

**Norfolk and Waveney ICB**

# **Freedom of Information (FOI) Act 2000 Policy**

## Document Control Sheet

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<b>Produced by</b>	This policy has been prepared by the ICB's Corporate Affairs Manager
<b>What is it for?</b>	To ensure that Norfolk and Waveney ICB fulfils its legal obligations under FOI law.
<b>Evidence base</b>	Freedom of Information Act 2000 and Information Commissioners Office (ICO) guidance
<b>Who is it aimed at and which settings?</b>	This Policy applies to all ICB employees, any staff who are seconded to the ICB and contracted and agency staff.
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<b>Other relevant approved documents</b>	Norfolk and Waveney ICB Constitution Information Governance Framework Records Management
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## Version Control

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## Contents

	Page
1. Introduction	4
2. Purpose	4
3. Scope and objectives	5
4. Roles and responsibilities	6
5. Information caught by the Freedom of Information (FOI) Act 2000	7
6. Freedom of Information (FOI) Act 2000	7
7. Environmental Information Regulations (EIR) 2004	15
8. Datasets and Re-use of information & copyright	16
9. Disclosure of staff names and details	16
10. Records Management	17
11. Training and compliance	18
12. Equality, Diversity and Inclusion	18
13. Contacts and sources of support	18
14. Reference documents	19
<b>Appendix A: FOI background and our duties</b>	<b>21</b>
<b>Appendix B: ICB FOI process map</b>	<b>22</b>
<b>Appendix C: Summary of key actions and timescale – quick guide</b>	<b>23</b>
<b>Appendix D: Exemptions</b>	<b>24</b>
<b>Appendix E: Internal Review Procedure</b>	<b>26</b>

## 1 Introduction

- 1.1 This policy is for NHS Norfolk and Waveney Integrated Care Board (ICB).
- 1.2 This document sets out the Freedom of Information Policy for the ICB. It explains what the ICB will do to comply with its obligations under the Freedom of Information Act 2000 (hereafter referred to as the FOI Act) and Environmental Information Regulations 2004 (EIR).
- 1.3 The FOI Act and EIR replaced the non-statutory “*Code of Practice on Openness in the NHS*” and became a legal requirement for all public sector organisations on 1 January 2005. The Acts are designed to give the public a general right of access to almost all types of recorded information held by public authorities. Its key theme is that public authorities are accountable to the public and should be open and transparent in their decision-making.
- 1.4 The FOI Act places a statutory obligation on all public bodies to publish details of recorded information that they hold and to allow the public the right to access this information on request, except where an exemption applies e.g. personal or other confidential data.
- 1.5 More information on the background to the FOI Act can be found at Appendix A.
- 1.6 It is important to note that FOI legislation is wholly retrospective and applies to all information held by public authorities regardless of its date. It does not oblige public authorities to create information for the purposes of responding to requests for information or to retain information which is no longer necessary for it to keep.
- 1.7 Compliance with the FOI Act and the EIR is overseen and regulated by the Information Commissioner’s Office (ICO) the UK’s independent body established to uphold information rights. The ICO has the ability to monitor organisational compliance, issue undertakings, serve information and enforcement notices and, if needed, initiate court proceedings to ensure compliance.
- 1.8 The ICB also believes that individuals have a right to privacy and confidentiality. This policy does not override the common law duty of confidence or the statutory provisions that prevent disclosure of personal data. The release of such information is covered by data protection legislation, which is set out in more detail in the ICB’s Information Governance policies.

## 2 Purpose

- 2.1 The purpose of this policy is to provide the ICB and public with guidance in relation to compliance with the FOI Act. It is a statement of the framework within which the ICB will work to ensure it meets its statutory duties under the Act. In particular it:

- outlines the role of legislation;
- defines the roles and responsibilities;
- indicates the way in which compliance with the policy will be monitored; and
- acts as guide for the implementation of legislation.

### 3 Scope and objectives

- 3.1 The ICB's FOI Policy has been structured in a way that helps ensure its staff is aware of their responsibilities, roles and accountability in regard to the FOI Act, and outlines the duty to comply with the guidance issued by the ICO.
- 3.2 It is the duty of each NHS body to establish and maintain arrangements for the purposes of monitoring and improving the quality of healthcare provided by and for that body. The ICB is committed to this policy and its implementation.
- 3.3 This policy applies to all members of staff who are directly employed by the ICB and for whom the ICB has legal responsibility. This includes any persons undertaking specific duties for, or on behalf of, the ICB.
- 3.4 This policy provides a framework within which the ICB will ensure compliance with the requirements of the FOI Act. The policy will underpin any operational procedures and activities connected with the implementation of the FOI Act.
- 3.5 The aim of this policy is to:
  - Ensure all FOI requests are dealt with consistently and that legislative timescales are met.
  - Provide high quality responses, however, and whatever, requests are made.
  - Provide clear routes for members of the public to make contact with the ICB so that they can appropriately request information.
  - Ensure that the ICB complies with all relevant codes of practice, regulations and good practice guidance.
  - Ensure that ICB's Publication Scheme is up-to-date and inclusive in order to provide access to information (and in the right formats).
  - Ensure that the necessary administrative infrastructure is in place to maintain compliance with the FOI Act.
  - Ensure staff at all levels are aware of their responsibilities with regards to the FOI Act, be it in directing any requests or queries to the Corporate Affairs Manager, or in ensuring they provide any information requested in a timely manner.
  - Ensure staff members have access to advice to support their understanding of the FOI Act.
  - Ensure the Senior Management Team, Executive Management Team and Governing Body are fully informed of the operations of the FOI Act and any implications to the service.

