



# **Freedom of Information Policy**

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## 1 Policy Statement

NHS England will use all appropriate and necessary means to ensure that it complies with the legislation and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Freedom of Information Act.

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## 2 Introduction

### 2.1 Background

- 2.1.1 The Freedom of Information (FOI) Act was passed in 2000 and replaces the Open Government Code of Practice that has been in place since 1994. The Act gives the public a general right of access to almost all types of recorded information held by public authorities. The Act came into full effect on 01 January 2005.
- 2.1.2 The Act places a statutory obligation on all public bodies to publish details of all recorded information that they hold and to allow the general public to have access to this information on request, except where an exemption applies e.g. personal or other confidential data.
- 2.1.3 NHS England recognises the importance of the Act and it will ensure that appropriate systems are put in place to publicise what recorded information is kept by NHS England and how this information can be accessed on request by the general public.

### 2.3 The FOI Act

- 2.3.1 The main features of the FOI Act are:
- A general right of access to information held by public authorities.
  - Sets out exemptions from the duty to provide information.
  - Place a requirement on public authorities to exercise discretion; they may have to determine not only whether an exemption applies but also the extent to which it may apply (some exemptions are conditional and depend on where the balance of 'public interests lie').
  - Make arrangements in respect of costs and fees.
  - Places a duty on public authorities to adopt publication schemes.
  - Public authorities must make arrangements for enforcement and appeal.
  - Places a duty to provide advice and assistance to people who wish to make, or have made requests for information, and
  - Outlines Codes of Practice.
- 2.3.2 The FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. It does not oblige public authorities to retain information which is no longer useful to the authority.
- 2.3.3 The FOI Act is overseen by the Information Commissioner who has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.

## 2.4 Definitions

2.4.1 In the context of FOI, 'information' is defined as each item of material held by NHS England in paper or electronic form. This includes but is not limited to, all draft documents, agendas, minutes, emails, diaries, handwritten notes and all other recorded information.

2.4.2 For the purpose of this policy, 'Policy Team(s)' are defined as NHS England directorates, teams or departments to which an FOI request has been commissioned or those who may be involved in the management of an FOI request or potential response.

## 3 Scope

3.1 All staff of NHS England are within the scope of this policy, including:

- Central Team;
- Regional Teams;
- All Commissioning Support Units;

Staff working in or on behalf of NHS England (this includes contractors, temporary staff, embedded staff, PCSE staff, secondees and all permanent employees).3.2 This policy applies to all staff working in, or on behalf of NHS England. This includes contractors, temporary and agency staff, secondees and all permanent employees.

## 4 Roles and responsibilities

### 4.1 Organisational Responsibilities

4.1.1 NHS England will:

- Ensure that there is always one person with overall operational responsibility for FOI available within standard business hours.
- Publish and maintain a Publication Scheme.
- Provide relevant FOI training for all staff with FOI responsibilities.
- Provide clear lines of reporting and supervision for compliance with FOI.
- Develop and maintain clear procedures for recognising and responding to requests for information under FOI in a timely manner to meet the requirement to respond within 20 working days
- Support a comprehensive Records Management Strategy that compliments FOI.

## 4.2 Corporate Responsibilities

- 4.2.1 NHS England recognises its responsibility under the Act to provide the general right of access to information held. Overall responsibility for this policy is with the Chief Executive.
- 4.2.2 The Freedom of Information Manager is responsible to oversee the implementation of this Policy and will establish systems, procedures and operational processes to support this function as necessary.
- 4.2.3 The FOI Act makes it an offence to alter, deface, block, erase, destroy or conceal any information from disclosure which is held by the NHS England.

## 4.3 Director Responsibilities

4.3.1 Central, Local, Regional and Sub-Regional Team Directors are responsible for:

- Checking the accuracy and content of FOI response where deemed necessary
- Advising the FOI Team of requests which may be subject to an exemption (or, if they have reason to believe that the disclosure may be used in a contentious or malicious way) and ensuring that they nominate a senior person within the team, department or directorate to act as a single point of contact for the FOI request.
- Ensuring Directorate records and information is created, maintained, retained and disposed of in accordance with all NHS England Records Management Policies, procedures and processes to enable easy identification and retrieval when required
- Maintaining up to date information within the Publication Scheme
- Acting appropriately to recommendations generated by the FOI Team
- Ensuring information held within a directorate is provided to the FOI team in line with timescales outlined by the FOI team, including any opinion and supporting detail if there is a concern that the information should not be disclosed
- Ensuring written requests for information within the directorate that should be dealt with under the Act are referred immediately to the FOI Team
- Providing assistance to the FOI Team with investigations into appeals and complaints

4.3.2 All Directors are responsible for ensuring that any records created and maintained by their respective Directorate are registered on the organisations Information Asset Register, maintained by the Corporate Information Governance Team, and for the regular review and upkeep of that entry.

