

# Freedom of Information Policy

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The CCG is committed to an environment that promotes equality, embraces diversity and respects human rights both within our workforce and in service delivery. This document should be implemented with due regard to this commitment.

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Approved documents are valid for use after their approval date and remain in force beyond any expiry of their review date until a new version is available.

## Version Control Sheet

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## 1. Policy Statement

1.1 NHS Bolton Clinical Commissioning Group will use all appropriate and necessary means to comply with its obligations under the Freedom of Information (FOI) Act 2000 (hereafter referred to as the Act).

1.2 This policy is guided by the associated Codes of Practice issued by Lord Chancellor's Department under sections 45(5) and 46(6) of the Act.

1.3 This policy will be published on the CCG website.

## 2. Introduction

2.1 It is the duty of each NHS body to establish and keep in place arrangements for the purpose of monitoring and improving the quality of healthcare provided by and for that body. The CCG is committed to this duty and its implementation.

2.2 The CCG supports the Government's commitment to greater openness in the public sector. The Act will further this aim of greater openness, by enabling members of the public to be able to access documents and as such scrutinise and question the decisions of public authorities more closely and ensure that the services provided are properly delivered. The CCG wishes to create a climate of openness and dialogue with all of its stakeholders. Improved access to information about the CCG will help to support this aim.

2.3 The CCG will make such information available in a range of formats as required to meet the needs of the person requesting the information.

2.4 The CCG believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duty of confidence or the statutory provisions that prevent disclosure of personal identifiable information. The release of such information is covered by the Data Protection Act 2018 and General Data Protection Regulations (GDPR) and is dealt with in other relevant policies including the Confidentiality and Data Protection Policy (IG002). However, some personal information may be released under the provisions of the Act.

2.5 The CCG believes that public authorities should be allowed to discharge their functions effectively. This means that we will use the exemptions contained in the Act where either:

- an absolute exemption applies; or
- where a qualified exemption can reasonably be applied in terms of the public interest in disclosure.

## 3 The Freedom of Information Act 2000 (FOI)

3.1 The main features of the FOI Act are:

- A general right of access to information held by public authorities.

- Set out exemptions from the duty to provide information.
- Place a requirement on public authorities to exercise discretion; they may have to determine not only whether an exemption applies but also the extent to which it may apply (some exemptions are conditional and depend on where the balance of 'public interests lie').
- Make arrangements in respect of costs and fees.
- Place a duty on public authorities to adopt publication schemes.
- Public authorities must make arrangements for enforcement and appeal.
- Place a duty to provide advice and assistance to people who wish to make, or have made requests for information, and
- Outlines Codes of Practice.

3.2 The FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. It does not oblige public authorities to retain information which is no longer useful to the authority.

3.3 The FOI Act is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.

## **4 Environmental Information Regulations 2004**

4.1 The CCG recognises that in addition to the Act, there is also an obligation on public authorities to respond to requests for environmental information under the Environmental Information Regulations (EIR) 2004.

4.2 The CCG will, as far as possible, respond to requests for environmental information using the same procedures as for responding to Freedom of Information (FOI) requests, while recognising that there are some differing regulations between EIR and FOI on the provision of information. These include rules governing what environmental information may be disclosed (exceptions under EIR) and the requirement to respond to requests for environmental information whether the request is in writing or verbal form.

## **5 Scope**

5.1 This policy provides a framework within which the CCG will ensure compliance with the requirements of the Act and will underpin any operational procedures and activities connected with the implementation of the Act.

5.2 The aims of this policy are to:

- ensure all FOI requests are dealt with consistently and receive a high quality response;
- ensure that the CCG complies with all relevant laws, regulations and guidance;
- provide clear routes for members of the public to make contact with the CCG so that they can appropriately request documents and information;

- ensure the CCG's publication scheme is up to date in order to provide access to information and to lessen the number of requests the public have to make;
- ensure the necessary internal structures are in place for the Act to be complied with;
- ensure staff at all levels are aware of their responsibilities with regards to the Act;
- ensure timescales are met;
- ensure the CCG's Board is informed of the operation of the Act and the implications for the organisation.

5.3 The Act applies to all recorded information held by the CCG. Information can be held in any form including recordings or notes of telephone calls, file notes, the internet / intranet and any other service the CCG may introduce in the future.

5.4 This policy applies to those members of staff that are employed by the CCG, both permanent and non-permanent, and for whom the CCG has legal responsibility, including contractors and those who undertake work on behalf of contractors.

## **6 Equality Impact Assessment (EIA)**

6.1 All public bodies have statutory duties under the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006 to set out arrangements to assess and consult on how their policies and functions impact on race, gender and disability equality, in effect to undertake equality impact assessments on all policies / guidelines and practices. Best practice also suggests that Equality Impact Assessments should be extended to include equality and human rights with regard to age, religion and sexual orientation and as such the CCG have adopted this best practice approach within its EIA as from the date of the adoption of the Policy for the Development and Management of Corporate Documents.

