

# Freedom of Information Policy

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<b>EFFECTIVE FROM:</b>	September 2018
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<b>TARGET AUDIENCE:</b>	ALL STAFF

This policy must be read in conjunction with the following policies:

Complaints Policy  
Confidentiality Code of Conduct  
Data Protection Policy  
Disciplinary Policy  
Records Management and Information Lifecycle Policy

[General Data Protection Regulation - gdpr-info.eu/](http://gdpr-info.eu/)

## Version Control

<b>Policy Category:</b>	Governance	
<b>Relevant to:</b>	All Staff (including temporary staff, contractors and seconded staff)	
<b>Version History</b>		
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0.1	14/08/2012	Initial model version
0.2	04/09/2012	Amended following comments received from IM&T team
0.3	24/01/2013	Preparation for Eastbourne, Hailsham and Seaford CCG Governing Body
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5.4.	August 2018	Review by IGSG
5.5.	19/09/2018	Approved by Quality and Governance Committees
6.	26/09/2018	Ratified by Governing Bodies

An Equality Impact Assessment has been carried out to ensure that this policy is non-discriminatory in December 2015

## Contents

<b>1. STAFF QUICK REFERENCE GUIDE.....</b>	<b>4</b>
<b>2. INTRODUCTION.....</b>	<b>5</b>
<b>3. SCOPE AND OBJECTIVES. ....</b>	<b>6</b>
<b>4. PURPOSE.....</b>	<b>7</b>
<b>5. RESPONSIBILITIES.....</b>	<b>7</b>
<b>6. MONITORING AND REVIEW. ....</b>	<b>8</b>
<b>7. COMPLIANCE.....</b>	<b>8</b>
<b>8. EQUALITY.....</b>	<b>9</b>
<b>9. REFERENCES.....</b>	<b>9</b>
<b>Appendix 1: Background to the FOI Act.....</b>	<b>11</b>
<b>Appendix 2: CCG FOI Process. ....</b>	<b>12</b>
<b>1. The publication scheme. ....</b>	<b>12</b>
<b>2. General rights of access. ....</b>	<b>12</b>
<b>3. Duty to provide advice and assistance. ....</b>	<b>13</b>
<b>4. Handling requests which appear to be part of an organised campaign.....</b>	<b>13</b>
<b>5. Timeliness in dealing with information requests. ....</b>	<b>13</b>
<b>6. Charges and fees. ....</b>	<b>14</b>
<b>7. Transferring requests for information.....</b>	<b>14</b>
<b>8. Consultation with third parties. ....</b>	<b>15</b>
<b>9. Public Sector contracts.....</b>	<b>15</b>
<b>10. Accepting information in confidence from third parties.....</b>	<b>16</b>
<b>11. Exempt information and refusal of requests. ....</b>	<b>16</b>
<b>12. Re-use and copyright. ....</b>	<b>17</b>
<b>13. Complaints procedure.....</b>	<b>18</b>
<b>14. Records management.....</b>	<b>18</b>
<b>15. Data protection and confidentiality. ....</b>	<b>18</b>
<b>16. Informing stakeholders of FOI requirements.....</b>	<b>18</b>
<b>Appendix 3: Information Exempt from Disclosure under FOI Act.....</b>	<b>19</b>
<b>Appendix 4: Standard Text for Contractors re the Freedom of Information Act.....</b>	<b>20</b>

