

CCGs working together

Airedale, Wharfedale and Craven CCG
Bradford City CCG
Bradford Districts CCG

FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY

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FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY

1. INTRODUCTION

This document sets out the Freedom of Information Act (FOI) and Environmental Information Regulations (EIR) Policy for NHS Airedale, Wharfedale and Craven Clinical Commissioning Group, NHS Bradford City Clinical Commissioning Group and NHS Bradford Districts Clinical Commissioning Group (hereafter known as the CCGs).

The Freedom of Information Act (2000)

The Freedom of Information Act (2000) is part of the Government's commitment to greater openness in the public sector. It enables members of the public to scrutinise the decisions of public authorities more closely and ensure that services are delivered properly and efficiently. The FOI Act replaces the non-statutory Code of Practice on Openness in the NHS.

The main features of the FOI Act are:

- A duty on every public authority to adopt and maintain a Publication Scheme.
- A general right of access to all recorded information held by the CCGs (subject to exemptions set out in the FOI Act).
- The creation of the Information Commissioner's Office to oversee the implementation of and compliance with the FOI Act along with all associated legislation and regulations.

Environmental Information Regulations (2004)

Certain categories of public information are covered by the Environmental Information Regulations (2004). The EIR Regulations cover information related to the environment such as emissions, land use, pollution, waste disposal etc. The regulations are similar to FOI but there is an even greater presumption of disclosure, exemptions (known as exceptions) are fewer and requests can be made verbally.

This policy reflects the CCGs' support of the principle that openness should be the norm in public life. The organisations believe that individuals have a right to privacy and confidentiality, and this policy does not overturn the common law duty of confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information will be dealt with under the provisions of the FOI Act, the Data Protection Act and the General Data Protection Regulation (GDPR) from 25th May 2018. The CCGs must still be able to carry out their duties effectively and to ensure this; the exemptions and exceptions outlined in the FOI Act and EIR Regulations respectively will be applied appropriately.

2. AIMS

The aims of this policy are to:

- Ensure all requests for information are dealt with consistently and receive a high quality response however and wherever the contact is made;
- Ensure that the CCGs comply with all relevant regulations, laws and guidance;
- Ensure staff at all levels are aware of their responsibilities with regards to the FOI Act, the Data Protection Act, EIR Regulations and GDPR (from 25th May 2018), be it in directing any queries to the appropriate person/department, or in ensuring they provide any information requested in a timely fashion;
- Ensure timescales are met;

3. SCOPE

3.1 This policy must be followed by all staff who work for or on behalf of the CCGs including those on temporary or honorary contracts, secondments, volunteers, pool staff, Board members, students and eMBED Health Consortium (hereafter known as eMBED) staff working for and behalf of the CCGs. The policy is applicable to all areas of the organisation and adherence should be included in all contracts for outsourced or shared services. There are no exclusions.

3.2 This policy covers:

All aspects of recorded information within the organisation, including (but not limited to):

- Patient/Client/Service User information of a general, non-personal nature
- Certain types of Personnel/Staff information, especially where this concerns senior executives and board members
- Organisational and business sensitive information
- Structured and unstructured record systems - paper and electronic
- Photographic images, digital, text or video/audio recordings including CCTV
- All information systems purchased, developed and managed by/or on behalf of, the organisation
- CCG information held on paper, floppy disc, CD, USB/Memory sticks, computers, laptops, tablets, mobile phones and cameras
- All information held by the CCGs, including documents that have been supplied by other organisations.
- All documents created in the course of staff duties (even personal e-mails and potentially including information held on private equipment) will fall within the scope of the Data Protection Act, and GDPR (from 25th May 2018), and may fall within the scope of the FOI Act or the EIR

- 3.3** Information management within an independent contractor's premises is the responsibility of the owner/partners. However, the CCGs are committed to supporting independent contractors in their management of information risk and will provide advice, share best practice and provide assistance when appropriate.
- 3.4** The CCGs recognise the changes introduced to publication schemes as a result of the Protection of Freedoms Act 2012 and will work with partners under national guidelines to develop and improve the organisations publication schemes and websites.
- 3.5** Failure to adhere to this Policy may result in disciplinary action and/or referral to the appropriate regulatory bodies including the police and professional bodies.

4. ACCOUNTABILITY

4.1 The Governing Body

The Governing Body is accountable for ensuring that resources and systems are in place to support compliance with the FOI and EIR and to receive by exception any significant risks and gaps in compliance

4.2 Chief Officer

The Chief Officer has organisational responsibility for all aspects of information governance, including the responsibility for ensuring the CCGs have appropriate systems and policies in place to comply with the requirements of the FOI and EIR.

