IG 01
Surrey Heartlands CCGs’ Public Information Access and Re-use Policy

Policy applicable to:

- NHS Guildford and Waverley CCG
- NHS North West Surrey CCG
- NHS Surrey Downs CCG

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<td>Surrey Heartlands CCGs’ Managing Directors</td>
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### Version control sheet

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**Equality statement**

The Surrey Heartlands’ CCGs aim 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. We take into account the Human Rights Act 1998 and promote equal opportunities for all. This document has been assessed to ensure that no employee receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the member of staff has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

We embrace the four staff pledges in the NHS Constitution. This policy is consistent with these pledges.

See next page for an Equality Analysis of this policy.

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**Contact details for alternative format:**

If you would like this policy translated into another language or alternative format such as large print, Braille, audio or BSL, please contact:

Patient Experience Team
NHS Guildford and Waverley CCG
Dominion House
Woodbridge Road
Guildford
GU1 4PU
Telephone: 01483 405450
Text: 07827 663749
Email: gwccg.complaints@nhs.net
**Equality analysis**

Equality analysis is a way of considering the effect on different groups protected from discrimination by the Equality Act, such as people of different ages. There are two reasons for this:

- to consider if there are any unintended consequences for some groups
- to consider if the policy will be fully effective for all target groups

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<tr>
<th>Name of Policy:</th>
<th>Public Information Access and Re-use</th>
<th>Policy Ref:</th>
<th>Is this New? [✔] Or Existing? [ ]</th>
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<td>Eleanor O’Shaughnessy, Information Governance Delivery Manager</td>
<td>Date of Analysis: 30/01/19</td>
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<td>Directorate:</td>
<td>Communications and Corporate Affairs</td>
<td>Director’s signature:</td>
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Who is intended to **follow** this policy? Explain the aim of the policy as applied to this group.

- All CCG staff and those for whom the CCGs have legal responsibility (including interim, agency and consultancy staff working for the CCGs). For those staff covered by a letter of authority/honorary contract or work experience, the organisation’s policies are also applicable while undertaking duties for or on behalf of the CCGs. Furthermore, this policy applies to all third parties and others authorised to undertake work on behalf of the CCGs
- NEL CSU Staff

Who is intended to **benefit from** this policy? Explain the aim of the policy as applied to this group.

- substantively employed Surrey Heartlands CCGs staff, whether part time or full time;
- non-employed resource; including Governing Body Members, contractors, and other individuals undertaking work on the CCGs’ behalf
- NEL CSU Staff
- Members of the public who wish to submit a request for public information access and re-use

1. **Evidence considered.** What data or other information have you used to evaluate if this policy is likely to have a positive or an adverse impact upon protected groups when implemented? Discussed with the Head of Engagement, Diversity and Inclusion for the Surrey Heartlands CCGs.

2. **Consultation.** Have you consulted people from protected groups? What were their views?

   No consultation with protected groups has taken place. No adverse impact is predicted from this Policy since the Surrey Heartlands CCGs adhere to their obligations under the Equality Act 2010 and the Human Rights Act 1998. Where an applicant is unable to make a request in writing the CCGs will make any required reasonable adjustments to mitigate any negative impact of specific groups.

3. **Promoting equality.** Does this policy have a positive impact on equality? What evidence is there to support this? Could it do more?
The Surrey Heartlands CCGs adhere to their obligations under the Equality Act 2010 and the Human Rights Act 1998 where an applicant is unable to make a request in writing and will make any required reasonable adjustments to mitigate any negative impact of specific groups.

4. Identifying the adverse impact of policies
In the boxes below, identify any issues in the policy where equality characteristics require consideration for either those abiding by the policy or those the policy is aimed to benefit, based upon your research.

If no adverse impact predicted, state ‘No adverse impact predicted from this policy’.

| a) People from different age groups: | No adverse impact predicted from this policy |
| b) Disabled people: | No adverse impact predicted from this policy. Formatting has been clarified to enable easier navigation, acronyms are explained and a definitions section is included. |
| c) Women and men: | No adverse impact predicted from this policy |
| d) Religious people or those with strongly held philosophical beliefs: | No adverse impact predicted from this policy |
| e) Black and minority ethnic (BME) people: | No adverse impact predicted from this policy |
| f) Transgender people: | No adverse impact predicted from this policy |
| g) Lesbians, gay men and bisexual people: | No adverse impact predicted from this policy |
| h) Women who are pregnant or on maternity leave: | No adverse impact predicted from this policy |
| i) People who are married or in a civil partnership: | No adverse impact predicted from this policy |

5. Monitoring  How will you monitor the impact of the policy on protected groups?
Complaints to the CCGs – equality monitoring
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1. **Introduction and Policy Objective**

1.1 The Surrey Heartlands Clinical Commissioning Groups, hereafter referred to as ‘the CCGs’, are committed to openness and transparency in the conduct of all of their business. As public authorities, the CCGs have a duty to comply with all aspects of the following legislation:

- **Freedom of Information Act 2000 (FOIA).** The FOIA deals with access to recorded information held by public bodies, primarily corporate information.