## 1. STAFF QUICK REFERENCE GUIDE.

- 1.1. Eastbourne, Hailsham and Seaford (EHS) Clinical Commissioning Group (CCG) and Hastings and Rother (HR) CCG have a joint staff structure. This policy covers both organisations and they are referred to jointly as “the CCG”.
- 1.2. The [Freedom of Information Act 2000](#) (FOIA) aims to help ensure that organisations are open and transparent about what they do. It gives anyone the right to make a written request to the CCG for recorded information that it holds. The CCG has to release the information it holds in the scope of the request within **20** working days, unless a relevant exemption applies. (See [Appendix 3](#)).
- 1.3. **What is a FOIA request?**  
A valid FOIA request:
- Is a request for **recorded** information, with a description of the information being sought. For example - a copy of a report on a particular subject or e-mails relating to a particular decision. The request may be for information held electronically, within paper documents, sound and video recordings, e-mail, handwritten notes and information that may be in storage.
  - Is **received in writing**, including via e-mail to an individual staff member or received through the CCG website / CCG social media platforms (reasonable adjustments should be made in line with the [Disability Discrimination Act 1995](#) for those unable to submit a request in writing).
  - Can be from anyone, but needs a **name** and return **contact address** (which can be an e-mail address).
- 1.4. The requestor does not need to specify that the request is being made under the terms of the FOIA or specify a reason for making the request. It is up to us, as a public authority, to identify which enquiries are FOIA requests and which are other types of correspondence, in line with the legislation.
- 1.5. If in doubt, please forward the correspondence to the Commissioning Support Unit (CSU) or speak to a member of the Governance and Corporate Services Team.
- 1.6. **What do I do if I receive a FOIA request?**  
All FOIA requests must be forwarded immediately (and within a maximum of **one** working day) to the CSU. This is required because the statutory countdown of 20 working days for complying with a request starts from the day it is received anywhere in the organisation, including by an individual member of staff (which is why e-mail auto responses with the FOIA e-mail address are vital).
- 1.7. **What must I do if the CSU asks me to provide information for a FOIA request?**
- i. If the request is not for you to deal with, advise the CSU straight away and provide an alternative contact where possible.
  - ii. Ensure that you **understand the scope** of the request. If you are not sure, ask the CSU to contact the requestor for clarification. **Stick to the scope** of the request when providing information to the CSU. The FOIA covers **information, not documents** – so this may require you to extract the relevant information for a request from a larger document.

- iii. **Estimate the time** it will take for you to locate, retrieve and extract the relevant information. If this is going to take you several hours, let the CSU know (there is a cost limit under the FOIA and the CSU will be able to advise further).
- iv. Within a maximum of **5 days** you must **carry out a search** for the information in the scope of the request and either **provide the information to the CSU** or **confirm that the information is not held by the CCG**. Please include a short summary of the search carried out when returning information to the CSU.
- v. Make the CSU aware of any relevant factors regarding **disclosure** of the information into the public domain; for example if the information is already available elsewhere (such as on the CCG website) or is due to be published.
- vi. Highlight to the CSU where there is any personal data within the requested information (where you can identify individuals, including staff) which may need to be removed / redacted or where there are particular commercial sensitivities. **You must highlight any reason that you feel the information should not be placed in the public domain at this time.**
- vii. Ensure that the appropriate senior manager is aware of the request and has **signed off** any information intended for disclosure into the public domain, or any FOIA response the CSU has asked the CCG to review.
- viii. **Keep a record** of your response to the CSU (for an audit trail and in case the requestor asks for a review of the decision taken).

#### 1.8. Other points to note:

- Take care with spread sheets and make sure that only the intended worksheet and data are included in the FOI response.
- Ensure that any acronyms in the requested information are explained to the CSU, so that this information can be included in the reply to the requestor.

**1.9.** Don't miss your deadline! If you are going on leave or will be away from the office for a few days, you must arrange for someone else to pick this up for you and make sure that "out of office" e-mail messages always include the following text: *"If you are requesting information under the Freedom of Information Act (2000), please redirect your request to [SCWCSU.FOI@nhs.net](mailto:SCWCSU.FOI@nhs.net) for action"*.

**1.10. For more detailed information about FOIA, contact the Head of Governance and Business Planning.**

**1.11.** For staff information see the [Key Staff Contacts](#) page on the staff Intranet.

## 2. INTRODUCTION.

**2.1.** This Freedom of Information Policy is a statement of what the CCG intends to do to ensure compliance with the [Freedom of Information Act 2000](#).

**2.2.** The Freedom of Information Act (FOIA) provides individuals or organisations with the right to request recorded information held by a public authority. In addition, there are also regulations, which provide access to environmental information; these are the [Environmental Information Regulations 2004](#) (EIR).

