

Policy, Procedures and other Written Control Documents Template

Version. 1.0

Reference Number.



Meddygfa Pendre Surgery

Freedom of Information Act 2000

Environmental Information Regulation Act 2004 Procedure

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***This document has been created and replaces a old document from October 2023.**

N.B. Staff should be discouraged from printing this document. This is to avoid the risk of out-of-date printed versions of the document. The Intranet / shared drive should be referred to for the current version of the document.

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1. Document history

Revision history

Date	Version	Author	Revision Summary
16.10.23	1.0	Paul Deaves	This procedure has been based upon Version 1.0 of the DPO Support Service Template
07.08.24	1.0	Paul Deaves	The DPO support service are still on the above template, V1.0. Therefore, no changes have been made,

Reviewers

This document requires the following reviews:

Date	Version	Name	Position
23.10.23	1.0	Joanne Collings-Jones	IG Lead

Authorisation

Signing of this document indicates acceptance of its contents.

Approver's Name:	Dr. Emma Poyner
Role:	Senior Partner / Caldicott Guardian
Signature:	Signed copy on file. <hr/> Dr. Emma Poyner Senior Partner / Caldicott Guardian 23.10.23 / 07.08.24

2. Introduction

The Freedom of Information Act (FOIA) 2000 and the Environmental Information Regulations (EIR) 2004 provide a right of access to information held and recorded by public authorities. General Practices are defined under the FOI Act as public authorities for the provision of general or personal medical services provided under contract. Therefore, information held relating to these services may be requested under the FOI Act and/or the EIR Regulations and any information requested should be provided unless an exemption in the FOIA or an exception under EIR applies.

3. Purpose

This procedure details the steps to be taken when responding to a request for information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR) (“the Regulations”).

FOIA and EIR apply to corporate records and information, and the emphasis is on increasing access to information. This procedure outlines how the practice complies with the legislation to ensure that:

- There is a clear process in place to respond to requests in a timely and helpful manner
- The practice has an open culture and attitude towards sharing relevant information with the public
- The practice is clear about what information cannot be shared under FOIA/EIR and what is covered under the Data Protection Act (DPA) 2018
- The practice has an FOI Publication Scheme in place

4. Scope

This procedure applies to all staff of Pendre Surgery.

The term ‘staff’ includes all health professionals, partners, staff members, locums, students, trainees, secondees, volunteers, contracted third parties and any persons undertaking duties on behalf of Pendre Surgery.

This procedure is supplementary to the practice’s Information Governance Policy and sets out the arrangements in place to manage FOI and EIR requests as set out in the policy. It must be read in conjunction with the policy.

5. Roles and Responsibilities

5.1 Senior Responsible Person

The Senior Responsible Person within the Practice is responsible for ensuring the highest level of organisational commitment to this procedure and the availability of resources to support its implementation. Where appropriate, the Senior Responsible Person may delegate specific tasks to other individuals who have responsibility for ensuring all FOI and EIR requests are dealt with in line with this procedure.

5.2 Information Governance Lead

The Information Governance (IG) Lead will receive specialist training in relation to managing and dealing with FOI and EIR requests and is responsible for overseeing the day-to-day duties relating to such requests. Where appropriate, the IG Lead may delegate specific tasks to other individuals who have received appropriate training. The IG Lead is also responsible for ensuring all staff are familiar with the procedure by having suitable access to this document and monitoring compliance against this procedure.

5.3 Data Protection Officer

The Data Protection Officer (DPO) will provide independent risk-based advice to support the Practice in its decision making.

The DPO can provide advice on:

- FOI and EIR requests and under what context these apply
- Processing requests timeframes, refusal, exemptions and exceptions
- Complex responses
- Advice on what can be disclosed under FOI and EIR and what should be disclosed under DPA

The Data Protection Officer for Pendre Surgery is the Digital Health and Care Wales (DHCW) Data Protection Officer Support Service.

