Freedom of Information Policy

This is a new policy

<table>
<thead>
<tr>
<th>Brief Description (max 50 words)</th>
<th>This policy sets out how the NHS Castle Point and Rochford Clinical Commissioning Group, and all of its staff members will deal with FOI requests. This is to ensure that requests are processed in a timely fashion, in line with the law.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Target Audience</td>
<td>Governing Body members, subcommittee members and all staff working for, or on behalf of the CCG.</td>
</tr>
<tr>
<td>Action Required</td>
<td>To be approved then for dissemination to all staff.</td>
</tr>
</tbody>
</table>
EQUALITY IMPACT ASSESSMENT
This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This Policy is applicable to every member of staff within the CCG irrespective of their age, disability, sex, gender reassignment, pregnancy, maternity, race (which includes colour, nationality and ethnic or national origins), sexual orientation, religion or belief, marriage or civil partnership.

This policy progresses the following Authorisation Domains and Equality Delivery System (tick all relevant boxes).

<table>
<thead>
<tr>
<th>Clear and Credible Plan</th>
<th>Collaborative Arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clinical Focus and Added Value</td>
<td>Engagement with Patients/Communities</td>
</tr>
<tr>
<td>Commissioning processes</td>
<td>Leadership Capacity and Capability</td>
</tr>
<tr>
<td>Equality Delivery System</td>
<td>NHS Constitution reference</td>
</tr>
</tbody>
</table>
Associated Policy Documents

<table>
<thead>
<tr>
<th>Reference</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Data Protection &amp; Confidentiality Policy</td>
</tr>
<tr>
<td></td>
<td>IM&amp;T Security Policy</td>
</tr>
<tr>
<td></td>
<td>Information Governance Policy</td>
</tr>
<tr>
<td></td>
<td>Information Lifecycle Management Policy &amp; Strategy</td>
</tr>
<tr>
<td></td>
<td>Pseudonymisation and Information Safe Havens Policy &amp; Procedure</td>
</tr>
<tr>
<td></td>
<td>Information Sharing Policy</td>
</tr>
<tr>
<td></td>
<td>Subject Access Request &amp; Access to Health Records Policy</td>
</tr>
<tr>
<td></td>
<td>Safe Haven Policy</td>
</tr>
</tbody>
</table>

Contents

1. Introduction ........................................................................................................... 4
2. Scope .................................................................................................................... 4
3. Key Responsibilities ............................................................................................ 5
4. Process, Public Interest Test and Exemptions ................................................ 6
5. Requests for an Internal Review .......................................................................... 8
6. Personal Information and Records ..................................................................... 10
7. Re-Use Regulations and Copyright .................................................................... 10
8. Charging and the Appropriate Limit .................................................................. 11
9. Duty to Advise and Assist .................................................................................. 11
11. Dissemination ..................................................................................................... 12
Appendix 1 ~ Publication Scheme .......................................................................... 13
Appendix 2 ~ Environmental Information Regulations 2004 (EIR) ........................ 14
Appendix 3 ~ FOI Request Process & Timescales .................................................. 15
Appendix 4 ~ Summary of the FOI Fee Regulations 2004 .................................... 17
Appendix 5 ~ Important Contacts .......................................................................... 21
Appendix 6 ~ Exemptions under Part II of the Freedom of Information Act 2000.... 22
1. Introduction

The Clinical Commissioning Group (CCG) is committed to openness and transparency in the conduct of all of its business. It has a duty to comply with all aspects of the Freedom of Information Act 2000 (FOIA).

The FOIA came into force at the beginning of 2005, and gives individuals or organisations rights of access to information held by public bodies. The FOIA provides individuals or organisations with the right to request information held by a public authority.

The FOIA supplements and complements the Subject Access provisions of the Data Protection Act (DPA) 1998, which gives individual’s access to their personal information held by organisations. For further information about access to personal or health records please see the CCGs Subject Access & Access to Health Records Policy.

In addition, there are also regulations which provide access to environmental information; these are the Environmental Information Regulations 2004 (EIR). Requests under EIR will be treated as a FOI requests as per this policy, except where the regulation drastically differ. Please see Appendix 2 for further information regarding the EIR and differences with the FOIA.

The FOIA gives access to all other information, as such has a wider remit than the DPA. However, together the two Acts along with the EIR will enable public access to most records held by the CCG.

