

FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY

May 2019

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The on-line version is the only version that is maintained. Any printed copies should, therefore, be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

POLICY AMENDMENTS

Amendments to the policy will be issued from time to time. A new amendment history will be issued with each change.

New Version Number	Issued by	Nature of Amendment	Approved by and Date	Date on Intranet
1.1	Corporate Services Manager	Updated to reflect changes in procedure with the processes coming in-house.	IGSG – 24.11.16	09.05.17
		Process for responding to Prevent / extremism FOI requests	SMT – 20.12.16	
		Updating of role of Chief Operating Officer to Executive Director of Planning and Governance in line with new organisation structure.	Exec – 15.03.17	
2.0	Corporate Services Manager	Updated in respect of DPA legislation Clarification updates Updates in relation to organisational changes		24.05.2019

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CONTENTS

1	INTRODUCTION.....	6
2	FREEDOM OF INFORMATION (FOI) ACT 2000.....	6
3	ENGAGEMENT.....	8
4	IMPACT ANALYSIS.....	8
5	SCOPE	9
6	POLICY PURPOSE AND AIMS	9
6.1	GENERAL PRINCIPLES.....	9
6.2	INFORMATION SUBJECT TO THE FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004.....	10
6.3	PUBLICATION SCHEME	10
6.4	AVAILABILITY AND ACCESS	10
6.5	GENERAL RIGHTS OF ACCESS.....	11
6.6	RECORDING INFORMATION	12
6.7	CONFIRMATION	12
6.8	REQUESTS IN RELATION TO PREVENT / CHANNEL / EXTREMISM.....	13
6.9	PROCESSING A REQUEST.....	13
6.10	ACCESSING INFORMATION.....	14
6.11	AMBIGUOUS OR WITHDRAWAL OF REQUESTS.....	14
6.12	VEXATIOUS AND REPEATED REQUESTS	14
6.13	AGGREGATION OF REQUESTS.....	15
6.14	PROVIDING THE INFORMATION.....	15
6.15	DATA SETS	16
6.16	REDACTIONS.....	17
6.17	REFUSAL NOTICES.....	17
6.18	THE DUTY TO CONFIRM OR DENY	18
6.19	TRANSFERRING A REQUEST	18

6.20	CHARGES AND FEES	19
6.21	APPROPRIATE LIMITS	19
6.22	ADVICE AND ASSISTANCE.....	20
6.23	CONSULTATION WITH THIRD PARTIES.....	20
6.24	PERSONAL INFORMATION AND THE DATA PROTECTION ACT.....	20
6.25	CONDITIONS, EXEMPTIONS AND EXCEPTIONS.....	21
6.26	PUBLIC INTEREST TEST	22
6.27	REQUESTS FOR RE-USE OF INFORMATION	22
6.28	PUBLIC SECTOR CONTRACTS.....	24
6.29	COMPLAINTS AND REVIEW REQUESTS.....	24
6.30	LEGAL ADVICE	25
6.31	RECORDS MANAGEMENT.....	26
7	ROLES / RESPONSIBILITIES / DUTIES	26
8	IMPLEMENTATION	27
9	TRAINING AND AWARENESS.....	28
10	MONITORING AND AUDIT.....	28
11	POLICY REVIEW.....	28
12	REFERENCES.....	28
13	Appendix A : EQUALITY IMPACT ANALYSIS FORM.....	29
14	Appendix B : SUSTAINABILITY IMPACT ASSESSMENT	32
15	Appendix C : A QUICK GUIDE TO RESPONDING TO A FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REQUESTS	33
16	Appendix D : EXEMPTIONS AVAILABLE UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000	34
17	Appendix E : EXCEPTIONS AVAILABLE UNDER THE ENVIRONMENTAL INFORMATION REGULATIONS 2004.....	37
18	Appendix F : VERBAL FREEDOM OF INFORMATION REQUEST FORM	40

19 Appendix G : DEPARTMENT OF HEALTH - PROCESS FOR RESPONDING
TO PREVENT / EXTREMISM FREEDOM OF INFORMATION ACT REQUESTS... 41

1 INTRODUCTION

- 1.1 This policy provides a framework for Vale of York CCG (Vale of York CCG) to ensure compliance with the Freedom of Information (FOI) Act and the Environmental Information Regulations (EIR) 2004.
- 1.2 It is important that this policy is read carefully and thoroughly understood. Any issues can be discussed with the CCG FOI Lead.

2 FREEDOM OF INFORMATION (FOI) ACT 2000

- 1.2 The FOI Act 2000 is part of the Government's commitment to greater openness in the public sector. Subject to some exemptions, it gives a right of access to recorded information that is held by public organisations, the right applying to anyone, anywhere in the world.
- 1.2 The Act is fully retrospective and replaces the non-statutory Code of Practice on openness in the NHS.
- 1.3 The FOI Act is supported by two Codes of Practice issued under Section 34 and 46 of the Act :
 - Code of Practice on the discharge of public authorities' functions;
 - Code of Practice on the management of records
- 1.4 These provide guidance to the public authorities as to the practices they should follow in respect of the discharge of their functions under the FOIA and in order for them to ensure effective records management.

2.1 THE ENVIRONMENTAL INFORMATION REGULATIONS (EIR) 2004

- 2.1.1 The Environmental Information Regulations 2004 (EIR) gives rights of public access to environmental information held by public authorities.
- 2.1.2 Environmental information is any information that is about, concerning or relating to the following :
 - a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements
 - b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a)

- c) measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements
- d) reports on the implementation of environmental legislation
- e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c)
- f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)

2.1.3 EIR is supported by a Code of Practice which provides guidance to the public authorities as to the practices they should follow in respect of the discharge of their functions under the EIR.

2.2 ABOUT THE ACT AND REGULATIONS

2.2.1 The main features of the FOI Act and the EIR include :

- A general right of access to all types of recorded information held by public authorities, subject to certain conditions exemptions and exceptions (see 6.25).
- Subject to exemptions under the FOI Act and exceptions under EIR there is a duty on public authorities to :
 - Inform the applicant, in writing, whether the information exists (the duty to confirm or deny).
 - Provide the applicant with the information specified.
- A statutory requirement under section 16 of the FOI Act and Part 2.9 of the EIR is to assist applicants who have made, or wish to make, a request. If it is not clear what information is required, the applicant is to be contacted for clarification.
- There is a duty under FOI on every public authority to adopt and maintain a Publication Scheme (including information which is, or will be, routinely published and available to anyone who asks for it).
- An independent Information Commissioner's Office oversees the implementation and compliance with the FOI Act, EIR, the Data Protection Act 2018 and the General Data Protection Regulations.

3 ENGAGEMENT

This policy has been reviewed by the CCG's Governance Committee and subsequently approved by the CCG's Executive Committee and will be made available to all staff on the CCG's website.

4 IMPACT ANALYSIS

4.1 EQUALITY IMPACT ANALYSIS

4.1.1 In developing this policy, an equalities impact assessment has been undertaken and can be found at Appendix A. An adverse impact is unlikely; on the contrary, the policy has the clear potential to have a positive impact by reducing and removing barriers and inequalities that currently exist.

4.1.2 Vale of York CCG will respond to all enquiries under the Freedom of Information Act and EIR regardless of the needs of the requestor. Information can be requested and provided in various formats including alternative languages, Braille, large print and audio.

4.1.3 If, at any time, this policy is considered to be discriminatory in any way, the author of the policy should be contacted immediately to discuss these concerns.

4.2 SUSTAINABILITY

4.2.1 A Sustainability Impact Assessment has been completed (see Appendix B). Wherever possible, the CCG will encourage the use of electronic documents although in line with the FOI Act hard copies will be available if requested.

4.3 BRIBERY ACT 2010

4.3.1 On July 2011 the Bribery Act 2010 came into force, making it a criminal offence to give, promise, or offer a bribe and to request, agree or receive a bribe. It increased the maximum penalty for bribery to 10 years' imprisonment, with an unlimited fine. Furthermore, the act introduces a 'corporate offence' of failing to prevent bribery by the organisation not having adequate preventative procedures in place. An organisation may avoid conviction if it can show that it had such procedures and protocols in place to prevent bribery.

