



**South East London**  
Clinical Commissioning Group

**NHS South East London Clinical Commissioning  
Group**

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**Public Information Access and Re-Use Policy**  
V1.0

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<b>Approved by</b>	Integrated Governance and Performance Committee
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<b>Name of responsible committee/individual</b>	Integrated Governance & Performance Committee
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#### Version Control

<b>Version number</b>	V1.0
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#### Document Review Control Information

<b>Version</b>	<b>Date</b>	<b>Reviewer Name(s) and Job title</b>	<b>Change/amendment</b>
0.1	23/10/20	IGP Committee	Creation of new policy to reflect statutory legislation and national best practice
1.0	29/10/20	IGP Committee	Approved policy

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## 1.0 Introduction

### Policy statement and aim

NHS South East London Clinical Commissioning Group, hereafter referred to as 'the CCG' is committed to openness and transparency in the conduct of all of its business. It has a duty to comply with all aspects of the following legislation;

- Freedom of Information Act 2000 (FOI(A)). The FOIA deals with access to recorded information held by public bodies, primarily corporate information.
- Environmental Information Regulations 2004 (EIR). EIR provides access to environmental information. These are similar to the FOIA but have subtle legal differences as detailed in this policy.
- The Protection of Freedoms Act 2012 (POF(A)) introduced requirements relating to the proactive publication and availability of data sets.
- The Re-use of Public Sector Information Regulations 2015 (RPSI(R)). RPSIR is about permitting re-use of information and how it is made available. It is not about accessing information, which is dealt with under the FOIA and EIR.

The FOIA, EIR, POFA, and RPSIR are also referred to hereafter as information access and re-use legislation.

Information access legislation supplements and complements the Data Protection Act (DPA) 2018 and the General Data Protection Regulation, hereafter referred to as data protection legislation, which gives individuals access to their personal information held by organisations. For further information about access to personal data or health records please see information management policy.

Information access legislation gives access to all other information (non-personal data) and as such has a broader remit than data protection legislation. However, together data protection legislation and information access legislation will enable public access to most records held by the CCG.

Information access legislation states that 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 them within 20 working days.

Re-use means using public sector information for a purpose other than the initial public task it was produced for.

Typically, this would mean an individual, a company or other organisation taking information you have produced and republishing it or using it to produce a new product or resource, often by combining it with additional information. This is sometimes, though not always, on a commercial basis. RPSI is intended to encourage re-use of public sector information.

Information access and re-use legislation also specifies a number of exemptions or exceptions (see Appendix 2) which can be claimed by public authorities when denying a request. These fall into two main types: Absolute and Qualified. Qualified exemptions are subject to the Public Interest Test, whereas absolute exemptions are not.

The objective of this policy is to set out the main features of information access legislation, along with the responsibilities of departments and individuals to ensure the CCG deals with requests for information within statutory obligations and guidelines, in a consistent manner and which deliver quality responses.

The aim of this policy is to:

- Ensure all information access and re-use requests are dealt with consistently and receive a high-quality response, however and wherever the contact is made;
- Ensure that NHS NEL CSU on behalf of the CCG complies with all relevant regulations, laws and guidance;
- Provide clear routes for members of the public to make contact with the CCG so that they can appropriately request information;
- Ensure that the CCG's Publication Scheme is up to date in order to provide access to information and to lessen the number of written requests the public have to make;
- Ensure that the necessary internal structures are in place for information access and re-use legislation to be complied with;
- Ensure staff at all levels are aware of their responsibilities;
- Ensure statutory timescales are met; and
- Ensure the Governing Body of the CCG is fully informed on the operation of this policy and its implications for the organisation.

## **Principles**

The policy supports the principle that openness and not secrecy should be the norm in public life. The CCG also believes that people have rights to privacy and confidentiality. This policy will not overturn existing rights under common law, or data protection legislation. The CCG also considers that, to discharge its function effectively, specific information will be exempt from disclosure.

