

Freedom of Information Policy v8.0

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Target Audience:	All staff
Further information:	Available from the Information Governance team

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Summary of changes from last version:

Minor changes to bring in line with new organisational structure and reflect the new process for processing FOIs

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1. Introduction / Purpose

The Freedom of Information Act (FOIA) 2000 is part of the government's commitment to greater openness in the public sector. The main features of the Act are:

- To provide a right of access to recorded information held by the public authorities;
- To provide exemptions from the duty to provide information to safeguard the public authorities interests;
- To establish arrangements for enforcement of appeals.

2. Policy Statement

The Trust is committed to complying with the Freedom of Information Act 2000, The protection of Freedoms Act 2012 and the Environmental Information Regulations 2005 (EIR), which is in line with the Trust value of being honest.

Staff are required to:

- Direct all FOI requests to the information Governance team;
- Provide accurate and timely responses;
- Keep information in the Publication Scheme accurate and up to date;
- Ensure responses are signed off by the relevant Corporate or Clinical Director.

Staff should not:

- Ignore requests for information;
- Use exemptions as an excuse not to respond.

3. Definitions

Publication Scheme: a list of information that should be routinely published via the Trust's website. The Trust adheres to the Information Commissioners Office (ICO) Model Publication Scheme for health organisations.

Public Interest Test: weighing up whether the public interest in disclosing information outweighs the public interest in withholding the information.

Exemptions: Can be absolute or qualified i.e. subject to Public Interest Test. For further details see **APPENDIX 2**

Right of access: Any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and if that is the case, to have that information communicated to him (subject to relevant exemptions).

Public authority: The Freedom of Information Act 2000 applies to all public authorities.

Abbreviations used in this policy:

FOIA: The Freedom of Information Act 2000

DPA: The Data Protection Act

FOI: Freedom of Information

4. Policy Requirements

The scope of FOIA covers any recorded information held by a public authority. This policy is intended to cover all records created in the course of the business of the Trust, i.e. corporate records, which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes email messages, electronic records and manual records. Staff should be aware that personal emails are covered by the Act where the content includes a mix of personal matters and business matters performed in the course of duty.

The right of access to personal data (recorded information that identifies an individual) is exempt from FOIA under section 40 (1) and provided by the Data Protection Act 1998, which is not included in the scope of this policy. For further information see the Trust's Data Protection, Confidentiality and Disclosures Policy.

4.1 Publication Scheme

Under Section 19 of the Freedom of Information Act 2000, the Trust has a legal duty to adopt and maintain a Publication Scheme for the publication of the Trust's information. The Publication Scheme must be reviewed at regular intervals.

The Publication Scheme is a guide to the information routinely published by Heart of England NHS Foundation Trust. It can be found under 'Publication Scheme' on the Trust's web site. The scheme will help people find all of the information which we make publicly available about the Trust. The Publication Scheme has been designed to be a route map so that information about the Trust can be found easily.

The amendments to the FOIA by the Protection of Freedoms Act 2012 also require public authorities to publish any requested datasets as part of their publication scheme, if appropriate.

4.2 How a request is processed

The procedure for processing FOI requests is included at **APPENDIX 1**.

4.3 General rights of access

Rights of access to information under the FOIA came into effect on 1st January 2005. This means that any person has the right:

- to be informed in writing whether the Trust holds the information specified in the request;
- to know if the Trust holds that information, to have that information communicated to them.

These duties are known as the duty to confirm or deny.

These provisions are fully retrospective in that if the Trust holds the information requested, it must provide the information subject to certain conditions and exemptions.

In accordance with the FOIA, any request for information needs to be in writing, stating the name of the applicant and an address for correspondence, and describing the information requested. A request in writing must be legible and capable of being used for reference. A request in writing can be electronic if it follows the above requirements.

4.4 Charges and fees

The information contained in the Trust Publication Scheme is freely accessible from the Trust internet site. The aim of this is to provide easy access to information free of charge. The charge does not apply to Trust information freely available before the introduction of the FOIA. If individuals cannot access information via the Publication Scheme, the Trust will offer advice and assistance of how best to meet the needs of those requesting information.