4.3.2 NHS organisations are included in the Bribery Act's definition of a "relevant commercial organisation". Any senior manager or executive who consents to or connives in any active or passive bribery offence will, together with the organisation, be liable for the corporate offence under the act.

4.3.3 Any individual associated with an organisation who commits acts or omissions forming part of a bribery offence may be liable for a primary bribery offence under the act or for conspiracy to commit the offence with others – including, for example, their employer.

4.3.4 A risk of bribery has been identified within the processing of FOIs where staff may be bribed to provide or not provide information requested. This risk is reduced by processes in place which instructs the requestor how to request a review of decisions made regarding their request. When an appeal is requested the process requires that it is undertaken by staff not involved in the original decision. If requestors are still not satisfied following an internal review of their case they are advised to contact the Information Commissioner's Office who will make a decision as an independent organisation.

5 SCOPE

This policy applies to :

- All employees of the CCG
- CCG Governing Body Members
- Contracted third parties (including agency staff)
- Students and trainees
- Staff on secondment and other staff on placement with the CCG

6 POLICY PURPOSE AND AIMS

6.1 GENERAL PRINCIPLES

6.1.2 Vale of York CCG supports the principle that openness should be the norm in public life.

6.1.2 Vale of York CCG believes that individuals have a right to privacy and confidentiality, and will ensure that this policy does not overturn the common law duty of confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information will be dealt with under the provisions of the Data Protection Act 2018.

6.1.3 Vale of York CCG must still be able to carry out its duties effectively and, to ensure this, the exemptions and exceptions outlined in the FOI Act and EIR will be applied appropriately.

6.2 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

- 6.2.1 All information held by, or on behalf of, Vale of York CCG may be subject to the FOI Act or EIR. The legislation applies regardless of the age, format, origin or classification of information. It covers files, letters, databases, reports, emails, videos, photographs, wall charts etc. It also extends to closed files and archived materials as well as information in current use. Please note that the FOI Act entitles applicants to have access to information, not documents.
- 6.2.2 It is the responsibility of staff at Vale of York CCG to consider all information held by the organisation when a request is received, historical and archived information as well as information in current use.
- 6.2.3 The legislation also applies to information that has been received by others which could include other public authorities, companies, organisations and members of the public. It is necessary to consult with the parties before disclosure of the information (see 6.23)

6.3 PUBLICATION SCHEME

- 6.3.1 Vale of York CCG has implemented a publication scheme which includes information which is, or will be, routinely published and made available to anyone who asks for it.
- 6.3.2 The publication scheme template is approved by the Information Commissioner and is monitored, updated and reviewed at regular intervals.

6.4 AVAILABILITY AND ACCESS

- 6.4.1 The Publication Scheme is available in hard copy on request from Vale of York CCG. It is also included on Vale of York CCG's website at : <http://www.valeofyorkccg.nhs.uk/freedom-of-information-new/publication-scheme/>
- 6.4.2 Information listed in the publication scheme can be downloaded directly from the website or requests may be made, via email at voyccg.foi@nhs.net, verbally or in writing to :

NHS Vale of York Clinical Commissioning Group
West Offices
Station Rise
York, YO1 6GA

6.5 GENERAL RIGHTS OF ACCESS

- 6.5.1 The FOI Act and EIR are fully retrospective and relate to documents produced from 01 April 2013, i.e., when NHS Vale of York CCG was originally established. They also relate to documents from previous organisations if they are still working documents and Vale of York CCG is the author / owner of the document, e.g., policies or procedures which are still to be updated.
- 6.5.2 Requests under FOI must be made in writing and can be treated as made in writing if transmitted by electronic means, is received in a legible form and is capable of being used for subsequent reference. These could include audio or transcripts of verbal requests, verified by the requestor, using a Verbal Freedom of Information Request Form (Appendix F).
- 6.5.3. Requests can also be submitted via social media such as Facebook and Twitter provided the request states the name of the applicant - this may be through a linked profile. As the limitations to the length of tweets may impede a full response an email address can be requested to provide a response to or, the response can be published on the CCG's website and a link to it can be tweeted.
- 6.5.4 Requests under the EIR can be accepted in writing or by electronic means but applicants can also make requests in person.
- 6.5.5 Where a person is having difficulty putting their request in writing in a legible form capable of being used for subsequent reference, Vale of York CCG will advise them of another person or agency who may be able to assist them with their application or make the application on their behalf (such as Citizen's Advice).
- 6.5.6 Requests must state the full name of the applicant and an address for correspondence. Requests must clearly describe the information that is requested. Requests should be made to : voyccg.foi@nhs.net

Or

Freedom of Information Team
NHS Vale of York Clinical Commissioning Group
West Offices
Station Rise
York, YO1 6GA

- 6.5.7 The FOI Act and EIR give a right of access that is not based upon need to know and therefore the organisation does not have the right to question an applicant for the reason or purpose of their request. The applicant can, however, be requested to provide further details or clarification in order to narrow down what might otherwise be a vague or broad request.

6.5.8 The FOI Act and EIR require that requests are responded to within 20 working days¹. If Vale of York CCG decides to apply a condition, exemption or exception (see 6.25) to withhold information, the applicant will be informed within 20 working days. The EIR allows for an extension of up to 20 additional working days to the period for response if requests are particularly complex and voluminous. If the extension is claimed, the applicant will be informed.

6.5.9 As recommended in the Lord Chancellors Section 45 code of practice² and the Environmental Information Regulations code of Practice³, we set out below details of how requests for information will be dealt with, ensuring that this is available to the public.

6.6 RECORDING INFORMATION

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

- Initial date received by the CCG
- Name of the applicant
- Contact details of the applicant
- Description of the information requested
- The medium by which the information was requested
- Decision taken and details of any exemptions or exceptions used
- Date completed and when information was forwarded to the applicant
- Time taken to provide response to applicant

6.6.2 Where requests for information are made from the media they are forwarded for information to the CCG's Communications Team.

6.7 CONFIRMATION

6.7.1 The FOI Team will write to the applicant acknowledging receipt of the request within two working days. This will state that Vale of York CCG intends to deal with the request under the FOI Act or EIR within 20 working days unless there are exceptional circumstances or fees and charges to be levied (see 6.20).

6.7.2 Where Environmental Information is requested specifically under the FOI Scheme a refusal notice will be issued quoting Section 39 – Environmental Information, which exempts information if the public authority holding it *'is obliged by regulations under Section 74 to make information available to the*

¹ A working day is any other than Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday (according to the Banking and Financial Dealings Act 1971) in any part of the UK (FOIA s10(6)), not just England.

² Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under Section 45 of the Act (November 2002)

³ Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) (February 2005)

public in accordance with the regulations'. The request will then be handled automatically as a request for Environmental Information.

6.7.3 Where relevant, requests will be transferred internally if the applicant is the subject of the request and it becomes a Subject Access Request under the Data Protection Act 2018 (See 6.24).

6.7.4 Whilst every effort is made to ensure all requests are forwarded for processing in a timely manner, some requests may inadvertently go astray. If confirmation that we are dealing with a request is not received within five working days, the applicant should contact Vale of York CCG straightaway so this can be investigated. Any 'missed requests' are logged and, where possible, actions taken to avoid similar situations occurring in the future.

6.8 REQUESTS IN RELATION TO PREVENT / CHANNEL / EXTREMISM

6.8.1 Any Freedom of Information Act request that relates in any way to 'Prevent', 'Channel' or extremism must follow the process set out by the Department of Health as detailed in Appendix G.

6.8.2 This guidance states that any FOI requests received pertaining to 'Prevent', 'Channel' or extremism should be notified to the NHS England Prevent Strategic Lead who should then inform the Department of Health Prevent / Extremism Policy Team. The NHS England Prevent Strategic Lead will assist with the drafting of the response.

6.8.3 Appendix G also includes some guidance from NHS England on FOI exemptions that maybe applied.

6.9 PROCESSING A REQUEST

6.9.1 It is important to note that a request for information need not be marked as such; there is no need for the applicant to state that they are making a FOI or EIR request. The FOI Act and EIR cover all requests for information and could be included in, for example, a compliment or complaint letter. It is, therefore, imperative that all staff are aware of this policy and the need to refer requests to the FOI Team in a timely manner.

