

Freedom of Information and Environmental Information Regulations Policy

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Glossary of Terms

The Glossary of Terms is presented at the beginning of this policy to support understanding and clarity in relation to a number of key terms related to Freedom of Information and Environmental Information legislation.

'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 2018

'EIR' is an acronym for Environmental Information Regulations 2004

'ICO' is an acronym for the Information Commissioner's Office (independent regulator for the Freedom of Information Act 2000, Environmental Information Regulations 2004, General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018)

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

'Exception' refers to provisions within EIR that define particular types of information that public authorities may not be obliged to disclose. These are qualified exceptions only.

'Disclosure Log' refers to a list of published responses to requests made under the FOI Act and EIR which are felt to be of wider public interest.

'Public Interest Test' is required for qualified exemptions and exceptions to determine if disclosure of the information is in the public interest.

'Publication Scheme' the CCG has a legal requirement to compile and make available certain classes of information routinely, and proactively provide to the public. This is called a Publication Scheme. The CCG Publication Scheme can be found on the CCG's public website or in hard copy on request.

1. Introduction

This document sets out the Freedom of Information and Environmental Information Regulations Policy for NHS Calderdale Clinical Commissioning Group (CCG).

The Freedom of Information Act (2000)

The Freedom of Information Act (2000) (FOI Act) is part of the Government's commitment to greater openness in the public sector. Public authorities spend money collected from taxpayers, and make decisions that can significantly affect many people's lives. The FOI Act helps the public make public authorities accountable for their actions and allows public debate to be better informed and more productive. It enables members of the public to scrutinise the decisions of public authorities more closely and ensure that services are delivered properly and efficiently.

The main features of the Act are:

- It provides a general right of access to all recorded information held by the CCG (subject to exemptions set out in the FOI Act and exceptions set out in the Environmental Information Regulations).
- It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings. It covers all recorded information held by a public authority.
- It provides a duty on every public authority to adopt and maintain a Publication Scheme.
- It does not give people access to their own personal data (information about themselves) such as their health records.
- The FOI Act is subject to 23 exemptions which allow public authorities to withhold information. They are either absolute or qualified exemptions. The Environmental Information Regulations (EIR) are subject to qualified exceptions only.
- The Information Commissioner's Office oversees compliance against the FOI Act and associated statutory instruments together with the EIR.

Environmental Information Regulations (2004)

Certain categories of public information are covered by the EIR. The 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, exceptions are fewer and requests can be made verbally.

The CCG and this policy support 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 General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018. The CCG must still be able to carry out its duties effectively and to ensure this the exemptions outlined in the Act and exceptions outlined in the Regulations will be applied appropriately.

Publication Scheme

The CCG is required to publish information held by setting up and maintaining a Publication Scheme. This Publication Scheme sets out classes of information that the CCG undertakes to publish and is based on the ICO's Model Publication Scheme.

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 delivering them
- 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.

The documents available through the 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 web page and, as a result, staff are encouraged to recommend information for inclusion.

Disclosure Log

The CCG will publish a disclosure log on its public web site of responses to requests made under the FOI Act and EIR which are felt to be of wider public interest.

2. Principles

In complying with its statutory duties relating to the FOI Act and EIR, the CCG will take all reasonable steps to abide by the following principles:

- Ensuring all requests for information are dealt with consistently and receive a high quality response however and wherever the contact is made;
- Ensuring that the CCG complies with all relevant regulations, laws and guidance;
- Ensuring staff at all levels are aware of their responsibilities with regards to the Act and Regulations, be it in directing any queries to the appropriate person/department, or in ensuring they provide any information requested in a timely fashion;
- Ensuring statutory timescales are met;
- Ensuring that the Audit Committee under delegated authority from the Governing Body is fully informed on the operation of the Act and Regulations and any implications for the service.

The CCG acknowledges that there are a range of consequences that can be imposed on a public authority by the Information Commissioners Office for failure to adhere to its statutory responsibilities under the FOI Act and EIR. These include assessment visits, information

notices, enforcement notices, decision notices and criminal prosecution.

3. **Scope**

The Freedom of Information and Environmental Information Regulations Policy applies to all staff and Governing Body members who work for the CCG (including those on temporary or honorary contracts, secondments, pool staff and students).