The Trust will follow the national fees and regulations for general access to information under the FOIA. These will establish appropriate limits on fees for compliance and the manner in which appropriate fees may be calculated and where no fees need to be paid.

A Fees Notice will be supplied to applicants for information under the Publication Scheme or under general rights of access, where the Trust wishes to charge for information. Fees will need to be paid within three months from the day on which the Fees Notice is given.

4.5 Time limits

The Trust will maintain systems and procedures to ensure that it meets its commitment to confirm or deny and/or to provide information, **not later than 20 working days** after receiving a request in accordance with Section 10 of the FOIA. All staff must comply with the requirements of this procedure, so that the Trust remains within the law.

20 working days starts from receipt of the FOI. If payment is identified a Fees Notice will be issued to the applicant then the request is put on hold and does not continue with the 20 working days until the Trust has received payment.

If the Trust decides to apply an exemption under the FOIA, the Trust will inform the applicant within 20 working days of receiving the request.

4.6 Means of conveying information

Under the Act the applicant can express a preference for recorded information to be communicated by one or more of the following means:

- The provision of a copy in permanent form or in another form acceptable to the applicant;
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information;
- The provision to the applicant of a summary of the information in a permanent form.

The Trust in so far as is reasonably possible will give effect to that preference of the applicant.

The Trust will determine whether it is reasonably practical to process requests in the format requested by considering all options including cost. If the Trust decides that it is not reasonably practical to supply the request in the format requested. The Trust will contact the applicant and inform them of their decision and will offer to provide the information in a means that it deems reasonable.

The Trust will maintain systems and procedures to monitor the provision of information requests under the FOIA.

4.7 Refusal notices

The duty to confirm or deny does not arise if the Trust:

- has issued a Fees Notice and the applicant has not paid the required fees within a three month period from which the Fees Notice was issued.
- estimates that the cost of determining whether or not the information is held would exceed the maximum cost as established by the national fees regulation body.
- receives a request for information which is repeated or vexatious (as identified through ICO guidance) and has already issued a refusal notice for a vexatious or repeated request.
- if stating whether or not the information is held would in itself provide the requester with information which is exempt.

If the Trust refuses a request for information the Trust will inform the applicant of this within 20 working days. The applicant will also be informed of the procedures for making a complaint about refusal of requests. The applicant is entitled to apply for a decision to the Information Commissioner under Section 50 of the FOIA.

If the Trust is applying the FOIA with regard to information being exempt the Trust will inform the applicant within 20 working days from receiving the request:

- that the request is exempt;
- which exemption applies and the reason for applying that exemption.

The Code of Practice issued under section 45 of the FOIA states that the 20-day timescale described above should be realistic and reasonable and compliance is expected within the estimated time unless there are extenuating circumstances. If a timescale is exceeded the applicant will be informed, given a reason for the delay and issued with an apology from the Trust. If the Trust finds, while considering the public interest issue, that the estimates are proving unrealistic the applicant will also be kept informed. The Trust will keep a record of all instances where timescales are exceeded and monitor and attempt to rectify this issue.

If applying an exemption the Trust will state the reasons for engaging the exemption/s. A list of exemptions is at **APPENDIX 2**.

4.8 Transferring requests

The Trust can transfer requests for information if the information is held by another public authority. Transfers of requests can only be made with regard to information not held by the Trust. 'Holding information' includes holding a copy of a record supplied or produced by another person (but does not include information held by the Trust on behalf of another person or body).

All requests for information from the Trust will be processed according to FOI. The Trust will also advise the applicant as to whether it holds part or none of the information required. If the Trust holds some of the information requested it may be obliged to supply the information to the applicant.

If some or all of the information requested is held by another public authority the Trust will provide reasonable assistance to the applicant with their request possibly by:

- Contacting the applicant and informing them that information is held by another public authority;
- Suggesting that the applicant reappplies to another public authority;
- Providing contact details for the public authorities holding information.

If the Trust considers it more appropriate to transfer a request to another public authority it will:

- Determine as to whether the other public authority holds information requested;
- Decide whether it is appropriate to transfer the request;
- Decide whether the applicant has any objection to the transfer.

If the Trust judges that the applicant would have no objections to a transfer of a request, it can transfer the request without further contacting the applicant but will inform the applicant that it has done so.