The Re-use of Public Sector Information Regulations 2005 are also contained within this Policy. Please see Section 7 for further information regarding the re-use of CCG information in accordance with the Re-use of Public Sector Information Regulations 2005.

2. Scope

This Policy applies to those members of staff that are directly employed by the CCG and for whom the CCG has legal responsibility. For those staff covered by a letter of authority/honorary contract or work experience the organisation’s policies are also applicable whilst undertaking duties for or on behalf of the CCG. Further, this Policy applies to all third parties and others authorised to undertake work on behalf of the CCG.

This Policy provides a framework for the CCG to ensure compliance with the FOIA, Re-use of Public Sector Information Regulations 2005 and EIR.

The CCG will, wherever possible, make all information we hold available.

The aim of this Policy is to:
ensure all Freedom of Information (FOI) requests are dealt with consistently and receive a high quality response however and wherever the contact is made;

ensure that the CCG complies with all relevant regulations, laws and guidance;

provide clear routes for members of the public to make contact with the organisation so that they can appropriately request documents and information;

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

ensure that the necessary internal structures are in place for the FOIA to be complied with;

ensure staff at all levels are aware of their responsibilities with regards to the FOIA;

ensure timescales are met; and

ensure the Governing Body of the CCG is fully informed on the operation of the FOIA and its implications for the organisation.

The CCG will not normally charge for the provision of information that is provided as the result of an FOI request. However, there may be occasions where this is necessary. Please see Section 8 for details concerning our charging Policy.

3. Key Responsibilities

The CCGs FOI publication scheme, FOI policy, and the processing of FOI requests is provided by the NHS Central Eastern CSU.

While the CCG is ultimately responsible for decisions made regarding FOI requests, the Freedom of Information team of the NHS Central Eastern CSU has day to day responsibility for the Act and ensuring that deadlines are met.

The Chief Clinical Officer has overall responsibility for ensuring the CCG complies with the FOIA.

The Senior Information Risk Owner will act as the CCGs appropriate ‘qualified person’ in relation to the application of Section 36 of the FOIA (an exemption in relation to the prejudice to the effective conduct of public affairs).

The CCG Governing Body is responsible for approving the CCG FOI Policy.

The Senior Information Risk Owner will act as FOI lead at Governing Body level to:

- ensure organisational compliance with the FOIA;
- have lead responsibility for FOIs and the CCGs Publication Scheme;
- act as the champion for FOI awareness throughout the organisation;
- ensure that the general public and CCG staff have access to information about their rights under the FOIA;
ensure that a process is in place to assist with investigations into complaints and appeals;
and ensure that sufficient resources, processes and structures are in place to administer FOI.

The CSU Freedom of Information Lead will provide leadership and advice in terms of responding to requests, the use of exemptions and where necessary gain legal advice as to whether it is appropriate to disclose the information requested.

Senior Officers of the CCG are responsible for ensuring that information held by them and their teams is up to date and accessible, and for ensuring a timely response is made to enquiries under the FOIA.

The CCG FOI Liaison will be the link between the CSU FOI Team and the CCG staff. Where the CSU FOI team does not have a contact in relation to who manages services/processes within the CCG the request will be sent to the liaison to disseminate as appropriate within the CCG, and they will be the point within the CCG to which information is returned before sending to the CSU FOI Team to compile the response.

All staff are responsible for ensuring enquirers receive accurate information about how to apply for information should it not be available online, and for ensuring that any information requested from them in relation to an enquiry under the FOIA is supplied within the timescales allowed.

4. Process, Public Interest Test and Exemptions

All requests for information with FOIA should be made in writing, in the form of a letter, fax or email. The enquirer should clearly identify the documents or information that they require, and supply a return address (which can be an email address) for the delivery of the information.

The FOIA only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.

The CSU will manage FOI requests for the CCGs. For a summary of this process with the CCGs, please see Appendix 3.

Where a request does not give sufficient detail to enable the CCG to process the request, the CSU will contact the applicant and advise them of the clarification that is required to make their application more detailed, and offer help with their request.

When clarification is sought from the requester the 20 working day deadline is restarted from when the clarification is received. The CCG will endeavour to ask for this clarification at the earliest opportunity. If, when sought, clarification is not received within a reasonable timescale (i.e. 3 months), the request will be considered cancelled, and the requester will be notified of this.
The CSU will acknowledge receipt of the request within the first two full working days, and provide the documents/information, or an explanation about why the information has not been disclosed within 20 full working days. A working day is defined by the Information Commissioner’s Office (ICO) as one day within the working week (Monday to Friday), excluding all UK Bank Holidays and any other Public Holidays granted.