6.2 This policy has been equality analysed for impact.

## **7 Duties and Accountability**

7.1 The Chief Officer of the CCG has ultimate responsibility for the organisation's compliance with the Act, supported by the Associate Director of Governance and Safety and the Patient Safety & Governance Lead.

7.2 All staff, Non-Executive Directors and contractors and those who undertake work on behalf of contractors are obliged to adhere to the CCG's FOI policy in relation to requests for information. They should be familiar with the basic requirements of the Act and aware of their personal responsibilities under this policy.

### **7.3 Associate Director Responsibilities**

7.3.1 Approve draft responses to FOI requests relating to their department. This may be delegated to a member of staff within their team.

- 7.3.2 Checking the accuracy and content of FOI response where deemed necessary
- 7.3.3 Advising the Governance & Safety Team of requests which may be subject to an exemption (or, if they have reason to believe that the disclosure may be used in a contentious or malicious way) and ensuring that they nominate a senior person within the team, department or directorate to act as a single point of contact for the FOI request.
- 7.3.4 Ensuring Directorate records and information is created, maintained, retained and disposed of in accordance with all CCG Records Management Policies, procedures and processes to enable easy identification and retrieval when required.
- 7.3.5 Maintaining up to date information within the Publication Scheme.
- 7.3.6 Acting appropriately to recommendations made by the Governance & Safety Team.
- 7.3.7 Ensuring information held within a directorate is provided to the Governance & Safety Team in line with timescales outlined by them, including any opinion and supporting detail if there is a concern that the information should not be disclosed.
- 7.3.8 Ensuring written requests for information within the directorate that should be dealt with under the Act are referred immediately to the Governance & Safety Team.
- 7.3.9 Providing assistance to the Governance & Safety Team with investigations into appeals and complaints

#### **7.4 Governance & Safety Team**

7.4.1 The Governance & Safety team will be the first point of contact on all issues in connection with the Act. The Governance & Safety team is responsible for supporting managers in the handling and drafting of responses to all FOI requests.

7.4.1 The CCG will ensure it has secure and robust information governance processes in place to ensure it meets its statutory responsibilities.

7.4.2 The Governance & Safety Team will provide support in the decision making process and risk assessment in denying any request and claiming a qualified or absolute exemption. The Chief Officer or their deputy will make the final decision.

7.4.3 The Governance & Safety Team ensure any action required to comply with the Act is carried out. They also ensure that all processes and procedures put in place have been tested to ensure they meet the requirements of the Act.

7.4.4 The Governance & Safety Team will:

- Provide advice and assistance to applicants requesting information under the Act; discussing the applicants particular requirements e.g. format in which the information is to be provided.
- Produce and maintain the FOI policy and procedures and ensuring they are available in alternative formats as required.
- Promote FOI awareness across the CCG through training and the dissemination of the FOI procedures to staff.

- Ensure that all staff and the general public are provided with information about their rights and responsibilities under FOI, in an accessible format.
- Regularly update the Publication Scheme.
- Maintain appropriate records of requests for information.
- Provide a quarterly and annual report on activity to the CCG.

## 7.5 Employee Responsibilities

7.5.1 All employees have a legal duty to preserve formal records. Employees must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices are not offences in themselves, however they may lead to an inability to comply with requirements of the FOI Act.

7.5.2 All employees will, through appropriate training and responsible management, observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records.

7.5.3 Provide full and appropriate responses to FOI requests within the timescales outlined by the Governance & Safety Team.

7.5.4 Undertake any formal FOI training which the CCG deems to be relevant to that person's role.

7.5.5 Be aware that ultimately the general public may have access to any piece of information held within the CCG and must pay due regard to how they record information as part of their normal duties.

7.5.6 On receipt of a Freedom of Information request or request from a third part for information held by the CCG, notify the Governance & Safety Team at [bolccg.foi@nhs.net](mailto:bolccg.foi@nhs.net).

## 8. Duty to Provide Advice and Assistance

8.1 The CCG will ensure that systems and procedures are in place to provide advice and assistance to members of the public who propose to make, or have made requests for information. This is a duty under section 16 of the Act.

8.2 The CCG will ensure that the systems and procedures to provide advice and assistance also conform to the Lord Chancellor's Code of Practice issued under section 45 of the Act.