## 4.4 National Director Responsibilities

In addition to those listed above, National Directors of NHS England are responsible for formally recommending to the Chief Executive, where deemed

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applicable, the application of a Section 36 exemption (Prejudice to the effective conduct of public affairs) under the FOI Act.

#### 4.5 Executive Manager Responsibilities

- 4.5.1 Staff operating at a Very Senior Manager level within NHS England must make provision to approve draft responses to FOI requests relating to their area, team, directorate or department. This may be delegated to a member of staff within their team.
- 4.5.2 All efforts must be made by all NHS England staff to consider the recommendations of an Internal Review, though employees of NHS England at a Very Senior Manager level may supersede the recommendations of the panel if deemed appropriate.

#### 4.6 Employee Responsibilities

- 4.6.1 Penalties can be imposed upon NHS England and staff for breaching the FOI Act.
- 4.6.2 All employees have a legal duty to preserve formal records. Employees must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices are not offences in themselves, however they may lead to an inability to comply with requirements of the Freedom of Information Act.
- 4.6.3 All employees will, through appropriate training and responsible management:
- Observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records.
  - Provide the National Freedom of Information Team with full and appropriate responses to FOI requests within the timescales outlined by the FOI team.
  - Undertake any formal FOI training which NHS England deems to be relevant to that persons role
  - Be aware that ultimately the general public may have access to any piece of information held within NHS England and must pay due regard to how they record information as part of their normal duties.
  - On receipt of Freedom of Information request, which does not need to specify that it is a 'Freedom of Information' request, immediately notify the NHS England Freedom of Information Team. This can be done by forwarding correspondence to [england.contactus@nhs.net](mailto:england.contactus@nhs.net)
  - Understand that breaches of this Policy may result in disciplinary action, including dismissal.

## 5 Managing Requests for Information

- 5.1.1 It is the responsibility of the Freedom of Information Manager to ensure that NHS England has sufficiently efficient processes to support the FOI agenda and assure that all requests are managed correctly.

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- 5.1.2 NHS England has existing processes for providing information to members of the public and other persons which are not superseded by this policy. Requests for information generated as part of NHS England's existing processes may be answered as 'business as usual' if it is deemed reasonable to do so.
- 5.1.3 Requests for information outside of 'business as usual' processes, other legislative access regimes or those specifically defined as FOI requests will be managed by the FOI Team.
- 5.1.4 Each department of NHS England may be required to nominate an FOI representative to liaise with the FOI Team in the provision of information as required.
- 5.1.5 Final draft responses to FOI requests must be approved for issue by a member of staff operating at a Very Senior Manager (VSM) level, a deputy in their absence or a member of staff with delegated authority.
- 5.1.6 Amendments to VSM approved draft responses may only be made by the Chief Executive, a member of the Chief Executives Team with delegated FOI authority or a National Director.

## 5.2 Defining a Valid FOI Request

- 5.2.1 As defined in Section 8 of the FOI Act, to meet all the requirements of a valid FOI request, a request must:
- Be in writing
  - State the name of the applicant and a valid address for correspondence (e-mail address is valid)
  - Describe the information requested
  - Be received in a legible form
  - Be capable of being used for subsequent reference
- 5.2.2 The term 'in writing' covers requests submitted by letter and electronic form, including those sent via Social Media (e.g. Twitter and Facebook) and the request does not have to make any direct reference to the Act, or be the sole or main theme of the requester's correspondence.
- 5.2.3 When determining whether or not a name and/or address is valid, where a requester's name is an obvious pseudonym or only includes a part of their real name (e.g. Joe@123 or Bloggs@456) then the request will only be valid if their real name is visible elsewhere in the body of the request (e.g. Signed from Joe Bloggs)
- 5.2.4 A request also becomes valid when:
- The Freedom of Information Act is mentioned in correspondence
  - When information cannot be supplied under another legislative access regime or Business as Usual criteria within 20 working days

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5.2.5 NHS England will not recognise a request as being valid if it has been copied (e.g. 'CC'd' into an email addressed to someone other than NHS England) into a request or piece of correspondence from an individual to another person or public authority.