- 2.3. The FOIA supplements and complements the [General Data Protection Regulation](#) (Regulation EU 2016/679 GDPR) which applied to the UK from 25 May 2018 and the UK [Data Protection Act 2018](#). These give individuals access to their personal information held by organisations and replace the [Data Protection Act 1998](#).
- 2.4. The most significant addition to the GDPR is the accountability principle. The GDPR requires you to show **how** you comply with the principles – for example by documenting the decisions you take about a processing activity.
- 2.5. The GDPR also includes provisions that promote accountability and governance. These complement the GDPR's transparency requirements. While the principles of accountability and transparency have previously been implicit requirements of data protection law, the GDPR's emphasis elevates their significance. Ultimately, these measures should minimise the risk of breaches and uphold the protection of personal data.
- 2.6. For further information about access to personal or health records please see the Data Protection Policy, available on the Staff Intranet at: [www.eastbournehailshamandseafordccg.nhs.uk/intranet/intranet-search/?q=data+protection](http://www.eastbournehailshamandseafordccg.nhs.uk/intranet/intranet-search/?q=data+protection)
- 2.7. The FOIA gives access to all other information and therefore has a wider remit than the GDPR and the DPA 2018. However, together these pieces of legislation along with the EIR will enable public access to most records held by the CCG.
- 2.8. As a public body, the CCG has obligations under the FOIA. This policy is not a statement of how compliance will be achieved. That will be a matter for operational procedures.

### 2.9. **Policy statement:**

“The CCG has made a commitment to both patients and staff to be as open and transparent as possible in the way that it works. This is a commitment which is supported by the Freedom of Information Act (2000). This is an Act of Parliament which gives people more rights to access information held by public authorities. The CCG and its agents (the relevant Commissioning Support Unit) who process FOI requests on behalf of the CCG will use all appropriate and necessary means to ensure that it complies with the FOIA and the associated Codes of Practice.”

## 3. **SCOPE AND OBJECTIVES.**

- 3.1. The CCG's FOI Policy is structured to ensure that staff are aware of their responsibilities, roles and accountability in regards to the [Freedom of Information Act](#) (2000), and outlines the duty to comply with guidance issued by the [Department of Health](#), advisory groups to the NHS and professional bodies.
- 3.2. This Freedom of Information Policy will apply to all those members of staff who 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, contract for services 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.

- 3.3.** This policy provides a framework within which the CCG will ensure compliance with the requirements of the FOIA. The Policy will underpin any operational procedures and activities connected with the implementation of the FOIA.
- 3.4.** 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 request information appropriately.
  - Ensure that the CCG 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.
  - Ensure the Executive Team of the CCG is fully informed on the operation of the FOIA and its implications for the organisation.
- 3.5.** The FOIA applies to **all recorded information** held by the CCG.

#### **4. PURPOSE.**

This Freedom of Information Policy details how staff will meet the CCG's legal obligations and NHS requirements concerning confidentiality and information security standards whilst meeting the requirements of the [Freedom of Information Act 2000](#).

#### **5. RESPONSIBILITIES.**

##### **5.1. General responsibilities** of all staff and members of the Governing Body:

- 5.1.1. All **staff** and Governing Body members (clinical and lay) are obliged to adhere to this policy. Failure to adhere to this Policy and its associated procedures may result in disciplinary action.
- 5.1.2. **Managers** at all levels are responsible for ensuring that the staff for whom they are responsible are aware of, and adhere to, this Policy. They are also responsible for ensuring that staff are updated regarding any changes to this policy.
- 5.1.3. The **Head of Governance and Business Planning** in the CCG will oversee the implementation of this Policy and will oversee the systems and procedures that support the implementation of this Policy.

##### **5.2. Specific responsibilities** of all staff and members of the Governing Body:

- 5.2.1. The CCG makes information available to stakeholders through staff on a regular basis (e.g. patient information leaflets) as part of “business as usual”. Staff will respond to requests for such information in a timely manner and in any case in less than **20 working days**. Such routine requests may be dealt with by individual staff members and do not have to be recorded.
- 5.2.2. Where requests for information are for recorded information and not part of the business as usual process – for example are more complex, or the member of staff does not know how to access the information being requested, and the request has been made in writing, the original request must be passed on to the FOI Officer at the **Commissioning Support Unit** within **one working day**. If the request is received verbally, the applicant’s name, contact number and the date and details of the request must be passed on to the FOI Officer within one working day for them to take the next steps
- 5.2.3. Upon receipt of a request for information from the FOI Officer, CCG staff will provide the information requested within a maximum of **five working days** along with any relevant information regarding the sensitivity or confidentiality of the information being provided. Where, in exceptional circumstances, staff are unable to meet this deadline, they will inform the FOI Officer as soon as possible within the five working days.
- 5.2.4. Complaints about the discharge of the duties of the CCG in regard to the FOIA, verbal or written, should be transferred to the Complaints Manager at the Commissioning Support Unit, e-mail [scwcsu.palscomplaints@nhs.net](mailto:scwcsu.palscomplaints@nhs.net) who will liaise with the FOI Officer.