It might sometimes be necessary to extend this timeframe, for example to assess the public interest in releasing information. In these circumstances the CSU will respond within 40 working days, and notify the requester. Appendix 3 outlines the CSU timescales for handling FOI requests.

Under the FOIA, information may be withheld if it is covered by an exemption. There are two categories of exemptions: qualified and absolute. Information covered by a qualified exemption can only be withheld if the public interest in withholding the information is greater than the public interest in releasing it. Information covered by an absolute exemption is not subject to this public interest test and can be withheld. The public interest test can be summarised as follows:

*In the majority of cases where an exemption applies, to some or all of the information requested, the authority will then have to consider whether it must override the exemption because it is in the public interest to release the information. This public interest test involves considering the circumstances of each particular case and the exemption that covers the information. The balance will lie in favour of disclosure, in that information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it.*

When the information requested falls under an exemption that is subject to the public interest test, the CSU FOI team will notify the provider of that information and the CCG FOI Liaison, both for awareness and to assist with assessing under the public interest test.

The ICO categorises qualified and absolute exemptions, as laid out in Appendix 6.

The FOIA itself should be consulted for more detailed information on each exemption. If there is any doubt over whether an exemption applies the decision will be escalated to the CSU Freedom of Information Lead responsible and legal advice gained where necessary.

If the CCG intend to withhold the information, there is a duty to explain this decision. This should be done within 20 working days, however if the CCG needs to consider the public interest test they are entitled to a reasonable extended period. In this case, within the 20 working day period we should provide an estimate of when we expect to reach a decision and stick to this unless we have a good reason not to. If, while trying to reach a decision, we realise that our original estimate is unrealistic we
must keep the applicant informed. We will keep a record of any instances where we fail to meet our estimates.

If the CCG does not hold the information that has been requested, but believes that some, or all of the information requested, is held by another public authority, we will endeavour to advise the requester. In most cases this will mean:

- contacting or formally responding to the applicant and informing him or her we do not hold the information, but that the information requested may be held by another public authority;
- suggesting that the applicant reapply to the authority which we believe may hold the information; and
- providing him or her with contact details for that authority.

Where a document contains some information that is disclosable and some that is exempt, it should still be released, with the exempt information carefully blocked out (redacted).

Exempt information on hard copies should be concealed with a black marker pen and then double photocopied to ensure that it cannot be read. The exempt information should be blocked out from electronic versions and then saved as a new document. All redacted information must be accompanied by an explanation.

We are not required to provide assistance to vexatious or repeated requests. A request would be classed as repeated if we had already responded to the same or very similar request from the same applicant in a recent time period (i.e. within 3 months). A vexatious request can be identified as a request which subjects the organisation to inconvenience, harassment or expense and could be sent by one person or a number of persons working together.

It is also important to consider whether any third parties may be affected by the disclosure of information, for example if the information contains personal data or potentially commercially sensitive information. In these cases we must obtain consent wherever possible.

If the third party refuses to consent, under the FOIA this does not always mean that the information should be withheld. Similarly, consent is not required if exemptions do not apply as the information will have to be disclosed regardless.

5. Requests for an Internal Review

Although a public body is not legally required to have an internal review procedure for FOI requests, the Section 45 Code of Practice makes clear that it is good practice to have a review procedure in place. The internal review procedure will ensure applicants are able to ask the CCG for an internal review if they are dissatisfied with the response to a request or the handling of a request.

Internal reviews should be conducted by a person who was not party to the original decision on whether to release the information requested.
An internal review must be a fair and impartial review of the decisions made during the original discussion of whether to release the information.

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

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

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

- reviews should be completed within 20 working days of receiving the complaint;
- for complex complaints, or where it is necessary to reconsider the public interest test – reviews should be completed within 40 working days of receipt;
- if it appears that the deadline will not be met then the applicant must be advised as soon as possible and a second deadline set by which a response will be sent.

The internal review can have two outcomes; the original decision is reversed or the original decision is upheld.

Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided to them. Where the original decision is upheld the applicant must be told and made aware of their further rights of appeal to the ICO.

The outcome of the internal review must be recorded.

