

# Freedom of Information and Environmental Information Regulations Policy

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## Version Control Sheet

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The table below logs the history of the steps in development of the document.

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**Performance Indicators**

% of requests completed within statutory 20 working day timeframe

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## **1. Introduction**

This document defines the Freedom of Information (FOIA) and Environmental Information Regulations (EIR) Policy for NHS Wakefield Clinical Commissioning Group (NHS WCCG).

The Freedom of Information Act (2000) (FOI Act) is part of the Government's commitment to greater openness in the public sector. 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:

- A general right of access to all recorded information held by NHS WCCG (subject to exemptions set out under FOIA and exceptions set out under EIR).
- A duty on every public authority to adopt and maintain a Publication Scheme.
- The Information Commissioner's Office oversee compliance against FOIA and EIR and its associated statutory instruments along with the regulation.

Certain categories of public information are covered by the Environmental Information Regulations (2004). 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.

NHS WCCG supports 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 Data Protection Act 1998. NHS WCCG 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.

## **2. Aims and objectives**

The aim of this policy is to:

- 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 WCCG complies with all relevant regulations, laws and guidance;
- Ensure staff at all levels are aware of their responsibilities with regards under FOIA and EIR, 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 under FOIA and EIR and any implications to the service.

## **3. Scope**

The Freedom of Information and Environmental Information Regulations Policy applies to all employees of NHS WCCG (including those on temporary or honorary contracts, secondments, pool staff and students).

This policy applies to all information held by NHS WCCG, including documents that have been

supplied by other organisations. Staff should be aware that all documents they create in the course of their duties (even personal e-mails) may fall within the scope under FOIA and EIR. The information can be held in any form, including recordings or notes of telephone calls, file notes, the internet, emails and video/audio recordings.

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

#### **4. Accountability**

##### **4.1 The Integrated Governance Committee**

The Integrated Governance Committee is responsible for ensuring that resources and systems are in place to support the delivery of the IG Toolkit and IG Work Programme, and to receive by exception significant risks and gaps in compliance on policy issues relating to the Freedom of Information Act and Environmental Information Regulations.

##### **4.2 Chief Officer**

The Chief Officer has organisational responsibility for all aspects of Information Governance, including the responsibility for ensuring NHS WCCG has appropriate systems and policies in place to comply with the requirements of the Freedom of Information Act and Environmental Information Regulations.

##### **4.3 Senior Information Risk Owner**

The Chief Finance Officer is the Senior Information Risk Owner (SIRO) and has organisational responsibility for all aspects of risks associated with Information Governance, including those relating to the Freedom of Information Act and Environmental Information Regulations

##### **4.4 Information Governance Lead**

The Information Governance Lead for NHS WCCG is the Governance and Board Secretary. The Governance and Board Secretary is accountable for ensuring effective management, accountability, compliance and assurance for all aspects of IG including management and of processing of requests for information under FOIA and EIR.

##### **4.5 Senior Governance Officer**

The Senior Governance Officer oversees responses to Freedom of Information and Environmental Information Regulations requests for the CCG.

##### **4.6 Governance Officer**

The Governance Officer has responsibility for processing requests for information under FOIA and EIR.

##### **4.7 Information Asset Owners**

Information Asset Owners (IAO) are directly accountable to the SIRO and must co-operate and support the provision of information in response to requests

##### **4.8 Employees**

All employees are responsible for:

- Ensuring compliance with this policy
- Seeking advice, assistance and training where required

NHS WCCG will take all reasonable steps to ensure that staff are aware of policies, protocols, procedures and legal obligations relating to FOIA and EIR. This will be delivered through training and staff communications at departmental and CCG-wide levels.

## **5. Definition of terms**

‘FOIA’ is an acronym for Freedom of Information Act 2000

‘DPA’ is an acronym for the Data Protection Act 1998

‘EIR’ is an acronym for Environmental Information Regulations 2004

‘ICO’ is an acronym for the Information Commissioners Office (independent regulator for Freedom of Information, Environmental Information Regulations and the Data Protection Act)

‘Exemption’ refers to provisions within FOIA 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.