6.9.2 It is not appropriate to refer requests to the FOI Team where staff are :

- Providing information leaflets or other material that has already been approved by the organisation; this would include service information and the Annual Report.
- Discussing an information leaflet / booklet with another individual, informing them of their options.
- Providing information on the current care and treatment of an individual using established practices.

6.9.3 Appendix C shows the organisation's detailed Request Process that will be followed by all employees.

6.10 ACCESSING INFORMATION

6.10.1 The FOI Team will forward information requests to the lead manager in those directorates who it is thought may hold the information that has been requested. This person will be sent the request within two working days of it being received. Staff then have eight working days to deal with the request and retrieve the relevant information. Any problems should be immediately brought to the attention of the FOI Team. This time may be extended in certain complex circumstances.

6.10.2 The gathered information will be forwarded to the FOI Team for review prior to disclosure.

6.10.3 In instances where an exemption or exception might be applicable, the retrieved information and options available will be discussed with the relevant manager and the Corporate Services Manager to decide whether information is relevant, and whether exemptions / redactions apply to any parts the of information.

6.10.4 The Caldicott Guardian may be consulted on an ad hoc basis in cases where clarification is required regarding Data Protection.

6.11 AMBIGUOUS OR WITHDRAWAL OF REQUESTS

6.11.1 If further clarification from the requestor is required or not enough information has been provided for the request to be processed, the requestor will be contacted at the earliest opportunity. If clarification is not received within three months of initial contact the FOI or EIR request will be closed.

6.11.2 Once clarification has been requested the 20 working days countdown will stop. The time for compliance will not begin again until the necessary clarification to allow the CCG to answer the request has been received.

6.11.3 If at any time the requestor advises that they wish to withdraw their FOI or EIR request, the request will be closed.

6.12 VEXATIOUS AND REPEATED REQUESTS

6.12.1 An FOI request can be considered vexatious when an activity is likely to cause distress or irritation, literally to vex a person to whom it is directed without due cause. Factors include :

- Previous possession of the information
- Tendentious language
- Background history between the requestor and the public authority
- Reopening issues

- 6.12.2 If Vale of York CCG has recently complied with a request for information then it is not required to comply with a subsequent identical or similar request unless a reasonable time interval has elapsed.
- 6.12.3 A log of all requests will be kept for monitoring purposes and this can be used to identify vexatious and repeated requests.
- 6.12.4 Where Environmental Information is requested it cannot be refused as vexatious. Vale of York CCG will, however, refuse a request that is “manifestly unreasonable”, under Regulation 12 (4)(b) – Nuisance Requests, subject to a public interest test.

6.13 AGGREGATION OF REQUESTS

- 6.13.1 When a number of requests are received from either the same person or different people asking for the same or similar information within a short time of each other, Vale of York CCG may consider aggregating these requests and take an overall view of the resources which would have to be committed to answering all of the requests.
- 6.13.2 Aggregation of requests can be considered when two or more requests for information have been made and :
- They are either from the same person, or from 'different persons who appear to be acting in concert or in pursuance of a campaign'
 - The requests relate to the same or similar information
 - They have been received by the public authority within a space of 60 consecutive working days

6.14 PROVIDING THE INFORMATION

- 6.14.1 In all instances, prior to providing the information the FOI Team will seek approval from the Planning and Assurance Manager or the Head of Legal and Governance.
- 6.14.2 If no exemptions apply and there are no fees or charges to be levied, the information requested by the applicant will be provided within two working days of the FOI Team receiving approval.
- 6.14.3 Information will normally be provided in the format in which the request was made, i.e. electronic or hardcopy, unless specified otherwise. Formats for response can include :
- A photocopy or printed copy of the information.
 - Provision of a pdf file transferred by electronic means.
 - Provision of a pdf file transferred on CD-ROM or floppy disk.
 - Provision of a summary of the information, in one or a combination of the formats mentioned in the first three points.

- Alternative language, large print, audio or Braille which will be fully funded by Vale of York CCG.

6.15 DATA SETS

6.15.1 As of 01 September 2013 Section 102 of the Protection of Freedoms Act 2012 added new provisions to the FOIA (in particular Sections 11 and 19) regarding how information held in datasets is released under FOI.

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

6.15.3 Where a request is made for a dataset the CCG will provide this information in a re-usable form so far as reasonably practicable. A re-usable form means that the dataset is in a machine readable form.

6.15.4 Factors which can affect whether it is reasonably practicable to provide the dataset in a re-usable form can include the time and cost of conversion, technical issues and resources of the CCG.

6.15.5 If a dataset is a relevant copyright work (the CCG owns the copyright and database rights), the CCG will provide it under the terms of a specified license. The Open Government License (OGL) is the default license for datasets that can be re-used without charge. Other licenses which can be used if appropriate are the Non Commercial Government License (the information cannot be used for Commercial purposes) and the Charged License (where it is appropriate to charge for the re-use of information).

6.15.6 As required by the new provisions, the CCG will publish datasets requested and any updated versions unless the CCG feels that it is not appropriate to do so. Reasons for it not being appropriate may include :

- The information is exempt from disclosure under the FOIA
- The information may cover a very narrow area of information. Although the requestor is entitled to ask for the information under the FOIA the CCG may consider that there is no benefit in continuing to publish the dataset routinely.
- The cost or technical issues involved in making the information routinely available on the Publication Scheme.

6.15.7 The dataset provisions do not apply to EIR however Regulation 6 does require that a public authority should make information available in the format requested by the applicant unless it is reasonable not to.

6.16 REDACTIONS

6.16.1 Where a document contains information which should not be put into the public domain, the document should be released with the relevant information redacted.

6.16.2 If an applicant has requested all the information in a document but it is necessary to redact some of the information because an exemption or exception applies, the applicant must be notified that the redactions have taken place and of the exemption or exception which has been applied.

6.17 REFUSAL NOTICES

6.17.1 A request for information may be refused if :

- The information is exempt under Part II of the FOI Act or an exception applies under EIR (see 6.25).
- A fees notice or charge has not been paid within the three months' time period (see 6.20)
- In the case of FOI requests – where the cost of compliance exceeds the appropriate limit of £450 (18 hours), in accordance with the National Fees Regulations. There is no appropriate limit for EIR requests (see 6.21).
- An FOI request can be demonstrated to be vexatious or repeated (see 6.12).
- An EIR cannot be considered as vexatious or repeated although Regulation 12 – Nuisance Requests can be applied.
- The information is not held.

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

- The exemption(s) that has been applied.
- The justification for the use of the exemption(s) or exception(s). Where an exception is applied, if the exemption is qualified, the Public Interest Test must be applied (see 6.26).
- Details of how the applicant can appeal against the decision if they are dissatisfied with the outcome (see 6.29).
- Details of the right to further appeal to the Information Commissioner's Office.

6.17.3 Where a request has been demonstrated to be vexatious or repeated and a refusal notice has already been issued, there is no requirement to issue further refusal notices where it would be unreasonable to do so again.

6.18 THE DUTY TO CONFIRM OR DENY

6.18.1 Section 1 of the FOI Act provides two distinct but related rights of access to information which impose corresponding duties on public authorities. These are :

- The duty to inform the applicant whether or not information is held by the authority, and, if so,
- The duty to communicate that information to the applicant.

6.18.2 In circumstances where confirming or denying whether information is held under FOI Act or EIR, or whether an exemption or exception applies would in itself entail the disclosure of exempt information, Vale of York CCG is not required to explain the exclusion of the duty to confirm or deny the information is held, why an exemption applies or why the public interest favours maintaining an exemption.

6.18.3 The Public Interest Test will, however, be applied to ensure it is appropriate for Vale of York CCG to issue a response neither confirming nor denying that the information requested is held.