The CCG recognises the importance of information access legislation and, in order to assist organisational compliance with these requirements, the CCG will endeavour to ensure that information is available on request within 20 working days.

If the information requested is subject to a qualified exemption, the CCG will undertake the public interest test and where applicable, the prejudice test as defined by the Information Commissioner's Office (ICO) to determine whether the information can be released.

## **Scope**

This policy applies to the CCG's statutory obligation under the information access legislation and how it meets these obligations. The policy will apply to all CCG staff and those for whom the CCG has legal responsibility (including interim, agency and consultancy staff working for the CCG). For those staff covered by a letter of authority/honorary contract or work experience, the organisation's policies are also applicable while undertaking duties for or on behalf of the CCG. Furthermore, this policy applies to all third parties and others authorised to undertake work on behalf of the CCG. The policy will provide a framework within which the organisation will ensure compliance with the requirements of all information access legislation. The policy will underpin any operational procedures and activities connected with the implementation of information access and re-use legislation.

This policy covers all information and records created in the course of the business by the CCG while undertaking its public task, i.e. corporate documents which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes drafts, emails, notes, recordings of telephone conversations and CCTV recordings and other electronic and paper

records. It is not limited to information the CCG creates, so it also covers, for example, letters received from members of the public or other organisations, although there may be a good reason not to release them.

## **Equality**

This document demonstrates the organisation'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.

## **2.0 Governance**

### **Roles and Responsibilities**

#### **Accountable Officer**

The Accountable Officer has overall responsibility for the CCG's information access programme and ensuring that this operates effectively. They are also the CCG's appropriate 'qualified person' for the application of section 36 (effective conduct of public affairs) exemption.

#### **Chief Operating Officer**

The Chief Operating Officer is the policy owner and responsible for the information access strategy within the CCG and will liaise with other senior members of the CCG as required.

#### **Directors**

The Directors of the CCG are responsible for overseeing information access activities within their directorates/teams, in accordance with the CCG's information access policies and procedures, and advising the Chief Operating Officer on risk issues in relation to information access requests.

#### **Head of FOI and IG (NHS NEL CSU)**

The Head of FOI and IG Compliance is the designated senior information access expert for the CCG and has strategic oversight and accountability for the management of the FOI service. They are responsible for advising on complex or contentious requests and conducting internal reviews in line with ICO guidance and best practice. They are the CCG's point of contact where a complaint has been made to the ICO.

#### **FOI Manager (NHS NEL CSU)**

The FOI Manager has day-to-day responsibility for the management of all aspects relating to the information access legislation. The Freedom of Information Manager is responsible for advising all staff throughout the organisation on issues relating to all areas of the information access legislation.

## **FOI Officer (NHS NEL CSU)**

The FOI Officer is the point of contact for CCG staff who have been designated responsibility for providing information in response to a request which has been received. They are the CCG's point of contact with applicants in relation to information access requests.

## **Managers**

All managers are to ensure that the staff they are responsible for are both aware of, and adhere to the policy. They are also responsible for ensuring that all staff are updated with regards to any changes in the policy.

## **All Staff**

All staff are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times. All staff across the CCG have a responsibility to ensure they comply with the CCG's statutory obligation under information access and re-use legislation, and any policies and procedures laid down to ensure compliance. Failure to do so may result in disciplinary action. Staff are not to correspond directly with applicants regarding their request.

## **NHS NEL CSU**

NHS NEL CSU is responsible for providing the information access and re-use service within the CCG.

## **Information Governance Steering Group (IGSG)**

The Information Governance Steering Group is responsible for reviewing all aspects of information access and reporting any associated risks to the Governing Body.

## **Information Access and Re-use Requests**

For a request to be valid under the Freedom of Information Act it must be in writing, but applicants do not have to mention any enactment or direct their request to a designated member of staff. CCG staff cannot ignore or refuse a request simply because it is addressed to any member of staff other than the FOI Team. Any letter or email to the CCG asking for information is a request for recorded information under the Act.

