

**POLICY FOR THE MANAGEMENT OF THE
FREEDOM OF INFORMATION ACT 2000**

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1. INTRODUCTION AND POLICY STATEMENT OF STATUTORY COMPLIANCE

1.1 Purpose

This policy is a statement of the framework within which the NHS Portsmouth Clinical Commissioning Group (CCG) will work to ensure compliance with the Freedom of Information Act 2000 (FOIA). In particular it:

- Outlines the role of legislation (see Section 1.2)
- Defines roles and responsibilities (see Section 3)
- Indicates the way in which compliance with the policy will be monitored (see Section 8)
- Details guidelines for the implementation of legislation (see Section 4)

1.2 Background

The FOIA 2000 replaces the non-statutory “*Code of Practice on Openness in the NHS*”, is part of the Government’s commitment to greater openness and transparency in the public sector and enables the public to question the actions and decisions of public authorities more closely. Section 1 of the FOIA gives a general right of access to recorded information held by a public authority, subject to certain conditions and exemptions. The main features of the FOIA are:

- A duty on every public authority to maintain a Publication Scheme
- A general right of access from 1 January 2005 to recorded information held by public authorities.
- Introduction of the office of Information Commissioner to promote good practice and with wide powers to enforce the rights created by the FOIA.

1.3 Principles

This policy supports the principle that openness, and not secrecy, should be the norm in public life. The CCG intends to create openness and dialogue with all stakeholders and improved access to information about the CCG and supports the following:

- Individuals have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provision that prevent the disclosure of personal identifiable information under the Data Protection Act 1998 (See *Data Subject Access Policy*).
- Public authorities should be allowed to discharge their functions effectively. The CCG will use the exemptions contained in the FOIA where an absolute applies or a qualified exemption can be reasonably applied in terms of the public interest of disclosure (see Appendix 1 – Exemptions).
- Staff should have access to advice to support their understanding of the FOIA.

1.4 Relevant Linking Documents

This policy should be read in conjunction with:

- The Freedom of Information Act 2000
- Data Protection Act 1998
- Procedure for the disclosure of records under the Data Protection Act 1998 and Access to Health Records Act 1990

- Environmental Information Regulations 2004

All policies / documents relating to the application of Information Governance:

- Information Governance Policy
- Information Governance Framework
- Records Management Policy
- Information Security, Confidentiality and Safe Haven Policy
- Freedom of Information – Information for Staff (see appendix 4)

2. SCOPE

This policy provides a framework for the CCG to ensure compliance with the FOIA and applies to:

- All employees of the CCG
- Contracted third parties, including hosted organisations and agency staff
- Students and trainees
- Staff on secondment and other staff on placement within the CCG

3. RESPONSIBILITIES

3.1 Statutory Responsibility

All public authorities in England, Wales and Northern Ireland are covered by the FOIA. In addition any company that is wholly owned by a public authority is also covered by the FOIA.

3.2 Managerial Accountability and Responsibility

All line managers should ensure their staff are aware of the obligations of the CCG under the FOIA and related legislation, of the rights of individuals making requests under the FOIA and of the process for dealing with requests under the FOIA.

3.3 Individual Responsibility

By law, all staff are responsible for any requests that they receive. Therefore it is the responsibility of all staff to be aware of the obligations of the CCG under the FOIA and related legislation, of the rights of individuals making requests under the FOIA and of the process for dealing with requests.

It is also the responsibility of all staff to support the Freedom of Information function as required, to ensure that requests are handled in accordance with legislation. This may involve locating, retrieving and extracting (including editing and redacting) the information.

Guidance for staff is set out in:

- *“Procedure for handling Freedom of Information enquiries”* (appendix 4)

3.4 Freedom of Information function with Portsmouth City Council

The FOI function sits within Portsmouth City Council’s FOI team and serves to ensure that legislation is appropriately and effectively implemented.

3.5 Chief Operating Officer’s Office

The Director of Quality & Commissioning is responsible, with support from the FOI team, for the oversight and final approval of any complaints, or requests for review received under the FOIA (see appendix 3: “*Complaints / Review Process*”).