The DPO can be contacted by emailing DHCWGMPDPO@wales.nhs.uk.

5.4 All Staff

All staff have a responsibility to familiarise themselves with the Practice's FOI and EIR procedure and ensure they comply with its obligations.

All staff are responsible for ensuring they can recognise an FOI and EIR request and are able to act promptly should they receive such a request, in line with Section 7.1 of this procedure.

6. Procedure

6.1 Requests for Information

6.1.1 Timeframe

The FOI Act and EIR allows 20 working days to respond to a request for information. Working days are Monday to Friday for FOI and EIR purposes and do not include any UK Bank Holidays.

The 20-day clock starts on the first working day after the request is received or, if clarification is sought, the day after further information is received from the applicant. If the response is completed prior to the 20-day time frame elapsing in full, then the response will be provided as soon as it is ready for release.

6.1.2 Information within remit of FOIA and EIR

The Act covers all recorded information held by the practice. It is not limited to official documents, and it may cover drafts, emails, notes, recordings of telephone conversations and CCTV recordings.

Emails and notes may be disclosed under the FOI Act and EIR if the text of these contain the requested information.

Employees of the practice relating to the request may be asked to search their emails and notes for relevant information.

Requests may be for less obvious sources of recorded information, such as the author and date of drafting, found in the properties of a document (sometimes called meta-data). This information is recorded so is covered by the Act and therefore the practice must consider it for release in the normal way.

However, the Act does not cover information that is in someone's head. If a member of the public asks for information, the practice is only obligated to provide information that already has in recorded form. The practice does not have to create new information or find the answer to a question from staff who may happen to know it.

6.1.3 Destruction of requested Information

Information requested may have been destroyed before a request was received. In this instance, the IG Lead will advise the applicant that it does not hold the information and explain why it was destroyed. At the same time, the practice may advise the applicant of any other relevant, available information that it does hold which may be of use to the applicant.

Should the information be scheduled for destruction but then a request is received the practice will preserve any information they identify as falling within the scope of an information request to prevent its deletion or amendment.

Section 77 of the Freedom of Information Act 2000 (FOI) makes it a criminal offence for a person to do anything with the intention of preventing the disclosure of information pursuant to an FOI request. These provisions mean it is an offence for the practice to intentionally delete or amend information to prevent disclosure if someone has already requested it and they would have been entitled to receive it.

6.2 Processing a Request

6.2.1 Receiving a Request

A request under the FOI Act and EIR can be made by anyone from any location. This includes requests made by employees, the public or external organisations.

Where an applicant requests information about themselves, then they will be asked to make a Subject Access Request under the Data Protection Act 2018.

To be valid, the request does not have to mention specific terminology such as 'Freedom of Information' or 'the Act' or 'Environmental Information Regulation' but it must:

- Be in writing (***except for EIR requests which can be made verbally and constitutes of information relating to the environment, such as air and atmosphere, water, soil, land, landscape and natural sites and the interaction between these elements or factors such as substances, energy, noise, radiation or waste affecting or likely to affect the elements of the environment***)
- State the name of the applicant and a valid address or e-mail address for correspondence
- Describe the information requested
- Be in a legible form
- Be capable of being used for subsequent reference

The term 'in writing' covers all requests submitted by letter or electronic form, including those sent via social media. The request does not have to make direct reference to the FOI Act or EIR or be the sole or main theme of the correspondence.

If received in writing, these must be forwarded to the IG Lead immediately. There is a 20-working day timeframe to respond, and this is calculated from the date the request was received into the practice.

If an EIR request is made verbally, the staff member receiving the request should transcribe, gather as much information as possible, and forward to the [IG Lead immediately.

6.2.2 Acknowledging a Request

On receipt of the request the [IG Lead or Other nominated individual] must log the request on the practice's request register including full details of the request including the date of receipt, applicant name and contact details, brief description of the request and deadline response date.