This doesn't mean every enquiry will be treated formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry, for example, if a member of the public wants to know how to make a complaint or when the next public governing body meeting is. The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away;
- there are concerns over the release of the information; or
- the applicant makes it clear that they expect a response under the Act.

At the same time, an individual asking for information and saying "this is not an FOI request" does not mean that it is not. If you are in any doubt whether a question is an information access request under statutory legislation you should contact the FOI Team immediately on [nelcsu.foi@nhs.net](mailto:nelcsu.foi@nhs.net) who will be able to advise on the best course of action.

Requests from individuals for details of their own health records come under data protection legislation and should not be dealt with under this policy. Please refer to the Information Governance policy and Subject Access Request procedure for how these types of requests should be handled; However, if an applicant has specifically said that they want personal information under the FOIA, the request must still be forwarded to the FOI Team to log and respond, exempting the information in most situations.

Under the FOIA, requests can be received in writing via email, fax, social media or a letter. FOI requests must contain a contact name, email address or postal address and describe the information the applicant wishes to receive. They do not have to provide a reason for wanting the information or specifically state they are requesting information under the Act. The CCG will make reasonable adjustments under the Equality Act 2010 and Human Rights Act 1998 where an applicant is unable to make a request in writing. It should be noted that the CCG no longer has fax facilities to receive an FOI by this means.

The EIR regulations have the same requirements as the FOIA, however it does permit requests to be received verbally.

The RPSIR requires that people who want to make a request for re-use must submit the request in writing, with their name and address for correspondence, and specify the information they want to re-use and the purpose they intend to use it for.

Requests for information or re-use should be promptly forwarded to the FOI team at [nelcsu.foi@nhs.net](mailto:nelcsu.foi@nhs.net)

NEL CSU's FOI team will manage all requests for information submitted under information access and re-use legislation and comply with other legal requirements such as data protection legislation.

The CCG has a requirement to comply with all requests for information except where information requested is subject to certain regulations and exemptions. These exemptions will be applied by the FOI Team. Repeated or vexatious requests may also be refused. Further details on exemptions can be found in Appendix 2.

## **Publication Scheme**

The CCG has a duty under the FOIA to adopt and maintain the ICO model publication scheme to assist the public in finding information already published.

The scheme sets out the CCG's commitment to make certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information.

The seven classes of information the CCG publish are broad and include headings like 'Who we are and what we do' and 'The services we offer'. The classes cover all the more formal types of information the CCG holds, such as information about the structure of the organisation, minutes of meetings, contracts, reports, plans and policies.

The publication scheme can be found on the CCG's website: <https://selondonccg.nhs.uk/>

## **Timescales for Responding to Requests**

In line with good practice, all information access and re-use requests will be acknowledged by the FOI team and where possible, this will be done within two working days.

The CCG has a statutory requirement to respond to all requests promptly and no later than 20 working days. The 20 days start on the day the CCG receives a request, not when the FOI team receives the request.

If the CCG requires clarification of a request in order to locate or identify the information, or if a fee for the information is applicable, the 20 day rule is suspended until the CCG receive the clarification or fee.

The CCG nominated FOI leads (experts within the CCG who will answer questions for their subject area) must respond to all requests for information from the FOI team within 10 working days to ensure adequate time for any queries to be resolved and for the approval process to be completed where applicable. Where the FOI team have a concern that information will not be provided in time to avoid a breach, they should flag this with the CCGs AD for Corporate Operations or Corporate, risk and EP lead who manage the contract, for internal escalation.

## **Internal Reviews (Complaints)**

Although a public body is not legally required to have an internal review procedure, FOIA Section 45 Code of Practice makes clear that it is good practice to have a review procedure in place. The internal review procedure will ensure applicants are able to ask the CCG for an internal review if they are dissatisfied with the response to a request or the handling of a request. The CCG will conduct internal reviews where an applicant has expressed their dissatisfaction with a response received to an information access or re-use request. The CCG has a formal complaints policy in place which details the process for dealing with any external complaint received. The process detailed below is specifically in relation to complaints received concerning the processing or outcome of an FOI request, but is consistent with the CCGs overarching complaints process.