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

‘Publication Scheme’ NHS WCCG 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 NHS WCCG Publication Scheme can be found on our website or in hard copy on request.

## **6. Procedure**

### **6.1 Advice and Assistance**

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

### **6.2 Publication Scheme**

NHS WCCG is required to publish information held by setting up and maintaining a Publication Scheme. The Publication Scheme sets out categories of information that we undertake to publish. NHS WCCG scheme is based on the ICO’s NHS Model Publication Scheme.

The documents available through the Scheme are final, approved versions only. It is NHS WCCG’s policy not to include draft documents in this Scheme although these may be releasable under FOIA or EIR. The Scheme as a whole will be reviewed annually.

The Publication Scheme is an evolving web page and, as a result, staff are encouraged to recommend information for inclusion.

#### **6.2.1 Publication Scheme Information Management**

The Publication Scheme covers a wide range of information from all areas of the organisation. It is the responsibility of the Governance and Board Secretary together with relevant managers to ensure that up to date information is provided so that the Scheme can be kept up to date. This is

especially important with documents such as policies and procedures and information leaflets. It will be assumed that the appropriate managers are satisfied with current documents unless they state otherwise.

It is also the responsibility of the relevant managers to ensure that records management in their department is compliant with the Records Management Code of Practice and NHS WCCG's Records Management Policy.

### **6.2.2 Classes of Information**

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

The current classes of information are:

- Who we are and what we do
- What we spend and how we spend it
- What are our priorities and how are we doing
- How we make decisions
- Our policies and procedures
- Lists and registers
- The services we offer

Brief outlines of these classes are contained in the Scheme.

### **6.3 General Rights of Access**

FOIA and EIR give a general right of access to recorded information held by NHS WCCG. This means that any person who makes a request has the right to:

- a) Be informed in writing whether NHS WCCG holds the information requested and;
- b) If NHS WCCG 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 FOIA and EIR. If in doubt refer the request to the Governance team.

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 would be 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 NHS WCCG 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 Chancellors code of practice, NHS WCCG 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.

### 6.3.1 Recording Requests

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

- Unique reference number
- Initial date received by NHS WCCG
- 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
- The request has been passed on to Head of Service for verification
- Decision taken and details of any exemption used
- Approval sought from the Governance and Board Secretary
- Date completed and sent to the applicant

### 6.3.2 Processing a Request (also summarised in appendix c)

**Acknowledgement** The CCG's Governance team will write to the applicant confirming receipt of the request within 3 working days. This will state that NHS WCCG intends to reply to the request within 20 working days, unless there are exceptional circumstances.

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

- give guidance on how to access the information from the organisation'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 review or complaints procedure and/or the Office of the Information Commissioner if they are dissatisfied with any outcome

**Accessing information** The CCG's Governance team will liaise with the Information Asset Owner at NHS WCCG to obtain the information that the applicant has requested. NHS WCCG staff will be given 10 working days to deal with this request. Any problems should be immediately brought to the attention of the Governance team.

If the request is from an MP or a media organization the CCG's Governance team will alert the Communications team that the request has been received.

If the request includes information which relates directly to another organisation the Governance team will inform an appropriate manager at this organisation as soon as possible.

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

**Difference between extracting or compiling existing information and creating new information**

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

- it presents information it holds in the form of a list or schedule
- Compiling an answer to a request involves simple manipulation of information held in files.
- it extracts information 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 would amount to creating new information not already held.

**Providing the information**

If no exemptions apply and there are no fees or charges to be levied a draft response letter will be prepared by the Governance team for verification by the Information Asset Owner/Head of the Service that provided the information. It will then be approved by the Governance and Board Secretary. Responses will be shared with the Communications team if the FOI is from an MP or a media organisation.

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

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

- Refusing a request** A request for information may be refused if:
- the information is exempt under the FOI Act or EIR
  - the cost of compliance exceeds the appropriate limit under FOI or the request is manifestly unreasonable under EIR.
  - the request can be demonstrated to be vexatious or repeated

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

- the exemption/exception(s) that has been applied
- the justification for the use of the exemption/exception/s and the application of any public interest test
- details of NHS WCCG's complaint procedure if they are not satisfied with the outcome
- details of the right to appeal to the Information Commissioner

If the exemption under FOI is absolute, then NHS WCCG is exempt from the duty to confirm or deny (that is the duty to tell the applicant whether or not the organisation actually holds the information).