#### 4 Roles and responsibilities

Role	Responsibilities
<b>Chief Executive Officer</b>	The ICB's Chief Executive Officer has overall responsibility for ensuring that it establishes and maintains procedures in order to comply with the provisions of the FOI Act and EIR. They are also the ICB's 'qualified person' for the purposes of applying necessary exemptions.
<b>Executive Directors</b>	Executive Directors of the ICB are responsible for overseeing FOI activities within their directorates in accordance with this policy. Executive Directors may also be asked to make decisions on issues of particular complexity and review decisions following appeal.
<b>Director of Finance</b>	The Chief Finance Officer is the Senior Information Risk Owner (SIRO) and is responsible for information risk. The Chief Finance Officer is also responsible for the independent review of FOI appeals.
<b>Director of Corporate Affairs and ICS Development</b>	Director of Corporate Affairs and ICS Development is responsible for developing the FOI Policy and processes within the ICB for ensuring effective delivery of the service.
<b>Associate Directors</b>	<p>Staff operating at Associate Director level must make provisions to coordinate and approve draft responses to FOI requests relating to their area/department. This may be delegated to a senior member of the team such as Head of Department or Senior Manager within their team.</p> <p>Associate Directors should also be required to participate in the appeals process should the need arise.</p>
<b>Corporate Affairs Manager</b>	Is the lead for all requests for information made under the FOI Act, ensuring that the ICB operates in accordance with this FOI procedure. The Corporate Affairs Manager has overall responsibility for the management of all aspects relating to the FOI Act and will work closely with staff throughout the organisation on issues relating this procedure or legislation.
<b>Commissioning Support Unit</b>	Arden & GEM Commissioning Support Unit (AGEM CSU) has been instructed by the ICB to support its administrative functions to ensure it meets its statutory obligations.

<b>All Staff and Managers</b>	<p>All ICB staff must ensure that they are aware of their responsibilities for processing information in accordance with the FOI Act and for complying with the principles of this policy. Staff must ensure that they have the required competency to recognise FOI requests even where this is not referenced within the request.</p> <p>All staff will be required to provide information on request from either their Associate Director or from the Corporate Affairs Manager directly.</p>
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## 5 Information caught by the Freedom of Information (FOI) Act 2000

- 5.1 The ICB is a public authority within the definition of the FOI Act and has a legal duty to comply with all aspects of government legislation, including any guidance produced by the ICO.
- 5.2 For the purposes of the FOI Act the term “recorded information” is defined as an item of material held by the ICB in paper or electronic form. This includes but is not limited to all draft documents, minutes, emails, diaries, handwritten notes, and telephone recordings and CCTV images.
- 5.3 Written requests may come in from any source and can be addressed to a variety of people or business functions, for example the Chief Executive Officers office, Communications, Complaints or any director or member of staff. If the information is not clearly classed as a complaint, legal letter or request for access to personal records, but is requesting to receive information it should be considered as a possible FOI and forwarded to the Corporate Affairs Manager accordingly.
- 5.4 The ICO has ruled that public sector organisations with Facebook and Twitter accounts must accept FOI requests through these platforms, providing that the request clearly states the name of the requester.
- 5.4.2 The social media accounts are monitored by the Communications and Engagement team as part of their routine activities. Any requests received via social media will be sent to the Corporate Affairs Manager to be processed in the normal manner.

## 6 Freedom of Information (FOI) Act 2000

- 6.1 The ICB uses all appropriate and necessary means to ensure that it complies with the FOI Act and associated Codes of Practice issued by the Ministry of Justice’s Department pursuant to sections 45(5) and 46(6) of the FOI Act. This section sets out in more detail the main features covered by the FOI Act.

## **6.2 Publication Scheme**

- 6.2.1 The ICB has adopted the model publication scheme developed by the ICO in line with section 20 of the FOI Act and ensures compliance with our obligations under section 19.
- 6.2.2 The ICB's publication scheme sets out the information that we make 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. It also outlines local commissioning arrangements and the general structure of the NHS at national and local levels. The publication scheme is available on the ICB's website and in hard copy on request.
- 6.2.3 Information in the publication scheme will be made automatically and proactively available. The ICB's publication scheme is divided into 7 sections:
- Who we are and what we do;
  - What we spent and how we spend it;
  - Our priorities and what we are doing;
  - How we make decisions;
  - Policies and procedures;
  - Lists and registers; and,
  - Services we commission.

## **6.3 General rights of access**

- 6.3.1 In accordance with section 1 of the FOI Act the public are entitled to a general right of access to recorded information held, subject to certain conditions and exemptions. In simple terms, any person making a request for information to the ICB is entitled to:
- I. Be informed in writing whether the ICB 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 ICB hold the information, to have that information communicated to them.
- 6.3.2 The provisions listed at 6.3.1 are fully retrospective and mean that if the ICB holds the information, it must lawfully disclose it, subject to the conditions and exemptions found at Appendix D.
- 6.3.3 The ICB will ensure that procedures and systems are in place to facilitate access by the public to recorded information. For more information, please see Appendix B and C.
- 6.3.4 The FOI Act only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.
- 6.3.5 In line with section 8 of the FOI Act, 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 right of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in a legible form and is capable of being used for subsequent reference.

- 6.3.6 The ICB 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 details.

