



**Dorset  
Clinical Commissioning Group**

## NHS Dorset Clinical Commissioning Group

POLICY AND PROCEDURES FOR REQUESTS MADE UNDER THE FREEDOM OF INFORMATION ACT 2000 OR THE ENVIRONMENTAL INFORMATION REGULATIONS 2004



**Supporting people in Dorset to lead healthier lives**

## **PREFACE**

This document sets the policy for NHS Dorset Clinical Commissioning Group with regard to its legal obligation to comply with the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

All managers and staff are responsible for ensuring that they are viewing and working to the current version of this procedural document. If this document is printed in hard copy or saved to another location, it must be checked that the version number in use matches with that of the live version on the CCG intranet.

All CCG procedural documents are published on the staff intranet and communication is circulated to all staff when new procedural documents or changes to existing procedural documents are released. Managers are encouraged to use team briefings to aid staff awareness of new and updated procedural documents.

All staff are responsible for implementing procedural documents as part of their normal responsibilities, and are responsible for ensuring they maintain an up to date awareness of procedural documents.

<b>A</b>	<b>SUMMARY POINTS</b>
<p>Policy for NHS Dorset Clinical Commissioning Group with regard to its legal obligation to comply with the Freedom of Information Act 2000 and Environmental Information Regulations 2004.</p>	

<b>B</b>	<b>ASSOCIATED DOCUMENTS</b>
<ul style="list-style-type: none"> <li>• Data Security and Protection Policy</li> <li>• Data Protection Policy</li> <li>• IT Security Policy</li> <li>• Confidentiality: Staff Code of Conduct</li> <li>• Confidential Corporate Information Policy</li> </ul>	

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<b>SUPPORTING DOCUMENTS/EVIDENCE BASED REFERENCES</b>		
<b>Evidence</b>	<b>Hyperlink (if available)</b>	<b>Date</b>
<ul style="list-style-type: none"> <li>Freedom of Information Act 2000, London, Stationery Office.</li> <li>The Information Commissioner's website covering The Freedom of Information Act, Environmental Information Regulations and the Data Protection Act.</li> <li>Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000,</li> </ul>	<p><a href="https://www.legislation.gov.uk/ukpga/2000/36/contents">https://www.legislation.gov.uk/ukpga/2000/36/contents</a></p> <p><a href="https://ico.org.uk/media/about-the-ico/documents/1042173/overview_of_the_foi_act_2000_and_regulatory_framework.pdf">https://ico.org.uk/media/about-the-ico/documents/1042173/overview_of_the_foi_act_2000_and_regulatory_framework.pdf</a></p> <p><a href="http://www.nationalarchives.gov.uk/foi/">http://www.nationalarchives.gov.uk/foi/</a></p>	<p>2000</p> <p>2002</p>

<p>issued under section 45 of the Act</p> <ul style="list-style-type: none"> <li>• Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000</li> <li>• Environmental Information Regulations 2004</li> <li>• Data Security and Protection Toolkit</li> <li>• Public interest test</li> <li>• FOI Release of Datasets for Re-use (Fees) Regulations 2013</li> <li>• The Re-use of Public Sector Information Regulations 2015</li> </ul>	<p><a href="http://www.nationalarchives.gov.uk/documents/foi-section-46-code-of-practice.pdf">http://www.nationalarchives.gov.uk/documents/foi-section-46-code-of-practice.pdf</a></p> <p><a href="http://www.legislation.gov.uk/uksi/2004/3391/contents/made">http://www.legislation.gov.uk/uksi/2004/3391/contents/made</a></p> <p><a href="https://www.dsptoolkit.nhs.uk/">https://www.dsptoolkit.nhs.uk/</a></p> <p><a href="https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf">https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf</a></p> <p><a href="http://www.legislation.gov.uk/uksi/2013/1977/pdfs/uksi_20131977_en.pdf">http://www.legislation.gov.uk/uksi/2013/1977/pdfs/uksi_20131977_en.pdf</a></p> <p><a href="http://www.legislation.gov.uk/uksi/2015/1415/contents/made">http://www.legislation.gov.uk/uksi/2015/1415/contents/made</a></p>	<p>2002</p> <p>2004</p>
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<b>G</b>	<b>DISTRIBUTION LIST</b>		
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## **1.0 RELEVANT TO**

1.1 This policy is relevant to all staff:

- within the CCG whether operating directly or providing services under a service level agreement or joint agreement;
- including contracted employees, non-executive directors and contracted third parties such as bank, agency, volunteers, locums, student placements, staff on secondment, researchers, visiting professionals and suppliers.