4. PROCEDURE FOR HANDLING FREEDOM OF INFORMATION ENQUIRIES

4.1 Introduction

Any member of staff may be approached and asked for information under this legislation. Section 16 of the FOIA states that public authorities have a duty to provide advice and assistance to applicants, therefore every member of staff in the CCG has a legal duty to assist someone in making a request. Guidance for staff is set out in “*Freedom of Information – Information for Staff*” (appendix 5).

4.2 Verbal requests

Under the terms of the FOIA enquiries must be written (letter, fax or email) however if a verbal request is received CCG staff have a duty to advise:

- The information requested may be in the Publication Scheme
- Requests must be written (letter, fax or email) to the address in Section 4.3
- There are a number of exemptions under the FOIA under which the CCG may not be obliged to provide the information requested
- A fee may be charged, depending on the type and size of request

4.3 Written requests

Written requests may come from any source and be directed to any member of staff. If the request for information is not classified as a complaint, solicitor’s letter or request for access to personal records it should be considered as a possible Freedom of Information enquiry, which should be forwarded to:

Corporate Information Governance Officer
Customer, Community & Democratic Service
Portsmouth City Council
Civic offices
Portsmouth
PO1 2AL
Phone: 023 9268 8482
Email: CCGFOI@portsmouthcc.gov.uk

The FOIA gives a right of access that is not based on ‘need to know’ and therefore the CCG does not have the right to question an applicant on the reason or purpose of their request. The CCG can, however, request the applicant to provide further detail or clarification in order to define a vague or broad request.

4.4 Requests for Information received by Staff

Any member of staff receiving a request for information, regardless of whether this is for information contained within the publication scheme or not, is expected to follow the staff process for handling requests. Guidance for staff is set out in:

- *Procedure for handling Freedom of Information enquiries*” (appendix 4)
- “*Freedom of Information – Information for Staff*” leaflet (appendix 5)

4.5 Requests for Information Received by the Freedom of Information team

The Freedom of Information team will follow the relevant processes for handling requests as set out in Appendix 2.2: “*Procedure following receipt of an enquiry made under the Freedom of Information Act 2000*”.

4.6 Timescales

The FOIA requires that requests are responded to by the twentieth working day following the date of receipt. If the CCG decides to apply a condition or exemption (see Appendix 1: “*Exemptions*”) to withhold information, the applicant will be informed within 20 working days.

The 20 working days timescale may be extended only if the CCG:

- Requests further clarification relating to the enquiry from the applicant, in which case the 20 working days is suspended until a reply is received.
- A fees notice is issued, in which case the 20 working days is suspended until payment is received by the CCG
- Considers a qualified exemption is applicable, in which case, in exceptional circumstances, response may be extended by a further 20 working days to consider the Public Interest Test.

The CCG will advise the applicant it is unable to complete the enquiry within the 20 working days and propose a revised timescale for agreement by the enquirer.

4.7 Public Interest Test

Where a qualified exemption is considered requiring the consideration of the Public Interest Test (PIT) this will be agreed between the Persons/departments holding the information and the FOI team. Final approval of the PIT will rest with an officer of the CCG or nominated deputy not associated with the request for information and will generally be the Chief Operating Officer or nominated deputy. The outcome and rationale for the decision will be recorded in writing. The CCG may extend the timescale for response by up to 20 working days if necessary and will advise the applicant in this circumstance.

4.8 Low volume data

A response to a Freedom of Information enquiry is effectively a provision of information to the general public, and not to one individual. The CCG has an obligation to maintain patient confidentiality under the Data Protection Act 1998 and will generally adhere to guidance provided by the ‘*Code of Practice for Official Statistics*’ (UK Statistics Authority) and further advice on using low data and maintaining confidentiality, from the Association of Public Health Observatories, generally supressing data with counts of less than five.

4.9 Charging and Fees

In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, the CCG will not charge for information that costs less that £450 to provide, calculated at a rate of £25 per person per hour. The following table illustrates what activities will and will not be included in this calculation:

Activities Included	Activities Not Included
Determining whether the requested information is held	Checking that the request is valid
Locating the information	Considering whether the request is

	repeated or vexatious
Retrieving the information	Considering whether the information may be exempt
Extracting the information (excluding editing or redacting)	Obtaining authorisation to send out the information
	Calculating any fee to be charged
	Providing advice and assistance

Additionally where the CCG considers it appropriate to charge a fee it will also consider the additional charge for non-staff costs or disbursements i.e. photocopying, printing or postage.