#### **6.4 Duty to provide advice and assistance**

- 6.4.1 Under section 17 of the FOI Act, the ICB has a duty to provide advice and assistance to any persons who have made, or wish to make, requests for information.
- 6.4.2 This duty is embedded into the ICB's systems and procedures. The ICB seeks to take all reasonable steps to provide advice and assistance and this is included at various stages of our end to end FOI management processes, as shown at Appendix B and C.

#### **6.5 Time limits for complying with requests**

- 6.5.1 As directed by section 10 of the FOI Act, the ICB will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and provide the information requested within 20 working days from the receipt of the request. All ICB staff and governing body members (clinical and lay) will be required to comply with the requirements of these procedures.
- 6.5.2 Where a fee notice is issued (as per 6.6 below), 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.
- 6.5.3 If the ICB 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.
- 6.5.4 If the ICB is unable to reach a decision within the 20 working day period on whether or not an exemption is to be applied, the applicant must be informed by refusal notice that there is an exemption and that a public interest test is being instigated, within those 20 working days.

#### **6.6 Charges and fees**

- 6.6.1 The FOI Act and the associated Fees Regulations stipulate that the ICB cannot levy a fee for information unless there is a statutory basis for doing so or the amount of time taken to locate the information exceeds 18 hours.

- 6.6.2 The ICB is, however, allowed to charge for disbursements related to the provision of information and any reformatting requested by the applicant.
- 6.6.3 Where charges are applicable, a fees notice will be issued to the applicant, as required under section 9 of the FOI Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

## **6.7 Means by which information will be communicated**

- 6.7.1 In accordance with section 11 of the FOI Act and where it is reasonably practicable, the ICB will convey information by any one or more of the following means subject to any preference expressed by the applicant:
- The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant.
  - The provision to the applicant of a reasonable opportunity to inspect a record containing the information.
  - The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.
- 6.7.2 If the ICB decides that it is not reasonably practicable to comply with any preference expressed by the applicant, the ICB will inform the applicant of the reasons for their decision and will discuss if it is possible to provide the information by any other means.
- 6.7.3 The ICB will establish systems and procedure to monitor the provision of information arising from requests under the FOI Act.

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

- 6.8.1 Where a number of requests made by different people appear to form part of an organised campaign, the ICB 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 ICB is not required to comply with the requests.
- 6.8.2 When the situation described at 6.8.1 arises, the ICB will consider whether it is possible to publish the requested information on the ICB's website and forward the details of the website to each of the applicants within the appropriate cost limit.

## **6.9 Dealing with politically sensitive requests**

- 6.9.1 If a request is identified that may be politically sensitive (e.g. a local councillor or Member of Parliament is copied in, the request concerns an emotive local health policy) then the Communications team should be notified, while ensuring that the requester remains anonymous.

## **6.10 Transferring requests for information**

- 6.10.1 When responding to requests for information, the ICB can only provide information that it holds.

6.10.2 If the ICB receives a request for information which it does not hold (or holds only in part) but which is held by another public authority, then the ICB will consider what would be the most helpful way of assisting the applicant with their request. This is likely to involve:

- Informing the applicant that the information requested may be held by another public authority;
- Suggesting that the applicant re-applies to that authority;
- Providing the applicant with the contact details for that organisation;
- Transferring a request to that organisation where they hold information relating to part of a request made to the ICB, and vice versa, due to the closer working arrangements of those two bodies. Any transfer of a request must be with the consent of the applicant.

## **6.11 Consultation with third parties**

6.11.1 The ICB recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes “personal data” within the meaning of the Data Protection Act 2018 (DPA). Unless an exemption provided for in the FOI Act applies in relation to any particular information, the ICB is obliged to disclose that information in response to a request.

6.11.2 Where a disclosure of information cannot be made without the consent of a third party (for example where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of the confidence such that the exemption at section 41 of the Act would apply), the ICB consults that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

6.11.3 Where information constitutes “personal data” within the meaning of the DPA, the ICB has regard to section 40 of the FOI Act which makes detailed provision for cases in which a request relates to such information and the interplay between the FOI Act and the DPA in such cases.

6.11.4 The ICB undertakes consultation where:

- I. The views of the third party may assist the authority to determine whether an exemption under the FOI Act applies to the information requested; or
- II. The views of the third party may assist the authority to determine where the public interest lies under section 2 of the FOI Act.

6.11.5 The ICB may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the ICB will consider the most reasonable course of action for it to take in light of the requirements of the FOI Act and the individual circumstances of the request. Consultation is unnecessary where:

- I. The public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the FOI Act
- II. The views of the third party can have no effect on the decision of the authority, for example where there is other legislation preventing or requiring the disclosure of this information
- III. No exemption applies and so under the provisions of the FOI Act, the information must be provided

6.11.6 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the ICB will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the ICB may consider that it would be sufficient to consult a representative sample of the third parties in question.

6.11.7 The fact that the third party has not responded to consultation does not relieve the ICB of its duty to disclose information under the FOI Act, or its duty to reply within the time specified. In all cases, it is for the ICB, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the FOI Act. A refusal to consent to disclosure by a third party does not, in itself, mean that information should be withheld.

## **6.12 Public sector contracts**

6.12.1 When entering into contracts, the ICB will not include contractual terms which appear to restrict the disclosure of information held by the ICB and relating to the contract beyond the restrictions permitted by the FOI Act. Unless an exemption provided for under the FOI Act is applicable in relation to any particular information, the ICB will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

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

6.12.3 The ICB will not agree to hold information, in confidence which is not in fact confidential in nature. Advice from the Ministry of Justice's Department indicates that the exemption provided for in section 41 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 FOI Act would constitute a breach of confidence actionable by that, or any other person.

