



Freedom of Information Policy

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TARGET AUDIENCE: ALL STAFF

This policy must be read in conjunction with the following policies:

Complaints Policy
Confidentiality Code of Conduct
Disciplinary Policy
Individual Rights policy
Records Management and Information Lifecycle Policy



Version Control

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Relevant to:	All Staff (including temporary staff, contractors and seconded staff).	
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1. STAFF QUICK REFERENCE GUIDE.

- 1.1. The Sussex Clinical Commissioning Groups comprise the following seven CCGs:
- Brighton and Hove CCG
 - Coastal West Sussex CCG
 - Crawley CCG
 - Eastbourne, Hailsham and Seaford CCG
 - Hastings and Rother CCG
 - High Weald Lewes Havens CCG
 - Horsham and Mid Sussex CCG
- 1.2. The seven CCGs that make up the Sussex Clinical Commissioning Groups have historically used different Freedom of Information (FOI) policies. Accordingly, this policy has been created in order to ensure a consistent approach, and will be applied uniformly across the CCGs.
- 1.3. All the Sussex CCGs have appropriate arrangements in place to enable information sharing between the CCGs during the processing of FOI requests.
- 1.4. The [Freedom of Information Act 2000](#) (FOIA) aims to help ensure that organisations are open and transparent about what they do. It gives anyone the right to make a written request to the CCGs for recorded information that it holds. The CCGs have to release the information it holds in the scope of the request within **20** working days, unless a relevant exemption applies. (See [Appendix 3](#)).
- 1.5. **What is a FOIA request?**
A valid FOIA request:
- Is a request for **recorded** information, with a description of the information being sought. For example - a copy of a report on a particular subject or e-mails relating to a particular decision. The request may be for information held electronically, within paper documents, sound and video recordings, e-mail, handwritten notes and information that may be in storage.
 - Is **received in writing**, including via e-mail to an individual staff member or received through the CCGs' website / CCGs' social media platforms (reasonable adjustments should be made in line with the [Disability Discrimination Act 1995](#) for those unable to submit a request in writing).
 - Can be from anyone, but needs a **name** and return **contact address** (which can be an e-mail address).
- 1.6. The requestor does not need to specify that the request is being made under the terms of the FOIA or specify a reason for making the request. It is up to us, as a public authority, to identify which enquiries are FOIA requests and which are other types of correspondence, in line with the legislation.



- 1.7. If in doubt, please forward the correspondence to the FOI team or speak to a member of the Governance team.
- 1.8. **What do I do if I receive a FOIA request?**
All FOIA requests must be forwarded immediately (and within a maximum of **one** working day) to the FOI team. This is required because the statutory countdown of 20 working days for complying with a request starts from the day it is received anywhere in the organisation, including by an individual member of staff (which is why e-mail auto responses with the FOIA e-mail address are vital).
- 1.9. **What must I do if the FOI team asks me to provide information for a FOIA request?**
- i. If the request is not for you to deal with, advise the FOI team straight away and provide an alternative contact where possible.
 - ii. Ensure that you **understand the scope** of the request. If you are not sure, ask the FOI team to contact the requestor for clarification. **Stick to the scope** of the request when providing information to the FOI team. The FOIA covers **information, not documents** – so this may require you to extract the relevant information for a request from a larger document.
 - iii. **Estimate the time** it will take for you to locate, retrieve and extract the relevant information. If this is going to take you several hours, let the FOI team know (there is a cost limit under the FOIA and the FOI team will be able to advise further).
 - iv. Within a maximum of **10 working days** you must **carry out a search** for the information in the scope of the request and either **provide the information to the FOI team** or **confirm that the information is not held by the CCG** (and advise, if possible, where the information may be held – e.g. by an acute trust). Please include a short summary of the search carried out when returning information to the FOI team.
 - v. Make the FOI team aware of any relevant factors regarding **disclosure** of the information into the public domain; for example if the information is already available elsewhere (such as on the CCG website) or is due to be published.
 - vi. Highlight to the FOI team where there is any personal data within the requested information (where you can identify individuals, including staff) which may need to be removed / redacted or where there are particular commercial sensitivities in which case it may be subject to an exemption under the FOIA (see [Appendix 3](#)). **You must highlight any reason that you feel the information should not be placed in the public domain at this time.**



- vii. Ensure that the appropriate senior manager is aware of the request and has **signed off** any information intended for disclosure into the public domain, or any FOIA response the FOI team has asked the CCG to review.
- viii. **Keep a record** of your response to the FOI team (for an audit trail and in case the requestor asks for a review of the decision taken).

1.10. Other points to note:

- Take care with spread sheets and make sure that only the intended worksheet and data are included in the FOI response.
- Ensure that any acronyms in the requested information are explained to the FOI team, so that this information can be included in the reply to the requestor.

1.11. Don't miss your deadline! If you are going on leave or will be away from the office for a few days, you must arrange for someone else to pick this up for you and make sure that "out of office" e-mail messages always include the following text: *"If you are requesting information under the Freedom of Information Act (2000), please redirect your request to [insert FOI address here] for action"*.

