

Checklist for the Review and Approval of Procedural Documents

To be completed and attached to any document which guides practices when submitted to the appropriate committee for consideration and approval.

	Yes/No/Unsure	Comments
Title of Document	Yes	Freedom of Information and Environmental Information Regulations Policy and Procedure
Could this policy be incorporated within an existing policy?	No	We need to show that we have a distinct FOI and EIR Policy.
Does this policy follow the style and format of the agreed template?	Yes	
Has the front sheet been completed?	Yes	
Is there an appropriate review date?	Yes	2 years (or when legislation updated if sooner)
Does the contents page reflect the body of the document?	Yes	
Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Yes	Quarterly reporting of compliance to Quality Committee and Risk Committee.
Are all appendices appropriate and/or applicable?	Yes	
Have all appropriate stakeholders been consulted?	Yes	Caroline Hall as responsible Director and SIRO Diane Curbishley as responsible Director and Caldicott Guardian Katy Patrick as Risk Manager Paul Curry as Equality & Diversity Manager Ruth Boughton as Information Governance Manager
Has an Equality Impact Assessment been undertaken?	Yes	
Is there a clear plan for implementation?	Yes	Following ratification, the updated policy will be effective immediately. It will be uploaded to the intranet, and notification of the update will be shared in the weekly staff newsletter.
Has the document control sheet been completed?	Yes	
Are key references cited and supporting documents	Yes	



referenced?		
Does the document identify which Committee/Group will approve it?	Yes	To be approved at Exec in July 2017.
Plans for communicating policy to – staff; practice membership; public (as appropriate)	Yes	Publish on FOI page on Internet and note in weekly staff update that this policy has been updated. Information Governance Training includes section on FOIA and need to familiarise self with policy.

Individual Approval

If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

Name	Caroline Hall Chief Finance Officer and SIRO	Date	11/07/17
Signature			

Individual Approval

If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

Name	Diane Curbishley Director of Nursing & Quality	Date	11/07/17
Signature			





FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY AND PROCEDURE

Version Number	3
Ratified By	Exec Team
Date Ratified	July 2017
Name of Originator/Author	Aryldi Moss-Burke
Responsible Director	Caroline Hall / Diane Curbishley
Staff Audience	All Staff
Date Issued	July 2017
Next Review Date	2 years (or sooner if regulations change)



DOCUMENT CONTROL

Plan Version	Page	Details of amendment	Date	Author
1	All	New policy	6/11/2013	Information Governance Lead
1.1	All	Amendments to policy following Board review	January 2014	Information Governance Lead
2.0	All	Complete policy revision to reflect that FOI responsibility has transferred from the Commissioning Support Unit to HVCCG, translate into latest HVCCG policy template, and to include the Environmental Information Regulations	June 2015	Aryldi Moss-Burke – FOI Officer
3	All	Routine update. Updated to reflect current staffing and amend internal response deadline. Additional reporting committee (Risk Management Committee) added.	June 2017	Aryldi Moss-Burke – FOI Officer



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1. INTRODUCTION

1.1 Freedom of Information Act (2000)

The Freedom of Information Act (2000) (FOIA) was passed into law on 30 November 2000. Section 19 of the FOIA, which obliges all public authorities to adopt and maintain a publication scheme, came into effect for the NHS on 31 October 2003. The full right to request information under the FOIA came into effect for the NHS on 1 January 2005.

The FOIA recognises that individuals have a right to know how public services such as the NHS are organised and managed, how much they cost, which services are being provided, the targets that are set, the standards of services that are expected, and the performance of these services. NHS Herts Valleys Clinical Commissioning Group (HVCCG) is committed to making as much information as possible available to the public as part of its normal business activities.

It sets out in law the rights of any individual or organisation to request and receive information that is held by a public body, sets out the way that requests should be handled, including timescales, and lists a number of exemptions relating to the information that a public authority is obliged to release under the FOIA.

It does not change the right of individuals to protection of their confidentiality in accordance with article 8 of the Human Rights Convention or under the Data Protection Act (1998).

1.2 Environmental Information Regulations (2004)

The Environmental Information Regulations (2004) (EIR) were passed into law on 21 December 2004 and came into force on 1 January 2005.

“Environmental information” covers a wide range of areas including information on air, water, land, flora and fauna, natural sites, and the built environment.

They set out the rights of any individual or organisation to request and receive environmental information that is held by a public body, including the way that requests should be handled, timescales, and a number of exceptions relating to the data that a public authority is obliged to release on request.