### **5.3. Training.**

The CCG will provide introductory and mandatory instruction, as part of Information Governance training, to all staff for the awareness and handling of information requests (this may be provided by the CSU.)

### **5.4. Reporting.**

The CCG uses a CSU to process FOI requests. The CSU is responsible for compiling a quarterly report which will be submitted to the Head of Governance and Business Planning who will compile a report for the Information Governance Steering Group and the Quality and Governance Committee. Information relating to FOI complaints will be summarised within the complaints report.

## **6. MONITORING AND REVIEW.**

Monitoring arrangements for compliance and effectiveness of this procedure will be via regular review of any changes to the Freedom of Information Act or upon advice from the [Information Commissioner’s Office](#) and through annual review at the CCG’s and Commissioning Support Unit’s Information Governance Steering Group. Monitoring of the effectiveness of the policy will be via the CCG Quality and Governance Committees.

## **7. COMPLIANCE.**

This Policy complies with associated guidance and legislation:

- [Data Protection Act 2018](#).



- [Freedom of Information Act 2000](#).
- [General Data Protection Regulation](#) (GDPR).
- [Human Rights Act 1998](#).
- [Environmental Information Regulations 2004](#) (EIR).

## 8. EQUALITY.

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

## 9. REFERENCES.

- i. Copyright Designs and Patents Act 1988.  
[www.legislation.gov.uk/ukpga/1988/48/contents](http://www.legislation.gov.uk/ukpga/1988/48/contents)
- ii. Data Protection Act 2018. [www.gov.uk/data-protection](http://www.gov.uk/data-protection)
- iii. Department of Health. [www.gov.uk/government/organisations/department-of-health](http://www.gov.uk/government/organisations/department-of-health)
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[www.gov.uk/search?q=foi&show\\_organisations\\_filter=true&filter\\_organisations%5B%5D=department-of-health](http://www.gov.uk/search?q=foi&show_organisations_filter=true&filter_organisations%5B%5D=department-of-health)
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[ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/](http://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/)
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[gdpr-info.eu/](http://gdpr-info.eu/) - text.
- ix. Human Rights Act 1998. [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents)
- x. Information Commissioner's Office. [ico.org.uk/](http://ico.org.uk/)
  - a) Complaints and Concerns. [ico.org.uk/concerns/](http://ico.org.uk/concerns/)
  - b) Guide to Freedom of Information.  
[ico.org.uk/for-organisations/guide-to-freedom-of-information/](http://ico.org.uk/for-organisations/guide-to-freedom-of-information/)
  - c) Information Tribunal. [www.gov.uk/search?q=general+regulatory+chamber](http://www.gov.uk/search?q=general+regulatory+chamber)

- d) Information on Fees Regulation.  
[ico.org.uk/about-the-ico/what-we-do/legislation-we-cover/freedom-of-information-act/](http://ico.org.uk/about-the-ico/what-we-do/legislation-we-cover/freedom-of-information-act/)  
[ico.org.uk/media/1635/fees\\_cost\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](http://ico.org.uk/media/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf)
- e) Model publication Scheme.  
[ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/](http://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/)
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- xii. Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000.  
[www.nationalarchives.gov.uk/information-management/legislation/section-46/](http://www.nationalarchives.gov.uk/information-management/legislation/section-46/)  
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- xiv. Ministry of Justice Guidance 2013. Secretary of State's Code of Practice (datasets) on the discharge of public authorities' functions under Part 1 of the FOI Act.  
[www.gov.uk/government/publications/secretary-of-states-code-of-practice-datasets-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act](http://www.gov.uk/government/publications/secretary-of-states-code-of-practice-datasets-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act)
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- xx. Stonewall Scotland: Inclusive Language in the NHS.  
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- xxi. Stonewall: Trans Inclusive Policies and Benefits.  
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## Appendix 1: Background to the FOI Act.

1. The [Freedom of Information Act 2000](#) (FOIA) is a commitment to greater openness in the public sector and this is supported by the CCG. The FOIA enables members of the public to question the decisions of public authorities more closely and thereby ensure that the services we provide are efficiently and properly delivered. The FOIA replaces the non-statutory Code of Practice on Openness in the NHS.
2. The main features of the FOIA are:
  - A general right of access to recorded information held by public authorities, subject to certain conditions and exemptions.
  - Public interest test - in cases where information is exempt from disclosure, except where an absolute exemption applies, a duty on public authorities to:
    - Inform the applicant whether they hold the information requested,  
**and**
    - Communicate the information to them, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.
  - A duty on every public authority to adopt and maintain a Publication Scheme.
  - An office of [Information Commissioner](#) with wide powers to enforce the rights created by the FOIA and to promote good practice and a new [Information Tribunal](#).
  - A duty on the Lord Chancellor to promulgate [Codes of Practice](#) for guidance on specific issues.