1.12. **For more detailed information about FOIA, contact the FOI team or Governance leads.**

1.13. For staff information and full contact details see the staff Intranet.

2. INTRODUCTION.

- 2.1. This FOI Policy is a statement of what the CCGs intend to do to ensure compliance with the [Freedom of Information Act 2000 \(FOIA\)](#).
- 2.2. The FOIA provides individuals or organisations with the right to request recorded information held by a public authority. In addition, there are also regulations, which provide access to environmental information; these are the [Environmental Information Regulations 2004](#) (EIR).
- 2.3. The FOIA supplements and complements [data protection legislation](#). This gives individuals access to their personal information held by organisations.
- 2.4. For further information about access to personal or health records please see the Individual Rights Policy, which covers Subject Access Requests, available on the Staff Intranet.



- 2.5. The FOIA gives access to all other information and therefore has a wider remit than data protection legislation. However, together these pieces of legislation along with the EIR will enable public access to most records held by the CCGs.
- 2.6. As public bodies, the CCGs have obligations under the FOIA. This policy is not a statement of how compliance will be achieved. That will be a matter for operational procedures.
- 2.7. All the Sussex CCGs have appropriate arrangements in place to enable information sharing between the CCGs during the processing of FOI requests.
- 2.8. The CCGs will follow the [Public Interest Test](#) as outlined in the FOI Act where the CCG has an obligation to communicate information on request, unless the public interest in maintaining an exemption to disclosure outweighs the public interest in the disclosure of the information. The Information Commissioner's Office has more information and [guidelines](#) on this.

2.9. Policy statement:

“The CCGs have made a commitment to both patients and staff to be as open and transparent as possible in the way that it works. This is a commitment which is supported by the Freedom of Information Act (2000). This is an Act of Parliament which gives people more rights to access information held by public authorities. The CCGs and their agents (the relevant Commissioning Support Unit) who process FOI requests on behalf of the CCGs will use all appropriate and necessary means to ensure that it complies with the FOIA and the associated Codes of Practice.”

3. SCOPE AND OBJECTIVES.

- 3.1. The CCGs' FOI Policy is structured to ensure that staff are aware of their responsibilities, roles and accountability in regards to the FOIA, and outlines the duty to comply with guidance issued by the [Department of Health](#), advisory groups to the NHS and professional bodies.
- 3.2. This Freedom of Information Policy will apply to all those members of staff who are directly employed by the CCGs and for whom the CCGs have legal responsibility. For those staff covered by a letter of authority / honorary contract, contract for services or work experience the organisation's policies are also applicable whilst undertaking duties for or on behalf of the CCGs. Further, this policy applies to all third parties and others authorised to undertake work on behalf of the CCGs.
- 3.3. This policy provides a framework within which the CCGs will ensure compliance with the requirements of the FOIA. The policy will underpin any operational procedures and activities connected with the implementation of the FOIA.



3.4. The aim of this policy is to:

- Ensure all FOI requests 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.
- Provide clear routes for members of the public to make contact with the organisation so that they can request information appropriately.
- Ensure that the CCGs' Publication Schemes is up to date in order to provide access to information and to lessen the number of written requests the public have to make.
- Ensure that the necessary internal structures are in place for the FOIA to be complied with.
- Ensure staff at all levels are aware of their responsibilities with regards to the FOIA.
- Ensure timescales are met.
- Ensure the Executive Team of the CCGs are fully informed on the operation of the FOIA and its implications for the organisation.

3.5. The FOIA applies to **all recorded information** held by the CCGs.

4. PURPOSE.

This Freedom of Information Policy details how staff will meet the CCGs' legal obligations and NHS requirements concerning confidentiality and information security standards whilst meeting the requirements of the [Freedom of Information Act 2000](#).

5. RESPONSIBILITIES.

5.1. General responsibilities of all staff and members of the Governing Body:

- 5.1.1. All **staff** and Governing Body members (clinical and lay) are obliged to adhere to this policy. Failure to adhere to this policy and its associated procedures may result in disciplinary action.
- 5.1.2. **Managers** at all levels are responsible for ensuring that the staff for whom they are responsible are aware of, and adhere to, this policy. They are also responsible for ensuring that staff are updated regarding any changes to this policy.
- 5.1.3. The **governance leads** in the CCGs will oversee the implementation of this policy and will oversee the systems and procedures that support the implementation of this policy.