Where possible, internal reviews will be conducted by a person who was not party to the original decision on whether to release the information requested. The review must be a fair and impartial examination of the decisions made during the original request of whether to release the information.

The person conducting the review must consider the information released against the information requested, and undertake a full review of the papers associated with the original application.

It is best practice that the internal reviewer discusses the decisions made with the staff member, or members, who dealt with the original application in order to build a full picture as to how decisions were made.

The circumstances relating to the original decision may have changed between the time the CCG made its decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames. The FOIA does not stipulate a time limit for completion of an internal review but the Section 45 Code states that they should be dealt with in a reasonable time, and the ICO recommends that:

- Reviews should be completed within 20 working days of receiving the 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; and
- If it appears that the deadline will not be met, then the applicant must be advised as soon as possible, and a second deadline set by which a response will be sent.

The internal review can have three outcomes:

- The original decision is reversed;
- The original decision is partially upheld; or
- The original decision is upheld.

Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided. Where the original decision is upheld the applicant must be informed and made aware of their further right of appeal to the Information Commissioner's Office. The outcome of the internal review must be recorded.

Requests for an internal review should be sent to -

Email: [NELCSU.FOI@nhs.net](mailto:NELCSU.FOI@nhs.net)

Post: FOI Team  
3th Floor  
1 Lower Marsh  
London  
SE1 7NT

### **The Appropriate Limit (Fees)**

The Fees Regulations (Section 12) of the FOIA provides an exemption from the CCG's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The Fees Regulations state this is £450 for CCG's as a public authority. The CCG must still confirm or deny whether the CCG holds the information requested, unless the cost of this alone would exceed the appropriate limit.

In estimating whether responding to a request would exceed the appropriate limit, the CCG may only consider the costs it would reasonably expect to incur in:

- Determining whether the information is held;
- Locating the information;
- Retrieving the information; and
- Extracting the information.

Costs are calculated at £25 per hour per person. The Information Commissioners Office guidance clarifies that the measure of limitation is a cost of £450 or more to the CCG; therefore based on the hourly rate this equates to 18 hours of activity. The figure of £450 relates only to the appropriate limit and not to the fees that may be charged.

Where a reasonable estimate has been made that the appropriate limit may be exceeded, there is no requirement for the CCG to undertake work up to the limit. However, the applicant will be invited to resubmit a request which requires a more limited response if they wish, which will come below the cost/time limit.

The CCG will not charge for the majority of requests, however the CCG is entitled to charge a fee for the photocopying and postage of information, although the charge will not be made if the cost of raising and processing an invoice is greater. If the request exceeds the appropriate time limit the CCG have the right to make a charge or refuse the request.

### **Advice and Assistance to Applicants or Potential Applicants**

The CCG, via the FOI team, will always endeavour to provide advice and assistance in all aspects of a request but particularly:

- To clarify unclear requests;

- To provide the information requested in an acceptable format;
- To narrow responses which exceed the appropriate limit;
- Where information is readily accessible to the applicant; and
- When a request is transferred to another public authority because the information is held by it, and not by us.

## **Vexatious/Repeated Requests**

The CCG will not comply with a request for information if the request is deemed vexatious. A vexatious request is where one or more of the following conditions are met:

- Abusive or aggressive language;
- Burden on the Authority;
- Personal grudges;
- Unreasonable persistence;
- Unfounded accusations;
- Intransigence;
- Frequent or overlapping requests;
- Deliberate intention to cause annoyance;
- Scattergun approach;
- Disproportionate effort;
- No obvious intent to obtain information;
- Futile requests; and/or
- Frivolous requests.

