FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY
Review and Amendment Log / Control Sheet

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<th>Responsible Officer:</th>
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<tr>
<td>Author:</td>
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<tr>
<td>Date Approved:</td>
<td>15th December 16</td>
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<td>Committee:</td>
<td>Audit Committee</td>
</tr>
<tr>
<td>Version:</td>
<td>3</td>
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<tr>
<td>Review Date:</td>
<td>December 18</td>
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Version History

<table>
<thead>
<tr>
<th>Version no.</th>
<th>Date</th>
<th>Author</th>
<th>Description</th>
<th>Circulation</th>
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<tbody>
<tr>
<td>0.1</td>
<td>10 Sept 2014</td>
<td>IG Specialist WSYBCSU</td>
<td>Initial Draft</td>
<td>Director of Informatics, FOI Lead YHCS</td>
</tr>
<tr>
<td>0.2</td>
<td>24 Sept 2014</td>
<td>IG Advisor Director of Informatics</td>
<td>Amendments and rationalisation of policy, removed procedural content and appendices</td>
<td>Senior Management Team, all CCG staff, Counter Fraud Lead</td>
</tr>
<tr>
<td>0.3</td>
<td>19 Nov 2014</td>
<td>IG Advisor</td>
<td>Further amendments and corrections. Advice details added</td>
<td>Assurance Committee</td>
</tr>
<tr>
<td>0.4</td>
<td>21 Sept 2016</td>
<td>FOI Manager (Embed Health Consortium)</td>
<td>Minor corrections and updates</td>
<td>Assurance Committee</td>
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Equality Impact Assessment

In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic. A single Equality Impact Assessment is used for all policies and procedures.

This document has been assessed to ensure consideration has been given to the actual or potential impacts on staff, certain communities or population groups.
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1. INTRODUCTION

This document sets out the policy requirements in terms of the Freedom of Information (FOI) Act and Environmental Information Regulations (EIR) for NHS Leeds West Clinical Commissioning Group (CCG).

These two pieces of legislation place an obligation on public authorities (such as the CCG) to make available to anyone information that is held by those public authorities. Access to information can be made through individuals or organisations requesting specific information or by accessing information made available by the public authority through the Publication Scheme, which is a specific part of the organisational website.

The policy sets out how the CCG meets those obligations and details the key responsibilities and requirements of the CCG.

This policy reflects the CCG’s support of 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.

Failure to adhere to this policy may result in disciplinary action and where necessary referred to the appropriate regulatory bodies where conditions of the Act or Regulations are not complied with.

1.1 Key Features of the Legislation

1.1.1 The Freedom of Information Act (2000)

The Freedom of Information Act (2000) 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 FOI Act replaces the non-statutory Code of Practice on Openness in the NHS.

The main features of the Act are:

- A duty on every public authority to adopt and maintain a publication scheme.
- A general right of access to all recorded information held by public authorities (such as the CCG) subject to exemptions and conditions set out in the Act.
- That the Information Commissioner’s Office will oversee the implementation and compliance with this Act and associated legislation and regulations.
- A 20 working day deadline to respond to a request for information.
- There are 23 exemptions (Absolute and Qualified) within the Act which could mean (if any are applicable) that certain information is not released (in terms of
a request) or not published.

- Arrangements in respect of costs and fees.
- Arrangements for enforcement and appeal.
- A duty to provide advice and assistance to people who wish to make, or have made requests for information.

1.1.2 Environmental Information Regulations (2004)

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 (similar to FOI exemptions) are fewer and requests can be made verbally.

2. AIMS

The aims of this policy are to:

- Ensure all requests for information are dealt with consistently and receive a high quality response
- Ensure that the CCG complies with all relevant regulations, laws and guidance.
- Ensure staff at all levels are aware of their responsibilities with regards to the Act and Regulations, be it in directing any queries to the appropriate person/department, or in ensuring they provide information (when asked to) in a timely fashion to the team processing a request
- Ensure legal timescales are met
- Ensure that the Senior Information Risk Owner (SIRO) under delegated authority from the Governing Body is fully informed on the operation of the Act and Regulations and any implications for the service
- Ensure the CCG meet its legal obligations in terms of the FOI Act and Protection of Freedoms Act 2012 to develop and improve the organisation’s publication scheme and website

3. SCOPE

This policy must be followed by all staff who work for or on behalf of the CCG including those on temporary or honorary contracts, secondments, volunteers, pool staff, Governing Body members, students and any staff working on an individual contractor basis or who are employees for an organisation contracted to provide services to the CCG. The policy is applicable to all areas of the organisation and adherence should be included in all contracts for outsourced or shared services. There are no exclusions.