If there is any doubt about the applicants consent for a transfer of request that applicant will be contacted to discuss this possibility or to suggest that the applicant contacts the public authority themselves.

All transfers of request will be undertaken as soon as is reasonably possible. If the Trust is unable to advise the applicant as to whether it holds all or part of the information requested, or to facilitate the transfer of the request to another authority, it will provide the applicant (if it can do so) as to further options to satisfy their request.

4.9 Personal Information

The Trust believes that individuals have a right to privacy and confidentiality. The release of personal information is covered by the subject access provisions of the Data Protection Act 1988.

It should be noted that some requests for information might involve declaring the name of a member of staff and job title, the member of staff concerned would be informed prior to the information being sent out. This information is not, in itself, confidential. However, each request will be dealt with on an individual basis. If it were thought that declaring such

information could be potentially harmful to the member of staff concerned, the Trust would apply an exemption.

4.10 Third Party

The Trust recognises that requests for information may affect the legal rights of third parties, unless the information is covered by exemptions under the FOIA the Trust will be required to disclose such information.

Where the Trust needs to consult third parties before disclosing information, the Trust will consult third parties for their consent before making any disclosures whenever practical.

Where information constitutes personal data within the meaning of the Data Protection Act (DPA) the Trust will have regard to section 40 of the FOIA, which deals with the issues resulting from the interplay of FOI and DPA.

The Trust may not consult with third parties if it is not reasonable or practical to do so, or the cost of consultation is disproportionate. In these cases the Trust will consider what is the most reasonable action to take, considering the requirements of the FOIA and the individual circumstances of the request. Consultation will be unnecessary where the Trust:

- Does not plan to disclose the information requested;
- No exemption applies so the information must be disclosed;
- The third party could not have any effect on the decision to disclose.

Where the interest of a group of third parties may be affected by disclosure, the Trust will make all reasonable and practical attempts to consult a representative organisation or individual from these parties (if one exists) and where one does not exist, to consult a sample representative.

The Trust ultimately will decide whether information is to be disclosed or not with regard to the FOIA. The failure of third party response to consultation does not relieve the Trust of its obligations to disclose information.

4.11 Public sector contracts

When entering into contracts the Trust will not agree contracts that refuse the disclosure of information under the terms of the FOIA. Unless exempt under the FOIA all information held by the Trust can be disclosed regardless of contractual terms.

The Trust will review confidentiality clauses in contracts. The Trust can draw up a non disclosure schedule within contracts but parties to the contract must be aware that restrictions on disclosure can be overridden under obligations under the FOIA.

Confidentiality clauses must be for good reasons and be capable of being justified to the Information Commissioner.

The Trust will take steps to protect from disclosure by the contractor information provided to the contractor that would clearly be exempt under the FOIA.

4.12 Complaints and Review Process

The Trust has established systems and procedures for dealing with complaints about the discharge of its duties under the FOIA.

A review of a decision should ideally take place within 20 working days; in exceptional circumstances within no more than 40 working days at the latest. The request for a review should be acknowledged and the following process undertaken:

1. Nominate a senior individual as the reviewer (it must be a different person to the originator of the response, and preferably someone more senior).
2. That person should consider the request and the response, and the basis of reliance on exemptions, to consider whether a new decision is needed.
3. The reviewer should document that the review has been conducted.
4. A letter should go to the requestor communicating the outcome of the review.

The letter will refer applicants to their right under section 50 of the FOIA to apply for a decision by the Commissioner, if they are unsatisfied with the Trust in relation to their request for information.

4.13 Records management

The Trust will have a separate policy on the management of records in compliance with the Lord Chancellors Code of Practice on Records Management, and HSC 1999/053, including the destruction of records.

All staff should be aware that the public will be able to request access to any information held by the Trust, including minutes, emails, notes, etc

In order to be fully compliant with the Freedom of Information Act 2000, it is essential that all staff maintain efficient and effective office management systems. This means:

- keeping files and records in order
- Information should be legible, accurate and evidence-based.
- Staff are responsible for the storage and accessibility of information which they create

- Information should be retained and disposed off, in accordance with Trust guidelines

Staff should be aware that there is a chance that the e-mail they thought to be confidential may be seen by people for whom it was not originally intended.