### 5.3 Time Limits for Compliance with Requests

5.3.1 NHS England has systems and procedures to ensure that it complies with the duty to confirm or deny whether it holds requested information, and to provide a response to requests within the statutory timeframe of twenty working days from the point of a valid request being received.

5.3.2 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, the period from when the applicant received the fees notice to when they paid the fee is disregarded for the purposes of calculating the twentieth working day following receipt.

5.3.3 NHS England may choose to apply an exemption to any information, to refuse a request if it is vexatious or repeated, or exceeds the appropriate limit for costs of compliance. A formal refusal notice must be issued within twenty working days informing the applicant of this decision.

### 5.4 Means by which information will be conveyed

5.4.1 When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means;

- The provision to the applicant of a copy of the information in permanent form or in another form deemed to be acceptable by the applicant
- The provision to the applicant of a reasonable opportunity to inspect the record containing the information, and
- The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant

NHS England, so far as is reasonably practicable, will give effect to that preference.

5.4.2 In determining whether it is reasonably practicable to communicate information by a particular means, NHS England will consider all the circumstances, including the cost of doing so. If it is determined that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the applicant will be notified of the reasons for its determination and will provide the information by such means as which it deems reasonable in the circumstances.

### 5.5 Refusal of Requests

5.5.1 The duty to confirm or deny whether information is or is not held does not arise if:

- An exemption applies under section 2 of the Act
- A fees notice has been issued and the fee has not been paid
- An estimate demonstrates that the cost of compliance will exceed the appropriate limit
- It can be demonstrated that the request is repeated or vexatious

5.5.2 Upon refusal of a request for information, the applicant will be informed of the reasons for this decision within twenty working days, and at the same time, will be informed of the procedures for making a complaint about the discharge of the duties of NHS England and their rights in relation to FOI.

5.5.3 If NHS England is reliant upon an exemption under part 2 of the Act, relating to the duty to confirm or deny, a notice will be issued within twenty working days, which will state that fact and specify the exemption being applied and why it applies.

## 5.6 Redaction of Information

5.6.1 Redaction is a process which is carried out to make information unreadable or to remove exempt information from a document. This is achieved by blocking out individual words, sentences or paragraphs or by removing whole pages or sections of information prior to the release of the document.

However, if so much information is deemed to be exempt and the document becomes illegible the entire document should be withheld.

5.6.2 When responding under FOI you must ensure you state what exemption the information has been redacted under and must be done for every exemption.

5.6.3 All redactions must be carried out by the team/staff member/Information Asset Owner of the requested information.

5.6.4 A 'clean' (requested information which has not been redacted) copy of the requested information must be provided to the FOI team as well as the redacted copy

5.6.5 Help with redactions can be found on the NHS Intranet at:  
<https://nhsengland.sharepoint.com/TeamCentre/TCO/infogov/Pages/Redaction.aspx>

## 5.7 Internal Review

5.7.1 Applicants may ask NHS England to conduct an Internal Review of its handling of FOI requests. Internal Reviews consider decisions made, rationale, public interest, timeliness and all other relevant aspects of the request.

5.7.2 The FOI team will identify and communicate with all relevant staff that were active in the original request and invite them to review the handling of the request.

5.7.3 NHS England will conduct Internal Reviews within 20 working days or 40 working days where a review is shown to be particularly complex.

5.7.4 Applicants who may remain unsatisfied with the outcome of an Internal Review will be advised that they may exercise their right to appeal to the Information Commissioner, and subsequently to an Information Tribunal.

## 5.8 Vexatious/Repeat requests

5.8.1 Should an applicant make a 'vexatious' or 'repeated' request for identical or substantially similar information, NHS England will inform the applicant in writing that it will not fulfil the request. When responding in this manner NHS England will offer assistance to the individual, by indicating why they consider the request is vexatious or repeated. NHS England will also indicate what recourse the applicant has if they are unhappy with this position.

## 5.9 Datasets

5.9.1 A dataset is a collection of factual information in electronic form (e.g. statistics or figures) that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation

5.9.2 Clause 92 of the Protection of Freedoms Bill amends the FOI Act meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use at the point of release under the Open Government Licence, and where reasonably practicable, they will be published in a reusable format.

