

Official Information held in Private Email Accounts

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.

This guidance is intended to clarify the legal status under FOIA of information relating to the business of the Trust held in private email accounts as this is an emerging area of FOIA compliance.

Overview

- FOIA applies to official information held in private email accounts when held on behalf of the Trust.
- It may be necessary to request relevant individuals to search private email accounts in particular cases. The occasions when this will be necessary are expected to be rare.
- In circumstances where information is held by another person on behalf of the Trust, the information is considered to be held by the Trust for the purposes of FOIA.
- Information held in **non-work personal email accounts** (e.g. Hotmail, Yahoo and Gmail) may be **subject to FOIA** if it relates to the official business of the Trust.
- All such information which is held by someone who has a direct, formal connection with the Trust is potentially subject to FOIA regardless of whether it is held in an official or private email account.
- If the information held in a private account amounts to the Trust's business it is very likely to be held on behalf of the Trust.
- Situations where information legitimately requested under FOIA includes relevant information held on private email accounts, as a Trust we should consider all locations where relevant information may be held. This may include private email accounts.
- Where members of staff have been asked to search private email accounts for requested information, there should be a record of the action taken so that the Trust will be able to demonstrate, if required, that appropriate searches have been made in relation to a particular request if the Information Commissioner (ICO) may need to see this.
- Information in private email accounts that does not relate to the business of the Trust will not be subject to FOIA.

For example, a Councillor may hold information relating to local authority business in his/her private email account on behalf of the local authority or a management consultant working with NHS Trust may hold and share information with senior members of the Trust from their private email accounts. **The FOI Act will apply to all the official information that may be held in their private email account, unless it is personal.**

Relevant information in other forms

Although the main emphasis of this guidance is on information held in private email accounts, we need to be aware that it applies to information in other forms. The definition of 'information' under FOIA means '**information recorded in any form**'. Therefore, **official information recorded on mobile devices**, including **text messages on mobile phones**, or in **any other media**, may also be considered to be **held on behalf of the Trust**. Again, this does not necessarily mean that such information will be disclosable, but, on receipt of a valid FOIA request, we should consider all locations where the requested information may be found.

Concealment and deletion

Please remember that **deleting or concealing information** with the intention of preventing its disclosure following receipt of a request **is a criminal offence**. For example, where information

that is covered by a request is knowingly treated as not held because it is held in a private email account, this may count as concealment intended to prevent the disclosure of information, with the person concealing the information being liable to prosecution.

Steps that we need to take:

- All **staff** to be **aware** that official information held in private email accounts will fall under the scope of FOIA.
- **Policies** to clarify the types of information that could be considered as records relating to the Trust's business. These policies to include clear **advice to staff that recorded information** held by **individuals**, regardless of the form in which it is held, and which relates to the business of the Trust, is likely to be held on behalf of the Trust and so **subject to FOIA**.
- Policies to incorporate that **information on Trust-related business** should be **recorded** on the **Trust's record keeping systems** in so far as reasonably practicable.

For any further advice/enquiry on this, please contact Soma Moulik, Trust's PALS/FOI Manager on 01743 277689 or email soma.moulik@shropcom.nhs.uk.