So, when using e-mail, staff are required to:

- make sure that the content is verifiable, evidence-based and capable of being subjected to public scrutiny
- make sure the information is only sent to those people who need the information
- be responsible about use of e-mail; be aware that the e-mail may be forwarded on without consent or knowledge
- Manage e-mail in line with the Trust Email Policy

4.14 Environmental Information Regulations (section 39)

New Environmental Information Regulations came into force on 1st January 2005. These Regulations establish a regime that allows people to request environmental information from public authorities. The Regulations allow access in a similar way to the Freedom of Information Act 2000.

For requests involving environmental information, the Trust must respond within 20 working days, this can be extended by a further 20 working days for complex and voluminous requests.

The Corporate affairs directorate will process such requests using the same procedure for requests for information under the Freedom of Information Act and will liaise with the appropriate manager in the Facilities and Estates directorate to fulfill each request. See **APPENDIX 3** for details of what may constitute a request for information under Environmental Information Regulations.

4.15 Reuse of public sector information

The regulations on the re-use of public sector information came into force on 1 July 2005. The regulations implement the European Directive on the re-use of public sector information. The aim of the regulations is to provide a framework that encourages the re-use of public sector information. The main themes are improving transparency, fairness and consistency and thereby stimulating the development of innovative new information products and services across Europe, so boosting the information industry. Details of the regulations can be found at www.opsi.gov.uk. RPSI regulations will be on a case by case basis.

4.16 Circular (Round Robin) Requests

Staff that manage FOI requests must be alert to the possibility that a request may have been sent to a number of organisations i.e. circular or 'round robin' requests. The Information Commissioner has issued guidance on 'Circular requests' and advises that if a request is valid, any consideration of whether it is vexatious or manifestly unreasonable should be carried out in accordance with the ICO's guidance on 'Dealing with vexatious requests' and 'Manifestly unreasonable requests'.

5. Responsibilities

5.1 Chief Executive

The Chief Executive has overall responsibility for the Trust's compliance with the FOI.

5.2 Director of Corporate Affairs

The Director of Corporate Affairs is responsible for Information Governance within the Trust. She/he will report to the Trust Board in relation to FOI and liaise with other senior members of the Trust as required.

5.4 Director of Estates and Facilities

Is responsible for responding to requests for information made under Environmental Information Regulations 2005 (EIR).

5.5 Corporate and Clinical Directors

Executive Directors are responsible for maintaining a framework to support FOI activity in accordance with the Trust FOI Policy and Procedure. They will advise the Director of Corporate Affairs on FOI issues in areas of their responsibility. They will ensure that information is provided to the Information Governance team in a timely manner to ensure compliance with the timescales of the Act. They will nominate a dedicated FOI lead for their area.

5.6 Head of Information Governance

The Head of Information Governance is responsible for the reviewing of FOI complaints and supporting the Information Governance Officer in their day to day role.

5.7 Information Governance Officer

The Information Governance Officer has day to day responsibility for the maintenance of all aspects of FOI issues. She/he is responsible for advising all staff on issues relating to FOI. The Information Governance officer will provide bi-monthly reports to the Information Governance Group.

5.8 FOI lead

FOI lead will have been nominated by Directors in all departments. Their responsibility is to respond to information requests from the Trust IG Officer in a timely manner and escalate appropriately where delays are identified.

5.9 All Staff

All staff are responsible for ensuring that:

- Freedom of Information requests are processed in line with the guidance issued in this procedure
- Information is supplied to the Information Governance team in a timely manner
- accurate records are kept

5.10 Trust Board

The Trust Board is responsible for assuring that appropriate FOI systems are in place to enable the organisation to deliver its objectives. It will delegate operational responsibility for delivery of the FOI programme to the Information Governance Group.

5.11 Information Governance Group

The Information Governance Group manages and oversees implementation of the Trust's FOI programme. Its responsibility is to ensure an appropriate infrastructure is implemented to monitor, maintain and improve all elements of Information Governance

6. Training

The Information Governance Department will ensure provision of training for relevant managers, supervisors and staff to enable them to carry out their duties and responsibilities relating to FOI. Information Governance training (including FOI) is part of the Trusts mandatory training programme.