For a request to be deemed vexatious, the Chief Operating Officer and the Head of FOI and IG Compliance must agree that one or more of the above conditions have been met. The handling of vexatious complainants is covered in more detail in the CCG Complaints policy.

Where the CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

What is a reasonable interval will largely depend on the circumstances, including:

- How likely the information is to change;
- How often records are updated; and
- Any advice previously given to the requester (e.g. on when new information is likely to be available).

Taking into account the circumstances given above, the CCG deems this period to be three months.

## **Applying Exemptions**

An applicant may ask for any information that is held by the CCG. However, this does not mean the CCG is always obliged to provide the information. In some cases, there will be a good reason why the CCG should not make public some or all of the information requested.

The FOIA and EIR contain a number of exemptions and exceptions that allow the CCG to withhold information from an applicant. Details of these exemptions can be found in Appendix 2.

Please note that if an exemption or redaction is used, the manager using the exemption should be aware that they may need to substantiate their decision if challenged by the Information

Commissioner's Office. It is therefore advisable to document and date all decisions made in relation to using exemptions.

## **Redacting**

Where information is considered exempt under any one or more exemptions or exceptions, CCG employees should redact this information in line with the ICO's guidance, *how to disclose information safely*<sup>1</sup>. Guidance on redacting documents is available on the CCG staff intranet under the Information Governance section. Advice can also be sought from the CCGs data protection officer or information governance officers. The need to redact information suggests this may be sensitive or personal information, so this process must be carried out with reference to information governance guidelines and staff must ensure they only have access to information to which they are permitted.

## **Audit and monitoring criteria**

### **Monitoring of compliance**

The integrated governance and performance committee will annually evaluate the effectiveness of the Freedom of Information process. This review mechanism will be supported by:

- The Data Security and Protection Toolkit annual submissions;
- Quarterly reports on information requests received;
- Information access and re-use complaints; and
- Audits and reviews.

### **Implementation and dissemination of document**

This policy will be available to staff via the CCG intranet.

### **Non-Compliance**

Non-compliance with this policy by staff will be brought to the attention of the individuals responsible director via the Corporate Operations team who are the CCG point of contact with the FOI team.

### **Review**

Review of this policy will take place on the first anniversary of adoption and subsequently every three years until rescinded or superseded.

### **Latest Version**

The audience of this document should be aware that a physical copy may not be the latest version. The latest version, which supersedes all previous versions, is available at the location indicated in the document control section.

### **Public interest test**

The public interest test assesses whether withholding the information outweighs the public interest in disclosing the information.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/how-to-disclose-information-safely-removing-personal-data-from-information-requests-and-datasets/2013958/how-to-disclose-information-safely.pdf>

The starting point whenever considering the balance of the public interest is that there is a general public interest in disclosure. In contrast, there is no general public interest in public authorities withholding information. However, the right to access information must be balanced against the need to facilitate effective government and public services. Therefore, for each qualified exemption, and the disclosure of any particular piece of information falling within it, there may be specific reasons in favour of refusing the request.

When considering a request for information that falls under one of the qualified exemptions, the CCG must weigh the public interest considerations in favour of releasing the information against the prejudice which may be caused by its disclosure.

The requirements of the public procurement regime also need to be taken into account in relation to the possible disclosure of information. The EC Public Procurement Directives, implemented in the Public Works Contracts Regulations 1991, the Public Services Contracts Regulations 1993 and the Public Supply Contracts Regulations 1995, recognise that the interest of suppliers in sensitive information supplied by them in a procurement must be respected and that both the interest of suppliers and the public interest may mean that certain information relating to a contract award is withheld from publication.

The Consolidated Public Procurement Directive (2004/18/EC) continues to recognise these interests and prohibits the disclosure of information, which suppliers have designated as confidential in a procurement, except as provided by the Directive and by national law.

