

## NHS Dorset Clinical Commissioning Group

POLICY AND PROCEDURES FOR REQUESTS MADE UNDER THE FREEDOM OF  
INFORMATION ACT 2000 INCLUDING ENVIRONMENTAL INFORMATION REGULATIONS



## **PREFACE**

This document sets the policy for NHS Dorset Clinical Commissioning Group with regard to its legal obligation to comply with the Freedom of Information Act 2000 and Environmental Information Regulations.

All managers and staff (at all levels) are responsible for ensuring that they are viewing and working to the current version of this procedural document. If this document is printed in hard copy or saved to another location, it must be checked that the version number in use matches with that of the live version on the CCG intranet.

All CCG procedural documents are published on the staff intranet and communication is circulated to all staff when new procedural documents or changes to existing procedural documents are released. Managers are encouraged to use team briefings to aid staff awareness of new and updated procedural documents.

All staff is responsible for implementing procedural documents as part of their normal responsibilities, and are responsible for ensuring they maintain an up to date awareness of procedural documents.

<b>A</b>	<b>SUMMARY POINTS</b>
<p>Policy for NHS Dorset Clinical Commissioning Group with regard to its legal obligation to comply with the Freedom of Information Act 2000 and Environmental Information Regulations.</p>	

<b>B</b>	<b>ASSOCIATED DOCUMENTS</b>
<ul style="list-style-type: none"> <li>• Information Governance Policy</li> <li>• Data Protection Policy</li> <li>• Information Security Policy</li> <li>• IT Security Policy</li> <li>• Confidentiality: Staff Code of Conduct</li> <li>• Confidential Corporate Information Policy</li> </ul>	

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<b>Author</b>	Joyce Green	
<b>Job Title</b>	Head of Information Governance/Customer Care	
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<b>F SUPPORTING DOCUMENTS/EVIDENCE BASED REFERENCES</b>		
<b>Evidence</b>	<b>Hyperlink (if available)</b>	<b>Date</b>
<ul style="list-style-type: none"> <li>Freedom of Information Act 2000, London, Stationery Office.</li> </ul>	<a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a>	2000
<ul style="list-style-type: none"> <li>The Information Commissioner's website covering The Freedom of Information Act, Environmental Information Regulations and the Data Protection Act.</li> </ul>	<a href="http://www.ico.gov.uk">www.ico.gov.uk</a>	
<ul style="list-style-type: none"> <li>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</li> </ul>	<a href="http://www.nationalarchives.gov.uk/foi/">http://www.nationalarchives.gov.uk/foi/</a>	2002
<ul style="list-style-type: none"> <li>Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000</li> </ul>	<a href="http://www.nationalarchives.gov.uk/documents/foi-section-46-code-of-practice.pdf">http://www.nationalarchives.gov.uk/documents/foi-section-46-code-of-practice.pdf</a>	2004

<ul style="list-style-type: none"> <li>Environmental Information Regulations</li> <li>Information Governance Toolkit</li> </ul>	<a href="http://www.legislation.gov.uk/ukxi/2004/3391/contents/made">http://www.legislation.gov.uk/ukxi/2004/3391/contents/made</a> <a href="https://nww.igt.hscic.gov.uk/">https://nww.igt.hscic.gov.uk/</a>	
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G	DISTRIBUTION LIST		
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## **1. RELEVANT TO**

1.1 This policy is relevant to all staff:

- within the CCG whether operating directly or providing services under a service level agreement or joint agreement;
- including contracted employees, non-executive directors and contracted third parties such as bank, agency, volunteers, locums, student placements, staff on secondment, researchers, visiting professionals and suppliers.

1.2 Failure to adhere to this policy, and its associated procedures, may result in disciplinary action.

## **2. INTRODUCTION**

2.1 The Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (EIR) places various requirements on public authorities in relation to information provision and openness. As a public authority NHS Dorset Clinical Commissioning Group (CCG) has obligations under the Act and EIR.

2.2 The Act/EIR is part of the Government's commitment to greater openness in the public sector and aim to help transform the culture of the public sector to one of greater openness.

2.3 Since January 2005 people have had the formal right to access information about the way decisions are made, and public money is spent, by more than 100,000 public authorities, including Government departments, schools, NHS Trusts, police forces and local authorities. Anyone, of any nationality, and living anywhere in the world, can make a written request for information, and they must receive a response within 20 working days.

2.4 The main features of the Act are:

- a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions;
- a duty on every public authority to adopt and maintain a Publication Scheme.

2.5 This document sets out the policy for the CCG with regard to its legal obligation to comply with the Act/EIR in providing access to anyone who wishes access to information held by the CCG.

2.6 Within the context of the Act, the term 'information' means every piece of information held by the CCG, whether in paper or electronic format. This includes all draft documents, agendas, minutes, e-mails, diaries and even rough handwritten notes.

- 2.7 The CCG will deal with all requests for environmental information in accordance with the Secretary of State's Code of Practice on the Discharge of the Obligations of Public Authorities under the Environmental Information Regulations 2004.
- 2.8 The Act makes it an offence to alter, deface, block, erase, destroy or conceal any record held by the CCG, with the intention of preventing disclosure to all or part of the information that an applicant is entitled to. Penalties can be imposed on both the CCG and employees for non-compliance with the Act.

### **3. SCOPE**

3.1 This policy applies to every piece of recorded information held by the CCG, whether paper or electronic. It includes:

- final documents;
- agreements;
- agendas;
- minutes;
- emails;
- diaries;
- rough handwritten notes.