5.2. Specific responsibilities of all staff and members of the Governing Body:

- 5.2.1. The CCGs makes information available to stakeholders through staff on a regular basis (e.g. patient information leaflets) as part of “business as usual”. Staff will respond to requests for such information in a timely manner and in any case in less than **20 working days**. Such routine requests may be dealt with by individual staff members and do not have to be recorded.
- 5.2.2. Where requests for information are for recorded information and not part of the business as usual process – for example are more complex, or the member of staff does not know how to access the information being requested, and the request has been made in writing, the original request must be passed on to the FOI Team within **one working day**. If the request is received verbally, the applicant’s name, contact number and the date and details of the request must be passed on to the FOI Team within one working day for them to take the next steps.
- 5.2.3. Upon receipt of a request for information from the FOI Team, CCG staff will provide the information requested within a maximum of **10 working days** along with any relevant information regarding the sensitivity or confidentiality of the information being provided. Where, in exceptional circumstances, staff are unable to meet this deadline, they will inform the FOI Officer as soon as possible within the 10 working days.
- 5.2.4. Complaints about the discharge of the duties of the CCGs in regard to the FOIA, verbal or written, would be referred to the Complaints Manager who will liaise with the FOI Team. More information is available in Appendix 2, [section 13 Complaints Procedure](#).

5.3. Training.

The CCGs will provide introductory and mandatory instruction, as part of Information Governance training, to all staff for the awareness and handling of information requests.

5.4. Reporting.

The FOI team is responsible for compiling a quarterly report which will be submitted to the governance leads who will compile a report for the Strategic Information Governance Group and the Audit Committees. Information relating to FOI complaints will be summarised within the complaints report.

6. MONITORING AND REVIEW.

- 6.1. Monitoring arrangements for compliance and effectiveness of this procedure will be via regular review of any changes to the Freedom of Information Act or upon advice from the [Information Commissioner’s Office](#) and through annual review at the



CCGs' Strategic Information Governance Group. Monitoring of the effectiveness of the policy will be via the CCGs' Audit Committees.

- 6.2. An Equality and Health Inequality Impact Assessment (EHIA) has been carried out on this policy. As a result, there is no anticipated detrimental impact on any equality group.

7. COMPLIANCE.

This Policy complies with associated guidance and legislation:

- [Data protection legislation](#).
- [Freedom of Information Act 2000](#).
- [Human Rights Act 1998](#).
- [Environmental Information Regulations 2004](#) (EIR).

8. EQUALITY.

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

9. REFERENCES.

- i. Copyright Designs and Patents Act 1988. www.legislation.gov.uk/ukpga/1988/48/contents
- ii. Data protection legislation. www.gov.uk/data-protection
- iii. Department of Health. www.gov.uk/government/organisations/department-of-health
- iv. Department of Health. FOI information. www.gov.uk/search?q=foi&show_organisations_filter=true&filter_organisations%5B%5D=department-of-health
- v. Disability Discrimination Act 1995. www.legislation.gov.uk/ukpga/1995/50/contents



- vi. Environmental Information Regulations 2004.
www.legislation.gov.uk/uksi/2004/3391/contents
ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/
- vii. Freedom of Information Act 2000. www.legislation.gov.uk/ukpga/2000/36/contents
ico.org.uk/about-the-ico/what-we-do/legislation-we-cover/freedom-of-information-act/
- viii. Human Rights Act 1998. www.legislation.gov.uk/ukpga/1998/42/contents
- ix. Information Commissioner's Office. ico.org.uk/
 - a) Complaints and Concerns. ico.org.uk/concerns/
 - b) Guide to Freedom of Information.
ico.org.uk/for-organisations/guide-to-freedom-of-information/
 - c) Information Tribunal. www.gov.uk/search?q=general+regulatory+chamber
 - d) Information on Fees Regulation.
ico.org.uk/about-the-ico/what-we-do/legislation-we-cover/freedom-of-information-act/
ico.org.uk/media/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf
 - e) Model publication Scheme.
ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/
ico.org.uk/media/for-organisations/documents/1153/model-publication-scheme.pdf
 - f) Public Interest Test.
ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf
- x. Intellectual Property Office.
www.gov.uk/government/organisations/intellectual-property-office
- xi. Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000.
www.nationalarchives.gov.uk/information-management/legislation/section-46/
www.nationalarchives.gov.uk/information-management/manage-information/planning/records-management-code/
- xii. Ministry of Justice. FOI information.
www.gov.uk/search?q=ministry+of+justice+foi&show_organisations_filter=true&filter_organisations%5B%5D=ministry-of-justice
- xiii. Ministry of Justice Guidance 2013. Secretary of State's Code of Practice (datasets) on the discharge of public authorities' functions under Part 1 of the FOI Act.
www.gov.uk/government/publications/secretary-of-states-code-of-practice-datasets-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act



- xiv. NHS model publication scheme. www.england.nhs.uk/contact-us/pub-scheme/
- xv. Primary Care Support Services. pcse.england.nhs.uk/
- xvi. Records Management Code of Practice for Health and Social Care 2016. digital.nhs.uk/article/1202/Records-Management-Code-of-Practice-for-Health-and-Social-Care-2016
- xvii. Reuse of Public Sector Information Regulations 2015. www.legislation.gov.uk/uksi/2015/1415/contents/made



Appendix 1: Background to the FOI Act.