6.18.4 In these circumstances, the applicant will be issued a refusal notice within 20 working days.

6.19 TRANSFERRING A REQUEST

6.19.1 If Vale of York CCG does not hold some or all of the information requested but believes that another public authority may hold it then advice and assistance will be provided to the applicant. This will usually involve :

- Contacting the applicant and informing them that the information requested may be held by another public authority.
- Suggesting that the applicant re-applies to the authority which the CCG believes may hold the information.
- Provide them with the contact details for that authority.

6.19.2 If the applicant wishes Vale of York CCG to transfer the request on their behalf, the applicant will be asked for their consent to transfer their request for information to this public body. A request will not be transferred outside the organisation without the applicant's consent.

6.19.3 Where relevant, requests will be transferred internally within Vale of York CCG if the applicant is the subject of the request and it becomes a Subject Access Request under the Data Protection Act 2018 (See 6.24) or if it is to be dealt with in accordance with the Environmental Information Regulations 1992.

6.19.4 In cases where it is apparent that other public authorities as well as Vale of York CCG are holding information relevant to a request, the applicant will be advised in writing.

6.19.5 Where it is not possible to advise the applicant which public authority holds or may hold the information, further advice and assistance will be considered to enable the applicant to pursue their request if possible.

6.19.6 Where a request is transferred from another public authority to Vale of York CCG it will be treated in the same way as it would if it had been received direct from the applicant. To calculate the timescale for responding, the date of transfer will be used as the date of receipt of request.

6.20 CHARGES AND FEES

6.20.1 In relation to requests under FOI, fees will be in accordance with Statutory Instrument 3244 (Fees Regulations). Vale of York CCG will charge for photocopying and disbursement costs where these exceed £50. Charges for photocopying will be set at 10p per sheet. Where disbursement costs are below £50, there will be no charge levied to the applicant.

6.20.2 Where Vale of York CCG chooses to levy a fee, a fees notice will be issued to the applicant, as required by Section 9 of the FOI Act. Applicants will be required to pay any fees within a period of three months, beginning with the day on which the fees notice is issued to them. The working days in the period from when the applicant received the fees notice to when they paid will not be included in the 20 working days requirement to respond to the initial request. If payment is not received within three months, Vale of York CCG will close the Freedom of Information request.

6.21 APPROPRIATE LIMITS

6.21.1 Section 12 of the FOI Act makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit, which for Public Bodies is set at £450. This represents the estimated cost of one person spending 18 hours in determining whether the department holds the information, locating, retrieving and extracting the information. Under these circumstances Vale of York CCG is not obligated to provide the information, however the applicant can request advice and assistance under Section 16 of the FOI Act to discuss ways in which their request could be adapted and brought within the appropriate limit. The 18 hours does not include time taken to redact information.

6.21.2 If requests have been aggregated as outlined in 6.13 and the total cost of handling the requests exceeds the appropriate limit, the request can be refused under Section 12.

6.21.3 There is no appropriate limit set for EIR requests. It may, however, be relevant for some exceptionally costly requests to be considered as 'manifestly unreasonable' under regulation 12(4)(b).

6.22 ADVICE AND ASSISTANCE

6.22.1 Vale of York CCG has a duty under Section 16 of FOIA and R9 (1) under EIR to assist members of the public requesting information. If an applicant or potential applicant is requesting advice or assistance, one or more of the following steps will be taken, depending on the situation :

- Guidance will be given on how to access the information from Vale of York CCG under the Publication Scheme or the general rights.
- The applicant will be informed of the progress of their current request.
- The basis for any charges or fees levied or exemptions applied will be explained.
- Other routes through which the applicant may wish to access information, including directing them to other public authorities, will be suggested.
- Applicants will be directed to the appeals process and / or the Office of the Information Commissioner if they are dissatisfied with any outcome.
- Support will be given to applicants who are unable to put their request in writing.

6.23 CONSULTATION WITH THIRD PARTIES

6.23.1 In the event that a request contains information about third parties, the CCG will, wherever possible, contact the third party providing them with the opportunity to comment or raise concerns regarding the response.

6.23.2 Ultimately the decision as to whether the information should be provided or if any exemptions apply will be made by Vale of York CCG, as the holder of the information.

6.24 PERSONAL INFORMATION AND THE DATA PROTECTION ACT

6.24.1 Personal data is information about a living individual from which that individual can be identified. It may take any of the following forms :

- Computer documents.
- Information processed by a computer or other equipment (e.g., CCTV).
- Information in medical and other records.
- Information in some forms of structured manual records.
- Unstructured personal information held in manual form by a public authority (the applicant is likely to be asked to provide extra details to locate the information requested).

6.24.2 If an applicant requests information where they are the subject of that information, they have no right to it under the Freedom of Information Act and the request becomes a Subject Access Request under the Data Protection Act 2018 / GDPR and this will be redirected within the organisation to the appropriate department.

6.24.3 If the personal data relates to someone other than the applicant, there is an exemption if disclosure would breach any of the Data Protection principles. The subject of the information has the right to object to the disclosure. Vale of York CCG will undertake to ensure that all requests for personal information are handled in consultation with the data subject.

6.24.4 Vale of York CCG will endeavour to balance an individual member of staff's right to privacy with the accountability that goes with working in the public sector.

6.24.5 Vale of York CCG will not hold information 'in confidence' that is not confidential in nature. The confidential information exemption under the FOI Act only applies if the release of such information constitutes a breach of confidence actionable in a court of law.

6.25 CONDITIONS, EXEMPTIONS AND EXCEPTIONS

Conditions

6.25.1 Vale of York CCG can postpone dealing with a request if :

- It reasonably requires additional information or clarification of the initial request, in order to identify and locate the information requested, and has written to the applicant informing them of this. Vale of York CCG will make reasonable efforts to contact the applicant for the additional information (see 6.11).
- A fees notice has been served to the applicant and has not been paid within three months (beginning on the day the fees notice is issued).

Exemptions – FOI

6.25.2 The FOI Act specifies several different exemptions and when they can be applied. There are two types of exemption : absolute and qualified. An absolute exemption means that the organisation is exempt from the need to confirm or deny. This means that Vale of York CCG does not have to admit or deny holding the information. A qualified exemption means that the organisation has to consider the public interest (see 6.26) before making the decision.

6.25.3 Any decision to use the exemptions will initially be taken by the FOI Team in discussion with the manager providing the information.

6.25.4 The Section 36 Exemption states that information is exempt if, it is the reasonable opinion of a qualified person, that disclosure of the information would prejudice the effective conduct of public affairs.

6.25.5 In accordance with the Department of Health guidelines, the qualified person for the purposes of the Freedom of Information Act will be the Accountable Officer.

6.25.6 Appendix D contains details of the exemptions available under the FOI Act.

Exceptions – EIR

6.25.7 The EIR specifies several different exceptions which can be applied. These are all subject to the Public Interest Test (see 6.26).

6.25.8 Any decision to use the exemptions will initially be taken by the FOI Team in discussion with the manager providing the information.

6.25.9 Appendix E contains details of the exceptions available under the EIR.

6.26 PUBLIC INTEREST TEST

6.26.1 The public interest must be considered where, in the case of FOIs, a qualified exemption applies or where any exception is applied for an EIR request. The Information Commissioner's Office states that "In effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information."⁴

6.26.2 The public interest will vary with each request and the exemption being considered. It may include ensuring honesty, accountability, transparent decision making and the absence of bias.

6.26.3 It is acknowledged by the Information Commissioner's Office that it may take longer than the 20 working day limit to consider the Public Interest Test. Where Vale of York CCG requires a longer period to consider the Public Interest Test, a refusal notice will still be issued within the 20 working day timescale stating the exemptions being applied and an estimate of the time by which a decision will be made. A decision regarding the Public Interest Test would normally be made within an additional 20 working days.

6.26.4 Vale of York CCG will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary, e.g., colleagues, legal experts, etc. The public interest does not include protecting an authority or individual from embarrassment. There is no exemption under the Act for embarrassment.

6.27 REQUESTS FOR RE-USE OF INFORMATION

6.27.1 Information provided under FOI and EIR may be re-used for personal use. This means that brief extracts of any of the material may be reproduced without permission, under the fair dealing provisions of the Copyright, Designs and Patents Act 1988 (sections 29 and 30) for the purposes of research for non-commercial purposes, private study, criticism, review and news reporting, subject to an acknowledgement of Vale of York CCG as the copyright owner.

