

## POLICY FOR THE MANAGEMENT OF THE FREEDOM OF INFORMATION ACT 2000

### Revised Version 2 Document Control Sheet

<b>Policy Number:</b>	IGPOL0002
<b>Version: Draft</b>	2.1
<b>Approved by</b>	Audit Committee March 2019
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<b>Effective date:</b>	December 2015
<b>Last Review date:</b>	March 2019
<b>Next review date:</b>	Jan 2021

#### Version control

<b>Date</b>	<b>Update/ change</b>	<b>By Who</b>
Dec 2015	Minor changes including update to CSU name.	D Yelverton-Denbury
Feb 2017	Minor changes including update to email and postal addresses	A York
September 2017	Minor changes including update of CSU name to SCW and responsibilities of Governance Team.	A Moss
March 2018	Amended to reflect changes in the FOIA as a result of the introduction of the GDPR and the DPA 2018 (Data Protection Legislation)	A Sumner
March 2019	Further details inserted on publication scheme from old policy	Buckinghamshire CCG Head of Governance

#### Equality Analysis

This Policy is applicable to the Governing Body, every member of staff within the CCG (CCG) and those who work on behalf of the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates the CCG's



commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners.

The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities.

An equality impact assessment is in Appendix 6.

If you have identified a potential discriminatory impact of this procedural document, please contact the CCG Data Protection Officer.

### **Alternative formats**

To help ensure that this policy is as accessible as possible, this document is available in alternative formats and languages. To request a copy of this policy in large print, audio, Braille (or another format) or in an alternative language please call the CCG Data Protection Officer.

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## 1. INTRODUCTION AND POLICY STATEMENT OF STATUTORY COMPLIANCE

### 1.1 Purpose

The purpose of this policy is to provide NHS Buckinghamshire Clinical Commissioning Group (CCG) with guidance in relation to the compliance with the Freedom of Information Act 2000 (FOIA). It is a statement of the framework within which the CCG will work to ensure the organisation meets its obligations under the FOIA. In particular it:

- outlines the role of legislation (see Section 1.2)
- defines roles and responsibilities (see Section 3)
- indicates the way in which compliance with the policy will be monitored (see Section 8)
- details guidelines for the implementation of legislation (see Section 4)

### 1.2 Background

The FOIA 2000 replaces the non-statutory “*Code of Practice on Openness in the NHS*”; it is part of the Government’s commitment to greater openness and transparency in the public sector and enables the public to question the actions and decisions of public authorities more closely. Section 1 of the FOIA gives a general right of access to recorded information held by a public authority, subject to certain conditions and exemptions. The main features of the FOIA are:

- a duty on every public authority to maintain a Publication Scheme;
- a general right of access to recorded information held by public authorities;
- the introduction of the office of Information Commissioner to promote good practice; and with wide powers to enforce the rights created by the FOIA

### 1.3 Principles

This policy supports the principle that openness, and not secrecy, should be the rule in public life. NHS Buckinghamshire CCG intends to create openness and dialogue with all stakeholders and improved access to information about the CCG and supports the following:

- Individuals have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provision that prevent the disclosure of personal identifiable information under the Data Protection Legislation (See ‘*Procedure for the disclosure of records under the Data Protection Legislation and Access to Health Records Act 1990*’).
- Public authorities should be allowed to discharge their functions effectively. The CCG will use the exemptions contained within the FOIA where an absolute exemption applies or a qualified exemption can be reasonably applied in terms of the public interest of disclosure (see Appendix 1 – Exemptions).
- Staff should have access to advice to support their understanding of the FOIA.

## **1.4 Relevant Linking Documents**

This policy should be read in conjunction with the following documents:

- A) the Freedom of Information Act 2000 (FOIA)
- B) the Data Protection Legislation and accompanying definitions
  - 1) the Data Protection Act 2018 (DPA 2018)
  - 2) the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679),
  - 3) the Law Enforcement Directive (LED) (Directive (EU) 2016/680) and,
  - 4) any applicable national Laws implementing them as amended from time to time
  - 5) all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations
- C) the Procedure for the disclosure of records under the Data Protection Legislation and Access to Health Records Act 1990
- D) the Environmental Information Regulations 2004
- E) all policies/documents relating to the application of Information Governance
- F) Freedom of Information – Information for Staff (Appendix 4)

## **2. SCOPE**

This policy provides a framework for NHS Buckinghamshire CCG to ensure compliance with the FOIA and applies to:

- all employees of NHS Buckinghamshire CCG
- contracted third parties, including hosted organisations and agency staff
- students and trainees
- staff on secondment, staff on honorary contract and other staff on placement within the CCG

This Policy will be available for staff to view on the CCG's shared server. Managers of staff without direct access to the intranet must provide an up-to-date paper copy of the policy within the department.

The policy applies to all recorded information that the CCG holds, created, received and maintained by staff in the course of their work. This can be held in a number of different media e.g. paper, electronic (including text and e-mail), audio and video.

## **3. RESPONSIBILITIES**

### **3.1 Statutory Responsibility**

All public authorities in England, Wales and Northern Ireland are covered by the FOIA. In addition, any company that is wholly owned by a public authority is also covered by the FOIA.

### **3.2 Managerial Accountability and Responsibility**

All line managers should ensure their staff are aware of the obligations of the CCG under the FOIA and related legislation, of the rights of individuals making requests under the FOIA and of the process for dealing with requests under the FOIA.