4.3 Senior Information Risk Owner

The Chief Finance Officer is the Senior Information Risk Owner (SIRO) and has organisational responsibility for all aspects of risks associated with Information Governance, including those relating to FOI and EIR.

4.4 Information Governance Lead

The Senior Level Information Governance Lead for the CCG's is the Associate Director of Corporate Affairs (supported by the Head of Governance). The IG Lead is responsible for ensuring effective management, accountability, compliance and assurance for all aspects of IG and for liaising with the FOI Team from eMBED who provide agreed support to the CCGs.

4.5 Information Asset Owners

Information Asset Owners (IAO) are senior members of staff who are the nominated owners for one or more identified information assets. Their role is to understand what information is held, how it is used/transferred, who has access to it and why. Information Asset Owners (IAO) are directly accountable to the SIRO and must co-operate and support the provision of information in response to FOI and EIR requests.

4.6 Employees

All employees are responsible for:

- Ensuring compliance with this policy
- Seeking advice, assistance and training when required

The CCGs will take all reasonable steps to ensure that staff are aware of policies, protocols, procedures and legal obligations relating to FOI and EIR. This will be delivered through training and through internal staff communication mechanisms.

4.7 eMBED Health Consortium (eMBED)

The CCGs' contract with eMBED for Information Governance support and expert advice in respect of compliance with FOIA and EIR. The Associate Director of Corporate Affairs will liaise with eMBED to develop agreed protocols and procedures for managing information requests, reporting standards and ensuring compliance with timescales and legal requirements.

5. DEFINITION OF TERMS

'The Act' refers to the Freedom of Information Act 2000

'FOI' and 'FOIA' are acronyms for the Freedom of Information Act 2000

'DPA' is an acronym for the Data Protection Act

"GDPR" refers to the General Data Protection Regulation.

'EIR' is an acronym for Environmental Information Regulations 2004

'ICO' is an acronym for the Information Commissioner's Office (-supervisory authority for Freedom of Information, Environmental Information Regulations, the Data Protection Act and the General Data Protection Regulation.)

'Exemption' refers to provisions within FOI that define particular types of information that public authorities may be obliged or may choose not to disclose. These may be absolute or qualified exemptions.

'Exception' refers to provisions within EIR that define particular types of information that public authorities may be obliged or may choose not to disclose. All exceptions are qualified.

'Public Interest Test' is required for qualified exemptions and exceptions to determine whether the public interest is best served by disclosing or withholding the information in question. A similar test may also be applied under the DPA (and from 25th May 2018 the GDPR) to consider the public interest factors in disclosing or withholding the

information of third parties which has been requested under FOI or EIR.

'Publication Scheme' concerns the CCGs' legal requirement to compile and make available information it has in its possession and that they will routinely and proactively provide to the public. This requirement is called a Publication Scheme. The CCGs' Publication Schemes can be found on our websites or in hard copy on request.

6. KEY PRINCIPLES AND PROCEDURES

6.1 Management of FOI/EIR Process The day to day management of requests received by the CCGs is contracted to eMBED. The CCGs will agree procedures and timescales with the provider and will ensure that key link individuals at the CCGs are identified to support those processes and to ensure timely responses are sent out.

6.2 Advice and Assistance

FOI and EIR require the CCGs to provide advice and assistance to applicants and would-be applicants. The organisation will do this, in conjunction with eMBED, taking into account other statutory duties including, but not limited to, the Disability Discrimination Act 1995 and the Equality Act 2010.

6.3 Publication Scheme

The CCGs are required to publish information held by setting up and maintaining a Publication Scheme. This Publication Scheme sets out categories of information that the CCGs undertake to publish and is based on the ICO's Model Publication Scheme. This Model Scheme was subject to amendment following the full implementation of provisions contained in the Protection of Freedoms Act 2012.

The documents available through the Scheme will be the final, approved versions only. It is the CCGs' policy not to include draft documents in this Scheme although these may be releasable under FOI or EIR. The Scheme as a whole will be reviewed annually.

The Publication Scheme will be an evolving series of web pages and, as a result, staff are encouraged to recommend information for inclusion.

