

Freedom of information act and environmental information regulations policy

Key information

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1. Introduction

This document sets out the freedom of information act (FOI) and environmental information regulations (EIR) policy for NHS Bradford District and Craven Clinical Commissioning Group (hereafter known as the CCG).

1.1. The freedom of information act (2000)

The freedom of information act 2000 was introduced to provide public access to information held by public authorities, thus ensuring greater transparency and openness from public sector organisations.

Under the FOI act public authorities are obliged to publish certain information about their activities; and members of the public are entitled to request information from public authorities.

The main features of the FOI act are:

- a duty on every public authority to adopt and maintain a publication scheme
- a general right of access to all recorded information held by the CCG (subject to exemptions set out in the FOI act)
- the creation of the information commissioner's office to oversee the implementation of and compliance with the FOI act along with all associated legislation and regulations
- 20 working day deadline to respond to a request for information
- there are 24 exemptions (absolute and qualified) within the FOI act which could mean (if any are applicable) that certain information is not released (in response to a request) or is not published.
- arrangements in respect of costs and fees.
- arrangements for enforcement and appeal.
- duty to provide advice and assistance to people who wish to make, or have made requests for information.

1.2. Environmental information regulations (2004)

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

This policy reflects the CCG's support of the principle that openness should be the norm in public life. The organisation believes that individuals have a right to privacy and confidentiality, and this policy does not overturn the common law duty of confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information will be dealt with under the provisions of the FOI act and data protection legislation. The CCG must be able to carry out its duties effectively and to ensure that the exemptions and exceptions outlined in the FOI act and EIR regulations respectively will be applied appropriately.

These two pieces of legislation place an obligation on public authorities (such as the CCG) to make available to anyone, anywhere in the world, information that is held by those public authorities. Access to information can be made by individuals or organisations requesting

specific information or by accessing information made available by the public authority through the publication scheme, which is a specific part of the organisational website.

The policy supports the principle that openness and not secrecy should be the norm in public life. A climate of openness and dialogue with all stakeholders and improved access to information about the CCG will facilitate the development of such an environment.

Individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the general data protection regulation (data protection act 2018).

2. Scope of the policy

- 2.1 This policy must be followed by all staff who work for or on behalf of the CCG including those on temporary or honorary contracts, secondments, volunteers, pool staff, board members and students. The policy is applicable to all areas of the organisation and adherence should be included in all contracts for outsourced or shared services. There are no exclusions.
- 2.2 This policy covers all aspects of recorded information within the organisation, including (but not limited to):
 - patient / client / service user information of a general, non-personal nature
 - certain types of personnel / staff information, especially where this concerns senior executives and governing body members
 - organisational and business sensitive information
 - structured and unstructured record systems - paper and electronic
 - photographic images, digital, text or video/audio recordings including CCTV
 - all information systems purchased, developed and managed by or on behalf of, the organisation
 - CCG information held on paper, floppy disc, CD, USB / memory sticks, computers, laptops, tablets, mobile phones and cameras
 - all information held by the CCG, including documents that have been supplied by other organisations
 - all documents created in the course of staff duties (even personal e-mails and potentially including information held on private equipment) will fall within the scope of the data protection act 2018, GDPR, and may fall within the scope of the FOI act or the EIR
- 2.3. Information management within an independent contractor's premises is the responsibility of the owner / partners. However, the CCG is committed to supporting independent contractors in their management of information risk and will provide advice, share best practice and provide assistance when appropriate.
- 2.4. The CCG recognise the changes introduced to publication schemes as a result of the protection of freedoms act 2012 and will work with partners under national guidelines to develop and improve the organisation's publication scheme and website.
- 2.5. Failure to adhere to this policy may result in disciplinary action and/or referral to the appropriate regulatory bodies including the police and professional bodies.

3. Associated documentation

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

This policy should be read in conjunction with:

- FOI and EIR procedures
- access to records and subject access request procedure
- information governance framework
- confidentiality and data protection policy
- records management policy
- integrated risk management framework
- incident reporting policy
- incident management, investigation and reporting procedure
- business continuity plan
- disciplinary policy and procedure
- whistleblowing (raising concerns) policy
- counter-fraud, bribery and corruption policy

4. Key legislation and guidance

4.1. Legal references

All NHS records are public records under the public records act 1958. This provides statutory obligations upon the CCG. The organisation will take actions as necessary to comply with all its legal and professional obligations. The key legislation is listed below but is not limited to this list.