Each individual case will need to be considered on its own merits. In more difficult cases there is likely to be a complex mix of conflicting factors that will have to be weighed in deciding where the balance of the public interest lies. It is therefore vital that where a decision is taken to withhold information, there are clear reasons for refusing to disclose information, which is capable of standing up to scrutiny by the Information Commissioner and Information Tribunal. Determining the balance of the public interest will need to be determined on a case by case basis and may, in difficult cases, require legal advice.

## **Re-use regulations and copyright**

Publishing information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2015 and requires permission of the CCG, and may also incur a fee. Release of information under information access legislation does not affect copyright.

If there are concerns about information reaching a wider audience without sufficient briefing relating to the circumstances surrounding its production or context, on behalf of the CCG, NHS NEL CSU will be able to advise on the restriction for re-use to the applicant, so it cannot be re-used or reproduced in any format without the consent of the CCG. Under information access legislation, a response to a single applicant is not a release to a specific person but considered to be a disclosure to the world at large.

Information supplied under information access legislation continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988. The supply of information in response to an information access request does not confer an automatic right to re-use of the information. Under UK copyright law applicants can use any information supplied for the purposes of private study and non-commercial research without requiring permission. Similarly, information supplied can also be re-used for the purposes of news reporting, an exception to this is photographs.

If the copyright is identified as belonging to another organisation, the CCG will not permit re-use.

## Protection of Freedoms Act 2012

Section 102 of the Protections of Freedoms Act 2012 adds new provisions to FOI regarding datasets. They are about the re-use of datasets that the CCG provides in response to a request, or under a publication scheme. There is no new duty to provide any information in response to an FOI or EIR request that was not previously accessible.

A dataset is a collection of factual information in electronic form to do with the services and functions of public authorities that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

If the CCG provides information that constitutes a dataset and the applicant expresses a preference to receive the information in electronic form, the CCG must provide the information in a re-usable form.

If the dataset is relevant copyright work, the CCG must provide it under the terms of a specified licence. A relevant copyright work is one for which the CCG owns the copyright and the database rights.

The CCG may charge a fee for communicating the information and a fee for making the dataset available for re-use. There are new fees regulations dealing with making the dataset available for re-use.

Where information is not provided due to an exemption, exception or other lawful reason, the CCG are not required to provide this in a re-usable format.

Under the publication scheme, the CCG is obliged to publish datasets that have been requested and any updated versions it holds unless it is satisfied that it is not appropriate to do so.

When dealing with a request involving a dataset, the CCG should first consider whether the information is exempt from disclosure under any FOI exemption. Particular care should be taken to ensure that personal data is not disclosed. The ICO's *Anonymisation: managing data protection risk code of practice*<sup>2</sup> must be followed.

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<sup>2</sup> <https://ico.org.uk/media/1061/anonymisation-code.pdf>

## References

General Data Protection Regulation

<https://gdpr-info.eu/>

Data Protection Act 2018

<http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

Freedom of Information Act 2000

<https://www.legislation.gov.uk/ukpga/2000/36/contents>

The Environmental Information Regulations 2004

<http://www.legislation.gov.uk/uksi/2004/3391/contents/made>

The Re-use of Public Sector Information Regulations 2015

<http://www.legislation.gov.uk/uksi/2015/1415/contents/made>

Copyright, Designs and Patents Act 1988

<https://www.legislation.gov.uk/ukpga/1988/48/contents>

Anonymisation: Managing Data Protection Risk Code of Practice

<https://ico.org.uk/media/1061/anonymisation-code.pdf>

Records Management Code of Practice for Health and Social Care 2016

<https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/records-management-code-of-practice-for-health-and-social-care-2016>