## Appendix 2: CCG FOI Process.

1. [The publication scheme.](#)
  2. [General rights of access.](#)
  3. [Duty to provide advice and assistance.](#)
  4. [Handling requests which appear to be part of an organised campaign.](#)
  5. [Timeliness in dealing with information requests.](#)
  6. [Charges and fees.](#)
  7. [Transferring requests for information.](#)
  8. [Consultation with third parties.](#)
  9. [Public Sector contracts.](#)
  10. [Accepting information in confidence from third parties.](#)
  11. [Exempt information and refusal of requests.](#)
  12. [Re-use and copyright.](#)
  13. [Complaints procedure.](#)
  14. [Records management.](#)
  15. [Data protection and confidentiality.](#)
  16. [Informing stakeholders of FOI requirements](#)
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### 1. The publication scheme.

- 1.1. The CCG has adopted the [model publication scheme](#) developed by the NHS Freedom of Information Project Board and Team. This is permissible under [Section 20](#) of the [Freedom of Information Act](#) (FOIA) and ensures compliance with [Section 19](#) of the FOIA.
- 1.2. The CCG's publication scheme details the information that the CCG makes routinely available to the general public. It details the format in which the information is held and whether there is a charge for its provision. The publication scheme is available on the [CCG websites](#) and in hard copy on request:
- 1.3. Some of the information listed in the CCG publication scheme is available to view on the CCG website. However, other publications must be requested from the CCG. Request for information listed in the publication scheme may be received verbally or in writing. The CCG has a procedure for processing applications arising from the publication scheme known as the Procedure for Processing FOI Requests.

### 2. General rights of access.

- 2.1. [Section 1](#) of the FOIA gives a general right of access from 1 January 2005 to recorded information held, subject to certain conditions and exemptions contained in the FOIA. Simply, any person making a request for information to the CCG is entitled:
  - (i) To be informed in writing whether the CCG holds the information of the description specified in the request; this is referred to as the "duty to confirm or deny".
  - and**
  - (ii) If the CCG holds the information, to have that information communicated to them.

- 2.2. These provisions are fully retrospective in that if the CCG holds the information, it must provide it, subject to certain conditions and exemptions (see [Appendix 3](#)).
- 2.3. The CCG will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.
- 2.4. The FOIA only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.
- 2.5. In accordance with [Section 8](#) of the FOIA, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describing the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.
- 2.6. The CCG will accept verbal requests in circumstances where the enquirer would have great difficulty in putting a request in writing specifically due to disability. On these occasions, the member of staff taking the call will note as many details as possible, which must include contact information.
- 2.7. Requests for information specifically under the [Environmental Information Regulations \(EIR\) 2004](#) can be accepted verbally. It is recommended that enquirers are still advised to put their request in writing, as this will ensure there is no ambiguity about their request. Where they still wish to make a verbal request the member of staff taking the call will note as many details as possible, which must include contact information.

### **3. Duty to provide advice and assistance.**

- 3.1. Under [Section 17](#) of the FOIA, it is the duty of the CCG to provide advice and assistance to persons who have made, or wish to make, requests for information. The CCG will ensure that systems and procedures are in place to meet this duty.
- 3.2. The systems and procedures will conform to the [Code of Practice](#) issued under [Section 45](#) of the FOIA.

### **4. Handling requests which appear to be part of an organised campaign.**

- 4.1. Where a number of requests made by different people appear to form part of an organised campaign, the CCG may calculate the cost of complying with any of the requests as being the cost of complying with them all. If this cumulative cost is estimated to exceed the appropriate limit that is set in the [Fees Regulations](#), the CCG is not required to comply with the requests.
- 4.2. In the situation described in 4.1 above, the CCG will consider whether it is possible to publish the requested information on the CCG website and forward details of the website to each of the applicants within the appropriate cost limit.