- data protection act 2018
- access to health records act 1990
- freedom of information act 2000
- environmental information regulations 2004
- re-use of public sector information regulations 2015
- freedom of information and data protection (appropriate limit and fees) regulations 2004
- human rights act 1998
- protection of freedoms act 2012
- public records act 1958
- copyright, designs and patents act 1988 (as amended by the copyright (computer programs) regulations 1992)
- records management code of practice 2021
- health and social care act 2012
- coroners and justice act 2009
- computer misuse act 1990
- common law duty of confidentiality
- crime and disorder act 1998

- the children acts 1989 and 2004
- electronic communications act 2000
- regulation of investigatory powers act 2000
- lawful business practice regulations 2000
- public interest disclosure act 1998
- NHS sexually transmitted disease regulations 2000
- human fertilisation and embryology act 1990
- abortion regulations 1991
- road traffic act 1988
- prevention of terrorism (temporary provisions) act 1989 and terrorism act 2000
- regulations under the health and safety at work act 1974
- equality act 2010
- enterprise and regulatory reform act 2013
- fraud act 2006
- bribery act 2010

4.2. Guidance and other references

General data protection regulation (data protection act 2018).
<https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

Freedom of information act 2000.
<https://www.legislation.gov.uk/ukpga/2000/36/contents>

Environmental information regulations 2004.
<https://www.legislation.gov.uk/uksi/2004/3391/contents/made>

Records management code of practice 2021.
<https://www.nhsx.nhs.uk/information-governance/guidance/records-management-code/>

Code of practice on the discharge of public authorities' functions under part I of the freedom of information act 2000, issued under section 45 of the act, November 2002.
<https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

Lord chancellor's code of practice on the management of records issued under section 46 of the freedom of information act 2000, November 2002.
<https://www.nationalarchives.gov.uk/documents/foi-section-46-code-of-practice.pdf>

5. Aims and objectives

The aims of this policy are to:

- ensure that the CCG complies with all relevant regulations, laws and guidance
- ensure staff are aware of their responsibilities with regards to the FOI act and EIR regulations
- ensure all requests for information are dealt with consistently and receive a high quality response

6. Definitions / explanation of terms

'The act' refers to the freedom of information act 2000

'FOI' and **'FOIA'** are acronyms for the freedom of information act 2000

'DPA' is an acronym for the data protection act 1998

'EIR' is an acronym for environmental information regulations 2004

GDPR: refers to the general data protection regulation (EU) 2016/679, which came into force on 25th May 2018 and which replaced the data directive 95/46/EC.

'ICO' is an acronym for the information commissioner's office (supervisory authority for FOI, EIR and DPA.)

'Applicant' the individual(s), group or organisation requesting access to information under the act.

'Duty to confirm or deny' any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not

'General right of access' section 1 of the act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them.

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

'Qualified exemption' refers to information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure.

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

'Public interest test' is required for qualified exemptions and exceptions to determine whether the public interest is best served by disclosing or withholding the information in question.

'Publication scheme' concerns the CCG's legal requirement to compile and make available information it has in its possession and will routinely and proactively provide to the public; the CCG's publication scheme can be found on our websites or in hard copy on request.

'Round robins' circular (or round robin) requests, requests sent to more than one public authority at once are often called 'round robins'. Round robin requests will be dealt with in the same way as any other request.

7. Duties, accountabilities, roles and responsibilities

7.1. Duties within the organisation

7.1.1. Governing body

The governing body is accountable for ensuring that resources and systems are in place to support compliance with the FOI act and EIR and to receive by exception reports of any significant risks and gaps in compliance.

7.1.2 Audit and governance committee

The audit and governance committee has delegated authority from the governing body to approve the FOI and EIR policy and related procedures and to undertake detailed scrutiny of related performance.

7.1.2. Chief officer

The chief officer is the accountable officer for the CCG and has overall accountability and responsibility for all aspects of information governance, including the responsibility for ensuring the CCG has appropriate systems and policies in place to comply with the requirements of the FOI and EIR.

7.1.3. Senior information risk owner

The chief finance officer is the senior information risk owner (SIRO) has organisational responsibility for all aspects of risk associated with information governance, including those relating to FOI and EIR.

7.1.4. Information governance lead

The information governance lead for the CCG is the strategic head of assurance, supported by the corporate governance manager. The IG lead is responsible for ensuring effective management, accountability, compliance and assurance for all aspects of IG, FOI and EIR.