This policy applies to all information held by the CCG, including documents that have been supplied by other organisations. Staff should be aware that all documents they create in the course of their duties (including personal e-mails) may fall within the scope of the Act and its Regulations. Information can be held in any form, including recordings or notes of telephone calls, file notes, the internet, emails and video/audio recordings.

All CCG staff should have an understanding of this policy in order to direct enquirers appropriately.

4. **Accountability**

4.1 **Role and Responsibilities.**

The following table sets out the roles and responsibilities in relation to this policy:

Formal governance and assurance

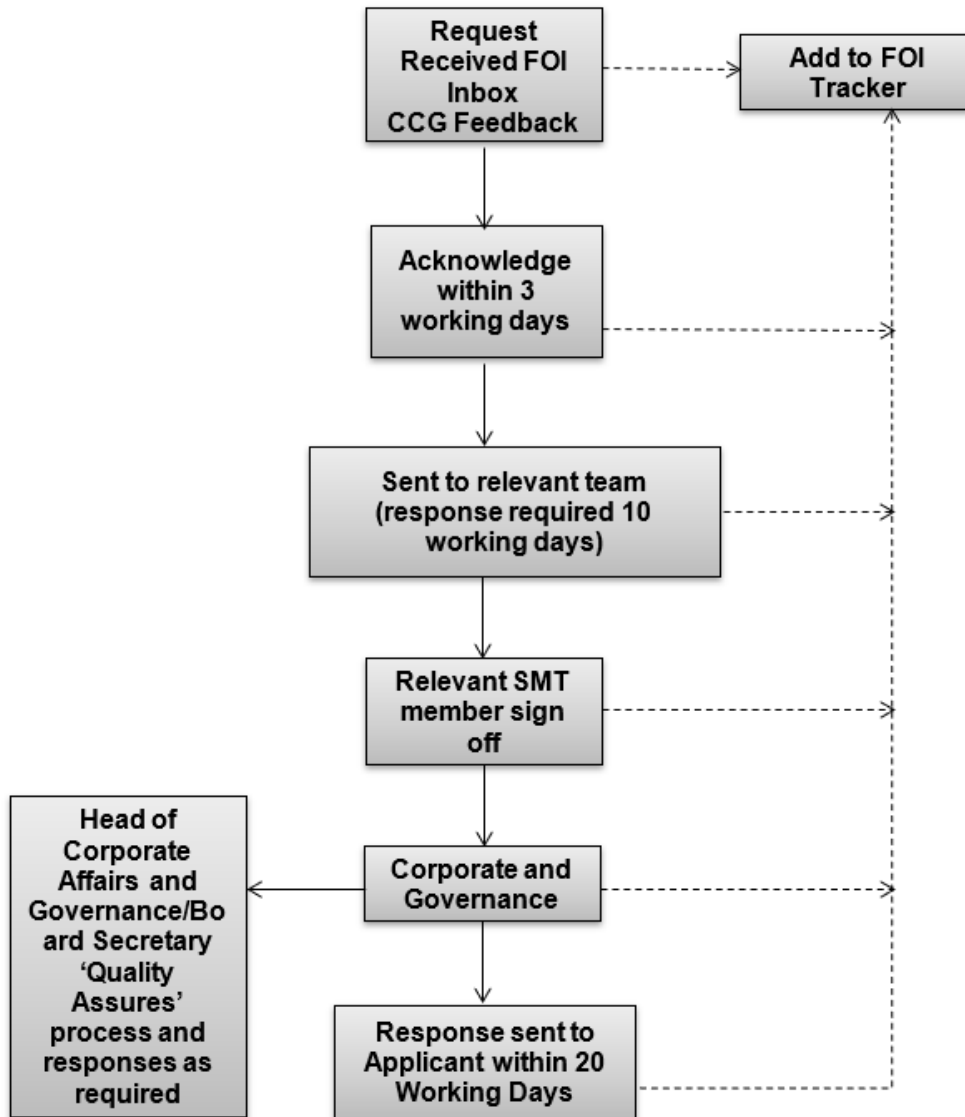
Title	Responsibility
Governing Body	<ul style="list-style-type: none">▪ Accountable for ensuring that resources and systems are in place to support compliance with the FOI Act and EIR, and to receive by exception, significant risks and gaps in compliance on policy issues relating to the FOI Act and EIR.▪ To monitor FOI Act and EIR management via minutes / reports and assurance from the Audit Committee on a regular basis.
Finance and Performance	<ul style="list-style-type: none">▪ Responsible for the approval of this policy document.

