

Freedom of Information (FOI) Policy

Effective from 25 November 2020

Applies to all employees of NHS Cheshire CCG

Approved by the Governance, Audit and Risk Committee 25 November 2020

Amendments Log

Any changes made to this policy should be outlined in the below Review and Amendment Log. In the event of any changes to relevant legislation or statutory procedures this policy will be automatically updated to ensure compliancy without consultation. Such changes will be communicated.

Version No	Type of Change	Date(s)	Description of change
1	Updated policy for Cheshire CCG taken to GARC (November 20)		Updated for NHS Cheshire CCG

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1. Introduction

- 1.1 NHS Cheshire Clinical Commissioning Group (CCCG) is committed to openness and transparency in the conduct of all of its business. NHS CCCG has a duty to comply with all aspects of the Freedom of Information Act 2000 (FOIA). The FOIA was passed in the year 2000 and came into full effect on 1st January 2005. The FOIA gives the public a general right of access to almost all types of recorded information held by a public authority.
- 1.2 The FOIA supplements and complements the Data Protection Act (DPA) 2018, which gives individual's access to their personal information, which is held by organisation. For further information about access to personal or health records please see Section 6.
- 1.3 In addition, there are also regulations which provide access to environmental information; these are the Environmental Information Regulations 2004 (EIR). Please see Section 4 for further information regarding the EIR.
- 1.4 The FOIA gives access to all other information, as such has a wider remit than the DPA. However, together the two Acts along with the Environmental Information Regulations (EIR) will enable public access to most records held by NHS CCCG.
- 1.5 The Re-use of Public Sector Information Regulations 2005 are also contained within this policy. Please see Section 7 for further information regarding the re-use of NHS CCCG's information in accordance with the re-use of Public Sector Information Regulations 2005.

2. Scope

- 2.1 This Policy applies to those members of staff that are directly employed by NHS CCCG and for whom NHS CCCG has a legal responsibility. For those staff covered by a letter of authority/honorary contract or work experience the organisations policies are also applicable whilst undertaking duties for or on behalf of NHS CCCG. Further, this Policy applies to all third parties and others authorised to undertake work on behalf of NHS CCCG.
- 2.2 This Policy provides a framework for NHS CCCG to ensure compliance with the FOIA, Re-use of Public Sector Information Regulations 2005 and EIR.
- 2.3 NHS CCCG will, wherever possible, make all information we hold available.
- 2.4 The aim of this Policy is to:
 - ensure all Freedom of Information (FOI) requests are dealt with consistently and receive a high quality response however and wherever the contact is made.
 - ensure that NHS CCCG complies 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 appropriately request documents and information;
 - ensure that NHS CCCG's Publication Scheme is up to date in order to provide access to information and to lessen the number of written requests

- the public have to make;
 - ensure that the necessary internal structures are in place for the FOIA to be complied with;
 - ensure staff at all levels are aware of their responsibilities with regards to the FOIA;
 - ensure that statutory timescales set out by the FOIA are met;
 - ensure the Governing Body of the NHS CCG is fully informed on the operation of the FOIA and its implications for the organisation.
- 2.5 The FOIA applies to all recorded information held by NHS CCG.
- 2.6 Information can be held in any form, including recordings or notes of telephone calls, file notes, the web, and any other service that NHS CCG will introduce in the future.
- 2.7 It is important that this Policy is read carefully and thoroughly understood.
- 2.8 NHS CCG will manage the processing of FOI requests received at the organisation.
- 2.9 FOI requests for information held by NHS CCG should be made in writing either by post or email and be sent to the appropriate address or email address as detailed below:
- Email: cheshireccg.foi@nhs.net
- Post: Freedom of Information Requests, 1st Floor – West Wing, New Alderley Building, Macclesfield District General Hospital, Victoria Road, Macclesfield, SK10 3BL.
- 2.10 NHS CCG will not normally charge for the provision of information that is provided as the result of an FOI request. However, there may be occasions where this is necessary. Please see Section 8 for details concerning our charging Policy.

