Partnership is not obliged to comply with a request for information if the request is vexatious. Where Ledbury Health Partnership 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. Ledbury Health Partnership will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

8.7 Charges and Fees

Ledbury Health Partnership will generally not charge for information that it has chosen to publish in its Publication Scheme once linked documents make information available direct to applicants over the Internet. Charges may be levied for hard copies, multiple copies or copying onto media such as an appropriate USB.

Ledbury Health Partnership will follow the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.

The first £450 worth of information/staff time must be provided free (18 hours). If the cost of providing information comes to more than £450 the Caldicott Guardian must complete a fees calculation. In order to complete a fees calculation, the Caldicott Guardian must complete part of the request in order to establish the time required to complete. A calculation is then made from the time taken in relation to the amount of information required. The fees calculation is then made by the £25 per hour of staff's time.

In all cases where Ledbury Health Partnership chooses to charge for information published as a fee arising from an information request under general rights of access, a fees notice (invoice) 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. Once payment is received, Section 1 (3) of the FOIA states that the time for compliance with the request will reset to 20 working days. The Practice Manager should acknowledge the payment, quoting the new deadline for response, and forward the request on to the appropriate service leads for response.

An enquiry will be considered to be withdrawn where:

- an applicant indicates that they do not wish to pay the advised fees in order to obtain the information,
- the applicant agrees to pay the fees but does not do so within 20 working days of Ledbury Health Partnership sending the invoice
- if the applicant does not indicate whether they wish to pay the advised fees in order to obtain the information within 20 working days of being sent a response

from Ledbury Health Partnership stating that a fee would be payable should they wish to proceed with their request for information.

8.8 Means by Which Information will be Conveyed

When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, 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, and
- the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant, Ledbury Health Partnership shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.

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

8.9 Drafting of Response by Practice Manager

After drafting a response based on the information provided the Practice Manager should send the draft response to the Caldicott Guardian for proofing/comment. Responses with any comments should be received within 2 working days to either confirm that they are happy with the draft response or to make any amendments.

8.10 Final Response Sent to the Applicant

Once the response has been approved by the Caldicott Guardian, the Practice Manager will convert it to PDF (unless a different format of response has been specifically requested by the enquirer), and email (or post, if requested by the enquirer) the response with the appropriate FOI Response Letter template as in [Appendix I](#). The date of response will be recorded as the day that the email is sent, or the day that the letter is put in the post tray ready to send out.

Partial responses where the information is reasonably available, but is not given within 20 working days count as a breach of the 20 working day deadline.

Partial responses where some of the information requested is not available within the response deadline (eg. Copies of notes of a meeting that have not been ratified by the time the response is due) do not count as a breach of the 20 working day deadline.

8.11 Filing

Whilst an FOI enquiry is progressed, all correspondence should be retained in a folder containing the reference number of the FOI request.

All progress relating to FOI requests should be noted on the FOI Log for that year, which is located on the organisational server. Access to this drive is restricted to named personnel with a specific reason to access the information, in compliance with national information governance regulations and the Data Protection Act (1998).

Once an FOI response has been sent, the folder of all correspondence should be moved to the “completed” section of the file.

Copies of all correspondence, all drafts of and the final response to the FOI request should be saved under the appropriate year, month, and FOI reference number on the organisational server.

Copies of responses will be retained for 3 years from the date that they were issued. Copies of appeals will be retained for 6 years from the date that the appeal response was issued.

Where any documents have been redacted, a full, un-redacted copy of those documents (clearly labelled) should be included in the folder for the record.

9 Appeals Process

9.1 Internal Review

Should an applicant be dissatisfied with a response that the organisation has written to them, they are able to request an internal review. Any complaint about or challenge to the information given in a response to an FOI request should be treated as a request for an internal review.

Any request for an internal appeal should be made within 20 working days of an FOIA response being sent. Any requests for an internal review made after this date are out of time and will not receive an internal review.

Internal Review requests will be investigated and answered by the Caldicott Guardian. All requests for an internal review will be responded to within 20 working days. To ensure that all reviews are carried out independently, support in compiling the review responses will be provided by the organisation’s Data Protection Officer.