(This list is not exhaustive).

### **4. PURPOSE**

4.1 The purpose of this policy is to ensure that the CCG is compliant with the requirements of the Act/EIR.

4.2 The CCG recognises its responsibilities to implement, in full, its duties in respect of the Act/EIR and to ensure all its employees understand and implement the requirements.

4.3 The CCG will use all appropriate and necessary means to ensure that it complies with the Act and associated Codes of Practice issued by the Lord Chancellors Office pursuant to sections 45(5) and 46(6) of the Act.

4.4 This policy will underpin any operational procedures and activities connected with the implementation of the Act.

#### **Legal Requirements**

4.5 The Act and the EIR places a statutory duty on the CCG to give the right of access to recorded corporate information held and to release information upon request unless an exemption applies.

## **5. DEFINITIONS**

### **Information**

- 5.1 Is any recorded information the CCG holds in any format. This includes documents, plans, and all other types of recorded information that are not personal information.

### **The Act**

- 5.2 Freedom of Information Act 2000.

### **FOI**

- 5.3 An acronym for Freedom of Information.

### **Exemption**

- 5.4 Categories within the Act that define particular types of information that public bodies are not obliged to disclose. Exemptions can be either 'absolute' or 'qualified'.

### **Absolute Exemption**

- 5.5 When the information falls within the scope of an absolute exemption a public body is not obliged to provide the information e.g. Personal Information relating to a patient.

### **Qualified Exemption**

- 5.6 When the information falls within the scope of a qualified exemption this is subject to the public interest test. The public interest in non-disclosure must outweigh the public interest in disclosure e.g. commercial interests.

### **Public Interest Test**

- 5.7 Is the test a public body must apply if it feels the information requested falls under a qualified exemption.

### **Redaction**

- 5.8 The process of editing or revising a piece of writing in preparation for publication or responding to a request.

### **Record**

- 5.9 A record is defined as that created during the course of the business of the CCG i.e. corporate records which are also public records under the terms of the Public Records Acts 1958 and 1967. Information may be recorded in computerised or manual form or in a mixture of both and may include hand-written notes, letters, reports, and computer held records such as emails.

## **Information Commissioner**

- 5.10 The Information Commissioner is responsible for administering the Act and enforcing its provisions through powers vested in him and through the courts. Further information is available at [www.ico.gov.uk](http://www.ico.gov.uk).

## **DPA**

- 5.11 Is an acronym for Data Protection Act.

## **Publication Scheme**

- 5.12 All public authorities have a legal duty to compile and make available a list of documents that are held and that will be routinely made available to the public. This list is known as the Publication Scheme and is to be made available via the CCG's website and in printed form on request.

## **Duty to confirm or deny**

- 5.13 Under Section 1 of the Act public authorities have a duty to inform the person requesting information whether or not the information they have requested is held by the authority.

## **6. ROLES AND RESPONSIBILITIES**

### **Chief Officer**

- 6.1 The Chief Officer has overall responsibility for the organisational compliance with the Act.

### **Head of Information Governance/FOI Lead**

- 6.2 The Head of Information Governance:
- is the designated Freedom of Information lead for the CCG;
  - has responsibility for ensuring compliance with the Act within the CCG;
  - has day-to-day responsibility for the management of all aspects relating to the Act;
  - is responsible for promoting awareness and advising all staff, throughout the CCG, on issues relating to the Act;
  - will provide a regular report to the Audit and Quality Committee and Information Governance Group, detailing all aspects of the disclosure and non-disclosure of recorded information by the CCG under the Act;
  - will ensure relevant information is made available via the Publication Scheme;
  - will ensure that the Publication Scheme is regularly reviewed and the content is up to date.

## **Information Governance Group**

6.3 The Information Governance Group is responsible for reviewing all aspects of Freedom of Information within the CCG.

### **Managers**

6.4 Managers are responsible for ensuring that:

- information is supplied promptly to the FOI Lead and FOI Coordinator when requested for inclusion within the Publication Scheme or for individual requests;
- information not included within the Scheme is created and stored in accordance with CCG records management procedures and processes to enable easy location when required;
- all staff are aware of, and adhere to, the policy;
- all staff are updated with regards to any changes in this policy.

### **Staff**

6.5 All staff within the CCG are responsible for:

- ensuring they comply with the CCG's statutory obligation under the Act, and any policies and procedures laid down by the CCG to ensure compliance. Failure to do so may result in disciplinary action;
- the creation of their own records and for adhering to the CCG Records/Management procedures and processes;
- identifying Freedom of Information requests and forwarding to the FOI Co-ordinator at [FOI.Requests@dorsetccg.nhs.uk](mailto:FOI.Requests@dorsetccg.nhs.uk) immediately;
- responding to requests made for information by the FOI Co-ordinator within the set timescales;
- ensure that all relevant information to meet the requirements of the request is retrieved;
- ensure that responses made in relation to a request do not include information of a sensitive personal nature (i.e. for staff, patients or clients);
- preserving formal records of their official activities, which must be accurate, adequately named and indexed for easy retrieval or publication. Poor record management itself is not an offence, but it may lead to an inability to comply with Freedom of Information requirements.