This policy covers:

All aspects of recorded information held by the CCG, including (but not limited to):

- Patient/Client/Service User information of a general, non-personal nature
• Certain types of Personnel/Staff information, especially where this concerns senior executives and board members
• Organisational and business sensitive information
• Structured and unstructured record systems - paper and electronic
• Photographic images, digital, text or video/audio recordings including CCTV
• All information systems purchased, developed and managed by/or on behalf of, the organisation
• Information held on paper, floppy disc, CD, USB/Memory sticks, computers laptops, tablets, mobile phones and cameras
• Documents and information that have been supplied by other organisations
• All documents and information created in the course of staff duties (even personal e-mails and potentially including information held on private equipment may fall within the scope of the Act and its Regulations)

4. ACCOUNTABILITY AND RESPONSIBILITIES

There are a number of key information governance roles and bodies that the CCG needs to have in place as part of its Information Governance Framework, these are:

- Governing Body
- Audit Committee
- Accountable Officer
- Senior Information Risk Owner
- Caldicott Guardian
- Information Asset Owner
- Information Asset Administrator
- Heads of Service
- All employees

The accountability and responsibility are set out in more detail in the Information Governance Strategy and Information Governance Policy Management Framework which must be read in conjunction with this policy.

In respect of compliance with the FOI Act and EIR and, in particular with the processing of requests and of holding of information, all employees have the following specific responsibilities:

- Be aware of the CCG procedure for dealing with FOI and EIR requests.
- Be aware what constitutes an FOI or EIR request.
- Be aware of the key elements of the FOI Act and EIR such as the 20 working day deadline for responding to requests.
- That where an employee is in receipt of what constitutes a FOI or EIR request that employee then passes it on to the FOI/EIR processing team as soon as possible.
- That where an employee is in any doubt whether a request is a request under FOI or EIR that employee must seek guidance (See section 10 Advice).
- That where an employee is asked for information from the FOI/EIR processing team or IG service provider that employee must either: provide information (in line with the agreed procedure for doing so), inform the team that they do not
hold the information, refer the FOI/EIR processing team to the staff that may do, liaise with the relevant CCG contact about providing the information.

- That where an employee holds information that has been asked for by FOI/EIR processing team and the employee has concerns as to the release of the information the employee raises those concerns with the team or line manager.
- To be aware that information held in your personal or departmental information filing systems could be requested under the FOI Act or EIR.
- To organise records in a way that means information is easily accessible and referenced in a clear and concise manner (see Records Management section).
- To provide relevant information as required for inclusion within the CCG’s Publication Scheme.

4.1. ** Provision of FOI and EIR services**

Services for the processing of (and advice relating to) FOI and EIR requests and for development of the Publication Scheme, may be provided by a service provider organisation on behalf of the CCG. However, the responsibility for responding to requests within legal deadlines and for making key information available through the Publication Scheme remains with the CCG.

5. ** DEFINITION OF TERMS**

**The Act:** refers to the Freedom of Information Act 2000

**FOI and FOIA:** acronyms for the Freedom of Information Act 2000

**DPA:** acronym for the Data Protection Act 1998

**EIR:** an acronym for Environmental Information Regulations 2004

**ICO:** an acronym for the Information Commissioner’s Office (independent regulator for Freedom of Information, Environmental Information Regulations and the Data Protection Act)

6. ** KEY REQUIREMENTS**

The section below set out the key requirements in order for the CCG to meet its legal obligations relating to the FOI Act and EIR.

6.1 ** Processing of FOI and EIR requests**

Services for the processing of (and advice relating to) FOI and EIR requests and for development of the publication scheme may be provided by a service provider organisation acting on behalf of the CCG.