⁴ Information Commissioner's Awareness Guidance No. 3 – Public Interest Test

6.27.2 Copyright law does not give applicants a right to re-use information in a way that would infringe or breach that copyright, by making copies, publishing and issuing copies to the public or to any other person. This means that wider re-use requires express permission in writing.

6.27.3 Under the Re-use of Public Sector Information 2005 Regulations (RPSI) you are free to use this information for your own use or for the purposes of news reporting. Any other type of re-use under the regulations, for example, publication of the information or circulation to the public, will require permission and may be subject to terms and conditions such as :

- Organisations must ensure that the information is reproduced accurately and indicates the date at which the information was released by the CCG.
- Any publication which incorporates the CCG's information must include an acknowledgement of the source of the information.
- Any comments associated by you to the information must clearly state that it is not necessarily the view of the CCG.
- Readers of the information must not be given the impression that the CCG is responsible for, or has in any way approved, the publication in which the information has been reproduced.
- The information may not be altered or amended unless such material is clearly marked as altered or amended by the organisation or others.
- When reproducing the CCG's materials, organisations must not use the information in a misleading way and have regard to any qualifying statements or descriptions attached to the information, (for example, descriptions such as 'consultation document', 'discussion paper', or 'preliminary view' are important as are statements concerning the audience at which the material is directed). If the information is reproduced in full, or substantial extracts are reproduced, any qualifying statements attached to the information must be included.

6.27.4 Any requests for re-use of information must be in writing and the applicant must state their full name, postal address, specify the document being requested for re-use and the purpose for which the document is to be re-used.

6.27.5 The request will be acknowledged within three working days and responded to within 20 working days of receipt of the request. This period may be extended where the request is extensive or complex and the requester must be informed of this in writing.

6.27.6 Re-use can be refused if the information requested falls within one or more of the exclusions permitted by Re-use of Public Sector Information Regulations 2005 (RPSI).

6.27.7 Where requests are refused, the applicant will be advised of the decision and has a right to ask for that decision to be reviewed under the CCG's FOI and EIR appeals procedures. If the information is still not released, the applicant will be advised of their right to ask the Office for Public Sector Information (OPSI) to review the decision.

6.28 PUBLIC SECTOR CONTRACTS

6.28.1 When entering into contracts Vale of York CCG will limit the contractual terms which are intended to restrict the disclosure of information held. Vale of York CCG cannot 'contract out' its obligations under the FOI Act or EIR. Both the Lord Chancellors Code of Practice⁵ and Environmental Information Regulations Code of Practice⁶, state that unless an exemption or an exception provided for under the FOI Act is applicable in relation to any particular information and the balancing of public interest favours refusal, a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

6.28.2 Contractors may put pressure on Vale of York CCG to accept confidentiality clauses covering information about the terms of the contract, its value and performance. Where it is necessary to include a non-disclosure provision in a contract (exceptional circumstances only) an option could be to agree a schedule with the contractor that clearly identifies the information that should not be disclosed.

6.28.3 Vale of York CCG and the Contractor should be aware that any restrictions on disclosure in such a schedule could be overridden by the obligations of the FOI Act.

6.28.4 The Information Commissioner's Office has produced the following documents for public bodies outsourcing services which provide practical guidance for public authorities when procuring services :

- Transparency in outsource : a roadmap
- Outsourcing and Freedom of Information – guidance documents.

6.29 COMPLAINTS AND REVIEW REQUESTS

6.29.1 If the applicant wishes to make a complaint about the staff involved in their response then this should be processed as a complaint using the procedure outlined in the Vale of York CCG Complaints Policy.

⁵ Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under Section 45 of the Act (November 2002)

⁶ Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) (February 2005)

6.29.2 If the applicant feels they have not been given proper advice and help, have not been given the information they requested within 20 working days, is unhappy with the information that has been provided or wishes to request a review of an exemption which has been applied they should, in the first instance contact the FOI Team to try to resolve the issue. This should be done within the first two months of receiving the response to their request,

6.29.3 If the applicant is still not happy with their response, a request for an internal review can be made in writing to the Accountable Officer at :

voyccg.foi@nhs.net

Or

NHS Vale of York Clinical Commissioning Group
West Offices
Station Rise
York, YO1 6GA

6.29.4 Vale of York CCG will appoint an independent senior manager from within the organisation to investigate the original decision made. The senior manager will be supported by the legal team. Neither manager will have been involved in the original decision. The managers will consider the findings and decide whether the request was processed in line with the Vale of York CCG Freedom of Information Policy and the Section 45 Code of Practice and, where relevant, if the original exemption should be upheld or not.

6.29.5 The applicant will be informed of this decision within 20 working days of receipt of their request for an internal review.

6.29.6 If the applicant is still not satisfied with the outcome of their internal review, they can contact the Information Commissioner's Office at :

FOI/EIR Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire, SK9 5AF

Helpline telephone: 01625 545 745

6.30 LEGAL ADVICE

6.30.1 The CCG FOI Lead will decide when legal advice should be sought and will then seek such advice through the relevant channels.

6.31 RECORDS MANAGEMENT

6.31.1 Good records management is the key to complying with the FOI Act. Vale of York CCG has a Records Management Policy for dealing with records management that is consistent with the Records Management : NHS Code of Practice (April 2006).

6.31.2 Staff should also see the Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000.

6.31.3 Good records management will allow the organisation to deal with requests in an efficient and accurate manner. Not knowing whether or not a record is held is not a valid reason for not complying with a request.

7 ROLES / RESPONSIBILITIES / DUTIES

7.1 RESPONSIBILITIES OF THE EMPLOYER

Managers at all levels are responsible for ensuring the staff for whom they are responsible are aware of and adhere to this policy. Any advice or assistance regarding this policy or the Freedom of Information Act 2000 or Environmental Information Regulations can be obtained from the FOI Team.

7.2 CCG ACCOUNTABLE OFFICER

The Accountable Officer has overall responsibility for the management of Vale of York CCG's response to enquiries under the Freedom of Information Act and Environmental Information Regulations.

7.3 CCG EXECUTIVE COMMITTEE

The Executive Committee is responsible for approving the Vale of York CCG Freedom of information and Environmental Information Regulations Policy.

7.4 FREEDOM OF INFORMATION TEAM

The Freedom of Information Team are responsible for :

- Ensuring all requests for information are co-ordinated and responded to within the set timescales, though this does not negate the responsibility of all other employees in ensuring a timely response to requests.
- Providing advice and assistance to staff and those who propose to make, or have made, requests for information under the Act.
- Maintaining the information on requests that have been made using the FOI Tracker.
- Advising on the use of exemptions.
- Advising on maintaining and reviewing the publication scheme.
- Producing regular monitoring reports.

7.5 LEAD MANAGERS

Lead managers will be the initial point of contact for the area in which they are the lead. They are responsible for :

- Providing information within the set timescale.
- Assisting with reviewing the publication scheme.
- Ensuring that appropriate information to be included in the scheme is forwarded to the FOI Team to keep the publication scheme up to date.

7.6 ALL STAFF

All staff (referred to in section 5) are expected to understand the content of this policy, agree to abide by it, and :

- Identify Freedom of Information requests and forward them to the FOI Team at voycg.foi@nhs.net immediately.
- Respond to requests made by the FOI Team within the set timescales.
- Ensure that all relevant information to meet the requirements of the request is retrieved.
- Ensure that responses made in relation to a request do not include information of a sensitive personal nature (i.e., for staff, patients or clients).
- Provide advice and assistance to those who propose to make, or have made, requests for information.
- Remember that not everyone will be aware of the Act, or Regulations made under it, and help draw these to the attention of potential applicants who appear unaware of them.
- Ensure that appropriate information to be included in the publication scheme is forwarded to the FOI Team in order to keep the scheme up to date.

7.7 INFORMATION COMMISSIONER

The Information Commissioner has a duty to enforce the requirements of the Freedom of Information Act 2000.

