

HFEA INFORMATION ACCESS POLICY

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1. Introduction

1.1. This policy supports the legislative framework for responding to requests for information under the statutory access regimes established by the Data Protection Act 1998 ('DPA'), the Freedom of Information Act 2000 ('FOIA'), the, the Environmental Information Regulations 2004 ('EIR') and other legislation that provides a right of access to information. The policy does not cover the information access regime provided for in the Human Fertilisation and Embryology Act 1990, which is covered by a separate policy.

1.2. The aims of the policy are:

- 1.2.1. To provide a framework that enables full compliance with the requirements of statutory access regimes;
- 1.2.2. To provide authoritative information;
- 1.2.3. To promote transparency;
- 1.2.4. To improve and enhance public trust and confidence in the Authority.

1.3. These aims will be balanced by:

- 1.3.1. The confidentiality requirements of section 33A of the Human Fertilisation and Embryology Act 1990 (as amended) ('HFE Act');
- 1.3.2. The duty to maintain the privacy and confidentiality of personal data in line with the Data Protection Principles set out in the DPA;
- 1.3.3. The Authority's obligation to ensure that it is compliant with the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR');
- 1.3.4. Any other legal requirements which prohibit the disclosure of information.

1.4. This policy supersedes the HFEA Freedom of Information Policy v.3.1 (TRIM reference: 04/1957), the HFEA Data Protection Policy v.2.1 (TRIM reference: 04/2758). This policy forms part of the Authority's wider Information Management strategy and should be read in conjunction with the:

- Information Access Standard Operating Procedure (TRIM reference: 2009/05464)
- Records Management Policy (TRIM reference: 04/31)

- Handbook for Privacy Impact Assessments (TRIM reference: 2009/04669)
- Standard Operating Procedure for Privacy Impact Assessments (TRIM reference: 2008/05859)
- Standard Operating Procedure for HFEA Parliamentary Question Responses (TRIM reference: 2008/02062)
- Archiving Policy and Procedures (TRIM reference 2008/04673).
- Interim policy – Opening the Register (TRIM reference 2008/04733)
- Policy on Collection, Confirmation and Publication of Register Data (TRIM reference 2009/05463)

2. Scope of the policy

2.1. The policy sets out the general principles that will be adopted by the Authority in response to any requests for information under any statutory access regimes, with particular reference to:

- 2.1.1. Responses to requests for information;
- 2.1.2. The provision of advice and assistance;
- 2.1.3. The application of exemptions;
- 2.1.4. Consultation with third parties;
- 2.1.5. Refusal or part refusal of requests;
- 2.1.6. Complaints about responses to requests for information;
- 2.1.7. Recording and monitoring requests for information.

2.2. The policy addresses the requirements of the DPA and the FOIA in detail. As the requirements of the EIR are broadly similar to those under the FOIA, this policy does not refer specifically to EIR requests. The process for dealing with such requests is set out in the Information Access SOP (TRIM reference: 2009/05464). This policy also makes reference to other, existing statutory access regimes in order to provide clarity about when the DPA and FOIA should be applied to requests for information.

3. Roles and responsibilities

- 3.1. **Senior management:** Responsibility for ensuring compliance with this policy lies with the Chief Executive and the Director of Strategy and Information.
- 3.1.1. All Authority staff, whether or not they create, receive or maintain information, have responsibilities under the FOIA. Section 16 of the Act identifies a duty to advise and assist, which is developed further in the section 45 Code of Practice (available on the Ministry of Justice website at <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>). In addition, all staff have an obligation to follow the Authority's Records Management Policy (TRIM reference: 04/31) and further guidance can be found in the Section 46 Code of Practice (available on the Ministry of Justice website at <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>).
- 3.1.2. Compliance with this policy is compulsory for all staff employed by the Authority.
- 3.2. **Case Management Co-ordinator ('CMC'):** The CMC will be responsible for co-ordinating, logging, tracking, advising on, monitoring and reporting on requests for information made under the statutory schemes. Upon receipt of a request the CMC will log the request and allocate it to the relevant TIO.
- 3.3. **Team Information Officers ('TIO'):** Each Directorate shall establish an appropriate number of TIOs to service the information needs of that Directorate. The TIOs will be responsible for ensuring that the Authority's responses to requests are prepared, approved and communicated to the applicant within the prescribed timeframe. The key tasks of this role will include:
- 3.3.1. Liaison with the CMC;
- 3.3.2. Preparing instructions for the HFEA's Legal Advisors when legal advice is needed on the application of relevant statutory provisions;
- 3.3.3. Notifying the CMC of any contentious or potentially contentious requests and, with them, reporting this to the Chair, Chief Executive, relevant Directors and the Communications team;
- 3.3.4. Gathering the information necessary to respond to the request;
- 3.3.5. Preparing the response and communicating it to the applicant;
- 3.3.6. Logging the response and related background information in the centralised document management system using the approved naming convention;
- 3.3.7. Notifying the CMC when the response has been communicated.