## 5.10 Environmental Information Regulations

5.10.1 Requests for information to NHS England which relate to the environment will be processed in accordance with the Environmental Information Regulations 2004. This includes, but is not restricted to, all information about the impact on the elements and measures that might affect the environment. This applies to information in all formats which is held by NHS England.

5.10.2 The statutory time limit for responses to requests for information under the Environmental Information Regulations is 20 working days, though this may be extended by a further 20 working days if the request is deemed to be complex or voluminous in nature.

## 5.11 Round Robin Requests

5.11.1 Round Robin requests are those which are generic in nature and are designed to be 'catch all' requests submitted to a number of similar organisations.

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5.11.2 All written requests for information received by NHS England may be FOI requests. Upon receipt of a circular, a questionnaire or any other ‘round robin’ request for information, NHS England will:

- Work with those organisations to whom the request has been submitted to ensure a consistent and cohesive approach is applied
- Identify which questions are requests for information
- Provide, if necessary, advice and assistance that is reasonable in the circumstances
- Provide a response in line with the requirements of the Act

5.11.3 Where questions invite comment or opinion not held on record, NHS England will, dependent on the question, advise the applicant the information is not held, or if appropriate to do so, provide the comment or opinion as part of its routine ‘business as usual’ functions.

## 5.12 Meta Requests

5.12.1 A Meta request is a request for recorded information about the management and/or handling of a previous FOI request.

5.12.2 NHS England will process all Meta requests as individual FOI requests as outlined in this Policy and associated procedures.

## 5.13 Requests relating to potential media interest

5.13.1 NHS England will not distort its process or compile a response to an FOI request differently if it is felt that the response will prompt media interest, though the NHS England Media Team will be sighted on the response to be aware of the media interest in the topic.

## 5.14 Formal Complaints

5.14.1 All formal complaints received via the NHS England complaints process about the discharge of the duties of NHS England under the Act will be handled in the same manner and using the same procedures as any other formal complaint which NHS England receives.

## 5.15 The Role of the Information Commissioner

5.15.1 The Information Commissioner Office (ICO) is an independent public authority which upholds Information Rights in the UK. Applicants who are not satisfied with the outcome of their FOI request may ask the ICO to review how NHS England has performed in response to the complainant’s request.

# 6 Duty to Provide Advice and Assistance

6.1.1 NHS England has a duty to provide advice and assistance to persons making FOI Requests in line with Section 16 of the FOI Act and the Section 45 Code

of Practice. NHS England will endeavour to undertake all steps it deems to be reasonable to achieve this.

## 6.2 Identity of the applicant and reasons for the request

6.2.1 The FOI Act does not mandate that the identity of an applicant must be disregarded, though the ICO has advised that, as the Act enables disclosure of information on grounds of public interest, requests ought to be made applicant and motive blind when responses to requests are formulated by organisations.

On this basis, NHS England will assess all requests on the understanding that applicant identity is not a relevant consideration during the lifecycle of the request management process.

6.2.2 Possible exceptions to this include, but are not limited to:

- A request is deemed to be repeated
- The applicant has made a request for their own personal data
- Aggregated costs in line with the Fees Regulations
- Release would be likely to endanger the health and safety of the requester or any other person
- Prejudice may be caused by releasing the information either to the requester or to any other person (prejudice based exemptions only)
- Situations where NHS England is confident that the identity of the applicant means the requested information is reasonably accessible to that person by other means, and is therefore exempt by way of Section 21 of the Act
- If disclosure of third party personal data would be contrary to Data Protection principles and/or regulations to release the information to the general public

## 7 Transferring Requests for Information

7.1.1 NHS England may only transfer a request when it does not hold, or does not substantially hold the information requested.

7.1.2 Holding of information includes the holding of a copy of the record produced or supplied by another person or body, but does not extend to holding a record on behalf of another person or body.

NHS England may not hold the information requested and the applicant will be advised as soon as possible in these cases.

7.1.3 NHS England may believe that the information requested is held by another public authority, in such cases it will either;

- Contact the applicant informing them of this and provide contact details of that authority and advise the applicant to contact the relevant authority, or
- Contact the authority on the applicants' behalf and transfer the request.