- **Environmental Information Regulations 2004 (EIR).** EIR provides access to environmental information. These are similar to the FOIA but have subtle legal differences as detailed in this policy.

- **The Protection of Freedoms Act 2012 (POFA).** POFA introduced requirements relating to the proactive publication and availability of data sets.

- **The Re-use of Public Sector Information Regulations 2015 (RPSIR).** RPSIR is about permitting re-use of information and how it is made available. It is not about accessing information, which is dealt with under the FOIA and EIR.

1.2 The FOIA, EIR, POFA, and RPSIR are referred to hereafter as information access and re-use legislation.

1.3 Information access legislation supplements and complements the Data Protection Act 2018 (DPA18) and the General Data Protection Regulation (GDPR), hereafter referred to as data protection legislation, which gives individuals access to their personal information held by organisations. For further information about access to personal data or health records please see the CCGs’ Confidentiality & Data Protection Policy.

1.4 Information access legislation gives access to all other information (non-personal data) and as such has a broader remit than data protection legislation. However, together data protection legislation and information access legislation will enable public access to most records held by the CCGs.

1.5 Information access legislation states that any person making a request for information to a public authority is entitled to:

- Be informed in writing by the public authority whether it holds information of the description specified in the request; and

- If that is the case, to have that information communicated to them within 20 working days.

1.6 Re-use means using public sector information for a purpose other than the initial public task it was produced for.
1.7 Typically, this would mean an individual, a company or other organisation taking information you have produced and republishing it or using it to produce a new product or resource, often by combining it with additional information. This is sometimes, though not always, on a commercial basis. RPSI is intended to encourage re-use of public sector information.

1.8 Information access and re-use legislation also specifies a number of exemptions or exceptions (see Appendix 2) which can be claimed by public authorities when denying a request. These fall into two main types: Absolute and Qualified. Qualified exemptions are subject to the Public Interest Test, whereas absolute exemptions are not.

1.9 Principles

1.9.1 The policy supports the principle that openness and not secrecy should be the norm in public life. The CCGs also believe that people have rights to privacy and confidentiality. This policy will not overturn existing rights under common law or data protection legislation. The CCGs also consider that, to discharge their functions effectively, specific information will be exempt from disclosure.

1.9.2 The CCGs recognise the importance of information access legislation and, in order to assist organisational compliance with these requirements, the CCGs will endeavour to ensure that information is available on request within 20 working days.

1.9.3 If the information requested is subject to a qualified exemption, the CCGs will undertake a public interest test and where applicable, the prejudice test as defined by the Information Commissioner’s Office (ICO) to determine whether the information can be released.

2. Scope

2.1 This policy applies to the Surrey Heartlands CCGs, which includes:
- NHS Guildford and Waverley Clinical Commissioning Group
- NHS North West Surrey Clinical Commissioning Group
- NHS Surrey Downs Clinical Commissioning Group

2.2 This policy applies to the CCGs’ statutory obligation under the information access legislation and how it meets these obligations. The policy will apply to all CCG staff and those for whom the CCGs have legal responsibility (including interim, agency and consultancy staff working for the CCGs). For those staff covered by a letter of authority/honorary contract or work experience, the organisation’s policies are also applicable while undertaking duties for or on behalf of the CCGs. Furthermore, this policy applies to all third parties and others authorised to undertake work on behalf of the CCGs.
The policy will provide a framework within which the organisation will ensure compliance with the requirements of all information access legislation. The policy will underpin any operational procedures and activities connected with the implementation of information access and re-use legislation.

2.3 This policy covers all information and records created in the course of the business by the CCGs while undertaking their public task, i.e. corporate documents which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes drafts, emails, notes, recordings of telephone conversations and CCTV recordings and other electronic and paper records. It is not limited to information the CCGs create, so it also covers, for example, letters received from members of the public or other organisations, although there may be a good reason not to release them.

3. **Policy Statement**

3.1 The objective of this policy is to set out the main features of information access legislation, along with the responsibilities of departments and individuals to ensure the CCGs deal with requests for information within statutory obligations and guidelines, in a consistent manner and which deliver quality responses.

3.2 The aim of this policy is to:

3.2.1 Ensure all information access and re-use requests are dealt with consistently and receive a high-quality response, however and wherever the contact is made;

3.2.2 Ensure that NHS NEL CSU, on behalf of the CCGs, complies with all relevant regulations, laws and guidance;

3.2.3 Provide clear routes for members of the public to make contact with the CCGs so that they can appropriately request information;

3.2.4 Ensure that the CCGs’ Publication Scheme is up to date in order to provide access to information and to lessen the number of written requests the public have to make;

3.2.5 Ensure that the necessary internal structures are in place for information access and re-use legislation to be complied with;

3.2.6 Ensure staff at all levels are aware of their responsibilities;

3.2.7 Ensure statutory timescales are met; and

3.2.8 Ensure the Governing Bodies of the CCGs are fully informed on the operation of this policy and its implications for the organisation.
4. Definitions

4.1 See Appendix 3 for definitions

5. Roles and Responsibilities

Duties of CCG staff

5.1 Joint Accountable Officer

5.1.1 The Joint Accountable Officer (JAO) has overall responsibility for the CCGs’ information access programme and ensuring that this operates effectively. They are also the CCGs' appropriate ‘qualified person’ for the application of Section 36 (effective conduct of public affairs) exemption.

