

FREEDOM OF INFORMATION POLICY

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| Description: | This policy sets out how the CCG will ensure compliance with the Freedom of Information Act 2000 | | |
| Audience: | All CCG staff | | |
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Section 1: Introduction

1.1 Freedom of Information Policy statement and aim

NHS Lewisham is committed to openness and transparency in the conduct of all of its business. It has a duty to comply with all aspects of the Freedom of Information Act 2000 (FOIA). The FOIA came into force at the beginning of 2005, and deals with access to information held by public bodies.

In addition, there are also regulations, which provide access to environmental information; these are the Environmental Information Regulations 2004 (EIR).

The FOIA supplements and complements the Data Protection Act (DPA) 1998, which gives individuals access to their personal information held by organisations. For further information about access to personal or health records please see Section 6.

The FOIA gives access to all other information and as such has a wider remit than the DPA. However, together the two Acts along with the EIR will enable public access to most records held by the CCG

The Freedom of Information (FOI) Act 2000 states that any person making a request for information to a public authority is entitled to:

- Be informed in writing by the public authority whether it holds information of the description specified in the request.
- If that is the case, to have that information communicated to him/her within 20 working days.

This policy provides a general understanding of the principles of the FOI Act and how NHS Lewisham CCG will comply with these regulations.

The Act also specifies a number of **exemptions** (see Appendix 3) which can be claimed by public authorities when denying a request. These fall into two main types: Absolute and Qualified. Qualified exemptions are subject to the Public Interest Test.

1.2 Objectives

The objective of this Policy is to set out the main features of the Act, along with the responsibilities of departments and individuals to ensure the CCG deals with requests for information within statutory regulations and guidelines, in a consistent manner and delivers quality responses.

1.3 Principles

The Policy supports the principle that openness and not secrecy should be the norm in public life. NHS Lewisham CCG also believes that people have rights to privacy and confidentiality. This Policy will not overturn existing rights under common law, or under the Data Protection Act 1998. NHS Lewisham CCG also believes that, in order to discharge its function effectively, certain information will be exempt from disclosure.

If the information requested is subject to a qualified exemption, NHS Lewisham CCG will implement the public interest test and where applicable, the prejudice test (as defined by the Information Commissioner's Office) to determine whether the information can be released.

- 1.4** Requests from individuals for details of their own health records come under the Data Protection Act 1998 and will not be dealt with under this policy. The Information Governance policies and Subject Access Request procedures should be used for these types of request.

Section 2: Scope

This policy applies to NHS Lewisham CCG's statutory obligation under the FOI Act and how it meets these obligations. The policy will apply to all NHS Lewisham CCG staff and for whom Lewisham CCG has legal responsibility (including interim, agency and consultancy staff working for the CCG). For those staff covered by a letter of authority/honorary contract or work experience the organisation's policies are also applicable whilst undertaking duties for or on behalf of the CCG. Further, this policy applies to all third parties and others authorised to undertake work on behalf of the CCG. The policy will provide a framework within which the organisation will ensure compliance with the requirements of the Act. The policy will underpin any operational procedures and activities connected with the implementation of the Act.

This policy is intended to cover all records created in the course of the business of NHS Lewisham CCG, i.e. corporate records which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes drafts, emails, notes, recordings of telephone conversations and CCTV recordings and other electronic records. Nor is it limited to information the CCG creates, so it also covers, for example, letters you receive from members of the public, although there may be a good reason not to release them..

Section 3: Governance

3.1 Roles and Responsibilities

3.1.1 Chief Officer

The Chief Officer has overall responsibility for NHS Lewisham CCG's Freedom of Information programme and ensuring that this operates effectively. They are also the CCGs appropriate 'qualified person' for the application of section 36 (effective conduct of public affairs).

3.1.2 Associate Director of Integrated Governance

The Associate Director of Integrated Governance is responsible for developing Freedom of Information policy and processes within NHS Lewisham CCG and for ensuring effective delivery of the service.

3.1.3 Directors

The Directors of the CCG are responsible for overseeing Freedom of Information activities within their service areas/teams, in accordance with the CCG's Freedom of Information Policy and Procedures and advising the Associate Director of Integrated Governance on risk issues in relation to Freedom of Information.