The procedure on receiving a request for an internal review is as follows:

<table>
<thead>
<tr>
<th>Person Responsible</th>
<th>Action to be taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSU FOI lead</td>
<td>If complaint cannot be handled on an informal basis then request for internal review to be acknowledged within five working days along with details of internal review procedure</td>
</tr>
<tr>
<td>FOI lead</td>
<td>Independent person to be assigned to conduct internal review and relevant papers forwarded to them</td>
</tr>
<tr>
<td>Head of IG, plus CCG</td>
<td>Independent panel to review the original decision and discuss with</td>
</tr>
</tbody>
</table>
All complaints regarding FOI requests should be sent to the CCG in the first instance, either by email or post, following the same route that a FOI request would. Contact details can be found in Appendix 5.

To complain to the Information Commissioner, please see the ICO web page at: [http://www.ico.gov.uk/complaints/getting/complain.aspx](http://www.ico.gov.uk/complaints/getting/complain.aspx)

### 6. Personal Information and Records

Requests for personnel, staff, or other personal records relating to the enquirer or third parties will be managed outside of this FOI Policy.

Requests for health related information about identifiable, living or deceased, individuals will be dealt with in accordance with the Data Protection Act (DPA) 1998 or Access to Health Records Act 1990, accordingly.

All such requests will be managed under the Subject Access & Access to Health Records Policy.

### 7. Re-Use Regulations and Copyright

If there are concerns about information reaching a wider audience, without sufficient briefing relating to the circumstances surrounding the production of the data/document, or its context, then the CCG may indicate that the information is being supplied only for the use of the initial enquirer, and cannot be re-used or reproduced in any format, or relayed on to other people, without the consent of the CCG.

CCG information supplied under the FOIA continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988.
For other forms of re-use, for example publishing the information, you would need the permission of the organisation or person who owns the copyright. In the case of information produced by government departments and agencies, you can re-use the information under the Open Government Licence. For information about this, please see: http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm

If, however, the copyright is identified as belonging to somebody else, you will need to apply for permission.

For information about how to obtain permission from a third party, please go to Intellectual Property Office’s website at: http://www.ipo.gov.uk/

Publishing the information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2005 and will require permission of the CCG and may require a fee.

8. Charging and the Appropriate Limit

The CCG may, in some circumstances, charge for releasing information in accordance with regulations.

A public authority is not obliged to comply with a request for information if it estimates that the cost of determining if it holds the relevant information, locating and retrieving the information and, where necessary, extracting the information from a document would exceed the Appropriate Limit (see Appendix 4 for further details).

The Appropriate Limit is set down under Section 12 of the FOIA (£450 for public authorities). This figure is calculated at a rate of £25 per hour and therefore any request that exceeds 18 hours of combined work will normally be rejected.

Wherever possible, the CSU will work with the enquirer to try to reduce the amount of work involved so that some of the information can be provided. In certain circumstances the CCG can offer the enquirer the option of paying for the information. In this instance, the enquirer would have to pay the full cost.

9. Duty to Advise and Assist

All public bodies have a duty to advise and assist applicants in requesting information (under Section 16 of the FOIA). This could involve assisting applicants in making their requests by suggesting what information is available and/or contacting applicants who have made broad requests in order to specify information required so that it may be identified.

10. Process for Monitoring, Effective Implementation and Review

The CSU will continually review and monitor the handling and logging of information requests.
The CSU Freedom of Information Team will produce monthly performance reports, which will provide information regarding the number of requests received, types of requesters, how requests have been responded to and their compliance with the time limit.

This Policy will be reviewed every two years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

The CSU will endeavour to make sure that everyone is able to access the information it holds fairly and openly regardless of race, social exclusion, gender, disability, age, sexual orientation or religion/belief.

11. Dissemination

This Policy will be available to all staff and members of the public via the CCGs website.
Appendix 1 ~ Publication Scheme
The Information Commissioner’s Office (ICO) defines seven classes of information that a public authority should be making available via their Publication Scheme. These classes are listed below.

1. **Who we are and what we do**: Organisational information, locations and contacts, constitutional and legal governance.
2. **What we spend and how we spend it**: Financial information relating to projected/actual income & expenditure, tendering, procurement and contracts.
3. **What our priorities are and how we are doing**: Strategy and performance information, plans, assessments, inspections and reviews.
4. **How we make decisions**: Policy proposals and decisions; Decision making processes, internal criteria and procedures, consultations.
5. **Our policies and procedures**: Current written protocols for delivering our functions and responsibilities.
6. **Lists and registers**: Information held in registers required by law and other lists and registers relating to the functions of the CCG.
7. **The services we offer**: Advice and guidance, booklets and leaflets, transactions and media releases; a description of the services offered.