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

### **6.13 Accepting information in confidence from third parties**

6.13.1 The ICB only accepts information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided.

6.13.2 The ICB does not agree to hold information received from third parties "in confidence" that is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the ICO.

### **6.14 Refusal of requests**

6.14.1 A refusal of a request may apply to all the information requested by an applicant or a part thereof. A request for information may be refused if:

- The information is exempt from disclosure under Part II of the FOI Act.
- A fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant or the applicant was notified of the charge.
- The cost of compliance exceeds the appropriate limit.
- The request is demonstrably vexatious or repeated.

6.14.2 If consideration is given to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within 20 working days. The applicant will also be informed of the ICB's complaints procedures and of their right to appeal to the ICO.

6.14.3 If the ICB is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information, a notice will be issued within 20 working days under section 17 of the Act. The notice will:

- State that fact.
- Specify the exemption in question.
- State (if not otherwise apparent) why the exemption applies.

6.14.4 If the ICB anticipates that it will take more than 20 working days to reach a decision as to whether any part of the information requested by the applicant is exempt under Part II of the FOI Act, the applicant will be notified. A realistic and reasonable estimate of the date that a decision will be reached will be given and compliance expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given

the reason(s) for delay and offered an apology. If the ICB finds, whilst considering the public interest, that the estimate is proving unrealistic, the applicant will be informed.

6.14.5 If a qualified exemption is being applied, the Corporate Affairs Manager will, either in the notice issued above or a separate notice given within a reasonable timescale, state the reasons for claiming:

- That, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the ICB hold the information, or
- That, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

6.14.6 This statement will not involve the disclosure of information which would itself be exempt information.

6.14.7 If the ICB believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit, or the request is demonstrably repeated or vexatious, the notice will state that fact. If the ICB is relying on a claim that the request is vexatious or repeated under section 14 of the FOI Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

6.14.8 The Corporate Affairs Manager will keep records of all notices issued to refuse requests for information. When implementing this procedure, the Corporate Affairs Manager will seek advice from those person(s) who hold the information that the applicant has requested and from senior staff.

## **6.15 Complaints procedure**

6.15.1 The ICB will outline the complaints procedure to be followed in the case of complaints relating to the way in which the ICB has acted with regard to its obligations under the FOI Act. The complaints process for the FOI Act is known as an Internal Review. Any complaints about the discharge of the duties of the ICB in regard to the FOI Act either made in writing or verbally, would be handled in accordance with Appendix E.

6.15.2 As described in more detail at Appendix E, the Internal Review responses will highlight the applicant's rights under section 50 of the FOI Act to apply to the ICO if they remain unsatisfied with the conduct of the ICB following attempts at local resolution of their complaint.

## **6.16 Vexatious requests**

6.16.1 Under section 14(1) of the FOI Act, the ICB does not have to comply with vexatious requests. These are requests that may be so patently unreasonable or objectionable that it will obviously be vexatious. In cases where the issue is not clear-cut, the key question to ask it whether the request is "*reasonable*" or is likely to cause a "*disproportionate*" or "*unjustified*" level of disruption, irritation or distress – as described by the ICO in their guidance on vexatious requests

6.16.2 Similarly, in accordance with section 14(2) of the FOI Act, the ICB does not have to comply with a request which is identical, or substantially similar to a previous request

submitted by the same individual, unless a reasonable period has elapsed between those requests. The ICB may only apply section 14(2) where it has either:

- Previously provided the same requester with the information in response an earlier FOI Act request; **or**
- Previously confirmed the information is not held in response to an earlier FOI Act request from the same requester.

6.16.3 The ICB maintains a FOI log which retains a full audit trail which can used to support any decisions or considerations.

## 7 Environmental Information Regulations (EIR) 2004

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

- 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.
- factors affecting (or likely to affect) the environment – including energy, noise, radiation, waste, emissions, discharges and other releases into the environment.
- Measures – such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to above.
- reports – on the implementation of environmental legislation.
- economic analysis – including cost benefit and other analyses and assumptions used within the framework of measures and activities referred to above. Including 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 elements of the environment.

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

7.3 As with the FOI Act, the EIR sets out a number of 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 ICB reasonably believes that it is impracticable to answer the request in that timescale due to its complexity and volume, in which event the ICB 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'.

7.4 Exceptions – under the EIR there is an express presumption in favour of disclosure. However, the ICB can refuse to disclose the information if it would adversely affect the following matters:

- International relations, defence, national security or public safety.
- The course of justice, ability of a person to receive a fair trial or ability of public authority to conduct a criminal or disciplinary inquiry.
- Intellectual property rights.
- The confidentiality of proceedings of the organisation where such confidentiality is protected by law.

## 8 Datasets, re-use of information and copyright

- 8.1 A dataset is a collection of factual information in electronic form e.g. statistics or figures that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation.
- 8.2 Clause 92 of the Protection of Freedoms Bill amends the FOI Act meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use at the point of release under the open Government Licence, and where reasonably practicable, they will be published in a reusable format.
- 8.3 Regulations apply in respect of the re-use of information where the ICB holds the intellectual property/copyright of information and where re-use has been requested by a body that is not a public authority.
- 8.4 The regulations around re-use require organisations to publish details of information available for this purpose. Information that the ICB publishes as part of its Publication Scheme can be considered as the list of information available for re-use. Any published document can be re-used without charge, provided the ICB is quoted as the source and retains copyright.
- 8.5 Requests for re-use will be granted or denied by the Corporate Affairs Manager in consultation with the ICB subject matter experts. Following the completion of a response to a request for information that is not covered by the Publication Scheme, consideration will be made as to whether this information should be added to it.
- 8.6 If a request to re-use information provided by another organisation is received, the ICB will advise applicants of this and will be directed to the relevant organisation.