## **7. PUBLICATION SCHEME**

7.1 Section 19 of the Act makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority.

7.2 The CCG uses an amended version of the 'approved' model issued by the Information Commissioners Office in January 2009. The outline of the scheme is below:

### **About NHS Dorset CCG**

- who we are and what we do such as organisational structure, how we fit into the NHS, organisations we work in partnership with and senior staff and board members;

### **Financial Information**

- what we spend and how we spend it such as annual statements of accounts and contracts currently being tendered;

### **Corporate information**

- what our priorities are and how are we doing;

### **Policies and procedures**

- the policies and procedures followed by the CCG;

### **List and registers**

- lists and registers held by the CCG such as those for declarations of interests and gifts and hospitality;

### **The services we offer**

- information about the services we offer. In general, this will be an extension of the first class of information, 'Who we are and what we do' as it will detail the services that the organisation provides.

### **Request for Information within the Publication Scheme**

7.3 If a request is received for information that comes under the scope of the publication scheme, the requestor will be directed to download the information from the CCG website if actively published. Where the information is identified as available on request it will be provided in electronic format where possible or alternative format if requested. All such responses will be dealt with promptly and within 5 working days.

7.4 The Publication Scheme sets out the following:

- the classes of information published, or intended to be published;
- the manner in which publication is, or is intended to be made;

- whether the information is available free of charge or if payment is required.

7.5 The CCG's Publication Scheme details the information published at that point in time, the format in which the information is available and whether or not a charge will be made for the provision of that information.

## **8. GENERAL RIGHTS OF ACCESS**

8.1 Section 1 of the Act gives a general right of access from 1 January 2005 to recorded information held by the CCG, subject to certain conditions and exemptions contained in the Act. Any person making a request for information is entitled to:

- be informed in writing whether the specified information is held;
- have that information, if held, communicated to them.

8.2 These duties are known as the duty to confirm or deny and are fully retrospective. If the information requested is held, it must be provided, depending on certain conditions and exemptions.

8.3 The CCG will ensure that procedures and systems are in place to facilitate access by the public to recorded information under this general right of access.

8.4 In accordance with the Act any request for information needs to:

- be in writing;
- state the name of the applicant and an address for correspondence;
- describe the information requested;
- be legible and capable of being used for reference.

8.5 A request in writing can be in electronic format if it follows the above requirements.

### **Accessing the Information**

8.6 The FOI Co-ordinator will identify who holds the information that the applicant has requested. The contact person(s) will be identified and a request for information will be made. A record will be kept of this contact as follows:

- initial date received by the CCG;
- date received by the FOI Co-ordinator;
- name of the applicant;
- contact details of the applicant;
- description of the information requested;

- the method by which the information was requested;
- decision taken and details of any exemptions used;
- date completed and date information forwarded to the applicant;
- time taken to provide response to applicant.

8.7 When requests for information are made from the media they will be forwarded, for information, to the Communications Team.

8.8 When an applicant, on making their request for information, expresses a preference for method of communication this shall be complied with so far as reasonably practicable.

## **9. TIME LIMITS FOR COMPLYING WITH REQUESTS**

9.1 The CCG has systems and procedures in place to ensure that it meets the commitment to confirm or deny and/or to provide information, not later than 20 working days after receiving a request in accordance with Section 10 of the Act. All staff and non-executive directors must comply with the requirements of this procedure; failure to do so may result in disciplinary action.

9.2 The 20 day time limit is subject to the following:

- on receipt of the request the CCG may need to clarify with the individual exactly what information is required. The 20 working days begins to run after this clarification has been given;
- the CCG is entitled to issue a fees notice, setting out the amount they intend to charge for supply of the requested information. The 20 working day limit does not begin to run till the fee, set out in a fees notice, has been received. (If a fee is applicable see section 13).

## **10. PROVIDING THE INFORMATION**

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

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

10.2 In determining whether it is reasonably practicable to communicate information by a particular means, the FOI Co-ordinator will consider the circumstances, including the cost of doing so.

- 10.3 All other statutory obligations placed upon the CCG will be considered such as those established under the Disability Discrimination Act 1995.
- 10.4 If it is determined that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the applicant will be notified of the reasons and the information will be provided by such means as is deemed to be reasonable.

## 11. EXEMPT INFORMATION

- 11.1 Whilst the Act creates a general right of access to information held the CCG does not have to comply with information requests where the information requested is exempt under the provisions made in Part II of the Act, sections 21-44.
- 11.2 There are two types of exemption relating to FOI requests:
- **Absolute** – where the information falls within the scope of an absolute exemption a public body is not obliged to provide the information e.g. Personal Information relating to a patient;
  - **Qualified** – where the information falls within the scope of a qualified exemption this is subject to the public interest test. The public interest in non-disclosure must outweigh the public interest in disclosure e.g. commercial interests.
- 11.3 The exemptions are listed in Appendix C.
- 11.4 An interpretation of these exemptions is carried out in accordance with ICO guidelines.
- 11.5 If the FOI Lead anticipates that it will take more than 20 working days to reach a decision as to whether any part of the information requested by the applicant is exempt, the applicant will be notified that a decision as to whether the information is subject to an exemption has not been reached. The applicant will be provided with an estimate of the date by which the expected decision will have been reached.
- 11.6 All estimates provided to applicants must be realistic and reasonable and the CCG will ensure compliance unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology. If during the course of considering the public interest the FOI Team finds that the estimate is unrealistic, the applicant will be informed.
- 11.7 A record will be kept of instances where estimates have been exceeded, and where this happens more frequently, steps will be taken to identify the problem and rectify it.

## **12. THE PUBLIC INTEREST**

- 12.1 The majority of the exemptions set out in the Act must only be relied upon if the CCG is satisfied that maintaining the exemption in question outweighs the public interest in disclosure.
- 12.2 To some, or all of the information requested, the CCG will then have to consider whether it must override the exemption because it is in the public interest to release the information. This involves considering the circumstances of each particular case and the exemption that covers the information.