It was agreed by Ministers in November 2003 that the EIR and FOIA should be aligned as far as was practicable. This is why the 2 sets of legislation are covered within a single policy.

2. PURPOSE

This policy has been developed to explain the processes by which HVCCG will comply with the Freedom of Information Act (2000) and the Environmental Information Regulations (2004) and how compliance with these pieces of legislation will be audited.



This policy supports the principle that openness and not secrecy should be the norm in public life. This policy supports the values of HVCCG; in particular “making sure we are open, transparent, honest and straightforward”.

3. DEFINITIONS

Absolute Exemption: refers to a FOIA exemption that applies without reference to the Public Interest Test.

Enquirer: refers to the individual or organisation that has requested information. The FOIA and EIR are “applicant blind”; which means that the processes for responding to a request will remain the same, regardless of the nature of the enquirer.

Environmental Information Regulations (2004). These set out the rights of any individual or organisation to request and receive environmental information that is held by a public body, including the way that requests should be handled, timescales, and a number of exceptions relating to the data that should be released on request.

Exception: refers to provisions within the EIR that define types of information that are exempt from disclosure. All exceptions under the EIR are subject to the public interest test.

Freedom of Information Act (2000). This sets out the rights of any individual or organisation to request and receive information that is held by a public body. The FOIA sets out the way that requests should be handled, including timescales, and outlines a number of exemptions relating to the data that should be released under the FOIA.

Information Commissioner’s Office (ICO). Should an enquirer be unhappy with a response that we have sent them, following an internal review, they have the right to refer their request and our answer to that request to the Information Commissioner’s Office for review. Should the ICO determine that we have not released all the information that we should have, they have the power to compel us to do so. The ICO also has the power to levy a fine for continued non-compliance with the statutory deadline for response to requests for information.

Internal Review: refers to the right of an individual to request a review of their request by HVCCG to determine whether or not our original answer met our responsibility to release all non-exempt information. Requests for an FOIA internal review must be made to HVCCG within 20 working days of our issuing our final response to the enquirer. Requests for an EIR internal review must be made to HVCCG within 40 working days of our issuing our final response to the enquirer.

Lord Chancellor’s Department: The Lord Chancellor’s Department is responsible for



the efficient administration of justice in England and Wales.

Publication Scheme: refers to Section 19 of the FOIA, which lists the information that all public authorities must make routinely available to the public without the need to make a formal request for information.

Public Interest Test: refers to a series of questions that must be considered in order to determine whether releasing or withholding information would be in the best interests of the public.

Public Authority: refers to any authority receiving public funding. HVCCG is a public authority. A detailed list of public authorities is included in the FOIA.

Qualified Exemption: refers to a FOIA exemption that can only be applied if the Public Interest Test is applied and falls in favour of withholding the information.

Service: refers to the HVCCG department or directorate that is asked to provide information in order to respond to a request for information.

4. ROLES AND RESPONSIBILITIES WITHIN THE ORGANISATION

4.1 Chief Executive

The Chief Executive has ultimate responsibility for HVCCG's compliance with the FOIA and EIR.

4.2 Chief Financial Officer

In their role as Senior Information Risk Owner, the Chief Financial Officer is responsible for providing advice and guidance to the Freedom of Information Officer, and to carry out any internal reviews where it is not possible for the director of Nursing & Quality to do so (eg. where the director of Nursing & Quality is not available to carry out the review within the timescale, or where the response that has been challenged was originally approved by the Director of Nursing & Quality).

4.3 Director of Nursing & Quality

The Director of Nursing & Quality is responsible for providing advice and support to the FOI Officer in her role as Caldicott Guardian. They are also the nominated person to carry out an internal review of a response to an FOI or EIR enquiry on behalf of HVCCG.

4.4 All Directors

All Directors are responsible for checking and approving for release FOIA and EIR responses within their areas of responsibility.



4.5 Freedom of Information Officer

The FOI Officer will oversee the implementation of this Policy on behalf of the Director of Nursing & Quality, who has delegated responsibility for the Freedom of Information Act (2000) and Environmental Information Regulations (2004) from the Chief Executive.

The FOI Officer is responsible for implementation of the FOIA and EIR within the CCG. This includes day to day processing of all FOIA and EIR requests, and for reporting on HVCCG's performance against our responsibilities.

Where a request for information has been received from a member of the Media or regarding a topic of particular interest to the Media, the FOI Officer is responsible for ensuring that the Communications Team are made aware of the request and the planned response.

