

# Freedom of Information Policy (For NHS contracts)

## Version Control

Date	Version Number	Stage	Author
16 <sup>th</sup> September 2014	1.0	Creation	Tim Crowson
3 <sup>rd</sup> October	Final Draft version	Review	Paul Haycox
5 <sup>th</sup> November 2014	Final Version	Comments added that were received from Sharon Leach	Paul Haycox
26 <sup>th</sup> August 2016	Review	Minor alterations made and clinic details changed. Checked against the Outcome of the March 2016 Independent commission on Freedom of Information	Paul Haycox
2 <sup>nd</sup> February 2018	Review	Amended clinic name. Added document location and review date	Paul Haycox

## Contents

1. Introduction
2. Scope
3. Purpose
4. Definitions
5. Related Policies
6. Roles and responsibilities
7. Receiving and Responding to Requests
8. Exemptions

9. Refusal of Request
10. Consultations with Third Parties
11. Records Management
12. Implementation

## **1. Introduction**

The Freedom of Information Act Policy is a statement of responsibilities of St Michael's Clinic Ltd under the Freedom of Information Act ("the Act"), and how then company will ensure compliance with the Act, including procedures staff should follow if they receive a request for information.

## **2. Scope**

This policy applies to all Clinic staff and relates to the procedure in place for dealing with requests under the Act. This excludes personal data, which will continue to be dealt with under the Data Protection Act (see Data Protection and Confidentiality Policies).

## **3. Purpose**

The purpose of this policy is:

To ensure St Michael's Clinic Ltd complies with the Act.

To ensure all Clinic staff are aware of their responsibilities under the Act.

To outline St Michael's Clinic Ltd procedure in responding to a request under the Act.

## **4. Definitions**

**Data Protection Act (1998) ("the DPA").** An Act of Parliament which defines the UK law on the processing of data of living persons. The DPA defines eight data protection principles and is the main legislation governing the protection of personal data in the UK.

**Exemptions.** Conditions which may be applied in circumstances in which requested data may be withheld from disclosure. There are two types of exemption: absolute and qualified.

Absolute exemptions: exemptions that do not require a public interest test *to be undertaken*.

Qualified exemptions: exemptions which require a public interest test to be completed before they are applied.

**Freedom of Information (FOI) Act (2000) (“the Act”).** An Act of Parliament which came into force in 2005. The Act gives the public the “right to know” and allows them to request any information held by St Michael’s Clinic Ltd **relating to its work for and with the NHS only.**

**Information Commissioner’s Office (ICO).** An independent regulatory office reporting directly to Parliament and overseeing the DPA, the FOI Act, and the EIRs. The Information Commissioner is appointed by the Crown.

**Public Interest Test.** A public interest test must be applied when the use of a qualified exemption is proposed. The factors for and against the disclosure of requested information are considered. In order to apply the exemption, the factors against disclosure must be seen to outweigh the factors for disclosure.

**Publication Scheme.** A list of information the ICO expects public authorities to regularly publish. All public authorities are required to produce and maintain a Publication Scheme.

## **5. Related Clinic Policies**

Data Protection Policy 2018

Confidentiality Policy 2018

Document, Record and Lifecycle Management Policy 2018

## **6. Roles and Responsibilities**

All Clinic staff are required to comply with the Act. Staff who do not respond in a timely manner will have the request escalated to their line manager.

Failure to assist may result in St Michael’s Clinic Ltd. failing to comply with the Act, which may lead to complaints and ultimately an investigation by the Information Commissioner.

Non-compliance with a Clinic policy, Procedure, protocol or patient information standard may result in disciplinary action.

The Senior Information Risk Owner (SIRO) – Mr Paul Haycox - has overall responsibility for compliance with the Act.

As well as ensuring compliance, St Michael’s Clinic Ltd SIRO is also the responsible manager to bring any FOI issues requiring the Senior Clinicians and Managers Group consideration to their attention.

St Michael’s Clinic Ltd Information Governance (IG) Lead, has responsibility for the overall management of FOI policy and procedure and the day to day routine management of FOI requests and procedures.

All staff have a responsibility to recognise and respond to requests for information, and to forward information to the IG Lead when asked.

## **7. Receiving and responding to requests**

St Michael's Clinic Ltd will ensure it provides advice and assistance (as set out in Section 16 of the Act) to persons who propose to make, or have made, requests for information.

Under the Act, the Clinic has a duty "to confirm or deny". In the vast majority of cases, the Clinic must either confirm or deny whether the information requested is held. Failure to do so may result in an investigation by the ICO.