6.3.1 Publication Scheme Information Management

The Scheme covers a wide range of information from all areas of the organisation. It is the responsibility of each Head of Service to ensure that up to date information is provided so that the Scheme can be kept up to date. This is especially important with documents such as policies and procedures and information leaflets. It will be assumed that the appropriate managers are satisfied with current documents unless they state otherwise.

6.3.2 Classes of Information

Classes of information should not be added or removed without the approval of the Information Commissioner.

The current classes of information are:

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

Brief outlines of these classes are contained in the Scheme.

6.4 General Rights of Access

FOI and EIR give a general right of access to recorded information held by the CCGs. This means that any person who makes a request has the right to:

- a) Be informed in writing whether the CCG holds the information requested and;
- b) If the CCG holds that information, have it communicated to them

It is important to understand that a request for information does not need to be marked as such; there is no need for the applicant to say they are making an FOI or EIR request. It is for a public authority to ensure the correct process is applied to any request for information that it receives. Requests for information could be included in, for example, a compliment or complaint letter.

It is also important to make a distinction between requests for information and routine correspondence. Requests for information (such as recruitment brochures, press releases, leaflets) that can be provided without any need for the more formal and legal FOI and EIR process should be treated as business as usual. Nonetheless the information should still be provided within 20 working days in order to comply with the spirit of both the FOI and EIR

Similarly requests that are not for recorded information but which pose questions (please explain your policy on Y? Why do you do X?) should be treated as routine correspondence although caution is required here as the enquirer may think they were applying for information under the Act or Regulations.

A request for access under FOI must be made in writing, giving the name of the applicant, a postal or email address for correspondence and a description of the information requested. E mail is an acceptable form of correspondence.

Requests for information under EIR can be made verbally although it would be good practice to record the request and send a dated copy to the requester inviting them to confirm or make any amendments necessary.

FOI and EIR require that requests are responded to within 20 working days, unless extra time is required for a public interest test or a request is placed on hold awaiting clarification of the request or payment of a fee. The response will either communicate all of the requested information, or give reasons why some or all of that information has been withheld. If the CCGs decide to make use of a condition or exemption to withhold information, the applicant will be informed within 20 working days, subject to the provisos mentioned above.

As recommended in the Lord Chancellor's code of practice, the CCGs will set out details about how requests for information will be dealt with, and this will be available to the public. Whilst the organisation cannot ask the applicant the reason or purpose for a request, it can contact the applicant to obtain more detail about the information requested and narrow down what might otherwise be a vague or broad request.

6.5 Key Points of Procedure at eMBED

The CCGs have contracted with eMBED for the processing, management and response drafting for all requests for information under FOI and EIR. The following processes will be carried out by eMBED to a detailed standard and procedure agreed by both parties.

6.5.1 Recording Requests

When dealing with a request, the following information will be recorded:

- Unique reference number
- Initial date received by the CCGs or direct at eMBED
- Name of the applicant
- Contact details of the applicant
- Summary description of the information requested
- Who the request has been referred to in order to source the information
- Follow up action taken if necessary
- When the request must be processed by the 20 working day deadline
- Decisions taken and details of any exemption used
- Date completed and sent to the applicant

6.5.2 Processing a Request

Acknowledgement eMBED will write to the applicant confirming receipt of the request within 3 working days. This will state that the CCG intends to reply to the request within 20 working days, unless there are exceptional circumstances.

Advice and Assistance

If the applicant is requesting advice and assistance or has not provided enough information for the request to be dealt with, one or more of the following steps will be taken, depending on the situation:

- give guidance on how to access the information from the CCG's Publication Scheme and the general right of access
- inform the applicant of the progress of their request
- explain the basis for any charges or fees levied or exemption/exceptions applied - See the Guidance in the FOI/EIR Procedure
- suggest other routes through which the applicant may wish to access information, including directing them to other public authorities
- identify independent sources of help for applicants
- direct applicants to the FOI/EIR review or complaints procedure and/or the Office of the Information Commissioner if they are dissatisfied with any outcome

Accessing information

The eMBED FOI/EIR team will liaise with the appropriate person at the CCG to obtain the information that the applicant has requested. The CCG staff will be given a timescale to deal with this request. Any problems should be immediately brought to the attention of the team at eMBED.

The information will be forwarded to the FOI/EIR team at eMBED who will provide advice and guidance on any potential exemptions and exceptions that can apply where appropriate. An exemption or exception may apply to part of a document but the rest of the document could still be eligible for release.