7.1.5. Information asset owners

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

7.1.6. Senior managers

The allocated senior manager for each FOI request is responsible for:

- ensuring the required information is returned to the FOI team within the specified deadline.
- reviewing the draft response letters prepared by the FOI team and approving these for issue.

7.1.7. Employees

All employees are responsible for:

- ensuring compliance with this policy
- seeking advice, assistance and training when required

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

7.1.8. Corporate governance team

The corporate governance team will be responsible for the processing, management and drafting of responses for all requests for information under FOI and EIR. Once draft responses have been approved by the senior manager of the area providing the information, they will be quality assured by a senior member of the corporate governance team prior to issue to the recipient. The team will also provide related information to the communications team for inclusion in the CCG's publication schemes.

7.2. Responsibilities for approval

7.2.1. Audit and governance committee

The audit & governance committee has delegated responsibility from the governing body for approving the FOI and EIR policy.

8. Policy and procedure details

8.1. Management of FOI/EIR Process

The day to day management of requests received by the CCG is the responsibility of the CCG's FOI team. The FOI team will agree procedures and timescales with colleagues to ensure that key link individuals at the CCG are identified to support those processes and to ensure timely responses are sent out.

8.2. Advice and assistance

FOI and EIR require the CCG to provide advice and assistance to applicants and would-be applicants. The organisation will do this, taking into account other statutory duties including, but not limited to, the disability discrimination act 1995 and the equality act 2010.

8.3. Publication scheme

The CCG is required to publish information it holds by setting up, maintaining and expanding a publication scheme. This publication scheme sets out categories of information that the CCG undertake to publish and is based on the ICO's model publication scheme. This model scheme was subject to amendment following the full implementation of provisions contained in the protection of freedoms act 2012.

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

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

8.3.1. Publication scheme information management

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

8.3.2. Classes of information

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

The current classes of information are:

- who we are and what we do
- what we spend and how we spend it
- what are our priorities and how are we doing
- how we make decisions
- our policies and procedures
- lists and registers
- the services we offer

Brief outlines of these classes are contained in the scheme.

8.4. General rights of access

The FOI act and EIR gives a general right of access to recorded information held by the CCG, subject to certain conditions and exemptions contained in the act. Any person making a request for information to the CCG is entitled:

(a) to be informed in writing whether the CCG holds the information of the description specified in the request, and

(b) if the CCG holds the information to have that information communicated to them. This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the CCG holds the information it must provide it, subject to the certain conditions and exemptions. All requests under the general rights of access will be centrally processed through the corporate governance team.

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

It is also important to make a distinction between requests for information and routine correspondence. Requests for information (such as recruitment brochures, press releases, leaflets) that can be provided without any need for the more formal and legal FOI and EIR

process should be treated as business as usual. Nonetheless the information should still be provided within 20 working days in order to comply with the spirit of both the FOI act and EIR.

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

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

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

FOI and EIR require that requests are responded to within 20 working days, unless extra time up to an extra 20 working days is required for a public interest test or unless a request is placed on hold awaiting clarification of the request or the payment of a fee is required.

The response will either communicate all of the requested information, or give reasons why some or all of that information has been withheld. If the CCG decide to make use of a exemption or exception to withhold information, the applicant will be informed within 20 working days, subject to the conditions mentioned above.

Personal data processed as a condition of this general right of access has a lawful basis under section 8 (c) of the DPA, which for the CCG as data controller is 'compliance with a legal obligation' according to article 6 (1) (c) of the GDPR.

As recommended in the cabinet office's code of practice issued under section 45 of the act, the CCG will set out details about how requests for information will be dealt with, and this will be available to the public. Whilst the organisation cannot ask the applicant the reason or purpose for a request, it can contact the applicant to obtain more detail about the information requested and narrow down what might otherwise be a vague or broad request.

8.5. Key points of procedure - processing a request

The full CCG procedures can be found on the CCG's freedom of information act 2000 and environmental information regulations act 2004 procedures.

The FOI team will be responsible for the processing, management and response drafting for all requests for information under FOI and EIR. The following processes will be carried out by the FOI team to a detailed standard and procedure.

8.5.1. Recording requests

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

- unique reference number
- initial date received by the CCG
- name of the applicant
- contact details of the applicant
- summary description of the information requested

- who the request has been referred to in order to source the information
- follow up action taken if necessary
- when the request must be processed by / 20 working day deadline
- decisions taken and details of any exemption used
- date completed and sent to the applicant

8.5.2. Acknowledgement

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

8.5.3. Advice and assistance

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

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

8.5.4. Accessing information

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

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

8.5.5. Difference between extracting or compiling existing information and creating new information

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

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

What amounts to a simple calculation depends on the level of skill and judgement required to carry out the task. If extracting the information relevant to the request requires a high level of skill and judgement, this would amount to creating new information not already held.