### **3.3 Individual Responsibility**

By law, all staff are responsible for any requests they receive. Therefore it is the responsibility of all staff to be aware of both their individual obligations and those of the CCG under the FOIA and related legislation. These may involve locating, retrieving and extracting (including editing and redacting) the information requested. Staff should also have knowledge of the rights of individuals making requests under the FOIA and of the process for dealing with requests.

Guidance for staff is set out in the:

- ‘Procedure for handling Freedom of Information enquiries’ (Appendix 4)
- ‘Freedom of Information – Information for Staff’ leaflet (Appendix 7).

### **3.4 Freedom of Information function with NHS South, Central and West Commissioning Support Unit (SCW)**

The FOI function is managed by the Freedom of Information Team which sits within Governance Services of NHS South, Central and West Commissioning Support Unit (SCW). It serves to ensure that legislation is appropriately and effectively implemented and the specific roles are:

- **Head of Governance Services** – has overall responsibility for management of the FOI Team within SCW and the organisations (including NHS Buckinghamshire CCG) for which an FOI Service is provided.
- **Freedom of Information Manager** – is responsible for the management and handling of all requests made to CCG Customers under the FOIA. The FOI Manager is responsible for identifying and applying all potential exemptions, internal reviews and ICO complaints/correspondence. The FOI Manager provides NHS Buckinghamshire CCG with all reporting information and advice on the model Publication Scheme and Disclosure Logs.
- **Freedom of Information Officer** – is responsible for the day-to-day handling and response to all requests made to NHS Buckinghamshire CCG under the FOIA.

### **3.5 Operational Leadership Team and the Chief Officer**

The Operational Leadership Team is responsible for the determination of the arrangements for handling FOI requests and the review of, and response to these requests. Quarterly and Year-end FOI reports will be provided to the CCG Governing Body by the FOI team.

The Chief Officer, responsibility delegated through Deputy Chief Officer, is responsible, with support from the FOI team, for the oversight and final approval of any complaints, or requests for review received under the FOIA (see Appendix 3: “Complaints / Review Process”).

## **4. PROCEDURE FOR HANDLING FREEDOM OF INFORMATION ENQUIRIES**

### **4.1 Introduction**

Any member of staff in NHS Buckinghamshire CCG may be approached and asked for information under this legislation. Section 16 of the FOIA states that public authorities have a duty to provide advice and assistance to applicants, therefore every member of the CCG's staff has a legal duty to assist someone in making a request. Guidance for staff is set out in "*Freedom of Information – Information for Staff*" leaflet (Appendix 7).

### **4.2 Verbal requests**

Under the terms of the FOIA enquiries must be written (letter, fax or e-mail). Requests can also be made via the web, or even on social networking sites such as Facebook or Twitter (all in writing) if your public authority uses these. However, if a verbal request is received CCG, staff have a duty to advise that requests must be written and include a full name and correspondence address (this can be an e-mail address). Staff must also inform the enquirer of the e-mail and postal addresses for the FOI team (see below).

### **4.3 Written requests**

Written requests may come from any source and be directed to any member of staff. If the request for information is not classified as a complaint, solicitor's letter, request for access to personal records, or anything that can be classed as 'business as usual', it should be considered as a possible FOI enquiry and forwarded by e-mail and then posted where appropriate to:

Freedom of Information Team  
NHS South, Central and West Commissioning Support Unit  
Southgate House  
Pans Lane,  
Devizes,  
Wiltshire, SN10 5EQ

E-mail: [BCCG.CCGFOI@nhs.net](mailto:BCCG.CCGFOI@nhs.net)

The FOIA gives a right of access that is not based on 'need to know' and therefore the CCG does not have the right to question an applicant on the reason or purpose of their request. The CCG can, however, request the applicant to provide further detail or clarification in order to define a vague or broad request.

### **4.4 Requests for Information received by Staff**

Any member of staff receiving a request for information is expected to follow the staff process for handling requests. Guidance for staff is set out in:

- *Procedure for handling Freedom of Information enquiries* (Appendix 4)
- "*Freedom of Information – Information for Staff*" leaflet (Appendix 7)

#### 4.5 Requests for Information Received by the Freedom of Information Team

The FOI team will follow the relevant processes for handling requests as set out in Appendix 2: “Procedure following receipt of an enquiry made under the Freedom of Information Act 2000”.

#### 4.6 Timescales

The FOIA requires that requests are responded to by the twentieth working day following the date of receipt. If the CCG decides to apply an exemption (see Appendix 1: “Exemptions”) to withhold information, the applicant will be informed within 20 working days. The 20 working day timescale may be extended only if the CCG:

- requests further clarification relating to the enquiry from the applicant, in which case the 20 working day deadline restarts from the beginning once a reply is received;
- advises the applicant it is unable to complete the enquiry within the 20 working days and a revised timescale is agreed between the enquirer and the CCG;
- issues a fees notice: the statutory timescale is suspended until payment is received;
- considers a qualified exemption applies, in which case, in exceptional circumstances, the response time may be extended by 20 working days to consider the Public Interest Test

#### 4.7 Public Interest Test

Where a qualified exemption is thought appropriate, requiring the consideration of the Public Interest Test (PIT), this will be agreed between the person(s)/department(s) holding the information and the FOI team. Final approval of the PIT will rest with the CCG’s Chief Officer (this responsibility is delegated to the Deputy Chief Officer).