## 9 Disclosure of staff names and details

- 9.1 The ICB acknowledges that as a public authority, some justification exists for the disclosure of employee names and contact details.

- 9.2 In accordance with the ICB's publication scheme we will disclose the names of board members, directors and staff at a senior level, unless a valid exemption applies. Names and details of staff already published on the ICB's website (or other areas) will also be provided without consent. For example, staff that write public board papers, reports, or who have written public documents should expect that their names and details are in the public domain. Similarly, staff should be mindful of their own professional status and links to personal social media accounts.
- 9.3 The Corporate Affairs Manager will seek consent from other ICB staff where it is reasonably practicable to do so.
- 9.4 Requests for salary information will be answered, if applicable, by providing 'Agenda for Change' pay bands. Where a person falls outside of Agenda for Change pay bands, their salary will be given in £5,000 bands. Requesters will be referred to the ICB's Annual Report where possible.

## 10 Records Management

- 10.1 The ICB has a Records Management Policy that meets the requirements of the Code of Practice issued under Section 46 of the FOI Act. Together with the records management function this will serve to ensure that effective management is undertaken within the organisation, thereby enabling speedy location and retrieval of requested information.
- 10.2 Although by its nature, email seems to be less formal than other written forms of communication, the same laws apply. Therefore, it is important that ICB staff are aware of the legal risks of email. An email is an electronic record; a printed copy of an email is a hard copy record. Nonetheless, information noted in an email may be disclosed either in part or in whole to the public through the FOI Act and whilst exemptions exist, the ICB will not be able to safeguard confidentiality of correspondence carried out by email.
- 10.3 Staff should be made aware that under no circumstances should they deliberately alter, deface, block, erase or destroy information which has been requested in order to prevent its disclosure. Doing so is a criminal offence under the FOI Act and EIR, for which staff could be held individually responsible.
- 10.4 With regard to records created under the FOI Act, these will be held in accordance with NHS guidance on retention periods (ref 12): electronic and paper records of FOI requests will be retained for three years and then destroyed, with the exception of requests where any information requested was refused, in which case they should be retained for 10 years.
- 10.5 For monitoring purposes, the Corporate Affairs Manager will keep a record of all applications. This will include applications where all or part of the requested information is withheld. The Corporate Affairs Manager will also keep a record of all complaints and their outcomes.

## 11 Training and compliance

- 11.1 The ICB will regularly review their FOI arrangements to ensure compliance with this policy.
- 11.2 The Corporate Affairs Manager will maintain records of all FOI requests to assess performance in meeting the standards and statutory timeframes set out in the Lord Chancellor's Code of Practice. The Corporate Affairs Manager will produce monthly and quarterly reports to assess performance in meeting the statutory timeframes.
- 11.3 Review findings will also be used by the Corporate Affairs Manager to inform measures for improvement, including identifying any communications and training needs and whether new or revised procedures are needed to comply with the policy.
- 11.4 The Corporate Affairs Manager will ensure training is available to those managers tasked with handling FOI requests within the ICB, as required. It is the responsibility of line managers to ensure that their staff are aware of this policy and procedure and how to deal with a Freedom of Information request should they receive one.

## 12 Equality and Diversity

- 12.1 The ICB recognises the diversity of the local community and those in their employment. It aims to design and implement policies that meet the diverse needs of our services, population and workforce, ensuring that nobody is placed at a disadvantage over others and providing a safe environment free from discrimination.
- 12.2 This policy takes into account current UK legislative requirements, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equal opportunities for all. This document has been designed to ensure that no-one receives less favourable treatment due to their personal circumstances, i.e. the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity. Appropriate consideration has also been given to socio-economic status, immigration status and the principles of the Human Rights Act.
- 12.3 The ICB recognises that equality impacts on all aspects of its day to day operations and has produced an Equality Impact Assessment Framework for all their policies. This policy has been assessed against the Equality Impact Assessment Tool, which is attached to this policy.

## 13 Contacts and sources of support

- 13.1 Any enquiries regarding the ICB's FOI Policy and Publication Scheme should be directed to:

**Corporate Affairs Manager**  
Corporate Affairs Team

NHS Norfolk and Waveney ICB  
[nwicb.corporateaffairs@nhs.net](mailto:nwicb.corporateaffairs@nhs.net)

**Corporate Senior Manager**

Engagement, Communications and Marketing  
NHS Arden & GEM CSU  
2<sup>nd</sup> Floor, St. John's House  
30 East Street  
Leicester, LE1 6NB  
[agem.nwicb.foiservice@nhs.net](mailto:agem.nwicb.foiservice@nhs.net)

14 Reference documents

- Data Protection Act 2018
- Freedom of Information Act 2000
- Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 Issued under section 45 of the Act .November 2004 Act, November 2002.
- Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002

**Reference Links**

1. Freedom of Information Act 2000\_  
<http://www.legislation.gov.uk/ukpga/2000/36/contents>
2. Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Section 45 of the Freedom of Information Act 2000\_  
<https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>
3. Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000\_  
<http://www.nationalarchives.gov.uk/documents/foi-section-46-code-of-practice.pdf>
4. Model Publication Scheme 2009\_  
[http://www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide/publication\\_scheme](http://www.ico.org.uk/for_organisations/freedom_of_information/guide/publication_scheme)
5. Definition Document for the Model Publication Scheme for Health Bodies in England\_  
[http://www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide/publication\\_scheme](http://www.ico.org.uk/for_organisations/freedom_of_information/guide/publication_scheme)
6. Information Commissioner's Guide: Vexatious or repeated requests