The CCG Publication Scheme

The ICO guidance is clear that an organisation should not create information purely for the purposes of completing the model publications scheme. As a young organisation, we do not expect to hold all the information suggested in the ICO guidance for some time.

Below, we set out the information we envisage proactively publishing over the coming months. By continually challenging ourselves to release as much information as possible, in as timely and accessible way as possible, we can ensure that the body of information in the public domain grows in line with our growth as an organisation.

The CCG will publish and make available the following information:

- the minutes and papers of CCG Formal Meetings (Governing Body), and further information about upcoming meetings;
- information about our Governing Body and senior team, and further information about the CCGs organisational design;
- press releases and corporate communications;
- a disclosure log of summary information that the CCG releases in response to FOIA enquiries;
- basic information about our key partners as we build up relationships with stakeholders;
- information about the CCGs procurement processes and live contracts & tenders;
- internal policies and equalities analysis;
- the CCG business plan; and
- an annual report to cover our work (including our financial accounts).
Appendix 2 ~ Environmental Information Regulations 2004 (EIR)

An EIR request may be made verbally as well as in writing and will be a request for environmental information if it is information in written, visual, aural, electronic or any other material form on:-

a) the state of the elements of the environment – e.g. air, atmosphere, water, soil, land, landscape and natural sites such as wetlands, coastal and marine areas, biological diversity and the interaction of these elements;

b) factors affecting (or likely to affect) the environment – including energy, noise, radiation, waste, emissions, discharges and other releases into the environment;

c) measures – such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to above;

d) reports – on the implementation of environmental legislation;

e) economic analyses – including cost benefit and other analyses and assumptions used within the framework of measures and activities referred to in (c); and

f) the state of human health and safety – including the contamination of the food chain, conditions of human life, cultural sites and built structures insofar as they are or may be affected by the state of the elements of the environment.

Under the EIR, information is held by the public authority if it has been produced or received by it; is held by another person on its behalf; or which the public authority holds on behalf of a third party.

The EIR places various rights and duties on public authorities which include:

- A duty to actively disseminate environmental information;
- A duty to make information available on request. Information requests must be answered within 20 working days, unless the public authority reasonably believes that it is impracticable to answer the request in that timescale due to its complexity and volume, in which event the public authority may have 40 days in which to provide the information.
- A duty to provide advice and assistance to applicants;
- A right to charge for information provided. Under the EIR, there is no cost limit beyond which information requests need not be answered. The EIR states that a charge may not exceed “an amount which the public authority is satisfied is a reasonable amount”.

Exceptions – Under the EIR there is an express presumption in favour of disclosure. However the public authority can refuse to disclose the information if it would adversely affect the following matters:-

a) international relations, defence, national security or public safety;

b) the course of justice, ability of a person to receive a fair trial or ability of a public authority to conduct a criminal or disciplinary inquiry;

c) intellectual property rights;

d) the confidentiality or proceedings of any public authority where such confidentiality is protected by law;
Appendix 3 ~ FOI Request Process & Timescales

**Process**

1. **FOI Request received into organisation**
2. **Forward request to CCG FOI inbox**
3. **Acknowledge within 48 hours**
4. **Whole request sent to CCG FOI Liaison for awareness.**
   - **For each question:** Assess where information may be held and forward request to CCG FOI Liaison/CSU Service to consider and provide information.
5. **If request has been sent to multiple Essex CCGs (round robin), we will notify to enable collaborative responses**
6. **Information gathered, or notification that information is not held by CCG, and returned to FOI team via CCG FOI inbox within **10 working days**. If any information is potentially exempt, raise with FOI team for consideration & discussion.
7. **Consideration of exemptions and checking completeness of answers**
8. **If request comes from MP, Councillor, or Media:** Response sent to communications team for awareness and approval prior to release.
9. **All response to have CCG FOI Liaison cc’d in, for CCG awareness of what has been released**

**Legend / Key**
- **Info held**
- **Info not held**
- **We do not hold this information**
- **Respond to request**
- **Details of exemption and how it applies**