4.6 All staff

All staff, including contractors, are responsible for ensuring that any requests for information that cannot be considered to be "business as usual" and therefore fall under the FOIA are forwarded to the Freedom of Information Officer immediately to ensure that HVCCG is able to comply with its responsibility to acknowledge all FOIA requests within 2 working days, and to respond within 20 working days.

All staff, including contractors, that receive a request for information under the EIR, are responsible for ensuring that these requests are forwarded to the Freedom of Information Officer immediately to ensure that HVCCG is able to comply with its responsibility to acknowledge all EIR requests within 2 working days, and to respond within 20 working days.

All staff, including contractors, are responsible for responding to requests for information in order to comply with the FOIA or EIR received from the FOI Officer in a timely manner in order to ensure that requests for information that they have access to can be completed within the statutory timescale of 20 working days.

4.7 Communications Team

The Communications Team, with advice where appropriate from the Freedom of Information Officer and Information Governance Manger, are responsible for ensuring that HVCCG's internet site complies with the Model Publication Scheme detailed in Section 19 of the Freedom of Information Act (2000).

5. KEY ELEMENTS OF THE FOIA / EIR

5.1 Policy statement

HVCCG will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act (2000) Environmental Information Regulations (2004), and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to



Sections 45(5) and 46(6) of the Act.

This policy has been drafted with relevance to all applicable legislation, advice notes from the Information Commissioner, and compared for content with equivalent policies from a number of different NHS Organisations.

This policy has been reviewed by the Director of Nursing & Quality as Caldicott Guardian, the Chief Financial Officer as Senior Information Risk Owner, the Risk Manager, the Information Governance Manager, and the Equality & Diversity Manager.

Information on the Freedom of Information Act (2000), the Environmental Information Regulations (2004), and how to make a request for information to HVCCG is published on the HVCCG website.

This policy will be made available to the public via the HVCCG website.

5.2 Publication scheme.

Under Section 19 of the Freedom of Information Act (2000), all public bodies are required to follow the Model Publication Scheme set out by the Information Commissioner's Office. The Freedom of Information Officer will advise the Communications Team of any changes to publication requirements announced by the Information Commissioner, so that they can update the HVCCG website to remain compliant with that legislation.

5.3 Response process

Step 1: Assessment of request

On receipt of an FOI or EIR request, the FOI lead will assess the request to ensure it is valid and clear. All requests should be submitted in writing and should contain the proper name of the enquirer. Should a request be submitted verbally or under a pseudonym, the Freedom of Information Officer will contact the enquirer to advise them how to submit a valid FOI request.

Where an enquirer is unable by reason of disability to put their request in writing, they are entitled to verbally list their request to the FOI Officer. The FOI Officer will write down their request on their behalf and confirm that they have recorded their request accurately. This will then count as an enquiry in writing for the purposes of the FOIA and EIR. As with all requests, such an enquirer is entitled to indicate their preferred format for a response. Where no preferred format has been indicated, a written response will be provided.

Should a request be unclear, the FOI Officer will contact the enquirer to request clarification. Clarification may include a request to provide a request in English, to ensure that the FOI Officer clearly understands the questions that have been asked.



The 20 working day “clock” does not start until a valid request is received, and clarification (if necessary) has been received.

If clarification is requested but not received within 20 working days, the request will be considered to have been withdrawn. Should the enquirer re-submit their request after this point, it will be treated as a new FOI.

Step 2: Acknowledgement and logging of request

All valid requests for information under the FOIA or EIR should be acknowledged within 2 working days, with an indicated response date (20 working days) stated in the acknowledgement. Requests should be logged and the timeline calculated for responding.

Step 3: Allocation of request for draft response

All valid requests should be forwarded to the relevant service area, who must confirm within 2 working days whether or not they are likely to be able to provide the requested information. HVCCG service areas will be given a total of 7 working days to provide their draft response to the questions to the FOI Officer.

Step 3.1: Request for clarification

If, on attempting to answer the questions, a service realises that they require clarification, they should inform the FOI Officer immediately. The FOI Officer will then request clarification of that question from the enquirer. The 20 working day “clock” will be stopped at this point.

Once clarification is received, Section 1 (3) of the FOIA states that the time for compliance with the request will reset to 20 working days. The FOI Officer should acknowledge the clarified request, quoting the new deadline for response, and forward the clarified request on to the appropriate service leads for response as per Step 3.