8.5.6. Providing the information

If no exemptions apply and there are no fees or charges to be levied the FOI team will draft a response letter for approval by the head of service and the head of corporate governance or corporate governance manager.

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

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

8.5.7. Refusing a request

A request for information may be refused if:

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

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

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

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

- the fact that the CCG is exempt from the duty to confirm or deny
- specify the exemption/exception in question

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

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

8.5.8. Re-use regulations

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

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

8.5.9. Copyright

Any information supplied under the FOI act and EIR continues to be protected by the copyright, designs and patents act 1988. A copy of the below wording must be included whenever information is released under FOI and EIR.

Any information we have provided in response to your request remains subject to copyright protection. The copyright may be owned by the above-named CCG, another CCG or health trust or a third party. You are free to use any information supplied for your own non-commercial research or private study purposes. However permission must be sought before any of the information provided can be used for commercial purposes. Permission will normally be granted providing that this CCG owns the copyright.

More information on these regulations can be found at;
<https://www.nationalarchives.gov.uk/documents/information-management/psi-implementation-guidance-public-sector-bodies.pdf>

Information explaining crown copyright can be found [here](https://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/crown-copyright/);
<https://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/crown-copyright/>

8.5.10. Transferring a request

Information you receive which is not subject to crown copyright continues to be protected by the copyright of the person, or organisation, from which the information originated. You must ensure that you gain their permission before reproducing any third party (non-crown copyright) information.”

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

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

Requests will be transferred within the CCG if the request is a data protection subject access request. A request must not be transferred outside the CCG without the applicant's consent.

8.5.11. Consultation with third parties

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

8.6. Personal information

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

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

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

If the person requesting the information is the subject of the information then the applicant should be redirected to the subject access provisions under the data protection act 1998 and the GDPR right of access procedure. If the personal data is about someone other than the applicant, there is an absolute exemption under FOI and EIR but the public authority must still consider whether disclosure would be in the public interest.

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

Whilst the data protection act and GDPR, only apply to living individuals, the personal data of deceased persons may be subject to a duty of confidentiality under common law which extends beyond death.

8.7. Conditions, exemptions and exceptions

8.7.1. Conditions

The CCG can postpone dealing with a request if:

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

8.7.2. Exemptions under FOI

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

An absolute exemption means that the CCG does not have a statutory duty to undertake a public interest test before applying these exemptions.

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

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

Appendix A contains details of the exemptions available under the FOI act.

8.7.3. Exceptions under EIR

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

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

8.7.4. Public Interest Test

The public interest must be considered in every case where a qualified exemption may apply. The information commissioner states that "In effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves

the interests of the public better to withhold or to disclose information.” The public interest will vary with each request and the exemption being considered. Factors to consider often include ensuring honesty, accountability, transparent decision making and the absence of bias. The CCG will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary (this may include colleagues and legal advice). The public interest does not include protecting an authority or individual from embarrassment.

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

8.8. Public sector contracts

When entering into contracts the CCG will limit the contractual terms which are intended to restrict the disclosure of information held by the CCG. The CCG cannot ‘contract out’ their obligations under the act. Unless an exemption provided for under the act is applicable in relation to any particular information; a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

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

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

8.9. Complaints

Initial complaints about the handling of a request for information will go to the CCG’s head of corporate governance or corporate governance manager who will follow a review procedure, see appendix D. When the applicant is informed of the outcome of this process, they must be given the details of the office of the information commissioner and informed of their right to take their complaint to that office.

8.10. Records management

Good records management is the key to complying with requests for information. The CCG has a records management policy and supporting guidelines which provide comprehensive guidance for the management of all records and are consistent with:

- a) The records management code of practice 2021
- b) The lord chancellor’s code of practice on the management of records under section 46 of the act (November 2002)

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

FOI and EIR requests and the responses also have to be retained for a certain length of time. Where the information was provided in full, or with redactions, these responses must be retained for 3 years which begins from the closure of the request. Where redactions have been made it is important to keep a copy of the redacted disclosed documents or if not practical to keep a summary of the redactions. In all cases, a log must be kept of requests and the responses sent.