3.1.4 Freedom of Information Manager (Commissioning Support Unit)

The Freedom of Information Manager is the designated FOI advisor for NHS Lewisham CCG and has day-to-day responsibility for the management of all aspects relating to the Act. The Freedom of Information Manager is responsible for advising all staff throughout the organisation on issues relating to all areas of the Act.

The Freedom of Information Manager will provide quarterly reports to the NHS Lewisham CCG Senior Management Team meeting, detailing all aspects of the disclosure and non-disclosure of recorded information by the CCG under The Act. They will be responsible for providing reports to relevant management committees as required.

3.1.5 All Staff and Managers

All staff across NHS Lewisham CCG have a responsibility to ensure they comply with the CCG's statutory obligation under the Act, and any policies and procedures laid down to ensure compliance. Failure to do so may result in disciplinary action.

All managers are to ensure that staff are aware of, and adhere to, the Policy. They are also responsible for ensuring that all staff are updated with regards to any changes in the Policy.

3.1.6 Commissioning Support Service

The NEL Commissioning Support Unit is responsible for ensuring that appropriate Freedom of Information Systems are in place to support NHS Lewisham CCG in meeting its statutory obligations.

Section 4: The Policy

- 4.1** Under Freedom of Information legislation, requests can be received in writing via email or a letter. FOI requests must contain a contact name, email address or postal address but requesters do not have to provide a reason why they want the information or specifically state they are requesting information under the Act.
- 4.2** The FOI staff will manage all FOI requests for information requested under statutory regulations whilst complying with other legal requirements such as the Data Protection Act 1998.
- 4.3** The CCG will respond to all requests for information except where information requested is subject to certain regulations and exemptions. These

exemptions, which will be applied by the FOI staff, include personal information, information accessible to the applicant by other means, information subject to future publication and commercial interest. Repeated or vexatious requests may also be refused. See section 4.12 on Vexatious/Repeated requests in this policy.

Timescales for Responding to Requests

- 4.4** In line with good practice all FOI requests will be acknowledged by the FOI team within 2 working days. Requests for information under the Act should be promptly forwarded to the FOI team at nelcsu.foi@nhs.net
- 4.5** The CCG has a statutory requirement to respond to all requests promptly but within 20 working days. The 20 days are considered to start from the day after the request is received by the FOI team (CSU) and not when the FOI team forward the request onto the CCG.
- 4.6** If the CCG requires clarification of a request or if the CCG requests a fee for the information, the 20 day rule is suspended until the CCG receives the clarification or receives the fee.
Further information: <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

Internal Reviews

- 4.7** If the applicant is unhappy with either the way their request has been handled or the response, they may appeal to the Head of FOI and Complaints for an internal review to be conducted into the response or the handling of the request. The internal review will be carried out promptly and in no more than 20 working days from the date of the request for review. If the applicant remains unhappy, they will be notified of their right to complaint to the Information Commissioner's Office.
- 4.8** There may be a small number of cases which involve exceptional circumstances where it may be reasonable to take longer to review a case. In these cases the total time taken to review a complaint will not exceed 40 working days.

The Appropriate Limit (Fees)

- 4.9** The Fees Regulations (Section 12) of the FOIA provides an exemption from our obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The Fees Regulations state £450 for our type of public authority. The CCG will confirm or deny whether it holds the information requested unless the cost of this alone would exceed the appropriate limit.
- 4.10** In estimating whether responding to a request would exceed the appropriate limit, the CCG may only take into account the costs it would reasonably expect to incur in:
- determining whether it holds the information
 - locating the information
 - retrieving the information

- extracting the information

Costs are calculated at £25 per hour per person (total of 18 hours). The figure of £450 relates only to the appropriate limit and not to the fees that may be charged.

Where a reasonable estimate has been made that the appropriate limit may be exceeded, there is no requirement for the CCG to undertake work up to the limit. However the applicant may be offered a lesser amount of information, which will come below the cost/time limit.

- 4.11** The CCG will not charge for the majority of requests however it is entitled to charge a fee for the photocopying and postage of information, although it will not make a charge if the cost of raising and processing an invoice is greater. If the request exceeds the appropriate time limit the CCG has the right to make a charge or refuse the request.