## **13. CHARGES**

- 13.1 The CCG will not charge for information that it has chosen to publish in its Publication Scheme.
- 13.2 The CCG follows the national Fees Regulations for general rights of access under the Act.
- 13.3 Section 12 of the FOI Act allows public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit, which for Public Bodies is set at £450. This represents the estimated cost of one person spending 18 hours in determining whether the CCG holds the information, locating, retrieving and extracting the information.
- 13.4 Under these circumstances, outlined in 13.3, NHS Dorset CCG is not obligated to provide the information. The applicant can request advice and assistance under Section 16 of the FOI Act to determine how their request could be adapted and brought within the appropriate limit.
- 13.5 Where the cost of supplying the information exceeds the limit on fees the CCG must still confirm or deny whether it holds the information.
- 13.6 For information which costs less than £450 to retrieve and collate, there will be no charge as required under the Act.
- 13.7 The CCG has a duty to work with applicants to keep compliance costs to a minimum but reserves the right to either:
- refuse to disclose the information;
  - charge whatever costs of disclosure are above the appropriate limit.
- 13.8 In all cases where the CCG applies a charge for information a fees notice will be issued to the applicant. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is issued.
- 13.9 There is no appropriate limit set for EIR requests. However it may be relevant for some exceptionally costly requests to be considered as 'manifestly unreasonable' under regulation 12(4)(b)

## **14. AMBIGUOUS OR WITHDRAWAL OF REQUESTS**

- 14.1 If further clarification from the requestor is required, or not enough information has been provided for the request to be processed, the requestor will be informed at the earliest opportunity. If clarification is not received within 3 months of initial contact the FOI or EIR, request will be closed.
- 14.2 Once clarification has been requested the 20 working days countdown will stop. When the clarification has been received the countdown will re-commence from where it stopped.

## **15. AGGREGATION OF REQUESTS**

- 15.1 When a number of requests are received from either the same person or different people asking for the same or similar information within a short time of each other, Dorset CCG may consider aggregating these requests and take an overall view of the resources which would have to be committed to answering all of the requests. Aggregation of requests can be considered when two or more requests for information have been made and:
- they are either from the same person, or from 'different persons who appear to be acting in concert or in pursuance of a campaign;'
  - the requests relate to the same or similar information;
  - they have been received by the public authority within a space of 60 consecutive working days.

## **16. VEXATIOUS/REPEATED REQUESTS**

- 16.1 The CCG is not obliged to comply with a request for information if the request is vexatious (requests posed to frustrate normal business interests of the organisation with no intrinsic interest in the information requested).
- 16.2 Where the CCG has previously complied with a request for information it is not obliged to comply with a subsequent identical or similar request from that person. A reasonable interval must have elapsed between compliance with the previous request and the making of the current request.
- 16.3 All requests for information are logged in order to assist monitoring and therefore the CCG is able to identify repeated or vexatious requests.
- 16.4 Requests can be refused as vexatious if they are part of a campaign to disrupt or distress and come from a number of applicants acting together.

### **Repeated Requests**

- 16.5 Section 14 (2) of the Act allows refusal of requests if they are identical or substantially similar to a previous request and no reasonable interval has passed.

## **17. REFUSAL OF REQUESTS**

- 17.1 A refusal of a request may apply to all the information requested by an applicant or a part thereof. A request for information may be refused if:
- the information requested is personal Information. The provisions of the Data Protection Act 1998 (DPA) always takes precedence over those of the FOIA. Personal information must be obtained, processed, stored and disclosed in accordance with the DPA, even where a request for information has been made under the provisions of the FOIA;
  - the information falls under one of the 23 exemptions;
  - a fees notice (see section 13) has been issued to an applicant and the fee has not been paid within three months;
  - the request is repeated or vexatious – (see section 16);
  - the cost of compliance with the request for information exceeds the appropriate limit (£450).
- 17.2 The CCG will keep a record of all refusal notices issued to applicants. These will be subject to quarterly review to maintain consistency in decision-making.
- 17.3 All notices issued by the CCG advising the applicant that it is refusing to comply with a request for information will inform the applicant of the CCG's complaints procedure and of their right to apply to the Information Commissioner.

## **18. COMPLAINTS**

- 18.1 Under the Act, there is no obligation for an authority to provide a complaints process. However the Section 45 Code of Practice makes clear that it is good practice to have a review procedure in place. This is endorsed by the Information Commissioners Office.
- 18.2 A complaint is also generally referred to as an internal review.
- 18.3 In the first instance complaints about the CCG's Freedom of Information procedures, and decisions not to supply exempt information, should be made to the FOI Lead who will refer this to a chosen panel.
- 18.4 An internal review:
- should be conducted by a panel which does not include any person who was involved in the original decision;
  - must be a fair and impartial review of the decisions made during the original decision.

- 18.5 The panel conducting the review must consider the information released against the information requested and make a full review of the papers associated with the original application.
- 18.6 It is best practice that the panel 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.
- 18.7 The circumstances relating to the original decision may have changed between the time Dorset 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.
- 18.8 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. The ICO recommends that reviews should be completed within 20 working days of receiving the complaint; or, for complex reviews, within 40 working days of receipt. 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.
- 18.9 The internal review can have two outcomes. The original decision is reversed or the original decision is upheld.
- 18.10 Where the original decision is upheld the applicant must be told and made aware of their right to contact the Information Commissioner directly <http://www.ico.gov.uk>.
- 18.11 The outcome of the internal review must be recorded.
- 18.12 Procedure on receiving a request for an internal review see Appendix E.