### **5. Timeliness in dealing with information requests.**

- 5.1. In line with [Section 10](#) of the FOIA, the CCG will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and

provides the information requested within 20 working days of receipt of a request. All staff and Governing Body members (clinical and lay) will be required to comply with the requirements of these procedures.

- 5.2. Where a fees notice is issued, calculating the 20-working day time limit for responses begins on the day that the request is first received. However, the working days between the fees notice being received and the fee being paid will be disregarded for the purposes of calculating the 20<sup>th</sup> working day following receipt of the request.
- 5.3. If the CCG chooses to apply an exemption to any information, or chooses to refuse a request because it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice will be issued within 20 working days informing the applicant of this decision.
- 5.4. If the CCG needs to apply the public interest test to a request for exempt information, it may not be possible to reach a decision relating to disclosure within the 20-working day time limit. In this situation, the CCG will write to the applicant within 20 days of receipt of the request with a realistic estimate of when a decision will be reached.

## **6. Charges and fees.**

- 6.1. There will not generally be a charge for information that the CCG has chosen to publish in its publication scheme. However, charges may be raised where multiple page hard copies are requested, or information is to be copied onto other media (e.g. CD-ROM). These charges will be regularly reviewed.
- 6.2. The CCG will follow the [Fees Regulations](#) for general rights of access under the FOIA. These will set an appropriate limit on costs of compliance, the method for calculating appropriate fees and the circumstances in which a fee should be levied.
- 6.3. In all cases where the CCG chooses to charge for information published through the publication scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by [Section 9](#) of the FOIA. Applicants will be required to pay any fees within a period of **three months**, beginning with the day on which the fees notice is given to them.

## **7. Transferring requests for information.**

- 7.1. A request for information may be transferred where the CCG receives a request for information which it does not hold, but which is held by another public authority. If a request is partly for information which the CCG does hold, and partly for that which it does not, the transfer will only be made in respect of the part of the information it does not hold.
- 7.2. The CCG, or the CSU on its behalf, will offer advice and assistance to applicants in situations where some, or all, of the information requested is not held by the CCG.
- 7.3. The CCG does not hold complete medical records and requests based on patient records should be directed back to the requester to contact [Primary Care Support Services](#).

## **8. Consultation with third parties.**

- 8.1. Where information cannot be disclosed without affecting the legal rights of a third party (e.g. where information has been obtained from a third party and disclosure without their consent would constitute an actionable breach of confidence as set out in [Section 41](#) of the FOIA), the CCG will make reasonable efforts to gain the consent of the third party to grant disclosure of the information.
- 8.2. Where information requested is personal data as defined by the [General Data Protection Regulation](#), the CCG will refer to [Section 40](#) of the FOIA.
- 8.3. Even where a third party's legal rights are not affected, the CCG will undertake consultation with third parties where their views will assist the CCG in assessing exemptions and the public interest.
- 8.4. The CCG will make reasonable efforts to contact third parties where necessary, but may consider that consulting the third party is not appropriate where the cost of consulting would be disproportionate.
- 8.5. Where the interests of a number of third parties may be affected by a disclosure, the CCG may consider that consultation with their representative organisation or a representative sample of the third parties in question is sufficient.
- 8.6. In all cases, it is for the CCG (not the third party) to determine whether information should be disclosed under the FOIA. Non-response or refusal to consent to disclosure by a third party does not, in themselves, provide sufficient reason for information to be withheld.

## **9. Public Sector contracts.**

- 9.1. When entering into contracts, the CCG uses the [NHS terms and conditions for procuring goods and services](#) last updated in March 2018 to reflect changes in the [Public Contract Regulations](#). These terms and conditions have been drawn up with knowledge of the FOIA.
- 9.2. Unless an exemption under the FOIA is applicable in relation to any particular information, the CCG will be obliged to disclose that information in response to a request.
- 9.3. The CCG will not agree to hold information "in confidence" which is not, in fact, confidential in nature. Advice from the [Ministry of Justice](#) (formally the Lord Chancellor's Department) indicates that the exemption provided for in [Section 41](#) of the FIOA only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the FIOA, would constitute a breach of confidence actionable by that, or any other person.
- 9.4. If it becomes necessary for the CCG to question whether information provided "in confidence" by a contractor should be disclosed in response to an information request, the CCG will consult with the contractor in answering that question.

## **10. Accepting information in confidence from third parties.**

The CCG will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of the CCG's functions, and it would not otherwise be provided. However, the CCG will not agree to hold information in confidence if it is not confidential in nature.