Title	Responsibility
Committee	
Audit Committee	<ul style="list-style-type: none"> ▪ The Audit Committee is established to assist the Governing Body with the delivery of its delegated responsibilities. ▪ Has responsibility for maintaining an overview of the adequacy and effectiveness of the system of internal control and the integrated risk management system. ▪ Responsible for monitoring compliance with this policy as part of ensuring the adequacy and effectiveness of arrangements in place to comply with the FOI Act and EIR. ▪ Bringing to the attention of the Governing Body significant risks and gaps in compliance.
Chief Officer	<ul style="list-style-type: none"> ▪ Has overall responsibility for ensuring compliance with this policy, supported by the Head of Corporate Affairs and Governance/Board Secretary.
Head of Corporate Affairs and Governance/Board Secretary	<ul style="list-style-type: none"> ▪ Responsible for the administrative co-ordination of this policy. ▪ Responsible for ensuring effective management, compliance and assurance for all aspects of FOI Act and EIR management including ensuring training is provided for staff as appropriate. ▪ Supported by the expertise of the Information Governance Team and ICO when required.
Senior Information Risk Owner	<ul style="list-style-type: none"> ▪ Has organisational responsibility for all aspects of risk associated with information Governance, including those relating to the FOI Act and EIR.

Title	Responsibility
Data Protection Officer	<ul style="list-style-type: none"> ▪ Responsible for the provision of advice on compliance obligations, data protection impact assessment and monitoring of data protection compliance in respect of the FOI and EIR regimes.
HR Team	<ul style="list-style-type: none"> ▪ Provide advice on any workforce implications during the drafting of this policy. ▪ Advise the policy lead of any changes to national HR policy or legislation that may impact on the policy. ▪ Advise on conduct/capability matters arising from alleged breaches of this policy to managers and staff.
Heads of Service	<p>Each Head of Service is responsible for ensuring that:</p> <ul style="list-style-type: none"> ▪ All members of staff are aware of this policy and processes to be followed. ▪ All staff within their function receive relevant training. ▪ Timely, high quality and complete information is provided in response to requests under the FOI Act and EIR and that up to date information is provided to the Corporate and Governance Officer so that the Publication Scheme can be kept up to date.
All staff	<p>Each member of staff is responsible for:</p> <ul style="list-style-type: none"> ▪ Ensuring that they are aware of the requirements under this policy and complying with them. ▪ Attending any training as required.

5. Procedure

5.1 Procedural Flow Diagram



The flow diagram shows the process of how a Freedom of Information (FOI) Request is managed.

- Request received FOI Inbox / CCG Feedback > add to tracker
- Acknowledge within 3 working days > add to tracker
- Sent to relevant team (response required 10 working days) > add to tracker
- Relevant SMT member sign off > add to tracker
- Corporate and Governance > Head of Corporate Governance Affairs and Governance / Board Secretary Quality Assures process and response as required
- Corporate and Governance > add to tracker
- Response sent to applicant within 20 working days > add to tracker

5.2 **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
- 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
- Decision taken and details of any exemption used
- Date completed and sent to the applicant

5.3 **Advice and Assistance**

The FOI Act and EIR require the CCG to provide advice and assistance to applicants and would-be applicants. The organisation will provide this, taking into account other statutory duties, e.g. the Equality Act 2010.

5.4 **General Rights of Access**

FOI and EIR provide a general right of access to recorded information held by the CCG. This means that any person who makes a request has the right to:

- a) Be informed in writing whether the CCG holds the information requested and;
- b) If the CCG holds that information, have it communicated to them.

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 a 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 that can be provided without any question (recruitment brochures, press releases, leaflets) should be treated as business as usual.

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, an address for correspondence and a description of the information requested. E-mail is an acceptable form of correspondence.