## **19. REQUESTS KNOWN TO BE FROM THE MEDIA OR OF POTENTIAL MEDIA INTEREST**

- 19.1 There is no difference in the compilation of a response to a request from the media, on the basis that disclosure under FOI is considered to be disclosure to any member of the public.
- 19.1 Where the request is known to be from a journalist, the media, or likely to be of media interest, the response will be agreed with the CCG Communications team prior to sending, to ensure awareness of the media interest in the topic.

## **20. DUTY TO PROVIDE ADVICE AND ASSISTANCE**

- 20.1 The CCG will ensure that systems and procedures are in place to meet the duty to provide advice and assistance to the public, so far as it would be reasonable to expect the CCG to do so, to persons who propose to make, or have made, requests for information.

20.2 The advice and assistance may include:

- guidance on how to access information from the CCG under the general right of access and the Publication Scheme;
- informing the applicant of the progress of their request;
- explaining the basis upon which any charges or fees have been levied or exemptions applied (this is in addition to Fees Notices and refusal of request notices);
- obtaining additional information to assist the CCG in meeting the information needs of the applicant;
- consulting with third parties as required;
- identifying source of independent help for applicants;
- directing applicants to the complaints procedure and/or Information Commissioner if they are dissatisfied with the discharge of the duties under the exempt information section of the Act;
- advising the person that another person or agency (e.g. advocate) may be able to assist them with the application, or make the application on their behalf;
- in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

20.3 This list is not exhaustive, and the FOI Lead will discuss the options available with the applicant, offering advice and assistance that is most appropriate.

20.4 A record will be kept of all instances where applicants have been provided with advice and assistance.

20.5 The CCG FOI Lead will act as a source of advice and support for staff in regard to the Act.

## **21. TRANSFER OF REQUESTS FOR INFORMATION**

21.1 When the CCG receives a request for information which it does not hold, but recognises that it is held by another public authority, the request can be transferred.

21.2 Transfers of requests can only be made if the CCG is certain that the information is not held. The CCG recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body.

- 21.3 Upon receiving the initial request for information, it will be processed in accordance with the Act. The applicant will also be advised that the CCG does not hold part of the requested information, or all of it, whichever applies.
- 21.4 If some or all of the information requested is held by another public authority, the CCG will assist the applicant with their request, by:
- contacting the applicant and informing them that the information requested may be held by another public authority;
  - suggesting that the applicant re-applies to another authority;
  - providing the individual with contact details for that authority.
- 21.5 If it is considered more appropriate to transfer a request to another public authority the CCG will:
- ascertain whether or not the other public authority holds information requested;
  - decide whether or not it is appropriate to transfer the request;
  - decide whether or not the applicant has any objection to the transfer.
- 21.6 If it is judged that the applicant would have no objections to a transfer of a request, the request can be transferred but the CCG will inform the applicant it has done so.
- 21.7 If there is any doubt about the applicant's consent for a transfer of request that applicant will be contacted to discuss with a view to suggesting that the applicant contacts the public authority themselves.
- 21.8 All transfers of requests will be undertaken as soon as is reasonably practicable, and the applicant will be informed that this has been done.

## **22. CONSULTATION WITH THIRD PARTIES**

- 22.1 The CCG recognises that in some cases the disclosure of information may affect the legal rights of a third party. Unless an exemption applies the CCG is obliged to disclose that information in response to a request.
- 22.2 In some cases disclosure of information cannot be made without the consent of a third party. In this instance the CCG will consult that third party to seek their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.
- 22.3 The CCG will consider the requirements of the Act, the individual circumstances of the request, and decide on the appropriate action. Consultation will be unnecessary where the CCG:
- does not plan to disclose the information requested;

- decides that no exemption applies so the information must be disclosed;
- decides that the third party could not have any effect on the decision to disclose.

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

22.5 If the third party does not respond to the consultation it does not relieve the CCG of its duty to disclose information under the Act, or its duty to reply within the time specified. In all cases it is for the CCG, not the third party (or representative) to determine whether or not information should be disclosed. A refusal to consent to disclosure by a third party does not mean information should be withheld.

22.6 Any consultation with third parties will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done.

## **23. PUBLIC SECTOR CONTRACTS**

23.1 When entering into contracts the CCG will reject contractual terms that would negate the disclosure of information under the terms of the Act. Unless exempt all information held can be disclosed regardless of contractual terms.

23.2 As recommended by the Lord Chancellor's Department, the CCG will reject confidentiality clauses in contracts. A non-disclosure schedule within contracts can be drawn up, but parties to the contract must be aware that restrictions on disclosure can be overridden under obligations placed by the Act. Confidentiality clauses must be for good reasons and be capable of being justified to the Information Commissioner.

23.3 The CCG will take steps to protect from disclosure by the contractor, information provided to the contractor that would clearly be exempt under the Act.

### **Accepting Information in Confidence from Third Parties**

23.4 The CCG will only accept information from third parties in confidence if it is necessary to obtain that information for the running of any of its functions and it would not otherwise be provided.

## **24. DATASETS**

24.1 On 01 September 2013 the open data rights came into force. Section 102 of the Protection of Freedoms Act 2012 amended sections 11 and 19 of the Freedom of Information Act. This gives requestors rights to receive datasets in a form capable of re-use (e.g. CSV).