Step 3.2: Consideration of potential additional charges

If there would be a charge to supply the information due to the requested medium of response, or the size of the request exceeding the limit of 18 hours work or £450.

Should HVCCG judge that retrieving information in order to answer an FOI request would take over 18 hours (based on a defined fee of £25 per hour) or cost HVCCG more than £450, the FOI Officer will write to inform the enquirer of this and give them the options of withdrawing their request, refining their request to bring it under the cost limit, or continuing with the request after paying an invoice of costs.

Should the enquirer request information for which there is a charge, and agree to pay the charge, the clock “stops” from the statement that a charge would be payable until the date that payment is cleared.



Once payment is received, Section 1 (3) of the FOIA states that the time for compliance with the request will reset to 20 working days. The FOI Officer should acknowledge the payment, quoting the new deadline for response, and forward the request on to the appropriate service leads for response as per Step 3.

Step 4: Drafting of response by FOI Officer

After drafting a response based on the information supplied by the appropriate service leads, the FOI Officer should send the draft response back to those service leads for proofing / comment. Service leads should respond with any comments within 2 working days to either confirm that they are happy with the draft response or to make any amendments.

Step 5: Approval of response by Director

Once the FOI Officer is satisfied that the draft response is accurate and complete, they will forward it on to the Director responsible for the subject area. Where 2 different Directorates have inputted into a response, the FOI Officer should make a judgement as to whether more than one Director should approve the response, or whether a lead Director is sufficient.

Step 5.1: Sharing of response with communications team

Where an enquiry has been received from a member of the media, or the FOI Officer judges that the information requested is likely to generate media interest, the FOI Officer will share the draft response with the Communications Team to enable them to prepare a comment, if necessary.

Step 6: Final response sent to the enquirer

Once the response has been approved by the Director, the FOI Officer will convert it to PDF (unless a different format of response has been specifically requested by the enquirer), and email (or post, if requested by the enquirer) the response. The date of response will be recorded as the day that the email is sent, or the day that the letter is put in the post tray ready to send out.

Partial responses where the information is reasonably available, but is not given within 20 working days count as a breach of the 20 working day deadline.

Partial responses where some of the information requested is not available within the response deadline (eg. Copies of notes of a meeting that have not been ratified by the time the response is due) do not count as a breach of the 20 working day deadline.

All responses to FOIA or EIR requests should contain information on how to make an appeal, should the enquirer be dissatisfied with the response that they receive.

Step 7: Filing

Whilst an FOI enquiry is Progressed, all email correspondence should be retained in the



FOI mailbox (hvccg.foi@nhs.net) in a folder containing the reference number of the FOI request.

All progress relating to FOI requests should be noted on the FOI Log for that year, which is located on the Secure drive here [N:_SECURE\Nursing & Quality\PET\FOI](#). Access to this drive is restricted to named personnel with a specific reason to access the information, in compliance with national information governance regulations and the Data Protection Act (1998).

Once an FOI response has been sent, the email folder of all correspondence should be moved to the “completed” section of the FOI mailbox, but should otherwise be retained for 6 months from the date that the response is sent. This is to enable easy access to all information relating to the FOI request, should an appeal be received.

Copies of all email correspondence, all drafts of and the final response to the FOI request should be saved under the appropriate year, month, and FOI reference number here [N:_SECURE\Nursing & Quality\PET\FOI\Individual HV CCG FOIs by Year](#). Copies of responses will be retained for 3 years from the date that they were issued. Copies of appeals will be retained for 6 years from the date that the appeal response was issued.

Where any documents have been redacted, a full, un-redacted copy of those documents (clearly labelled) should be included in the folder for the record.

5.4 Appeals Process

5.4.1: Internal Review

Should an enquirer be dissatisfied with a response that the Freedom of Information Officer has written to them, they are able to request an internal review. Any complaint about or challenge to the information given in a response to an FOI or EIR request should be treated as a request for an internal review.

Any request for an internal appeal should be made within 20 working days of an FOIA response being sent, or within 40 working days of an EIR response being sent. Any requests for an internal review made after this date are out of time and will not receive an internal review.

Internal Review requests will be investigated and answered by the Director of Nursing & Quality or, where the original response has been approved by the Director of Nursing & Quality, the Chief Financial Officer in their role of Senior Information Risk Owner will conduct the review. All requests for an internal review will be responded to within 20 working days. To ensure that all reviews are carried out independently, support in compiling the review responses will be provided by the Information Governance Manager rather than the FOI Officer.