The procedures for processing of FOI and EIR requests and the key features of the FOI Act and EIR can be seen in separate guidance and procedural documents.
6.2 Maintenance of the Publication Scheme

The CCG must comply with the legal requirement under the FOI Act to make accessible to the public key documents and information it holds. This is known as the Publication Scheme. The scheme acts as the guide as to:

- What CCG information is publicly available
- How to access that information
- Which classes of information the information is held in
- Whether there are any charges for accessing the information

Responsibility for the CCG Publication Scheme falls under Corporate Governance duties.

The CCG Publication Scheme can be found on the CCG website or in hard copy. The CCG has a duty to maintain and develop the Publication Scheme in line with the Information Commissioner’s model publication scheme and in compliance with provisions contained in the Protection of Freedoms Act 2012.

6.2.1 Approval of Documents for Inclusion in the Publication Scheme

The documents available through the scheme will be the final approved versions only. The Publication Scheme will be an up-to-date series of web pages and, as a result, staff are encouraged to recommend information for inclusion.

The scheme covers a wide range of information from all areas of the organisation. It is the responsibility of Heads of Service 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.

The Publication Scheme needs to be updated and maintained to ensure that information posted online continues to be accurate and the most recent versions of documents are posted.

For any information that is (or is intended to be) made available in the public domain (on the CCG website or otherwise), the information must not be subject to any FOI Act exemption or EIR exception or condition which restricts the release of information. For obtaining guidance on the application of exemptions see contact details in Section 10 Advice.

6.3 Handling FOI and EIR Complaints

Where complaints about the handling of a request for information or operation of the publication scheme are received by the CCG, these will be processed by the FOI and EIR service provider acting in conjunction with managers from the CCG as nominated by the CCG’s service lead. They will follow the Internal Review process for complaints about requests in line with those conditions set out in 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).
6.4 Records Management

Good records management is a key component in complying with requests for information. Staff need to organise records in such a way that information can be accessed quickly and easily. The CCG has a Records Management Policy and supporting guidelines which provide comprehensive guidance for the management of all records and are consistent with:

- Records Management Code of Practice - Department of Health 2006

Records and information needs to held in line with minimum retention schedules. Where a request is received and the requested information is still held by the CCG, it would be offence to destroy that information or potentially to declare that the information is not held.

6.5 Contractual Clauses

When entering into contracts the CCG will limit the contractual terms which are intended to restrict the disclosure of information held by the CCG. The CCG will still need to meet its obligations under the FOI Act and EIR for information that it holds, regardless of whether the information was produced by another agency. Therefore, contracts made between the CCG and other organisations need to include relevant clauses in which it is made clear that the CCG needs to meet its legal obligations for the information that it holds and would only consider not releasing information where an exemption or condition of the legislation restricts release of the information.

6.6 Personal Information

Where a request is received and the person requesting the information is the subject of the information then it needs to be dealt with under the subject access provisions under the Data Protection Act 1998. The CCG has a subject access process in place for dealing with these kinds of requests. This is documented as a CCG approved procedure.

If a request for information is received and the information includes personal data about someone other than the applicant, there is an absolute exemption under FOI/EIR but in certain circumstances the CCG must still consider whether disclosure would be in the public interest.

6.7 FOI and EIR fees

The CCG does not generally charge applicants for providing them with information following a request. There are instances, however, where a public authority could charge fees - such as for photocopying and printing a large amount of information. Matters relating to fees are explained in more detail in the CCG guidance: Summary of the FOI Fee Regulations 2004.
7. TRAINING

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

Information governance including all rights of access will be a part of induction training and is mandatory for all staff. The CCG will identify the information governance training needs of key staff groups taking into account their role, responsibility and accountability levels and will review this regularly through the Personal Development Review processes.

It is all line managers’ responsibility to ensure that all staff are made aware of their record keeping responsibilities through generic and specific staff training and guidance so that they understand:

- What they are recording and how it should be recorded.
- Why they are recording it.
- How to validate information with the patient or carers or against other records – to ensure that staff are recording the correct data.
- How to identify and correct errors – so that staff know how to correct errors and how to report errors if they find them.
- The use of information – so staff understand what the records are used for (and therefore why timeliness, accuracy and completeness of recording is so important) and what the information must not be used for.
- How to update information and add in information from other sources.
- The rights of access available to the public and how to respond to any such requests however received.