1.2 Failure to adhere to this policy, and its associated procedures, may result in disciplinary action.

## **2.0 INTRODUCTION**

2.1 As a public authority NHS Dorset Clinical Commissioning Group (CCG) has obligations under the Freedom of Information (FOI) Act 2000 (the 'Act') and the Environmental Information Regulations, 2004 (EIR), both of which give a right of access to information. Those obligations mean that any person who makes a request to the CCG for information is entitled:

- to be informed in writing by the CCG whether it holds information meeting the description set out in the request; and
- to have information the CCG holds relating to the request communicated to them.

2.2 These rights apply unless an exemption applies (see Appendix A), or the request can be refused under sections 12 (cost prohibitive) or 14 (vexatious), as set out in the legislation.

2.3 This document sets out the policy for the CCG with regard to its legal obligation to comply with the Act/EIR.

2.4 The Act defines the 'information' the CCG can be asked to provide. It makes clear that it means recorded information held in any form, electronic or paper.

2.5 The CCG is not required to create new information in order to comply with a request for information under the Act. The CCG need only consider information already in existence at the time a request is received.

2.6 A request to the CCG for recorded information will be treated as a request under the Act, other than:

- information given out as part of routine business, for example, standard responses to general enquiries;
- a request for environmental information; or

- the requester's own personal data.
- 2.7 The Act provides a right to information and disclosing existing documents will often be the most straightforward way of providing that information. However, in other cases it may be appropriate to extract the relevant information for disclosure and put in a single document rather than redact the existing document that contains it.
- 2.8 A request for environmental information only should be dealt with under the Environmental Information Regulations 2004, and a request for a person's own personal data should be dealt with under the subject access provisions of the Data Protection Act 2018. Sometimes it may be necessary to consider a request under more than one access regime.
- 3.0 Section 77 (Offence of altering records etc. with intent to prevent disclosure)**
- 3.1 Staff need to be aware that under the Act it is a criminal offence to alter, deface, block, erase, destroy or conceal any information held by the CCG with the intention of preventing disclosure following a request under the Act.
- 4.0 SCOPE**
- 4.1 This policy applies to every piece of recorded information held by the CCG, whether paper or electronic.
- 5.0 PURPOSE**
- 5.1 The purpose of this policy is to ensure that the CCG is compliant with the requirements of the Act/EIR.
- 5.2 The CCG recognises its responsibilities to implement, in full, its duties in respect of the Act/EIR and to ensure all its employees understand and implement the requirements.
- 5.3 The CCG will use all appropriate and necessary means to ensure that it complies with the Act and associated Codes of Practice issued by the Lord Chancellors Office pursuant to sections 45 and 46 of the Act.
- 5.4 This policy will underpin any operational procedures and activities connected with the implementation of the Act.
- 6.0 ROLES AND RESPONSIBILITIES**
- 6.1 Chief Officer**

6.2 The Chief Officer has overall responsibility for the organisational compliance with the Act.

### **6.3 Data Protection Officer**

6.4 The Data Protection Officer:

- has responsibility for ensuring compliance with the Act within the CCG;
- has day-to-day responsibility for the management of all aspects relating to the Act;
- is responsible for promoting awareness and advising all staff, throughout the CCG, on issues relating to the Act;
- will provide a regular report to the Audit and Quality Committee and Data Security and Protection Group, detailing all aspects of the disclosure and non-disclosure of recorded information by the CCG under the Act;
- will ensure relevant information is made available via the CCG's Publication Scheme;
- will ensure that the Publication Scheme is regularly reviewed and the content is up to date.