9.2 External Review

Should an enquirer be dissatisfied with a response that they have received, under Section 50 of the FOIA they are entitled to request an external review by the Information Commissioner’s Office.

Should an appeal be accepted by the Information Commissioner, the organisation is obliged to supply the complete audit trail of our response to the Information Commissioner, including un-redacted copies of information that we have redacted.

10 Model Publication Scheme

A Practice must publish information proactively.

This is known as a “Publication Scheme” and must set out the Practice’s commitment to making certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information.

A “Model Publication Scheme” for General Practices has been developed by the Information Commissioner’s Office (ICO) and MUST be followed.

Its 7 “Classes” and their respective content is summarised below.

This scheme commits an organisation:

- To proactively publish or otherwise make available as a matter of routine, information, including environmental information, which is held by the Practice and falls within the “Classes of Information” described overleaf.
- To specify the information which is held by the Practice and falls within the “Classes of Information” described overleaf.
- To proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within this scheme.
- To produce and publish the methods by which the specific information is made routinely available so that it can be easily identified and accessed by members of the public.
- To review and update on a regular basis the information the Practice makes available under this scheme. (See Appendix A for a Form to record when the Publication Scheme has been updated and log FOI requests, which can be used as evidence of compliance with CQC Outcome 21.)
- To produce a schedule of any fees charged for access to information which is made proactively available.
- To make this publication scheme available to the public.

The Practice should consider expanding elements of the MPS to provide greater explanation and additional information where this can be done (e.g. if there are specific plans for the provision of NHS services these should be detailed). It is not necessary to submit the guide completed by the Practice for approval by the ICO.

In Class 5 – the Policies and Procedures listed are those the ICO would expect a Practice to have. Any additional policies should also be listed.

Fees should be requested only where this is done in accordance with ICO guidance.

The Classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.

The method by which information published under this scheme will be made available. The Publication Scheme must always be available in hard copy format but the FOI Act states: “Where it is within the capability of a Practice, information will be provided on a website”.

Where a Practice has decided not to make their Publication Scheme available on their website and only produce it in hard-copy format, the Practice must still list on their website the Classes of information in their Publication Scheme and provide contact details so people can make a request to obtain it. The Practice should provide this promptly on request.

The Practice must publicise the fact that the Publication Scheme is available to the public, what is covered by the Scheme and how it can be obtained, by promoting this prominently on the Practice notice board, or in any other way the Practice normally communicates with the public.

In exceptional circumstances certain information may only be available by viewing in person (e.g. copy of a large map). Such circumstances must be specified and most appropriate contact details provided. The appointment to view this information must be arranged within a reasonable timescale.

The Publication Scheme will be provided in the language in which it is held or in such other language that is legally required. Where a Practice is legally required to translate any information, it must do so.

The organisation must also adhere to its obligations under disability and discrimination legislation and any other legislation to provide information in other forms and formats when providing information in accordance with this scheme.

The ICO has produced the following Model Publication Scheme specifically for General Practice:

<p>Class 1 - Who we are and what we do (Organisational information, structures, locations and contacts) - This will be current information only</p>
Doctors in the Practice
Contact details for the Practice (named contacts where possible with telephone number and email address (if used))
Opening hours
Other staffing details
<p>Class 2 – What we spend and how we spend it (Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit) - Current and previous financial year as a minimum</p>
Total cost to the PCO / LHB / HSSB of the Practice’s Contracted Services.
Audit of NHS income
<p>Class 3 – What our priorities are and how we are doing (Strategies and plans, performance indicators, audits, inspections and reviews) Current and previous year as a minimum.</p>
Plans for the development and provision of NHS services
<p>Class 4 – How we make decisions (Decision making processes and records of decisions) - Current and previous year as a minimum</p>
Records of decisions made in the practice affecting the provision of NHS services
<p>Class 5 – Our policies and procedures (Current written protocols, policies and procedures for delivering services and responsibilities) Current information only.</p>
Policies and procedures about the employment of staff
Internal instructions to staff and policies relating to the delivery of services
Equality and diversity policy
Health and safety policy