Where there has been an appeal to an FOI and EIR, the retention period is 6 years which begins from the closure of the appeal process.

9. Dissemination, implementation and training

9.1. Training

9.1.1. Information governance including all rights of access will be a part of mandatory training through the data security protection and information governance handbook. The CCG has an information governance training strategy which will identify the information governance training needs of key staff groups taking into account role, responsibility and accountability levels and will review this regularly through the PDR processes.

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

- what they are recording and how it should be recorded
- why they are recording it
- how to validate information with the patient or carers or against other records – to ensure that staff are recording the correct data
- how to identify and correct errors – so that staff know how to correct errors and how to report errors if they find them
- the use of information – so staff understand what the records are used for (and therefore why timeliness, accuracy and completeness of recording is so important)
- how to update information and add in information from other sources
- the right of access available to the public and how to respond to any such requests however received
- the right to correct inaccurate information under section 2 (1) (b) and 186 (2) (a) of the DPA and the similar right to rectification under Article 16 of the GDPR
- the new GDPR rights incorporated into the DPA under Section 186 (2) (a) of that act which refer to the right to object to processing under articles 19 and 21 of the GDPR, the right to restrict processing under article 18, and the right to rectification under article 16. The rights to erasure (to be forgotten) under article 17 of the GDPR and to data portability under section 20 do not apply to personal data processed for FOIA purposes

Training will be provided to ensure relevant staff can effectively fulfil their responsibilities under this policy. An overview of the CCGs requirements under the freedom of information act is included within mandatory information governance training.

9.2. Implementation and dissemination

Upon ratification by the CCG, this policy will be disseminated to staff via the CCG's intranet, website and communication through in-house newsletters.

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

10. Review and monitoring

Performance indicators will include:

- numbers logged and missed deadlines
- requests logged by applicant type
- requests logged by main category
- refusal to release information.
- FOI internal review
- environmental information regulations (EIRs) – environmental requests

The performance against the indicators will be reported to the audit & governance committee as part of the information governance reports.

11. Public sector equality duty

[The Equality Act 2010, available on the GOV.UK website](#), includes a general legal duty to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and people who do not share it
- foster good relations between people who share a protected characteristic and people who do not share it

The protected characteristics are:

- age
- disability
- gender reassignment
- marriage or civil partnership (only in respect of eliminating discrimination)
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

All policies should include a statement that the CCG aims to design and implement services, policies and measures that meet the diverse needs of our service users, population and workforce, ensuring that no one is placed at a disadvantage over others.

In this statement also describe any elements of the policy which aim to reduce any inequalities experienced by any group(s) of people with any of the equality act protected characteristic(s).

Seek advice on this statement, if necessary, from the CCG equality and diversity lead.

12. Appendices

List appendices (as required) for the policy, ensuring these are referred to appropriately in the document and list these on the contents page.

Appendix A - Exemptions available under part ii of the Freedom of Information Act 2000

Appendix B - Environmental Information regulations exceptions

Appendix C - Summary of the FOI fee Regulations 2004

Appendix D - Freedom of Information and Environmental Information Regulations Review Process

Appendix A - Exemptions available under part ii of the Freedom of Information Act 2000

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

Absolute Exemptions

- Section 21 - Information reasonably accessible to applicant by other means – it may be reasonably accessible even if the applicant has to pay for it.
- Section 23 - Information supplied by, or relating to, bodies with security matters – this is aimed at the Security Services, Government Communications Headquarters and the National Criminal Intelligence Service.
- Section 32 - Court records – covers documents in the custody of a court or tribunal, created by a court or tribunal or served on or by a public authority for court or tribunal proceedings
- Section 34 – Information covered by Parliamentary privilege – to avoid infringing the privileges of either House of Parliament.
- Section 40 subsection 1 - Personal information where the applicant is the subject of the information the request must be dealt with in accordance with the Subject Access rights provided in the Data Protection Act 1998, and the GDPR Right of Access procedure.
- Section 40 subsection 2 - Where the applicant is not the subject of the information requested, then it is exempt if disclosure would breach the Data Protection Act and/or the GDPR.
- Section 41 - Information provided in confidence which has the necessary quality of confidence which if disclosed would be detrimental to the confider and would constitute a breach of confidence that could lead to action against the CCG which is likely to be successful.
- Section 44 - Prohibitions on disclosure, whereby information is exempt if its release is prohibited under any enactment, it is incompatible with Community obligations or would constitute contempt of court.