Difference between extracting or compiling existing information and creating new information

The legislation requires a public authority to provide information in the manner requested if this is reasonably practicable. Public Authorities do not have to create new information to respond to requests. Public Authorities are not creating new information where:-

- it presents information it holds in the form of a list or schedule
- Compiling an answer to a request involves simple manipulation of information held in files.
- it extracts information building blocks from an electronic database by searching it in the form of a query

What amounts to a simple calculation depends on the level of skill and judgement required to carry out the task. If extracting the information relevant to the request requires a high level of skill and judgement, this would amount to creating new

information not already held.

Providing the information

If no exemptions apply and there are no fees or charges to be levied eMBED will draft a response letter for approval by the CCG

Information will be provided to applicants in one or more of the following methods:

- a photocopy or printed copy of the information
- transferred by electronic means
- transferred on CD-ROM or floppy disk
- provision of a summary of the information, in one or a combination of the formats mentioned in the first 3 points

Refusing a request

A request for information may be refused if:

- the information is exempt under the FOI or EIR
- the cost of compliance exceeds the appropriate limit.
- the aggregated cost of compliance of more than one request for similar or the same information from the same person or a group of applicants who appears to be acting in concert or as part of a campaign, where the aggregate cost of compliance for each request exceeds the appropriate limit, provided that all the requests have been received with a period of 60 working days from first to last request
- the request can be demonstrated to be vexatious or repeated

The applicant will be informed in writing of the decision within 20 working days of the request and will be told the following:

- the exemption/exception(s) that has been applied
- the justification for the use of the exemption(s)/exception(s) and the decision of any public interest test(s)
- details of the CCG's complaint procedure if the applicant is not satisfied with the outcome
- details of the right to appeal to the Information Commissioner

If the exemption/exception is absolute, then the CCG is exempt from the duty to confirm or deny (that is the duty to tell the applicant whether or not the organisation actually holds the information). In these circumstances, the applicant will be informed within 20 working days of the following:

- the fact that the CCG is exempt from the duty to confirm or

- deny
- specify the exemption/exception in question
- state why the exemption/exception applies (unless it would be otherwise apparent)

It is acknowledged that it can take more than 20 working days to reach a decision as to whether all or some of the information can be provided especially in cases where the public interest has to be considered. As a result the CCG (through eMBED) will inform the applicant of this delay and give a reasonable estimate of the date by which a decision is expected.

Re-use regulations

The Re-use of Public Sector Information Regulations 2015 marks a significant change to re-use regulations, insomuch as the previous regulations (Re-use of Public Sector Information Regulations 2005) limited re-use to information which had been made accessible by that authority and which the authority allowed to be re-used at its sole discretion.

The 2015 Regulations widen this right in two key areas. Firstly the right to re-use now extends to all information produced, held or disseminated as part of that authority's public task, unless the information itself is exempted/excepted or unless Copyright for the information belongs to a third party such as another authority or the Crown. Secondly the 2015 Regulations encourage authorities to provide an open, non-restrictive licence for this re-use.

Copyright

Any information supplied under FOI/EIR continues to be protected by the Copyright, Designs and Patents Act 1988. A copy of the below wording must be included whenever information is released under FOI/EIR.

"The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other reuse, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by the CCG will have been produced by government officials and will be Crown Copyright. You can find details on the arrangements for re-using Crown Copyright on HM Stationery Office Online at: <http://www.hmsso.gov.uk/copyright/licences/click-use-home.htm>

Information you receive which is not subject to Crown Copyright continues to be protected by the copyright of the person, or organisation, from which the information originated.

You must ensure that you gain their permission before reproducing any third party (non Crown Copyright) information.”

Transferring a request

All or part of a request can be transferred to another public authority if it becomes apparent that the CCG's do not hold the information concerned. A transfer should only occur if it has been established that the other authority does hold the information concerned. eMBED (on behalf of the CCGs) must write to the applicant and explain that it does not hold the information and give the applicant the following options:

- to re-apply the request themselves to the identified authority(ies) and provide the contact details
- to have the request transferred by the CCG on behalf of the applicant

Requests will be transferred within the CCG if the request is a Data Protection Subject Access Request, or after 25th May 2018 the GDPR Right of Access.

A request must not be transferred outside the CCG without the applicant's consent.

Consultation with third parties

In the event that a request contains information about third parties the CCG will liaise with the third parties about their rights to make representation on any information they do not wish to have released. The public authority should record their consideration of these requests but is under no legal obligation to comply.