Vexatious/Repeated Requests

- 4.12** NHS Lewisham CCG will not comply with a request for information if the request is deemed vexatious. A vexatious request is one where one or more of the following conditions are met: Abusive or Aggressive Language

- Burden on the Authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- Disproportionate effort
- No obvious intent to obtain information
- Futile requests
- Frivolous requests

For a request to be deemed vexatious, The Chief Officer, Corporate Director and the Freedom of Information Manager must all agree that one or more of the above conditions have been met.

- 4.13** 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 substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

What is a reasonable interval will largely depend on the circumstances, including:

- how likely the information is to change;
- how often records are updated; and
- any advice previously given to the requester (e.g. on when new information is likely to be available)

Taking into account the circumstances given above, NHS Lewisham CCG deems this period to be three months.

Section 5: Audit and monitoring

5.1 Monitoring of compliance

The Associate Director of Integrated Governance will annually evaluate the effectiveness of the Freedom of Information process. This review mechanism will be supported by:

- Quarterly reports on Information requests received.
- Complaints;
- Audits and Reviews.

Section 6: Statement of evidence/references

6.1 Legislative and Regulatory Environment

The Freedom of Information (FOI) Act 2000 gives members of the public a right to request access to all types of recorded information held by public authorities, promoting a culture of openness and accountability across the public sector. It is within this environment that this Policy has been written to reflect how the Act will be implemented within NHS Lewisham CCG.

6.2 The Protections of Freedoms Act 2012 adds new provisions to the FOI Act regarding datasets. The new provisions are about how information is released rather than what information is released. They only relate to information that the CCGs holds as a dataset which is a defined term in the new provisions. Please see Appendix 4 for further information.

6.3. Other References

Further information on and relating to the Freedom of Information Act, the Environmental Information Regulations, the model publication scheme and the Data Protection Act can be found at www.ico.org.uk.

Section 7: Implementation and dissemination

This Policy will be distributed to staff by the staff bulletin and placed on the intranet with training and support offered to individuals as required.

7.1 Next formal review

Review of this Policy will take place of the 1st anniversary of adoption and subsequently every three years until rescinded or superseded.

7.2 Latest Version

The audience of this document should be aware that a physical copy may not be the latest version. The latest version, which supersedes all previous versions, is available at the location indicated in the document control section of this document. Those to whom this policy applies are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times.

Section 8: Re-use regulations and copyright

- 8.1 If there are concerns about information reaching a wider audience, without sufficient briefing relating to the circumstances surrounding the production of the data/document, or its context, then NEL CSU on behalf of the CCG may indicate that the information is being supplied only for the use of the initial enquirer, and cannot be re-used or reproduced in any format, or relayed on to other people, without the consent of the CCG.
- 8.2 Information supplied under FOIA continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988. A copy of the below wording must be included whenever information is released under FOIA:

‘Please note, that the supply of information in response to a FOI request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission. Similarly, information supplied can also be re-used for the purposes of news reporting. An exception to this is photographs’.

For other forms of re-use, for example publishing the information, you would need the permission of the organisation or person who owns the copyright. In the case of information produced by government departments and agencies, you can re-use the information under the Open Government Licence. For information about this, please see:

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

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

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

Publishing the information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 201505 and will require permission of CCG. It may also incur a fee.

Section 9: Equality Analysis

This Policy is applicable to the Governing Body, every member of staff within the CCG and those who work on behalf of the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates NHS Lewisham CCG’s commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners.

The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation,

religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities.

Section 10: Definitions

| Term | Definition |
|-----------------------|--|
| Accountable Executive | CCG Executive accountable for development, implementation and review of the policy |
| Policy Owner | Post holder responsible for the development, implementation and review of the policy |