In these circumstances, the applicant will be informed within 20 working days of the following:

- the fact that NHS WCCG is exempt from the duty to confirm or deny
- specify the exemption/exception in question
- state why the exemption/exception applies (unless it would be otherwise apparent)

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

## Re-use regulations

The Re-Use of Public Sector Information Regulations 2015 gives the public and the private sector the right to re-use public sector information which the NHS WCCG produces as part of our Public Task.

The Re-Use of Public Sector Information (RoPSI) regulations govern the re-use of information created and used by Public Authorities in the UK as part of fulfilling their public task. Re-using the information means to use it for a purpose other than the initial public task it was produced for. Access to the corporate information of Public Authorities is provided under Freedom of Information legislation. The RoPSI regulations do not change the provisions for accessing information but provide the public and the private sector with a framework to re-use this information once it has been disclosed. NHS WCCG's public task is the core roles and functions as defined by legislation and regulations. Information on the public task, such as the services provided and key functions, can be found in the About section of the NHS WCCG website. Information which is not within the scope of our public task is not covered by RoPSI regulations.

Applicants who wish to make a request for re-use under the RoPSI regulations should contact NHS WCCG 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 NHS WCCG permits re-use of information under the Re-Use of Public Sector Information Regulations 2015 it is licensed under the [Open Government Licence](#).

NHS WCCG 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.

## Copyright

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.

*“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 reuse, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by **NHS Wakefield 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 HMS*

*Online at: <http://www.hmso.gov.uk/copyright/licences/click-use-home.htm> Information you receive which is not subject to Crown Copyright continues to be protected by the copyright of the person, or organisation, from which the information originated. You must ensure that you gain their permission before reproducing any third party (non Crown Copyright) information.”*

## Transferring a request

All or part of a request can be transferred to another public authority if it becomes apparent that NHS WCCG 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. NHS WCCG must write to the applicant and explain that it does not hold the information and give the applicant the following options:

- to re-apply the request themselves to the identified authority(ies) and provide the contact details
- to have the request transferred by NHS WCCG on behalf of the

applicant

Requests will be transferred within NHS WCCG if the request is a Data Protection Subject Access Request.

A request must not be transferred outside NHS WCCG without the applicants consent.

**Consultation with third parties** In the event that a request contains information about third parties NHS WCCG 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.

#### **6.4 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 Data Protection Act 1998. If the personal data is about someone other than the applicant, there is an absolute exemption under FOI/EIR but 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. NHS WCCG will undertake to ensure that all requests for personal information are handled in consultation with the subject and with advice from the SIRO and Caldicott Guardian as appropriate. NHS WCCG will endeavour to balance an individual's right to privacy with the accountability that goes with working in the public sector.

#### **6.5 Conditions, exemptions and exceptions**

##### **6.5.1 Conditions**

NHS WCCG 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.
- If complying with the request would exceed the appropriate limit established in the National Fees Regulations. NHS WCCG will work with applicants to keep compliance costs to a minimum, but maintains the right to refuse such a request.
- If the request is vexatious. If NHS WCCG 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.

##### **6.5.2 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 NHS WCCG is exempt from the need to confirm or deny. This means that NHS WCCG does not have to admit or deny holding the information.

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

Any decision to use the exemptions will be taken by NHS WCCG following advice and consultation with senior colleagues as appropriate.

### **6.5.3 Exceptions under EIR**

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

### **6.5.4 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. NHS WCCG will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary (this may include colleagues and legal advice). The public interest does not include protecting an authority or individual from embarrassment.

### **6.6 Public sector contracts**

When entering into contracts the NHS WCCG will limit the contractual terms which are intended to restrict the disclosure of information held by NHS WCCG. NHS WCCG cannot ‘contract out’ its obligations under FOIA and EIR. The Lord Chancellors Code of Practice states that “unless an exemption provided for under FOIA and EIR 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 NHS WCCG to accept confidentiality clauses covering information about the terms of the contract, its value and performance. Where it is necessary to include a non-disclosure provision in a contract (exceptional circumstances only) an option could be to agree a schedule with the contractor 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 FOIA and EIR.