---

Policy ref:
Version 0.1
Approved:
Review Date:
### Timescales

<table>
<thead>
<tr>
<th>Day 0</th>
<th>Request received into organisation via email, post or website</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IMMEDIATELY</strong></td>
<td>Request forwarded to CCG FOI inbox. If postal request, scan and forward to CCG FOI Inbox</td>
</tr>
<tr>
<td>Within 2 working days</td>
<td>Request acknowledged and deadline provided to requester</td>
</tr>
<tr>
<td>Within 2 working days</td>
<td>Request forwarded to CCG Corporate Business Manager, or CSU Service Lead, to disseminate and obtain information.</td>
</tr>
<tr>
<td><strong>Within 10 working days</strong></td>
<td>Information returned to CCG Corporate Business Manager or CSU Service Lead, then forwarded to CCG FOI Inbox</td>
</tr>
<tr>
<td>10, 15, 17 &amp; 19 working days</td>
<td>If information not yet received:</td>
</tr>
<tr>
<td></td>
<td>Reminder sent to appropriate person, escalated to SIRO &amp; Heads of Department as deadline draws nearer.</td>
</tr>
<tr>
<td><strong>Within 10 – 20 working days</strong></td>
<td>Exemptions considered. If complex public interest test considerations then notify requester that extra time is needed and estimate response (no longer than 40 days)</td>
</tr>
<tr>
<td></td>
<td>Approval for release gained via communications where necessary</td>
</tr>
<tr>
<td>Within 20 working days</td>
<td>Response sent to requester</td>
</tr>
<tr>
<td><strong>Within 40 working days</strong></td>
<td>If complex public interest test was considered response sent to requester</td>
</tr>
</tbody>
</table>
Appendix 4 ~ Summary of the FOI Fee Regulations 2004

The following summary is in line with Statutory Instrument 2004 No. 3244:

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

Introduction
Under the FOIA, the Regulations governing the appropriate limit, and the fees that can be charged for requests for information, came into force, along with the Act's new rights of access to information, on 1 January 2005.

The appropriate limit
The 'appropriate limit', for the purposes of Section 12 of the Freedom of Information Act 2000 and Section 9A of the Data Protection Act 1998, has been set at £600 for central government and Parliament; and £450 for other public authorities, including local authorities, police, the health service and education.

The appropriate limit has to be applied, separately, to the duty under Section 1(1)(a) of the FOIA to confirm or deny whether the information is held. It is only if it would cost more than the appropriate limit to confirm or deny, by itself, that the obligation to do so is removed.

It will often be immediately obvious that the cost will not exceed the appropriate limit. But if a request is more complicated and likely to take longer to answer, the public authority will have to consider on a case by case basis if it wishes to estimate whether the appropriate limit would be exceeded in advance.

The Regulations set out what may be taken into account when public authorities are estimating whether the appropriate limit has been exceeded. The costs are limited to those that an authority reasonably expects to incur in:
- determining whether it holds the information requested,
- locating the information or documents containing the information,
- retrieving such information or documents, and
- extracting the information from the document containing it (including editing or redacting information).

The authority may take into account the costs attributable to the time that persons are expected to spend on these activities.

In order to achieve consistency, all public authorities should use the same hourly rate when estimating staff-time costs, regardless of the actual costs. The hourly rate is set at £25 per person per hour. If the costs attributable to the time spent on these activities, at £25 per person per hour, would cost more than the appropriate limit of £450 to answer, the public authority is not obliged to answer it.
But, if a request would cost less than the appropriate limit to answer, it cannot charge for the areas listed above under what may be taken into account in relation to the request.

An authority may not take into account any costs other than those set out in the Regulations. In particular it may not take account of the expected costs of:

- the time taken to check that a request for information meets the requirements of the FOIA;
- considering whether the information requested should be withheld in reliance on an exemption (this includes any costs incurred through seeking legal advice about whether exemptions apply);
- considering whether a request is vexatious or a repeated request;
- obtaining authorisation to send out the information;
- the time taken to calculate any fee to be charged; or
- advice and assistance provided under Section 16 of the FOIA.

Requests costing less than the appropriate limit

If a request would cost less than the appropriate limit to answer, and there is no other basis on which it may be refused or otherwise dealt with, the public authority must comply with the request. It cannot charge for the areas listed above under what may be taken into account in relation to the request. The fees that can be charged are much more restricted than when the appropriate limit is exceeded, with the public authority bearing the majority of the costs of the request.

Authorities can develop their own policies on charging fees below the maximum, with the discretion to charge a lower fee or waive fees altogether. In cases where the appropriate limit has not been exceeded, the maximum fee that could be charged is based on an authority's estimate of the costs that it reasonably expects to incur in:

- informing the person making the request whether it holds the information; and
- communicating the information to the person making the request.