Section 11: Appendices

Appendix 1 – The Process

Appendix 2 – Process Flowchart

Appendix 3 – The Exemptions

Appendix 4 - Protections of Freedoms Act Amendments

Appendix 1: The Process

FOI Request Processing Procedure

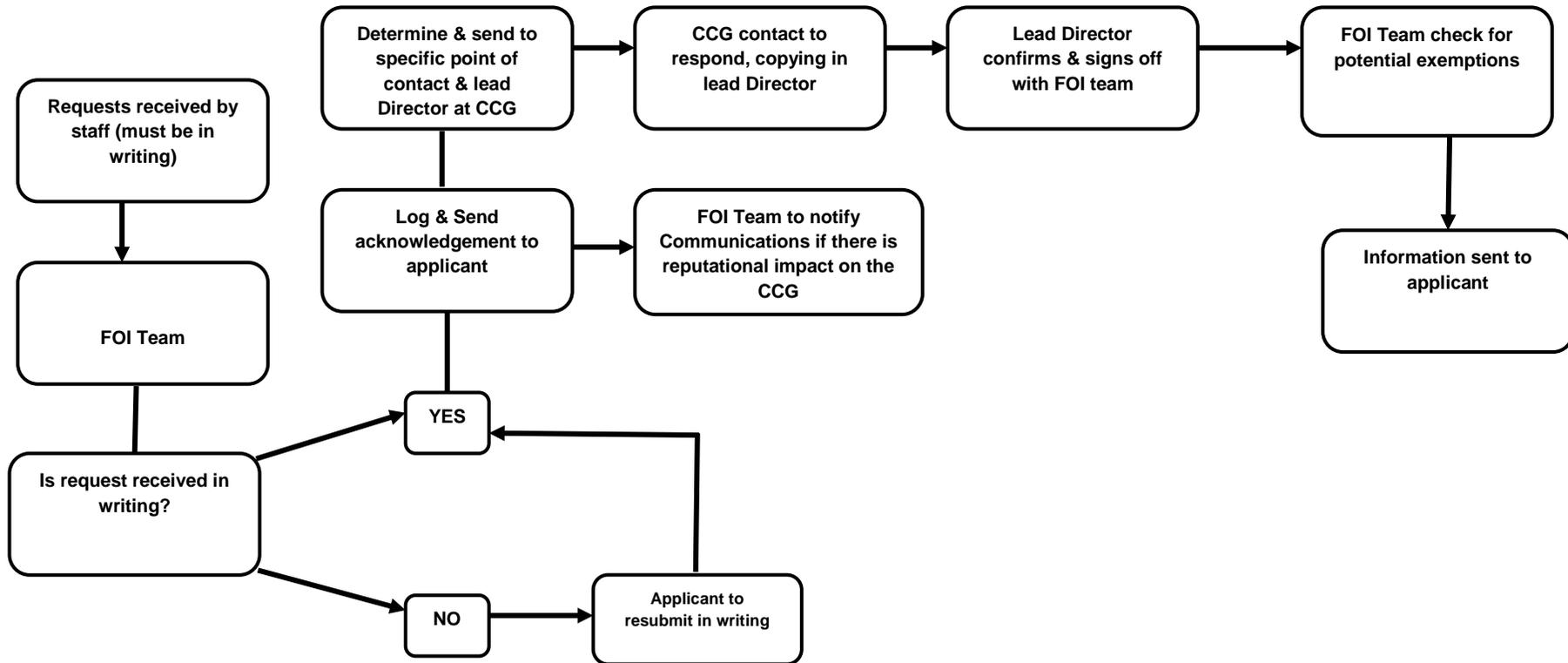
1. All new requests received must be sent to the FOI team who will log each request on the FOI database. The FOI team will allocate a unique reference number and electronic folders are then to be set up for each request.
2. All applicants will be sent a standard FOI acknowledgment of receipt email within two working days of receipt of request.
3. All information requests received will be assessed to ascertain whether:
 - It is a valid Freedom of Information request
 - The request is clear. If not the applicant will be asked to clarify their request.
 - The estimate of time needed to comply with request will exceed the appropriate time limit. If this is the case, the applicant will be asked if they wish to redefine their request.
 - Part or all of the information requested falls under one of the exemptions contained within the Act
 - The information requested can be found on the CCG publication scheme or website.
 - The information has been requested previously.
4. Once the request has been assessed the FOI team will determine which service area of the CCG is best placed to provide the information requested. It will be sent to the appropriate service lead, copied to the relevant Director, to gather the information. The name of the applicant and their contact details will be removed prior to sending to ensure that the applicant's personal data is protected under the Data Protection Act. In some cases it will be necessary for these details to be disclosed to staff outside of the FOI department.
5. CCG staff will acknowledge to the FOI team that they have received the request. If the request is not relevant to their area or not for their team they will notify the FOI team immediately.
6. Requests that have a potential reputational impact on the CCG will be notified to the Communications Lead at NHS Lewisham CCG and the communications team.
7. CCG Staff will have 12 working days in which to comply with requests. A reminder will be sent to staff by the FOI team if the information is not received by the 15th working day.
8. It is the responsibility of the service leads to ensure that the director of the department has cleared the response before returning the information to the FOI team within the time limit of 12 working days. This allows time for queries, amendments and the drafting of the response by the FOI manager.
9. Once the information has been returned to the FOI staff, it will be considered against the original request and where applicable, exemptions may be considered. Providing the information has been agreed by the service manager/director or the Chief Officer where applicable, the FOI staff will use the data provided to write a response.