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

FOI and EIR require that requests are responded to within 20 working days. If the CCG decides to make use of a condition or exemption to withhold information, the applicant will be informed within 20 working days.

As recommended in the Lord Chancellor's code of practice, 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 their 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.

5.5 **Personal Information**

Personal data is information about a living or deceased 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)

If the person requesting the information is the subject of the information then they should be redirected to the subject access provisions under the General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018. If the personal data is about someone other than the applicant, there is an absolute exemption under FOI. The public authority must still consider if disclosure would breach any of the Data Protection principles and apply a public interest test.

The subject also has the right to object to the disclosure, the CCG undertakes to ensure that all requests for personal information are handled in consultation with the subject and with advice from Information Governance team, 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.

5.6 **Official Information held in Private Email Accounts**

FOI and EIR apply to official information held in private email accounts when held on behalf of the CCG. It may be necessary in particular cases to request relevant individuals to search their private email accounts. The occasions when this will be necessary are expected to be rare.

In circumstances where information is held by another person on behalf of the CCG, the information is considered to be held by the CCG for the purposes of FOI and EIR (for example, a commissioning support unit). Information held in non-work personal email accounts (e.g. Hotmail, Yahoo and Gmail) may be subject to FOI and EIR if it relates to the official business of the CCG.

All such information which is held by someone who has a direct, formal connection with the CCG is potentially subject to FOI and EIR regardless of whether it is held in an official or private email account. If the information held in a private account amounts to the business of the CCG it is very likely to be held on behalf of the CCG.

In situations where information legitimately requested under FOI and EIR includes relevant information held on private email accounts, the CCG should consider all locations where relevant information may be held.

Where members of staff have been asked to search their private email accounts for requested information, there should be a record of the action taken so that the CCG is able to demonstrate, if required, that appropriate searches have been made in relation to a particular request. The Information Commissioner may need to see this. Information in private email accounts that does not relate to the business of the CCG will not be subject to FOI and EIR.

5.7 Conditions, Exemptions and Exceptions

5.7.1 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 advise the applicant of the estimated costs and work with them to keep compliance costs to a minimum, but maintains the right to refuse such a request.
- If the request is vexatious.
- If the CCG has recently complied with a request for information then it 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.

5.7.2 Exemptions under FOI

The 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 is exempt from the need to confirm or deny. This means that the CCG does not have to admit or deny holding the information.
- 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 information governance team/Head of Corporate Affairs and Governance/Board Secretary and other senior colleagues as appropriate.

[Appendix B contains details of the exemptions available under the Act.](#)

5.7.3 Exceptions under EIR

There is a strong presumption of openness in relation to all matters relating to the environment and only qualified exceptions can be applied under EIR.

5.7.4 Public Interest Test

The public interest must be considered in every case where a qualified exemption applies. 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. It may often include ensuring honesty, accountability, transparent decision making and the absence of bias. Advice on carrying out the public interest test is provided by the information governance team/Head of Corporate Affairs and Governance/Board Secretary. The public interest does not include protecting an authority or individual from embarrassment.

If a public interest test needs to be carried out and may take more than the statutory 20 working days, the CCG will inform the applicant as soon as possible and provide an indication of when they can expect a response.

5.8 Data Sets

Section 102 of the Protection of Freedoms Act 2012 adds provisions to the FOIA (in particular Sections 11 and 19) relating to the way that information held in datasets is released under FOI. A data set is a collection of factual information in electronic form related to the services and functions of the CCG that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered. Where a request is made for a dataset the CCG is required to provide this information in a re-usable form so far as reasonably practicable.

A re-usable form means that the dataset is in a 'machine readable' form. Factors which can affect whether it is reasonably practicable to provide the dataset in a readable form can include the time and cost of conversion, technical issues and resources of the CCG. If a dataset is a relevant copyright work (the CCG owns the copyright and database rights), the CCG will provide it under the terms of a specified license.

The Open Government License (OGL) is the default license for datasets that can be re-used without charge. Other licenses which can be used, if appropriate, are the Non Commercial Government License (the information cannot be used for Commercial purposes) and the Charged License (where it is appropriate to charge for the re-use of information).