The Clinic may not have to comply with a request if it falls under an exemption allowed for in the Act (See Part II of the Act, items 21 to 44)

Information provided by the Clinic in response to a request under the Act remains under copyright and intellectual property law. If any person wishes to re-use the public information for commercial purposes they should make an application under the Re-use of Public Sector Information regulations. The information should only be used for the applicant's personal use or for other specific uses permitted in the Copyright, Designs and Patents Act 1988.

If an applicant wishes to use information provided by St Michael's Clinic Ltd for commercial purposes (including the sale of the information to a third party) they must seek written permission from the company. Granting permission may involve a licensing arrangement, which may incur a fee for the applicant.

## **8. Exemptions**

The Act provides a small number of exemptions that may allow St Michael's Clinic Ltd not to disclose requested information.

The most likely exemptions to be used within St Michael's Clinic Ltd is Section 40 (personal information), Section 21 (information available by other means), and Section 12 (cost of compliance is excessive, see 6.4).

Section 14 allows for a request to be exempt by classing it as "vexatious" or "repeated". The history of the request will be looked at in order to establish whether a request is vexatious or repeated. Characteristically, vexatious requests are typically obsessive and cause unjustified distress and disruption. It is the request, not the requestor that is deemed vexatious or repeated, so future requests will not be automatically refused. A requestor asking for information that has already been supplied to them can be treated as repeated.

Any decision to use a Section 14 exemption will be agreed by St Michael's Clinic Ltd SIRO. Requestors deemed as vexatious or repeated must be given the right to appeal this decision by being informed of their right to

request an internal review. Once a requestor has been informed that their request is being treated as vexatious or repeated, St Michael's Clinic Ltd is not obliged to provide any further response to any repeated requests for substantially similar information until a "reasonable interval of time" has passed.

In accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, St Michael's Clinic Ltd has the right to refuse to process any request for information where the costs associated with that production would exceed £450. This is calculated at the flat rate of £25 per hour and equates to 18 working hours. This is regardless of actual salary or job role. Not all activities associated with the production of the information will be chargeable. Where it is intended to apply this exemption, a breakdown of the work involved in complying with the request will be required by the SIRO, stating how the £450 limit would be reached, and by how far it would be exceeded. The applicant may wish to pay for the request to go ahead. St Michael's Clinic Ltd may make charges for multiple copies of information.

## **9. Refusal of Requests**

St Michael's Clinic Ltd will be obliged to disclose any information in response to a request unless an exemption provided for in the Act applies in relation to that particular information. If St Michael's Clinic Ltd chooses to refuse a request for information under any of the reasons outlined in The Act, the applicant will be informed of the reasons for this decision within twenty working days.

When a request is refused, the applicant will be informed of the procedure for requesting an internal review of St Michael's Clinic Ltd handling of the request, and of how to make a complaint to the ICO if they remain dissatisfied. Appendix D contains the Clinic's "How to request a review" letter.

St Michael's Clinic Ltd will follow the Appeals Procedure in Appendix B point 12 when dealing with complaints about the discharge of the duties of St Michael's Clinic Ltd under the Act, including the handling of requests for information.

Where a request is made for information that is subject to a current piece of work and premature disclosure is not deemed in the public interest, St Michael's Clinic Ltd may choose to withhold the information temporarily. Every effort will be made to indicate a date when a future request would be honoured.

## **10. Consultation with Third Parties**

St Michael's Clinic Ltd 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 of duty of confidence or where it constitutes "personal data" within the meaning of the DPA. Unless an exemption provided for in the Act applies in relation to any particular

information involving third parties, St Michael's Clinic Ltd will be obliged to disclose that information in response to a request. St Michael's Clinic Ltd will always try to gain the consent of employees (see 8.0).

The fact that the third party has not responded to the consultation does not relieve St Michael's Clinic Ltd 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 St Michael's Clinic Ltd, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

## **11. Records Management**

St Michael's Clinic Ltd is compliant with the Code of Practice on the Management of Records under section 46 of the Act.

A request for information cannot be refused on the grounds of an inability to locate a document or information due to poor records management. It is a criminal offence to destroy material because it has been requested under the Act.

St Michael's Clinic Ltd Document, Record and Lifecycle Management Policy contains information about the creation, management, retention period, and disposal of Clinic records.

## **12. Implementation**

The policy will be available on the clinic's internal shared network and in hard copy.

The new policy will be highlighted to those receiving contact from the FOI office regarding requests for information.

St Michael's Clinic Ltd Business Manager will be available to talk to individual staff groups about FOI awareness as and when requested.