- 24.2 Under the dataset provisions public authorities have to make datasets available, either in response to an FOI request or proactively under a publication scheme, in a way that allows them to be re-used
- 24.3 The requester does not have to specify when submitting their request that they want a re-usable dataset. If the information that the requester wants happens to be held in a dataset, and the requester expresses a preference for receiving the information in electronic form, then the duty to provide the dataset in a re-usable form is triggered. If the requester has asked to receive the information in hard copy, then there is no duty to provide it in an electronic form capable of re-use.
- 24.4 The amendments also require the CCG to publish any requested datasets as part of the Publication Scheme, if appropriate.
- 24.5 It is important to note that the changes do not give differing rights of access; they are concerned with format and the ability to re-use datasets, once the CCG has decided that no exemptions or other provisions (e.g. costs, vexatious) in the legislation apply.
- 24.6 The Freedom of Information (Release of Datasets for Re-use) (Fees) Regulations 2013 set out how a public authority can charge for making a certain datasets available for re-use.

## **25. PERSONAL INFORMATION AND THE DATA PROTECTION ACT**

- 25.1 Personal data 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 records (e.g. Continuing Healthcare, Complaints);
  - information in some forms of structured manual records;
  - unstructured personal information held in manual form.
- 25.2 If an applicant requests information and they are the subject of that information, they have no right to it under the Freedom of Information Act. This is a Subject Access Request which requires dealing with under the Data Protection Act 1998. This should be redirected to the Information Governance Team for action.
- 25.3 If the personal data relates to someone other than the applicant, there is an exemption if disclosure would breach any of the Data Protection principles.

### **Requests relating to staff in their capacity as a member of Dorset CCG**

- 25.4 Requests for information relating to a public authority's staff can cover a wide range of topics, including the names of staff, organisation charts and internal directories, as well as other data.

- 25.5 There must be an expectation that information will be released about an employee's actions, or decisions, in carrying out their job role within a public authority. Dorset CCG will not, however, release information of a personal nature relating to employees e.g. information held in a personnel file.
- 25.6 The more senior an employee is, and the more responsibility they have for decision making and expenditure of public money, the greater their expectation should be that their name will be disclosed. However, seniority within the CCG organisational structure is not the sole determining factor. Employees who represent the CCG to the outside world should also have an expectation that their names will be disclosed.
- 25.7 The fact that a person holds a particular post is information about their working life, rather than their private life, and there should be a greater expectation that the CCG may disclose this.
- 25.8 Dorset CCG will endeavour to balance an individual member of staff's right to privacy with the accountability that goes with working in the public sector.

## **26. REQUESTS FOR RE-USE OF INFORMATION**

- 26.1 Information provided under FOI and EIR may be re-used for personal use. This means that brief extracts of any of the material may be reproduced without permission, under the fair dealing provisions of the Copyright, Designs and Patents Act 1988 (sections 29 and 30).
- 26.2 Copyright law does not give applicants a right to re-use information in a way that would infringe or breach that copyright, by making copies, publishing and issuing copies to the public or to any other person. This means that wider re-use requires express permission in writing.
- 26.3 Under the Re-use of Public Sector Information 2005 Regulations the information can be re-used for the purposes of research, private study, criticism, review, news reporting and for non-commercial purposes, subject to an acknowledgement of Dorset CCG as the copyright owner. However, any other type of re-use under the regulations, for example; publication of the information or circulation to the public, will require permission and may be subject to terms and conditions such as:
- organisations must ensure that the information is reproduced accurately and indicates the date at which the information was released by the CCG.
  - any publication which incorporates the CCG's information must include an acknowledgement of the source of the information;
  - any comments associated by you to the information must clearly state that it is not necessarily the view of the CCG.
  - readers of the information must not be given the impression that the CCG is responsible for, or has in any way approved, the publication in which the information has been reproduced;

- the information may not be altered or amended unless such material is clearly marked as altered or amended by the organisation or others.
- 26.4 When reproducing the CCG's materials, organisations must not use the information in a misleading way and have regard to any qualifying statements or descriptions attached to the information. For example, descriptions such as 'consultation document', 'discussion paper', or 'preliminary view' are important as are statements concerning the audience at which the material is directed.
- 26.5 If the information is reproduced in full, or substantial extracts are reproduced, any qualifying statements attached to the information must be included.
- 26.6 Any requests for re-use of information must be in writing and the applicant must state their full name, contact details, specify the document being requested for re-use and the purpose for which the document is to be re-used.
- 26.7 The request will be acknowledged within 3 working days and responded to within 20 working days of receipt. This period may be extended where the request is extensive or complex; and the requester must be informed of this in writing.
- 26.8 Re-use can be refused if the information requested falls within one or more of the exclusions permitted by Re-use of Public Sector Information Regulations 2005 (RPSI).
- 26.9 Where requests are refused, the applicant will be advised of the decision and has a right to ask for that decision to be reviewed under the CCG'S FOI and EIR appeals procedures. If the information is still not released, the applicant will be advised of their right to ask the Office for Public Sector Information (OPSI) to review the decision.