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

### **6.7 Complaints**

Initial complaints about the handling of a request for information will go to the NHS WCCG who will follow an agreed Review procedure (see appendix B).

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 NHS WCCG response to the request.

Information Governance Lead  
NHS Wakefield Clinical Commissioning Group

White Rose House  
West Parade Wakefield  
Wf1 1LT

If a complaint is not resolved to the applicants complete satisfaction, they have the right to appeal to the Information Commissioner for a decision.

#### **6.8 Training and awareness**

Information Governance Training is included in NHS WCCG's mandatory training programme. There will be more detailed awareness raising for managers and senior staff to ensure they are aware of their responsibilities.

#### **6.9 Records Management**

Good records management is the key to complying with requests for information. NHS WCCG has a Records Management Policy and supporting guidelines which 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 NHS WCCG to deal with requests in an efficient and accurate manner.

#### **7 Training needs analysis**

NHS WCCG will ensure all staff receive Information Governance training on an annual basis.

#### **8 Equality impact assessment**

NHS WCCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. NHS WCCG uses a single equality impact assessment for all of its policies and procedures. The Equality Impact Assessment for this policy is included at appendix D.

#### **9 Implementation and dissemination**

Following ratification by the Integrated Governance Committee this policy will be disseminated to staff via NHS WCCG's intranet and communication through in-house newsletters.

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

#### **10 Monitoring compliance with and the effectiveness of the policy**

Performance indicators will include:

- % of FOI requests completed within the statutory 20 working day timeframe

The performance indicator will be reported to the Integrated Governance Committee

#### **11 Legal references**

The following documents are referenced in this policy:

- Freedom of Information Act 2000
- Environmental Information Regulations 2004 (EIRs)
- Data Protection Act 1998
- Records Management Code of Practice
- 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)  
• Re-Use of Public Sector Information Regulations 2015

## **12 Associated Documents**

The following NHS WCCG policies and procedures are related to this policy:

- Records Management Policy
- Access to Records Procedure
- NHS WCCG Complaints Procedure

## Summary of the FOI Fee Regulations 2004

The following summary is in line with Statutory Instrument 2004 No. 3244:

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

<http://www.legislation.hmso.gov.uk/si/si2004/20043244.htm>

### Introduction

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

### The appropriate limit

The 'appropriate limit', for the purposes of Section 12 of the Freedom of Information Act 2000 and Section 9A of the Data Protection Act 1998, 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.

**Freedom of Information and Environmental Information Regulations Review Process**

1. This procedure will deal with complaints arising from NHS WCCG's obligations under the FOI and EIR in respect of maintenance of the publication scheme, and handling of requests for information.
2. NHS WCCG'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, NHS WCCG will notify the applicant of their right of complaint. They should be informed of NHS WCCG'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 a NHS WCCG 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:

Information Governance Lead  
NHS Wakefield Clinical Commissioning Group  
White Rose House  
West Parade  
Wakefield  
Wf1 1LT

6. The Information Governance Lead will acknowledge receipt and completion of the complaint.
7. The Information Governance Lead will identify and 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.