## 9. Process for Managing Requests for Information

9.1 A flow chart showing the process for dealing with an FOI request can be found at Appendix 5.

- 9.2 The CCG has existing processes for providing information to members of the public and other persons which are not superseded by this policy. Requests for information generated as part of the CCG's existing processes may be answered as 'business as usual' if it is deemed reasonable to do so.
- 9.3 Requests for information outside of 'business as usual' processes, other legislative access regimes or those specifically defined as FOI requests will be managed by the Governance & Safety team.
- 9.4 The FOI Act only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.
- 9.5 Where a request does not give sufficient detail to enable the CCG to process the request, the Governance & Safety Team will contact the applicant and advise them of the information that is required to make their application and offer help with their request.
- 9.6 The CCG will accept verbal requests in circumstances where the enquirer would have great difficulty in putting a request in writing. On these occasions, the Governance & Safety Team will note as many details as possible, which must include contact information.
- 9.7 Requests for information specifically under the Environmental Information Regulations (EIR) can be accepted verbally. Enquirers should still be 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.
- 9.8 The Governance & Safety Team will acknowledge receipt of the request within the first three full working days, and provide the documents / information, or an explanation about why the information has not been disclosed within 20 full working days. A working day is defined by the Information Commissioner's Office (ICO) as one day within the working week Monday to Friday.
- 9.9 All responses will be approved and signed off by the CCG's Patient Safety & Governance Lead or other appropriate manager or senior manager, as delegated, in their absence.
- 9.10 It might sometimes be necessary to extend this timeframe, for example to assess the public interest in releasing information. In these circumstances the Governance & Safety Team will respond within 40 working days, and notify the requester.
- 9.11 Under the FOI Act, 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.

## 9.12 Defining a Valid FOI Request

9.12.1 As defined in section 8 of the FOI Act, to meet all the requirements of a valid FOI request, a request must:

- Be in writing.
- State the name of the applicant and a valid address for correspondence (e-mail address is valid).
- Describe the information requested.
- Be received in a legible form.
- Be capable of being used for subsequent reference.

9.12.1 The term 'in writing' covers requests submitted by letter and electronic form, including those sent via Social Media (e.g. Twitter and Facebook) and the request does not have to make any direct reference to the Act, or be the sole or main theme of the requester's correspondence.

9.12.2 There will be two potential exceptions to the need for a request to be put in writing (see paragraphs 9.6 and 9.7).

9.12.3 When determining whether or not a name and/or address is valid, where a requester's name is an obvious pseudonym or only includes a part of their real name (e.g. Joe@123 or Bloggs@456) then the request will only be valid if their real name is visible elsewhere in the body of the request (e.g. signed from Joe Bloggs)

9.12.4 A request also becomes valid when:

- The Freedom of Information Act is mentioned in correspondence.
- When information cannot be supplied under another legislative access regime or Business as Usual criteria within 20 working days.

9.12.5 The CCG will not recognise a request as being valid if it has been copied (e.g. 'cc'd' into an email addressed to someone other than the CCG) into a request or piece of correspondence from an individual to another person or public authority.

9.12.6 Contact details are outlined in Appendix 4.

## 9.13 Time Limits for Compliance with Requests

9.13.1 The CCG has systems and procedures to ensure that it complies with the duty to confirm or deny whether it holds requested information, and to provide a response to requests within the statutory timeframe of twenty working days from the point of a valid request being received.

9.13.2 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, the period from when the applicant received the fees

notice to when they paid the fee is disregarded for the purposes of calculating the twentieth working day following receipt.

9.13.3 The CCG may choose to apply an exemption to any information, to refuse a request if it is vexatious or repeated, or exceeds the appropriate limit for costs of compliance. A formal refusal notice must be issued within twenty working days informing the applicant of this decision.

#### 9.14 Means by which information will be provided

9.14.1 When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means;

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

The CCG, so far as is reasonably practicable, will accommodate that preference.

9.14.2 In deciding whether it is reasonably practicable to communicate information by a particular means, the CCG will consider all the circumstances, including the cost of doing so. If it is decided that it is not reasonably practicable to comply with any preference expressed by the applicant, the applicant will be notified of the reasons and the CCG will provide the information by such means which are reasonable in the circumstances.

#### 9.15 Refusal of Requests

9.15.1 As indicated above, the duty to confirm or deny the existence of information or provide the information to the applicant does not arise if the CCG:

- applies an exemption under Part II of the Act.
- Has issued a fees notice under section 9 of the Act and the fee has remained unpaid after a three month period.
- Estimates that the cost of compliance with the request for information exceeds the appropriate limit.
- Can demonstrate that the request for information is vexatious or repeated.

9.15.2 If the CCG intends to refuse a request for information, the applicant will be informed of the reasons for this decision within 20 working days. The applicant will also be informed of their rights, conferred by section 50 of the Act, to appeal to the Information Commissioner against the decision if the applicant is not satisfied with the outcome of the internal complaints procedure.

9.15.3 If the CCG decides to refuse to confirm or deny whether it holds the information requested and/or to refuse to provide that information, an exemption notice will be issued to the applicant within 20 working days which will:

- state the fact;
- specify the exemption in question; and
- explain why the exemption applies.