- 7.1.4 Should NHS England consider it appropriate to transfer the request, consultation will take place with the other authority, to determine if it holds the information and whether it should transfer the request.
- 7.1.5 The request may be transferred to the other authority without further consultation with the applicant where NHS England believes that the applicant would not object to such a transfer.
- 7.1.6 Should NHS England believe that the applicant would object to the transfer, the transfer will only take place with the consent of the applicant.
- 7.1.7 All transfers of requests will take place as soon as is practicable and the applicant will be informed as soon as this has been done.

## 7.2 Consultation with Third Parties

- 7.2.1 NHS England recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where the information is subject to the common law duty of confidence or where it constitutes Personal Data as defined by the Data Protection Act 1998. Unless an exemption applies in relation to any particular information, NHS England will be obliged to disclose the information in response to a request.
- 7.2.2 Where disclosure of information cannot be made without the consent of a third party and would constitute an actionable breach of confidence such that an exemption would apply, NHS England will consult that third party with a view to seeking their consent, unless such consultation is not practicable.
- 7.2.3 NHS England will undertake consultation where:
  - The views of the third party may assist in determining whether an exemption under the Act applies, or
  - The views of the third party may assist in determining where the Public Interest lies.
- 7.2.4 NHS England may consider that consultation is not appropriate where the cost or amount of time and/or effort of consulting with the third party would be disproportionate. In such it will consider the most reasonable course of action to take in light of the requirements of the Act. Consultation will be unnecessary where:
  - NHS England does not intend to disclose the information
  - The view of the third party can have no effect on the decision as to whether to disclose the requested information.
- 7.2.5 Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative, NHS England will, if it considers consultation appropriate, consider that it would be sufficient to only some of the organisations.

7.2.6 If a third party does not respond to consultation it does not relieve NHS England of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for NHS England, not the third party, to determine whether or not information should be disclosed. A refusal to consent to disclosure by a third party does not automatically mean information will be withheld.

### 7.3 Information provided by other organisations

7.3.1 If the response to an FOI request belongs to or contains a significant amount of information provided by another organisation, NHS England will consider, on a case by case basis, whether to consult with that organisation. The organisation will apply this process when considering whether an exemption may be applicable.

### 7.4 Accepting Information in Confidence from Third Parties

7.4.1 NHS England 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 its functions and it would not be otherwise provided.

7.4.2 NHS England will not agree to hold information ‘in confidence’ which is not in fact confidential in nature.

### 7.5 Staff Names and Details

7.5.1 It is acknowledged that as a public authority, some justification exists for the disclosure of employee names and contact details.

7.5.2 NHS England will release the names of Board members, Directors and all staff at a ‘Very Senior Manager’ pay grade upon request, unless a valid exemption applies. Names and details of staff published on the NHS England website will also be provided without gaining additional consent.

7.5.3 Consent will be sought from all other staff to release their information where it is reasonably practicable to do so. The FOI Manager will decide when it may or may not be reasonably practicable to obtain consent.

7.5.4 Requests for salary information will be answered, if applicable, by providing ‘Agenda for Change’ pay bands. Where a person falls outside of Agenda for Change pay bands, their salary will be given in £5,000 bands. Requestors will be referred to the Annual Report if requesting information regarding Executive Director’s salaries.

## 8 Exemptions and the Public Interest Test

8.1.1 NHS England will consistently encourage the release of recorded information to the public. Sometimes it is not appropriate or practicable for recorded information held by NHS England to be disclosed and there are 23 exemptions (**See Appendix A**) under the FOI Act which may be applied to withhold

information from disclosure. There are two types of Exemption: Absolute and Qualified.

- 8.1.2 Absolute exemptions are not subject to a Public Interest Test, however qualified exemptions are subject to a Public Interest Test prior to their reliance to determine whether to disclose the requested information or to withhold it based upon the greater public good.
- 8.1.3 The Public Interest Test is set out in section 2 of the FOI Act. It provides that, even where the information meets the requirements of a qualified exemption, the information may only be withheld where, *“in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”*.
- 8.1.4 A Public Interest Test requires NHS England to consider the competing public interest factors in disclosure and the maintenance of secrecy by weighing of competing information and circumstances. NHS England will conduct Public Interest Tests without bias, in line with guidance set by the ICO and with a view to release of the requested information unless a clear margin of public interest in maintaining the exemption exists.
- 8.1.5 The strength of the factors both in favour of disclosure and maintaining the exemption will be assessed on a case-by-case basis.
- 8.1.6 Section 36 of the FOI Act enables information to be made exempt if its disclosure may inhibit the ability of an authority to conduct its business effectively.
- 8.1.7 Reliance upon this exemption requires the approval of the Chief Executive in receipt of a recommendation to do so by a National Director.