1. The [Freedom of Information Act 2000](#) (FOIA) is a commitment to greater openness in the public sector and this is supported by the CCGs. The FOIA enables members of the public to question the decisions of public authorities more closely and thereby ensure that the services we provide are efficiently and properly delivered. The FOIA replaces the non-statutory Code of Practice on Openness in the NHS.
2. The main features of the FOIA are:
 - A general right of access to recorded information held by public authorities, subject to certain conditions and exemptions.
 - Public interest test - in cases where information is exempt from disclosure, except where an absolute exemption applies, a duty on public authorities to:
 - Inform the applicant whether they hold the information requested, **and**
 - Communicate the information to them, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.
 - A duty on every public authority to adopt and maintain a Publication Scheme.
 - An office of [Information Commissioner](#) with wide powers to enforce the rights created by the FOIA and to promote good practice and a new [Information Tribunal](#).
 - A duty on the Lord Chancellor to promulgate [Codes of Practice](#) for guidance on specific issues.



Appendix 2: CCG FOI Process.

1. [The publication scheme.](#)
2. [General rights of access.](#)
3. [Duty to provide advice and assistance.](#)
4. [Handling requests which appear to be part of an organised campaign.](#)
5. [Dealing with politically sensitive requests.](#)
6. [Timeliness in dealing with information requests.](#)
7. [Charges and fees.](#)
8. [Transferring requests for information.](#)
9. [Consultation with third parties.](#)
10. [Public Sector contracts.](#)
11. [Accepting information in confidence from third parties.](#)
12. [Exempt information, refusal of requests and public interest tests \(PIT\).](#)
13. [Re-use and copyright.](#)
14. [Complaints procedure.](#)
15. [Records management.](#)
16. [Data protection and confidentiality.](#)
17. [Informing stakeholders of FOI requirements](#)

1. **The publication scheme.**

- 1.1. The CCGs have adopted the model publication schemes developed by the [NHS FOI Project Board and Team](#), or the [Information Commissioner's Office](#). This is permissible under [Section 20](#) of the [Freedom of Information Act](#) (FOIA) and ensures compliance with [Section 19](#) of the FOIA.
- 1.2. The CCGs' publication scheme details the information that the CCGs make routinely available to the general public. It details the format in which the information is held and whether there is a charge for its provision. The publication scheme is available on the CCGs' websites and in hard copy on request.
- 1.3. Some of the information listed in the CCGs' publication scheme is available to view on the CCGs' website. However, other publications must be requested from the CCGs. Request for information listed in the publication scheme may be received verbally or in writing. The CCGs have a procedure for processing applications arising from the publication scheme known as the Procedure for Processing FOI Requests.

2. **General rights of access.**

- 2.1. [Section 1](#) of the FOIA gives a general right of access from 1 January 2005 to recorded information held, subject to certain conditions and exemptions contained in the FOIA. Simply, any person making a request for information to the CCGs is entitled:



- (i) To be informed in writing whether the CCGs hold the information of the description specified in the request; this is referred to as the “duty to confirm or deny”.
- and**
- (ii) If the CCGs hold the information, to have that information communicated to them.

- 2.2. These provisions are fully retrospective in that if the CCGs hold the information, it must provide it, subject to certain conditions and exemptions (see [Appendix 3](#)).
 - 2.3. The CCGs will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.
 - 2.4. The FOIA only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.
 - 2.5. In accordance with [Section 8](#) of the FOIA, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describing the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.
 - 2.6. The CCGs will accept verbal requests in circumstances where the enquirer would have great difficulty in putting a request in writing specifically due to disability. On these occasions, the member of staff taking the call will note as many details as possible, which must include contact information.
 - 2.7. Requests for information specifically under the [Environmental Information Regulations \(EIR\) 2004](#) can be accepted verbally. It is recommended that enquirers are still advised to put their request in writing, as this will ensure there is no ambiguity about their request. Where they still wish to make a verbal request the member of staff taking the call will note as many details as possible, which must include contact information.
- 3. Duty to provide advice and assistance.**
- 3.1. Under [Section 17](#) of the FOIA, it is the duty of the CCG to provide advice and assistance to persons who have made, or wish to make, requests for information. The CCG will ensure that systems and procedures are in place to meet this duty.
 - 3.2. The systems and procedures will conform to the [Code of Practice](#) issued under [Section 45](#) of the FOIA.