#### 4.8 Charging and Fees

In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, the CCG will not charge for information that costs less than £450 to provide, calculated at a rate of £25 per person per hour. The table below illustrates what activities will and will not be included in this calculation:

Activities Included	Activities Not Included
Determining whether the requested information is held	Checking that the request is valid
Locating the information	Considering whether the request is repeated or vexatious
Retrieving the information	Considering whether the information may be exempt
Extracting the information	Obtaining authorisation to send out the information
	Calculating any fee to be charged
	Providing advice and assistance
	Redacting information

Additionally, where the CCG considers it appropriate to charge a fee it will also consider the additional charge for non-staff costs or disbursements i.e. photocopying, printing or postage. Where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, the CCG will aggregate the requests and charge in accordance with the fees regulations. If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed.

#### **4.9 Complaints / Review requests**

NHS Buckinghamshire CCG will deal with complaints and requests for review to ensure that the requirements of the FOIA and EIRs are met (Appendix 3: “Complaints / Review Process”).

#### **4.10 Information Format**

Information will be provided in the applicant’s preferred format (so far as this is reasonably practicable). The CCG will notify the applicant of the reasons if it considers it is not practicable to comply.

#### **4.11 Low volume data**

A response to an FOI enquiry is effectively a provision of information to the general public and not to one individual. The CCG has an FOI policy obligation to maintain patient confidentiality under the Data Protection Legislation. Therefore, the CCG will generally adhere to guidance provided by the ‘Code of Practice for Official Statistics’ (UK Statistics Authority) and advice on using low data and maintaining confidentiality from the Association of Public Health Observatories, generally suppressing data with counts of less than five.

#### **4.12 Vexatious or Repeated requests**

NHS Buckinghamshire CCG will not facilitate requests from applicants if that request could be considered vexatious or repeated, which will be identified by monitoring data.

### **5. CONTRACTS AND CONFIDENTIALITY CLAUSES**

#### **5.1 Public Sector Contracts**

Contracts entered into by the CCG will not include contractual terms that restrict the disclosure of information held by the CCG or NHS South, Central and West Commissioning Support Unit on its behalf, beyond the restrictions permitted by the FOIA, unless an exemption provided for under the FOIA is applicable. All contracts entered into by the CCG will include appropriate FOI clauses to ensure that both parties are aware of their responsibilities under the FOIA.

When entering into contracts, the CCG may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor’s Department, the CCG will reject such clauses wherever possible.

Under exceptional circumstances, where it is necessary to include non-disclosure provisions in a contract, the CCG will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. The CCG will take care when drawing up any such schedule, and will be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the FOIA, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

The CCG will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption would only apply if disclosure of the information would constitute a breach of confidence actionable by that, or any other person.

## ***5.2 Accepting Information "In Confidence" from Third Parties***

NHS Buckinghamshire CCG will only accept information from third parties 'in confidence' if it is necessary to obtain that information in connection with the exercise of any of the CCG's functions and it would not otherwise be provided. The CCG will not agree to hold information received from third parties 'in confidence' which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified under the terms of the FOIA.

## **6. CONSULTATION WITH THIRD PARTIES**

NHS Buckinghamshire CCG recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes 'personal data' within the meaning of the Data Protection Legislation. Unless an exemption provided for in the Legislation applies in relation to any particular information, the CCG will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party (for example where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of the confidence such that the exemption at section 41 of the FOIA would apply), the CCG will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

Where information constitutes 'personal data' within the meaning of the Data Protection Legislation, the CCG will have regard to section 40 of the FOIA, which makes detailed provision for cases in which a request relates to such information.

The CCG may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the CCG will consider the most reasonable course of action for it to take in light of the requirements of the FOIA and the individual circumstances of the request.

The fact that the third party has not responded to consultation does not relieve the CCG of its duty to disclose information under the FOIA, or its duty to reply within the time specified in the FOIA. In all cases, it is for the CCG, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the FOIA. A refusal to consent to disclosure by a third party does not, in itself, mean that information should be withheld.

## **7. TRANSFERRING REQUESTS FOR INFORMATION**

A request can only be transferred where the CCG receives a request for information which it does not hold, within the meaning of section 3(2) of the FOIA, but which it believes is held by another public authority.

The CCG recognises that ‘holding’ information includes holding a copy of a records produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the FOIA).

Upon receiving the initial request for information, the CCG will process it in accordance with the FOIA in respect of such information relating to the request as it holds. The CCG will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the CCG must be certain as to the extent of the information relating to the request that it holds itself.

If the CCG believes that some or all of the information requested is held by another public authority, the organisation will consider what would be the most helpful way of assisting the applicant with his or her request. This will generally involve either transferring the enquirer to that organisation having once gained their approval to do so or responding to the enquirer suggesting that they contact the other public authority themselves.

Where the CCG is unable either to advise the applicant whether it holds or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable them to pursue their request.

## **8. RECORDS MANAGEMENT**

NHS Buckinghamshire CCG has a Records Management Policy that meets the requirements of the Code of Practice issued under Section 46 of the FOIA. Together with the records management function this will serve to ensure that effective management is undertaken within the organisation, thereby enabling the speedy location and retrieval of requested information.

Although by its nature, e-mail seems to be less formal than other written communication, the same laws apply. Therefore, it is important that CCG staff are aware of the legal risks of e-mail. An e-mail is an electronic record; a printed copy of an e-mail is a hard copy record. Information contained in an e-mail may be disclosed either in part or in whole to the public through the FOIA and whilst exemptions exist, the CCG will not be able to guarantee confidentiality of correspondence conducted by e-mail.

Staff should be made aware that under no circumstances should they deliberately alter, deface, block, erase or destroy information which has been requested in order to prevent its release. Doing so is a criminal offence under the FOIA and EIR, for which staff could be held individually responsible.

