



# **Freedom of Information and Environmental Information Regulations Policy**

## Review and Amendment Log / Version Control Sheet

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### Version History

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0.0	Dec 13	Associate IG Specialist WSYBCSU	Created	FOI Policy reviewed
1.0	Dec 13	Associate IG Specialist	Approved	FOI Policy approved by Integrated Governance Committee.
2.0	June 2014	Governance & Board Secretary	Draft - revised	Amended to reflect FOI function transfer to the CCG from WSYBCSU, presented to Integrated Governance Committee for approval.
2.0	June 2014		Approved	Policy approved at Integrated Governance Committee 19 June 2014
2.1	June 2016	Governance Officer	Review	FOI Policy Review. The policy has been reviewed to reflect the new Re-use Regulations, to ensure compliance with the requirements of the FOI Act.
2.1	July 2016		Approved	Policy approved at Integrated Governance Committee 21 July 2016
2.2	May 2017	Governance & Board Secretary	Approved	Policy amended to reflect new role of Associate Director of Corporate Affairs
2.3	June 2018	Information Governance Manager	Draft	FOI Policy review

3.0	June 2018	Information Governance Manager	Final	Policy approved by Integrated Governance Committee 21 June 2018. Published on Skyline for all staff.
3.0	Nov 2019	Governance Officer	Final	Change of email address for the FOI inbox to reflect migration to NHS.net

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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 Wakefield CCG).

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 debates 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 FOI Act does not put a limit on the amount of information an organisation can disclose i.e. it may release more information than is allowed for in the Act, but must at least release the information that the Act suggests it should.

The main features of the Act are:

- A general right of access to all recorded information held by NHS Wakefield CCG (subject to exemptions set out under FOIA and exceptions set out under EIR).
- It is not limited to official documentation 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 does not give people access to their own personal data (information about themselves) such as their health records.
- It 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.
- A public interest test in cases where information may be exempt from disclosure, except where an absolute exemption applies.
- A duty on public authorities to:
  - (i) Inform the applicant whether they hold the information requested, and
  - (ii) Communicate the information to him or her not later than the twentieth working day following the date of receipt, unless the public interest test in maintaining the exemption in question outweighs the public interest in disclosure.
- It provides a duty on every public authority to adopt and maintain a Publication Scheme.
- The Information Commissioner's Office oversees compliance against FOIA and EIR and its associated statutory instruments along with the EIR.

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.

The CCG and this policy 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 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.

## **2. Aims and objectives**

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 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;
- Ensuring statutory timescales are met;
- Ensuring the Governing Body is fully informed on the operation under FOIA and EIR 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 employees of NHS Wakefield CCG (including those on temporary or honorary contracts, secondments, volunteers, pool staff, governing body members 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 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 CCG staff should have an understanding of this policy in order to direct enquirers appropriately.

Failure to adhere to this Policy may result in disciplinary action and/or referral to the appropriate professional regulatory body, health and care regulator as well as the police.

### **4. Accountability**

#### **4.1 The Governing Body**

The Governing Body is accountable for ensuring that resources and systems are in place to support compliance with the FOI Act and EIR and to receive by exception any significant risks and gaps in compliance on policy issues relating to the FOI and EIR.

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

The Integrated Governance Committee is responsible for ensuring the adequacy and effectiveness of arrangements in place to comply with the FOI Act and EIR and bringing to the attention of the Governing Body significant risks and gaps in compliance.

#### **4.2 Chief Officer**

The Chief Officer has organisational responsibility for compliance with the FOI and EIR, including the responsibility for ensuring the CCG has appropriate systems and policies in place to comply with the requirements of the FOI Act and EIR.

#### **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 risk associated with Information Governance, including those relating to the FOI Act and EIR

#### **4.4 Data Protection Officer**

The Data Protection Officer is the Governance and Board Secretary. The Data Protection Officer is 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.

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

The Information Governance Lead for the CCG is the Governance and Board Secretary. The IG Lead is accountable for ensuring effective management, compliance and assurance for all aspects of the FOI Act and EIR management including ensuring training is provided for staff as appropriate. They are supported by the expertise of the information Governance Team and ICO when required. The Information Governance Lead oversees responses to Freedom of Information and Environmental Information Regulations requests for the CCG.