5.2 Managing Directors

5.2.1 The CCGs' Managing Directors are the policy owner for their respective CCG in line with their role as Senior Information Risk Owner for the organisation.

5.3 Joint Executive Team Members

5.3.1 Members of the CCGs' Joint Executive Team have delegated responsibility for the information access programme and for ensuring that the business units they are responsible for comply fully with applicable legislation. They are the responsible for the information access strategy within their allocated areas of responsibility and will liaise with other senior members of the CCGs as required. Joint Executive Team Members are required to provide written approval of any particularly sensitive requests which are relevant to their respective CCG.

5.4 Head of IG and FOI (Surrey Heartlands CCGs)

5.4.1 The CCGs' Head of IG and FOI is responsible for ensuring that this policy remains current and is aligned with CCG business processes. They are responsible for ensuring that there is appropriate internal monitoring and reporting of the CCGs’ performance with respect to information access and re-use legislation. They will also ensure that information access and re-use related business processes are efficient and appropriate. The Head of IG and FOI will review draft responses for any particularly sensitive requests received by the CCGs.
5.5 **Head of Communication (Surrey Heartlands CCGs)**

5.5.1 The CCGs’ Head of Communications assists the CCGs to manage reputational risk associated with information access and re-use legislation and will review draft responses for any particularly sensitive requests and those from media organisations.

5.6 **Senior Managers**

5.6.1 Senior Managers within the CCGs (e.g. Heads of departments, Deputy Directors, Associate Directors, Executive Directors, etc.) are responsible for overseeing information access activities within their directorates / teams, in accordance with the CCGs’ information access policy and related procedures, and advising the CCGs’ Managing Directors and Head of Information Governance & FOI on risk issues in relation to information access requests. Senior Managers are required to provide written approval of responses to requests which relate to their area of business.

5.7 **Managers**

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

5.8 **All Staff**

5.8.1 All staff are responsible for familiarising themselves with the latest version and for complying with policy requirements at all times. Staff will be notified when an updated version of the policy is released. All staff across the CCGs have a responsibility to ensure they comply with the CCG’s statutory obligation under information access and re-use legislation, and any policies and procedures laid down to ensure compliance. Failure to do so may result in disciplinary action. Staff are not to correspond directly with applicants regarding their request.

5.9 **Information Governance Sub Committees (IGSCs)**

5.9.1 The Information Governance Sub Committees are responsible for reviewing all aspects of information access and reporting any associated risks to the Governing Bodies. The IGSCs will receive regular reports on the CCGs’ performance with respect to public access to information and will agree key performance indicators for this activity on an annual basis.
Duties of NHS NEL CSU:

5.10 NHS NEL CSU

5.10.1 NHS NEL CSU is responsible for providing the information access and re-use service on behalf of the CCGs.

5.11 Head of FOI and IG Compliance (NHS NEL CSU)

5.11.1 The NEL CSU Head of FOI and IG Compliance is the designated senior information access subject matter expert for the CCGs and has strategic oversight and accountability for the management of the service. They are responsible for advising on complex or contentious requests and conducting internal reviews in line with ICO guidance and best practice. They are the CCGs’ point of contact where a complaint has been made to the ICO.

5.12 FOI Manager (NHS NEL CSU)

5.12.1 The FOI Manager has day-to-day responsibility for the management of all aspects relating to the information access legislation. The FOI Manager is responsible for advising all staff throughout the organisation on issues relating to all areas of the information access legislation.

5.13 FOI Officer (NHS NEL CSU)

5.13.1 The FOI Officer is the point of contact for the CCGs’ staff who have been designated responsibility for providing information in response to a request which has been received. They are the CCGs’ point of contact with applicants in relation to information access requests.

6. Information Access and Re-use Requests

6.1 For a request to be valid under the Freedom of Information Act it must be in writing, but applicants do not have to mention any enactment or direct their request to a designated member of staff. CCG staff cannot ignore or refuse a request simply because it is addressed to any member of staff other than the FOI Team. Any letter or email to the CCGs asking for information is a request for recorded information under the Act.

6.2 This doesn’t mean every enquiry will be treated formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry, for example, if a member of the public wants to know how to make a complaint or when the next public governing body meeting is. The provisions of the Act need to come into force only if:

• you cannot provide the requested information straight away;
• there are concerns over the release of the information; or
• the applicant makes it clear that they expect a response under the Act.

6.3 At the same time, an individual asking for information and saying “this is not an FOI request” does not mean that it is not. If you are in any doubt whether a question is an information access request under statutory legislation you should contact the FOI Team immediately on nelcsu.foi@nhs.net who will be able to advise on the best course of action.

6.4 Requests from individuals for details of their own health records come under data protection legislation and should not be dealt with under this policy. Please refer to the CCGs’ Confidentiality & Data Protection policy and related procedures for how these types of requests should be handled; However, if an applicant has specifically said that they want personal information under the FOIA, the request must still be forwarded to the FOI Team to log and respond, exempting the information in most situations.

