



# Freedom of Information Policy

First introduced September 2012

Review Date 25<sup>th</sup> January 2018

Next Review 25<sup>th</sup> January 2020

**Physiotherapy2fit Ltd is committed to ensuring that, as far as it is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on the basis of their age, disability, gender, race, religion/belief or sexual orientation. Should a member of staff or any other person require access to this policy in another language or format (such as Braille or large print) we will do our best to provide this in a format the user is able to access. Physiotherapy2fit Ltd will do its utmost to support and develop equitable access to all policies. The Director is responsible for ensuring staff are aware of Physiotherapy2fit Ltd policies and that staff adhere to them. It is also the Director's responsibility to keep staff up to date with new policy changes.**

**Staff are responsible for ensuring they are familiar with policies, know where to locate the documents on Physiotherapy2fit's main website, and seek out every opportunity to keep up to date with them**

**Independent contractors are expected to identify a lead person to be responsible for ensuring staff employed within their place of work are aware of Physiotherapy2fit Ltd policies.**

## **Summary**

The Freedom of Information Act (“the Act”) came into force in 2005. It is a legal requirement that P2F, along with all other public authorities, must comply with.

All staff should be aware of their duties under the Act and should assist the Director acting as the FOI Officer when asked. Any member of staff could be asked for information.

The Act applies to all information (excluding personal records) held by, or on behalf of, P2F. This includes both current and archived information. The Data Protection Act 1998 (“the DPA”) still applies to Subject Access Requests for access to health records, and other person-identifiable information.

The Act gives anyone the right to make a written request for information. The Act gives a general right of access to recorded information held by the Trust, subject to certain conditions and exemptions contained in the Act.

The Act is enforced and overseen by the Information Commissioner’s Office (ICO).

The Trust Freedom of Information Officer coordinates the Trust’s responses to requests made under the Act.

## **Introduction**

The Freedom of Information Act Policy is a statement of P2F’s responsibilities under the Freedom of Information Act (“the Act”), and how P2F ensures compliance with the Act, including procedures staff should follow if they receive a request for information.

P2F supports the principle that openness and not secrecy should be the norm in public life. P2F wants to create a climate of openness. Improved access to information about P2F will facilitate the development of such an environment.

## **Scope**

This policy applies to all P2F staff and relates to the procedure in place at P2F for dealing with requests under the Act. This excludes personal data, which will continue to be dealt with under the Data Protection Act.

The procedures within this policy refer to Freedom of Information (FOI), but will also be applied to any requests made for environmental information which may be treated under the Environmental Information Regulations (EIRs). The minor differences between FOI and EIRs will be taken into account by the Director when processing the request.

## **Purpose**

- To ensure P2F complies with the Act  
To ensure all P2F staff are aware of their responsibilities under the Act To outline the P2F procedure in responding to a request under the Act

## **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.

### ***Environmental Information Regulations (2004) (EIRs)***

Statute which came into force in 2005 and gives the right of access to environmental information held by public authorities.

### ***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 the Trust.

***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.

### **Related Policies**

- Data Protection Policy
- Confidentiality policy
- Records Management policy
- Internet Security policy

### **Roles and Responsibilities**

1. All P2F staff are required to comply with the Act and to assist the Trust FOI Officer if asked for information. Staff who do not respond in a timely manner will have the request escalated to their relevant manager or Director.
2. Failure to assist may result in P2F failing to comply with the Act, which may lead to complaints and ultimately an investigation by the Information Commissioner.
3. Non-compliance with a P2F policy, Procedure, PGD, protocol or patient information standard may result in disciplinary action.
4. The Director has overall responsibility for compliance with the Act.
5. As well as ensuring compliance, the Director (as executive lead for information governance) is also the responsible executive to bring any FOI issues requiring peer group consideration to their attention. This will be within the monthly staff meeting.
6. The Director will be responsible for undertaking internal reviews resulting from complaints and appeals. Complex complaints and appeals, and performance and compliance reports on FOI activity will be considered by credited external advisor.
7. The Director has responsibility for the overall management of FOI policy and procedure.
8. The Director is responsible for the day to day routine management of FOI requests and procedures and maintenance of the Trust publication scheme. The Director will maintain appropriate performance statistics on FOI activity and submit regular reports to staff meetings.

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

## **Publication Scheme**

1. The publication scheme is a legal requirement of the Act, and encourages the proactive and routine publication of information by P2F.
2. P2F complies with the ICO publication scheme template. This lists information in seven categories that the ICO would expect a public authority to make available.
3. P2F's publication scheme is available via their website.

## **Receiving and responding to requests**

1. P2F will ensure it meets the duty of a public authority to provide advice and assistance to persons who propose to make, or have made, requests for information.
2. Under the Act, P2F has a duty "to confirm or deny". In the vast majority of cases, P2F must either confirm or deny whether the information requested is held. Failure to do so may result in an investigation by the ICO.
3. P2F may not have to comply with a request if it falls under an exemption allowed for in the Act.
4. Information provided by P2F in response to a request under the Act remains copyrighted and can only be used for the applicant's personal use or for other specific uses permitted in the Copyright, Designs and Patents Act 1988.
5. If an applicant wishes to use information provided by P2F for commercial purposes (including the sale of the information to a third party) they must seek written permission from P2F under the Regulation on the Re-use of Public Sector Information Regulations 2005. Granting permission may involve a licensing arrangement, which may incur a fee for the applicant.