## **27. ENVIRONMENTAL INFORMATION REGULATIONS**

- 27.1 Any information held by the CCG that relates to the environment, the definition in the Environmental Information Regulations (2004) will apply. This includes (but is not limited to) any information about the impact on the elements (air, water etc.), substances released into the environment, measures (including policies and plans) that might affect the environment and the state of human health and safety. This applies to information in written, visual, aural, electronic or any other material form.
- 27.2 The policy and procedure for dealing with requests under EIR is the same as those laid down for the Freedom of Information Act, except for the following points:
- EIR requests do not have to be made in writing; they can be made via the phone or in person. Where they are received in such a manner, they will be formally documented and then processed in the same way as a request made under the Freedom of Information Act;

- requests under EIR can be charged for at any time, provided the cost is reasonable. EIR requests cannot be refused on cost grounds alone. To date virtually no EIR requests have been received, so the CCG policy is not to charge. This can be reviewed if required at any time;
- the time limit for the provision of a response is 20 working days; however, it can be extended by a 20 further days if the EIR request is complex and large;
- there are some differences in the 'exceptions' under EIR, when compared to the 'exemptions' in the Freedom of Information Act. They are not listed here, but are centrally available for consideration if the need arises.

27.3 As a request under EIR can be made orally, via telephone or during a meeting, it is possible that any member of staff may be the recipient of a request. If appropriate, the individual making the request should be directed to the FOI Lead for assistance with their request. This will not always be possible, so the staff member should take adequate steps to date and record the request and contact details of the individual, and forward these onto the FOI Lead. It is important that the date is recorded as the 20 working day time limit starts at the point the request is received.

## **28. TRAINING**

28.1 All staff will be made aware of their responsibilities for dealing with requests under the Act/EIR via Information Governance Training.

28.2 All staff attending the CCG Induction training receive basic guidance on the Act/EIR as part of the Information Governance session.

28.3 Information Governance Training is mandatory for all staff regardless of designation.

## **29. CONSULTATION**

29.1 This policy is a legislative requirement and no consultation is required.

## **30. RECOMMENDATION AND APPROVAL PROCESS**

30.1 Refer to Section C – Document Details at the front of this policy.

## **31. COMMUNICATION/DISSEMINATION**

31.1 Refer to Section C – Document Details at the front of this policy.

## **32. IMPLEMENTATION**

32.1 This policy does not require any new aspects to be implemented.

32.2 This policy will be made available to staff through the intranet as detailed in the CCG's policy for the management of procedural documents.

### **33. MONITORING COMPLIANCE AND EFFECTIVENESS OF THE DOCUMENT**

33.1 The Information Governance Group (IGG) takes overall responsibility for ensuring compliance with this policy and any procedures contained within this policy.

33.2 Details provided to the IGG include:

- number of requests received;
- number of requests closed within the required 20 day time frame;
- number of requests not completed in the required 20 day timescale with reasons why;
- number of Internal Reviews received and the outcome;
- any communications from the Information Commissioner in relation to responses to requests outside of the 20 day time period.

33.3 Following each IGG meeting, a report summarising the issues discussed at the meeting is prepared and issued to the Governing Body, Audit and Quality Committee and the Directors Performance Group.

33.4 The criteria described in 33.2 also form part of the Key Performance Indicators for the Quality Directorate.

33.5 Compliance with this policy will also be measured against the criteria for the receiving and responding of requests as detailed in the Freedom of Information Act and guidance produced by the Information Commissioners Office.

### **34. DOCUMENT REVIEW FREQUENCY AND VERSION CONTROL**

34.1 This policy will be reviewed bi-annually, or earlier if appropriate, to take into account any changes to legislation that may occur, and/or guidance from the Information Commissioner.

## KEY SUPPORTING POLICIES AND PROCEDURES

<b>Policy/Procedure Name</b>	<b>Approval Details</b>
Information Governance Policy	IGG 16 December 2015
Data Protection Policy	IGG 15 March 2016
Confidentiality: Staff Code of Conduct Leaflet	IGG 10 October 2013 Reviewed 3 February 2015
IT Security Policy	IGG 15 March 2016
Procedure for the Management of Serious Incidents	Directors Performance Meeting 18 August 2015
Procedure for the Management of Adverse Incidents	Directors Performance Meeting 5 October 2015
Risk Management Framework	Directors Performance Meeting March 2015
Confidentiality: Patient Information Leaflet	IGG 22 October 2013

## KEY CONTACTS

<b>KEY CONTACTS Job Role</b>	<b>Job Title and Name</b>	<b>Contact Number</b>
<b>Information Governance Team</b> Head of Information Governance and Customer Care (Data Protection Officer, CCG Records Manager, CCG Freedom of Information Lead)	Joyce Green	01305 361252
Information Governance and Customer Care Manager	Helen Williams	01202 541439
Information Governance Officer	Donna Adams	01305 368023
Information Governance and Customer Care Officer	Sandra Legg	01305 368941
Customer Care Officer	Judy Franek	01305 368914 / 8926
<b>Freedom of Information Team</b>	Joyce Green	01305 361252
	Donna Adams	01305 368023
	Sandra Legg	01305 368941
<b>Caldicott Guardian</b> Director of Quality	Sally Shead	01305 368070
<b>Senior Information Risk Owner</b> Governing Body Secretary	Conrad Lakeman	01305 361221
<b>Information Risk Lead</b> Patient Safety and Risk Manager	Susie Hawkins	01305 368049
<b>Information Security Manager</b> IM&T Infrastructure Manager	Duncan Pike	01305 368081

## EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:

Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

With the exception of s21 (information available by other means) exemptions apply both to the communication of information AND the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The **absolute** exemptions under the FOI Act are:-

Section 21: Information accessible to applicant by other means

Section 23: Information supplied by, or relating to, bodies dealing with security matters.