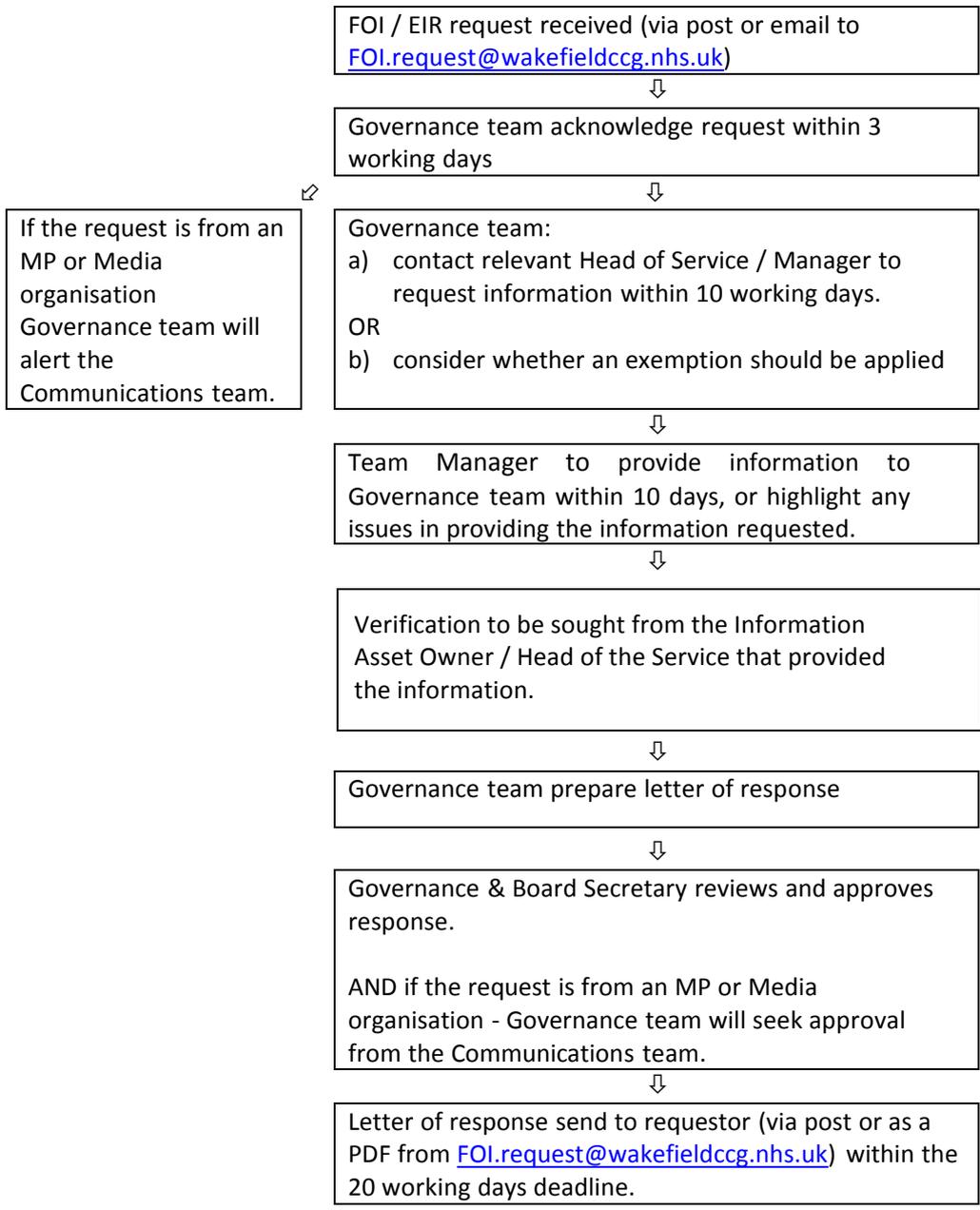
12. Where the exemption to be applied is a qualified exemption the person(s) carrying out the review must carry out a public interest test and document their reasons for either non-disclosure or disclosure of the requested information.
13. If the refusal notice is on the grounds of cost (exceeds £450.00 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 NHS WCCG have not been properly followed by staff NHS WCCG 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 NHS WCCG's favour, the applicant should be informed of the decision and also of their right to apply to the Information Commissioner (contact details below):

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

Telephone: 01625 545 700

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

**FOI Management Process**



## Equality Impact Assessment

| 1. Outline  |  |
|---|--|
| <p><b>Give a brief summary of your policy, project or service</b></p> <ul style="list-style-type: none"> <li>• Aims</li> <li>• Objectives</li> <li>• Links to other policies, including partners, national or regional</li> </ul> | <p>This document defines the Freedom of Information and Environmental Information Regulations Policy for NHS Wakefield Clinical Commissioning Group (NHS WCCG).</p> <p>The policy applies to all employees of NHS WCCG (including those on temporary or honorary contracts, secondments, pool staff and students).</p>   |
| <p><b>What outcomes do you want to achieve</b></p> <ul style="list-style-type: none"> <li>• Desired outcomes</li> <li>• Benefits</li> <li>• Who for</li> </ul>  | <ul style="list-style-type: none"> <li>• Ensure all requests for information are dealt with consistently and receive a high quality response however and wherever the contact is made;</li> <li>• Ensure that NHS WCCG complies with all relevant regulations, laws and guidance;</li> <li>• 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;</li> <li>• Ensure timescales are met;</li> <li>• Ensure the Governing Body is fully informed on the operation of FOIA and EIR and any implications to the service.</li> </ul> |