7. Monitoring and Review Matrix

The Trust's FOI programme will be monitored on a bi-monthly basis by reports to Information Governance Group.

8. References

- Environmental Information Regulations 2005
- Freedom of Information Act 2000
- Protection of Freedoms Act 2012
- Data Protection Act 1998
- ICO Guidance on Model Publication Schemes
- HEFT Publication Scheme
- Management, Retention and Disposal of Non-Clinical Records Strategy
- Information Governance Policy and Assurance Framework Strategy
- Information Security and Risk Policy

- Data Protection, Confidentiality and Disclosures Policy
- Email Policy
- FOIA Procedure – Dealing with Requests for Information

Procedure for processing FOI requests

1. All FOI requests must be forwarded immediately to the Information Governance Team via publication.scheme@heartofengland.nhs.uk
2. For a request to be valid it must be in writing (including email) and have a name and address for correspondence (this may be an email address).
3. All requests will be recorded onto the FOI log by the IG Officer
4. The IG Officer will send an acknowledgement within two working days of receipt and will contact the relevant Trust lead requesting the information.
5. The request should be responded to within 5 working days. If the information is not available or the provision / retrieval of this information would trigger an exemption (detailed list included at Appendix 2) or it is held by another team, the IG officer should be notified immediately
6. A reminder will be sent 5 working days after the initial request if the information has not been received by the IG team
7. Completed responses will be forwarded to the Director of Communications by the IG team for final approval before being issued to the requester.
8. Requests which are deemed to be high profile subjects will also be reviewed by the Director of Corporate Affairs and other directors, where applicable
9. Responses will be sent to the requester within 20 working days, with an explanation of any exemptions used, where necessary.
10. In line with the Act, all requests for information should be processed within 20 working days of receipt in the Trust. Any responses that miss the deadline will be escalated to the Director of Corporate Affairs and an email sent to the requester apologising for the delay
11. A report on the Trust's compliance with the FOIA will be submitted to the IG Group bi-monthly.

APPENDIX 2

Exemptions where the public interest test applied (qualified exemptions)

- Section 22: Information intended for future publication
- Section 24: National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise.)
- Section 26: Defence
- Section 27: International relations
- Section 28: Relations within the United Kingdom
- Section 29: The economy
- Section 30: Investigations and proceedings conducted by public authorities
- Section 31: Law enforcement
- Section 33: Audit functions
- Section 35: Formulation of government policy
- Section 36: Prejudice to effective conduct of public affairs (except information held by the House of Commons or House of Lords)
- Section 37: Communications with Her Majesty, etc and honours
- Section 38: Health and Safety
- Section 39: Environmental Information (as this can be accessed through the Environmental Information Regulations)
- Section 40: Personal information. People can not access personal data about themselves under the FOIA as there is already access to such information under the Data Protection Act 1998. Personal data about other people cannot be released if to do so would breach the Data Protection Act.
- Section 42: Legal professional privilege
- Section 43: Commercial interests

Where a public authority considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must inform the applicant of its reasons, unless to do so would mean releasing the exempt information.

Exemptions where the public interest test does not apply (absolute exemptions)

- Section 12: Cost of compliance exceeds the appropriate limit (general guidance >18 hours of staff time)
- Section 21: Information accessible to the applicant by other means
- Section 23: Information supplied by or relating to bodies dealing with security matters. (A certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals mechanism against such certificates)
- Section 32: Court records etc

- Section 34: Parliamentary privilege (A certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliaments, in respect of the House of Lords is conclusive proof that the exemption is justified.)
- Section 36: Prejudice to effective conduct of public affairs (only applies to information held by the House of Commons or House of Lords)
- Section 40: Personal Information (where the applicant is the subject of the information. The applicant already has the right of 'subject access' under the Data Protection Act 1998; where the information concerns a third party and disclosure would breach one of the data protection principles)
- Section 41: Information provided in confidence
- Section 44: Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court

What may be Classified as Environmental Information?