8 IMPLEMENTATION

- 8.1 This policy will be disseminated by the approved process and will be available on Vale of York CCG's website.
- 8.2 Breaches of this policy may be investigated and may result in the matter being treated as a disciplinary offence under the CCG's disciplinary procedure.

9 TRAINING AND AWARENESS

- 9.1 Training will be provided for new staff at induction. Training will be available to staff who require it. Any further requirements for training should be discussed with staff members' line manager.

10 MONITORING AND AUDIT

- 10.1 The FOI team will produce a bi-annual report for submission to the Audit Committee. These reports will detail the number of FOI requests received, a brief description of the information requested and whether this information was provided or an exemption applied. The reports also show the average time taken to respond to FOI requests and how these figures compare to previous reports.

11 POLICY REVIEW

- 11.1 This policy will be reviewed in two years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation / guidance, as instructed by the senior manager responsible for this policy.

12 REFERENCES

- Caldicott and Data Protection Policy
- Data Protection Act 2018
- Disciplinary Procedure
- Freedom of Information Act 2000
- HSC 1999/053 – For the Record: Managing NHS Records
- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act (November 2002)
- The CCG's Publication Scheme
- Statutory Instrument 1992 No 3240 – The Environmental Regulations 1992

13 APPENDIX A : EQUALITY IMPACT ANALYSIS FORM

1.	Title of policy/ programme/ service being analysed
	Freedom of Information Policy
2.	Please state the aims and objectives of this work.
	This Freedom of Information Policy describes the processes stipulated within the Freedom of Information Act which the CCG is required to follow when processing Freedom of Information requests.
3.	Who is likely to be affected? (e.g. staff, patients, service users)
	Staff need to comply with the principles and practices outlined in this policy.
4.	What sources of equality information have you used to inform your piece of work ?
	NHS England guidance.
5.	What steps have been taken ensure that the organisation has paid <u>due regard</u> to the need to eliminate discrimination, advance equal opportunities and foster good relations between people with protected characteristics.
	The analysis of equalities is embedded within the CCG's Committee Terms of Reference and project management framework.
6.	Who have you involved in the development of this piece of work ?
	Internal involvement : Governance Committee. Stakeholder involvement : Consultation with Senior Managers. Patient / carer / public involvement : This is an Internal policy aimed at staff employed by the CCG and contractors working for the CCG. The focus is on compliance with statutory duties and NHS mandated principles and practice. There are no particular equality implications.
7.	What evidence do you have of any potential adverse or positive impact on groups with protected characteristics ? Do you have any gaps in information ? Include any supporting evidence e.g. research, data or feedback from engagement activities (Refer to Error! Reference source not found. If your piece of work relates to commissioning activity to gather the evidence during all stages of the commissioning cycle).

Disability People who are learning disabled, physically disabled, people with mental illness, sensory loss and long term chronic conditions such as diabetes, HIV).	Consider building access, communication requirements, making reasonable adjustments for individuals etc.
N/A	
Sex Men and Women.	Consider gender preference in key worker, single sex accommodation etc.
N/A	
Race or nationality People of different ethnic backgrounds, including Roma Gypsies and Travellers.	Consider cultural traditions, food requirements, communication styles, language needs etc.
N/A	
Age This applies to all age groups. This can include safeguarding, consent and child welfare.	Consider access to services or employment based on need/merit not age, effective communication strategies etc.
N/A	
Trans People who have undergone gender reassignment (sex change) and those who identify as trans.	Consider privacy of data, harassment, access to unisex toilets & bathing areas etc.
N/A	
Sexual orientation This will include lesbian, gay and bi-sexual people as well as heterosexual people.	Consider whether the service acknowledges same sex partners as next of kin, harassment, inclusive language etc.
N/A	
Religion or belief Includes religions, beliefs or no religion or belief.	Consider holiday scheduling, appointment timing, dietary considerations, prayer space etc.

N/A	
Marriage and Civil Partnership Refers to legally recognised partnerships (employment policies only).	Consider whether civil partners are included in benefit and leave policies etc.
N/A	
Pregnancy and maternity Refers to the pregnancy period and the first year after birth.	Consider impact on working arrangements, part-time working, infant caring responsibilities etc.
N/A	
Carers This relates to general caring responsibilities for someone of any age.	Consider impact on part-time working, shift-patterns, options for flexi working etc.
N/A	
Other disadvantaged groups This relates to groups experiencing health inequalities such as people living in deprived areas, new migrants, people who are homeless, ex-offenders, people with HIV.	Consider ease of access, location of service, historic take-up of service etc.
N/A	
8. Action planning for improvement Please outline what mitigating actions have been considered to eliminate any adverse impact ? No adverse equality impact has been identified. Please state if there are any opportunities to advance equality of opportunity and/ foster good relationships between different groups of people ? An Equality Action Plan template is appended to assist in meeting the requirements of the general duty	

Sign off
Name and signature of person / team who carried out this analysis : Rachael Simmons, Corporate Services Manager
Date analysis completed : 09 April 2019
Name and signature of responsible Director : Phil Mettam, Accountable Officer
Date analysis was approved by responsible Director :

14 APPENDIX B : SUSTAINABILITY IMPACT ASSESSMENT

Sustainability is one of the CCG's key Strategies and the CCG has made a corporate commitment to address the environmental effects of activities across Trust services. The purpose of this Sustainability Impact Assessment is to record any positive or negative impacts that this activity is likely to have on each of the Trust's Sustainability Themes.

Policy / Report / Service Plan / Project Title:				
Theme (Potential impacts of the activity)	Positive Impact	Negative Impact	No specific Impact	What will the impact be? If the impact is negative, how can it be mitigated? (action)
Reduce Carbon Emission from buildings by 12.5% by 2010-11 then 30% by 2020			X	
New builds and refurbishments over £2million (capital costs) comply with BREEAM Healthcare requirements.			X	
Reduce the risk of pollution and avoid any breaches in legislation.			X	
Goods and services are procured more sustainability.			X	
Reduce carbon emissions from road vehicles.			X	
Reduce water consumption by 25% by 2020.			X	
Ensure legal compliance with waste legislation.			X	
Reduce the amount of waste produced by 5% by 2010 and by 25% by 2020	X			Wherever possible we will encourage the use of electronic documents although in line with the law, hard copies will be available if required but will be kept to minimum
Increase the amount of waste being recycled to 40%.			X	
Sustainability training and communications for employees.			X	
Partnership working with local groups and organisations to support sustainable development.			X	
Financial aspects of sustainable development are considered in line with policy requirements and commitments.			X	

15 APPENDIX C : A QUICK GUIDE TO RESPONDING TO A FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REQUESTS

The following process will be adopted for the handling of information requests

- 1 Information request is received and date stamped (if hard copy).
- 2 If the request has not been received directly into the voyccg.foi@nhs.net inbox, it will be scanned and emailed to voyccg.foi@nhs.net as soon as possible.
- 3 The information request is logged on the FOI spread sheet.
- 4 A standard acknowledgement letter / email is sent to the requestor within two working days.
- 5 If the information requested is routine and available on our website a response is sent within two working days with a link to the website.
- 6 If an applicant is unable to request the information in writing, a Verbal Freedom of Information Request Form is completed by a member of the Governance Team and sent to the requestor to sign confirming that it is a true representation of their request. Once the signed copy is returned the request will be processed.
- 7 The request is sent anonymously to the lead manager as identified in the CCG to provide the information.
- 8 It is the responsibility of the lead manager to ensure that all the relevant information is collated.
- 9 Copies of the retrieved information should be forwarded to the Freedom of Information Team, where possible via voyccg.foi@nhs.net
- 10 If clarification is required the requestor will be informed as soon as possible. If the requestor has not provided clarification within three months the request will be closed.
- 11 Conditions, exemptions, exceptions and redactions will be considered and applied if necessary.
- 12 Fees notice is sent to the requestor if applicable.
- 13 Response will be approved by the Planning and Assurance Manager or Head of Legal and Governance before sending.
- 14 On receipt of payment of fees (if applicable) the response will be sent to the requestor.
- 15 The requestor will be advised of any exemptions and redactions in writing.
- 16 The applicant will also be advised of their right and the process to appeal if they are happy with the decision.