## 9. RE-USE AND COPYRIGHT

If there are concerns about information reaching a wider audience, without sufficient briefing relating to the circumstances surrounding the production of the data/document, or its context, then NHS Buckinghamshire CCG may indicate that the information is being supplied only for the use of the initial enquirer and cannot be re-used or reproduced in any format, or relayed on to other people, without the organisation's consent. CCG information supplied under the FOIA continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988.

Other forms of re-use, for example publishing the information, would need the permission of the organisation or person who owns the copyright. Information produced by government departments and agencies can be re-used under the Open Government Licence. Advice about this can be found via: <http://www.nationalarchives.gov.uk/doc/open-government-licence/opengovernment-licence.htm>. If, however, the copyright is identified as belonging to somebody else, then permission will need to be applied for. Information about how to obtain permission from a third party can be found on the Intellectual Property Office's website at: <http://www.ipo.gov.uk/>.

Publishing information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2005 and will require CCG permission and maybe a fee.

## 10. REVIEW AND REITERATION

NHS Buckinghamshire CCG (via the SCW FOI team) will log all requests via a database. This will be regularly reviewed to determine the type of request received and the originator. Information that is regularly requested will be considered for routine publication in the publication scheme.

The publication scheme can be accessed on the CCG website. All employees of the CCG should be aware of the Scheme and its contents. The CCG aims to publish as much information about the activities of the CCG as it is reasonably practical to publish so that members of the public do not have to make a formal request for access to information under the Freedom of Information Act

The publication scheme is a living document and will be kept under continuing review. It details the information that the CCG publishes at any one point in time and intends to publish in the future. It details the format in which information is available and indicates whether or not a charge will be made for the provision of that information.

Applications for information listed in the Publication Scheme may be received verbally or in writing. Any request for information which has been published will be responded to promptly and in accordance with the systems and procedures which the CCG has established to deal with such applications.

By making information routinely available the CCG will be able to proactively meet the public's information needs and reduce requests made under the FOIA. Applicant satisfaction will be monitored via an evaluation form issued either electronically or by post with the final response from the FOI team. The FOI team will record all responses and will inform the CCG of these.

## **11. TRAINING**

Ad hoc training will be provided on request by the SCW FOI Team.

## **12. LEGAL ADVICE**

The Freedom of Information Manager will be the conduit through which legal advice on FOI is sought and given, and will liaise with the SCW Legal Services Manager as appropriate.

## **APPENDIX 1 EXEMPTIONS UNDER PART II OF THE FOIA 2000**

There are two types of class exemption:

- Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest not to disclose information.

With the exception of section 21 (information available by other means) absolute exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the FOIA are:

<b>Section 21</b>	<b>Information accessible to applicant by other means</b> – it may be reasonably accessible even if the applicant has to pay for it.
<b>Section 23</b>	<b>Information supplied by, or relating to, bodies with security matters</b> – this is aimed at the Security Services, Government Communications Headquarters and the National Criminal Intelligence Service.
<b>Section 32</b>	<b>Court records</b> – covers documents in the custody of a court, created by a court or served on or by a public authority for court proceedings.
<b>Section 34</b>	<b>Parliamentary privilege</b> – to avoid infringing the privileges of either House of Parliament.
<b>Section 40</b>	<p><b>Personal information</b> – Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.</p> <p>Any information to which a request for information relates is also exempt information if it constitutes personal data relating to a third party and meets one of the following conditions:</p> <p><u>Condition 1</u></p> <ul style="list-style-type: none"> <li>a) the disclosure of the information to a member of the public would contravene any of the data protection principles or</li> <li>b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded</li> </ul> <p><u>Condition 2</u></p> <p>It is also exempt if the disclosure of the information to a member of the public would contravene Article 21 of the GDPR (general processing: right to object to processing);</p> <p><u>Condition 3</u></p> <ul style="list-style-type: none"> <li>a) it is also exempt if the information was requested under Article 15(1) of the GDPR (general processing: right of access by the data subject) but would be withheld in reliance on a relevant provision in the Data Protection Act 2018</li> <li>b) It is also exempt if the information was requested under section 45(1)(b) of the GDPR (law enforcement processing: right of access by the data subject) and it would be withheld in reliance on subsection (4) of that section</li> </ul>
<b>Section 41</b>	<b>Information provided in confidence</b> – if the disclosure of the information would constitute a breach of confidence that could lead to action against the CCG.
<b>Section 44</b>	<b>Prohibitions on disclosure</b> – information is exempt if its release is prohibited under any enactment, it is incompatible with Community obligation or would constitute contempt of court.

The exemptions that are qualified by the public interest test are:

<b>Section 22</b>	<b>Information intended for future publication</b> – covers information held with a view to publication by the public authority or another person at some future date.
<b>Section 24</b>	<b>National security</b> – information can be exempt if it is required to safeguard national security.
<b>Section</b>	<b>Defence</b> – information can be exempt if its release would affect the defence of the British