## 9 Public Sector Contracts

- 9.1.1 NHS England will, when entering into contracts, refuse to include contractual terms which attempt to restrict the disclosure of information it holds relating to the contract beyond the restrictions permitted by the Act.
- 9.1.2 When entering into contracts with non-public authority contractors, NHS England 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. NHS England must reject such clauses wherever possible. Where it is exceptionally necessary to include non-disclosure provisions in a contract, NHS England will investigate the option of agreeing with the contractor a schedule of the contract which clearly identified information which should not be disclosed.
- 9.1.3 NHS England will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act.

9.1.4 NHS England must disclose information pursuant to the Act, not the non-public authority contractor. Steps must be taken to protect from disclosure by the contractor, information which NHS England has provided which would clearly be exempt from disclosure under the Act.

## 10 Re-use of information

10.1.1 Regulations apply in respect of the 're-use' of information where NHS England holds the intellectual property/copyright of information and where re-use has been requested by a body that is not a public authority.

10.1.2 The regulations around re-use require organisations to publish details of information available for re-use. Information that NHS England publishes as part of its Publication Scheme can be considered as the list of information available for re-use. Any published document can be re-used without charge, provided NHS England is quoted as the source and retains copyright.

10.1.3 Requests for re-use will be granted or denied by the Freedom of Information Manager in consultation with NHS England Subject Matter Experts. Following the completion of a response to a request for information that is not covered by the Publication Scheme, consideration will be made as to whether this information should become part of the Publication Scheme.

10.1.4 If a request to re-use information provided by another organisation is received, NHS England will advise applicants of this and will be directed to that organisation.

## 11 Fees and re-use charges

11.1.1 NHS England is able to charge a fee for dealing with a request, in line with the 'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004'.

11.1.2 In line with these regulations, when determining whether the cost of the work to respond is estimated to be less than £450, NHS England is not able to charge a fee. Where the cost exceeds this amount, NHS England will correspond with the applicant either to reduce the requirement (and therefore cost) below the threshold or to agree a fee. If an agreement cannot be reached NHS England may exempt the requested information from disclosure.

## 12 Publication Scheme

12.1.1 The FOI Act makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner.

12.1.2 NHS England has modified and adopted the 'approved model' issued by the Information Commissioner. The scheme is divided into 7 sections:

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- The services we offer
- Who we are and what we do
- How we fit into the NHS structure
- Organisational structure
- How we make decisions:
- Our policies and procedures
- List and registers

12.1.3 The Publication Scheme of NHS England can be found on its website.

## 12.2 Disclosure log

12.2.1 In addition to proactively updating its Publication Scheme, NHS England will maintain an online disclosure log that identifies the main types of requests received and the responses given.

12.2.2 A disclosure log lists responses to requests made to us under the FOI Act and EIR which are felt to be of wider public interest.

12.2.3 NHS England will assess each response to determine if it should be published in the disclosure log and will make a judgement accordingly by typically using the following criteria:

- Demonstrable evidence that key decisions have been made within NHS England
- If disclosure passes the Public Interest Test.
- Where NHS England has spent a significant amount of public money or disclosed information around resources.

12.2.4 NHS England will not publish any requests from an applicant for information in relation to their personal data.

## 13 Distribution and Implementation

### 13.1 Distribution Plan

13.1.2 This document will be made available to all Staff via the NHS England intranet site.

### 13.2 Training Plan

13.2.1 A training needs analysis will be undertaken with Staff affected by this document.

13.2.2 Appropriate training will be provided to staff as necessary based on the findings of that analysis.

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## 14 Monitoring

- 14.1.1 Compliance with this Policy will be monitored by the Corporate Information Governance Group in consultation with the FOI Manager, together with independent reviews by both Internal and External Audit on a periodic basis.
- 14.1.2 The Freedom of Information Manager is responsible for the revision and updating of this document.

## 15 Associated documentation

- 15.1.1 The following documents will provide additional information:

REF NO	DOC REFERENCE NUMBER	TITLE	VERSION
		Information Governance Policy	3.0
		Data Protection Policy / DPA Subject Access Request Procedure	3,0
		Confidentiality Policy	3.0
		Document and Records Management Policy	1.0
		Information Security Policy	3.0
		Acceptable Use of ICT Policy	1.0
		Information Sharing Policy	2.0
		Freedom of Information Procedure	1.0
		Corporate Records Retention and Disposal Schedule	1.0

- 15.1.2 Refer to any procedural documents which might be linked or cross relate in some way.