<https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

7. Information Commissioner's Guide: Time for compliance (Section 10).\_  
<https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>
8. Information Commissioner's Guide: When should names be disclosed?\_  
[https://ico.org.uk/media/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/1187/section_40_requests_for_personal_data_about_employees.pdf)
9. Statutory Instrument 2004 3244: The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004).\_  
<http://www.opsi.gov.uk/si/si2004/2004324>
10. Information Commissioner's Guide: Information provided in Confidence\_  
<https://ico.org.uk/media/1432163/information-provided-in-confidence-section-41.pdf>
11. Information Commissioner's Guide: Commercial Interests  
<https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>
12. Records Management: NHS Code of Practice (April 2006).\_  
<http://systems.digital.nhs.uk/infogov/iga/resources/rmcop/index.html>
13. UK Parliament\_  
<http://www.parliament.uk/>
14. Information Commissioners Office Freedom of Information Act  
webpage: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

## **Appendix A – FOI Background and our duties**

The Freedom of Information Act 2000 (FOI Act) is a commitment to greater openness in the public sector and this is supported by the ICB. The FOI Act sets out the basic rights of an individual or organisation to request and receive information held by a public body.

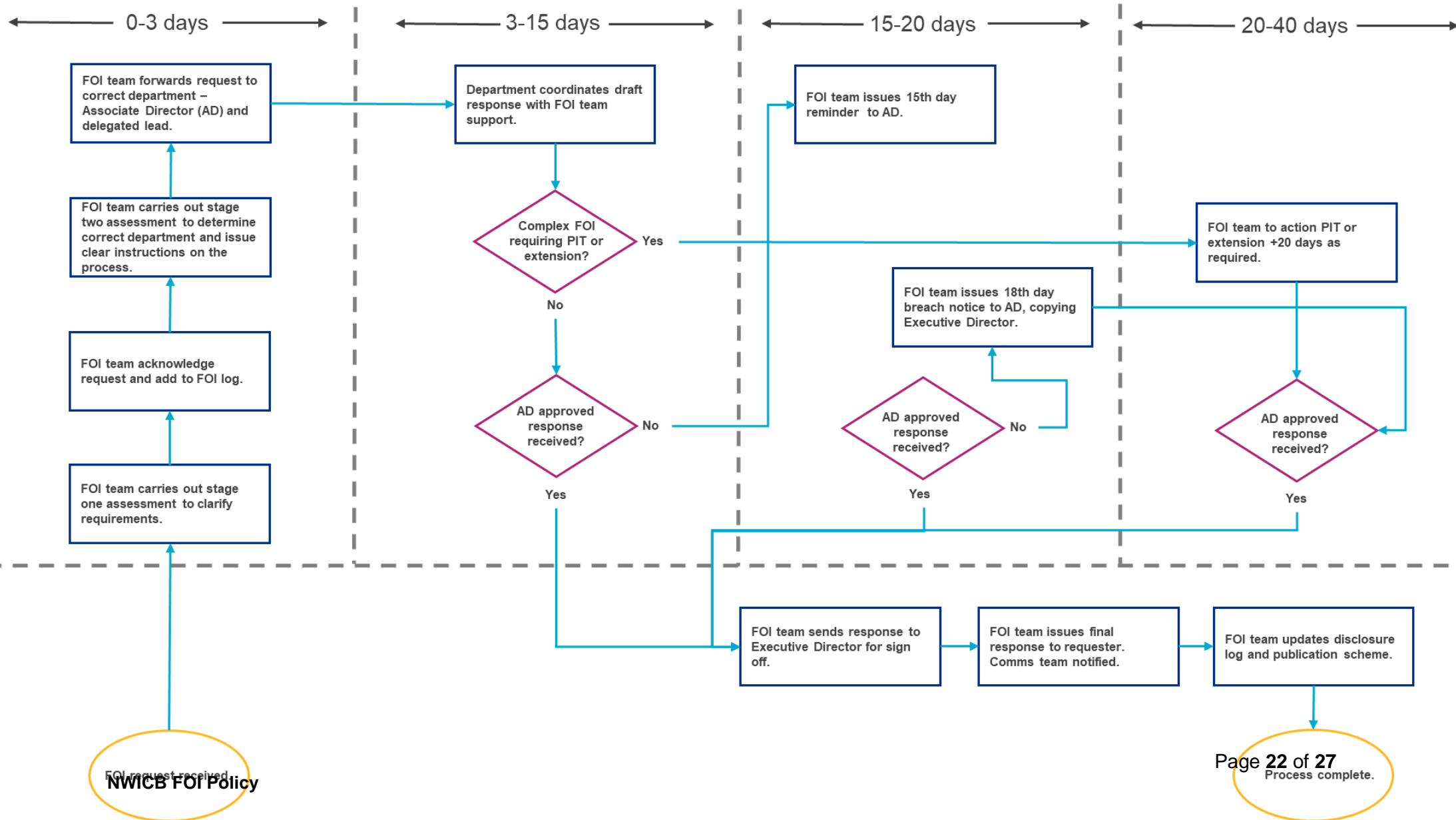
Transparency and accountability are fundamental principles for public bodies to adhere to. It is important that members of the public, media sources and Members of Parliament have the ability to question how public bodies operate and spend public money.