For aggregate requests, where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, the CCG will aggregate the requests and charge in accordance with the fees regulations.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed.

4.10 Complaints / Reviews

The CCG will deal with complaints and requests for review to ensure that the requirements of the FOIA and EIRs are met (see appendix 3: “Complaints / Review Process”).

4.11 Information Format

Information will be provided in the applicant’s preferred format (so far as this is reasonably practicable). The CCG will notify the applicant of the reasons if it considers it is not practicable to comply.

4.12 Vexatious or Repeated requests

The CCG will not facilitate requests from applicants if that request could be considered vexatious or repeated, which would be identified by monitoring data, and it is the view of the Chief Operating Officer, or nominated deputy, that the enquiry could be considered to be vexatious, with advice taken from the Information Commissioner’s guidance to S14 of the FOIA:

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

<https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

5. CONTRACTS AND CONFIDENTIALITY CLAUSES

5.1 Public Sector Contracts

Contracts entered into by the CCG will not include contractual terms that restrict the disclosure of information held by the CCG beyond the restrictions permitted by the FOIA, unless an exemption provided for under the FOIA is applicable. All contracts entered into by the CCG will include appropriate FOI clauses to ensure that both parties are aware of their responsibilities under the FOIA.

When entering into contracts, the CCG may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the CCG will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the CCG will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. The CCG will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

The CCG will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption would only apply if disclosure of the information would constitute a breach of confidence actionable by that, or any other person.

5.2 Accepting Information "In Confidence" from Third Parties

The CCG will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided.

The CCG will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified under the terms of the FOIA.

6. RECORDS MANAGEMENT

The CCG has a Records Management Policy that meets the requirements of the Code of Practice issued under Section 46 of the FOIA. Together with the records management function this will serve to ensure that effective records management is undertaken within the organisation, thereby enabling the speedy location and retrieval of requested information.

7. RE-USE OF INFORMATION / COPYRIGHT

Under the Re-use of Public Sector Information Regulations 2015, If an individual wishes to re-use information provided in response to a request for a purpose other than the initial purpose for which the information was produced, the consent of the public body should be sought.

The documents provided in the Publication Scheme, and those published as disclosure documents in requests are protected by copyright, which except where indicated, belongs to the CCG. Permission for re-use of copyright material should be sought from the copyright owners concerned.

8. REVIEW AND REITERATION

The CCG (via the FOI team at Portsmouth City Council) will log all requests via a database. This will be regularly reviewed to determine the type of request received and the originator. Information that is regularly requested will then be considered for routine publication in the publication scheme.

By making information routinely available the CCG will be able to proactively meet the information needs of the public and reduce the need for requests under the FOIA.

9. TRAINING

Record keeping and records management training, including Freedom of Information is included in staff induction and via mandatory Information Governance training. Ad hoc training will be provided on request by the Freedom of Information team.

10. LEGAL ADVICE

The Freedom of Information Manager will be the conduit through which legal advice on FOI is sought and given, and will liaise with the NHS South, Central and West Commissioning Support Unit Legal Services Manager as appropriate.

Appendix 1

EXEMPTIONS UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:

- Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest not to disclose information.

With the exception of section 21 (information available by other means) absolute exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the FOIA are:

- Section 21** **Information accessible to applicant by other means** – it may be reasonably accessible even if the applicant has to pay for it.
- Section 23** **Information supplied by, or relating to, bodies with security matters** – this is aimed at the Security Services, Government Communications Headquarters and the National Criminal Intelligence Service.
- Section 32** **Court records** – covers documents in the custody of a court, created by a court or served on or by a public authority for court proceedings.
- Section 34** **Parliamentary privilege** – to avoid infringing the privileges of either House of Parliament.
- Section 40** **Personal information** – where the applicant is the subject of the information the request must be dealt with in accordance with the Subject Access rights provided in the Data Protection Act 1998. Where the applicant is not the subject of the information, then it is exempt if disclosure of it would breach the Data Protection Act.
- Section 41** **Information provided in confidence** – if the disclosure of the information would constitute a breach of confidence that could lead to action against the CCG.
- Section 44** **Prohibitions on disclosure** – information is exempt if its release is prohibited under any enactment, it is incompatible with Community obligation or would constitute contempt of court.