## 16 Version Control Tracker

Version Number	Date	Author Title	Status	Comment/Reason for Issue/Approving Body
1.0	April 2013	Information Governance Senior Manager	Approved	New Policy
1.01	30/06/2015	Freedom of Information Manager	Approved	Policy Review
1.02	15/05/2018	Freedom of Information Manager	Approved	Policy Review

## APPENDIX A - Exempt Information under Part 2 of the Act – The Exemptions

There are two types of class exemption identified within the Freedom of Information Act 2000:

(a) Absolute – which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

(b) Qualified – by the public interest test, which require the public body to decide whether it is in the balance or 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 is reasonable to withhold.

Absolute Exemptions:

- **Section 21 - Information accessible to the applicant by other means**  
Information which is already in the public domain, such as that which is published in the Publication Scheme
- **Section 23 - Information supplied by, or relating to, bodies dealing with security matters**  
This applies only to information supplied by or relating to security bodies
- **Section 32 - Court Records**  
Information that is only held as part of the documentation for a court, tribunal case or a statutory inquiry
- **Section 34 - Parliamentary Privilege**  
Where disclosure would infringe the privileges of either House of Parliament
- **Section 40 - Personal Information**  
Information which is personal to the person making the request
- **Section 41 - Information provided in confidence**  
An 'actionable' breach of confidence where disclosure would constitute a breach of confidence which would lead to legal action being taken
- **Section 44 - Legal Prohibitions on Disclosure**  
Where disclosure of information is prohibited by any other law or regulation, or if it would be a contempt of court

Qualified Exemptions:

- **Section 22 - Information intended for future publication**  
Where publication was planned at the time the request was made, for example, an annual report, or the results of an investigation. Applicants will be advised when the information will be published and how it can be obtained.
- **Section 24 - National Security**  
Information that is not covered by Section 23 under the Absolute Exemption category above, but exemption is needed to safeguard national security. This requires a certificate signed by a Minister of the Crown.

- **Section 26 - Defence**  
Information likely to prejudice national defence or the activities or our armed forces, or those of allies
- **Section 27 - International Relations**  
Information likely to prejudice the United Kingdom's international relations or interests, for example, information obtained in confidence from another State or international court.
- **Section 28 - Relations within the United Kingdom**  
Information likely to prejudice relations between the United Kingdom Government, Wales, Scotland or Northern Ireland
- **Section 29 - The economy**  
Information likely to prejudice the economic interests of the United Kingdom or part of the United Kingdom, or the financial interests of the government
- **Section 30 - Investigations and proceedings conducted by public authorities**  
Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.
- **Section 31 - Law enforcement**  
Information not covered by Section 30 above, and which is likely to prejudice a wider range of investigative activities.
- **Section 33 - Audit**  
Applies to information held by public authorities which have functions relating to audit (for example, the National Audit Office), or which examine the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions.
- **Section 35 - Formulation of Government Policy**  
Information held by a government department or the National Assembly for Wales, relating to the creation of government policy.
- **Section 36 - Prejudice to the effective conduct of public affairs**  
Information that may inhibit the ability of the authority to conduct its business effectively should that information be made freely available in the public domain - Use of this exemption requires sign off from the Chief Executive in receipt of a recommendation to do so by a National Director.
- **Section 37 - Communication with Her Majesty etc. and honours**  
This applies to information that relates to communications with Her Majesty, members of the Royal family or Royal household, or the conferring of honours, for example, recommendations for individuals to receive an honour in the New Year's Honours List.
- **Section 38 - Health and Safety**  
Information that would, or would be likely to, endanger the physical health, mental health or safety of an individual.
- **Section 39 - Environmental Information**  
Exempted under Freedom of Information but the request will be dealt with in accordance with the Environmental Information Regulations.
- **Section 40 - Personal information about a third party**  
Information which is personal to the applicant or someone other than the person making the request

OFFICIAL

- **Section 42 - Legal Professional Privilege**

This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings, for example advice provided by a lawyer to his client, or information relating to ongoing legal proceedings.

- **Section 43 - Commercial Interests**

Such as trade secrets, and to information which if disclosed could harm/prejudice the commercial interests of any person, including the authority holding it.

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