9.15.4 If the CCG is unable to reach a decision on the application of an exemption within the 20 working day period then the applicant will be given notice that no decision has been reached and an estimate of the date by which the CCG expects that the decision will have been reached.

9.15.5 As indicated by the Lord Chancellor's Code of Practice, issued under section 45 of the Act, the CCG will endeavour to make such estimates realistic and reasonable. If an estimate is exceeded, the applicant will be given a reason for the delay and offered an apology. If the CCG find, whilst considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The CCG will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify any problems and rectify them.

9.15.6 If applying a qualified exemption under section 2 of the Act using the "public interest test", the CCG will, in its notice to the applicant, state the reasons for claiming:

- that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the information is held; or
- that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

9.15.7 The notice should not involve the disclosure of information which would itself be exempt information.

9.15.8 If the CCG refuses a request because it can be demonstrated that it is vexatious or repeated and a notice has already been issued to the applicant stating this fact, a further notice is not required.

9.15.9 The CCG will keep a record of all notices issued to refuse requests for information.

## 9.16 Redaction of Information

9.16.1 Redaction is a process which is carried out to make information unreadable or remove exempt information from a document. However, if so much information is deemed to be exempt and the document becomes illegible the entire document should be withheld.

9.16.2 The exemption under which the information has been redacted must be stated for every exemption.

9.16.3 A 'clean' (requested information which has not been redacted) copy of the requested information must be provided to the Governance & Safety Team as well as the redacted copy.

## 9.17 Internal Review

9.17.1 Although a public body is not legally required to have an internal review procedure, the section 45 Code of Practice makes it clear that it is good practice to have a review procedure in place.

9.17.2 Applicants are able to ask the CCG for an internal review if they are dissatisfied with the response to a request or the handling of a request.

9.17.3 The review will consider:

- whether the complainant was given adequate advice and guidance about their request for information;
- whether the procedures for responding to requests for information were followed correctly in this instance;
- whether, if an exemption was applied, the reasons were explained adequately to the complainant.

9.17.4 Internal reviews should be conducted by a person who was not party to the original decision on whether to release the information requested.

9.17.5 An internal review must be a fair and impartial review of the decisions made during the original decision of whether to release the information. 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.

9.17.6 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.

9.17.7 The circumstances relating to the original decision may have changed between the time the CCG made its decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames.

9.17.8 The Act 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.

9.17.9 The internal review can have two outcomes:

- the original decision is reversed; or
- the original decision is upheld.

9.17.10 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.

9.17.11 Where the original decision is upheld the applicant must be told and made aware of their further rights of appeal to the ICO.

9.17.12 The outcome of the internal review must be recorded in routine monitoring reports.

9.17.13 If an FOI applicant remains dissatisfied, complaints may be made to the Information Commissioner.

## 9.18 Vexatious / Repeat Requests

9.18.1 Should an applicant make a 'vexatious' or 'repeated' request for identical or substantially similar information, the CCG will inform the applicant in writing that it will not fulfil the request. When responding in this way the CCG will offer assistance to the individual, by indicating why they consider the request is vexatious or repeated and what recourse the applicant has if they are unhappy with this decision.

## 9.19 Datasets

9.19.1 A dataset is a collection of factual information in electronic form (e.g. statistics or figures) that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation.

9.19.2 Clause 92 of the Protection of Freedoms Bill amends the FOI Act meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use at the point of release under the Open Government Licence, and where reasonably practicable, they will be published in a reusable format.

## 10 Publication Scheme

10.1 Section 19 of the Act makes it the duty of every public authority to adopt a Publication Scheme.

10.2 The Information Commissioner's Office (ICO) defines seven classes of information that a public authority should be making available via their publication scheme. These are:

- **Who we are and what we do:** Organisational information, locations and contacts, constitutional and legal governance.
- **What we spend and how we spend it:** Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- **What our priorities are and how we are doing:** Strategy and performance information, plans, assessments, inspections and reviews.
- **How we make decisions:** Policy proposals and decisions; decision making processes, internal criteria and procedures, consultations.
- **Our policies and procedures:** Current written protocols for delivering our functions and responsibilities.
- **Lists and registers:** Information held in registers required by law and other lists and registers relating to the functions of the Authority.
- **The services we offer:** Advice and guidance, booklets and leaflets, transactions and media releases; a description of the services offered.

10.3 The CCG's Publication Scheme details the information that the CCG has published and intends to publish in the future. It details the format in which the information is available and whether or not a charge will be made for the provision of that information.

10.4 The ICO guidance is clear that an organisation should not create information purely for the purposes of completing the model publications scheme. As the CCG starts to hold increasing amounts of information, it will continually consider how it can proactively make this freely available, most commonly via its website.

10.5 The Publication Scheme is available on the public website of the CCG and is available in all other formats on request.