Complaints procedures (including those covering requests for information and operating the publication scheme)
Records management policies (records retention, destruction and archive)
Data protection policies
Policies and procedures for handling requests for information
Patients' charter
Class 6 – Lists and Registers Currently maintained lists and registers only.
Any publicly available register or list (if any are held this should be publicised; in most circumstances existing access provisions will suffice)
Class 7 – The services the Practice offers (Information about the services offered, including leaflets, guidance and newsletters produced for the public) - Current information only.
The services provided under contract to the NHS
Charges for any of these services
Information leaflets
Out of hours arrangements

[Appendix J](#) provides a model publication scheme template for completion.

11 Disclosure Log

The disclosure log provides information which has been released via requests made to Ledbury Health Partnership for information under the FOIA. The disclosure log forms part of the publication scheme and can link to documents available on the scheme.

The disclosure log provides information that has been released under a Freedom of Information Request. The Practice Manager must ensure that information from multiple requests regarding the same subject is available via the disclosure log. If there has been a request made for information which is currently part of a public debate, for example the subject is within the media, this information must be published within the disclosure log.

By having an up to date disclosure log this can reduce the amount of time spent answering FOI requests as the information can be made readily available on the log. The disclosure log also benefits public understanding of information released, for example, if information released via a FOI request was published within the media, the public will be able to check the information available within the media with the information provided by Ledbury Health Partnership.

The requests within the disclosure log must remain anonymous and so the requester's details must not be made available. The only information provided on the disclosure log are the questions asked and the answers to these questions. The reference numbers will also be provided to provide a reference if a member of the public contacts Ledbury Health Partnership regarding the information contained within the disclosure log.

12 Refusal of Requests

As indicated previously, the provision of information does not arise if Ledbury Health Partnership:

- applies an absolute exemption under Part II of the Act, as illustrated in [Appendix B](#), with the exclusion of section 21, or in all exemption circumstances of the case, if the public interest in maintaining the exclusion to provide the information outweighs the public interest in disclosing the information and in disclosing whether Ledbury Health Partnership holds the information.

- 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 Ledbury Health Partnership chooses to refuse a request for information under any of the above clauses, the organisation's Data Protection Officer's expert advice should be sought. Once the Data Protection Officer is in agreement, the applicant will be informed of the reasons for this decision within twenty working days by issue of a refusal notice. The applicant will also be informed of the procedures for making a complaint about the discharge of the duties of Ledbury Health Partnership under the Act.

If Ledbury Health Partnership decides that an exemption applies, a refusal notice will be issued within twenty working days. The notice will:

- state that fact,
- specify the exemption in question, and
- state (if that would not otherwise be apparent) why the exemption applies.
- include a copy of the complaints process

Where it is not possible to confirm that an exemption applies, Ledbury Health Partnership will inform the applicant that the issue remains under consideration and will estimate the date at which a firm judgement will be made. This will be notified to the applicant by issue of an exemption pending notice.

If Ledbury Health Partnership finds, while considering the public interest, that the estimate is proving unrealistic, Ledbury Health Partnership will endeavour to keep the applicant informed.

If Ledbury Health Partnership claims that the request is vexatious or repeated, and a refusal notice has already been issued to the applicant stating this fact, a further notice is not required.

The Practice Manager will keep a record of all notices issued to refuse requests for information and any information regarding the Public Interest Test process.

13 Duty to Provide Advice and Assistance

Ledbury Health Partnership will ensure that systems and procedures are in place to meet the duty of a public authority to provide reasonable advice and assistance to persons who make requests for information.

Ledbury Health Partnership must ensure that the systems and procedures employed conform to the Code of Practice issued under section 45 of the Act.

Should applicants or potential applicants need information about Freedom of Information or need assistance to produce a written request for information, they must be given the contact details of the Practice Manager. A Freedom of Information Leaflet must be regularly updated in line with the FOIA and changes within contact details or Ledbury

Health Partnership policy. The leaflet must be made available in all Ledbury Health Partnership buildings.