5.4.2: External Review

Should an enquirer be dissatisfied with a response that they have received, under Section 50 of the FOIA or Section 18 of the EIR, they are entitled to request an external review by the Information Commissioner's Office.

Should an appeal be accepted by the Information Commissioner, the Freedom of Information Officer is obliged to supply the complete audit trail of our response to the Information Commissioner, including un-redacted copies of information that we have redacted.

5.5 Position statements in relation to exemptions

5.5.1: Requests for information prior to the creation of HVCCG

NHS Herts Valleys Clinical Commissioning Group is only able to answer requests for information after its creation in April 2013. Enquirers requesting information prior to April 2013 will be informed that this information is not held, with the reason being that HVCCG did not exist prior to that date. (Exemption S1 of the FOIA).

5.5.2: Vexatious requests

Where a request is received that appears to be patently unreasonable or objectionable, or where complying with a request for information is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress to individuals or HVCCG, this will be designated a "vexatious request". Refusal of such a request falls under exemption S14 (1) of the FOIA. Refusal Notices under Section 1 (1) of the FOIA will be issued by the Chief Financial Officer in their role of Senior Information Risk Owner, rather than the FOI Officer.

5.5.3: Duplicate requests

Where a request is received from a person or organisation that is identical or substantially similar to a previous request AND where a reasonable period of time has not passed between making these requests for information, this will be designated a "duplicate request". A reasonable period of time for most requests is judged by HVCCG to be 12 months. Refusal of such a request falls under exemption S14 (2) of the FOIA.

5.5.4: Data Protection

Where a request relating to numbers of individuals meeting a certain criteria is received (eg. How many employees have been absent due to stress in the past year) and the answer is small enough that individuals could be identified or identify themselves from the answer, an exemption applies in relation to the Data Protection Act 1998. HVCCG will treat any number below 10 to be small enough to make the individuals referred to potentially identifiable (to themselves or others) and apply exemption S40 accordingly.

Where a request relating to names of individual staff members as part of an organisational chart or contacts list is received, HVCCG judges that it is reasonable to



assume that the names of senior staff members are already publically known and can therefore be routinely released without first asking the individuals for explicit permission to release their names. HVCCG judges that the names of junior staff members are likely to not already be publicly known, and therefore they should not routinely be released. "Senior staff member" is judged to be any individual performing a role graded at Band 8a and above or where a role is designated "Head of", "Manager", or "Lead". (exemption S40 of the FOIA)

5.6 Charges and fees

HVCCG will not generally charge for information that it has chosen to publish in its publication scheme. Charges may be levied where HVCCG will incur a cost itself in order to produce information. This includes, but is not exclusive to, copying information on to portable media such as a CD Rom or Flash Drive, paper copies of information, copies of publications for which there is a defined purchase price, and staff hours where the enquirer has requested information that will take more than 18 hours of staff time to retrieve or reproduce and the enquirer has asked to receive the information nevertheless. It does not apply to the time required to consider exemptions or redact the requested material.

HVCCG will not levy unreasonable charges for access to information. Where the cost of providing information is likely to exceed the threshold of £450 / 18 staff hours, the enquirer will be informed and asked whether they wish to proceed with the information request.

Any fees will be invoiced to the enquirer, and copies will not be made until payment has been received. Where an enquirer has agreed to pay costs in order to receive information, the 20 working day "clock" will stop from the point at which HVCCG notifies the enquirer that there would be a charge to receive the information and re-start from Day 0 when cleared payment is received.

An enquiry will be considered to be withdrawn where an enquirer indicates that they do not wish to pay the advised fees in order to obtain the information, OR the enquirer agrees to pay the fees but does not do so within 20 working days of HVCCG sending the invoice OR if the enquirer does not indicate whether they wish to pay the advised fees in order to obtain the information within 20 working days of being sent a response from HVCCG stating that a fee would be payable should they wish to proceed with their request for information.

5.7 Contracts

HVCCG will not enter into any contract that includes contractual terms which purport to restrict the disclosure of information held by HVCCG that we could be expected to disclose under the FOIA, EIR, or other legislation relating to openness. All contracts should include a paragraph stating that we have a duty to disclose information, where asked, under FOIA and EIR legislation.



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

HVCCG will not agree to hold information “in confidence” that is not in fact confidential in nature. Advice from the Information Commission indicates that the exemption provided for in Section 41 only applies if information has been obtained by a public authority from another company or person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by the company or any other person.