10.6 The contents of the Publications Scheme will be regularly reviewed and updated.

10.7 Applications for information listed in the Publication Scheme may be received verbally or in writing.

## 11 Conditions and Exemptions

11.1 The "duty to confirm or deny" and to provide information is subject to certain conditions and exemptions. Detailed information can be found at Appendix 6.

## 12 The Public Interest Test

12.1 The public interest will be considered in every case where a qualified exemption may apply.

12.2 Defining the public interest will vary according to the information being requested. It may often involve issues around accountability, transparent decision making and good management. When considering the public interest

to reach a decision on a qualified exemption, the CCG may seek appropriate professional advice (this may include legal advice).

12.3 The CCG will aim to use the qualified exemptions sparingly and will, in accordance with section 17 of the FOI Act, justify their use.

12.4 More information can be found at Appendix 7.

## 13 Charges and Fees

13.1 The FOI Act and the associated Fees Regulations stipulate that the CCG cannot levy a fee for information unless there is a statutory basis for doing so or the amount of time taken to locate the information exceeds 18 hours.

13.2 However, the CCG is allowed to charge for disbursements related to the provision of information and any reformatting requested by the applicant provided it ensures that applicants are aware of any charges which may be made.

13.3 Where charges are applicable, a fees notice will be issued to the applicant, as required under section 9 of the Act. 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.

## 14 Transferring Requests for Information

14.1 When responding to requests for information, the CCG can only provide information that it holds.

14.2 If the CCG receives a request for information which it does not hold (or holds only in part) but which is held by another public authority, then the CCG will consider what would be the most helpful way of assisting the applicant with their request. This is likely to involve:

- informing the applicant that the information requested may be held by another public authority;
- suggesting that the applicant re-applies to that authority;
- providing the applicant with contact details for that authority;
- transferring a request to that authority where they hold information relating to part of a request made to the CCG, and vice versa, due to the closer working arrangements of these two bodies. Any transfer of a request must be with the consent of the applicant.

## 15 Consultation with Third Parties

15.1 There will be instances where information requested under the Act will include information relating to third parties (i.e. references to organisations or individuals other than the CCG). Such information will normally be disclosed unless:

- It is "personal data", as defined by the Data Protection Act 2018 (DPA) and in guidance issued by the Information Commissioner;

- Where disclosure without consent would constitute an actionable breach of confidence as described in section 41 of the Act;
- Where common law duty of confidence is owed (e.g. information concerning a deceased patient).

15.2 Where none of the conditions described above apply and where there are no other exemptions, the CCG will normally be obliged to disclose the information requested.

15.3 The CCG will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of their functions and it would not be otherwise provided.

15.4 The CCG will not agree to hold information received from third parties “in confidence” which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

## 16 Managing Contracts

16.1 When entering into contracts, the CCG will refuse to include contractual terms which seek to restrict the disclosure of information relating to the contract, beyond the restrictions permitted by the Act or the Data Protection Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the CCG will be obliged to disclose that information in response to a request, regardless of the terms of the contract.

16.2 When entering into contracts with non-public authority contractors, the CCG may be asked to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance are exempt from disclosure. Such clauses will be rejected wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the CCG will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. When drawing up any such schedule the CCG will be mindful that any restrictions on disclosure could potentially be overridden by obligations under the Act and that such confidentiality provisions must be for good reasons and be capable of being justified to the Information Commissioner.

16.3 In order to avoid unnecessary secrecy, any such constraints on disclosure will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the CCG will not impose terms of secrecy on contractors.

16.4 The CCG will not agree to hold information “in confidence” where it is not in fact confidential in nature, that is, where the information has been obtained by the CCG from another organisation or individual and the disclosure of the information to the public, otherwise than under the Act, would constitute an actionable breach of confidence.

## **17 Records Management**

17.1 The CCG has systems and processes in place for managing its corporate records in both electronic and paper format in order to respond effectively to requests for information. The Records Management Policy (IG005) and supporting procedures will be compliant with the Department of Health guidance "Records Management: NHS Code of Practice" as well as the "Lord Chancellor's Code of Practice on the Management of Records under section 46 of the FOI".

## **18 Document Consultation, Approval & Ratification**

18.1 The CCG's Conflicts of Interest Committee is the delegated authority for the approval and ratification of this document. The committee has considered the content of the document in terms of current best practice, guidelines, legislation and mandatory and statutory requirements before formally approving and ratifying it on behalf of the CCG Board.

## **19 Review**

19.1 The policy will be reviewed every 2 years by the CCG's Information Governance Board or equivalent or as and when significant changes make earlier review necessary.

## **20 Training**

20.1 FOI training will be available to staff with responsibilities for FOI applications.

20.2 Training & awareness raising will be provided for staff to support timely submissions of information.

20.3 The CCG's Patient Safety & Governance Lead will consider specific training to identified groups / key individuals in liaison with the Information Governance Manager or Data Protection Officer.