The [IG Lead or Other nominated individual] will issue an acknowledgement to the requester within 3 working days of receipt of the request. This will inform the requester that the request has been received and is being processed by the practice, or after having checked the Practice's publication scheme and website, where the information can be found if it is already in the public domain. This will be recorded in the request register, and if appropriate the request may be closed at this stage.

6.2.3 Clarification

The requestor does not have to state the reason for their request. However, if the request is not precise or clear enough to be processed, the initial acknowledgement to the requester will ask for clarification of the request and/or for additional information to be provided. The 20-working day timeframe will be put on hold until further clarification/information is received by the Practice.

6.3 Refusing a Request

6.3.1 Vexatious or Repeated Requests

The practice does not have to comply with requests that are 'vexatious' or repetitive in nature. The IG Lead will consider:

- Can the request fairly be seen as obsessive?
- Is the request harassing the practice, or causing distress to its employees?
- Would complying with the request impose a significant burden of expense/distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

If the request is considered vexatious, or repeated, the practice does not have to provide any information or confirm or deny whether it holds it. However, a refusal notice must be issued to the applicant.

Where the Practice is considering the refusal of a request on the grounds of it being vexatious, the IG Lead will contact the DPO Support Service for advice prior to issuing the refusal.

6.4 Compiling a Response

The IG Lead or Other nominated individual] has responsibility for compiling responses to requests made under the FOI Act and EIR.

Applicants have two distinct rights under the FOI Act:

- The right to know if the Trust holds the information requested (the duty to confirm or deny), and
- The right to be provided with a copy of the requested information (the duty to communicate).

Responses are to address both rights where appropriate, for example where the information is known to be held but cannot be provided due to the excessive costs involved.

Upon receipt of a request, the IG Lead or Other nominated individual] will determine the initial feasibility of responding, and in particular:

- Whether time and effort to compile the response can be estimated from the request and if this is likely to exceed the cost limits set in fee regulations ([The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](#)), and
- Whether any applicable exemptions are clear at the outset (see Appendix A).

Where requests are straightforward, the designated individual(s) will start to prepare a response as soon as possible. This may involve a search of electronic and paper records, identifying key employees so that they can search for relevant emails and notes they may have made, and/or identifying where the release of any of the information is a cause for concern, so that the possible application of relevant exemptions may be considered.

Where a request is particularly complex, the practice may seek advice from the DPO Support Service and request a review of the response before it is sent to the applicant.

6.4.1 Providing Advice and Assistance

The practice must provide advice ‘as far as would be reasonable to do so’, to applicants and prospective applicants. This will usually be advice about the type of information that the practice holds and how to access it or if the information is not held by the practice, but it is held by another public authority, such as the Health Board, how this information can be requested.

6.5 Calculating the cost limit

If the estimated costs of responding to a request would exceed the appropriate limit of £450, then the practice is not obliged to supply the requested information. It may still be necessary to state whether the information is held by the practice (unless this would, by itself, exceed the appropriate limit).

Estimated costs can include staff time spent in determining if the information is held, and in locating, retrieving, and extracting the information. The costs of redacting any exempt information contained within the records/documents cannot be considered or the time taken to consider if a refusal, exemption, or exception applies or applying the public interest test.

The cost limit equates to 18 hours work calculated at cost of £25 per person, per hour, the rate outlined in the FOI Act. This figure should be used to calculate if the £450 limit for any request would be exceeded regardless of the pay rates of the staff involved.

Where the cost limit is being applied, the IG Lead will outline this within the response, along with details of the actions required to comply with the request and the calculation of the cost limit.

6.6 Consideration of Exemptions

If it is determined that an exemption applies to the requested information (see Appendix A of this document), either in full or in part, then the response to the applicant should explain:

- the particular exemption applied,
- why the exemption applies, and
- whether there is a public interest in disclosing the information.

There are two types of exemption: absolute and qualified. “Absolute” exemptions mean that the information can be withheld without needing to consider any public interest in disclosure. However, many exemptions in the FOI Act are “qualified” exemptions, which means that the practice must consider whether the public interest favours withholding or disclosing the information, this is known as a public interest test.