6.5 Under the FOIA, requests can be received in writing via email, fax, social media or a letter. FOI requests must contain a contact name, email address or postal address and describe the information the applicant wishes to receive. They do not have to provide a reason for wanting the information or specifically state they are requesting information under the Act. The CCGs will make reasonable adjustments under the Equality Act 2010 and Human Rights Act 1998 where an applicant is unable to make a request in writing.

6.6 The EIR regulations have the same requirements as the FOIA, however it does permit requests to be received verbally.

6.7 The RPSIR requires that people who want to make a request for re-use must submit the request in writing, with their name and address for correspondence, and specify the information they want to re-use and the purpose they intend to use it for.

6.8 Requests for information or re-use should be promptly forwarded to the FOI team at nelcsu.foi@nhs.net.

6.9 NEL CSU’s FOI team will manage all requests for information submitted under information access and re-use legislation and will also ensure that the handling of these requests complies with other legal requirements such as data protection legislation.

6.10 The CCGs have a requirement to comply with all requests for information except where information requested is subject to certain regulations and exemptions. These exemptions will be applied by the FOI Team. Repeated or vexatious requests may also be refused. Further details on exemptions can be found in Appendix 2.
6.11 Publication Scheme

6.11.1 The CCGs have a duty under the FOIA to adopt and maintain the ICO model publication scheme to assist the public in finding information already published.

6.11.2 The scheme sets out the CCGs’ commitment to make certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information.

6.11.3 The seven classes of information the CCGs publish are broad and include headings like ‘Who we are and what we do’ and ‘The services we offer’. The classes cover all the more formal types of information the CCGs hold, such as information about the structure of the organisation, minutes of meetings, contracts, reports, plans and policies.

6.11.4 The publication schemes are available via the CCGs’ websites:

http://www.guildfordandwaverleyccg.nhs.uk
http://www.nwsurreyccg.nhs.uk/
http://www.surreydownsccg.nhs.uk/

6.12 Timescales for Responding to Requests

6.12.1 In line with good practice, all information access and re-use requests will be acknowledged by the FOI team and where possible, this will be done within two working days.

6.12.2 The CCGs have a statutory requirement to respond to all requests promptly and no later than 20 working days. The 20 days start on the day the CCGs receives a request, not when the FOI team receives the request.

6.12.3 If the CCGs require clarification of a request in order to locate or identify the information, or if a fee for the information is applicable, the 20 day rule is suspended until the CCGs receive the clarification or fee.

6.12.4 The CCGs nominated FOI contacts (assigned individuals within CCG teams who will answer questions for their subject area) must respond to all requests for information from the FOI team within 10 working days to ensure adequate time for any queries to be resolved and for the approval process to be completed where applicable.

6.12.5 Senior Managers who are asked to approve responses to requests should complete their review within 3 working days and provide
written confirmation of whether they approve the response or whether they believe that further review is required.

6.13 Internal Reviews (Complaints)

6.13.1 Although a public body is not legally required to have an internal review procedure, FOIA Section 45 Code of Practice makes clear that it is good practice to have a review procedure in place. The internal review procedure will ensure applicants are able to ask the CCGs for an internal review if they are dissatisfied with the response to a request or the handling of a request. The CCGs will conduct internal reviews where an applicant has expressed their dissatisfaction with a response received to an information access or re-use request.

6.13.2 Internal reviews will be conducted by a person who was not party to the original decision on whether to release the information requested. The exception to this is where the internal review relates to the application of Section 36 exemption (effective conduct of public affairs) under FOIA, as the Joint Accountable Officer is the only ‘qualified person’ within the CCGs who can make a decision with respect to the application of this exemption.

6.13.3 The review must be a fair and impartial examination of the decisions made during the original request of whether to release the information.

6.13.4 The person conducting the review must consider the information released against the information requested, and undertake a full review of the papers associated with the original application.

6.13.5 It is best practice that the internal reviewer discusses the decisions made with the staff member or members, who dealt with the original application in order to build a full picture as to how decisions were made.

6.13.6 The circumstances relating to the original decision may have changed between the time the CCGs made their decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames. The FOIA does not stipulate a time limit for completion of an internal review but the Section 45 Code states that they should be dealt with in a reasonable time, and the ICO recommends that:

- Reviews should be completed within 20 working days of receiving the complaint;
• For complex complaints, or where it is necessary to reconsider the public interest test – reviews should be completed within 40 working days of receipt; and

• If it appears that the deadline will not be met, then the applicant must be advised as soon as possible, and a second deadline set by which a response will be sent.

6.13.7 The internal review can have three outcomes:

• The original decision is reversed;

• The original decision is partially upheld; or

• The original decision is upheld.

6.13.8 Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided. Where the original decision is upheld the applicant must be informed and made aware of their further right of appeal to the Information Commissioner’s Office. The outcome of the internal review must be recorded.