The exemptions that are qualified by the public interest test are:

- Section 22** **Information intended for future publication** – covers information held with a view to publication by the public authority or another person at some future date.
- Section 24** **National security** – information can be exempt if it is required to safeguard national security.

- Section 26** **Defence** – information can be exempt if its release would affect the defence of the British Isle, any British colony or the capability and effectiveness of the armed forces.
- Section 27** **International relations** – information is exempt if its release would prejudice relations with another state, international organisation, international court or the interests of the UK abroad.
- Section 28** **Relations within the United Kingdom** – covers information that would prejudice the economic interest of the UK or of any administration in the UK.
- Section 29** **The economy** – covers information that would prejudice the economic interest of the UK or of any administration in the UK.
- Section 30** **Investigations and proceedings conducted by public authorities** – covers information held for an investigation that the authority has a duty to conduct to decide if a person should be charged with or found guilty of an offence, relates to criminal proceedings that the authority has power to conduct or relates to civil proceedings brought by or on behalf of the authority.
- Section 31** **Law enforcement** – information is exempt if its release would prejudice law enforcement. This includes the prevention and detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons.
- Section 33** **Audit functions** – this applies to authorities that have functions in relation to the audit of other authorities' accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.
- Section 35** **Formulation of government policy** – relates to government departments and the National Assembly for Wales.
- Section 36** **Prejudice to effective conduct of public affairs** – information is exempt if, in the opinion of a qualified person, it would prejudice how the CCG conducts its public affairs.
- Section 37** **Communications with Her Majesty, with other members of the Royal Household, and the conferring by the Crown of any honour or dignity.**
- Section 38** **Health and safety** – information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.
- Section 39** **Environmental information** – covers information that can be accessed via the Environmental Information Regulations.
- Section 42** **Legal professional privilege**
- Section 43** **Commercial interests** – information is exempt if it constitutes a trade secret or would prejudice or be likely to prejudice the commercial interests of any person or organisation.

PROCEDURE FOLLOWING RECEIPT OF AN ENQUIRY MADE UNDER THE FREEDOM OF INFORMATION ACT 2000

Summary of Key Actions and Timescales

Stage	Key Action	Timescale	Who?	Other Actions
Initial Application	Details of enquiry to FOI team by fax or e-mail. Original documentation also sent to FOI team.	1 working day.	Recipient of request	Recipient informs applicant that request has been transferred to FOI team.
Processing Request				
On Receipt	Acknowledge receipt of request to applicant.	2 working days.	FOI team	The FOI team: Team inform applicant it will be processed in 20 working days. Keeps applicant informed of progress. Provides advice and assistance if required. Requests clarification. Decides if a fee/charge is applicable. Decides if request can be met within applicable limits set in Fees Regulations. Considers if information is
Accessing information	Identification of person(s) holding relevant information. (using pre-established list of contacts) Locate and provide relevant information to FOI team <i>Note: Timescale suspended if insufficient information provided by applicant to identify and locate information requested.</i>	2 working days. 8 working days.	FOI team Staff	

Stage	Key Action	Timescale	Who?	Other Actions
	<p>Additional time discussed with FOI team / applicant if:</p> <ul style="list-style-type: none"> • Contentious request is reviewed by a CCG Chief Officer • Information requested is difficult to retrieve. 	2 working days.	Staff / FOI team	<p>exempt. Decides if request is repeated or vexatious.</p>
	<p>Information reviewed in respect of fees/charges and exemptions.</p> <p><i>If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The twenty working day timescale is suspended until the fee/charge is paid.</i></p>	2 working days.	FOI team	<p>FOI team presents public interest test to qualified person where an exemption is qualified.</p> <p>FOI team provides advice and assistance in the event of applicant being unable/unwilling to pay fee/charge.</p> <p>If an exemption is applicable the FOI team will issue a notice informing the applicant of this.</p> <p>If a request is refused for any other reason, the FOI team will notify the applicant of this.</p>
Providing Information	Information provided to applicant.	3 working days.	FOI team	<p>The FOI team will consider the preferences of the applicant in regard to the format in which they wish to receive the information they have requested.</p>