<b>26</b>	Isle, any British colony or the capability and effectiveness of the armed forces.
<b>Section 27</b>	<b>International relations</b> – information is exempt if its release would prejudice relations with another state, international organisation, international court or the interests of the UK abroad.
<b>Section 28</b>	<b>Relations within the United Kingdom</b> – covers information that would prejudice the economic interest of the UK or of any administration in the UK.
<b>Section 29</b>	<b>The economy</b> – covers information that would prejudice the economic interest of the UK or of any administration in the UK.
<b>Section 30</b>	<b>Investigations and proceedings conducted by public authorities</b> – covers information held for an investigation that the authority has a duty to conduct to decide if a person should be charged with or found guilty of an offence, relates to criminal proceedings that the authority has power to conduct or relates to civil proceedings brought by or on behalf of the authority.
<b>Section 31</b>	<b>Law enforcement</b> – information is exempt if its release would prejudice law enforcement. This includes the prevention and detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons.
<b>Section 33</b>	<b>Audit functions</b> – this applies to authorities that have functions in relation to the audit of other authorities' accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.
<b>Section 35</b>	<b>Formulation of government policy</b> – relates to government departments and the National Assembly for Wales.
<b>Section 36</b>	<b>Prejudice to effective conduct of public affairs</b> – information is exempt if, in the opinion of a qualified person, it would prejudice how the Trust conducts its public affairs.
<b>Section 37</b>	<b>Communications with Her Majesty, with other members of the Royal Household, and the conferring by the Crown of any honour or dignity.</b>
<b>Section 38</b>	<b>Health and safety</b> – information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.
<b>Section 39</b>	<b>Environmental information</b> – covers information that can be accessed via the Environmental Information Regulations.
<b>Section 42</b>	<b>Legal professional privilege</b>
<b>Section 43</b>	<b>Commercial interests</b> – information is exempt if it constitutes a trade secret or would prejudice or be likely to prejudice the commercial interests of any person or organisation.

**APPENDIX 2 PROCEDURE FOLLOWING RECEIPT OF AN ENQUIRY MADE UNDER FOIA 2000**

**2.1 Summary of Key Actions and Timescales**

Timescale	Action	SCW FOI Team Actions
Note: the 20 working day clock starts the day after the enquiry is received		
Day 0	Request received into CCG via e-mail or post	
<b>Immediately</b>	<p>If received by staff member or alternative mailbox to the CCG FOI mailbox – request forwarded to SCW FOI team via the CCG FOI e-mail address: <a href="#">XXXXXXXXXXXXXXXXXXXX</a></p> <p>If postal request, scan/forward to the CCG FOI Inbox. Send the original to the FOI team (Southgate House)</p>	
<b>Within 3 working days</b>	Request acknowledged by SCW FOI team and deadline provided to enquirer	<p>The FOI team:</p> <ul style="list-style-type: none"> <li>Keeps applicant informed of progress.</li> <li>Provides advice/ assistance if required.</li> <li>Requests clarification.</li> <li>Decides if a fee/charge is applicable.</li> <li>Decides if request can be met within applicable limits set in Fees Regulations.</li> <li>Considers if information is exempt.</li> <li>Decides if request is repeated/vexatious.</li> </ul>
	<p>Request for Information (RFI) with deadline for receipt of response information sent to CCG Chief Officer to disseminate to CCG staff.</p> <p>Where SCW staff identified as more appropriate to assist with response information, RFI sent directly to SCW staff and CCG Chief Officer copied in to the request e-mail.</p>	
<b>Within 10 working days</b>	Information located and provided by staff and returned to SCW FOI Team	<p>The FOI team:</p> <ul style="list-style-type: none"> <li>Will consider the applicant's preferences regarding response format.</li> <li>Will show the PIT to a qualified person where an exemption is qualified.</li> <li>Will provide advice/assistance in the event of the applicant being unable or unwilling to pay the fee/charge.</li> <li>Will write the exemption.</li> <li>Will notify applicant if the request is refused for any other reason.</li> </ul>
10 <sup>th</sup> working day	Information not received, a reminder is sent to the appropriate person	
<b>15<sup>th</sup> working day</b>	1 <sup>st</sup> breach warning sent to appropriate person	
<b>18<sup>th</sup> working day</b>	Final breach warning sent to appropriate person	
Before the 20 <sup>th</sup> working day	Final response sent to CCG Chief Officer for approval	
<b>Within 20 working days</b>	Response sent to enquirer	
Within 40 working days	If complex public interest test was considered, response sent to enquirer.	
If a request for clarification is made to the enquirer then the 20 working day clock stops and restarts from the beginning once the information required is received by the CCG.		
If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The 20 working day timescale is suspended until the fee/charge is paid.		



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Additional time to respond can be requested from the applicant if the information is difficult to retrieve.

## 2.2. Processing Requests for Information

### Receipt of a Request

Once the SCW FOI team receives an applicant's request, the following information will be recorded on the FOI database:

- Request Identifier
- Date received by the CCG
- Name of applicant and organisation, if known
- Information requested
- Due date for response and closure of enquiry

The FOI team will write in the same format as the original request within two working days to inform the applicant that the request has been received and is being processed. A record of this contact will be kept.

If the FOI team has sufficient information to respond to the request, they will inform the applicant in the letter of acknowledgement that their request will be processed within 20 working days.

The FOI team will also inform the applicant in writing of any fees or charges, if known, that are payable for the provision of the information and that no information will be provided unless the fee or charge is paid within three months. In regard to the general right of access from the 1<sup>st</sup> of January 2005, this will constitute the issue of a 'Fees Notice' as described in section 9 of the FOIA. Charges and fees are addressed in Section 4.8. If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed

If the applicant has not provided sufficient information for the request to be processed, the FOI team will contact the applicant for clarification; if further clarification is not received within three months from the day on which the applicant receives the request for clarification the enquiry will be closed. The 20 working day clock restarts from the beginning once clarification is received and the enquirer will be informed of the new due date for the response to their request.

In accordance with sections 12 and 13 of the FOIA, if the FOI team estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations (Section 4.8), they will notify the applicant in writing of the estimated cost. Under the FOI guidelines to advise and assist, the FOI lead will discuss with the applicant ways of bringing costs within appropriate limits. If it is not possible to comply with the request within appropriate limits, a Fees Notice will be issued.