This includes the costs of:

- putting the information in the applicant's preferred format, so far as this is reasonably practicable, as set out in Section 11(1) of the Act;
- reproducing any document containing the information, e.g. photocopying or printing; and
- postage and other forms of communicating the information.

When the appropriate limit has not been met, it is only these costs which may be taken into account for the purposes of calculating the maximum fee. In addition, no account can be taken of staff time in undertaking these activities, nor of the costs involved with calculating whether the appropriate limit would be exceeded. For example, if the appropriate limit was not exceeded and you were providing information to an applicant:
you could not charge for the time taken to locate, retrieve or extract the information or to write a covering letter to the applicant explaining that the information is being provided,

you could charge for the cost of paper when photocopying or printing the information and printing the covering letter, as well as the cost of postage.

Public authorities have a duty to give effect to an applicant's preferred format for receiving information, so far as this is reasonably practicable. This may include:

- summarising the information;
- providing the applicant with a copy (for example by photocopying or printing);
- allowing the applicant reasonable opportunity to inspect a record containing the information;
- producing material in an applicant's preferred format (for example by putting it onto CD); or
- translating information into a different language at the request of the applicant.

If a public authority regularly works in the language requested and has an in-house translation service, it should consider waiving any translation costs. However, public authorities are not obliged under the Act to translate documents if this would not be ‘reasonably practicable’.

Authorities can charge for the actual costs incurred, but charges are expected to be reasonable. For example, in most cases, photocopying and printing would be expected to cost no more than 10 pence per sheet of paper.

In some cases, authorities may be required by other legislation to produce information in a particular format or a different language at no additional cost (and should not therefore charge for it as part of complying with the FOIA). For example, the requirement to make reasonable adjustments for disabled people under the Disability Discrimination Act 1995 could require an authority to produce material in a format such as Braille or on audio tape.

Where the maximum fee would be very low, less than £5 or £10, public authorities are encouraged to consider waiving the fee altogether.

If a public authority proposes to charge a fee for answering a request, it must issue a fees notice to the applicant, stating the fee. The fees notice should usually be issued before any costs are incurred in preparing to communicate the answer to the request. When an authority issues a fees notice, the applicant has three months to pay. If payment is not forthcoming, the authority does not have to answer the request (Section 9(2) of the Act).

Requests for information have to be answered promptly, and in any event not later than the twentieth working day following date of receipt. However, where the authority has given a fees notice to the applicant, the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating the twentieth working day following the date of receipt.
If the actual cost of answering the request turns out to be greater than the estimated cost charged by way of a maximum fee, the authority must bear the additional cost. The FOIA does not allow for authorities to issue another fees notice to cover the additional cost. But if the actual cost of answering the request proves to be less than the fee charged, the public authority should consider refunding the excess money to the applicant.

Requests costing more than the appropriate limit
If requests would cost more than the appropriate limit to answer, the public authority is not obliged under Section 1 of the FOIA to answer it. However, Section 16(1) requires the authority to ‘provide advice and assistance, and see if the question could be refined to a more manageable level, or resubmitted in part, to bring it below the appropriate limit’.

Fees and information that is exempt under the FOIA
Information that is exempt through one of the exemptions listed in Part II of the Act is not affected by the FOI fees regime. Information is (absolutely) exempt if it is ‘reasonably accessible’ to the applicant. Information will always be considered reasonably accessible if:

- the authority is obliged to communicate it to the applicant under some other Act, or
- the information is made available in accordance with the authority’s Publication Scheme.

Authorities can charge fees outside the terms of the Regulations for providing information through the Publication Scheme, provided that this is made clear as part of the scheme. For example, this could include set fees for specific pieces of information, or information about how any fees would be charged (such as a set rate per hour of work, a scale of charges, or the market rates for the work).

VAT
The rules apply equally to requests that are above or below the appropriate limit. The key determining factor as to whether VAT is charged is whether the information is available from another source that is not a public authority.