4. Requests for Information

- 4.1. The public has a general right of access to information held by the Authority.
- 4.2. All recorded information, personal and non-personal, held by the Authority in any format is subject to a statutory access regime under the DPA, the FOIA or other existing legislation. However, access to the information may be subject to certain exemptions under the applicable legislation as well as certain provisions of the HFE Act.
- 4.3. **DPA and Personal Information:**
 - 4.3.1. The DPA aims to secure the right of individuals to privacy by protecting information that is held about them. Individuals have the right to submit a subject access request ('SAR') to data controllers, asking for a description of the personal data held about them and to receive a copy of that information.
 - 4.3.2. Requests for access to recorded personal information by the individuals to whom the information relates will be processed by the Authority as SARs in accordance with the requirements of Section 7 of the DPA 1998.
 - 4.3.3. A subject access request under the DPA must be dealt with no longer than 40 calendar days after receipt of the request.
 - 4.3.4. Requests must be submitted in writing and must provide a name and postal address (or email address if the applicant prefers to receive the information electronically).
 - 4.3.5. Once a request is received, if the applicant has not already provided suitable proof of identity, he or she should be asked to provide this. Details of what evidence will be accepted and how to handle evidence is provided in the Information Access Standard Operating Procedure.
 - 4.3.6. Applicants should not be asked to explain the purpose of their request, although in the course of clarifying requests and ascertaining exactly what information is being sought by an applicant it may be necessary to seek further information from them.
 - 4.3.7. The HFE Act establishes a right for donor-conceived people, donors and parents of donor-conceived people to request information held in the HFEA Register. Such requests will not be dealt with as section 7 DPA subject access requests as such data is exempt from disclosure under the DPA (see Statutory Instruments

2000/419 and 2000/1865). In these cases the Opening the Register ('OTR') process is followed rather than the DPA.

4.4. Information under the FOIA

- 4.4.1. Any request for recorded information received from anyone anywhere in the world and in any written format will be treated as a request under the FOIA, unless another statutory access right or other quasi-legal process (e.g. parliamentary questions) applies. The full identity and postal address of the individual or organisation is not relevant under the FOIA regime.
- 4.4.2. Requests must provide sufficient information for the Authority to be able to respond to the request.
- 4.4.3. The FOIA regime is applicant- and purpose-blind (i.e. it does not matter who is making a request for information and the reasons why they want that information are not relevant). Applicants must not be asked to explain the purpose of their request, although in the course of clarifying requests and ascertaining exactly what information is being sought it may be necessary to seek further information from the applicant. While clarification is awaited from the applicant the elapsed time for responding to the request is suspended. Once sufficient clarification is received to enable the Authority to respond, the elapsed time will again begin to count.
- 4.4.4. Where the information is subject to existing legislation that provides statutory access rights (e.g. access to register information under the HFE Act), the FOIA does not override or replace the statutory access rights afforded by such legislation.
- 4.4.5. A request by an individual for information about themselves and requests for environmental information are exempt under the FOIA and will be handled under the DPA and EIR respectively.
- 4.4.6. Information requests may be received in foreign languages or in Braille. The duty to assist may apply in the case of translation, although it would not be unreasonable to ask the applicant to reframe their request in English to avoid unnecessary charges. However, the provision of services to the disabled would fall under the jurisdiction of the Disability Discrimination Act 1995 (as amended) ('DDA'). Where relevant, the rights of the individual under the Human Rights Act 1998 ('HRA') must also be taken into consideration.
- 4.4.7. A request for information about another living individual will be handled under the FOIA, but certain data protection considerations will apply. The Authority will not provide the information if the disclosure would breach the data protection principles. If the

Authority decides that it will disclose the information, it should notify the third party about whom information will be disclosed.