#### **4.5 Governance Officer**

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

#### **4.6 Heads of Service**

Heads of Service will support the provision of timely, high quality and complete information in response to requests under the FOI Act and EIR.

It is the responsibility of each Head of Service to ensure that up to date information is provided to the Governance Officer so that the Publication 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 each Head of Service to ensure that records management in their area is compliant with the Records Management Code of Practice for Health and Social Care and the CCGs Records Management and Information Lifecycle Policy and Procedure.

The Heads of Service will take all reasonable steps to ensure that staff are aware of policies, protocols, procedures and legal obligations relating to the FOI Act and EIR. This will be delivered through training and through internal staff communication mechanisms.



## 4.7 Employees

All employees are responsible for:

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

## 5. Definition of terms

**'FOIA'** is an acronym for Freedom of Information Act 2000.

**GDPR/DPA** - General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018.

**'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 legislation).

**'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.

**'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 public website or in hard copy on request.

## 6. Procedure

### 6.1 Advice and Assistance

FOIA and EIR require NHS Wakefield CCG 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**

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

The documents available through the Scheme are final, approved versions only. It is the CCG'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.

The CCG will work with partners using national guidelines to further develop and improve the organisation's publication scheme.

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.

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

It is the responsibility of the relevant managers to ensure that records management in their department is compliant with the Records Management Code of Practice and the CCGs Records Management and Information Lifecycle Policy and Procedures.

### **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 Wakefield CCG, subject to certain exemptions and exceptions. This means that any person who makes a request has the right to:

- a) Be informed in writing whether NHS Wakefield CCG holds the information requested and;
- b) If NHS Wakefield 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 (for example; 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 Wakefield 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 Chancellors code of practice, NHS Wakefield 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.

### 6.3.1 Recording Requests

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

- Unique reference number
- Initial date received by NHS Wakefield 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
- 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 Wakefield CCG 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 Wakefield CCG to obtain the information that the applicant has requested. NHS Wakefield CCG 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 organisation 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 secure 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 repeater.

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 Wakefield CCG'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 Wakefield 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:

- the fact that NHS Wakefield CCG 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 Wakefield CCG 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 Wakefield CCG 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 Wakefield CCGs 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 Wakefield CCG 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 Wakefield 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 NHS Wakefield CCG permits re-use of information under the Re-Use of Public Sector Information Regulations 2015 it is licensed under the [Open Government Licence](#).

NHS Wakefield 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.

## 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/clip-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 Wakefield 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. NHS Wakefield CCG 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 Wakefield CCG on behalf of the applicant.

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

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

## **Consultation with third parties**

In the event that a request contains information about third parties NHS Wakefield 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.

## **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 GDPR/Data Protection Act 2018. If the personal data is about someone other than the applicant, there is an absolute exemption under FOI but the CCG 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 Wakefield CCG will undertake to ensure that all requests for personal information are handled in consultation with the subject and with advice from the IG Team, the DPO and Caldicott Guardian as appropriate. NHS Wakefield CCG 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 Wakefield 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.
- If complying with the request would exceed the appropriate limit established in the National Fees Regulations. NHS Wakefield CCG 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 Wakefield 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.

### **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 Wakefield CCG is exempt from the need to confirm or deny. This means that NHS Wakefield CCG does not have to admit or deny holding the information. There is no obligation to consider the request for information further if an absolute exemption applies.

A qualified exemption means that NHS Wakefield CCG has to consider the public interest before making the decision. Qualified exemptions do not justify withholding information unless, following a proper assessment, the balance of the public interest comes down against disclosure. NHS Wakefield CCG will endeavour to use exemptions appropriately and sparingly.

Any decision to use the exemptions will be taken by NHS Wakefield CCG following advice and consultation with the Information Governance Team, Governance and Board Secretary and other senior colleagues as appropriate.

The CCG will maintain documentation/communication records of the decision process.

### **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. Advice on carrying out the public interest test is provided by the information governance team/Governance and Board Secretary. NHS Wakefield CCG 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 Wakefield CCG will limit the contractual terms which are intended to restrict the disclosure of information held by NHS Wakefield CCG. NHS Wakefield CCG 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 Wakefield 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 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 Wakefield CCG 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 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.