FOI TEAM PROCEDURE FOR ENQUIRIES MADE UNDER THE FOI 2000 PROCESSING REQUESTS FOR INFORMATION

Receipt of a Request

Once the FOI team receives an applicant's request for information the following information will be recorded on the confidential FOI database:

- Request Identifier (FOI – Database ID plus 10R)
- Initial Date Received by the NHS Portsmouth Clinical Commissioning Group
- Name and Contact Details for Initial Recipient
- Date Received by FOI team
- Name of Applicant
- Contact Details
- Information Requested

The FOI team will write in the same format as the original request within two working days to inform the applicant that the request has been received and is being processed. A record will be kept of this contact.

If the FOI team has sufficient information to respond to the request, they will inform the applicant in the letter of acknowledgement that their request will be processed within twenty working days.

The FOI team will also inform the applicant in writing of any fees or charges, if known, that are payable for the provision of the information and that no information will be provided unless the fee or charge is paid within three months. In regard to the general right of access from 1 January 2005, this will constitute the issue of a Fees Notice as described in section 9 of the FOIA. Charges and fees are addressed in Section 4.8.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed

If the applicant has not provided sufficient information for the request to be processed, the FOI team will contact the applicant for clarification; if further clarification is not received within three months from the day on which the applicant receives the request for clarification the enquiry will be closed.

In accordance with sections 12 and 13 of the FOIA, if the FOI team estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations (Section 4.8), they will notify the applicant in writing of the estimated cost. Under the FOI guidelines to advise and assist the FOI lead will discuss with the applicant ways of bringing costs within appropriate limits. If it is not possible to comply with the request within appropriate limits, a Fees Notice will be issued.

If the FOI team believes that any of the information requested is exempt from disclosure under Part II of the Act, the applicant will be advised referencing to the appropriate exemption. This includes circumstances where the information requested is available from another source other than the CCG, unless that source is a public authority, in which case the request may be transferred to that authority (see 6).

If a qualified exemption requiring consideration of the Public Interest Test is under consideration, and might delay response, the FOI team will advise the applicant of an extension of the time for response, the reason and an estimated date for final decision.

If the FOI team has evidence to demonstrate that the request is vexatious or repeated, as defined under section 14 of the Act, the request will be refused.

Accessing the Information

The FOI team will identify who holds the information that the applicant has requested. They will, within two working days, identify and contact the person(s) in either the CCG or NHS South, Central and West Commissioning Support Unit who are most appropriately placed to meet the requirements of the applicant. The FOI team will keep a record of this contact.

Upon receipt of an information request from the FOI team, staff will normally be asked to respond within eight working days to locate and provide the information requested to the FOI team. If it is not possible to meet this deadline, the FOI team must be informed immediately; up to five additional working days may then be allowed to comply with the initial request. The FOI lead will keep a record of these contacts.

The information that the applicant has requested will be forwarded to the FOI team who will review the information in respect of any exemptions and/or fees payable, within two working days before providing the information to the applicant. If any exemptions are applicable, the applicant will be advised in the final response. If fees are payable the applicant will be issued with a Fees Notice.

If the FOI team feels that releasing particular information under the general rights of access could be contentious, the matter will be referred to a CCG Chief Officer / Director who will make a decision to release or deny access to the contentious information within the required time frame for responding to requests. If it is not possible to meet this timeframe the FOI team will contact the applicant to agree an extension. The FOI team will ensure that the applicant is kept informed as to the progress of their request.

Providing the Information

If no fees or charges are either payable or outstanding, or if no exemptions are applicable, the FOI team will provide the information requested directly to the applicant.

Information will be provided to applicants by any one or more of the following means, namely:

- As a copy of the information in permanent form (i.e. PDF) or another form acceptable to the applicant.
- Through the provision of a reasonable opportunity to inspect a record containing the information.
- The provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The FOI team will consider all the circumstances of the request for the communication of information by a particular means, including the cost of doing so. If the FOI team determines that it is not reasonably practicable to comply with any preference for the provision of the information as requested by the applicant in their request, they will notify the applicant of the reasons for this. The information will then be provided by such means as the FOI team deems to be reasonable. In the discharge of this function, the FOI team will have regard to other statutory obligations upon the CCG such as those established under the Disability Discrimination Act 1995.