6.13.9 Requests for an internal review should be sent to -

Email:  NELCSU.FOI@nhs.net

Post:
FOI Team
4th Floor
Kent House
Station Road
Ashford
TN23 1PP

6.14 The Appropriate Limit (Fees)

6.14.1 The Fees Regulations (Section 12) of the FOIA provides an exemption from the CCG’s obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The Fees Regulations state this is £450 for CCG’s as a public authority. The CCGs must still confirm or deny whether the CCGs hold the information requested, unless the cost of this alone would exceed the appropriate limit.

6.14.2 In estimating whether responding to a request would exceed the appropriate limit, the CCGs may only consider the costs it would reasonably expect to incur in:

• Determining whether the information is held;

• Locating the information;
• Retrieving the information; and
• Extracting the information.

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

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

6.14.5 The CCGs will not charge for the majority of requests, however the CCGs are entitled to charge a fee for the photocopying and postage of information, although the charge will not be made if the cost of raising and processing an invoice is greater. If the request exceeds the appropriate time limit the CCGs have the right to make a charge or refuse the request.

6.15 Advice and Assistance to Applicants or Potential Applicants

6.15.1 The CCGs, via the FOI team, will always endeavour to provide advice and assistance in all aspects of a request but particularly:
• To clarify unclear requests;
• To provide the information requested in an acceptable format;
• To narrow responses which exceed the appropriate limit;
• Where information is readily accessible to the applicant; and
• When a request is transferred to another public authority because the information is held by it, and not by us.

6.16 Vexatious/Repeated Requests

6.16.1 The CCGs will not comply with a request for information if the request is deemed vexatious. A vexatious request is where one or more of the following conditions are met:
• Abusive or aggressive language;
• Burden on the Authority;
• Personal grudges;
• Unreasonable persistence;
• Unfounded accusations;
• Intransigence;
• Frequent or overlapping requests;
• Deliberate intention to cause annoyance;
• Scattergun approach;
• Disproportionate effort;
• No obvious intent to obtain information;
• Futile requests; and/or
• Frivolous requests.

6.16.2 For a request to be deemed vexatious, the CCGs’ Managing Director, the NELCSU Head of FOI and IG Compliance, and the CCG Head of IG and Freedom of Information must agree that one or more of the above conditions have been met.

6.16.3 Where the CCGs have previously complied with a request for information which was made by any person, they are not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

6.16.4 What is a reasonable interval will largely depend on the circumstances, including:
• How likely the information is to change;
• How often records are updated; and
• Any advice previously given to the requester (e.g. on when new information is likely to be available).

6.16.5 Taking into account the circumstances given above, the CCGs will normally deem this period to be three months but will consider each request on a case by case basis.

6.17 Applying Exemptions

6.17.1 An applicant may ask for any information that is held by the CCGs. However, this does not mean the CCGs are always obliged to provide the information. In some cases, there will be a good reason why the CCGs should not make public some or all of the information requested.

6.17.2 The FOIA and EIR contain a number of exemptions and exceptions that allow the CCGs to withhold information from an applicant. Details of these exemptions can be found in Appendix 2.
6.17.3 Please note that if an exemption or redaction is used, the manager using the exemption should be aware that they may need to substantiate their decision if challenged by the Information Commissioner’s Office. It is therefore advisable to document and date all decisions made in relation to using exemptions.

6.18 Redacting

6.18.1 Where information is considered exempt under any one or more exemptions or exceptions, CCG employees should contact the CCGs’ Information Governance Team who will support them to support redact the information in line with the ICO’s guidance, how to disclose information safely\(^1\).

6.19 Audit and monitoring criteria

6.19.1 Monitoring of compliance- The Information Governance Sub Committee of the CCGs’ Audit Committees will evaluate the effectiveness of the Freedom of Information process annually. This review mechanism will be supported by:

- The Data Security and Protection Toolkit annual submissions;
- Quarterly reports on information requests received;
- Information access and re-use complaints; and
- Audits and reviews.

6.19.2 Implementation and dissemination of document- This policy will be distributed to staff via the CCG newsletter and placed on the CCG intranet. This policy will also be publicly available via the CCG websites.

6.19.3 Non-Compliance- Non-compliance with this policy by staff will be brought to the attention of the CCG’s Managing Directors and the relevant responsible senior manager(s). Non-compliance with this policy may result in disciplinary action.

6.19.4 Review- Review of this policy will take place on the first anniversary of adoption and subsequently every three years until rescinded or superseded.

6.19.5 Latest Version- The audience of this document should be aware that a physical copy may not be the latest version. The latest version, which supersedes all previous versions, is available via the intranet.

7. **Public interest test**

7.1 The public interest test assesses whether withholding the information outweighs the public interest in disclosing the information.

7.2 The starting point whenever considering the balance of the public interest is that there is a general public interest in disclosure. In contrast, there is no general public interest in public authorities withholding information. However, the right to access information must be balanced against the need to facilitate effective government and public services. Therefore, for each qualified exemption, and the disclosure of any particular piece of information falling within it, there may be specific reasons in favour of refusing the request.

7.3 When considering a request for information that falls under one of the qualified exemptions, the CCGs must weigh the public interest considerations in favour of releasing the information against the prejudice which may be caused by its disclosure.