- 4.4.8. The Authority has no obligation to provide information if the information sought does not exist in a recorded format and/or is information that is intended for future publication. The Authority will not generate new, recorded information that it does not currently hold in order to meet a request for information. It will, however, endeavour to advise the applicant of recorded information that it does hold that is relevant to the request and that goes some way towards meeting it. It will also advise if the requested information is likely to be published in the future and, where possible, when it will be published and how it may be accessed.
- 4.4.9. The Authority produces a Publication Scheme (<http://www.hfea.gov.uk/1106.html>) that sets out the range and type of information the Authority will routinely publish. Requests for information which fall into any of the classes of information listed in the Publication Scheme will, in most cases, be refused on the basis that the information has already been pro-actively published by the Authority (i.e. the information is publicly available and therefore “readily accessible by other means”). Applicants should be referred to the website or other source where the information can be found.
- 4.4.10. Correspondence with an FOI applicant, either delivering requested information or declining an application owing to the enforcement of an exemption or the identification of a vexatious request (see section 9 below), must be accompanied by details of the Authority’s own and the Information Commissioner’s complaints procedures.
- 4.4.11. Where information is available in hard copy only, it is acceptable to contact an applicant who has only provided an email address to request details of a street or P.O. Box address to which the information can be mailed.
- 4.4.12. The FOIA and this policy equally do not override any existing statutory prohibitions on the disclosure of information.

4.5. Requests made under the EIR

- 4.5.1. EIR give rights of access to environmental information, including information relating to health and safety issues and polices.
- 4.5.2. An EIR request does not have to be in writing and can be made orally. The HFEA has to respond to the request within 20 working days (40 working days in the case of complicated requests).
- 4.5.3. A reasonable charge can be made for the information. Exemptions exist in relation to some information (see section 6, below).

- 4.5.4. EIR requests are exempt from the FOIA but, as with the DPA, public authorities will have a duty to identify the nature of an information request and respond accordingly.
- 4.5.5. EIR overrides any other enactment or rule of law that would prevent disclosure of information in accordance with the Regulations. Guidance on the Authority's duties under the EIR can be found in the Code of Practice (http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/detailed_specialist_guides/environmental_information_regulations_code_of_practice.pdf).

5. Timescale for Responses

- 5.1. An acknowledgement of any request for information will be sent as soon as possible after a request for information is received if a full response cannot be provided promptly (within 3 working days). The acknowledgement will identify the HFEA official responsible for handling the request and provide a reference number for further correspondence.

5.2. Requests for personal information under the DPA

- 5.2.1. There is an absolute requirement under Section 7 of the DPA to meet requests for personal information within 40 calendar days of receipt of the request and fee.

5.3. Requests under the FOIA

- 5.3.1. There is a requirement to respond to all requests for information promptly and in any event within 20 working days of the receipt of the application. It is important that the 20 working day period is not seen as the target but as the maximum period within which to respond: the Authority should not delay responding to a request if the information can reasonably be provided earlier.

5.4. Requests under any other statutory access regimes

- 5.4.1. Where deadlines for the provision of information are stipulated under other statutory access regimes, such deadlines will continue to apply and are not overridden by the FOIA.

5.5. Out-of-office Procedures

- 5.5.1. Because the Authority must respond to information requests within time frames prescribed by legislation, it is essential that staff ensure that all incoming correspondence (electronic or paper) and telephone calls are managed when absent from the office. Absence from the office does not override the duty to assist under the FOIA, DPA or EIR.
- 5.5.2. When members of staff know they are going to be out of the office for more than a day, they should ensure that they use the HFEA standard out-of-office message on their email. The standard out of office message is available on the intranet in the Requests for Information Toolkit (<http://hfeaapp01:90/30.htm>).
- 5.5.3. As EIR requests can be made by telephone, it is also important that staff ensure they have an appropriate voice mail message on office and mobile telephones/Blackberries.