## **FOI procedures at P2F**

### ***Background***

1. The Freedom of Information Act 2000 ("the Act") gives anyone the right to make a written request (including an e-mail request) to see information held by P2F. If the information is held by P2F, it must be disclosed. Any information can be requested, no matter how old it may be. This includes information contained within emails.
2. Requests do not have to specifically mention the Act, nor do they have to state why the applicant require the information, and P2F is not permitted to enquire.
3. P2F must respond to Freedom of Information requests within 20 working days. If we do not P2F may be liable for penalties. We must provide advice and assistance to everyone who makes a request but have no right to know why they want the information.
4. People will not always get the information they request. We may no longer hold it or may withhold it. There are a small number of exemptions provided for under the Act which allow us to withhold information. This can be found on the ICO website.
5. Requests are "applicant blind", meaning P2F cannot take the identity of the applicant into consideration when releasing the information. An exception to this may be made if the applicant proves vexatious.

### ***Requests for information you normally provide***

1. If someone asks you for information that you have to hand and normally give out (e.g. an information leaflet, routine letter, etc), you should continue to do so. These requests do not need to be logged.

### ***Requests for other information***

1. Any P2F employee may be contacted by an applicant wishing to make an FOI request. You should be aware of the correct advice to give them and should contact the FOI Director if unsure.
2. If someone asks for a P2F document (e.g. a policy document) you can refer them to the publication scheme on our website. The scheme has links to many standard documents that

can be read online or downloaded. It also tells people how to request hard copies of documents from the P2F Director or request documents that are not available online.

3. If the requestor is unable to use the website, or the information they want is not there, they must make a written request. You should give them the following correspondence addresses:

For postal requests (must include the applicant's name and a contact address) –

Director  
Physiotherapy2fit  
Freedom of Information Enquiry  
19 Bradley Drive  
Sittingbourne  
Kent  
ME10 1RB

For email requests (must include the applicant's name) –

[info@physiotherapy2fit.com](mailto:info@physiotherapy2fit.com)

4. Requests must be made in writing. If an applicant attempts to make a request over the telephone, they should be informed how to make their request in writing. All requests must contain the applicant's name and a way of contacting them with P2F's written response.

#### ***What to do if someone gives you a written request***

1. FOI is governed by strict timescales. This should be scanned immediately and sent to the director within 24 hours. Confirmation this has been received should be made via telephone.
2. The date of receipt is the date the request is received in P2F, not the date it is passed to the appropriate person (ie, the Director), so you must act quickly.

#### ***What to do if the FOI officer asks you for information***

1. Any P2F employee may be contacted by the Director and asked for information regarding a request. If you are asked to provide information in response to a request, please do so as quickly as possible and by the date stated on the request form you have been sent. Contact the Director straight away if you are unsure or unable to help.
2. If the information is readily available, send it immediately to the Director. All responses go from there so that we can be sure we have met the timescale and criteria. If information is asked for on several occasions, consideration will be given to making it available through the publication scheme.
3. If you cannot provide information within 10 days, tell the Director as soon as possible as they may need to advise the requestor.
4. If you have not responded by the date stated on the request form, the matter will be escalated and could result in disciplinary measures.
5. Under section 16 of the Act, P2F has a duty to provide advice and assistance to applicants. P2F will ensure it meets the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect P2F to do so. If you cannot provide the exact information asked for, you may be able to suggest an alternative. You should discuss this with the Director.
6. If we do not hold the information within P2F, but you know which public authority does hold the information (ie, the PCT, the council, etc) you should inform the Director as this part of the request may be able to be transferred.

#### ***Transferring a request***

1. This will be done by the Director.
2. A request can only be transferred where P2F receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If P2F 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). P2F will also advise the applicant that it does not hold part, or all, of the requested information.

3. If P2F believes that some or all of the information requested is held by another public authority, P2F will consider what would be the most helpful way of assisting the applicant with his/her request. Under section 45 P2F can suggest the applicant applies to another authority and provide the contact details, or consult another authority to confirm they hold the information and then (with the applicant's consent) transfer the request to the other authority. The requestor should be informed the transfer has taken place. The time limit for responding applies from the date of transfer.