3. Roles and responsibilities

- 3.1 The Accountable Officer has overall responsibility for ensuring NHS CCG complies with the FOIA. The operational responsibility for ensuring a robust and efficient FOI function for the CCG sits with the CCGs Director of Governance and Corporate Development.
- 3.2 The CCG Senior Information Risk Owner (SIRO), with the support of the CCGs Director for Governance and Corporate Development will act as NHS CCG's appropriate 'qualified person' in relation to the application of Section 36 of the FOIA (an exemption in relation to the prejudice to the effective conduct of public affairs).
- 3.3 NHS CCG's Governance, Audit and Risk Committee is the responsible CCG Committee for approving the CCGs FOI Policy.
- 3.4 The CCGs Director for Governance and Corporate Development will act as FOI

lead at Governing Body level to:

- ensure organisational compliance with the FOIA;
- have lead responsibility for FOIs and NHS CCG's Publication Scheme;
- act as the champion for FOI awareness throughout the organization
- ensure that the general public and NHS CCG staff have access to information about their rights under the FOIA;
- ensure that a process is in place to assist with investigations into complaints and appeals; and
- ensure that sufficient resources, processes and structures are in place to administer FOI.

- 3.5 The CCG Compliance and Assurance Manager will provide leadership and advice in terms of responding to requests, the use of exemptions and where necessary gain legal advice as to whether it is appropriate to disclose the information requested.
- 3.6 Senior Managers in NHS CCG are responsible for ensuring that information held by them and their teams is up to date and accessible, and for ensuring a timely response is made to enquiries under the FOIA.
- 3.7 All staff are responsible for ensuring enquirers receive accurate information about how to apply for information should it not be available online, and for ensuring that any information requested from them in relation to an enquiry under the FOIA is supplied within the timescales allowed.
- 3.8 Under the FOIA all public bodies are obliged to have a Publication Scheme. A Publication Scheme is a commitment from the organisation to routinely and proactively supply information to the public.

4. Process, public interest test and exemptions

- 4.1 All requests for information under the FOIA should be made in writing, in the form of a letter or email. The enquirer should clearly identify the documents or information that they require, and supply a return address (which can be an email/postal address) for the delivery of the information.
- 4.2 The FOIA only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.
- 4.3 NHS CCG will manage FOI requests through its Governance and Corporate Development Directorate.
- 4.4 Where a request does not give sufficient detail to enable NHS CCG to process the request, we will contact the applicant and advise them of the information that is required to clarify the request being made and offer help with their request.
- 4.5 Requests for information specifically under the EIR 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 request will note as many details as possible, which must include contact information.

- 4.6 NHS CCG will acknowledge receipt of a FOI request within the two working days, and provide the documents/information, or an explanation about why the information has not been disclosed within 20 working days. A working day is defined by the Information Commissioner's Office (ICO) as one day within the working week (Monday to Friday), excluding Bank Holidays and any other Public Holidays granted. The first working day is classed as the first full working day following the date the request was received.
- 4.7 There may be occasions where it is necessary for NHS CCG to extend the 20 working day timeframe, for example to assess the public interest in releasing information. In these circumstances NHS CCG will respond within 40 working days, and notify the requester of any extension to the original timescale within 20 working days.
- 4.8 Under the FOIA, information may be withheld if it is covered by an exemption. There are two categories of exemptions: qualified and absolute. Information covered by a qualified exemption can only be withheld if the public interest in withholding the information is greater than the public interest in releasing it. Information covered by an absolute exemption is not subject to this public interest test and can be withheld. The public interest test can be summarised as follows:
- 4.9 In the majority of cases where an exemption applies, to some or all of the information requested, the authority will then have to consider whether it must override the exemption because it is in the public interest to release the information. This public interest test involves considering the circumstances of each particular case and the exemption that covers the information. The balance will lie in favour of disclosure, in that information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it.
- 4.10 The ICO categorises qualified and absolute exemptions as below:
Qualified exemptions:
- information intended for future publication;
 - national security;
 - defence;
 - international relations;
 - relations within the United Kingdom;
 - the economy;
 - investigations and proceedings conducted by public authorities;
 - law enforcement;
 - audit functions;
 - formulation of government Policy, etc;
 - prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords);
 - communications with Her Majesty, etc and honours;
 - health and safety;
 - environmental information (as this can be accessed through the Environmental Information Regulations);
 - personal information (as this is covered by the Data Protection Act 2018);
 - legal professional privilege; and

- commercial interests.