## **11. Exempt information and refusal of requests.**

11.1. The CCG's duty to confirm or deny does not arise where further information is required from the applicant to identify the information being requested and the applicant has been informed of this. However, in this situation, the CCG will provide advice and assistance.

11.2. The CCG does not have to comply with information requests where the information requested is exempt under the provisions made in [Part II](#) of the FOIA, Sections 21 to 44.

11.3. A full list of exemptions is provided in [Appendix 3](#) to this policy.

11.4. Where required to do so by the FOIA, the CCG will apply the public interest test to exempt information to determine whether the public interest in disclosing the information outweighs the public interest in maintaining its confidentiality. If this is found to be the case, the CCG will disclose the information in question.

11.5. The CCG will not comply with a request for information when a fees notice has been issued to an applicant and the fee has not been paid within three months.

11.6. The CCG will not comply with a request for information if it estimates that the cost of compliance with the request would exceed the appropriate limit established in the [Fees Regulations](#).

11.7. The CCG will work with applicants to keep compliance costs to a minimum but reserves the right to either;

- Refuse to disclose the information;
- or**
- Charge whatever costs of disclosure are above the appropriate limit.

11.8. Where charges are raised, the applicant will be issued with a fees notice.

11.9. The CCG is not obliged to comply with a request for information if the request is deemed vexatious or repeated as defined by the FOIA.

11.10. The CCG will log all requests for information for monitoring purposes so will be able to identify repeated or vexatious requests.

11.11. Where a request is refused, the CCG will notify the applicant, within 20 working days of receiving the request, that this is the case and explain why the request is being refused. Similarly, where the public interest test has been applied and the request is still being refused, the CCG will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.

11.12. If the CCG needs to apply the public interest test to a request for exempt information, it may not be possible to reach a decision relating to disclosure within the 20-day time limit. In this situation, the CCG will write to the applicant within 20



days of receipt of the request with a realistic estimate of when a decision will be reached, keep to this estimate where at all possible and keep the applicant informed at all times.

- 11.13. The CCG will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.
- 11.14. A further notice will not be issued where the CCG has already issued a notice that a request is being refused because it is vexatious or repeated.
- 11.15. Any notice issued by the CCG to the effect that it is refusing to comply with a request for information will inform the applicant of the [CCG complaints](#) procedure and of their right to apply to the [Information Commissioner](#).
- 11.16. The CCG will keep a record of all applications where some or all of the requested information is withheld.
- 11.17. 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 must be scanned and concealed with redaction software. The relevant paragraphs must be deleted from the electronic versions with a note indicating the paragraph has been deleted and then saved as a new document. All blocked out information must be accompanied by an explanation under the terms of the FOIA (exemption / reason for redaction).

## **12. Re-use and copyright.**

- 12.1. 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 CSU 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 consent.
- 12.2. Information supplied under FOIA continues to be protected by the [Copyright, Designs and Patents Act \(CDPA\)](#) 1988. A copy of the below wording may be included whenever information is released under FOIA in line with advice from CSU leads:

“Please note, that the supply of information in response to a FOI request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission. Similarly, information supplied can also be re-used for the purposes of news reporting. An exception to this is photographs.”

- 12.3. 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: [www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm](http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm)
- 12.4. If, however, the copyright is identified as belonging to somebody else, you will need to apply for permission.

12.5. For information about how to obtain permission from a third party, please go to [Intellectual Property Office's](#) website.

12.6. Publishing the information or issuing copies may be subject to the provisions of the [Re-use of Public Sector Information Regulations 2015](#) and will require permission and may require a fee.

### **13. Complaints procedure.**

13.1. The CCG will outline the complaints procedure to be followed in the case of complaints relating to the way in which the CCG has complied with its obligations under the FOIA in FOI responses. The complaints process for a FOIA request is known as an internal review.

13.2. In review responses, the CCG will highlight the applicant's right under [Section 50](#) of the FOIA, to apply to the [Information Commissioner's Office](#) if they remain dissatisfied with the conduct of the CCG following attempts at local resolution of their complaint.

13.3. Where the outcome of an internal review is that information should be disclosed which was previously withheld, the information in question will be disclosed as soon as possible and the applicant will be informed how soon this will be.