| 2. Consideration of relevant information – what do we know about peoples and groups access, experience or outcomes? |  |
|---|--|
| Protected group   | 2a. Consultation, engagement or experience data  |
| <b>Generic issues</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Human rights</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Age</b>  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Carers</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Disability</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Sex</b>  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Race</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Religion or belief</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Sexual orientation</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Gender reassignment</b>  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |

|  |  |
|--|--|
| <b>Pregnancy and maternity</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Marriage and civil partnership</b> (only eliminating discrimination)  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Other relevant group</b><br>a group identified as relevant ie, rural communities, asylum seekers and refugees | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |

| <b>Protected group</b>  | <b>2b. Evidence, data or research available</b>  |
|---|--|
| <b>Generic issues</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Human rights</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Age</b>  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Carers</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Disability</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Sex</b>  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Race</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Religion or belief</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Sexual orientation</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Gender reassignment</b>  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Pregnancy and maternity</b>  | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Marriage and civil partnership</b> (only eliminating discrimination) | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |
| <b>Other relevant group</b>   | No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004). |

| <b>3. Analysis of impact</b>   |   |   |  |
|--|---|---|--|
| 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; |   |   |  |
| <ul style="list-style-type: none"> <li>• eliminate unlawful discrimination</li> <li>• advance equality of opportunity</li> <li>• foster good relations</li> </ul>  |   |   |  |
|  | <b>What key issues have you identified?</b> | <b>What action do you need to take to address these issues?</b> | <b>What difference will this make?</b> |

|   |                       |  |  |
|---|-----------------------|--|--|
| <b>General issues</b>   | No issues identified. |  |  |
| <b>Human rights</b>   | No issues identified. |  |  |
| <b>Age</b>  | No issues identified. |  |  |
| <b>Carers</b>   | No issues identified. |  |  |
| <b>Disability</b>   | No issues identified. |  |  |
| <b>Sex</b>  | No issues identified. |  |  |
| <b>Race</b>   | No issues identified. |  |  |
| <b>Religion or belief</b>   | No issues identified. |  |  |
| <b>Sexual orientation</b>   | No issues identified. |  |  |
| <b>Gender reassignment</b>  | No issues identified. |  |  |
| <b>Pregnancy and maternity</b>  | No issues identified. |  |  |
| <b>Marriage and civil partnership</b> (only eliminating discrimination) | No issues identified. |  |  |
| <b>Other relevant group</b>   | No issues identified. |  |  |

Using the above actions populate the plan below.

| <b>4. Action plan</b> |                            |             |                  |                                    |
|-----------------------|----------------------------|-------------|------------------|------------------------------------|
| <b>Action</b>         | <b>Progress milestones</b> | <b>Lead</b> | <b>Timescale</b> | <b>How will impact be measured</b> |
| No actions required.  |                            |             |                  |                                    |
|                       |                            |             |                  |                                    |
|                       |                            |             |                  |                                    |
|                       |                            |             |                  |                                    |

| <b>5. Monitoring, Review and Publication</b>                                    |                  |                     |           |
|---|------------------|---------------------|-----------|
| <b>How will you review/monitor the impact and effectiveness of your actions</b> | Not applicable   |                     |           |
| <b>How will these actions form part of mainstream activity</b>                  | Not applicable   |                     |           |
| <b>Lead Officer:</b>  | Katherine Bryant | <b>Review date:</b> | June 2016 |

| <b>6. Sign off</b>   |                  |                       |  |
|----------------------|------------------|-----------------------|--|
| <b>Lead Officer:</b> | Katherine Bryant |                       |  |
| <b>Director:</b>     | Andrew Pepper    | <b>Date approved:</b> |  |