6.6 Personal information

Personal data as defined by the DPA is information about a living individual from which that individual can be identified. It may take any of the following forms:

- Computer documents
- Information processed by a computer or other equipment (e.g. CCTV)
- Information in medical and other records
- Information in some forms of structured manual records
- Unstructured personal information held in manual form by a public authority (the applicant is likely to be asked to provide extra details to locate the information requested)
- Information from which an individual can be identified.

Under the new GDPR personal information also includes online identifiers such as IP addresses, genetic and biometric data and even pseudonymised data in some circumstances. Personal data will also extend to more manual filing systems than was the case under the DPA.

If the person requesting the information is the subject of the information then the applicant should be redirected to the subject access provisions under the Data Protection Act, or after 25th May 2018 the GDPR Right of Access procedure. If the personal data is about someone other than the applicant, there is an absolute exemption under FOI/EIR but the public authority must still consider whether disclosure would be in the public interest.

The subject also has the right to object to the disclosure, hence the CCGs undertake to ensure that all requests for personal information are handled in consultation with the subject and with advice from eMBED FOI and/or Information Governance experts, the SIRO and Caldicott Guardian as appropriate. The CCGs will endeavour to balance an individual's right to privacy with the accountability that goes with working in the public sector.

Whilst the Data Protection Act and GDPR (from 25th May 2018), only applies to living individuals, the personal data of deceased persons may be subject to a duty of confidentiality under Common Law which extends beyond death.

6.7 Conditions, exemptions and exceptions

6.7.1 Conditions

The CCGs can postpone dealing with a request if:

- It reasonably requires more information to identify and locate the information requested and has written to the applicant informing them of this. eMBED will make reasonable efforts on behalf of the CCGs to contact the applicant for the additional information.
- If complying with the request would exceed the appropriate limit established in the National Fees Regulations. The CCGs and eMBED will work with applicants to keep compliance costs to a minimum, but maintains the right to refuse such a request. This also applies where more than one request has been taken into account for the purposes of the appropriate limit: any open request where the costs of compliance have been aggregated will be placed on hold.
- If the request is vexatious. If the CCGs have recently complied with a request for information then they are not required to comply with a subsequent identical or highly similar request unless a reasonable time interval has elapsed. A log of all requests will be kept for monitoring purposes and this can be used to identify vexatious requests. If the request is clearly designed to be a nuisance, or frivolous it can be regarded as vexatious.

6.7.2 Exemptions under FOI

The Act specifies a number of different exemptions and when they can be applied. There are two types of exemption: absolute and qualified.

An absolute exemption means that the CCGs are exempt from the need to confirm or deny. This means that the CCGs do not have to admit or deny holding the information.

A qualified exemption means that the CCGs have to consider the public interest before making the decision. The CCGs will endeavour to use these exemptions appropriately and sparingly.

Any decision to use the exemptions will be taken by the CCGs following advice and consultation with eMBED FOI specialists and other senior colleagues as appropriate.

Appendix A contains details of the exemptions available under the Act.

6.7.3 Exceptions under EIR

There is a stronger presumption of openness in relation to all matters relating to the environment although qualified exceptions can be applied as under FOI.

Appendix B contains details of the exemptions available under the EIR Regulations.

6.7.4 Public Interest Test

The public interest must be considered in every case where a qualified exemption applies. The Information Commissioner states that “In effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.” The public interest will vary with each request and the exemption being considered. Factors to consider often include ensuring honesty, accountability, transparent decision making and the absence of bias. The CCGs will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary (this may include colleagues and legal advice). The public interest does not include protecting an authority or individual from embarrassment.

In certain circumstances there may be a public interest in releasing personal data which would normally be subject to an absolute exemption. An example of this would be the remuneration and expenses of Governing Body members.

6.8 Public sector contracts

When entering into contracts the CCGs will limit the contractual terms which are intended to restrict the disclosure of information held by the CCGs. The CCGs cannot ‘contract out’ their obligations under the Act. The Lord Chancellor’s Code of Practice states that “unless an exemption provided for under the Act is applicable in relation to

any particular information; a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract”.

Contractors may put pressure on the CCGs to accept confidentiality clauses covering information about the terms of the contract, its value and performance. Where it is necessary to include a non-disclosure provision in a contract (exceptional circumstances only) an option could be to agree with the contractor a schedule that contains the information that should not be disclosed. The organisation would have to be aware that any restrictions on disclosure in such a schedule could be overridden by the obligations of the Act and EIR Regulations

The CCGs should not hold information ‘in confidence’ that is not confidential in nature. The confidential information exemption under the FOI and the similar exception under EIR only applies if the release of such information constitutes a breach of confidence likely to be actionable in a court of law.