14 Transferring Requests for Information

A request can only be transferred where Ledbury Health Partnership receives a request for information that it does not hold but which is held by another public authority. If Ledbury Health Partnership is in receipt of a request and 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). Ledbury Health Partnership 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).

Upon receiving the initial request for information, Ledbury Health Partnership will process it in accordance with the Act in respect of information it holds. Ledbury Health Partnership 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, Ledbury Health Partnership must be certain as to the extent of the information relating to the request which it holds itself.

If Ledbury Health Partnership believes that some or all of the information requested is held by another public authority, Ledbury Health Partnership 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 Ledbury Health Partnership 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, Ledbury Health Partnership 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 Ledbury Health Partnership 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 by issues of a transfer notice.

Where there are reasonable grounds to believe an applicant is likely to object, Ledbury Health Partnership must 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 they make a new request to the other authority.

All transfers of requests will take place as soon as is practicable, and the applicant must be informed as soon as possible once this has been done. Where Ledbury Health Partnership is unable 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 them to pursue their request.

Where a request or part of a request is transferred from another public authority to Ledbury Health Partnership, the organisation will comply with its obligations under Part I of the Act in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the organisation receives the request.

15 Consultation with Third Parties

Ledbury Health Partnership recognises that in some cases the disclosure of information may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the definition of the Data Protection Act 1998 (DPA). Unless an exemption provided for in the Act applies in relation to any particular information, Ledbury Health Partnership 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 an exemption would apply), Ledbury Health Partnership must 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 who may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

If information constitutes "personal data" within the definition of the DPA, Ledbury Health Partnership must comply with section 40 of the FOI Act that makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA.

Ledbury Health Partnership 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 Ledbury Health Partnership to determine where the public interest lies.

Ledbury Health Partnership may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, Ledbury Health Partnership will consider what is the most reasonable course of action for it to take in light of the requirements of the Act, and the individual circumstances of the request. Consultation will be unnecessary where:

- the organisation 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 that can express views on behalf of those parties, Ledbury Health Partnership will, if it considers consultation appropriate,

consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, Ledbury Health Partnership 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 Ledbury Health Partnership 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 Ledbury Health Partnership, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. If a request for the disclosure of information to which the third party has previously objected is received, under the Act, Ledbury Health Partnership must review the decision to accept the objection and must provide the information unless it is satisfied that the objection was in fact a valid one.

16 Public Sector Contracts

When entering into contracts Ledbury Health Partnership must refuse to include contractual terms that attempt to restrict the disclosure of information held by Ledbury Health Partnership and relating to the contract beyond the restrictions permitted by the Act. With the inclusion of existing contracts, unless an exemption provided for under the Act is applicable in relation to any particular information, the organisation may 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, Ledbury Health Partnership 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, Ledbury Health Partnership will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, Ledbury Health Partnership will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. Ledbury Health Partnership 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. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

Ledbury Health Partnership 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, 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 Ledbury Health Partnership to disclose information as required by the Act, and not the non-public authority contractor. The organisation will take steps to protect from disclosure by the contractor information that Ledbury Health Partnership has provided to the contractor that 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, Ledbury Health Partnership will not impose terms of secrecy on contractors.

When entering into contracts with non-public authority contractors, Ledbury Health Partnership will include information that the Act empowers the Lord Chancellor to designate as public authorities for the purposes of the Act, persons (or bodies) who provide under a contract made with Ledbury Health Partnership, any service whose provision is a function of that organisation. Thus, some non-public authority contractors will be regarded as public authorities within the meaning of the Act, although only in

respect of the services provided under the contract. As such, and to that extent, the contractor will be required to comply with the Act like any other public authority.

17 Accepting Information in Confidence from Third Parties

Ledbury Health Partnership 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 organisation's functions and it would not otherwise be provided.

Ledbury Health Partnership must not agree to hold information received from third parties "in confidence" which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Office of the Information Commissioner.