If the FOI team believes that any of the information requested is exempt from disclosure under Part II of the Act, the applicant will be advised referencing the appropriate exemption. This includes circumstances where the information is available from another source other than the CCG, unless that source is a public authority, in which case the request may be transferred to that authority.

If a qualified exemption requiring consideration of the Public Interest Test is under consideration, and might delay response, the FOI team will advise the applicant of an extension of the time for response, the reason and an estimated date for final decision.

If the FOI team has evidence to demonstrate that the request is vexatious or repeated, as defined under section 14 of the Act, the request will be refused.

### **Accessing the Information**

The FOI team will either identify who within SCW holds the information the applicant has requested or will ask the CCG to do so from the staff within the organisation. Within two working days, the person(s) in either the CCG or the SCW who are most appropriately placed to meet the requirements of the applicant will be identified and contacted. The FOI team will keep a record of this contact.

Upon receipt of an information request, staff will be asked to respond within 10 working days and to locate and provide the information requested to the FOI team. If it is not possible to meet this deadline, the FOI team must be informed immediately; up to five additional working days may then be allowed to comply with the initial request; a record of these contacts will be kept. The requested information will be forwarded to the FOI team who will review it in respect of any exemptions and/or fees payable. If exemptions are applicable, the applicant will be advised in the final response. If fees are payable the applicant will be issued with a Fees Notice.

If the FOI team feels that releasing particular information under the general rights of access could be contentious, the matter will be discussed with the CCG. The CCG will make a decision to release or deny access to the contentious information within the required time frame for responding to requests. If it is not possible to meet this timeframe the FOI team will contact the applicant to agree an extension. The FOI team will ensure that the applicant is kept informed as to the progress of their request.

### **Providing the Information**

If no fees or charges are either payable or outstanding, or if no exemptions are applicable, the FOI team will provide the information requested directly to the applicant.

Information will be provided to applicants by any one or more of the following means, namely:

- as a copy of the information in permanent form (i.e. PDF) or another form acceptable to the applicant
- through the provision of a reasonable opportunity to inspect a record containing the information
- the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant

The FOI team will consider all the circumstances of the request for the release of information by a particular means, including the cost of doing so. If the FOI team determines that it is not reasonably practicable to comply with any preference for the provision of the information as requested by the applicant, they will notify the applicant of the reasons for this. The information will then be provided by such means as the FOI team deems to be reasonable. In the discharge of this function, the FOI team will have regard to other statutory obligations upon the CCG such as those established under the Disability Discrimination Act 1995.

The FOI team will record within the FOI database:

- the date upon which the information was provided to the applicant
- any exemptions used

### **Refusal of Requests**

A refusal of a request may apply to all the information requested by an applicant or a part thereof.

A request for information may be refused if:

- the information is exempt from disclosure under Part II of the Act
- a fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant or the applicant was notified of the charge
- the cost of compliance exceeds the appropriate limit
- the request is demonstrably vexatious or repeated

If the FOI team chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within 20 working days. The applicant will also be informed of the CCG's complaints procedures and of their right to appeal to the Information Commissioner (Appendix 3).

If the FOI team is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information, a notice will be issued within 20 working days under section 17 of the Act. The notice will:

- state that fact
- specify the exemption in question
- state (if not otherwise apparent) why the exemption applies

If the FOI team anticipates that it will take more than 20 working days to reach a decision as to whether any part of the information requested by the applicant is exempt under Part II of the Act, the applicant will be notified. A realistic and reasonable estimate of the date that a decision will be reached will be given and compliance expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given the reason(s) for delay and offered an apology. If the FOI team finds, whilst considering the public interest, that the estimate is proving unrealistic, the applicant will be informed.

If a qualified exemption is being applied, the FOI team will, either in the notice issued above or a separate notice given within a reasonable timescale, state the reasons for claiming:

- that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the CCG holds the information, or
- that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

The statement will not involve the disclosure of information which would itself be exempt information.



If the FOI team believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit, or the request is demonstrably repeated or vexatious, the notice will state that fact. If the CCG is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

The FOI team will keep records of all notices issued to refuse requests for information. When implementing this procedure, the FOI team will seek advice from those person(s) who hold the information that the applicant has requested and from senior staff.

### **Evaluation**

Applicant satisfaction will be monitored via an evaluation form issued either electronically or by post with the final notice from the FOI team. The FOI team will record all responses and will inform the CCG of these.

## **APPENDIX 3 COMPLAINTS / REVIEW PROCESS**

### **The right to appeal**

The right to appeal is a fundamental part of the Freedom of Information Act and the Environmental Information Regulations. This right can be exercised in two ways: by an internal review using the CCG's procedures and by an external appeal to the regulatory body.

An applicant can make a complaint or request a review regarding any of the following:

- a refusal of a request for information under FOI Act or EIR
- dissatisfaction with a response to a request
- the CCG FOI and EIR policy
- non-compliance with the Publication Scheme

The CCG has one internal appeals process covering both Freedom of Information and Environmental Information requests, this gives dissatisfied applicants the opportunity for an initial review of how their request for information was handled. Having gone through this process, applicants who are still unhappy can complain to the Information Commissioner and the appeal will be dealt with according to the Commissioner's procedures.

### **Formal requests for an internal review**

Applicants who are dissatisfied with the response that they have received to their request are advised within the response to write to the CCG via the FOI team.