6.9 Complaints

Initial complaints about the handling of a request for information will go to the CCGs who will follow a Review procedure agreed with eMBED. When the applicant is informed of the outcome of this process, they must be given the details of the office of the Information Commissioner and informed of their right to take their complaint to that Office.

6.10 Records Management

Good records management is the key to complying with requests for information. The CCGs have a Records Management Policy and supporting guidelines which provide comprehensive guidance for the management of all records and are consistent with:

- a) Records Management Code of Practice - Department of Health 2006
- b) The Lord Chancellor’s Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000 (November 2002)

Good records management should allow the CCGs to deal with requests in an efficient and accurate manner

FOI and EIR requests/responses also have to be retained for a certain length of time. Where the information was provided in full, these responses must be retained for 3 years. Where the response included an exemption (or another similar condition such as the appropriate limit) whereby some or all of the information requested was withheld, the responses must be retained for 10 years.

7.0 TRAINING

7.1 Information Governance including all rights of access will be a part of induction training and is mandatory for all staff. The CCGs will identify the information governance training needs of key staff groups taking into account role, responsibility and accountability levels and will review this regularly through the JDR processes.

7.2 It is the line manager's responsibility to ensure that all staff are made aware of their record keeping responsibilities through generic and specific staff training and guidance so that they understand ;

- what they are recording and how it should be recorded;
- why they are recording it;
- how to validate information with the patient or carers or against other records – to ensure that staff are recording the correct data;
- how to identify and correct errors – so that staff know how to correct errors and how to report errors if they find them;
- the use of information – so staff understand what the records are used for (and therefore why timeliness, accuracy and completeness of recording is so important); and
- how to update information and add in information from other sources.
- The right of access available to the public and how to respond to any such requests however received.
- The right to correct inaccurate information under the DPA and the similar right to rectification under the GDPR.
- The new GDPR rights from 25th May 2018 to erasure of data (the right to be forgotten), to restrict processing, to the portability of a subject's data and the right to object.

All CCG staff will be made aware of their responsibilities for access to records, record-keeping and record management through generic and specific training programmes and guidance supported by eMBED.

8 IMPLEMENTATION AND DISSEMINATION

Following ratification by the CCGs this policy will be disseminated to staff via the CCGs' intranets and communication through in-house newsletters.

This Policy will be reviewed every two years or in line with changes to relevant legislation or national guidance.

9 MONITORING COMPLIANCE WITH AND THE EFFECTIVENESS OF THE POLICY

Performance indicators will include:

- % of FOI requests completed within the statutory 20 working day timeframe

The performance against the indicators will be reported to the CCGs as part of the Information Governance reports provided by eMBED.

10 ASSOCIATED DOCUMENTS (Policies, protocols and procedures)

The CCGs will produce appropriate policies, procedures and guidance relating to records management as required. This will include an Information Governance handbook which will be updated annually and which will be given to all staff.

This policy should be read in conjunction with;

- Confidentiality and Data Protection Policy
- Records Management Policy
- Information Governance Policy and Framework
- Information Governance Strategy
- Information Security Policy
- Network Security Policy
- Integrated Risk Management Framework Incident Reporting Policy
- Business Continuity Policy
- Disciplinary Policy and Procedure

Raising Concerns Policy Anti-Fraud, Bribery and Corruption Policy
And their associated procedures (including but not limited to)

- Access to Records Procedure
- Information Sharing Protocol
- Freedom of Information Procedures
- E mail and Internet Procedures
- Privacy Impact processes
- Remote access and home working procedures
- Safe Transfer Guidelines and Procedure
- Incident Management, Investigation and Reporting

11. KEY LEGISLATION AND GUIDANCE

Legal References

All NHS records are Public Records under the Public Records Act 1958. This provides statutory obligations upon the CCGs. The organisations will take actions as necessary to comply with all their legal and professional obligations. The key legislation is listed below but is not limited to this list. Additional guidance can be obtained from the eMBED FOI or Information Governance teams.