6.6.1 Applying the Public Interest Test and time extensions

If the exemption is qualified, the IG Lead will weigh the public interest in maintaining the exemption against the public interest in disclosure. Where required, the IG Lead will consult with the Senior Responsible Person and DPO Support Service.

Where the IG Lead anticipates that the practice:

- requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; or
- it needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held the IG Lead or Other nominated individual] will apply an extension of up to an additional 20 working days and inform the requester of this. The additional time cannot be used to determine whether an exemption is engaged it only permits extensions for further consideration of public interest.

6.6.2 Requests for Information obtained from Third Parties

The practice may receive a request for information which has been provided by a third party, for example, information held in a contract with a third-party supplier. In this case, the third party should be consulted about information held which falls into the scope of the request to consider whether information is suitable for disclosure, or an exemption applies. This may include:

- when requests for information relate to persons or bodies who are not the applicant and/or the public authority; or
- when disclosure of information is likely to affect the interests of persons or bodies who are not the applicant or the authority.

6.6.3 Requests that include Information on Individuals (employees or third parties)

Where the applicant is requesting their own data, the IG Lead or Other nominated individual will inform the applicant that the request will be managed as a subject access request under the DPA 2018. Please refer to the practice's Individual's Rights Procedure.

Where the personal information of others is requested, the IG Lead or Other nominated individual will consider if the information is exempt under Section 40(2) of the FOI Act. There are three conditions to this, only one of these must be met:

- Disclosure would contravene one of the data protection principles – this would usually be the first principle – “Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.
- Disclosure would contravene an individual's right to object where this has been exercised; or
- The requested data would be exempt from the right of subject access. In other words, if a copy of the information would not be provided to the data subject on request, then it should not be disclosed under FOI.

Information related to deceased individuals is not subject to data protection legislation, however the common law duty of confidentiality remains. Where information relating to deceased individuals has been provided with the expectation it would remain confidential (i.e., health information), the Practice will utilise Section 41 Information Provided in Confidence.

6.7 Providing a response

The Practice will aim to identify whether, and where, requested information is held. Any identified information will be reviewed and separated from information to which an exemption or exception to release may be applied.

If information is to be released, the Practice will make a copy of the information, and make this available to the requester, either digitally (published online, sent via e-mail) or physically (sent via post).

If no information can be released, the Practice will notify the requester of the reason(s) why the information will not be disclosed. This will include the exemption in question and why it applies. If it is a qualified exemption, the Practice will also include how they have considered the public interest test.

All responses will include information about the requesters right to complain and request an internal review, should they be unhappy with the way their request has been dealt with. The response will also inform the requester of their right to raise their concerns with the Information Commissioner's Office, including their contact details.

6.7.1 Redacting Information and small number suppression

The FOI Act and EIR refers to the release of information rather than documents and therefore it may be appropriate to release some of the information held within a document. Any potentially sensitive information not relevant to the request should be removed or redacted.

Where a response to a request is to disclose aggregate data, the IG Lead will consider if the information is likely to be identifiable where small numbers are involved. Where necessary, the IG Lead will consult with the Senior Responsible Person and DPO Support Service, to establish this. Considerations will include, the number of individuals involved, other identifying criteria (i.e. specific diagnosis, age group), and information already in the public domain (i.e. practice catchment area).

Where small numbers are suppressed, the practice will apply the Section 40(2) exemption along with details of the factors considered when suppressing the numbers.

6.7.2 Requests for Information not held by the practice

If the practice does not hold all or part of the information requested, then the IG Lead will inform the applicant of this in the formal response.

Where some or all of the information they have requested is held by another organisation, details of this will be included, suggesting that the applicant applies to the other organisation directly, and provide contact details if known.