- 4. Handling requests which appear to be part of an organised campaign.**
 - 4.1.** Where a number of requests made by different people appear to form part of an organised campaign, the CCGs may calculate the cost of complying with any of the requests as being the cost of complying with them all. If this cumulative cost is estimated to exceed the appropriate limit that is set in the [Fees Regulations](#), the CCGs are not required to comply with the requests.
 - 4.2.** In the situation described in 4.1 above, the CCGs will consider whether it is possible to publish the requested information on the CCGs' website and forward details of the website to each of the applicants within the appropriate cost limit.
- 5. Dealing with politically sensitive requests.**
 - 5.1.** If a request is identified that may be politically sensitive (e.g. a local Councillor or Member of Parliament is copied in, the request concerns an emotive local health policy) then the Communications team should be copied in, while ensuring that the requester needs to remain anonymous.
- 6. Timeliness in dealing with information requests.**
 - 6.1.** In line with [Section 10](#) of the FOIA, the CCGs will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and provides the information requested within 20 working days of receipt of a request. All staff and Governing Body members (clinical and lay) will be required to comply with the requirements of these procedures. See [Appendix 5](#) for an FOI process chart.
 - 6.2.** Where a fees notice is issued, calculating the 20-working day time limit for responses begins on the day that the request is first received. However, the working days between the fees notice being received and the fee being paid will be disregarded for the purposes of calculating the 20th working day following receipt of the request.
 - 6.3.** If the CCGs choose to apply an exemption to any information, or choose to refuse a request because it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice will be issued within 20 working days informing the applicant of this decision.
 - 6.4.** If the CCGs need to apply the [public interest](#) test to a request for exempt information, it may not be possible to reach a decision relating to disclosure within the 20-working day time limit. In this situation, the CCGs will write to the applicant within 20 days of receipt of the request with a realistic estimate of when a decision will be reached.
- 7. Charges and fees.**
 - 7.1.** There will not generally be a charge for information that the CCGs have chosen to publish in its publication scheme. However, charges may be raised where multiple



page hard copies are requested, or information is to be copied onto other media (e.g. USB stick). These charges will be regularly reviewed.

- 7.2.** The CCGs will follow the [Fees Regulations](#) for general rights of access under the FOIA. These will set an appropriate limit on costs of compliance, the method for calculating appropriate fees and the circumstances in which a fee should be levied.
- 7.3.** In all cases where the CCGs choose to charge for information published through the publication scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by [Section 9](#) of the FOIA. Applicants will be required to pay any fees within a period of **three months**, beginning with the day on which the fees notice is given to them.
- 8. Transferring requests for information.**
- 8.1.** A request for information may be transferred where the CCGs receive a request for information which it does not hold, but which is held by another public authority. If a request is partly for information which the CCGs do hold, and partly for that which it does not, the transfer will only be made in respect of the part of the information it does not hold.
- 8.2.** The CCGs, or the FOI teams on their behalf, will offer advice and assistance to applicants in situations where some, or all, of the information requested is not held by the CCGs.
- 8.3.** The CCGs do not hold complete medical records and requests based on patient records should be directed back to the relevant service provider for a Subject Access Request.
- 9. Consultation with third parties.**
- 9.1.** Where information cannot be disclosed without affecting the legal rights of a third party (e.g. where information has been obtained from a third party and disclosure without their consent would constitute an actionable breach of confidence as set out in [Section 41](#) of the FOIA), the CCGs will make reasonable efforts to gain the consent of the third party to grant disclosure of the information.
- 9.2.** Where information requested is personal data as defined by [data protection legislation](#), the CCGs will refer to [Section 40](#) of the FOIA.
- 9.3.** Even where a third party's legal rights are not affected, the CCGs will undertake consultation with third parties where their views will assist the CCGs in assessing exemptions and the public interest.
- 9.4.** The CCGs will make reasonable efforts to contact third parties where necessary, but may consider that consulting the third party is not appropriate where the cost of consulting would be disproportionate.



- 9.5.** Where the interests of a number of third parties may be affected by a disclosure, the CCGs may consider that consultation with their representative organisation or a representative sample of the third parties in question is sufficient.
- 9.6.** In all cases, it is for the CCGs (not the third party) to determine whether information should be disclosed under the FOIA. Non-response or refusal to consent to disclosure by a third party does not, in themselves, provide sufficient reason for information to be withheld.
- 10. Public Sector contracts.**
- 10.1.** When entering into contracts, the CCGs use the [NHS terms and conditions for procuring goods and services](#) last updated in September 2018 to reflect changes in the [Public Contract Regulations](#). These terms and conditions have been drawn up with knowledge of the FOIA.
- 10.2.** Unless an exemption under the FOIA is applicable in relation to any particular information, the CCGs will be obliged to disclose that information in response to a request.
- 10.3.** The CCGs will not agree to hold information “in confidence” which is not, in fact, confidential in nature. Advice from the [Ministry of Justice](#) (formally the Lord Chancellor’s Department) indicates that the exemption provided for in [Section 41](#) of the FIOA only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the FIOA, would constitute a breach of confidence actionable by that, or any other person.
- 10.4.** If it becomes necessary for the CCGs to question whether information provided “in confidence” by a contractor should be disclosed in response to an information request, the CCGs will consult with the contractor in answering that question.
- 11. Accepting information in confidence from third parties.**
The CCGs will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of the CCGs’ functions, and it would not otherwise be provided. However, the CCGs will not agree to hold information in confidence if it is not confidential in nature.
- 12. Exempt information, refusal of requests and public interest tests (PIT).**
- 12.1.** The CCGs’ duty to confirm or deny does not arise where further information is required from the applicant to identify the information being requested and the applicant has been informed of this. However, in this situation, the CCGs will provide advice and assistance.