As required by the new provisions, the CCG will publish datasets requested and any updated versions unless the CCG feels that it is not appropriate to do so. Reasons for it not being appropriate may include:

- The information is exempt from disclosure under the FOIA.
- The information may cover a very narrow area of information. Although the requestor is entitled to ask for the information under the FOIA the CCG may consider that there is no benefit in continuing to publish the dataset routinely.
- The cost or technical issues involved in making the information routinely available on the Publication Scheme.

The dataset provisions do not apply to EIR, however, Regulation 6 does require that a public authority should make information available in the format requested by the applicant unless it is reasonable not to.

5.9 **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' its obligations under the Act. The Lord Chancellor's Code of Practice states that "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 can be agreed to include a schedule within the contract that clearly identifies 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 Regulations.

The CCG should not hold information 'in confidence' that is not confidential in nature. The confidential information exemption under the FOI and EIR only applies if the release of such information constitutes a breach of confidence actionable in a court of law.

5.10 **Complaints**

Applicants that are dissatisfied with the response to their request are able to request an internal review and/or log a complaint with the CCG. The process is set out at Appendix E. Applicants will be informed of the option to appeal, make a complaint or refer their case to the Office of the Information Commissioner in the response to the initial FOI application.

5.11 **Records Management**

Good records management is the key to complying with requests for information. The Records Management Policy and supporting guidelines provide comprehensive guidance for the management of all records and are consistent with:

a) Records Management Code of Practice - Department of Health 2006

b) The Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000 (November 2002)

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

6. Training Needs Analysis

The CCG will ensure all staff receive Data Security Awareness training on an annual basis through the CCG's statutory and mandatory training programme. This annual training includes awareness of the provisions of the FOIA. Awareness of the provisions of the FOIA and EIR will additionally be raised through internal staff workshops and staff reminder communications.

7. Implementation and Dissemination

NHS Calderdale CCG will take the following steps shown in the table below to ensure that all those within the scope of this policy are aware of its existence and are supported by training in its requirements, to ensure effective implementation.

How will the policy be disseminated?	How will awareness of the policy be raised?	How will any training or support be provided?	Who will need training or support?	How often is the training needed?	Who will monitor compliance with the training?
Via the CCG intranet	Via in house newsletters/articles	Statutory and Mandatory Data Security and Awareness Training Helpdesk support via Information Governance Team	All staff	Annual	Audit Committee

8. Monitoring Compliance with and the Effectiveness of the Policy

The table below shows how compliance will be monitored to evidence the effectiveness of the policy.

Which key aspects of the policy will be monitored?	How will they be monitored?	Who is responsible for ensuring the monitoring?	How frequently?	Which Group/ Committee will receive and review any findings, lessons learned and ensure actions to improve are completed?	Evidence this has happened?
Statutory response time of 20 working days, the number/% of breaches and reasons for this, the number of exemptions used and reasons for this.	Reporting to Audit Committee	Head of Corporate Affairs and Governance/ Board Secretary	At least annually	Audit Committee	Audit Committee minutes

9. **References**

The following documents are referenced in this policy:

- Freedom of Information Act 2000
- Environmental Information Regulations 2004 (EIRs)
- Re-Use of Public Sector Information Regulations 2015
- General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018
- Records Management Code of Practice for Health and Social Care
- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act (November 2002)
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000 (November 2002)

10. **Associated Documents**

The following CCG policies and procedures are related to this policy:

- Policy and Guidance on Records Management Subject Access Request and Access to Health Records Procedure
- Complaints Framework
- Confidentiality and Data Protection Policy

11. **Equality Impact Assessment**

Title of policy

Freedom of Information and Environmental Information Regulations Policy

Names and roles of people completing the assessment

Information Governance Manager

Date assessment started/completed

June 2018

1. Outline

Give a brief summary of the policy

This document defines the Freedom of Information and Environmental Information Regulations Policy for NHS Calderdale Clinical Commissioning Group (NHS Calderdale CCG). The policy applies to all employees of NHS Calderdale CCG (including those on temporary or honorary contracts, secondments, pool staff and students).

What outcomes do you want to achieve?