6.8 Complaints, Reviews and Appeals

6.8.1 Complaints

If, at any stage of the process, the applicant complains or expresses concern about the progress of the request and the response, then initially this is to be dealt with internally by the Senior Responsible Person. If a satisfactory response cannot be made or there is no success in resolving the matter, then the applicant must be informed of the formal review process and provided contact details of the Information Commissioner's Office (ICO).

Every response issued will inform the applicant about the right to an internal review, as well as the right of appeal to the ICO if they remain unsatisfied. Applicants will be informed that the ICO is unlikely to consider a complaint from an applicant who has not first attempted to resolve the issue via the practice's internal review procedure.

6.8.2 Reviews

Applicants may request an internal review if they believe that any FOI or EIR exemptions and exceptions have been wrongly applied, the costs estimate is incorrect, or the response time took longer than 20 working days to provide.

Applicants should request a review within two months of receiving the final response to their FOI request.

The review must be undertaken impartially by someone senior to the person who was not involved in the original decision, where practicable. Where this is impracticable, it is to be undertaken by someone different to the original decision-maker but who understands freedom of information.

The IG Lead or Other nominated individual will keep the applicant fully informed throughout the review process, including an expected date in which the review will be complete. This will generally be within 20 working days of the receipt of a review request, or in exceptional cases, within 40 working days.

If the outcome is that information should be disclosed, then this is to be done as soon as possible. If the original decision is upheld, the practice will advise the applicant of their right of appeal to the ICO.

6.8.3 ICO Complaints and Appeals

The applicant may complain to the ICO who will investigate the facts behind the complaint and may then issue a Decision Notice. This is the ICO's view on whether the practice has complied with the FOI Act or EIR. The ICO may ask the practice to disclose some or all the information or decide that information was correctly withheld.

Where the Practice is contacted by the ICO for further details on a request, the IG Lead will contact the DHCW DPO Support Service for assistance drafting a response.

The practice will act on the outcome of the ICO's decision notice and recommendations as a priority.

6.9 Retention

All requests, responses, associated documents and communications will be kept in line with the practice's records management policy.

6.10 Disclosure Log

The practice will maintain a public disclosure log to record anonymised FOI and EIR requests and responses which may be of the wider public interest. The IG Lead will update the disclosure log every year responses will not be published on the practice's disclosure log prior to being provided to the applicant.

6.11 Publication Scheme

The practice will maintain an FOI and EIR publication scheme which sets out the practice's high-level commitment to proactively publish information. The publication scheme commits the practice to publish certain classes of information. These are:

- Who we are and what we do
- What we spend and how we spent it
- What our priorities are and how we are doing
- How we make decisions
- Our policies and procedures
- Lists and registers
- The services we offer

The Publication Scheme will be made available on the practice's website, <https://www.pendresurgery.co.uk/pages/FOI-GDPR--Other-Data>. The IG Lead review the publication scheme 1 years and updated when required.

7. Review

This procedure will be reviewed every 2 years or more frequently where the contents are affected by major internal or external changes such as:

- Changes in legislation;
- Practice change or change in system/technology; or
- Changing methodology.



Annex A – Freedom of Information Exemptions

Absolute exemptions

Absolute exemptions allow the Practice to withhold information from disclosure, without consideration of the public interest. The absolute exemptions include:

Section 21 - Information already reasonably accessible:

The Practice can apply this exemption when the requested information has already been made available in the public domain. Your duty to advise and assist would be to direct the requester to where they can find this information. An example of where this exemption may be applied would be the information already being published as part of your publication scheme.

Section 23 - Information supplied by, or relating to, bodies dealing with security matters:

Section 23 applies to information that is received from any of the listed security bodies, for example the security service.

Section 32 – Court records:

To utilise these exemptions the requested information must have been created and used as part of legal proceedings including inquiries, inquests, and arbitration.

Section 34 – Parliamentary privilege:

This exemption is used to avoid the disclosure of information that would infringe upon parliamentary privilege.