- 12.2.** The CCGs do not have to comply with information requests where the information requested is exempt under the provisions made in [Part II](#) of the FOIA, Sections 21 to 44. A full list of exemptions is provided in [Appendix 3](#) to this policy.
- 12.3.** Where required to do so by the FOIA, the CCGs will apply the [public interest test](#) to exempt information to determine whether the public interest in disclosing the information outweighs the public interest in maintaining its confidentiality. If this is found to be the case, the CCGs will disclose the information in question.
- 12.4.** The CCGs will not comply with a request for information when a fees notice has been issued to an applicant and the fee has not been paid within three months.
- 12.5.** The CCGs will not comply with a request for information if it estimates that the cost of compliance with the request would exceed the appropriate limit established in the [Fees Regulations](#).
- 12.6.** The CCGs will work with applicants to keep compliance costs to a minimum but reserves the right to either;
- Refuse to disclose the information;
 - or**
 - Charge whatever costs of disclosure are above the appropriate limit.
- 12.7.** Where charges are raised, the applicant will be issued with a fees notice.
- 12.8.** The CCGs are not obliged to comply with a request for information if the request is deemed vexatious or repeated as defined by the FOIA. The CCGs will log all requests for information for monitoring purposes so will be able to identify repeated or vexatious requests.
- 12.9.** Where a request is refused, the CCGs will notify the applicant, within 20 working days of receiving the request, that this is the case and explain why the request is being refused. Similarly, where the public interest test (PIT) has been applied and the request is still being refused, the CCGs will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.
- 12.10.** If the CCGs need to apply the public interest test to a request for exempt information, it may not be possible to reach a decision relating to disclosure within the 20-day time limit. In this situation, the CCGs will write to the applicant within 20 days of receipt of the request with a realistic estimate of when a decision will be reached, keep to this estimate where at all possible and keep the applicant informed at all times.
- 12.11.** The CCGs will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.



- 12.12.** A further notice will not be issued where the CCGs have already issued a notice that a request is being refused because it is vexatious or repeated.
- 12.13.** Any notice issued by the CCGs to the effect that it is refusing to comply with a request for information will also inform the applicant of how to complain about the decision and of their right to apply to the [Information Commissioner](#). There will be an internal CCG review, carried out by the FOI Team in consultation with the Complaints Manager. More information is available in [section 13 Complaints Procedure](#) in this appendix.
- 12.14.** The CCGs will keep a record of all applications where some or all of the requested information is withheld.
- 12.15.** Where a document contains some information that is disclosable and some that is exempt it should still be released, with the exempt information carefully blocked out (redacted). Exempt information on hard copies must be scanned and concealed with redaction software. The relevant paragraphs must be deleted from the electronic versions with a note indicating the paragraph has been deleted and then saved as a new document. All blocked out information must be accompanied by an explanation under the terms of the FOIA (exemption / reason for redaction).
- 13. Re-use and copyright.**
- 13.1.** If there are concerns about information reaching a wider audience, without sufficient briefing relating to the circumstances surrounding the production of the data / document, or its context, then the FOI team may indicate that the information is being supplied only for the use of the initial enquirer, and cannot be re-used or reproduced in any format, or relayed on to other people, without consent.
- 13.2.** Information supplied under FOIA continues to be protected by the [Copyright, Designs and Patents Act \(CDPA\)](#) 1988. A copy of the below wording may be included whenever information is released under FOIA in line with advice from the FOI team:
- “Please note, that the supply of information in response to a FOI request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission. Similarly, information supplied can also be re-used for the purposes of news reporting. An exception to this is photographs.”
- 13.3.** For other forms of re-use, for example publishing the information, you would need the permission of the organisation or person who owns the copyright. In the case of information produced by government departments and agencies, you can re-use the information under the Open Government Licence. For information about this,



please see: www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm

- 13.4.** If, however, the copyright is identified as belonging to somebody else, you will need to apply for permission.
- 13.5.** For information about how to obtain permission from a third party, please go to [Intellectual Property Office's](#) website.
- 13.6.** Publishing the information or issuing copies may be subject to the provisions of the [Re-use of Public Sector Information Regulations 2015](#) and will require permission and may require a fee.
- 14. Complaints procedure.**
- 14.1.** The CCGs will outline the complaints procedure to be followed in the case of complaints relating to the way in which the CCGs have complied with its obligations under the FOIA in FOI responses. The complaints process for a FOIA request is known as an internal review. Any complaints about the discharge of the duties of the CCGs in regard to the FOIA, verbal or written, would be referred to the Complaints Manager who will liaise with the FOI Team.
- 14.2.** In review responses, the CCGs will highlight the applicant's right under [Section 50](#) of the FOIA, to apply to the [Information Commissioner's Office](#) if they remain dissatisfied with the conduct of the CCGs following attempts at local resolution of their complaint.
- 14.3.** Where the outcome of an internal review is that information should be disclosed which was previously withheld, the information in question will be disclosed as soon as possible and the applicant will be informed how soon this will be.
- 15. Records management.**
- 15.1.** The CCGs have separate Corporate Records Management Guidance and a Records Management Policy to ensure compliance with the [Records management code of practice for health and social care](#) under [Section 46](#) of the FOIA. Both CCG documents are available on the staff Intranet.
- 15.2.** The policy addresses issues of active records management (creating, keeping, maintenance and disposal) according to the requirements that the law places upon the CCGs. All staff are expected to comply with the CCGs' policy and procedures.
- 16. Data protection and confidentiality.**
- 16.1.** The CCGs have a separate Confidentiality Code of Conduct and Individual Rights Policy with supporting systems and procedures that ensure compliance with [data protection legislation](#). All CCG staff have a personal common law duty of