5.6. Consultation with Third Parties

- 5.6.1. The Authority will not automatically presume a duty of confidence (absolute exemption) and will, where necessary or appropriate, consult with and seek the views of third parties with regard to the disclosure of requested information. However, the decision as to whether or not to disclose the requested information is an decision for the Authority.

6. Fees and charges

- 6.1. Information published under the Authority's Publication Scheme will, wherever possible, be provided free of charge. To avoid unfair treatment and social exclusion, those applicants that do not have access to electronic facilities will be provided with a paper copy of the information free of charge provided it is readily available from the website or does not fall into the categories identified below.
- 6.2. A reasonable charge may be made for expenditure incurred such as photocopying, postage and packaging, providing CDs or DVDs, and the costs associated with viewings made in person.
- 6.3. Photocopying of black and white A4 copies may be charged at a rate of 10p per page; any other expenses will be charged at cost. All costs will be made known to the applicant before any information is provided.

6.4. The HFEA will always take into consideration its obligations under the DDA when considering any request to produce information in other formats.

6.5. Costs under the FOIA

- 6.5.1. The Regulations distinguish between prescribed costs (the cost to the Authority of processing an FOI request: determining whether the Authority holds the information requested; finding and retrieving that information) and disbursements (the cost of informing the applicant whether the Authority holds the information requested; giving effect to the applicant's format preference for delivering the information; delivering information to the applicant).
- 6.5.2. No charge can be made for applying exemptions and assessing the public interest test.
- 6.5.3. The Authority will not charge a fee for responding to a request where the prescribed costs amount to less than £450. This cost is based on an average hourly work rate of £25 per hour.
- 6.5.4. If the prescribed costs are above this threshold, the Authority may either refuse the request, advise the applicant of what information can be made available within the costs threshold or, in exceptional circumstances, offer the applicant the choice of paying in full for the processing of his or her request.
- 6.5.5. Applicants are required to cover in full the costs of having information communicated to them in their preferred format. This includes the cost of postage, photocopying, printing and media such as CD-ROM.

6.6. Costs under the DPA

- 6.6.1. Requests for the provision of personal information that are made under Section 7 of the Data Protection Act 1998 may incur a fee of £10 (or up to a maximum of £50 in certain circumstances), or whatever fee is prescribed by the relevant legislation at the time.

6.7. Costs under other statutory access regimes

- 6.7.1. Where fees for the provision of information are stipulated under other statutory access regimes, such fees will continue to apply and are not overridden by the FOIA.

7. Application of exemptions

- 7.1. In certain circumstances, where a statutory exemption applies, the Authority is not required to provide the information requested. The Authority will try to apply exemptions to requests for information fairly, objectively and consistently, and will not seek to use exemptions as a means of obstructing access.
- 7.2. Exemptions may apply to only some of the information requested by an applicant. In such cases the Authority will release as much information as it can by redacting (blocking out) the information that is deemed to be exempt.

8. Refusal of requests

- 8.1. The Authority will provide written notice to applicants where a request has been refused in its entirety, or where a part of the request is refused. Such notices will provide details of any exemptions that have been applied and, where the public interest test has been applied under the FOIA resulting in the non-disclosure of information, the reasons for the decision not to disclose.
- 8.2. The Authority is not obliged to confirm or deny the existence of information, or to advise in respect of exemptions applied where to do so would in itself disclose exempt information.

9. Repeat and vexatious requests

9.1. Repeat requests

- 9.1.1. The Authority is not obliged to comply with repeat requests for information, under either the DPA or the FOIA. In reaching a decision about whether a request for information should be treated as a repeat request the Authority shall have regard to, among other things:
- the time that has elapsed since the previous request;
 - whether the request is identical or substantially similar to the previous request;

- whether any relevant, new information has been generated since the previous request.
- 9.1.2. Where there are valid grounds to refuse to respond to a repeat request, the Authority may refuse any similar requests made within a period of 60 consecutive days.
- 9.1.3. Where the Authority receives two or more requests from one person, or different persons who appear to be acting in concert, for the same or similar information and these requests are received within 60 working days of a previous request, the Authority will aggregate the costs of responding to such requests.