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

<http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

## Appendices

### Appendix 1: Process

#### FOI, EIR and RPSIR Request Procedure

1. All new information requests received by staff of the CCG must be sent to the FOI Team immediately. The FOI Team will log each request on the database. The FOI team will allocate a unique reference number and create electronic folders for each request.
2. All applicants will be sent a standard FOI acknowledgment, where possible within two working days of receipt of a request.
3. All information requests received will be assessed to ascertain whether:
  - It is a valid FOI, EIR or RPSIR request;
  - The request is clear, if not, the applicant will be asked to clarify their request;
  - The estimate of time needed to comply with the request will exceed the appropriate time limit, if this is the case, the applicant will be asked if they wish to redefine their request;
  - Part or all of the information requested falls under one of the exemptions or exceptions contained within the FOIA or EIR;
  - The information requested can be found on the CCG publication scheme or website; and/or
  - The information has been requested previously.
4. Once the request has been assessed, it will be sent to the appropriate service lead at the relevant department to gather the information requested. The name of the applicant and their contact details will be removed prior to sending to ensure that the applicant's personal data is protected under the data protection legislation. In some cases, it will be necessary for these details to be disclosed to staff outside of the FOI department where specific exemptions or exceptions apply, for example where a request is vexatious.
5. CCG staff will acknowledge to the FOI team that they have received the request. If the request is not relevant to their area or not for their team they will notify the FOI Team immediately and advise this.
6. Requests that have a potential reputational impact on the CCG will be notified to the Communications Manager.
7. CCG staff will have 10 working days in which to comply with requests for information from the FOI team. A reminder will be sent to staff by the FOI team if the information is not received back by the 10<sup>th</sup> working day.
8. It is the responsibility of the service leads to ensure that the director of the department has cleared the response before returning the information to the FOI Team within the time limit of 10 working days. This is to allow time for queries, amendments and the drafting of the response by the FOI Team and for the approval process to be completed.

9. The service lead is responsible for identifying any concerns over the release of information, and where required, seek advice from the FOI team.
10. Once the information has been returned to the FOI staff, it will be considered against the original request and where applicable, exemptions and/or exceptions may be considered. Providing the information has been agreed by the service director or the Chief Officer where applicable, the FOI staff will use the data provided to write a response.
11. All final responses must be provided within 20 working days. If this isn't possible, and before the deadline expires, a further communication must be sent to the applicant by the FOI team advising of this, along with an expected response date.
12. The FOI Database must be updated when a request is completed. Electronic responses are filed in the applicant's file within the FOI team's folder for compliance and audit purposes. Paper copies will be scanned into the system.
13. Case files will be held in line with the NHS Retention Schedule.<sup>3</sup>

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<sup>3</sup> <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/records-management-code-of-practice-for-health-and-social-care-2016>

## Appendix 2: FOI Exemptions

Although the CCG will try to comply with all requests for information, there are a number of exemptions and provisions within the Act that can be considered. The exemptions are split into two main categories:

Absolute Exemptions - where the public interest test does not apply.

- S21 - Information reasonably accessible to the applicant by other means
- S23 - Information supplied by or relating to security bodies
- S32 - Information contained in court records
- S34 - Parliamentary privilege
- S36 - Effective conduct of public affairs (absolute for the government only)
- S40 - Personal information (on occasion may also be a qualified exemption)
- S41 - Information provided in confidence
- S44 - Prohibitions on disclosure

Qualified Exemptions - where the public interest test applies.

- S22 - Information intended for future publication
- S24 - The national security exemption
- S26 - Defence
- S27 - International relations
- S28 - Relations within the UK
- S29 - Economy
- S30 - Investigations
- S31 - Law enforcement
- S33 - Public audit
- S35 - Government policy formulation
- S36 - Effective conduct of public affairs
- S37 - Communication with Her Majesty and the awarding of honours
- S39 - Environmental information (falls under EIR)
- S40 - Personal information (majority would fall under an absolute exemption)
- S42 - Legal professional privilege
- S43 - Defined areas of commercial interest

In addition, the following provisions allow the CCG not to comply with a request for information:

- S12 - Where the cost of collating the evidence is excessive
- S14 - Repeated or vexatious requests

## Appendix 3: Definitions

**‘A legitimate request’** In order for a request to fall under the auspices of the FOIA or RPSIR it must fulfil certain criteria: it must be in writing (letter, email, fax) or under EIR be verbal; it must state the name of the applicant and provide an address for correspondence (an email address is sufficient); and, it must describe the information requested. Note, a request does not need to mention the FOIA, EIR or RPSIR in order to be classed as a legitimate request. In addition to the above, a request for re-use must include how they intend to use the information.