It is for HVCCG to disclose information pursuant to the Act and not the contractor. HVCCG will take steps to protect from disclosure by the contractor information which the CCG has provided to the contractor which would be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the CCG will not impose terms of secrecy on contractors.

5.8 Accepting information in confidence from third parties

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

HVCCG will not agree to hold information received from third parties “in confidence” which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

6. MONITORING COMPLIANCE

Performance against the 20 working day statutory response limit is monitored daily by the Freedom of Information Officer, using calculations and reports embedded into the excel spreadsheet mentioned above (see 5.3, Step 7 – filing).

Assurance of our compliance with the 20 working day response target will be through



reporting quarterly to the Quality Committee and the Risk Management Committee.

Should we fail to meet the 100% target in any month, reasons for missing this target and changes that could be made to avoid doing so in future will reported to this committee.

7. EDUCATION AND TRAINING

The Freedom of Information Officer is expected to have a good understanding of the Freedom of Information Act, Environmental Information Regulations, and all applicable exceptions / exemptions. The FOI Officer is also expected to keep up to date with any changes to legislation, and any recent judgements made by the Information Commissioner that may affect our interpretation of the FOIA / EIR.

All staff are expected to have a basic understanding of their obligations under the Freedom of Information Act (2000) and Environmental Information Regulations (2004). This understanding can be gained via face to face training, by reading this policy, or through information governance mandatory training.

8. REFERENCES

Data Protection Act 1998
Freedom of Information Act 2000
Information Commissioner's Office Guidance Notes
Environmental Information Regulations (2004)
Environmental Information Regulations Explanatory Memorandum 2004/3391
Department of Health Code of Practice
Public Sector Contract Regulations
<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

9. ASSOCIATED DOCUMENTATION

HVCCG Information Governance Policy.
HVCCG Being Open Policy

10. APPENDICES

Appendix A - Exempt information under Part II of the Freedom of Information Act (2000)
Appendix B – Exceptions under Part 3 of the Environmental Information Regulations (2004)
Appendix C – FOI / EIR Process Flowchart
Appendix D – Abbreviations
Appendix E – Equality Impact Assessment



Appendix A

Exempt information under Part II of the Freedom of Information Act (2000)

There are two types of class exemption:

- a) Absolute – can be applied without considering the public interest or prejudice test.
- b) Qualified – cannot be applied unless it is in the balance of public interest not to disclose the 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 Act are:

- Section 21 – information already reasonably accessible to applicant by other means
- Section 23 – information supplied by, or relating to, bodies dealing with security matters
- Section 32 – information contained in court records
- Section 34 – information that is subject to Parliamentary privilege
- Section 40 – personal information (where disclosure may contravene the Data Protection Act 1998)
- Section 41 – information provided in confidence
- Section 44 – prohibitions on disclosure

The **qualified** exemptions under the Act are:

- Section 12 – prohibitive cost / time (completion of the request for information is likely to take 18 or more hours or cost more than £450 to produce). Should the enquirer wish to pay the excess costs, information should be released following receipt of payment.
- Section 14 (1) – vexatious requests
- Section 14 (2) – duplicate request
- Section 22 – information intended for future publication
- Section 24 – disclosure would or would be likely to adversely affect national security
- Section 27 – disclosure would or would be likely to adversely affect international relations
- Section 28 – disclosure would or would be likely to adversely affect relations within the UK
- Section 29 – disclosure would or would be likely to adversely affect the economy



- Section 30 – disclosure would or would be likely to adversely affect investigations and proceedings conducted by public authorities
- Section 31 – disclosure would or would be likely to adversely affect law enforcement
- Section 33 – disclosure would or would be likely to adversely affect audit functions
- Section 35 – disclosure would or would be likely to adversely affect formulation of government policy
- Section 36 – disclosure would or would be likely to prejudice effective conduct of public affairs (note, the only person authorised to apply this exemption is the Chief Executive).
- Section 37 – communications with Her Majesty
- Section 38 – disclosure would or would be likely to adversely affect physical or mental health or safety.
- Section 39 – environmental information (requests for environmental information should be answered using the Environmental Information Regulations 2004).
- Section 42 – disclosure would or would be likely to contravene legal professional privilege
- Section 43 – disclosure would or would be likely to prejudice commercial interests



Appendix B

Exceptions under Part 3 of the Environmental Information Regulations (2004)

All exceptions under the EIR are subject to the public interest test. All exceptions 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.