The FOI team will record within the FOI database:

- The date upon which the information was provided to the applicant
- The form in which the information was requested
- The format in which the information was provided.

REFUSAL OF REQUESTS

A refusal of a request may apply to all the information requested by an applicant or a part thereof. A request for information may be refused if:

- The information is exempt from disclosure under Part II of the Act.

- A fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant or the applicant was notified of the charge.
- The cost of compliance exceeds the appropriate limit.
- The request is demonstrably vexatious or repeated.

If the FOI team chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. The applicant will also be informed of the CCG's complaints procedures and of their right to appeal to the Information Commissioner (Appendix 3).

If the FOI team is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information, a notice will be issued within twenty working days under section 17 of the Act. The notice will:

- State that fact
- Specify the exemption in question
- State (if not otherwise apparent) why the exemption applies

If the FOI team anticipates that it will take more than twenty working days to reach a decision as to whether any part of the information requested by the applicant is exempt under Part II of the Act, the applicant will be notified that no decision concerning the application of an exemption has been reached. An estimate of the date that a decision will be reached will be given.

Such estimates should be realistic and reasonable, and compliance expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given the reason(s) for delay and offered an apology by the FOI team. If the FOI team finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. A record will be kept of instances where estimates are exceeded, and where this happens more than occasionally, steps will be taken to identify the problem and rectify it.

If a qualified exemption is being applied, the FOI team will, either in the notice issued above or a separate notice given within a reasonable timescale for the circumstances, state the reasons for claiming:

- That, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the CCG holds the information, or
- That, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement will not involve the disclosure of information which would itself be exempt information.

If the FOI team believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit, or the request is demonstrably repeated or vexatious, the notice will state that fact. If the CCG is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required. The FOI team will keep records of all notices issued to refuse requests for information.

When implementing this procedure, the FOI team will seek advice from those person(s) who hold the information that the applicant has requested and from senior staff.

Appendix 3

FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 COMPLAINTS / REVIEW PROCESS

If you think that the NHS Portsmouth Clinical Commissioning Group has not supplied you with information in accordance with the Freedom of Information Act (FOI) or the Environmental Information Regulations 2004 (EIR) and wish to make a complaint or request a review regarding any of the following:

- A refusal of a request for information under FOI Act or EIR
- Dissatisfaction with a response to a request
- The NHS Portsmouth Clinical Commissioning Group FOI and EIR policy
- Non compliance with the scheme

Please contact:

NHS Portsmouth Clinical Commissioning Group
C/O Freedom of Information Complaints
Portsmouth City Council
Corporate Complaints Team
Civic Offices
Guildhall Square
Portsmouth
PO1 2BG

Phone: 023 9283 4456

What we will do:

- Acknowledge the complaint within 2 working days
- Review the procedure and the handling of your request in conjunction with the FOI Act and EIR. The re-evaluation will be carried out by a CCG Chief Officer who will have not been involved in the original request for information.
- A fresh decision will be made on consideration of all the factors relevant to the issue.
- We will aim to provide a full response within 20 working days. If for any reason we are unable to meet this target you will be kept informed of the progress of your complaint.

If you are dissatisfied with the outcome of the re-evaluation you have the right to refer your complaint to the Information Commissioner at:

Address: Wycliffe House, Water Lane,
Wilmslow, Cheshire, SK9 5AF.
Information Line: 0303 1231 1113 or 01625 545745 (national rate number)
Email: casework@ico.org.uk **Website:** www.ico.org.uk

The Information Commissioner has responsibility for enforcing the Freedom of Information Act 2000 and Environmental Information Regulations 2004 and is an independent public official responsible directly to Parliament. The Commissioner's role is to:

- Promote good practice
- Approve and assist in the preparation of publication schemes
- Provide information about the public's rights under the Act and EIR
- Enforce compliance with the Act and EIR

The Information Commissioner's guidance "Freedom of Information and Environmental Information Regulations – When and how to complain" can be obtained from the address above.