#### ***What the Director does with a request***

1. If a request is sent directly to the Director the date received and details of the request will be logged and the request acknowledged. It is best practice to acknowledge receipt of all requests. The Director will endeavour to do this within 48 hours of receiving the request.
2. A check will be made as to whether the information is already available in P2F publication scheme. If it is, a link will be sent to the applicant.
3. If the information is not available through the publication scheme, and the Director does not already hold the information, the request will be passed to the relevant area to locate and provide the information requested.
4. If the information is not exempt, it will be collated and the final response will be sent to the requestor within 20 working days of receipt.
5. If the information is exempt from disclosure, the applicant will be informed (in writing) which exemption applies. They will be given the right to challenge P2F's decision. A List of exemptions can be found on the ICO's website.
6. If the applicant is requesting a copy of their own health records they will be informed that their request is exempt under Section 40(1) of the Act, and advised how to make a Subject Access Request.
7. Where the use of a qualified exemption is proposed, a Public Interest Test will need to be carried out. Approval of the use of a qualified exemption will be sought from the Director.
8. Consultation on the use of a qualified exemption must take place and be communicated to the requestor within the 20 working day time limit.
9. Where requests are known to have been made by members of the Press the response will be copied to the communications department.

#### ***Charges and Fees***

1. Information in P2F's Publication Scheme is available to view online or download free of charge.
2. Charges may be levied for hard copies of requested information, multiple copies, or copying onto media such as a CD-ROM. Charges will be in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

#### ***Means by which information will be conveyed***

1. If a requestor asks for information in a particular format, this will be met where practicable. Fees may be charged.

#### ***Access to Health Records***

1. The Data Protection Act 1998 still applies to requests to access health records and other person-identifiable information and these requests will be dealt with as before. If you are unsure about other person-identifiable information please contact the Director.

#### ***Requests for reviews***

1. If a requestor wishes to appeal they may write to the Director, Physiotherapy2fit, 19 Bradley Drive, Sittingbourne, ME10 1RB

2. Upon receipt of a request for a review, the Director will prepare a summary of the Trust's handling of the request for consideration by all members of staff at the next staff meeting.
3. If, after the request or has appealed to P2F, they are still not satisfied they may appeal to the FOI/ EIR Case Reception Unit, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

## **Environmental Information Regulations**

1. Requests for information regarding topics such as environmental elements (air, water, land, etc), noise, activities affecting the environment, and some aspects of health and safety, may be treated under the Environmental Information Regulations (EIR).

### ***Exemptions***

1. The Act provides a small number of exemptions that may allow P2F not to disclose requested information. A list of exemptions can be found on the ICO website.
2. The most likely exemptions to be used within P2F are Section 40 (personal information), Section 21 (information available by other means), and Section 12 (cost of compliance is excessive, see 6.4).
3. 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.
4. Any decision to use a Section 14 exemption will be agreed by the Director. 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, P2F is not obliged to provide any further response to any repeated requests for substantially similar information until a "reasonable interval of time" has passed.
5. In accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, P2F 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 Director, 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. (The Trust may make charges for multiple copies of information.)

### ***Refusal of requests***

1. P2F 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 P2F chooses to refuse a request for information under any of the reasons outlined on the ICO website, the applicant will be informed of the reasons for this decision within twenty working days.
2. When a request is refused, the applicant will be informed of the procedure for requesting an internal review of P2F's handling of the request, and of how to make a complaint to the ICO if they remain dissatisfied.
3. P2F will follow the Appeals Procedure when dealing with complaints about the discharge of the duties of P2F under the Act, including the handling of requests for information.
4. 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, P2F may choose to withhold the information temporarily. Every effort will be made to indicate a date when a future request would be honoured.

### ***Release of Trust employee names and details***

1. As a public authority, there is recognised justification for the disclosure of employee names and contact details.
2. It is P2F policy that P2F will release names of Consultants, medical staff, and other staff members whose name is already published on P2F's website, without gaining additional consent.
3. P2F will routinely release the names of Executive Directors, Department Heads, Care Group Managers, and other senior staff. For other staff, consent will normally be sought if release of names is appropriate. In some cases, the public interest in disclosure of personal details may be judged to outweigh an individual's preference to restrict such disclosure. The final decision on release of information remains with the Director..
4. Those staff with public facing roles or those already in the public domain are more likely to have their names released. Personal contact details (ie, home address, home telephone number, personal email address) will never be released in response to a request under the Act.
5. Requests for salary information will be answered in £10,000 bands. Requestors will be referred to the Annual Report if requesting information regarding Director's salaries.

### ***Consultation with Third Parties***

1. P2F 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, the Trust will be obliged to disclose that information in response to a request. The Trust will always try to gain the consent of employees (see 8.0).
2. The fact that the third party has not responded to the consultation does not relieve the Trust of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act.
3. In all cases, it is for the Trust, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

### **Records Management**

1. P2F is compliant with the Code of Practice on the Management of Records under section 46 of the Act and the Department of Health guidance Records Management: NHS Code of Practice.
2. 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.
3. P2F's Records Management Policy contains information about the creation, management, retention period, and disposal of Trust records.

### **Process for Monitoring Compliance/Effectiveness**

1. The Director will routinely report a summary of FOI activity at all staff meetings, including the number of requests exceeding 20 working days to complete and the number of internal reviews requested.
2. The number of complaints will be monitored and regularly reviewed by the Director.