Section 36 - Prejudice to effective conduct of public affairs:

Section 36 is an absolute exemption in part but does have qualified considerations, which means that, even when the qualified person has given their opinion that the exemption is engaged, the practice must still carry out a public interest test

Section 40(1) – Personal information of the requestor:

This exemption should be used if the requestor is asking for access to, or copies of, their own personal information. This request should instead be treated as a subject access request and processed in line with the UK General Data Protection Regulation (UK GDPR) and Data Protection Act (DPA) 2018. If the information requested is a mixture of the individual's personal information and non-personal information you will need to deal with the request in line with both FOI Act and the UK GDPR and DPA.

Section 40(2) – Personal information:

This exemption should be used if the requested information is the personal data of a third party (anyone other than the requester) and where complying with the request for information would breach the UK GDPR and DPA.

Section 41 – Information provided in confidence:



This exemption can be applied if information obtained from any other person if its disclosure would constitute a breach of confidence actionable by that or any other person. This exemption is often used when information relating to deceased individuals is requested, where data protection legislation does not apply.

Section 44 – Prohibition on disclosure:

This exemption is used where complying with the request:

- Is not allowed under law.
- Would be contrary to an obligation under UK law.
- Would constitute contempt of court.

Qualified exemptions

Qualified exemptions require your Practice to complete a public interest test, which must consider whether withholding information outweighs the public interest in disclosing it. These qualified exemptions include:

Section 22 – Information intended for future publication:

The Practice can apply this to information being prepared to publish in the near future.

Section 22a – Research information:

The Practice may apply this exemption where information is held on an ongoing programme of research and there is the intention for someone (individual or organisation) to publish a report on the research and the disclosure of the information would or would likely prejudice the research programme.

Sections 24 – Security Bodies and National Security:

Section 24 applies if the information is “required for the purposes of safeguarding national security.”

Sections 26 to 29 – Defence and Relations:

This set of exemptions are available if complying with the request would prejudice or be likely to prejudice any of the following:

- Defence (Section 26)
- Effectiveness of armed forces (Section 26)
- International relations (Section 27)
- Relations between the UK Government, Scottish Executive, Welsh Assembly, and the Northern Irish Executive (Section 28)
- The Economy (Section 29)
- Financial interest of the UK administrations (Section 29)

Sections 30 and 31 – Investigations and Law Enforcement

Section 30 applies to information for the purposes of criminal investigations and certain types of investigations

Section 31 applies only to information that does not fall within section 30. Where release of information would likely prejudice law enforcement purposes for example preventing crime, administering justice and tax collection. It also protects certain regulatory functions for example relating to health and safety.

Section 33 - Prejudice to audit functions:

This exemption is only available for use by public bodies with audit functions.

Section 35 and 36 – Government Policy and Prejudice to the effective conduct of public affairs:

Section 35 can only be claimed by government departments or the Welsh Assembly Government.

Section 36 relates to information that would or would be likely to “effect conduct of public affairs” This exemption is used where there would be harm from disclosure that would have an impact on public affairs. If applicable this section requires that a “qualified persons” opinion must be sort and documented. The qualified person’s opinion must be reasonable. This will be in addition to the public interest test.

Section 37 – Communications with the Royal Family and the granting of Honour:

This exemption will not apply to general practice.

Section 38 – Endangering health and safety:

This exemption can be applied where release of the information would or would likely endanger someone’s physical or mental health or safety.

Section 39 – Environmental Information

This exemption can be applied where information requested under FOI Act would fall under the Environmental Information Regulation.

Section 42 - Legal Professional Privilege:

Legal professional privilege protects information shared between a legal professional and their client for the purpose of obtaining legal advice for proposed legal action.

Section 43 - Trade secrets and prejudice to commercial interests:

This exemption covers trade secrets for example for a “special” recipe of a branded product or where complying would prejudice or be likely to prejudice someone’s commercial interest.