## **21 Distribution**

21.1 This policy is available for all staff and members of the public via the CCG website.

21.2 Line managers should ensure that staff without computer access have access to the policy in alternative media.

21.3 This document will be included in the Publication Scheme for the CCG in compliance with the FOI Act.

## **22 Implementation**

- 22.1 It will be the responsibility of the Associate Director of Governance & Safety to ensure that this policy is implemented effectively across the CCG.
- 22.2 Line managers must ensure that their staff are aware of this policy and procedure and how to deal with a Freedom of Information request should they receive one.
- 22.3 Information Governance issues, including Freedom of Information, will be highlighted on a routine basis through the Quality & Safety Committee.

## **23 Monitoring Compliance**

- 23.1 The Governance & Safety Team will maintain records of all FOI requests and submit quarterly reports to the Conflicts of Interest Committee to assess performance in meeting the statutory timeframes. These reports will be published on the CCG website.
- 23.2 The Governance & Safety Team will include FOI data in the Governance & Safety Report, submitted quarterly to the Quality & Safety Committee.

## **Appendices:**

### **Appendix 1 - Definitions**

Publication Scheme	A Publication Scheme contains all published corporate information held by a public authority. It is both a public commitment to make certain information available and a guide to how that information can be obtained. The CCG has adopted a model publication scheme and it will be reviewed regularly.
Vexatious request	The dictionary definition refers to “causing annoyance or worry”. S14 (1) of the Act states that public authorities do not have to comply with vexatious requests. There is no public interest test. To decide whether a request is vexatious, its context and history need to be looked at. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. .
“Recorded Information Held”	Recorded information held is that which has been captured and can be reproduced in a readable form. The Act does not oblige the CCG to provide analysis of any “raw data” which they may hold, e.g. entries to a database, unless such analysis already exists.

### **Appendix 2 - Related Documents**

The documents listed below are linked to this policy and can be found on Bolton CCG’s website at [www.boltonccg.nhs.uk](http://www.boltonccg.nhs.uk).

- Information Governance Management Framework (IG010)
- Confidentiality and Data Protection Policy (IG002)
- Information Governance Policy (IG001)
- Record Archiving Policy and Procedure (REC001)
- Records Management Policy (IG013)
- Subject Access Standard Operating Procedure (IG013)

This document can be found on NHS Digital’s website:

- Records Management Code of Practice for Health and Social Care 2016 – Retention Schedules: <https://www.digital.nhs.uk/codes-of-practice-handling-information>.

### **Appendix 3 - References**

Freedom of Information Act 2000

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

Information Commissioners Office – Freedom of Information Act webpage

<http://ico.org.uk/>

Code of Practice on the discharge of public authorities' functions under section 45 of the Freedom of Information Act

<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

<https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf>

### **Appendix 4 – Useful Contacts**

#### **CCG FOI Executive Lead**

Michael Robinson, Associate Director Governance & Policy

Email: [michael.robinson1@nhs.net](mailto:michael.robinson1@nhs.net)

#### **CCG FOI Support**

Customer Services Officer

Email: [bolccg.foi@nhs.net](mailto:bolccg.foi@nhs.net)