**‘Advice and assistance’** Section 16 of the FOIA requires that all public authorities provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

The provision of advice and assistance can be seen as the means by which the CCG engages with the applicant in order to establish what it is that the applicant wants and, where possible, assists them in obtaining this, maintaining a dialogue with the applicant throughout the process.

**‘Business as usual’** Routine requests for information that can be provided without question and do not fall under information access legislation, for example: recruitment brochures, press releases, leaflets.

**‘DPA’** is an acronym for the Data Protection Act 2018.

**‘Data Protection Act 2018’** The Data Protection Act updates our data protection laws for the digital age. It received Royal Assent on 23 May 2018.

**‘Duty to confirm or deny’** under Section 1 of the FOIA public authorities have a duty to inform the person requesting information (“the applicant”) whether or not the information they have requested is held by the authority. (In some cases however it may be appropriate (under the FOIA) to neither confirm nor deny whether the information is held because to do so would itself communicate sensitive and potentially damaging information, to the detriment of the public good).

**‘Effective Conduct of Public Affairs’** Section 36 of the FOIA sets out an exemption from the right to know if the disclosure of information, in the reasonable opinion of a qualified person, would prejudice the effective conduct of public affairs through:

- Prejudice or likely prejudice to the maintenance of the convention of collective responsibility of Ministers of the Crown, the work of the Executive Committee of the Northern Ireland Assembly or the work of the executive committee of the National Assembly for Wales;
- Inhibition or likely inhibition of the free and frank provision of advice or exchange of views; or
- Any other prejudice to the effective conduct of public affairs

For information (other than ‘statistical information’) to be exempt under Section 36, it must in the ‘reasonable opinion of a qualified person’ (in our organisation this person is the Senior Information Risk Officer) be capable of either prejudicing or inhibiting the matters listed above.

**‘EIR’** is an acronym for the Environmental Information Regulations 2004. These regulations are similar to FOIA, but specifically relate to information held by public authorities that relates to the state of the environment.

**‘Exemption’** These are provisions within the FOIA that define particular types of information that public bodies are not obliged to disclose. Exemptions can be either absolute or qualified.

**‘FOI’** is an acronym for Freedom of Information.

**‘FOIA’** is an acronym for the Freedom of Information Act 2000.

**‘ICO’** is an acronym for the Information Commissioner’s Office. This is the UK’s independent authority set up to promote access to official information and to protect personal information. The ICO covers Data Protection, FOI, Privacy and Electronic Communications, Re-use of Public Sector Information Regulations, and the Environmental Information Regulations.

**‘Information’** means any recorded information we hold in any form. This includes documents, plans, and all other types of recorded information that are not personal information.

Individuals can ask to see any information we hold but the FOIA does exclude access to some information. (One of the exemptions is access to personal information).

**‘POFA’** is an acronym for The Protection of Freedoms Act 2012. This has requirements relating to the proactive publication and availability of data sets.

**‘Publication Scheme’** The CCG has a legal duty to compile and to make available a list of documents that it has in its possession and that it will routinely and proactively provide to the public. A Publication Scheme is an agreement by the CCG to supply this information.

**‘Public Interest Test’** The test a public body must apply if it feels the information requested falls under a qualified exemption.

**‘Records Management’** Section 46 of the FOIA refers to the Code of Practice on Records Management and it is Part 1 of this code that the CCG must comply with, by implementing records management policies. The CCG Records Management Policy is available on the staff intranet.

**‘RPSIR’** is an acronym for The Re-use of Public Sector Information Regulations 2015. RPSIR is about permitting re-use of information and how it is made available. It is not about accessing information, which is dealt with under the FOIA and EIR.