- Ensure all requests for information are dealt with consistently and receive a high-quality response however and wherever the contact is made.
- Ensure that NHS Calderdale CCG complies with all relevant regulations, laws and guidance
- Ensure staff at all levels are aware of their responsibilities, be it in directing any queries to the appropriate person/department, or in ensuring they provide any information requested in a timely fashion
- Ensure timescales are met

Ensure the Governing Body is fully informed on the operation of FOIA and EIR and any implications to the service

2. Analysis of impact

This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to; eliminate unlawful discrimination; advance equality of opportunity; foster good relations

Characteristics	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	Are these negative or positive?	What action will be taken to address any negative impacts or enhance positive ones?
Age	No	Neutral	No issues identified, policy

Characteristics	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	Are these negative or positive?	What action will be taken to address any negative impacts or enhance positive ones?
			complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Carers	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Disability	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Sex	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Race	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Religion or	No	Neutral	No issues identified, policy

Characteristics	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	Are these negative or positive?	What action will be taken to address any negative impacts or enhance positive ones?
belief			complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Sexual orientation	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Gender reassignment	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Pregnancy and maternity	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Marriage and civil partnership	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
Other relevant	No	Neutral	No issues identified, policy

Characteristics	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	Are these negative or positive?	What action will be taken to address any negative impacts or enhance positive ones?
group			complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).

3. Impact

If any negative/positive impacts were identified are they valid, legal and/or justifiable?

Please detail.

No anticipated detrimental impact on any equality group. The policy is applicable to all staff and adheres to legal requirements and best practice. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.

4. Monitoring, Review and Publication

How will you review/monitor the impact and effectiveness of your actions?

Monitoring of any issues of unlawful treatment of protected groups of staff (or others) (such as harassment or discrimination) relating to the implementation of this Policy.

Lead Officer

Review date: June 2018

5. Sign off

Lead Officer Head of Corporate Affairs and Governance/Body Secretary

Director

Date approved

Appendix A: Guidance when Processing a Freedom of Information Request

The Information Governance Team and the Head of Corporate Affairs and Governance/Board Secretary are able to provide advice on responding to FOI applications.

The Information Commissioner's Office provides a range of online guidance to support organisations in their compliance with the management of Freedom of Information requests.

See [guide to Freedom of Information](#):

See [guidance index](#):

Acknowledgement	The CCG 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.
Advice and Assistance	<p>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:</p> <ul style="list-style-type: none">▪ give guidance on how to access the information from the CCG's Publication Scheme and the general rights of access▪ inform the applicant of the progress of their request▪ explain the basis for any charges or fees levied or exemption/exceptions applied▪ 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 internal review or

	<p>complaints procedure and/or the Office of the Information Commissioner if they are dissatisfied with any outcome</p>
<p>Accessing information</p>	<p>The Corporate and Governance Officer will liaise with the appropriate manager to obtain the information that the applicant has requested. The relevant manager will be given a timescale to deal with the request. Any problems should be immediately brought to the attention of the Head of Corporate Affairs and Governance/Board Secretary.</p> <p>The information will be forwarded to the CCG's Corporate and Governance Officer who will provide advice and guidance on any potential exemptions and exceptions that may apply, where appropriate. An exemption or exception may apply to part of a document, but the remainder of the document may still be eligible for release.</p>
<p>Difference between extracting or compiling existing information and creating new information</p>	<p>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: -</p> <ul style="list-style-type: none"> ▪ 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 from an electronic database by searching 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

	<p>would amount to creating new information not already held.</p>
<p>Providing the information</p>	<p>If no exemptions or exceptions apply and there are no fees or charges to be levied the CCG's Corporate and Governance Officer will draft a response letter for approval by the relevant Senior Management Team member.</p> <p>Information will be provided to applicants in one or more of the following methods:</p> <ul style="list-style-type: none"> ▪ a photocopy or printed copy of the information ▪ transferred by electronic means ▪ transferred on CD-ROM ▪ provision of a summary of the information, in one or a combination of the formats mentioned in the first three points.
<p>Refusing a request</p>	<p>A request for information may be refused if:</p> <ul style="list-style-type: none"> ▪ the information is exempt under the FOI Act or EIR ▪ the cost of compliance exceeds the appropriate limit under FOI, or the request is manifestly unreasonable under EIR ▪ the request can be demonstrated to be vexatious or repeated. <p>The applicant will be informed in writing of the decision within 20 working days of the request and will be told the following:</p> <ul style="list-style-type: none"> ▪ the exemption/exception(s) that has been applied ▪ the justification for the use of the