Telephone: 01204 462022

#### **FOI APPLICATIONS SHOULD BE SUBMITTED TO:**

**Email:** [bolccg.foi@nhs.net](mailto:bolccg.foi@nhs.net)

**Post:** NHS Bolton CCG, 3rd Floor, Lever Chambers, 27 Ashburner Street, Bolton BL1 1SQ

#### **Information Commissioner's Office**

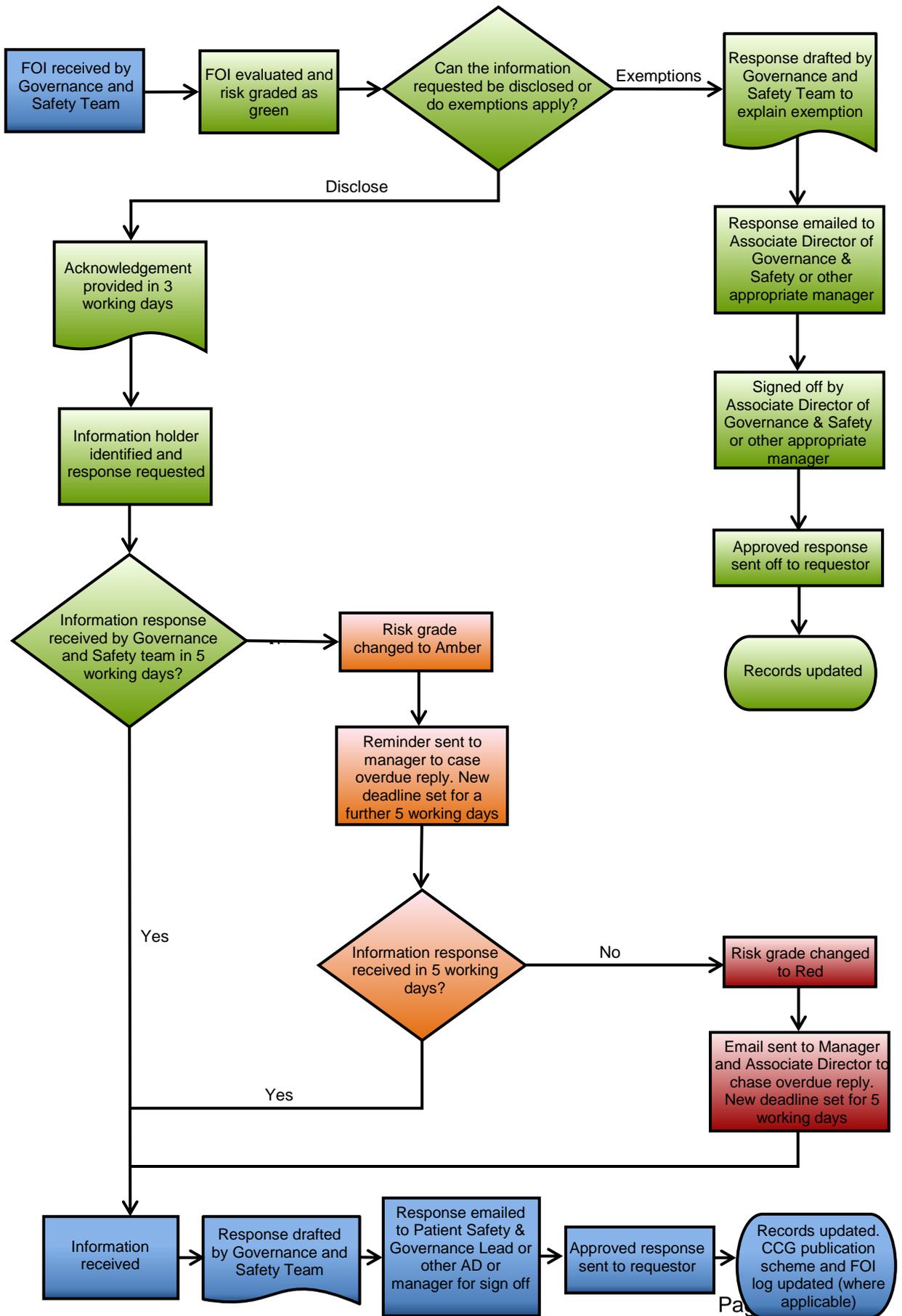
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate number)

Fax: 01625 524 510

Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

**Appendix 5 – FOI process**



## Appendix 6

### Conditions and Exemptions

The duty to confirm or deny does not arise where the CCG requires further information in order to identify and locate the information requested and had informed the applicant of that requirement. The CCG is required to contact the applicant for additional information should it be required.

The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

The duty to comply with a request for information does not arise if the CCG estimates that the cost of compliance with the request would exceed the appropriate limit in national fees regulations. The CCG will work with applicants to keep compliance costs to a minimum but reserves the right to either refuse to comply with the request or to charge for the communication of information that exceeds this limit.

The CCG is not obliged to comply with a request for information if the request is considered vexatious. Where the CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or similar request from that person unless a reasonable interval has elapsed between the two requests. The Governance & Safety Team will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

Under section 2 of the Act, the CCG does not have to comply with the duty to confirm or deny if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption.

Qualified exemptions:

- information intended for future publication;
- research data;
- national security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise);
- 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;
- prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords);

- royal household communications and honours;
  - health and safety;
  - environmental information (as this can be accessed through the Environmental Information Regulations);
  - legal professional privilege;
  - commercial interests.
4. Absolute exemptions:
- information accessible to the 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);
  - communication with Her Majesty and second in line to the throne
  - personal information (covered by the Data Protection Act);
  - information provided in confidence;
  - prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

If the CCG intends to withhold the information, there is a duty to explain the decision. This should be done within 20 working days, however if the CCG needs to consider the public interest test they are entitled to a reasonable extended period. In this case, within the 20 working day period the CCG should provide an estimate of when it expects to reach a decision and stick to this unless there is a good reason not to. If, while trying to reach a decision, it is realised that the original estimate is unrealistic the applicant will be informed.

The CCG will keep a record of any instances where it fails to meet estimated extensions.

The FOI Act 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 the CCG and / or legal advice gained where necessary.

By applying an absolute exemption the CCG may refuse to confirm or deny whether it holds the information requested.

A qualified exemption also allows the CCG the same right to neither confirm nor deny but subject to a “public interest test”. This means that the CCG must demonstrate, in all circumstances of the case, that the public interest in refusing to confirm or deny outweighs the public interest in favour of disclosure.