Qualified Exemptions

- Section 22 - Information intended for future publication – covers information held with a view to publication by the public authority or another person at some future date.
- Section 22a – Information obtained from a research project which is still under way and whose results will be published, but whose premature release would be prejudicial to the research programme or those involved in the research or the authority undertaking the research.
- Section 24 - National security – information can be exempt if it is required to safeguard national security.
- Section 26 – Information prejudicial to the defence of the realm – information can be exempt if its release would affect the defence of the British Isles, any British colony or the capability and effectiveness of the armed forces
- Section 27 – Prejudicial to international relations – information is exempt if its release would prejudice relations with another State, international organisation, international courts or the interests of the UK abroad.
- Section 28 – Prejudicial to relations within the United Kingdom – covers information that may prejudice relations between the national administrations within the UK

- Section 29 – Prejudicial to the economy – covers information that would prejudice the economic interest of the UK or of any administration in the UK
- Section 30 – Prejudicial to investigations and proceedings conducted by public authorities – covers information held for an investigation that the authority has a duty to conduct to decide if a person should be charged with or found guilty of an offence, relates to criminal proceedings that the authority has power to conduct or relates to civil proceedings brought by or on behalf of the authority.
- Section 31 - Prejudicial to law enforcement – information is exempt if its release would prejudice law enforcement. Subsection 1 in particular includes the prevention or detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons. This subsection can also be applied to protect information which if released would prejudice or would be likely to prejudice the security of IT systems.
- Section 33 – Prejudicial to audit functions – this applies to authorities that have functions in relation to the audit of other authority’s accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.
- Section 35 - Formulation of government policy – relates to government departments, communication between ministers and advice of law officers.
- Section 36 - Prejudicial to effective conduct of public affairs – information is exempt if, in the opinion of a qualified person, it would prejudice how the CCG conducts its public affairs.
- Section 37 - Communications with Her Majesty, etc. and honours – covers Her Majesty, other members of the Royal Family.
- Section 38 - Health and safety – information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.
- Section 39 - Environmental information – covers information that can be accessed via the Environmental Information Regulations.
- Section 42 - Legal professional privilege, where release would prejudice the confidential communication between a client and a solicitor and includes legal and litigation advice.
- Section 43 subsection 1 - Information containing trade secrets.
- Section 43 subsection 2 – Prejudicial to commercial interests – information is exempt if it would prejudice or be likely to prejudice the commercial interests of any person or organisation.

Appendix B - Environmental Information Regulations exceptions

ENVIRONMENTAL INFORMATION REGULATIONS EXCEPTIONS

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

The full list of exceptions follows:

- Regulation 12 (3) – Personal data of the applicant, which should be processed under the DPA Subject Access Request procedure and according to the Right of Access procedure under GDPR.
- Regulation 12 (4) (a) – Information not held
- Regulation 12 (4) (b) – Request manifestly unreasonable
- Regulation 12 (4) (c) – Request formulated in too general a manner
- Regulation 12 (4) (d) – Material in the course of completion, unfinished documents and incomplete data
- Regulation 12 (4) (e) – Involves internal communications
- Regulation 12 (5) (a) – Prejudicial to International relations, defence, national security or public safety
- Regulation 12 (5) (b) – May prejudicially affect the course of justice or jeopardise a fair trial, disciplinary or regulatory inquiry

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

Appendix C - Summary of the FOI fee regulations 2004

Summary of the FOI Fee Regulations 2004

The following summary is in line with Statutory Instrument 2004 No. 3244:
The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 <http://www.legislation.hmso.gov.uk/si/si2004/20043244.htm>

Introduction

Under the FOIA, the Regulations governing the appropriate limit, and the fees that can be charged for requests for information, came into force, along with the Act's new rights of access to information, on 1 January 2005.

The appropriate limit

The 'appropriate limit', for the purposes of Section 12 of the Freedom of Information Act 2000 has been set at:

- £600 for central government and Parliament; and
- **£450** for other public authorities, including local authorities, police, the **health service** and education.

The appropriate limit has to be applied, separately, to the duty under Section 1(1) (a) of the FOIA to confirm or deny whether the information is held. It is only if it would cost more than the appropriate limit to confirm or deny, by itself, that the obligation to do so is removed. It will often be immediately obvious that the cost will not exceed the appropriate limit. But if a request is more complicated and likely to take longer to answer, the public authority will have to consider on a case by case basis if it wishes to estimate whether the appropriate limit would be exceeded in advance.