Absolute exemptions:

- information accessible to applicant by other means;
- information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals process against such certificates);
- court records;
- parliamentary privilege (a certificate signed by the Speaker of the House for the House of Commons, or by the Clerk of the Parliaments for the House of Lords is conclusive proof that the exemption is justified);
- prejudice to effective conduct of public affairs (only applies to information held by House of Commons or House of Lords);
- personal information (as this is covered by the Data Protection Act 2018);
- information provided in confidence; and
- prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

4.11 The FOIA itself should be consulted for more detailed information on each exemption. If there is any doubt over whether an exemption applies the decision will be escalated within NHS CCG to the Director of Governance and Corporate Development and legal advice gained where necessary.

4.12 If CCG intends to withhold the information, we have a duty to explain our decision. This should be done within 20 working days, however if we need to consider the public interest test we are entitled to a reasonable extended period. In this case, within the 20 working day period we should provide an estimate of when we expect to reach a decision and stick to this unless we have a good reason not to. If, while trying to reach a decision, we realise that our original estimate is unrealistic we must keep the applicant informed. We will keep a record of any instances where we fail to meet our estimates.

4.13 If the CCG does not hold the information that has been requested, but believes that some, or all of the information requested, is held by another public authority, we will endeavor to advise the requester. In most cases this will mean:

- contacting or formally responding to the applicant and informing them that we do not hold the information, but that the information requested may be held by another public authority;
- suggesting that the applicant reappplies to the authority which we believe may hold the information; and
- providing them with contact details for that authority.

4.14 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).

4.15 Exempt information on hard copies should be concealed with a black marker pen and then double photocopied to ensure that it cannot be read. The exempt information should be blocked out from electronic versions and then saved as a new document. All redacted information must be accompanied by an

explanation.

- 4.16 We are not required to provide assistance to vexatious or repeated requests. A request would be classed as repeated if we had already responded to the same or very similar request from the same applicant in a recent time period (i.e. within 3 months). A vexatious request can be identified as a request which subjects the organisation to inconvenience, harassment or expense and could be sent by one person or a number of persons working together.
- 4.17 It is also important to consider whether any third parties may be affected by the disclosure of information, for example if the information contains personal/commercial data. In these cases we must obtain consent wherever possible.
- 4.18 If the third party refuses to consent, under the FOIA this does not always mean that the information should be withheld. Similarly, consent is not required if exemptions do not apply as the information will have to be disclosed regardless.
- 4.19 If a GP Practice receives a request for 'commissioning data' and NHS CCCG holds the data, the GP Practice can redirect the applicant to NHS CCCG.

5. Requests for an internal review

- 5.1 Although a public body is not legally required to have an internal review procedure for FOI requests, the Section 45 Code of Practice makes clear that it is good practice to have a review procedure in place. The internal review procedure will ensure applicants are able to ask NHS CCCG for an internal review if they are dissatisfied with the response to a FOI request or the handling of a FOI request.
- 5.2 Internal reviews should be conducted by a person who was not party to the original decision on whether to release the information requested.
- 5.3 An internal review must be a fair and impartial review of the decisions made during the original decision of whether to release the information.
- 5.4 The person conducting the review must consider the information released against the information requested and make a full review of the papers associated with the original application.
- 5.5 It is best practice that the internal reviewer discusses the decisions made with the staff member, or members, who dealt with the original application in order to build a full picture as to how decisions were made.
- 5.6 The circumstances relating to the original decision may have changed between the time NHS CCCG made its decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames. The FOIA does not stipulate a time limit for completion of an internal review but the Section 45 Code states that they should be dealt with in a reasonable time and the ICO recommend that:

- reviews should be completed within 20 working days of receiving the complaint;
- for complex complaints, or where it is necessary to reconsider the public interest test – reviews should be completed within 40 working days of receipt; and
- if it appears that the deadline will not be met then the applicant must be advised as soon as possible and a second deadline set by which a response will be sent.