	<p>exemption/exception(s) and the application of any public interest test</p> <ul style="list-style-type: none"> ▪ details of the CCG’s complaint procedure if they are not satisfied with the outcome ▪ details of the right to appeal to the Information Commissioner <p>If the exemption under FOI 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:</p> <ul style="list-style-type: none"> ▪ the fact that the CCG is exempt from the duty to confirm or deny ▪ specify the exemption in question ▪ state why the exemption applies (unless it would be otherwise apparent). <p>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.</p>
Re-use regulations	<p>The Re-Use of Public Sector Information Regulations (RoPSI) 2015 governs the re-use of information created and used by Public Authorities in the UK. The RoPSI regulations provide the public and the private sector with the right to re-use the information supplied, subject to a</p>

number of associated licencing conditions.

Applicants who wish to make a request for re-use under the RoPSI regulations should contact the CCG in writing (preferably by email), include their name and address for correspondence, details of the information they wish to re-use, and the purpose of intended use.

Where the CCG permits re-use of information under the Re-Use of Public Sector Information Regulations 2015 it is licensed under the [Open Government Licence](#). The CCG will, as a matter of routine, not charge for the re-use of information beyond reasonable disbursement costs (printing, postage, etc.) as per the Freedom of Information process. If the standard practice of allowing free-of-charge, Open Government Licence governed re-use will not apply to an application for re-use, this will be discussed with and communicated to the applicant as soon as it becomes apparent.

Applicants dissatisfied with the response they have received to a request for re-use, or the conditions applied, can make a formal complaint. Complaints should be in writing, stating the nature of the complaint in detail. Complaints should be sent to the address below within 60 days of the date of the CCG's response to the request.

Head of Corporate Affairs and Governance/Board
Secretary
NHS Calderdale CCG
5th Floor, F Mill

	<p>Dean Clough Halifax HX3 5AX</p> <p>If a complaint is not resolved to the applicant's complete satisfaction, they have the right to appeal to the Information Commissioner for a decision.</p>
Copyright	<p>Any information supplied under FOI/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/EIR.</p> <p><i>"The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by the CCG will have been produced by government officials and will be Crown Copyright. You can find details on the arrangements for re-using Crown Copyright on HMSO</i></p> <p>Online at: http://www.hmso.gov.uk/copyright/licences/click-use-home.htm</p> <p><i>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)</i></p>

	<i>information.”</i>
Transferring a request	<p>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. In such circumstances, the CCG will write to the applicant, explaining that it does not hold the information and provide the applicant with the contact details of the authority that may hold the information.</p> <p>Requests will be transferred within the CCG if the request is a Data Protection Subject Access Request.</p> <p>A request will not be transferred outside the CCG without the applicant’s consent.</p>
Consultation with third parties	<p>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.</p>

Appendix B: Exemptions available under Part II of the Freedom of Information Act 2000

It is essential that all managers asked to prepare Freedom of Information request responses make an early assessment as to whether one or more exemptions might apply to the requested information or part of the requested information. If it is felt that this is the case, the manager should seek the advice of the member of the Information Governance team or the Head of Corporate Affairs and Governance/Board Secretary.

[See guidance index:](#)

Absolute Exemptions

The information is covered by an exemption which is not subject to the Public Interest Test.

- **Section 21** Information 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, created by a court or served on or by a public authority for court proceedings.
- **Section 34** Parliamentary privilege – to avoid infringing the privileges of either House of Parliament.
- **Section 36** Prejudice 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. Although the public interest test normally applies to this exemption it does not apply in the case of requests made to the House of Commons or the House of Lords.
- **Section 40** (part 1 and part 2 ‘in part’) 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 General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018. Where the applicant is not the subject of the information, then it is exempt from disclosure if it would breach Data Protection legislation.