Appendix 4

CLINICAL COMMISSIONING GROUP STAFF PROCEDURE FOR HANDLING FOI ENQUIRIES

1. Introduction

Any member of staff may be approached and asked for information under this legislation. Section 16 of the Freedom of Information Act (FOIA) states that public authorities have a duty to provide advice and assistance to applicants, therefore every member of staff in the Clinical Commissioning Group has a legal duty to assist someone in making a request. Guidance for Clinical Commissioning Group staff is set out in the “*Freedom of Information – Information for Staff*” leaflet (appendix 4 of the FOI Policy).

2. Verbal requests

Under the terms of the FOIA enquiries must be written (letter, fax or email) however if a verbal request is received Clinical Commissioning Group staff have a duty to advise and assist:

- The information requested may be in the Publication Scheme
- Requests must be written (letter, fax or email) to the address in Section 3 and include a full name and correspondence address (this can be an email address)
- There are a number of exemptions under the FOIA under which the Clinical Commissioning Group may not be obliged to provide the information requested
- A fee may be charged, depending on the type and size of request

3. Written requests

Written requests may come from any source and be directed to any member of staff. If the request for information is not classified as a complaint, solicitor’s letter or request for access to personal records it should be considered as a possible Freedom of Information enquiry, which should be forwarded to:

Corporate Information Governance Officer
Customer, Community & Democratic Service
Portsmouth City Council
Civic offices
Portsmouth
PO1 2AL

Phone: 023 9268 8482

Email: CCGFOI@portsmouthcc.gov.uk

The FOIA gives a right of access that is not based on ‘need to know’ and therefore the Clinical Commissioning Group does not have the right to question an applicant on the reason or purpose of their request. The Clinical Commissioning Group can, however, request the applicant to provide further detail or clarification in order to define a vague or broad request.

4. Requests for Information received by Clinical Commissioning Group staff

Any member of staff receiving a request for information, regardless of whether this is for information contained within the publication scheme or not, is expected to follow the staff process for handling requests. Guidance for Clinical Commissioning Group staff is set out in the “*Freedom of Information – Information for Staff*” leaflet (appendix 4 of the FOI Policy).

5. Requests for Information Received by the PCC Freedom of Information team

The Freedom of Information team will follow the relevant processes for handling requests as set out in Appendix 2 of the FOI Policy: *“Procedure following receipt of an enquiry made under the Freedom of Information Act 2000”*, and will ensure that the Clinical Commissioning Group received timely notification of receipt.

6. Timescales

The FOIA requires that requests are responded to by the twentieth working day following the date of receipt and the PCC FOI team will work to this timeframe.

If the Clinical Commissioning Group decides to apply a condition or exemption (see Appendix 1 of the FOI Policy: *“Exemptions”*) to withhold information the applicant will be informed within 20 working days.

The 20 working days timescale may be extended only if the Clinical Commissioning Group, via the PCC FOI team:

- Requests further clarification relating to the enquiry from the applicant, in which case the 20 working days is suspended until a reply is received.
- A fees notice is issued, in which case the 20 working days is suspended until payment is received by the Clinical Commissioning Group.
- Considers a qualified exemption is applicable, in which case, in exceptional circumstances, response may be extended by a further 20 working days to consider the Public Interest Test.

The CCG will advise the applicant it is unable to complete the enquiry within the 20 working days and propose a revised timescale for agreement by the enquirer.

7. Public Interest Test

Where a qualified exemption is considered requiring the consideration of the Public Interest Test (PIT) this will be agreed between the persons / departments holding the information and the PCC FOI team. Final approval of the PIT will rest with an officer of the CCG not associated with the request for information and will generally be the Chief Operating Officer or nominated deputy of the CCG. The outcome and rationale for the decision will be recorded in writing. The Clinical Commissioning Group may extend the timescale for response by up to 20 working days if necessary and will advise the applicant in this circumstance via the PCC FOI team.

8. Charging and Fees

In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, the Clinical Commissioning Group will not charge for information that costs less than £450 to provide, calculated at a rate of £25 per person per hour. The following table illustrates which activities will and will not be included in this calculation:

Activities Included	Activities Not Included
Determining whether the requested information is held	Checking that the request is valid
Locating the information	Considering whether the request is repeated or vexatious
Retrieving the information	Considering whether the information may be exempt
Extracting the information	Obtaining authorisation to send out the information

(excluding editing or redacting)	
	Calculating any fee to be charged
	Providing advice and assistance

Additionally where the Clinical Commissioning Group considers it appropriate to charge a fee it will also consider the additional charge for non-staff costs or disbursements i.e. photocopying, printing or postage.