5.6 The internal review can have two outcomes:

- the original decision is reversed; or
- the original decision is upheld.
- Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided to them.
- Where the original decision is upheld the applicant must be told and made aware of their further rights of appeal to the ICO.
- The outcome of the internal review must be recorded.

5.7 All requests for an internal review regarding FOI requests should be forwarded to NHS CCG's Freedom of Information Team.

5.8 To complain to the Information Commissioner, please see the ICO web page at: <https://ico.org.uk/make-a-complaint/>

6. Personal Information and records

6.1 Requests for personnel staff records, or other personal records relating to the enquirer or third parties will be managed outside of this FOI Policy.

6.2 Requests for health related information about identifiable living or deceased individuals will be dealt with in accordance with the Data Protection Act (DPA) 2018 or Access to Health Records Act 1990, accordingly.

6.3 All such requests will be managed under NHS CCG's Subject Access Requests (SARs) Policy.

7. Re-use regulations and copyright

7.1 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 NHS CCG 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 the consent of NHS CCG.

7.2 NHS CCG information supplied under the FOIA continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988.

7.3 For other forms of re-use, for example publishing the information, the applicant 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:

<http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm>

7.4 If, however, the copyright is identified as belonging to somebody else, the applicant will need to apply for permission.

7.5 For information about how to obtain permission from a third party, please go to Intellectual Property Office's website at: <http://www.ipo.gov.uk/>

7.6 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 of NHS CCG.

8. Charging and the appropriate limit

8.1 NHS CCG may, in some circumstances, charge for releasing information in accordance with regulations.

8.2 A public authority is not obliged to comply with a request for information if it estimates that the cost of determining if it holds the relevant information, locating and retrieving the information and, where necessary, extracting the information from a document would exceed the Appropriate Limit.

8.3 The Appropriate Limit is set down under Section 12 of the FOIA (£450 for public authorities). This figure is calculated at a rate of £25 per hour and therefore any request that exceeds 18 hours of combined work will normally be rejected.

8.4 Wherever possible, NHS CCG will work with the enquirer to try to reduce the amount of work involved so that some of the information can be provided. In certain circumstances NHS CCG can offer the enquirer the option of paying for the information. In this instance, the enquirer would have to pay the full cost.

9. Duty to advise and assist

9.1 All public bodies have a duty to advise and assist (under Section 16 of the FOIA), applicants in requesting information. This could involve assisting applicants in making their requests by suggesting what information is available and/or contacting applicants who have made broad requests in order to specify information required so that it may be identified.

10. Process for monitoring, effective implementation and review

10.1 NHS CCG will continually review and monitor the handling and logging of information requests.

10.2 The CCG Compliance and Assurance Manager will produce regular reports, which will provide information regarding the number and types/areas of requests received at NHS CCG.

11. Monitoring

- 11.1 Compliance with this Policy will be monitored via the Director for Governance and Corporate Development, with support from the CCG's SIRO , Caldicott Guardian, and the CCG Compliance and Assurance Manager, together with independent reviews by both Internal and External Audit on a periodic basis where required.
- 11.2 The CCG Compliance and Assurance Manager is responsible for the monitoring, revision and updating of this Policy on a two yearly basis or sooner if the need arises.
- 11.3 This Policy will be made available to all NHS CCG Staff and the public via NHS CCG's website.

12. Equality impact assessment

- 12.1 This Policy forms part of NHS CCG's commitment to create a positive culture of respect for all staff and service users. The intention is to identify, remove or minimise discriminatory practice in relation to the protected characteristics (race, disability, gender, sexual orientation, age, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity), as well as to promote positive practice and value the diversity of all individuals and communities.
- 12.2 As part of its development this Policy and its impact on equality has been analysed and no detriment identified.

13. Associated documents

- 13.1 The following documents will provide additional information:
- Information Governance Strategy
 - Information Governance Policy
 - Confidentiality and Data Security Policy
 - Subject Access Request Policy
 - Corporate Records Management and Retention Policy
 - The suite of ICT security policies.