The CCG will:

- acknowledge the complaint within two working days
- review the procedure and the handling of the request in conjunction with the FOIA and EIR
- ensure that, normally, the review will be under the control and direction of a senior member of staff who had no involvement in the original process or decision
- make a fresh decision on consideration of all the factors relevant to the issue
- aim to provide a full response within 20 working days; if for any reason the CCG is unable to meet this target the applicant will be kept informed of the progress of their complaint; for complex complaints or where it is necessary to reconsider the public interest test, reviews should be completed within 40 working days of receipt

If the applicant is dissatisfied with the outcome of the re-evaluation they have the right to refer their complaint to the Information Commissioner.

The Commissioner will investigate the case, and may serve the CCG with an Information Notice specifying information which the Commissioner needs the organisation to provide in order to be able to make a determination. The Commissioner's judgment upholding or rejecting the complaint will eventually be published as a Decision Notice. If the complaint is upheld in whole or part, the Decision Notice may require the CCG to release information to the applicant which had previously been withheld or not provided. The CCG and the applicant have the right to appeal the



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Commissioner's decision to the Information Tribunal. Decisions of the Tribunal can then be appealed to the courts on points of law.

## APPENDIX 4 STAFF PROCEDURE FOR HANDLING FREEDOM OF INFORMATION ENQUIRIES

### 1. Introduction

Any member of the CCG staff may be approached and asked for information under this legislation. Section 16 of the Freedom of Information Act (FOIA) states that public authorities have a duty to provide advice and assistance to applicants, therefore every member of staff in the CCG has a legal duty to assist someone in making a request. Guidance for staff is set out in the *'Freedom of Information – Information for Staff'* leaflet (Appendix 7 of the FOI Policy).

### 2. Verbal requests

Under the terms of the FOIA enquiries must be written (letter, fax or e-mail), however, if a verbal request is received, CCG staff have a duty to advise and assist:

- the information requested may be in the Publication Scheme
- requests must be written (letter, fax or e-mail) to the address in Section 3 and include a full name and correspondence address (this can be an e-mail address)
- there are a number of exemptions under the FOIA under which the CCG may not be obliged to provide the information requested
- a fee may be charged, depending on the type and size of request

### 3. Written requests

Written requests may come from any source and be directed to any member of staff. If the request for information is not classified as a complaint, solicitor's letter or request for access to personal records it should be considered as a possible Freedom of Information enquiry, which should be forwarded to:

Freedom of Information Team  
NHS South, Central and West Commissioning Support Unit  
Southgate House  
Pans Lane,  
Devizes,  
Wiltshire, SN10 5EQ

E-mail: [BCCG.CCGFOI@nhs.net](mailto:BCCG.CCGFOI@nhs.net)

The FOIA gives a right of access that is not based on 'need to know' and therefore the CCG does not have the right to question an applicant on the reason or purpose of their request. The CCG can, however, request the applicant to provide further detail or clarification in order to define a vague or broad request.

### 4. Requests for Information received by CCG staff

Any member of staff receiving a request for information is expected to follow the staff process for handling requests, regardless of whether this is for information contained within the publication

scheme or not. Guidance for CCC staff is set out in the ‘Freedom of Information – Information for Staff’ leaflet (Appendix 7 of the FOI Policy).

## 5. Requests for Information Received by SCW FOI team

The SCW FOI team will follow the relevant process for handling requests as set out in Appendix 2.2 of the FOI Policy: ‘Procedure following receipt of an enquiry made under the Freedom of Information Act 2000’, and will ensure that the CCG receives timely notification of receipt.

## 6. Timescales

The FOIA requires that requests are responded to by the twentieth working day following the date of receipt and the SCW FOI team will work to this timeframe.

If the CCG decides to apply a condition or exemption (see Appendix 1 of the FOI Policy: “Exemptions”) to withhold information the applicant will be informed within 20 working days.

The 20 working day timescale may be extended only if the CCG, via the SCW FOI team:

- requests further clarification relating to the enquiry from the applicant, in which case the 20 working day deadline restarts from the beginning once a reply is received
- advises the applicant it is unable to complete the enquiry within the 20 working days and a revised timescale is agreed between the enquirer and the CCG
- issues a fees notice, in which case the 20 working days is suspended until payment is received by the CCG
- considers a qualified exemption applies, in which case, in exceptional circumstances, the response may be extended by a further 20 working days to consider the Public Interest Test

## 7. Public Interest Test

Where a qualified exemption is considered requiring the consideration of the Public Interest Test (PIT) this will be agreed between the persons/departments holding the information and the SCW FOI team. Final approval of the PIT (as part of the overall response as necessary) will rest with the CCG’s Chief Officer. The CCG may extend the timescale for response by up to 20 working days if necessary and will advise the applicant in this circumstance via the FOI team.

## 8. Charging and Fees

In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, the CCG will not charge for information that costs less than £450 to provide, calculated at a rate of £25 per person per hour. The table overleaf illustrates which activities will and will not be included in this calculation:

Activities Included	Activities Not Included
Determining whether the requested information is held	Checking that the request is valid

Locating the information	Considering whether the request is repeated or vexatious
Retrieving the information	Considering whether the information may be exempt
Extracting the information	Obtaining authorisation to send out the information
	Calculating any fee to be charged
	Providing advice and assistance
	Redacting Information

Additionally where the CCG considers it appropriate to charge a fee it will also consider the additional charge for non-staff costs or disbursements i.e. photocopying, printing or postage.

For aggregate requests, where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, the CCG will aggregate the requests and charge in accordance with the fees regulations, via the SCW FOI team.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed.