9.2. Vexatious requests

- 9.2.1. The Authority is not obliged to comply with vexatious requests under either the DPA or the FOIA. In determining whether a request should be refused because it is vexatious the Authority will consider all the circumstances of the request, including among other things:
- the history of requests submitted by an applicant;
 - the number and frequency of repeat requests submitted by an applicant;
 - whether an applicant is habitually and persistently submitting requests where there appears to be no reasonable grounds for them to do so and where there is a strong likelihood that such requests are being made with the intention to harass, unreasonably and unnecessarily divert resources, or to otherwise disrupt the functioning of the Authority.
- 9.2.2. In instances where a request is regarded as vexatious, the Authority will provide the applicant with written notice stating why the request is deemed to be vexatious.

10. Recording and monitoring

- 10.1. The Authority will keep a centralised record of all FOIA, DPA and EIR requests and responses. This does not include requests for information publicly available (i.e. “readily accessible by other means”).
- 10.2. The Authority will publish a summary on its website a selection of responses that it has issued to requests for information under the FOIA.

- 10.3. The CMC will report periodically on the Authority's performance in responding to requests for information and this information may be reviewed by the Authority as appropriate.

11. Interdependencies

11.1. Records Management

- 11.1.1. This policy should be read and interpreted in line with the Authority's policy on Records Management (TRIM reference: 04/31), and its wider information management strategy.
- 11.1.2. Information is a corporate asset and the records of the Authority are important sources of administrative, fiscal, legal, evidential and historical information. Staff will ensure that records are created, captured, maintained, secured, archived and disposed of in a way that complies with legal, administrative, cultural and business requirements.
- 11.1.3. Where records are the subject of an FOI request, civil proceedings or a criminal investigation, they must not be destroyed even in instances where they have reached their maximum retention period.

11.2. Business Intelligence and proactive information provision

- 11.2.1. This policy should be read and interpreted in line with the Authority's policies on opening the register (TRIM reference 2008/04733) and publication of register data (TRIM reference 2009/05463).
- 11.2.2. The Authority's information assets (principally that contained on the HFEA's statutory register of information) represent a valuable resource for researchers and others with an interest in understanding the impacts of licensed treatments on individuals and society. The Authority will respond efficiently to requests for information relevant to individuals' own treatments and facilitate research by making available the information it holds by suitable means and in a suitable format.

12. Privacy and privacy impact assessments

- 12.1. Staff undertaking project work where any general or specific privacy considerations are likely to arise should read this policy (Information Access Policy) together with the Privacy Impact Assessment Handbook (TRIM reference: 2009/04669) and the Privacy Impact Assessment Standard Operating Procedure (TRIM reference: 2008/05859).

13. Complaints and internal reviews

- 13.1. Complaints received in respect of the processing of FOI, DPA and EIR requests will be centrally co-ordinated and treated as a request for internal review under the FOIA.
- 13.2. Complaints will be acknowledged immediately in writing.
- 13.3. The Authority will operate a single tier internal review process which should be completed within 30 working days.
- 13.4. Internal reviews will be dealt with by a Director. Where a Director has had involvement in the processing of the request or, if it is considered that the Director may have a conflict of interest, the complaint should be referred to a different Director.
- 13.5. Once the Authority's internal review process has been exhausted, if a complainant remains dissatisfied with the handling of a complaint relating to an FOI request, he/she may seek an independent review by the Information Commissioner. Applicants should be directed in all FOI complaints decision notices of their right to make a request in writing to The Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, United Kingdom. Full contact details are available on the ICO website: <http://www.ico.gov.uk/>.
- 13.6. Relevant records relating to a complaint regarding the handling of an FOI request should not be destroyed, even if scheduled for disposal, until the time allocated to appeal a decision from the Information Tribunal has expired. The destruction of records subject to an information request is a criminal offence.

14. Review of this policy

- 14.1. This policy will be reviewed on an annual basis.

- 14.2. *Ad hoc* reviews will take place where relevant primary or secondary UK legislation is introduced, where Codes of Practice are updated, and where case law requires.

Control Sheet

Document control

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