18 Complaints about the Discharge of Duties Under the Act

The response letter to the applicant will contain standard paragraphs indicating the Ledbury Health Partnership procedure for dealing with complaints about the discharge of the duties of the organisation under the Act, including the handling of requests for information. Applicants may, if they are unhappy with the outcome, request an internal review within two calendar months of the date of the letter.

The procedure will also refer applicants to the right (under section 50 of the Act) to apply to the Information Commissioner if they remain dissatisfied with the conduct of Ledbury Health Partnership following attempts at local resolution of their complaint.

19 Education and Training

Any member of Ledbury Health Partnership undertaking FOI procedures should be trained in how to recognise a request, what to do when a request is received and, if the role requires it, how to complete a request.

All staff should be aware of the timescales for completion of a request and their role in meeting the requirements set out under the Freedom of Information Act. Refresher training should be provided to staff on a regular basis to ensure their knowledge is up to date.

Appropriate supporting documents should be reviewed and updated annually or as legislative requirements are amended.

20 Corporate Oversight

The Caldicott Guardian and Practice Manager at Ledbury Health Partnership will oversee the implementation of this policy. Individual departmental managers/supervisors will ensure that the policy is implemented fully within their areas of responsibility.

21 Monitoring Compliance

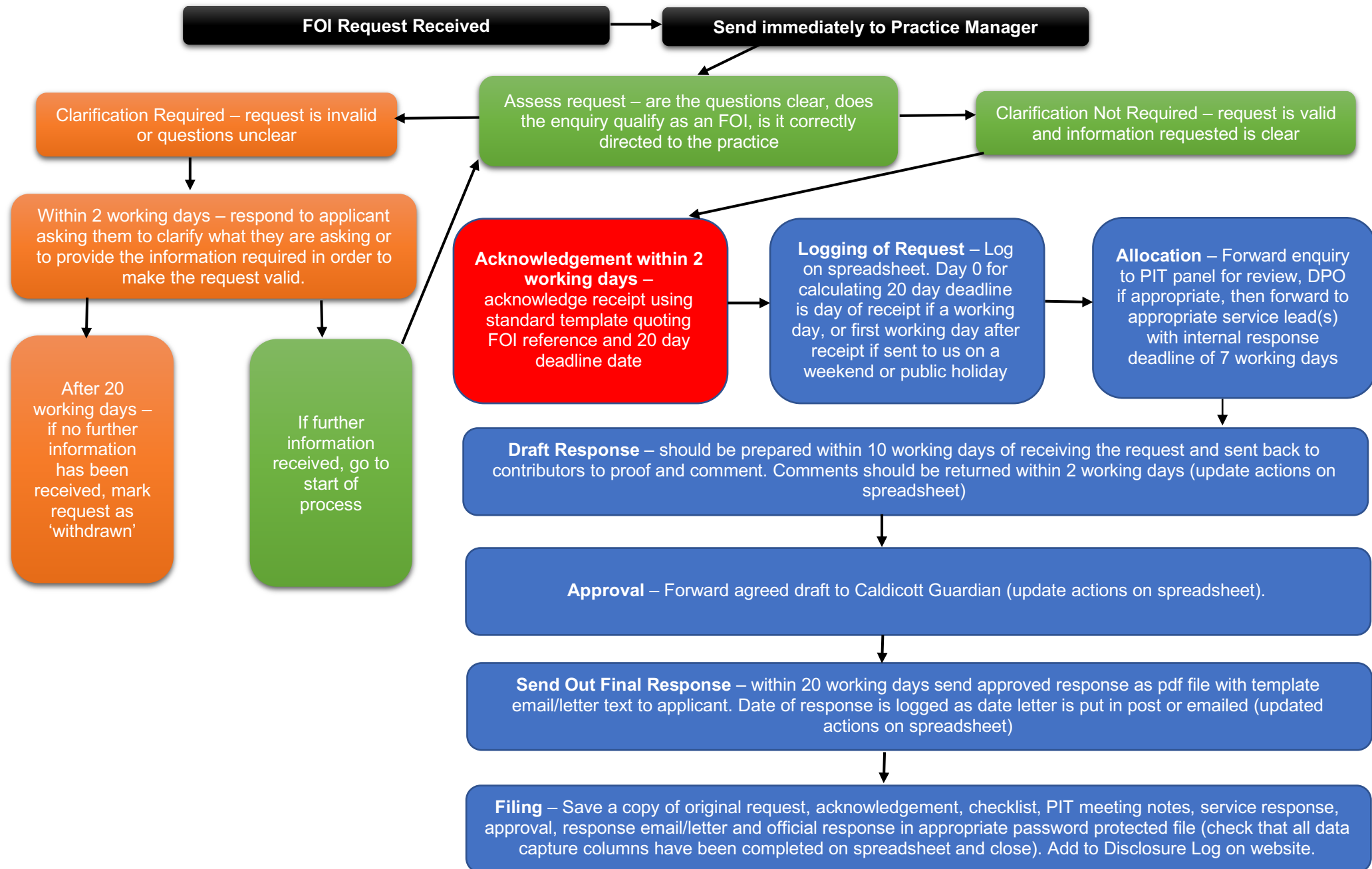
Staff are expected to comply with the requirements set out within the Freedom of Information Policy and related policies. Compliance will be monitored via manager and Information Governance reports, spot checks, completion of staff questionnaires, incidents reported, electronic audit trails and submission of Data Security and Protection Toolkit.