### **14. Records management.**

14.1. The CCG has separate Corporate Records Management Guidance and a Records Management and Information Lifecycle Policy to ensure compliance with the [Records management code of practice for health and social care](#) under [Section 46](#) of the FOIA. Both CCG documents are available on the staff Intranet at: [www.eastbournehailshamandseafordccg.nhs.uk/intranet/intranet-search/?q=records+management](http://www.eastbournehailshamandseafordccg.nhs.uk/intranet/intranet-search/?q=records+management)

14.2. The policy addresses issues of active records management (creating, keeping, maintenance and disposal) according to the requirements that the law places upon the CCG. All staff are expected to comply with the CCG policy and procedures.

### **15. Data protection and confidentiality.**

15.1. The CCG has a separate [Confidentiality Code of Conduct](#) and [Data Protection Policy](#) with supporting systems and procedures that ensure compliance with the [General Data Protection Regulation](#) (GDPR). All CCG staff have a personal common law duty of confidence to patients and to the CCG and must comply with the CCG policy and procedures in this area.

15.2. Information covered by the GDPR is generally exempt from disclosure under the FOIA. All staff are required to have a basic understanding of the types of information covered by the GDPR.

### **16. Informing Stakeholders of FOI requirements.**

The CCG will inform its staff of FOI responsibilities via normal communication media within the CCG, including as part of staff induction and information cascade. In addition it is the responsibility of managers to ensure that their staff are aware of CCG policies and procedures.

### Appendix 3: Information Exempt from Disclosure under [Freedom of Information Act](#).

There are a number of exemptions under the FOIA, some of which are absolute exemptions and others which are subject to a public interest test. The exemptions are:

<a href="#">Section 21</a>	Information accessible to applicant by other means.
<a href="#">Section 22</a>	Information intended for future publication.
<a href="#">Section 23</a>	Information supplied by, or relating to, bodies dealing with security matters.
<a href="#">Section 24</a>	National security.
<a href="#">Section 25</a>	Certificates under ss. 23 and 24: supplementary provisions.
<a href="#">Section 26</a>	Defence.
<a href="#">Section 27</a>	International relations.
<a href="#">Section 28</a>	Relations within the United Kingdom.
<a href="#">Section 29</a>	The economy.
<a href="#">Section 30</a>	Investigations and proceedings conducted by public authorities.
<a href="#">Section 31</a>	Law enforcement.
<a href="#">Section 32</a>	Court records, etc.
<a href="#">Section 33</a>	Audit functions.
<a href="#">Section 34</a>	Parliamentary privilege.
<a href="#">Section 35</a>	Formulation of government policy, etc.
<a href="#">Section 36</a>	Prejudice to effective conduct of public affairs.
<a href="#">Section 37</a>	Communications with Her Majesty, etc. and honours.
<a href="#">Section 38</a>	Health and safety.
<a href="#">Section 39</a>	Environmental information.
<a href="#">Section 40</a>	Personal information.
<a href="#">Section 41</a>	Information provided in confidence.
<a href="#">Section 42</a>	Legal professional privilege.
<a href="#">Section 43</a>	Commercial interests.
<a href="#">Section 44</a>	Prohibitions on disclosure.

In addition there are several sections of the FOIA that are a bar to compliance, such as [Section 12](#) (where cost of compliance exceeds the appropriate limit) and [Section 14](#) (vexatious or repeated requests).

In October 2014 the Information Commissioner's Office consolidated existing exemption guidance into "the guide". This is for those who work for a public authority and have day-to-day responsibility for freedom of information. It explains how to apply the FOIA by giving practical examples and answering frequently asked questions and is available via: [ico.org.uk/for-organisations/guide-to-freedom-of-information/](http://ico.org.uk/for-organisations/guide-to-freedom-of-information/)

[Pdf version](#) of the guide.

#### **Appendix 4: Standard Text for Contractors re the Freedom of Information Act.**

The following statement is standard text which can be used to inform contractors of the CCG's responsibilities under the FOIA:

*NHS Eastbourne, Hailsham and Seaford Clinical Commissioning Group and Hastings and Rother Clinical Commissioning Group are committed to openness and transparency and this commitment is supported by the Freedom of Information Act. Under the FOIA, any recorded information held by the CCG, unless legally exempt, may be subject to public disclosure. This includes information provided by contractors, or information contained within contract documentation.*

*Where information is genuinely exempt from disclosure under the FOIA, and this is capable of being justified to the Information Commissioner, the CCG will keep this information confidential. However, the CCG will not agree to hold information "in confidence" if it is not, in fact, confidential in nature.*