The Regulations set out what may be taken into account when public authorities are estimating whether the appropriate limit has been exceeded. The costs are limited to those that an authority reasonably expects to incur in:

- determining whether it **holds** the information requested,
- **locating** the information or documents containing the information,
- **retrieving** such information or documents, and
- **extracting** the information from the document containing it (including editing that information).

The authority may take into account the costs attributable to the time that persons are expected to spend on these activities.

In order to achieve consistency, all public authorities should use the same hourly rate when estimating staff-time costs, regardless of the actual costs. The **hourly rate** is set at **£25** per person per hour. If the costs attributable to the time spent on these activities, at **£25** per person per hour, would cost **more** than the appropriate limit of £450 to answer, the public authority is not obliged to answer it unless a fee is paid

But, if a request would cost **less** than the appropriate limit to answer, it **cannot refuse or charge for** the areas listed above.

An authority may not take into account any costs other than those set out in the Regulations. In particular it may not take account of the expected costs of:

- the time taken to **check** that a **request** for information **meets the requirements** of the FOIA;
- **considering** whether the information requested should be withheld in reliance on **an exemption** (this includes any costs incurred through seeking legal advice about whether exemptions apply);
- **considering** whether a request is **vexatious** or a **repeated** request;
- **obtaining authorisation** to send out the information;
- the time taken to **calculate any fee** to be charged; or
- **advice and assistance** provided under Section 16 of the FOIA.

Requests costing less than the appropriate limit

If a request would cost less than the appropriate limit to answer, and there is no other basis on which it may be refused or otherwise dealt with, the public authority must comply with the request. It **cannot charge for** the areas listed above. The fees that can be charged are much more restricted than when the appropriate limit is exceeded, with the public authority bearing the majority of the costs of the request.

Authorities can **develop their own policies** on charging fees to cover the cost of disbursements, with the discretion to waive fees altogether.

In cases where the appropriate limit has not been exceeded, the maximum fee that could be charged is based on an authority's estimate of the costs that it reasonably expects to incur in:

- informing the person making the request whether it holds the information;
- and communicating the information to the person making the request.

This **includes the costs of:**

- putting the information in the applicant's preferred format, so far as this is reasonably practicable, as set out in Section 11(1) of the Act;
- reproducing any document containing the information, e.g. photocopying or printing; and
- postage and other forms of communicating the information.

When the appropriate limit has not been met, it is only these costs which may be taken into account for the purposes of setting a fee. In addition, no account can be taken of staff time in undertaking these activities, nor of the costs involved in calculating whether the appropriate limit would be exceeded. For example, if the appropriate limit is not exceeded and the information needs to be provided to an applicant:

- you could not charge for the time taken to locate, retrieve or extract the information or to write a covering letter to the applicant explaining that the information is being provided,
- you could charge for the cost of paper when photocopying or printing the information and printing the covering letter, as well as the cost of postage.
- Public authorities have a duty to give effect to an applicant's **preferred format** for receiving information, so far as this is reasonably practicable. This may include:
 - summarising the information;
 - providing the applicant with a copy (for example by photocopying or printing);
 - allowing the applicant reasonable opportunity to inspect a record containing the information;

- producing material in an applicant's preferred format (for example by putting it onto CD-ROM); or
- translating information into a different language at the request of the applicant. If a public authority regularly works in the language requested and has an in-house translation service, it should consider waiving any translation costs. However, public authorities are not obliged under the Act to translate documents if this would not be 'reasonably practicable'.

Authorities can charge for the actual costs incurred, but charges are expected to be reasonable. For example, in most cases, **photocopying and printing** would be expected to cost no more than 10 pence per sheet of paper.

In some cases, authorities may be required by **other legislation** to produce information in a particular format or a different language at no additional cost (and should not therefore charge for it as part of complying with the FOIA). For example, the requirement to make reasonable adjustments for disabled people under the Disability Discrimination Act 1995 could require an authority to produce material in a format such as Braille or on audio tape.

Where the maximum fee would be very low for example below **£5 or £10** - public authorities are encouraged to consider waiving the fee altogether.

If a public authority proposes to charge a fee for answering a request, it must **issue a fees notice** to the applicant, stating the fee. The fees notice should usually be issued before any costs are incurred in preparing to communicate the answer to the request. When an authority issues a fees notice, the applicant has three months to pay. If payment is not forthcoming, the authority does not have to answer the request (Section 9 (2) of the Act).