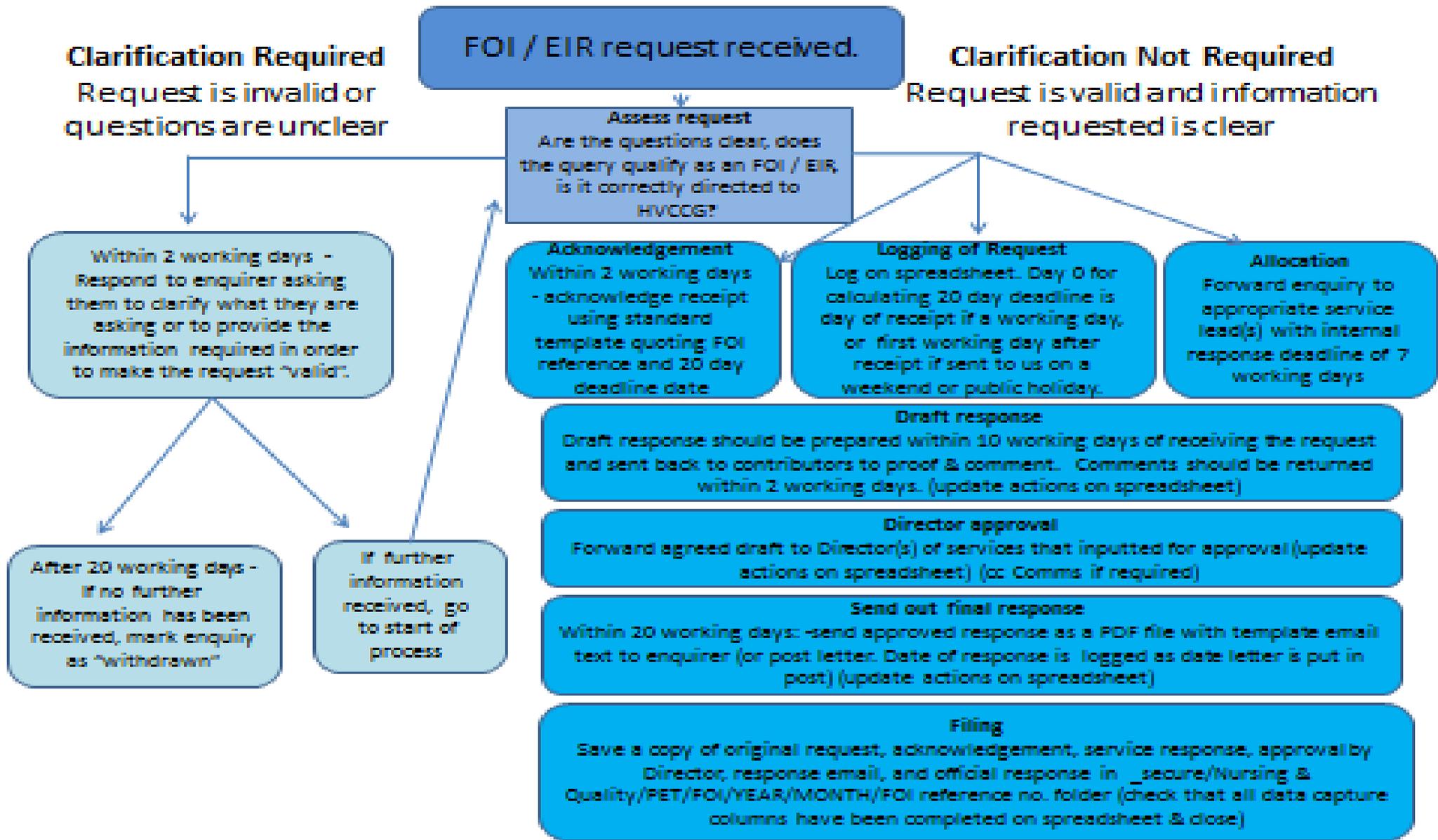
- 12.4a – information not held
- 12.4b – request is manifestly unreasonable
- 12.4c – request for information is formulated in too general manner, despite advice and assistance having been given by the public authority to help the enquirer refine the request.
- 12.4d – information requested is still in draft form or is incomplete
- 12.4e – request involves the disclosure of internal communications
- 12.5a – disclosure would or would be likely to adversely affect international relations, defence, national security or public safety
- 12.5b - disclosure would or would be likely to adversely affect the course of justice, the ability of a person to receive a fair trial, or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature
- 12.5c – information is protected by intellectual property rights
- 12.5d - disclosure would or would be likely to adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law
- 12.5e - disclosure would or would be likely to adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
- 12.5f - disclosure would or would be likely to adversely affect 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 obligations to supply it to that or any other public authority AND
 - 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
- 12.5g - disclosure would or would be likely to adversely affect the protection of the environment to which the information relates
- 13 – disclosure would contravene the Data Protection Act 1998, or any of the data protection principles