All CCG staff will be made aware of their responsibilities for access to records, record-keeping and record management through generic and specific training programmes.

8. IMPLEMENTATION AND DISSEMINATION

Following ratification by the CCG this policy will be disseminated to staff via the CCG’s Extranet 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.

9. MONITORING COMPLIANCE WITH AND THE EFFECTIVENESS OF THE POLICY

Performance indicators will include:

- The percentage of FOI requests completed within the statutory 20 working day timeframe
- The performance against the indicators will be reported to the CCG through
the Information Governance Committee.

Incidents are reported and all serious FOI and EIR issues must be reported by the SIRO at Governing Body level and in Annual Reports.

Any suspicion of fraud or bribery should be reported at the earliest available opportunity to the CCGs Local Counter Fraud Specialist or to NHS Protect by telephoning 08000 28 40 60 or by the following link: Counter fraud

10. ADVICE

Advice and guidance on any matters stemming from the Policy can be obtained by contacting: embed.foi@nhs.net

11. INCIDENT REPORTING

Incidents relating to FOI and EIR including the processing of FOI and EIR requests and maintenance of the Publication Scheme need to be reported as set out in the Incident Reporting Policy. Potential Serious Incidents Requiring Investigation (SIRIs) need to be entered on the Incident reporting Module of the Information Governance Toolkit.

12. ASSOCIATED DOCUMENTS (Policies, protocols and procedures)

The CCG will produce appropriate policies, procedures and guidance relating to records management as required. This will include an Information Governance Handbook which will be updated annually and which will be given to all staff.

This policy should be read in conjunction with;

- Confidentiality and Data Protection Policy
- Records Management and Information Lifecycle Policy
- Information Governance Strategic Vision, Policy and Framework
- Network Security Policy
- Risk Management Policy
- Incident Reporting Policy
- Business Continuity Policy
- Disciplinary Policy and Procedure
- Whistle Blowing Policy
- Anti-fraud and Bribery Policy

And their associated procedures (including but not limited to)

- Access to Records Procedure
- Information Sharing Protocol
- Freedom of Information and EIR Procedures
- E mail and Internet Procedures
- Privacy Impact processes
• Remote access and home working procedures
• Safe Haven Procedure

13. **KEY LEGISLATION AND GUIDANCE**

**LegalReferences**

All NHS records are Public Records under the Public Records Act 1958. This provides statutory obligations upon the CCG. The organisation will take actions as necessary to comply with all its legal and professional obligations. The key legislation is listed below but is not limited to this list. To obtain additional guidance – see contact details in section 10 (Advice).

• Data Protection Act 1998
• Access to Health Records Act 1990
• Freedom of Information Act 2000
• Environmental Information Regulations 2004
• Re-use of Public Sector Information Regulations 2015
• Human Rights Act 1998
• Protection of Freedoms Act 2012
• Public Records Act 1958
• Copyright, Designs and Patents Act 1988 (as amended by the Copyright (Computer Programs) Regulations 1992
• Health and Social Care Act 2012
• Coroners and Justice Act 2009
• Computer Misuse Act 1990
• Common Law Duty of Confidentiality
• Crime and Disorder Act 1998
• The Children Act 1989 and 2004
• Electronic Communications Act 2000
• Regulation of Investigatory Powers Act 2000
• Lawful Business Practice Regulations 2000
• Public Interest Disclosure Act 1998
• Audit & Internal Control Act 1987
• NHS Sexually transmitted disease regulations 2000
• Human Fertilisation and Embryology Act 1990
• Abortion Regulations 1991
• Road Traffic Act 1988
• Regulations under Health and Safety at Work Act 1974
• Disability Discrimination Act 1995
• Equality Act 2010
• Enterprise and Regulatory Reform Act 2013
• Fraud Act 2006
• Bribery Act 2010

Guidance and other References

• Caldicott Review updated 2013
• Health and Social Care Information Centre Guidance 2013
• Professional Codes of Conduct and Guidance
• Information Commissioners Guidance Documents
• ISO Guidance on Records Management
• NHS Records Management Code of Practice
• Care Records Guarantee