7.4 The requirements of the public procurement regime also need to be taken into account in relation to the possible disclosure of information. The EC Public Procurement Directives, implemented in the Public Works Contracts Regulations 1991, the Public Services Contracts Regulations 1993 and the Public Supply Contracts Regulations 1995, recognise that the interest of suppliers in sensitive information supplied by them in a procurement must be respected and that both the interest of suppliers and the public interest may mean that certain information relating to a contract award is withheld from publication.

7.5 The Consolidated Public Procurement Directive (2004/18/EC) continues to recognise these interests and prohibits the disclosure of information, which suppliers have designated as confidential in a procurement, except as provided by the Directive and by national law.

7.6 Each individual case will need to be considered on its own merits. In more difficult cases there is likely to be a complex mix of conflicting factors that will have to be weighed in deciding where the balance of the public interest lies. It is therefore vital that where a decision is taken to withhold information, there are clear reasons for refusing to disclose information, which is capable of standing up to scrutiny by the Information Commissioner and Information Tribunal. Determining the balance of the public interest will need to be determined on a case by case basis and may, in difficult cases, require legal advice.

8. **Re-use regulations and copyright**

8.1 Publishing information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2015 and requires
permission of the CCGs, and may also incur a fee. Release of information under information access legislation does not affect copyright.

8.2 If there are concerns about information reaching a wider audience without sufficient briefing relating to the circumstances surrounding its production or context, on behalf of the CCGs, NHS NEL CSU will be able to advise on the restriction for re-use to the applicant, so it cannot be re-used or reproduced in any format without the consent of the CCGs. Under information access legislation, a response to a single applicant is not a release to a specific person but considered to be a disclosure to the world at large.

8.3 Information supplied under information access legislation continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988. The supply of information in response to an information access request does not confer an automatic right to re-use of the information. Under UK copyright law applicants can use any information supplied for the purposes of private study and non-commercial research without requiring permission. Similarly, information supplied can also be re-used for the purposes of news reporting, an exception to this is photographs.

8.4 If the copyright is identified as belonging to another organisation, the CCGs will not permit re-use.


9.1 Section 102 of the Protection of Freedoms Act 2012 adds new provisions to FOI regarding datasets. They are about the re-use of datasets that the CCGs provide in response to a request, or under a publication scheme. There is no new duty to provide any information in response to an FOI or EIR request that was not previously accessible.

9.2 A dataset is a collection of factual information in electronic form to do with the services and functions of public authorities that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

9.3 If the CCGs provide information that constitutes a dataset and the applicant expresses a preference to receive the information in electronic form, the CCGs must provide the information in a re-usable form.

9.4 If the dataset is relevant copyright work, the CCGs must provide it under the terms of a specified licence. A relevant copyright work is one for which the CCGs own the copyright and the database rights.

9.5 The CCGs may charge a fee for communicating the information and a fee for making the dataset available for re-use. There are new fees regulations dealing with making the dataset available for re-use.
9.6 Where information is not provided due to an exemption, exception or other lawful reason, the CCGs are not required to provide this in a re-usable format.

9.7 Under the publication scheme, the CCGs are obliged to publish datasets that have been requested and any updated versions it holds unless it is satisfied that it is not appropriate to do so.

9.8 When dealing with a request involving a dataset, the CCGs should first consider whether the information is exempt from disclosure under any FOI exemption. Particular care should be taken to ensure that personal data is not disclosed. The ICO's Anonymisation: managing data protection risk code of practice must be followed.

10. References

General Data Protection Regulation
https://gdpr-info.eu/

Data Protection Act 2018

Freedom of Information Act 2000

The Environmental Information Regulations 2004

The Re-use of Public Sector Information Regulations 2015

Copyright, Designs and Patents Act 1988

Anonymisation: Managing Data Protection Risk Code of Practice
https://ico.org.uk/media/1061/anonymisation-code.pdf

Records Management Code of Practice for Health and Social Care 2016

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

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2 https://ico.org.uk/media/1061/anonymisation-code.pdf
11. **Appendix 1: FOI, EIR and RPSIR Request Procedure**

1. All new information requests received by staff of the CCGs must be sent to the NHS NEL CSU FOI Team immediately. The FOI Team will log each request on the database. The FOI team will allocate a unique reference number and create electronic folders for each request.

2. All applicants will be sent a standard FOI acknowledgment, where possible within three working days of receipt of a request.

3. All information requests received will be assessed to ascertain whether:
   - It is a valid FOI, EIR or RPSIR request;
   - The request is clear, if not, the applicant will be asked to clarify their request;
   - The estimate of time needed to comply with the request will exceed the appropriate time limit, if this is the case, the applicant will be asked if they wish to redefine their request;
   - Part or all of the information requested falls under one of the exemptions or exceptions contained within the FOIA or EIR;
   - The information requested can be found on the CCGs’ publication scheme or website; and/or
   - The information has been requested previously.

4. Once the request has been assessed, it will be sent to allocated individuals within the relevant CCG team / department within 3 working days for them to gather the information requested. The name of the applicant and their contact details will be removed prior to sending to ensure that the applicant’s personal data is protected under the data protection legislation. In some cases, it will be necessary for these details to be disclosed to staff outside of the FOI department where specific exemptions or exceptions apply, for example where a request is vexatious.