Requests for access to records of deceased health care service users will be considered under the Access to Health Records Act 1990 as a subject access request by the Information Governance Manager. The Information Commissioner's Office (ICO) has ruled that when a public authority has received a request for access to the records of a deceased person consideration must be given to any duty of confidence.

## **Appendix 7**

### **The Public Interest Test**

The public interest will be considered in every case where a qualified exemption may apply.

Defining the public interest will vary according to the information being requested. It may often involve issues around accountability, transparent decision making and good management. When considering the public interest to reach a decision on a qualified exemption, the CCG may seek appropriate professional advice (this may include legal advice).

The CCG will aim to use the qualified exemptions sparingly and will, in accordance with section 17 of the FOI Act, justify their use.

Most public bodies which govern access to information held by Government are based on the same building blocks:

- A general right of access to information held by public authorities.
- The right of access is subject to a range of exemptions covering issues like security, international relations, formulation of government policy and commercial confidentiality.
- Some of the exemptions are subject to a public interest test which requires the decision-maker to take public interest considerations into account when deciding whether to release information even where an exemption applies.

This mechanism is referred to as a "public interest override" or "public interest test" because the public interest considerations "override" the exemption.

It is often suggested that the fact that the term "the public interest" is not defined in the FOI Act leads to difficulty. This should not be the case. From time to time weighing competing interests may be difficult. However, this does not mean that the nature of the task facing a public authority when applying the public interest test is unclear. In effect something "in the public interest" is simply 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 question of where the public interest lies has often been considered by the courts in newspaper cases, particularly where an individual or organisation attempts to prevent publication of a story. The courts have often distinguished between things

which are in the public interest from things which merely interest the public. It is also important to bear in mind that the competing interests to be considered are the public interests favouring disclosure against the public (rather than private) interest favouring the withholding of information.

There will often be a private interest in withholding information which would reveal incompetence on the part of or corruption within the public authority or which would simply cause embarrassment to the authority. However, the public interest will favour accountability and good administration and it is this interest that must be weighed against the public interest in not disclosing the information. Of course, there will be many occasions when public and private interests coincide.

There is a presumption running through the Act that openness is, in itself, to be regarded as something which is in the public interest. Setting out the considerations for a public authority when adopting or reviewing its publication scheme, the FOI Act requires that "... a public authority shall have regard to the public interest –

- (a) in allowing public access to information held by the authority, and
- (b) in the publication of reasons for decision held by the authority."

It may be helpful to think about why openness should be regarded as being for the public good. In the Introduction to the Freedom of Information Act 2000, the Commissioner lists the following public interest factors that would encourage the disclosure of information:

- Furthering the understanding of and participation in the public debate of issues of the day. This factor would come into play if disclosure would allow a more informed debate of issues under consideration by the Government or a local authority. Promoting accountability and transparency by public authorities for decisions taken by them. Placing an obligation on authorities and officials to provide reasoned explanations for decisions made will improve the quality of decisions and administration.
- Promoting accountability and transparency in the spending of public money. The public interest is likely to be served, for instance in the context of private sector delivery of public services, if the disclosure of information ensures greater competition and better value for money that is public. Disclosure of information as to gifts and expenses may also assure the public of the personal probity of elected leaders and officials.
- Allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions.
- Bringing to light information affecting public health and public safety.

A public interest test is by no means an unusual feature in freedom of information legislation. For UK public authorities, the most useful case law is from decisions of the First Tier Tribunal.

The CCG's Associate Director of Governance & Safety and Chief Officer will decide whether to apply the Public Interest test.

The CCG's Chief Officer or their deputy will have the final decision on whether the Public Interest test is applied.

If a decision is taken to exempt the information, then the Chief Officer will be required to provide justification with the appropriate exemption as to why the information should not be disclosed.

## Analysis of Effect (AoE) Tool

To be completed and to accompany any procedural document when submitted to the appropriate committee for consideration and approval.

		Yes/No	Comments
1.	<b>Does the document/guidance affect one group less or more favourably than another on the basis of:</b>		
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	Yes	Info available in alternative media/formats upon request
	• Gender Reassignment	No	
	• Marriage and civil partnership	No	
	• Pregnancy and maternity	No	
	• Race (including gypsies and travellers)	No	
	• Religion or belief	No	
	• Sex	No	
	• Sexual orientation	No	
2.	<b>Is there any evidence that some groups are affected differently?</b>	No	
3.	<b>If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?</b>	No	
4.	<b>Is the impact of the document/guidance likely to be negative?</b>	No	
5.	<b>If so, can the impact be avoided?</b>	-	
6.	<b>What alternative is there to achieving the document/guidance without the impact?</b>	-	
7.	<b>Can we reduce the impact by taking different action?</b>	No	

If you have identified a potential discriminatory impact of this procedural document, please refer it to the Associate Director of Governance & Safety, together with any suggestions as to the action required to avoid / reduce this impact.