- 10.** All FOI requests will be responded to within **20 working days**. If this isn't possible, and before the deadline expires, a further communication must be sent to the applicant by the FOI Office advising of this along with a reason and an expected response date.
- 11.** The FOI database will be updated when a request is completed. Electronic responses are filed in the applicant's file within the FOI team folder for compliance and audit purposes. A paper copy may also be printed out and retained within the folder.
- 12.** A quarterly report will be completed at the end of each quarter and presented to the Information Governance Steering Group, the Head of Integrated Governance. This quarterly report will be completed a month in arrears after the end of the quarter. Reports will include details of where charges to requesters have been made.
- 13.** All FOI requests will be recorded on a FOI electronic database.

Appendix 2: Process Flowchart

FREEDOM OF INFORMATION FLOWCHART

All FOI requests are subject to a 20 day deadline



Appendix 3: The Exemptions

Exemptions & Provisions

Although the CCG will try to comply with all requests for information there are a number of exemptions and provisions within the Act that can be considered. The exemptions are split into two main categories:

Absolute Exemptions - where the public interest test* does not apply.

- s21 - Information reasonably accessible to the applicant by other means
- s23 - Information supplied by or relating to security bodies
- s32 - Information contained in court records
- s34 - Parliamentary privilege (currently under review)
- s36 - Effective conduct of public affairs
- s40 - Personal information (on occasion may also be a qualified exemption)
- s41 - Information provided in confidence
- s44 - Prohibitions on disclosure

Qualified Exemptions - where the public interest test* applies.

- s22 - Information intended for future publication
- s24 - The national security exemption
- s26 - Defence
- s27 - International relations
- s28 - Relations within the UK
- s29 - Economy
- s30 - Investigations
- s31 - Law enforcement
- s33 - Public audit
- s35 - Government policy formulation
- s37 - Communication with Her Majesty and the awarding of honours
- s39 - Environmental information (falls under EIR)
- s40 - Personal information (majority would fall under an absolute exemption)
- s42 - Legal professional privilege
- s43 - Defined areas of commercial interest

In addition the following provisions allow refusal of a request:

- s12 - Where the cost of collating the evidence is excessive
- s14 - Repeated or vexatious requests

***The public interest test requires weighing the public interest considerations in favour of release against the public interest in withholding the information. Where the interests are evenly balanced the ICO would usually expect the information to be released.**

Appendix 4: Protection of Freedoms Act 2012 Amendments

- Section 102 of the Protections of Freedoms Act 2012 adds new provisions to FOI regarding datasets. They are about the reuse of datasets that the CCG provides in response to a request of under a publication scheme. There is no new duty to provide any information in response to a FOI request that was not previously accessible.
- A dataset is a collection of factual information in electronic form to do with the services and functions of public authorities that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.
- If the CCG provides information that constitutes a dataset and the applicant expresses a preference to receive the information in electronic form, the CCG must provide the information in a reusable form.
- If the dataset is relevant copyright work, the CCG must provide it under the terms of a specified licence. A relevant copyright work is one for which the CCG owns the copyright and the database rights.
- The CCG may charge a fee for communicating the information and a fee for making the dataset available for reuse. There are new fees regulations dealing with making the dataset available for reuse.
- Under the publication scheme, the CCG is obliged to publish datasets that have been requested and any updated versions it holds unless it is satisfied that it is not appropriate to do so.
- When dealing with a request involving a dataset, the CCG should first consider whether the information is exempt from disclosure under any FOI exemption. Particular care should be taken to ensure that personal data is not disclosed.