## 9. Complaints / Reviews

Complaints and requests for review will be directed to the CCG Chief Officer's office and will be handled on behalf of the CCG by the SCW FOI team, to ensure that the requirements of the FOIA and EIRs are met (see Appendix 3 of the FOI Policy: "*Complaints / Review Process*"). Final decisions will be sent from the CCG's Chief Officer.

## 10. Information Format

Information will be provided in the applicant's preferred format (so far as this is reasonably practicable). The CCG will notify the applicant, via the SCW FOI team, of the reasons if it considers it is not practicable to comply.

## 11. Vexatious or Repeated requests

The CCG will not facilitate requests from applicants if that request could be considered vexatious or repeated, which would be identified by monitoring data, with advice taken from the Information Commissioner's guidance to S14 of the FOIA:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx) .

## APPENDIX 5 ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

An EIR request may be made verbally as well as in writing and will be a request for environmental information if it is information in written, visual, aural, electronic or any other material form on:

- the state of the elements of the environment – e.g. air, atmosphere, water, soil, land, landscape and natural sites such as wetlands, coastal and marine areas, biological diversity and the interaction of these elements;
- factors affecting (or likely to affect) the environment – including energy, noise, radiation, waste, emissions, discharges and other releases into the environment;
- measures – such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to above;
- reports – on the implementation of environmental legislation;
- economic analyses – including cost benefit and other analyses and assumptions used within the framework of measures and activities referred to in (c); and f) the state of human health and safety – including the contamination of the food chain, conditions of human life, cultural sites and built structures insofar as they are or may be affected by the state of the elements of the environment

Under the EIR, information is held by the CCG if it has been produced or received by it; is held by another person on its behalf; or is information which the CCG holds on behalf of a third party.

The EIR places various rights and duties on public authorities which include:

- a duty to actively disseminate environmental information
- a duty to make information available on request. Information requests must be answered within 20 working days, unless the CCG reasonably believes that it is impracticable to answer the request in that timescale due to its complexity and volume, in which event the CCG may have 40 days in which to provide the information
- a duty to provide advice and assistance to applicants
- a right to charge for information provided. Under the EIR, there is no cost limit beyond which information requests need not be answered. The EIR states that a charge may not exceed ‘an amount which the public authority is satisfied is a reasonable amount’

Exceptions – Under the EIR there is an express presumption in favour of disclosure. However, the CCG can refuse to disclose the information if it would adversely affect the following matters:

- international relations, defence, national security or public safety;
- the course of justice, ability of a person to receive a fair trial or ability of a public authority to conduct a criminal or disciplinary inquiry;
- intellectual property rights;
- the confidentiality or proceedings of the organisation where such confidentiality is protected by law

## **APPENDIX 6 EQUALITY ASSESSMENT TOOL**

**Policy Title:** Policy for the Management of The Freedom of Information Act 2000

<b>Policy Reference Number: 034</b>		
<b>Version Number: 1.3</b>	<b>Date of Issue</b>	<b>Review Date:</b>
<b>Have you considered in your Policy development the impact of your Policy on:</b>		
<i>Health &amp; Safety at Work Act 1974</i>		Yes
<i>Health and Social Care Act 2001</i>		Yes
<i>Sex Discrimination Act 1975</i>		Yes
<i>Sex Discrimination (Gender Reassignment) Regs 1999</i>		Yes
<i>The Gender Reassignment Act 2004</i>		Yes
<i>Race Relations Act 1976 (as amended by the RRA 2000)</i>		Yes
<i>The Civil Partnerships Act 2004</i>		Yes
<i>Human Rights Act 1998</i>		Yes
<i>The Equal Pay Act (as amended) 1970</i>		Yes
<i>Disability Discrimination Act 1995</i>		Yes
<i>Employment Equality Regs (Religion or Belief, Sexual Orientation) 2003</i>		Yes
<i>Promoting Equality and Human Rights in the NHS; a guide for Non-Executive Directors of NHS Boards (2005) DoH</i>		Yes
<i>Freedom of Information Act 2000</i>		Yes
<i>Environmental Information Regulations 2004</i>		Yes
<i>Re-use of Public Sector Information Regulations 2005</i>		Yes
<i>Data Protection Legislation</i>		Yes
<i>Race Relations (Amendment) Act 2000</i>		Yes
<i>Civil Contingencies Act 2005</i>		Yes
<i>Mental Capacity Act 2005</i>		Yes
<i>Corporate Manslaughter &amp; Corporate Homicide Act 2007</i>		Yes
<b>Other (please specify):</b>		
1. When referring to the above, does this policy discriminate in any way?		No
2. Does it promote equality and enhance community relations?		Yes

3. Does it influence relations between different groups?	<i>No</i>
4. If Yes, could some groups be affected differently?	<i>N/A</i>
5. Is there any evidence that some groups are affected differently?	<i>No</i>
6. If Yes, do we need to gather evidence to check this?	<i>N/A</i>
7. Is the impact of the policy likely to be negative?	<i>No</i>
8. If Yes, can the impact be avoided?	<i>N/A</i>
9. Is the impact unlawful?	<i>N/A</i>
10. Can the impact be justified?	<i>N/A</i>
11. What alternatives are there to achieving the policy/guidance without creating the impact?	<i>N/A</i>
12. Can the impact be reduced by taking different action?	<i>N/A</i>

If you have identified a potential discriminatory impact of this policy document, please refer it to the CCG together with any suggestions you have as to the action required to avoid/reduce this impact. For advice in respect of answering the above questions, contact Human Resources.