5. CCG staff should acknowledge to the FOI team that they have received the request. If the request is not relevant to their area or not for their team they will notify the FOI Team immediately and advise this, ideally providing guidance as to alternative individuals within the CCGs that should receive this.

6. Requests that have a potential adverse reputational impact on the CCGs will be notified to the Communications Manager.

7. CCG staff will have 10 working days in which to comply with requests for information from the FOI team. A reminder will be sent to staff on day 8 by the FOI team if the information has not been received back.

8. The allocated individuals within teams should ensure that the requested information is provided to the FOI Team within the time limit of 10 working days. This is to allow time for queries, amendments, the drafting of the response by the FOI Team, and for the approval process to be completed.

9. The allocated individuals within teams are also responsible for identifying any concerns over the release of information, and where required, seek advice from the FOI team.
10. Once the information has been returned to the FOI staff, it will be considered against the original request and where applicable, exemptions and/or exceptions may be considered.

11. The FOI Team will then send the draft response to the relevant Senior Manager for approval or the Managing Director / Joint Accountable Officer where applicable. Senior Managers who are asked to approve responses to requests should complete their review within 3 working days and provide written confirmation of whether they approve the response or whether they believe that further review is required.

12. Providing the information has been agreed by the service director, the FOI staff will use the data provided to write a response.

13. All final responses must be provided within 20 working days. If this isn’t possible, and before the deadline expires, a further communication must be sent to the applicant by the FOI team advising of this, along with an expected response date.

14. The FOI Database must be updated when a request is completed. Electronic responses are filed in the applicant’s file within the FOI team’s folder for compliance and audit purposes. Paper copies will be scanned into the system.

15. Case files will be held in line with the NHS Retention Schedule.3

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12. Appendix 2: FOI Exemptions

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

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

- S21 - Information reasonably accessible to the applicant by other means
- S23 - Information supplied by or relating to security bodies
- S32 - Information contained in court records
- S34 - Parliamentary privilege
- S36 - Effective conduct of public affairs (absolute for the government only)
- S40 - Personal information (on occasion may also be a qualified exemption)
- S41 - Information provided in confidence
- S44 - Prohibitions on disclosure

Qualified Exemptions - where the public interest test applies.

- S22 - Information intended for future publication
- S24 - The national security exemption
- S26 - Defence
- S27 - International relations
- S28 - Relations within the UK
- S29 - Economy
- S30 - Investigations
- S31 - Law enforcement
- S33 - Public audit
- S35 - Government policy formulation
- S36 - Effective conduct of public affairs
- S37 - Communication with Her Majesty and the awarding of honours
- S39 - Environmental information (falls under EIR)
- S40 - Personal information (majority would fall under an absolute exemption)
- S42 - Legal professional privilege
- S43 - Defined areas of commercial interest

In addition, the following provisions allow the CCGs not to comply with a request for information:

- S12 - Where the cost of collating the evidence is excessive
- S14 - Repeated or vexatious requests
13. Appendix 3: Definitions

‘A legitimate request’ In order for a request to fall under the auspices of the FOIA or RPSIR it must fulfil certain criteria: it must be in writing (letter, email, fax) or under EIR be verbal; it must state the name of the applicant and provide an address for correspondence (an email address is sufficient); and, it must describe the information requested. Note, a request does not need to mention the FOIA, EIR or RPSIR in order to be classed as a legitimate request. In addition to the above, a request for re-use must include how they intend to use the information.

‘Advice and assistance’ Section 16 of the FOIA requires that all public authorities provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

The provision of advice and assistance can be seen as the means by which the CCGs engage with the applicant in order to establish what it is that the applicant wants and, where possible, assists them in obtaining this, maintaining a dialogue with the applicant throughout the process.

‘Business as usual’ Routine requests for information that can be provided without question and do not fall under information access legislation, for example: recruitment brochures, press releases, leaflets.

‘DPA’ is an acronym for the Data Protection Act 2018.

‘Data Protection Act 2018’ The Data Protection Act updates our data protection laws for the digital age. It received Royal Assent on 23 May 2018.

‘Duty to confirm or deny’ under Section 1 of the FOIA public authorities have a duty to inform the person requesting information (“the applicant”) whether or not the information they have requested is held by the authority. (In some cases however it may be appropriate (under the FOIA) to neither confirm nor deny whether the information is held because to do so would itself communicate sensitive and potentially damaging information, to the detriment of the public good).

‘Effective Conduct of Public Affairs’ Section 36 of the FOIA sets out an exemption from the right to know if the disclosure of information, in the reasonable opinion of a qualified person, would prejudice the effective conduct of public affairs through:

- Prejudice or likely prejudice to the maintenance of the convention of collective responsibility of Ministers of the Crown, the work of the Executive Committee of the Northern Ireland Assembly or the work of the executive committee of the National Assembly for Wales;
- Inhibition or likely inhibition of the free and frank provision of advice or exchange of views; or
- Any other prejudice to the effective conduct of public affairs

For information (other than ‘statistical information’) to be exempt under Section 36, it must in the ‘reasonable opinion of a qualified person’ (in our organisation this person is the Senior Information Risk Officer) be capable of either prejudicing or inhibiting the matters listed above.
‘EIR’ is an acronym for the Environmental Information Regulations 2004. These regulations are similar to FOIA, but specifically relate to information held by public authorities that relates to the state of the environment.