Section 32: Court Records

Section 34: Parliamentary Privilege

Section 36: Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)

Section 40: Personal Information (where disclosure may contravene the Data Protection Act 1998)

Section 41: Information provided in confidence

Section 44: Prohibitions on disclosure

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

Section 22: Information intended for future publication

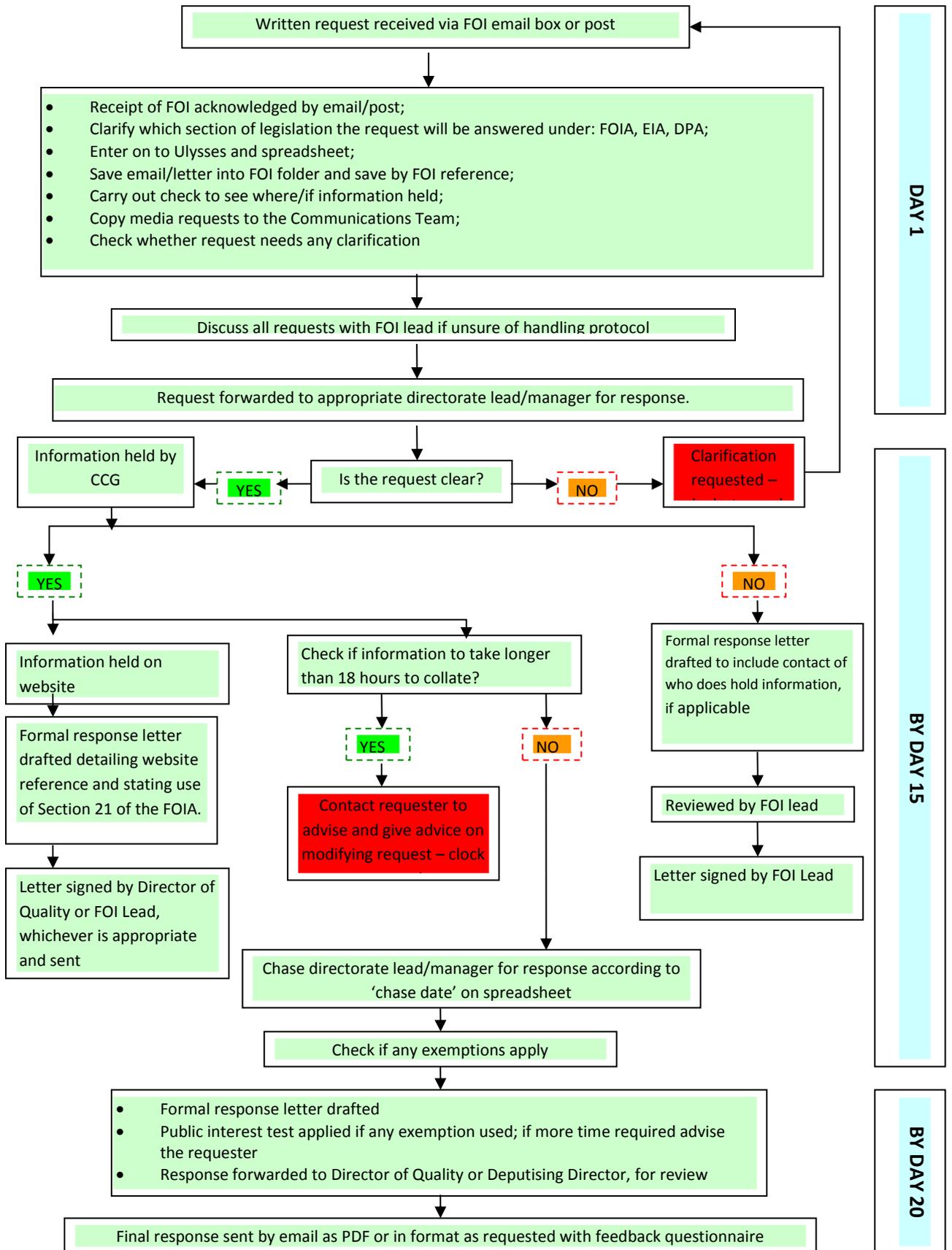
Section 24: National Security

Section 26: Defence

Section 27: International Relations

- Section 28: Relations within the United Kingdom
- Section 29: The Economy
- Section 30: Investigations and proceedings conducted by public authorities
- Section 31: Law Enforcement
- Section 33: Audit Functions
- Section 35: Formulation of Government Policy
- Section 36: Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37: Communications with Her Majesty, etc. and honours
- Section 38: Health and Safety
- Section 39: Environmental Information
- Section 42: Legal Professional Privilege
- Section 43: Commercial Interests

Procedure for Dealing with FOI/EIR Requests



**PROCEDURE ON RECEIVING A REQUEST FOR AN INTERNAL REVIEW**

<b>Step</b>	<b>Action</b>
1.	If complaint cannot be handled on an informal basis then request for internal review to be acknowledged within five working days along with details of internal review procedure.
2.	Independent panel to be assigned to conduct internal review and relevant papers forwarded to them
3.	Outcome of internal review to be discussed and agreed with the Director of Quality
4.	If outcome is to reverse the decision then information to be sent to the applicant as soon as possible
5.	If outcome is to uphold the decision then the applicant to be informed of their right to appeal to the Information Commissioner's Office
6.	Outcome of internal review to be recorded
7.	If procedures have not been correctly followed, the CCG should apologise to the applicant and take appropriate steps to prevent a recurrence. Apology to be from the Director of Quality.