Regulation 2 of the Environmental Information Regulations states that environmental information includes information about:

- **Air and atmosphere**
- **Water** –in all its forms (vapour, ice, liquid) and is not limited
- **Soil** – soil can be taken to mean the unconsolidated mineral or organic material top layer of the earth's surface in which plants grow
- **Land** – that is, all land surfaces, buildings, land covered by water, and underground strata
- **Landscape** – that is, the traits, patterns, and structure of a specific geographic area, including its biological composition and its physical environment
- **Natural sites** - including wetlands, coastal and marine areas
- **Biological diversity and its components** –. The components of biodiversity must be taken to mean, genetic diversity
- **Genetically modified organisms (GMOs)**
- **Interaction among the above elements** – the Regulation recognises that no one aspect of the environment can be fully understood in isolation and that the interaction between the elements is just as important as the elements themselves.
- **Substances** – includes all material/matter, natural or synthetic, for example, chemicals, pharmaceuticals, hormones, antibiotics, oil, particulates, gases, liquids. A European definition of substances states, 'Substances means any chemical element and its compounds, as they occur in the natural state or as produced by industry, whether in solid or liquid or gaseous form'.
- **Energy** – can be thermal, chemical, electrical, kinetic, potential, light, and sound. Common usage for the term centres on power generation, oil-fired, coal-fired, gas-fired, and nuclear energy and renewable energy (wind power, solar energy etc). However, energy is not restricted to large-scale power plants and electricity generation. It also includes, heat (heat, in the form of hot water emitted into a river for example, can have a drastic affect on the plants, animals and fish living in the vicinity). Energy will include sunlight, geothermal, radio waves, microwaves etc.
- **Noise** – although noise is itself energy, it is included separately. A dictionary definition of noise is, 'a sound, especially one that is loud, unpleasant, or disturbing'. Noise also includes vibrations (Environmental Protection Act, 1990, s79(1)(g)). For example, construction noise, transport noise, noise from aircraft, noise from premises, occupational noise, noise-making equipment, day time noise, evening noise, night time noise.
- **Radiation or waste, including radioactive waste** – radiation can be natural (sun, cosmic rays, radioactive minerals), or man-made. There are two main types of radiation, ionising and non-ionising. Ionising radiation is either particulate (alpha, beta, neutrons) or electromagnetic (x-rays, gamma rays). Non-ionising radiation consists of electromagnetic radiation from extremely low frequency (ELF) to ultraviolet (UV).
- **Waste** – waste can be broadly interpreted to mean anything discarded. This includes household waste, industrial waste and commercial waste (which are collectively described as Municipal Solid Waste (MSW)) and, construction and demolition wastes, mining and agricultural wastes, sewage sludge and dredged spoils, and Special Waste,

hazardous, toxic waste. The waste sector is highly regulated and the definition of waste can be controversial, for instance, if 'waste' is to be used to generate power through incineration, it has been argued that this therefore allows it to be categorised as fuel as opposed to waste. Special rules/prohibitions apply to transboundary movement of wastes

- **Radioactive waste** –Radioactive waste is generated by hospitals and other establishments. Radioactive waste is categorised as either High-level waste (HLW), Intermediate-Level Waste (ILM), Low-Level Waste (LLW) or Very-Low-Level Waste (VLLW). VLLW is disposed of in landfill or by incineration; LLW is disposed of at a facility at Drigg, near Sellafield. ILW and HLW are both stored on site, there is currently no Government policy for the disposal of ILW and HLW.
- **Emissions, discharges and other releases** – a common, widely quoted definition of emission comes from the European IPPC Directives, 'emission shall mean the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources (...) into the air, water or land'. 'Discharges' is not expressly defined in legislation; however, common usage of the term in this context suggests it is generally reserved (although not exclusively) for liquid releases into water. A definition for release is available from the Environmental Protection Act 1990 which states, '...release includes - a) in relation to air, any emission of the substance into the air; (b) in relation to water, any entry (including any discharge) of the substance into water; (c) in relation to land, any deposit, keeping or disposal of the substance in or on land...'
- **Affecting or likely to affect the elements of the environment referred to above** - this is a qualification to the understanding of factors. Information about the factor would not be environmental information unless the factor is affecting or likely to affect the elements of the environment.