- If an authority was asked for information, and the information was only available from that authority or another public authority, any fees charged would not attract VAT.
- If an authority was asked for information that was available from another source that is not a public authority, any fees would attract VAT.
- Fees charged for information that is provided in accordance with a public authority’s Publication Scheme will attract VAT.
Appendix 5 ~ Important Contacts

NHS Castle Point and Rochford CCG FOI Inbox
cprccg.foi@nhs.net

NHS Central Eastern CSU (Essex) FOI Inbox – essexcsu.foi@nhs.net

CCG Address for postal requests:
Phoenix Place
Christopher Martin Road
Basildon
Essex SS14 3HG

NHS Central Eastern CSU – Freedom of Information Lead (Essex)
Name: Iain Gear
Email: Iain.Gear@NHS.net
Telephone: 07896 818503

NHS Central Eastern CSU – Freedom of Information Co-ordinators (Essex)
Name: Priscilla Driscoll & Sarah Houghton

NHS Central Eastern CSU – Head of Information Governance
Name: Paul Cook
Email: Paul.Cook@see-pct.nhs.uk
Telephone: 01268 705036

NHS Castle Point and Rochford CCG SIRO
Name: Victoria Gunn, Chief Finance Officer
Email: vgunn@nhs.net
Telephone: 01268 245706

NHS Castle Point and Rochford CCG Caldicott Guardian
Name: Tricia D'Orsi, Executive Nurse
Email: patricia.dorsi@nhs.net
Telephone: 01268 245707

NHS Castle Point and Rochford CCG FOI Liaison
Name: Sara Tindell, Performance and Corporate Services Manager
Email: sara.tindell@nhs.net
Telephone: 01268 705023
Appendix 6 ~ Exemptions under Part II of the Freedom of Information Act 2000

The ICO categorises qualified and absolute exemptions as below:

Qualified exemptions:
- information intended for future publication;
- national security;
- defence;
- international relations;
- relations within the United Kingdom;
- the economy;
- investigations and proceedings conducted by public authorities;
- law enforcement;
- audit functions;
- formulation of government Policy, etc;
- prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords);
- communications with Her Majesty, etc and honours;
- health and safety;
- environmental information (as this can be accessed through the Environmental Information Regulations);
- personal information (as this is covered by the Data Protection Act 1998);
- legal professional privilege; and
- commercial interests.

Absolute exemptions:
- information accessible to applicant by other means;
- information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals process against such certificates);
- court records;
- parliamentary privilege (a certificate signed by the Speaker of the House for the House of Commons, or by the Clerk of the Parliaments for the House of Lords is conclusive proof that the exemption is justified);
- prejudice to effective conduct of public affairs (only applies to information held by House of Commons or House of Lords);
- personal information (as this is covered by the Data Protection Act);
- information provided in confidence; and
- prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

Further information and guidance on the exemptions can be found on the website of the Information Commissioners Office (ICO)
Appendix 7 – Checklist for Approval of Policy

(to be revised)

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

<table>
<thead>
<tr>
<th>Title of document being reviewed:</th>
<th>Yes/No/Unsure</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Title</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the title clear and unambiguous?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is it clear whether the document is a guideline, policy, protocol or standard?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. <strong>Rationale</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are reasons for development of the document stated?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. <strong>Development Process</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the method described in brief?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are people involved in the development identified?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there evidence of consultation with stakeholders and users?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. <strong>Content</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the objective of the document clear?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the target population clear and unambiguous?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are the intended outcomes described?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are the statements clear and unambiguous?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. <strong>Evidence Base</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the type of evidence to support the document identified explicitly?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are key references cited?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are the references cited in full?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are supporting documents referenced?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. <strong>Approval</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the document identify which committee/group will approve it?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Policy ref: 
Version 0.1
Approved:
Review Date: 
Page 23
<table>
<thead>
<tr>
<th>Title of document being reviewed:</th>
<th>Yes/No/Unsure</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Dissemination and Implementation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there an outline/plan to identify how this will be done?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the plan include the necessary training/support to ensure compliance?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Document Control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the document identify where it will be held?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have archiving arrangements for superseded documents been addressed?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Process to Monitor Compliance and Effectiveness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there a plan to review or audit compliance with the document?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Review Date</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the review date identified?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the frequency of review identified? If so is it acceptable?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Overall Responsibility for the Document</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the documentation?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 Equality Impact Assessment (EIA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Has an equality analysis been undertaken in preparation for this policy?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Has the equality analysis been quality assured by the Equality and Diversity Group?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Signature**

---

**Committee Approval**

If the committee is happy to approve this document, please sign and date it and forward copies to the person...
with responsibility for disseminating and implementing the document and the person who is responsible for maintaining the organisation’s database of approved documents.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td></td>
</tr>
</tbody>
</table>