Non-adherence to the Freedom of Information Policy and related policies will result in local disciplinary policies being implemented.

22 Summary

Ledbury Health Partnership has an obligation to make sure it adheres to the principles of the Act, ensuring right of access to information held at the organisation. In doing so, the organisation is demonstrating that it is operating in an open and transparent manner and complying with the provisions of the Freedom of Information Act 2000.

Annex A – Response Flowchart for FOI



Annex B – Exemption Information under Part II

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.
- non absolute exemption qualified by the public interest test, which require Ledbury Health Partnership to decide whether it is in the balance of public interest to not disclose information.

With the exception of Section 21 (information available 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 the applicant is the data subject)
- **Section 41**, Information provided in confidence
- **Section 44**, Prohibitions on disclosure

The exemptions that are non-absolute exemptions qualified by the public interest test are:

- **Section 22**, Information intended for future publication
- **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 40**, Personal Information (where the applicant is not the data subject)
- **Section 42**, Legal Professional Privilege
- **Section 43**, Commercial Interests

A full copy of the Act including further information on the exemptions can be found on the HMSO website at:-

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

Annex C – Glossary of Terms

Absolute exemption – applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of nondisclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

Applicant - the individual(s), group or organisation requesting access to information under the Act.

Duty to confirm or deny - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

Exemption Pending Notice – a written notification issued to an applicant stating it is not possible to confirm that an exemption applies, and the issues remains under consideration within the Organisation. An estimated date at which a firm judgement will be made will be stated.

Fees Notice – a written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before the request lapses.

Fees Regulations – national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

General right of access - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

Information Commissioner - The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK, the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

Lord Chancellor's Department - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts.
- The appointment of judges, magistrates and other judicial office holders.
- The administration of legal aid.
- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

Public authority - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities include the principal authorities in national and local government, together with the principal authorities relating to the armed forces, National Health Service, education, the police and other public bodies and offices.

Publication Scheme - a scheme specifying the classes of information which a public authority publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

Qualified exemption - Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

Refusal Notice – a written notification issued to an applicant stating reasons for the decision to refuse the information requested including specification of any exemption that applies and providing information why the exemption applies if this is not already clear by statement of the exemption applied. It will include information about procedures for making a complaint and how to contact the Information Commissioner’s Office (ICO) if the applicant remains dissatisfied with the outcome of the Organisation’s investigation of the complaint.

Transfer Notice – a written notification issued to an applicant to inform of one/some of the following:

- advising the applicant that it does not hold part of the requested information, or all of it, whichever applies
- informing the applicant 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 and where reasonable providing him or her with contact details for that authority requesting for consent to transfer of a request for information to another authority
- the date a transfer has been made of a request for information to another authority