- Data Protection Act
- The General Data Protection Regulation
- Access to Health Records Act 1990
- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Re-use of Public Sector Information Regulations 2015
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
- Human Rights Act 1998
- Protection of Freedoms Act 2012
- Public Records Act 1958
- Copyright, Designs and Patents Act 1988 (as amended by the Copyright (Computer Programs) Regulations 1992)
- Health and Social Care Act 2012
- Coroners and Justice Act 2009
- Computer Misuse Act 1990
- Common Law Duty of Confidentiality
- Crime and Disorder Act 1998
- The Children Act 1989 and 2004
- Electronic Communications Act 2000
- Regulation of Investigatory Powers Act 2000
- Lawful Business Practice Regulations 2000
- Public Interest Disclosure Act 1998
- Audit & Internal Control Act 1987
- NHS Sexually transmitted disease regulations 2000
- Human Fertilisation & Embryology Act 1990
- Abortion Regulations 1991
- Road Traffic Act 1988
- Prevention of Terrorism (Temporary Provisions) Act 1989 & Terrorism Act 2000
- Regulations under Health & Safety at Work Act 1974
- Disability Discrimination Act 1995
- Equality Act 2010
- Enterprise and Regulatory Reform Act 2013
- Fraud Act 2006
- Bribery Act 2010

Guidance and other References

- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act (November 2002)
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 (November 2002)
- Caldicott Review updated 2013
- Health and Social Care Information Centre Guidance 2013
- Professional Codes of Conduct and Guidance
- Information Commissioners Guidance Documents
- ISO Guidance on Records Management
- NHS Records Management Code of Practice for Health and Social Care 2016
- Care Records Guarantee

12 PUBLIC SECTOR EQUALITY DUTY

The Equality Act 2010 includes a general legal duty to:

- Eliminate unlawful discrimination, harassment victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it
- Foster good relations between people who share a protected characteristic and people who do not have it

The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Public bodies have to demonstrate due regard to the general duty. This means active consideration of equality must influence the decisions reached that will impact on patients, carers, communities and staff.

It is no longer a specific legal requirement to carry out an Equality Impact Assessment on all policies, procedures, practices and plans but, as described above, the CCGs do need to be able to demonstrate they have paid due regard to the general duty.

This policy sets out how the CCGs ensure that FOI and EIR requests are managed legally, efficiently and effectively. It is not believed that this policy will impact on or affect differently or adversely any of the groups with protected characteristics.

Exemptions available under Part II of the Freedom of Information Act 2000

Absolute Exemptions

- Section 21 - Information reasonably accessible to applicant by other means – it may be reasonably accessible even if the applicant has to pay for it.
- Section 23 - Information supplied by, or relating to, bodies with security matters – this is aimed at the Security Services, Government Communications Headquarters and the National Criminal Intelligence Service.
- Section 32 - Court records – covers documents in the custody of a court or tribunal, created by a court or tribunal or served on or by a public authority for court or tribunal proceedings
- Section 34 – Information covered by Parliamentary privilege – to avoid infringing the privileges of either Houses of Parliament.
- Section 40 subsection 1 - Personal information where the applicant is the subject of the information the request must be dealt with in accordance with the Subject Access rights provided in the Data Protection Act, or after 25th May 2018 the GDPR Right of Access procedure.
- Section 40 subsection 2 - Where the applicant is not the subject of the information requested, then it is exempt if disclosure if it would breach the Data Protection Act., or the GDPR after 25th May 2018.
- Section 41 - Information provided in confidence which has the necessary quality of confidence which if disclosed would be detrimental to the confider and would constitute a breach of confidence that could be lead to action against the CCG which is likely to be successful.
- Section 44 - Prohibitions on disclosure, whereby information is exempt if its release is prohibited under any enactment, it is incompatible with Community obligations or would constitute contempt of court.

Qualified Exemptions

- Section 22 - Information intended for future publication – covers information held with a view to publication by the public authority or another person at some future date.
- Section 22a – Information obtained from a research project which is still under way and whose results will be published, but whose premature release would be prejudicial to the research programme or those involved in the research or the authority undertaking the research.
- Section 24 - National security – information can be exempt if it is required to safeguard national security.
- Section 26 – Information prejudicial to the defence of the realm – information can be exempt if its release would affect the defence of the British Isles, any British colony or the capability and effectiveness of the armed forces