Replacing the non-statutory Code of Practice on Openness in the NHS, the FOI Act was formally passed in November 2000 and came into force on 1 January 2005.

The main features of the FOI Act 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 (see Appendix E), 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 FOI Act 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 B – Process map (see Appendix C also)



## **Appendix C – Summary of key actions and timescales**

Timescale (working days)	Action	Team actions
(FOI team refers to Corporate Affairs Manager and CSU FOI Lead)		
Note: the 20 working day 'clock' starts the day after the enquiry/request is received		
Day 0	Request is received by the ICB via email, post or other means.	
Immediately	If received by staff member, or alternative mailbox to the FOI inbox, the request should be forwarded without delay to <a href="mailto:agem.nwicb.foiservice@nhs.net">agem.nwicb.foiservice@nhs.net</a>  If postal request, scan and forward to the FOI inbox above.	
Day 0 - 3	The request is acknowledged by the FOI team and deadline is provided to the requester.  In the meantime, the request is assessed by the FOI team to identify which business area(s) is most appropriate to respond for example, finance, PCNs, contracts etc.  The request is sent to the relevant Associate Director(s) and their delegated FOI Lead/contact. <i>NB this will usually be Head of Department or Senior Manager.</i> The email will include any necessary advice and support to assist the team.	The FOI team will as routine: <ul style="list-style-type: none"><li>• Provide advice and assistance if required</li><li>• Review against the publication scheme</li><li>• Seek clarification from the requester</li><li>• Determine if a fee/charge is necessary</li><li>• Consider if information is exempt</li><li>• Decide if the request is vexatious or repeated</li></ul>
Day 3 – 15	The department responsible will coordinate the response which includes locating the relevant information and drafting responses.  The department's delegated lead will get their Associate Director's approval before submitting the information to the FOI team  Information, responses and a copy of Associate Director approval are sent to the FOI team	The FOI team will: <ul style="list-style-type: none"><li>• Support the Associate Director and their delegated lead with any and all aspects of the FOI Act</li><li>• Consider the requesters preference regarding response format</li><li>• Liaise with other senior colleagues and stakeholders</li><li>• Provide objective advice in respect of exemptions</li><li>• Consider the public interest test</li><li>• Draft the exemptions</li><li>• Write the final response based on the information provided</li><li>• Provide advice and assistance to the requester</li><li>• Notify the requester if the request has been refused</li></ul>
Day 15	Reminder sent to Associate Director	
Day 18	Breach warning sent to Associate Director, copying to the relevant Executive Director.	
Before day 20	Final response sent to Executive Director for sign off	
	The requester receives a copy of the final response and is informed of their right to appeal.	
Within day 40	For more complex requests or where the public interest was considered, the response is sent to the requester.	
If a request for clarification is made to the requester, the 20 working day clock stops and restarts from the date the information required is received by the ICB.		
If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The 20 working day timescale is suspended until the fee/charge is paid.		
Additional time to respond can be requested from the requester if the information is difficult to retrieve.		

## **Appendix D – Exemptions**

There are two types of exemptions:

- **Absolute exemptions**, which do not require a test of prejudice or balance of public interest to be in favour of non-disclosure.

Or,

- **Qualified exemptions by the public interest test**, which require the public authority to decide whether it is in the balance of the public interest not to disclose the information.

With the exception of section 21 (information available by other means) absolute exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that is reasonable to withhold.

The absolute exemptions under the FOI Act are:

<b>Section 21</b>	<b>Information accessible to the applicant by other means</b> – it may be reasonably accessible even if the applicant has to pay for it.
<b>Section 23</b>	<b>Information supplied by, or relating to, bodies with security matters</b> – this is aimed at the Security Services, Government Communications headquarters and the National Criminal Intelligence Service.
<b>Section 32</b>	<b>Court records</b> – covers documents in the custody of a court, created by a court or served on or by a public authority for court proceedings.
<b>Section 34</b>	<b>Parliamentary privilege</b> – to avoid infringing the privileges of either House of Parliament
<b>Section 40</b>	<p><b>Personal information</b>- Any information to which a request for information relates is exempt if it constitutes personal data of which the applicant is the data subject.</p> <p>Any information to which a request for information relates is also exempt information if it constitutes personal data relating to third part and meets one of the following conditions:</p> <p><u>Condition 1</u></p> <p>a) the disclosure of the information to a member of the public would contravene any of the data protection principles or</p> <p>b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.</p> <p><u>Condition 2</u></p> <p>It is also exempt if the disclosure of the information to a member of the public would contravene article 21 of the GDPR (general processing: right to object to processing)</p> <p><u>Condition 3</u></p> <p>a) it is also exempt if the information was requested under article 15(1) of the GDPR (general processing: right of access by the data subject) but would be withheld in reliance on a relevant provision in the Data Protection Act 2018</p> <p>b) It is also exempt if the information was requested under section 45(1)(b) of the GDPR (law enforcement processing: right of access of the data subject) and it would be withheld in reliance on subsection (4) of that section.</p>
<b>Section 42</b>	<b>Information provided in confidence</b> – if the disclosure of the information would

	constitute a breach of confidence that could lead to action against the ICB is disclosed.
<b>Section 44</b>	<b>Prohibitions on disclosure</b> – information is exempt if its release is prohibited under any enactment, it is incompatible with community obligation or would constitute contempt of court.