For aggregate requests, where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, the Clinical Commissioning Group will aggregate the requests and charge in accordance with the fees regulations, via the PCC FOI team.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed.

9. Complaints / Reviews

Complaints and requests for review will be directed to the Clinical Commissioning Group Executive office and will be handled on behalf of the Clinical Commissioning Group by the PCC FOI team, to ensure that the requirements of the FOIA and EIRs are met (see appendix 3 of the FOI Policy: *“Complaints / Review Process”*). Final decisions will be sent from the Clinical Commissioning Group Chief Operating Officer.

10. Information Format

Information will be provided in the applicant’s preferred format (so far as this is reasonably practicable). The Clinical Commissioning Group will notify the applicant, via the PCC FOI team, of the reasons if it considers it is not practicable to comply.

11. Vexatious or Repeated requests

The Clinical Commissioning Group will not facilitate requests from applicants if that request could be considered vexatious or repeated, which would be identified by monitoring data, and it is the view of the Chief Operating Officer, or nominated deputy, that the enquiry could be considered to be vexatious, with advice taken from the Information Commissioner’s guidance to S14 of the FOIA:

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

<https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

EQUALITY IMPACT ASSESSMENT



Equality Impact Assessment

Preliminary assessment form v5 / 2013

The preliminary impact assessment is a quick and easy screening process. It should:

- identify those policies, projects, services, functions or strategies which require a full EIA by looking at:
 - negative, positive or no impact on any of the equality groups
 - opportunity to promote equality for the equality groups
 - data / feedback
- prioritise if and when a full EIA should be completed
- justify reasons for why a full EIA is not going to be completed

Service:

Title of policy, service, function, project or strategy (new or old) :

Freedom of Information Policy

Type of policy, service, function, project or strategy:

- Existing
- New / proposed
- Changed

Q1 - What is the aim of your policy, service, function, project or strategy?

To provide guidance to staff and the public on how the CCG will discharge its duties with regard to the Freedom of Information Act 2000

Q2 - Who is this policy, service, function, project or strategy going to benefit or have a detrimental effect on and how?

The policy will provide clarity of expectations and process for the public and staff. There are no identified detrimental effects as a result of this policy.

Q3 - Thinking about each group below, does, or could the policy, service, function, project or strategy have a negative impact on members of the equality groups below?

Group	Negative	Positive / no impact	Unclear
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transgender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other excluded groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If the answer is "negative" or "unclear" consider doing a full EIA

Q4 - Does, or could the policy, service, function, project or strategy help to promote equality for members of the equality groups?

Group	Yes	No	Unclear
Age	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disability	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Race	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transgender	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy or maternity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other excluded groups	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If the answer is "no" or "unclear" consider doing a full EIA

Q5 - Do you have any feedback data from the equality groups that influences, affects or shapes this policy, service, function, project or strategy?

Group	Yes	No	Unclear
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transgender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Pregnancy and maternity

Other excluded groups

If the answer is "no" or "unclear" consider doing a full EIA

Q6 - Using the assessments in questions 3, 4 and 5 should a full assessment be carried out on this policy, service, function or strategy?

yes No

Q7 - How have you come to this decision?

The FOI Act supports the public to access public sector information which could help to identify issues relating to access or inequality. This policy provides clear guidelines which will enable the public to understand what they can expect from the CCG when making a FOI request.

This policy will be available on the CCG website and available in other formats on request.

If you have to complete a full EIA and / or require any help, please contact the Equality Lead on Tel: 023 9268 4818 or email: claire.pond@portsmouthccg.nhs.uk

Q8 - Who was involved in the EIA?

Suzannah Rosenberg

This EIA has been approved by: Innes Richens

Contact number: 023 9289 2589

Date: 13/6/16

Approved by:	NHS Portsmouth Clinical Commissioning Group Clinical Executive	Date of meeting: 22/6/16
Review date:	July 2019	