‘Exemption’ These are provisions within the FOIA that define particular types of information that public bodies are not obliged to disclose. Exemptions can be either absolute or qualified.

‘FOI’ is an acronym for Freedom of Information.

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

‘ICO’ is an acronym for the Information Commissioner’s Office. This is the UK’s independent authority set up to promote access to official information and to protect personal information. The ICO covers Data Protection, FOI, Privacy and Electronic Communications, Re-use of Public Sector Information Regulations, and the Environmental Information Regulations.

‘Information’ means any recorded information we hold in any form. This includes documents, plans, and all other types of recorded information that are not personal information.

Individuals can ask to see any information we hold but the FOIA does exclude access to some information. (One of the exemptions is access to personal information).

‘POFA’ is an acronym for The Protection of Freedoms Act 2012. This has requirements relating to the proactive publication and availability of data sets.

‘Publication Scheme’ The CCGs have a legal duty to compile and to make available a list of documents that it has in its possession and that it will routinely and proactively provide to the public. A Publication Scheme is an agreement by the CCGs to supply this information.

‘Public Interest Test’ The test a public body must apply if it feels the information requested falls under a qualified exemption.

‘Records Management’ Section 46 of the FOIA refers to the Code of Practice on Records Management and it is Part 1 of this code that the CCGs must comply with, by implementing records management policies. The CCG’s Records Management Policy is available on the staff intranet.

‘RPSIR’ is an acronym for The Re-use of Public Sector Information Regulations 2015. RPSIR is about permitting re-use of information and how it is made available. It is not about accessing information, which is dealt with under the FOIA and EIR.

‘Sensitive Requests’ are requests that may relate to ongoing contractual or legal disputes involving the CCG(s) or our partners, activities which are subject to public engagement and consultation activities, local or national activities which are currently subject to intense levels of public scrutiny, or those relating to other activities as notified to us by NHS and other partner organisations.
## Appendix 4 – Procedural Document Checklist for Approval

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<th>Title of document being reviewed:</th>
<th>Yes/No/Unsure</th>
<th>Comments/Details</th>
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<td>Is the title clear and unambiguous?</td>
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<tr>
<td>Is it clear whether the document is a guideline, policy, protocol or standard?</td>
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<td><strong>3. Development Process</strong></td>
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<tr>
<td>Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?</td>
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<tr>
<td>Is there evidence of consultation with stakeholders and users?</td>
<td>Yes</td>
<td>Discussed with NEL CSU FOI Team and CCG users (IG Team); approved by users (Senior Management)</td>
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<tr>
<td><strong>4. Content</strong></td>
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<tr>
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<tr>
<td>Is the target group clear and unambiguous?</td>
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<td>Are the intended outcomes described?</td>
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<td><strong>5. Evidence Base</strong></td>
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<td>Is the type of evidence to support the document identified explicitly?</td>
<td>Yes</td>
<td>Section 10 - References</td>
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<td>Are key references cited?</td>
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<td><strong>6. Approval</strong></td>
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<tr>
<td>Does the document identify which committee/group will approve it?</td>
<td>Yes</td>
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<tr>
<td><strong>7. Dissemination and Implementation</strong></td>
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<tr>
<td>Is there an outline/plan to identify how the document will be disseminated and implemented amongst the target group? Please provide details.</td>
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<td><strong>8. Process for Monitoring Compliance</strong></td>
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<tr>
<td>Have specific, measurable, achievable, realistic and time-specific standards been detailed to monitor compliance with the document? Complete Compliance &amp; Audit Table.</td>
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<td><strong>9. Review Date</strong></td>
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<td><strong>10. Overall Responsibility for the Document</strong></td>
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<tr>
<td>Is it clear who will be responsible for implementing and reviewing the documentation i.e. who is the document owner?</td>
<td>Yes</td>
<td>The Head of IG and FOI will review; MDs and Audit Committee approve</td>
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**Director Approval**
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<td>On approval, please sign and date it and forward to the chair of the committee/group where it will receive final approval.</td>
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<tr>
<td>Name</td>
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<td>Date</td>
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**Committee Approval**

On approval, Chair to sign and date.

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## Appendix 5 – Compliance and Audit Table

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<th>Criteria</th>
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<td>Quarterly FOI report from NEL CSU</td>
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<tr>
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<td>100%</td>
<td>Quarterly</td>
<td>Audit Committees</td>
<td>Quarterly FOI report from NEL CSU</td>
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<tr>
<td>Requests that have a potential adverse reputational impact on the CCGs will be notified to the Communications Manager</td>
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<td>Quarterly</td>
<td>Audit Committees</td>
<td>Quarterly FOI report from NEL CSU</td>
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<tr>
<td>CCG staff have 10 working days to provide response</td>
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<td>Quarterly</td>
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<td>Quarterly FOI report from NEL CSU</td>
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<td>Quarterly</td>
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<td>All final responses must be provided within 20 working days.</td>
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