confidence to patients and to the CCGs and must comply with the CCGs' policy and procedures in this area.

16.2. Information covered by data protection legislation is generally exempt from disclosure under the FOIA. All staff are required to have a basic understanding of the types of information covered by data protection legislation.

17. Informing stakeholders of FOI requirements.

The CCGs will inform its staff of FOI responsibilities via normal communication media within the CCGs, including as part of staff induction and information cascade. In addition it is the responsibility of managers to ensure that their staff are aware of CCG policies and procedures.

Appendix 3: Information Exempt from Disclosure under [Freedom of Information Act](#).

There are a number of exemptions under the FOIA, some of which are absolute exemptions and others which are subject to a public interest test. The exemptions are:

Section 21	Information accessible to applicant by other means
Section 22	Information intended for future publication
Section 23	Information supplied by, or relating to, bodies dealing with security matters
Section 24	National security
Section 25	Certificates under ss. 23 and 24: supplementary provisions
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 32	Court records, etc.
Section 33	Audit functions
Section 34	Parliamentary privilege
Section 35	Formulation of government policy, etc.
Section 36	Prejudice to effective conduct of public affairs
Section 37	Communications with Her Majesty etc. and honours
Section 38	Health and safety
Section 39	Environmental information
Section 40	Personal information
Section 41	Information provided in confidence
Section 42	Legal professional privilege
Section 43	Commercial interests
Section 44	Prohibitions on disclosure

In addition there are several sections of the FOIA that are a bar to compliance, such as [Section 12](#) (where cost of compliance exceeds the appropriate limit) and [Section 14](#) (vexatious or repeated requests).

In October 2014 the Information Commissioner's Office consolidated existing exemption guidance into "the guide". This is for those who work for a public authority and have day-to-day responsibility for freedom of information. It explains how to apply the FOIA by giving practical examples and answering frequently asked questions and is available via: ico.org.uk/for-organisations/guide-to-freedom-of-information/

[Pdf version](#) of the guide



Appendix 4: Standard Text for Contractors re the Freedom of Information Act.

The following statement is standard text which can be used to inform contractors of the CCGs' responsibilities under the FOIA:

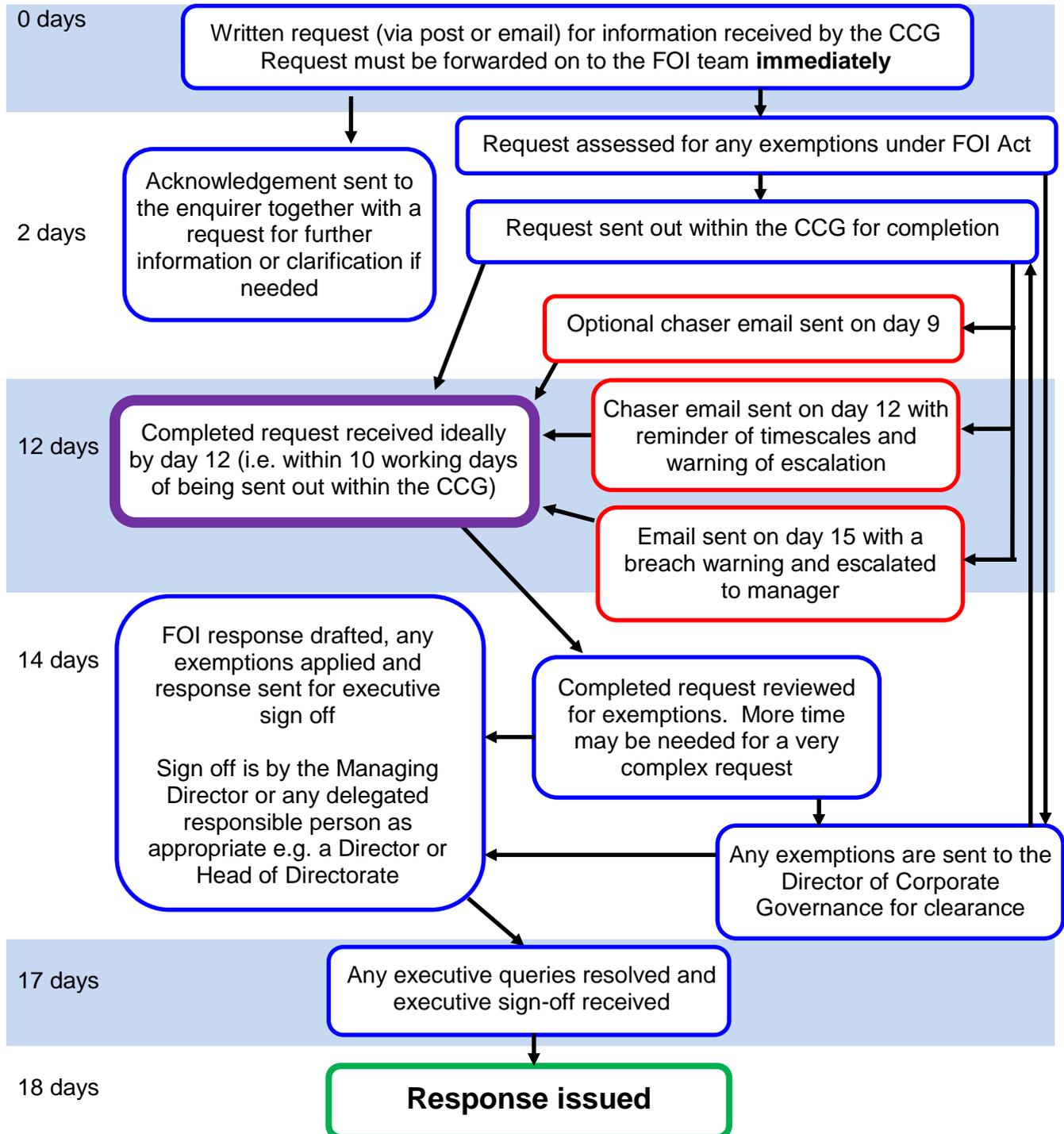
The CCG is committed to openness and transparency and this commitment is supported by the Freedom of Information Act. Under the FOIA, any recorded information held by the CCG, unless legally exempt, may be subject to public disclosure. This includes information provided by contractors, or information contained within contract documentation.

Where information is genuinely exempt from disclosure under the FOIA, and this is capable of being justified to the Information Commissioner, the CCG will keep this information confidential. However, the CCGs will not agree to hold information "in confidence" if it is not, in fact, confidential in nature.



Appendix 5: Flow chart of FOI process.

Please note: these are maximum time frames and the FOI process may be completed well before the deadlines set out below.





Appendix 6: Template letter response

Reference:

Dear

Thank you for your request for information which we received on ***** regarding documents and services relating to *****

Under section 1 (1) (a) and (b) of the Freedom of Information Act 2000, I can confirm that the CCG does hold some of/the information requested. Please find attached the response to your request, which is sent on behalf of the following Clinical Commissioning Group (CCG).

- **NHS **** CCG**

Your request for information has been dealt with in accordance with the Freedom of Information Act 2000 and we hope that you find this response helpful.

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can also be used in the UK without requiring permission for the purposes of news reporting. Any other reuse, for example, commercial publication, would require the permission of the copyright holder.

Or (delete as appropriate)

Under section 1 (1) (a) of the Freedom of Information Act 2000, I can confirm that the below CCG does not hold the information requested. Please see the table attached where you will be signposted as to where this information may be held.

- **NHS **** CCG**

Complaints

Section 17 (7) (a) of the Freedom of Information Act 2000 states that public authorities must provide applicants with details of how they may complain about the handling of their request for information should they wish to. If you are not satisfied with the way in which we have dealt with your request for information, then in accordance with the Act you may ask us to conduct a review. Internal review requests should be submitted within two months of the date of receipt of the response to your original e-mail and should be addressed to:

Freedom of Information Reviews
Freedom of Information Manager

Email: *****



If you are not content with the outcome of the internal review, you are entitled under Section 17 (7) (b) of the Act to apply to the Information Commissioner for a decision notice. Generally, the Information Commissioner's Office cannot make a decision unless you have already exhausted ***** internal review procedure. The Information Commissioner can be contacted at:

FOI Complaints Resolution
The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire, SK9 5AF

Freedom of Information Act

Further information about the Freedom of Information Act can be sourced on the Information Commissioner's website: www.ico.gov.uk/.

Queries

If you have any queries about this e-mail, please contact me. Please remember to quote the reference number above in any future communications.

Disclosure Log

In line with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response, which will protect your anonymity, will be posted on the CCG website.

Yours sincerely,
Name

****Full Name** | **Job Title****
****Organisation****

****Organisation Website****

****Organisation Logo****

Please be aware that all e-mails received and sent by this organisation are subject to the Freedom of Information Act (2000) and may be disclosed to a third party. If you believe you have been sent this message in error, please inform the sender and delete the message and any attachments as soon as possible. All messages sent by this organisation are checked for viruses but this does not, and cannot, guarantee that a virus has not been transmitted.