## **6.8 Appeals / Complaints**

Initial appeals (requests for review of decisions) or complaints about the handling of a request for information will be directed to the Governance and Board Secretary 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 Wakefield CCG 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 applicant's complete satisfaction, they have the right to appeal to the Information Commissioner for a decision.

In the event that the Information Commissioner issues a decision/enforcement notice as a result of an appeal/complaint, the complainant or the CCG may appeal to the Tribunal against the notice.

## **6.9 Training and awareness**

Awareness of the provisions of the FOI, EIR and subject access will be raised through annual Data Security Awareness training as well as through internal workshops and reminder bulletins. There will be more detailed training and awareness for managers and senior staff to ensure they are aware of their responsibilities.

## **6.10 Records Management**

Good records management is the key to complying with requests for information. NHS Wakefield CCG has a Records Management and Information Lifecycle

Policy which provides comprehensive guidance for the management of all records and is consistent with:

- a) Records Management Code of Practice for Health and Social Care - Department of Health 2016
- 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 NHS Wakefield CCG to deal with requests in an efficient and accurate manner.

## **7 Training Needs Analysis**

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

## **8 Equality Impact Assessment**

NHS Wakefield CCG 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 Wakefield CCG 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 approval by the Integrated Governance Committee this policy will be disseminated to staff via NHS Wakefield CCG'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)
- 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)
- Re-Use of Public Sector Information Regulations 2015

## **12 Associated Documents**

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

- Records Management and Information Lifecycle Policy and Procedures
- Access to Records Procedure
- NHS Wakefield CCG Complaints Procedure



## Appendix A

### 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.

## **Appendix B**

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

1. This procedure will deal with complaints arising from NHS Wakefield CCG's obligations under the FOI and EIR in respect of maintenance of the publication scheme, and handling of requests for information.
2. NHS Wakefield 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, NHS Wakefield CCG will notify the applicant of their right of complaint. They should be informed of NHS Wakefield 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 a NHS Wakefield 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:  
  
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.
11. 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.
12. If the refusal notice is on the grounds of cost (exceeds £450.00 or 18 working hours) documentary evidence must be produce as to how the request exceeds the limit.
13. 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.
14. Where the outcome of a complaint is that procedures within NHS Wakefield CCG have not been properly followed by staff NHS Wakefield CCG will apologise to the applicant and take appropriate steps to prevent similar errors in future.
15. Where the outcome of a complaint is that the initial decision was correct or is otherwise in NHS Wakefield 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):