The exemptions that are qualified by the public interest test are:

<b>Section 22</b>	<b>Information intended for future publication</b> – covers information held with a view to publication by the public authority or another person at some future date.
<b>Section 24</b>	<b>National security</b> – information can be exempt if it is required to safeguard national security
<b>Section 26</b>	<b>Defence</b> – information can be exempt if its release would affect the defence of the British Isle, any British colony or the capability and effectiveness of the armed forces
<b>Section 27</b>	<b>International relations</b> – information is exempt if its release would prejudice relations with another state, international organisation, international court or the interests of the UK abroad.
<b>Section 28</b>	<b>Relations within the UK</b> – covers information that would prejudice the economic interests of the UK or of any administration in the UK
<b>Section 29</b>	<b>The economy</b> – covers information that would prejudice the economic interest of the UK or of any administration in the UK
<b>Section 30</b>	<b>Investigations and proceedings conducted by public authorities</b> – covers information held for an investigation that the authority has a duty to conduct to decide if a person should be charged with or found guilty of an offence, relates to criminal proceedings that the authority has power to conduct or relates to civil proceedings brought by or on behalf of the authority.
<b>Section 31</b>	<b>Law enforcement</b> – information is exempt if its release would prejudice law enforcement. This includes the prevention and detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons.
<b>Section 33</b>	<b>Audit functions</b> – this applies to authorities that have functions in relation to the audit of other authorities' accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.
<b>Section 35</b>	<b>Formulation of government Policy</b> – relates to government departments and the National Assembly for Wales.
<b>Section 36</b>	<b>Prejudice to effective conduct of public affairs</b> – information is exempt if, in the opinion of a qualified person, it would prejudice how the Trust conducts its public affairs.
<b>Section 37</b>	<b>Communications with Her Majesty, with other members of the Royal Household, and the conferring by the Crown of any honour or dignity.</b>
<b>Section 38</b>	<b>Health and safety</b> – information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.
<b>Section 39</b>	<b>Environmental information</b> – covers information that can be accessed via the Environmental Information Regulations
<b>Section 42</b>	<b>Legal professional privilege</b> -
<b>Section 43</b>	<b>Commercial interests</b> – information is exempt if it constitutes a trade secret or would prejudice or be likely to prejudice the commercial interests of any person or organisation.

## **Appendix E – Internal Review Procedure**

### **Introduction**

The right to appeal is a fundamental part of the FOI Act and the Environmental Information Regulations. This right can be exercised in two ways: by an internal review using the ICB's appeal procedures and by an external appeal to the Information Commissioner's Office (ICO). The ICO will not usually investigate any appeal which has not been thoroughly investigated through the ICB's internal process.

Dissatisfied applicants therefore have the opportunity for an initial review of how their request for information was handled. Having gone through this process, applicants who are still unhappy can complain to the ICO and will be dealt with in accordance with the ICO procedures.

Any written correspondence from an applicant, including those transmitted by electronic means, expressing dissatisfaction with the ICB's response to a valid request for information should be treated as a complaint, as should any written communication from a person who perceives that the authority is not complying with its Publication Scheme. These communications should be handled in accordance with the procedure outlined below.

Internal reviews are fresh decisions, not just a review of the original decisions. They should be treated as a new request and carried out by a person who wasn't involved in the original decision.

The internal reviewer sets out their decision in the form of a document outlining their conclusions and recommendations. Following management approval, the outcome of the review is communicated to the applicant.

On completion of the review, records relating to the review are returned to the FOI Team. They are retained in order to assist in any investigation by the Information Commissioner.

### **Stage one appeal:**

Where possible, the ICB will take all reasonable steps to manage enquires which clearly do not require formal escalation in an informal manner. However, where this is not possible, stage two below should be followed.

### **Stage two appeal:**

When a formal Internal Review is received a review will be carried out into how the decision was reached. Simultaneously, a new and fresh decision will be made. This process will be led by the ICB's Information Governance Team – a team to whom the FOI function is independent, and moreover, a team that has significant experience of the FOI Act and information rights.

The review will consider the following issues:

- Whether there was an actionable breach of the FOI Act, for example that the decision was reached within the statutory timeframe;
- Whether the requester was given adequate advice and guidance about their request;
- Whether the procedure (FOI Policy) for responding to the request was followed correctly, and the ICB acted lawfully in respect of the FOI Act;
- If an exemption was applied, the reasons were explained adequately to the requester.

The review will be conducted by the Information Governance Team who will report their findings to the ICB's Chief Finance Officer to make a final decision. It's important to note that each request, and in turn Internal Review, is different and may require alternative approaches however as a minimum the reviewer will:

- Review all documents associated with the original request and the response;
- Discuss the decisions made with the staff who dealt with the original request to build a full picture of how decisions were made;
- Make a fresh decision based on all the available information that is relevant to the date of the request.

The outcome of the review may be that the decisions in relation to the original request are upheld or that further information is released to respond to the request, fully or in part; in which case the information will be shared without delay to the applicant. The person undertaking the review will recognise that the circumstances relating to the original decision may have changed between the time the decision was made and the application for internal review. In line with ICO guidance the review will be based on the circumstances as they existed at the time of the request, or at least within the agreed timeframes.

Where possible, reviews will be completed within 20 working days of receiving the request. Where this is not possible, the applicant will be advised as soon as possible when they should expect the review to be completed.

The outcome of the review will be recorded and the requester advised of their rights.

### **Stage three appeal:**

If the applicant feels that his or her complaint has not been dealt with satisfactorily by the ICB then they can apply to the Information Commissioner, who will consider whether the ICB have complied with their obligations under the Freedom of Information Act 2000.

Complaints to the Information Commissioner should be sent to:

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 123 1113  
Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)  
Web: <http://www.informationcommissioner.gov.uk>