Requests for information have to be answered promptly and in any event not later than the **twentieth working day** following date of receipt. However, where the authority has given a fees notice to the applicant, the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating the twentieth working day following the date of receipt.

If the actual cost of answering the request turns out to be greater than the estimated cost charged by way of a maximum fee, the authority must **bear the additional cost**. The FOIA does not allow for authorities to issue another fees notice to cover the additional cost. But if the actual cost of answering the request proves to be less than the fee charged, the public authority should consider **refunding** the excess money to the applicant.

Requests costing more than the appropriate limit

If requests would cost more than the appropriate limit to answer, the public authority is not obliged under Section 1 of the FOIA to answer it. However, Section 16(1) requires the authority to '**provide advice and assistance**, and see if the question could be refined to a more manageable level, or resubmitted in part, to bring it below the appropriate limit'.

Fees and information that is exempt under the FOIA

Information that is exempt through one of the exemptions listed in Part II of the Act is not affected by the FOI fees regime.

Information is (absolutely) exempt if it is 'reasonably accessible' to the applicant. Information will always be considered reasonably accessible if:

- the authority is obliged to communicate it to the applicant under some other Act, or

- the information is made available in accordance with the authority's Publication Scheme.

Authorities **can charge fees** outside the terms of the Regulations for providing information **through the Publication Scheme**, provided that this is made clear as part of the scheme. For example, this could include set fees for specific pieces of information, or information about how any fees would be charged (such as a set rate per hour of work, a scale of charges, or the market rates for the work).

VAT

The rules apply equally to requests that are above or below the appropriate limit. The key determining factor as to whether VAT is charged is whether the information is available from another source that is not a public authority.

- If an authority was asked for information, and the information was only available from that authority or another public authority, any fees charged would not attract VAT.
- If an authority was asked for information that was available from another source that is not a public authority, any fees would attract VAT.

Appendix D - Freedom of Information and Environmental Information Regulations review process

Freedom of Information and Environmental Information Regulations review process

1. This procedure will deal with complaints arising from the CCG's obligations under the FOI and EIR in respect of maintenance of the publication scheme, and handling of requests for information.
2. The CCG's publication scheme will notify individuals about who they should complain to about the maintenance of the scheme and inform individuals of their right to complain to the Information Commissioner's Office.
3. When communicating any decision made in relation to a request, the CCG will notify the applicant of their right of complaint. The applicant should be informed of the CCG's review process for dealing with issues relating to the publication scheme or handling of requests and the applicant should also be informed of the right to complain to the Information Commissioner.
4. Any written communication (including one transmitted by electronic means) expressing dissatisfaction with the CCG's response to a valid request for information, or operation of the publication scheme will be classed as a complaint.
5. Complaints should be handled initially by the CCG's Head of Corporate Governance.

FOI/EIR complaints should be addressed to the:

Head of Corporate Governance
NHS Bradford District and Craven CCG
1st Floor
Scorex House
1 Commercial Street
Bradford
BD1 4AS

6. The Head of Corporate Governance will acknowledge receipt and completion of the complaint.
7. The Head of Corporate Governance will identify an appropriate person to manage the review. This person could be a member the CCG's FOI team.
8. The applicant will be informed:
 - That review process is taking place
 - The intended date that the review process will be completed and a response sent
9. The review process should be completed within 20 working days of the letter of complaint. Where the intended date of the review cannot be met, the applicant must be informed as to the delay and be given a new date for completion.
10. The review will be carried out by senior staff members who have had no previous involvement in the original request. They will base their decision on receipt of relevant

information and guidance relating to the case. They will liaise with the person who made the original decision who must provide the reasoning for that decision.

11. The FOI team will provide expert advice and/or conduct the review for the CCG.
12. Where a new exemption is under consideration and is a qualified exemption the person(s) carrying out the review must carry out a public interest test and document their reasons for either non-disclosure or disclosure of the requested information.
13. If the refusal notice is on the grounds of cost (exceeds £450.00 or 18 working hours) documentary evidence must be produced as to how the request exceeds the limit.
14. Where the outcome of the complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant be informed as to how soon this will be.
15. Where the outcome of a complaint is that procedures within the CCG has not been properly followed by staff, the CCG will apologise to the applicant and take appropriate steps to prevent similar errors in future.
16. Where the outcome of a complaint is that the initial decision was correct or is otherwise in the CCG's favour, the applicant should be informed of the decision and also of their right to apply to the Information Commissioner (contact details below):

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 700

17. The letter outlining the outcome of the review will be signed by the Chief Officer.