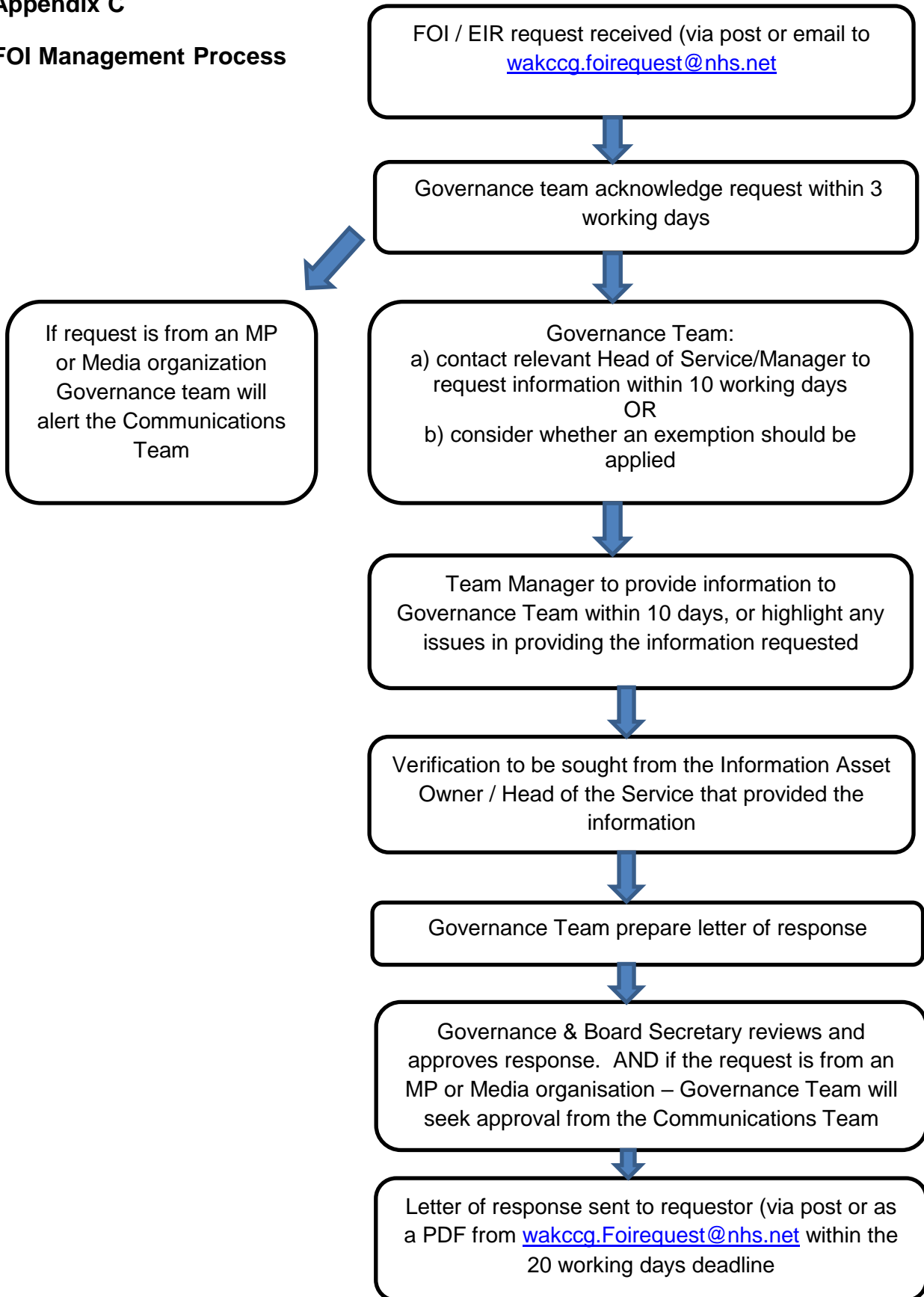
Information Commissioner's Office  
Wycliffe  
House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Telephone: 01625 545 700

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



## Appendix C

### FOI Management Process



## Appendix D

### Equality Impact Assessment

<b>Title of policy</b>	Freedom of Information and Environmental Information Regulations Policy
<b>Names and roles of people completing the assessment</b>	Information Governance Manager
<b>Date assessment started/completed</b>	June 2018

<b>1. Outline</b>	
<b>Give a brief summary of the policy</b>	This document defines the Freedom of Information and Environmental Information Regulations Policy for NHS Wakefield Clinical Commissioning Group (NHS Wakefield CCG). The policy applies to all employees of NHS Wakefield CCG (including those on temporary or honorary contracts, secondments, pool staff and students).
<b>What outcomes do you want to achieve</b>	<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 Wakefield CCG 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>

<b>2. 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; eliminate unlawful discrimination; advance equality of opportunity; foster good relations			
	<b>Are there any likely impacts? Are any groups going to be affected differently? Please describe.</b>	<b>Are these negative or positive?</b>	<b>What action will be taken to address any negative impacts or enhance positive ones?</b>
<b>Age</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Carers</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Disability</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Sex</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Race</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Religion or belief</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Sexual orientation</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information

			Regulations (2004).
<b>Gender reassignment</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Pregnancy and maternity</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Marriage and civil partnership</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>Other relevant group</b>	No	Neutral	No issues identified, policy complies with Freedom of Information Act (2000) and Environmental Information Regulations (2004).
<b>4. Monitoring, Review and Publication</b>			
<b>If any negative/positive impacts were identified are they valid, legal and/or justifiable?</b>		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.	
<b>Please detail.</b>			
<b>4. Monitoring, Review and Publication</b>			
<b>How will you review/monitor the impact and effectiveness of your actions</b>	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.		
<b>Lead Officer</b>	Governance and Board Secretary	<b>Review date:</b>	June 2018
<b>5. Sign off</b>			
<b>Lead Officer</b>	Governance and Board Secretary		
<b>Director</b>		<b>Date approved:</b>	