- 15 – a Minister of the Crown may certify that a refusal to disclose information under regulation 12 on the basis that disclosure would or would be likely to adversely affect national security AND it is not in the public interest to disclose the information. In this circumstance, the exemption can be treated by HVCCG as an absolute exemption, as the public interest test has already been applied.
- 17(1) – request relates to information contained in a historical record that is not a transferred public record AND the Lord Chancellor (or appropriate Northern Ireland Minister) has judged that the information should be withheld AND it is not in the public interest to disclose the information.
- 17(2) – request relates to information contained in a transferred public record, AND the Lord Chancellor(or appropriate Northern Ireland Minister) has judged that the information should be withheld AND it is not in the public interest to disclose the information



Appendix C
Response Flowchart for FOI and EIR requests



Appendix D
Abbreviations

CD Rom – Compact Disc – Read Only Memory
DPA – Data Protection Act 1998
EIR – Environmental Information Regulations (2004)
FOIA – Freedom of Information Act (2000)
FOI – Freedom of Information
HVCCG – NHS Herts Valleys Clinical Commissioning Group
ICO – Information Commissioner’s Office
SIRO – Senior Information Risk Owner



Equality Analysis – Full Equality Impact Assessment

Title of policy, service, proposal etc being assessed:

Freedom of Information and Environmental Information Regulations Policy and Procedure

What are the intended outcomes of this work?

Compliance with legislation. Policy includes actions taken to ensure that compliance with legislation does not negatively impact any groups

How will these outcomes be achieved?

The Policy clearly states that the legislation is “applicant blind”, meaning that all valid requests for information are treated equally, regardless of the source.

The Process includes adaptations that will be made to help protected groups to submit requests.

Who will be affected by this work?

All persons that wish to make requests for information via this process.

Evidence

What evidence have you considered? Against each of the protected characteristics categories below list the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic).

This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on page 9 of this template.

If you are submitting no evidence against a protected characteristic, please explain why.

Age

No impact

Disability

Additional assistance offered within process for those that are not able to submit a request for information in writing as per the legislation.

Font of policy / process is clear and unjustified, without serifs, to improve legibility. Where an

enquirer identifies a visual impairment (eg. request for editable copy of the response to be read using reading software or where the request for information has been written in a large font suggesting the enquirer would prefer a response in a large font), these adaptations are made.

Gender reassignment (including transgender)

No impact.

Marriage and civil partnership

No impact.

Pregnancy and maternity

No impact.

Race

Process includes adaptations to help applicants who do not speak English to submit a valid request for information.

Religion or belief

No impact.

Sex

No impact.

Sexual orientation

No impact.

Carers

No impact.

Other identified groups

Process includes ability to respond to an email address rather than a fixed address, which ensures that enquirers without a fixed abode are able to make and receive replies to requests for information.

Engagement and involvement

How have you engaged stakeholders with an interest in protected characteristics in gathering



evidence or testing the evidence available?

No.

How have you engaged stakeholders in testing the policy or programme proposals?

No engagement has been carried out.

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

No engagement has been carried out.

Summary of Analysis

Considering the evidence and engagement activity you listed above, please summarise the impact of your work.

N/A.

Now consider and detail below how the proposals could support the elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups (the General Duty of the Public Sector Equality Duty).

Eliminate discrimination, harassment and victimisation

The process ensures that enquirers are equally able to access information.

Advance equality of opportunity

The process goes beyond the expectations of legislation, to ensure that protected groups are equally able to access information using the legislation.

Promote good relations between groups

No additional actions taken.

Next Steps

Please give an outline of what you are going to do, based on the gaps, challenges and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be



addressed through further consultation or research. This is your action plan and should be SMART.

Adaptations have been made as described above to ensure that all protected groups have equal access to information.

How will you share the findings of the Equality analysis? This can include sharing through corporate governance or sharing with, for example, other directorates, partner organisations or the public.

This assessment will be published on the website with the policy document.