- Section 27 – Prejudicial to international relations – information is exempt if its release would prejudice relations with another State, international organisation, international courts or the interests of the UK abroad.
- Section 28 – Prejudicial to relations within the United Kingdom – covers information that may prejudice relations between the national administrations within the UK
- Section 29 – Prejudicial to the economy – covers information that would prejudice the economic interest of the UK or of any administration in the UK
- Section 30 – Prejudicial to investigations and proceedings conducted by public authorities – 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.
- Section 31 - Prejudicial to law enforcement – information is exempt if its release would prejudice law enforcement. Subsection 1 in particular includes the prevention or detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons. This subsection can also be applied to protect information which if released would prejudice or would be likely to prejudice the security of IT systems.
- Section 33 – Prejudicial to audit functions – this applies to authorities that have functions relation to the audit of other authority’s accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.
- Section 35 - Formulation of government policy – relates to government departments, communication between ministers and advice of law officers.
- Section 36 - Prejudicial to effective conduct of public affairs – information is exempt if, in the opinion of a qualified person, it would prejudice how the CCG conducts its public affairs.
- Section 37 - Communications with Her Majesty, etc. and honours – covers Her Majesty, other members of the Royal Family.
- Section 38 - Health and safety – information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.
- Section 39 - Environmental information – covers information that can be accessed via the Environmental Information Regulations.
- Section 42 - Legal professional privilege
- Section 43 subsection 1 - Information containing trade secrets.
- Section 43 subsection 2 – Prejudicial to commercial interests – information is exempt if it would prejudice or be likely to prejudice the commercial interests or any person or organisation.

ENVIRONMENTAL INFORMATION REGULATIONS EXCEPTIONS

1. While the FOI Act contains “exemptions” which allow the withholding of information under that Act, EIRs make use of “exceptions” in respect of withholding environmental information. The following summarises the EIR exceptions.
2. The EIR make provision for a number of exceptions to the duty to disclose such information. However, there are fewer exceptions under EIRs in respect of the release of environmental information than exist under the FOI Act in respect of the release of non-environmental information. This is because there is a greater presumption under the regulations that environmental information must be released, unless there are reasons to withhold it.
3. Regulation 12 lists the exceptions under which a public authority can refuse to disclose information. All the exceptions are qualified exceptions and are therefore subject to a public interest test. Those weighing the public interest of whether to release or withhold information should interpret the exceptions very carefully.
4. **A request for information can be refused (or part of the information withheld) if:**
 - Information is not held (then there is a duty to refer the request on)
 - The request is manifestly unreasonable
 - The request is too general (after fulfilling a duty to advise and assist)
 - The request is for unfinished documents or data (in which case an estimated time for completion must be given)
5. **A public authority may also refuse to disclose information or withhold part of it in order to protect the following:**
 - Confidentiality of proceedings
 - International relations / public security / defence
 - The course of justice and right to fair trial
 - Commercial confidentiality
 - Intellectual property rights
 - Personal data under the DPA and after 25th May 2018 the GDPR.

The full list of exceptions follows:

- Regulation 12 (3) – Personal data of the applicant, which should be processed under the DPA Subject Access Request procedure and after 25th May 2018 according to the Right of Access procedure under GDPR.
- Regulation 12 (4) (a) – Information not held
- Regulation 12 (4) (b) – Request manifestly unreasonable
- Regulation 12 (4) (c) – Request formulated in too general a manner

- Regulation 12 (4) (d) – Material in the course of completion, unfinished documents and incomplete data
 - Regulation 12 (4) (e) – Involves internal communications
 - Regulation 12 (5) (a) – Prejudicial to International relations, defence, national security or public safety
 - Regulation 12 (5) (b) – May prejudicially affect the course of justice or jeopardise a fair trial, disciplinary or regulatory inquiry
 - Regulation 12 (5) (c) – infringe intellectual property rights
 - Regulation 12 (5) (d) – Prejudicial to the confidentiality of proceedings
 - Regulation 12 (5) (e) – Prejudicial to confidentiality of commercial or industrial information
 - Regulation 12 (5) (f) – Prejudicial to the interests of the provider of the information (i.e. provided under a duty of confidence)
 - Regulation 12 (5) (g) – Prejudice the protection of the environment
 - Regulation 13 – Personal information of a third party under the DPA and after 25th May 2018 under the GDPR.
6. If information relates to emissions, a public authority cannot refuse to disclose it on grounds of confidentiality of proceedings, commercial confidentiality, or personal data.
7. **Public Interest Test** - It is important to note that none of the exceptions is absolute. For all of these exceptions, the public authority can only refuse to disclose environmental information **if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.** There should always be a presumption in favour of disclosure, and, where there is a balance between the two public interests, information should be disclosed.
8. Detailed guidance about Environmental Information Regulations and applying exceptions is available from the Information Commissioner's website
http://www.ico.org.uk/upload/documents/library/environmental_info_reg/introductory/introduction_to_eir_exceptions.pdf