- **Section 41** Information provided in confidence – if the disclosure of the information would constitute a breach of confidence that could be lead to action against the CCG.
- **Section 44** Prohibitions on disclosure – information is exempt if its release is prohibited under any enactment, it is incompatible with Community obligation or would constitute contempt of court.

Qualified Exemptions

Exemptions require a Public Interest Test. The CCG must decide whether it is in the public interest to disclose the information or to withhold it.

- **Sections 22 and 22A** 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 24** National security – information can be exempt if it is required to safeguard national security.
- **Section 26** Defence – information can be exempt if its release would affect the defence of the British Isle, any British colony or the capability and effectiveness of the armed forces.
- **Section 27** International relations – information is exempt if its release would prejudice relations with another State, international organisation, international court or the interests of the UK abroad.
- **Section 28** Relations within the United Kingdom – covers information that may prejudice relations between the administrations within the UK.
- **Section 29** The economy – covers information that would prejudice the economic interest of the UK or of any administration in the UK.
- **Section 30** 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** Law enforcement – information is exempt if its release would prejudice law enforcement. This includes the prevention and detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons.

- **Section 33** Audit functions – this applies to authorities that have functions 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 and the National Assembly for Wales.
- **Section 36** Prejudice 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. Although the public interest test normally applies to this exemption it does not apply in the case of requests made to the House of Commons or the House of Lords.
- **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 40** (part 2 ‘in part’) 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 General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018. Where the applicant is not the subject of the information, then it is exempt from disclosure if it would breach Data Protection legislation.
- **Section 42** Legal professional privilege
- **Section 43** Commercial interests – information is exempt if it constitutes a trade secret or would prejudice or be likely to prejudice the commercial interests or any person or organisation.

Appendix C: Environmental Information Regulations Exceptions

1. While the FOI Act contains “exemptions” which allow the withholding of information under that Act, EIRs make use of “exceptions” in respect of withholding environmental information. The following summarises the EIR exceptions.
2. While a public authority should apply a presumption in favour of disclosing environmental information, the EIRs make provision for a number of exceptions to the duty to disclose such information. However, there are fewer exceptions under EIRs in respect of the release of environmental information than exist under the FOI Act in respect of the release of non-environmental information. A presumption under the regulations that environmental information must be released, unless there are reasons to withhold it.
3. Regulation 12 lists the exceptions under which a public authority can refuse to disclose information. All the exceptions are 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 the duty to advise and assist)
 - The request is for unfinished documents or data (in which case estimated time for completion must be given)
 - The request is for internal communications
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 / voluntary data
 - Environmental protection
6. If information relates to emissions, a public authority cannot refuse to disclose it on grounds of confidentiality of proceedings, commercial confidentiality, personal/ voluntary data or environmental protection.
7. **Public Interest Test** - It is important to note that none of the exceptions are 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

Appendix D: 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 SI No. 3244](#)

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 or redacting 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.

But, if a request would cost less than the appropriate limit to answer, it cannot charge for the areas listed above under what may be taken into account in relation to the request.

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 under what may be taken into account in relation to the request.

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 below the maximum, with the discretion to charge a lower fee or 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 calculating the maximum fee. In addition, no account can be taken of staff time in undertaking these activities, nor of the costs involved with calculating whether the appropriate limit would be exceeded. For example, if the appropriate limit was not exceeded and you were providing information 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 - say less than £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.
- Fees charged for information that is provided in accordance with a public authority's Publication Scheme will attract VAT.

Appendix E: 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. They should be informed of the CCG's review process for dealing with issues relating the publication scheme or handling of requests. They 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 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 Information Governance Lead.

FOI/EIR complaints should be addressed to the:

Head of Corporate Affairs and Governance/Board Secretary

NHS Calderdale CCG

5th Floor, F Mill

Dean Clough

Halifax

HX3 5AX

6. The Information Governance Lead will acknowledge receipt and completion of the complaint.
7. The Information Governance Lead will liaise with the Information Governance Manager to identify an appropriate person to manage the review.
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 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 their reasoning for coming to their decision.
 11. The Information Governance team will provide expert advice and/or conduct the review for the CCG.
 12. Where the exemption to be applied 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 have 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: 0303 123 1113

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