Annex B – Environmental Information Regulation Exceptions

Reg. 12 (4) (a): the information is not held when the request is received

This exception only applies where the practice does not hold the information at the time the request is received. It is a criminal offence to destroy information or alter it with the intention of preventing disclosure following receipt of the request. Information which is held for (but not physically by) us must still be released. Similarly, information which is held by the practice for another organisation must also be released, unless an exception applies. Information is *held* by the practice if it is in its possession or control. It is irrelevant whether the information is legally *owned* by the practice

Reg. 12 (4) (b): the request is manifestly unreasonable

This exception applies when the amount of information sought is so large as to be unreasonable e.g a request for *all information held on the Environment* would be manifestly unreasonable. The exception should be used very sparingly as we must offer advice and assistance to any requestors, and should do so, before refusing a request on this basis.

Reg. 12 (4) (c): the request is formulated in too general a manner

This exception applies when a request is not specific enough. In this situation we must have offered advice and assistance to help the requestor reformulate their request and identify the information sought.

Reg. 12 (4) (d): the information is intended for future publication

The exception prevents the practice from having to release every single draft of a document before a final version is completed. In many cases, however, the public interest in releasing unfinished documents will be stronger than the public interest engaged with this exception, especially where the matter is subject to current public debate.

When applying this exception, it would be reasonable to provide the requestor with an estimated publication date for the information

Reg. 12 (4) (e): the request involves the disclosure of internal communications

The practice may refuse to disclose information if the request involves the disclosure of internal communications. This exception allows the practice *to think in private*, but it does not protect communications between the practice and any other person or organisation, be they public or private sector.

Reg. 12 (5) (a): disclosure would adversely affect international relations, defence, national security or public safety

This exception only applies in these cases when, subject to the public interest test, the practice is not required to confirm or deny whether the information exists or is held by the practice.

Reg. 12 (5) (b): disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature

Before the practice applies this exception it must be made clear that release of information would have this adverse effect. This exception is narrower than the related FOIA exemptions, both in terms of the proceedings it covers and the likelihood of affecting the protected interest.

There is a strong public interest in not adversely affecting the course of justice or the right of a person to receive a fair trial. The main question for us would be whether releasing the information will actually have such an effect. It is not enough to think that its release *might* have such an effect.

Reg. 12 (5) (c): disclosure would adversely affect intellectual property rights

The practice may refuse to disclose information that would adversely affect intellectual property rights. The fact that copyright in the information may be held by a 3rd party does not create an exception.

Reg. 12 (5) (d): disclosure would adversely affect confidentiality of proceedings

In this exception the confidentiality to be protected must be protected by law. The practice may not simply declare documents as *confidential* and then seek to rely on this exception; a legally protected right to confidentiality must already exist.

Reg. 12 (5) (e) disclosure would adversely affect commercial or industrial confidentiality

This exception only applies to information which has a confidentiality protected by law, which protects legitimate economic interests. Disclosure may only be refused where the commercial confidentiality would actually be adversely affected. In most cases, this will require demonstrating that the person or organisation whose interests are protected would suffer a real commercial or competitive disadvantage if the information were released.

Reg. 12 (5) (f): disclosure would adversely affect the interests of the person or organisation who provided the information

In these cases the information will have been provided voluntarily by an individual or organisation who will not have given consent to its disclosure. The purpose of this exception is to protect the supply of information to the practice that might not otherwise be made available (in particular from *whistle blowers*). Its purpose is not to except from disclosure information supplied in order to obtain a permit or licence. Even in these case the public interest in disclosing information supplied as part of such an application is likely to be very high.

Reg. 12 (5) (g): disclosure would adversely affect environmental protection

The practice may refuse to disclose if it would have a detrimental effect on our ability to protect the environment.

Reg. 13: personal data

When information requested includes personal information, of which the requestor is not the subject, then use of the exception will depend on whether the disclosure of the personal information about a member of staff to the public would be *fair and lawful* under the Data Protection Principles within the Data Protection Act 2018.