16 APPENDIX D : EXEMPTIONS AVAILABLE UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption :

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

With the exception of section 21 (information available by other means) 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 FOI Act 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 2018. 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 14 Vexatious requests** - You can refuse to comply with a request that is vexatious if the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.
- 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 may prejudice relations between the administrations within 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 be 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 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 Trust conducts its public affairs.
- Section 37 Communications with Her Majesty, etc. and honours** – covers Her Majesty, other members of the Royal Family.
- 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 or any person or organisation.

17 APPENDIX E : EXCEPTIONS AVAILABLE UNDER THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

The public interest test applies to all the exceptions contained in the EIR, except those relating to personal data.

Regulation 12(3) – Personal Data

If the information requested under the EIR includes third party personal data, a public authority may only disclose it in accordance with regulation 13.

Regulation 12(4)(a) Information not held when receiving a request

Regulation 12(4)(b) Manifestly unreasonable

There are no cost limits for responses to requests for environmental information; it may therefore be possible for some exceptionally costly requests to be considered manifestly unreasonable.

Regulation 12(4)(c) The request is too general

To claim the exception, an authority must follow the requirements of regulation 9(2). Where it receives a request which is “too general”, it must contact the applicant within 20 working days and help him or her to refine or clarify the request

Regulation 12(4)(d) Material in the course of completion, unfinished documents and incomplete data

This exception covers most work in progress. The authority must consider the status of the information at the time of the request.

The public interest test is an important consideration; we consider that the public interest in maintaining this exception will decline once the final version of a document has been completed.

Regulation 12(4)(e) Disclosure of internal communications

This exception should be interpreted broadly and may cover a wide range of internal communications. In practice the scope of this exception is likely to be narrowed by the application of the public interest test.

Whether a communication from an external adviser amounts to an internal communication depends on the facts of the case. In the exceptional circumstances of the following case, the tribunal found that such a communication did constitute an internal communication. However regulation 12(4)(e) will not be applicable in all situations involving external advisers.

Regulation 12(5) Adverse effect

This criterion of “adverse effect” is similar to that of “prejudice” under the FOIA, although not identical. For instance, the “prejudice” criterion under the FOIA is “would, or would be likely to, prejudice”, whereas for adverse effect the harm must be at least probable rather than merely likely.

Regulation 12(5)(a) International relations, defence, national security or public safety

In accordance with regulation 12(6), an authority is able to opt neither to confirm nor deny whether the information exists and is held, if this would adversely affect any of the matters listed under regulation 12(5)(a). This is subject to the public interest test.

Regulation 12(5)(b) The course of justice, the ability of a person to obtain a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature

Regulation 12(5)(c) Intellectual property rights

The exception protects the rights of the authority as well as third parties. An authority must be able to demonstrate that there is a real risk that disclosure would undermine the intellectual property rights.

Regulation 12(5)(d) The confidentiality of the proceedings of a public authority where such confidentiality is provided by law

A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.

Regulation 12(5)(e) The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest

A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.

This exception may cover a wide range of “commercial or industrial information” in the circumstances specified. It could cover either an individual or a body or the public authority itself. For instance, it could include information supplied in relation to a tendering or procurement process and information held by regulators.

Regulation 12(5)(f) The interests of the person who provided the information where that person –

- (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
- (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
- (iii) has not consented to its disclosure.

A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.

This exception covers the interests of a person who :

- supplied information voluntarily,
- supplied it in the expectation that it would not be disclosed to a third party, and
- has not consented to disclosure of the information supplied.

Regulation 12(5)(g) The protection of the environment to which the information relates

A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.

Regulation 12(9) Information relating to emissions

A public authority cannot use the following exceptions for environmental information that relates to information on emissions:

- Confidentiality of the proceedings of a public authority 12(5)(d)
- Confidentiality of commercial or industrial information 12(5)(e)
- Interests of the person who provided the information 12(5)(f)
- Protection of the environment to which the information relates 12(5)(g)

18 APPENDIX F : VERBAL FREEDOM OF INFORMATION REQUEST FORM

Request taken by:	
Team Name:	
Date of Request:	
Reference Number:	
Name of Applicant	
Address for the information to be sent to:	
E-mail:	
Phone:	
Information requested as interpreted by the Vale of York CCG	

I, [Applicants Name] confirm that the above interpretation of my request is correct/ is not correct and the correct request is below (delete as appropriate)

<p>Description of information requested.</p> <p>To be filled out by the applicant if the Vale of York CCG's interpretation was incorrect.</p>	
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19 APPENDIX G : DEPARTMENT OF HEALTH - PROCESS FOR RESPONDING TO PREVENT / EXTREMISM FREEDOM OF INFORMATION ACT REQUESTS

Publications Gateway Ref. No. 04364

Introduction

This document provides guidance for responding to Freedom of Information Act 2000 (“FOIA”) requests which may be received by NHS Organisations where they relate to matters concerning Prevent and Extremism.

Prompt action is required to ensure legal deadlines are not breached and that requests are completed and issued to ensure compliance with the FOIA (reply within 20 working days of receipt in the relevant Public Authority).

The Department of Health (DH) request that Prevent FOI submissions are shared with the DH where possible prior to submission. Where this is not possible a copy is shared from the submitting agency.

Annex A provides some suggested text for the FOIA exemptions, which are most commonly engaged in Prevent and Channel related FOI requests, and the latest Home Office (HO) advice.

Background

Given the sensitive nature of responding to counter terrorism enquires, all FOIA requests are in the spotlight of public interest. To support health agencies the DH request that all FOI submissions are supported with a review from the DH. It is expected that public interest will continue following the Prevent and Channel Duties (“Prevent” and “Channel”) becoming statutory duties from 01 July 2015, when the Counter Terrorism and Security Act 2015 came into force, and the publication of the Counter Extremism strategy in October 2015.

Recent publication of Channel statistics in the media has highlighted the need for high level agreement on what can safely be released into the public domain.

Whilst all health organisations must decide what information is or is not to be released, you should consider the following sections of the Freedom of Information Act (FOIA) : Section 24(1) – National Security; and Section 31(1)(a) - the prevention or detection of crime. Annex A provides information on the exemptions that could be used and the HO advice that may be used and adapted in relation to what impact the release of the information would be likely to have, and what the specific arguments are.

Process – NHS England FOI Request

On receipt of an FOIA request, that could be regarded as falling within the Prevent or Channel categories, the NHS England Prevent strategic lead should be notified and s/he should inform the DH Prevent/Extremism policy team.

DH Prevent/Extremism policy team will inform the HO FOI team that a relevant request has been received.

Each organisation must decide what exemptions apply, though the HO FOI team can assist as necessary by advising which further exemptions under the law may be applied.

DH Prevent / Extremism policy team to inform the NHS England Prevent strategic lead of the HO advice.

NHS England Prevent strategic lead will liaise with the health organisation to support drafting the response.

Process – DH FOI Request

On receipt of an FOIA request by the DH FOI team regarding Prevent and Extremism, the DH Prevent / Extremism policy team should be informed / commissioned to provide a contribution.

HO FOI team to confirm that relevant exemptions under the FOIA should be applied.

DH Prevent / Extremism policy team to draft reply in consultation with the DH FOI team to ensure the correct exemptions are used and the appeals process is included and for clearance at Branch Head / SCS level.

DH Prevent/Extremism policy team to send cleared SCS reply to DH FOI team

NHS England advice

Section 24(1) FOIA – National Security

Section 24(1) provides that information is exempt from disclosure if it is required for the purpose of safeguarding national security. The use of section 24(1) signifies that the information being withheld does not relate to a security body.

National security is not limited to the security of the UK, its military defence and its systems of government. The term is taken to mean that it includes co-operation with other states in combating international terrorism and guarding against actions targeted at other states which may impact on the UK and its citizens. Although there has to be a real possibility that the disclosure would undermine national security, the impact does not need to be direct or immediate.

Guidance issued by the Information Commissioner's Office (ICO) provides that the term "required for the purposes of safeguarding national security" means that the withholding of the information must be reasonably necessary for those purposes. Case law has established that this means there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged. The ICO guidance further provides that, while the impact on our partners may be relevant to the question of whether the exemption is engaged, a public authority can only look at the importance to the UK in withholding the information (although any impact on co-operation with the UK by other countries may be relevant).

The protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence. Action against a foreign state may be capable indirectly of affecting the security of the UK and reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

Section 24 can be engaged to prevent a disclosure that would have adverse consequences for a partner even if disclosure would not result in a direct or immediate risk of attack on the UK or its citizens. This also includes protecting potential targets even if there is no evidence that an attack is imminent.

Section 24 is a qualified exemption and, as such, you are required to assess the public interest in withholding this information against that of its release. We understand that the Prevent and Channel programme is high profile and there is a public interest in understanding how it is operated and to be assured that the programme is achieving its objectives.

However, we also take into account the fact that the specific information being requested in this instance may undermine the UK's national security. Disclosure may open up/reveal detailed information about individuals who have received or are receiving support through Prevent and/or Channel on a regional level. Furthermore, there is a serious terrorist threat to the United Kingdom and disclosing this information into the public domain could put national security at risk by jeopardising or negating the Government's efforts to prevent acts of terrorism and terrorist related crime.

Therefore, if following a full review of the specific information requested you consider that releasing this information would not be in the public interest; as this could possibly put those organisations and individuals at risk. Release of the information requested may divulge information which could be used against the counter-terrorism strategies in the UK, therefore possibly breaching national security: Any sensitive information can be declined under the principles set out in s24 of the FOIA.

Section 31(1)(a) FOIA - the prevention or detection of crime

Section 31(1)(a) covers all aspects of the prevention and detection of crime. It covers information held by public authorities without any specific law enforcement responsibilities, such as NHS England, and can be used as an exemption to withhold the disclosure of copies of information the authority had provided to a law enforcement agency as part of an investigation. It could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes.

NHS England may consider that section 31(1)(a) applies to the information that has been requested, in that releasing specific information would increase fears around the identification of individuals and partners involved in the process – irrespective of whether identification actually takes place.

Section 31(1)(a) is a qualified exemption and as such, organisations are required to consider the public interest in withholding this information. There is a very strong public interest in protecting the ability of public authorities to enforce the law. Furthermore, as outlined above, consideration must be given as to whether disclosing this information would be likely to reduce the effectiveness of Prevent and Channel and as such result in an increased risk of crime and increased risk to the public.

The public interest favouring disclosure assumes that referral locations are in fact in the areas of greatest risk and threat. This assumption may lead to unwarranted wider assumptions being made about the level of radicalisation and terrorist activity taking place in a particular location. This could raise alarm and lead to an increased risk of community tensions and public order issues. In the event that the criteria specified in the section are satisfied, NHS England could decline to disclose.

Section 41 FOIA – information provided in confidence

Section 41 of the FOIA provides for the protection of information provided in confidence. Section 41 prohibits a public body from disclosing information obtained from any other person if the disclosure of this information to the public would constitute a breach of confidence actionable by that or any other person.

When deciding whether the exemption under s41 applies to a request for information, consideration must be given as to whether organisations, partner agencies, and community members have been given reassurances that information submitted will be treated in the strictest of confidence thus forming a duty and obligation of confidence, and capable of success in any breach of confidence action. Releasing specific information could increase fears around the identification of individuals and partners involved in the process – irrespective of whether identification actually takes place. In the event that disclosure of this information could erode trust in the Prevent and Channel process from partners and communities it would be possible to consider that section 41 applies to the information.

Whilst the section 41 exemption is absolute, there is still a need to consider the public interest as a defence lies to an action for breach of confidence on grounds of significant public interest. Some of the issues that are relevant to the public interest are referred to above. Also, where section 41 is sought to be relied upon in respect of non-personal data, there is a need to show that some risk of detriment would be caused by disclosure and that risk of detriment must be evidence based and not based on speculation.

HO advice

First consideration - is information held that would answer all of the questions, if not, specify which questions no information is held for. Sections 24, 31 and 41 of the FOIA are engaged (40 could also be engaged when numbers are low).

The information in monthly reports submitted by regional co-ordinators would reveal a month by month picture over the period requested of the number of referrals by region. The reports do not just provide a number of referrals, other information is included. This information, put together with other information already in the public domain would allow a detailed picture of Prevent and Channel engagement to be drawn across the country. This reveals a pattern across the country which may then be used to undermine the Prevent and Channel programmes.

While it can be argued that it is in the public interest to understand what action the government is taking across the UK to protect communities revealing such a detailed breakdown would undermine the national security of the UK. There are a number of concerns :

- It would undermine our ability to identify and protect those vulnerable people
- It also reveals information about communities which can be misinterpreted and this can be presented in a way which is not conducive to serving the public interest in fostering safe and cohesive communities

Section 24

Revealing the detailed information requested may increase interest in areas which could ultimately lead to the identity of individuals, which may assist others intending to counter such work. Identification of those working locally to deliver the aims and objectives of the Channel and Prevent programme could enable those wishing to counter such work to disrupt delivery of on-going work. The Government's counter terrorism strategy could be undermined and this would lead to the public being at increased risk from terrorism.

This information may also lead to detection of a range of criminal activity, not just direct threats to National Security. Disclosure of the information would enable those intent on engaging in terrorist activities to determine on a National level which areas within the UK may be a vulnerable area to target.

Section 31

Disclosure of the information would hinder the prevention and detection of crime. A fear of crime would be realised because if the terrorists identified more vulnerable areas, they would target and exploit these areas and the public would be in fear of more criminal/terrorist activity occurring. There would be an impact on police and other official resources because if the measures used to detect terrorist activities and safeguard children are disclosed, and some areas are deemed to be a 'softer' target, those intent on criminal activity may move to these areas in order to continue their operations and target vulnerable individuals. There could be local implications with wrongful identification of children and families which in turn could lead to further offences being committed in the community.

Section 41

An actionable breach of confidence may not arise if an individual cannot be identified from the information that has been disclosed. However, if those engaging are told that their information, either their own personal data or the personal data of third parties that they are providing, is given in absolute confidence and will not be disclosed, then we must be sure that there is no risk that anyone could be identified from the information that is released. This is probably the case with top level national statistics on referrals but we believe there is a risk in disclosure at regional level.

Every attempt should be made to abide by the required 20 days, where this is not possible, due to the nature of the request or the significant impact to National security, NHS England, HO and DH should be sighted to the delay and the reasons, the DH can offers support to the agency in reviewing the new timescale confirmed and the relevant information to share. The requestor should be informed of the delay and where possible given a revised deadline for receipt of a response.

Further consideration

Section 38 may be engaged if there is any risk that health officials involved could be identified in response to the question about the number of Prevent referrals where NHS have provided an input and that the disclosure of information about such individuals would or would be likely to endanger their safety.

Section 38(1)(b) FOIA (Health and Safety)

The exemption:

s.38 (Health and Safety)

(1) Information is exempt if its disclosure under the Act would, or would be likely to

(b) Endanger the safety of any individual

Considerations in favour of disclosing the information

As above.

Considerations in favour of withholding the information

Disclosure of information could lead to organisations and individuals who are engaged in the delivery of Prevent and Channel being identified. This work is undertaken to protect individuals who are vulnerable to recruitment, or have already been recruited by extremists and it is often sensitive. Those engaged may be concerned about any risk that their engagement would become public knowledge.

Disclosing this information could put individuals at considerable risk of serious injury or harm from those who support terrorism and seek to damage the United Kingdom's interests and harm individuals within its communities. We must take care not to release information that may jeopardise the health & safety of any individual.

We have determined that the safety of any individual is of paramount importance and that in all circumstances of the case it is our opinion that the public interest clearly favours the non-disclosure of information covered by section 38(1)(b).

Section 17 (Declining disclosure Notification)

It is always necessary to notify applicants when a request is going to be declined. It is also generally necessary to confirm or deny the existence of information, and where information is being withheld, state which exemption(s) has been relied upon and why. It is recommended that when drafting declining disclosure notices, careful consideration should be given to the provisions contained within section 17 and if the authority does not wish to confirm or deny that information is held that must be communicated to the requestor.