### **6.5 Data Security and Protection Group**

6.6 The Data Security and Protection Group is responsible for monitoring compliance with the Act.

### **6.7 Managers**

6.8 Managers are responsible for ensuring that:

- information is supplied promptly to the Data Security and Protection team (DSP team) when requested for inclusion within the Publication Scheme or for individual requests;
- information not included within the Scheme is created and stored in accordance with CCG records management procedures and processes to enable easy location when required;
- all staff are aware of, and adhere to the policy;
- all staff are updated with regards to any changes in this policy.

### **6.9 Staff**

6.10 All staff within the CCG are responsible for:

- ensuring they comply with the CCG's statutory obligation under the Act, and any policies and procedures laid down by the CCG to ensure compliance. Failure to do so may result in disciplinary action;

- the creation of their own records and for adhering to the CCG Records Management procedures and processes;
- identifying Freedom of Information requests and forwarding immediately to the DSP team at: [FOI.Requests@dorsetccg.nhs.uk](mailto:FOI.Requests@dorsetccg.nhs.uk)
- responding to requests made for information by the DSP team within the set timescales;
- ensure that all relevant information to meet the requirements of the request is retrieved;
- ensure that responses made in relation to a request do not include information of a sensitive personal nature (i.e. for staff, patients or clients);
- preserving formal records of their official activities, which must be accurate, adequately named and indexed for easy retrieval or publication. Poor record management itself is not an offence, but it may lead to an inability to comply with Freedom of Information Act requirements.

## **7.0 PUBLICATION SCHEME**

7.1 The Act makes convey a duty on every Public Authority to adopt and maintain a scheme for the publication of information by that authority.

7.2 The CCG uses an amended version of the 'approved' model issued by the Information Commissioners Office in January 2015. The outline of the scheme is below:

### **7.3 About NHS Dorset CCG**

- who the CCG is and what it does such as organisational structure, how the CCG fits into the NHS, organisations worked in partnership with and senior staff and board members;

### **7.4 Financial Information**

- what the organisation spends and how the money is spent such as annual statements of accounts and contracts currently being tendered;

### **7.5 How decisions are made**

- governing body meetings and minutes;

### **7.6 Corporate information**

- what the CCG priorities are and how the CCG is doing;

### **7.7 Policies and procedures**

- the policies and procedures followed by the CCG;

## **7.8 List and registers**

- lists and registers held by the CCG such as those for declarations of interests and gifts and hospitality;

## **7.9 Request for Information within the Publication Scheme**

7.10 If a request is received for information that comes under the scope of the publication scheme, the requestor will be directed to download the information from the CCG website if actively published. Where the information is identified as available on request it will be provided in electronic format where possible or alternative format if requested. All such responses will be dealt with promptly and within 5 working days.

7.11 The Publication Scheme sets out the following:

- the classes of information published, or intended to be published;
- the manner in which publication is, or is intended to be made;
- whether the information is available free of charge or if payment is required.

7.12 The CCG's Publication Scheme details the information published at that point in time, the format in which the information is available and whether or not a charge will be made for the provision of that information.

## **8.0 VALID (FOI) REQUEST**

8.1 The Act sets out the criteria for what constitutes a valid request:

- a request for information must be made in writing. This can either be in hard copy or electronically;
- a request for information must state the name of the applicant and an address for correspondence. Applicants must provide their real name and not use a pseudonym. Both email and postal addresses are acceptable;
- a request for information must adequately describe the information sought.

8.2 The CCG does not have to comply with requests that do not meet the requirements set out above. However, it is good practice to write to the applicant and explain, if this is the case.

8.3 A request submitted through social media will be valid where it meets the requirements of a 'valid request' by providing an applicant's name and address for correspondence and a clear request for information. Addresses

for correspondence can take the form of an email address or a unique name or identifier on a social media platform (for example a Twitter handle), as well as postal addresses. Requests must be addressed directly to the CCG, which includes appointed representatives, when acting in their formal capacity. In order to be addressed directly, the CCG must have a formal, monitorable presence on the particular platform being used by an applicant.

#### **8.4 Accessing the Information**

8.5 The DSP team will work with staff to identify who holds the information that the applicant has requested. Once the contact person(s) have been identified, a request for information will be made. A record will be kept of each request as follows:

- initial date received by the CCG;
- date received by the DSP team;
- name of the applicant;
- contact details of the applicant;
- description of the information requested;
- the method by which the information was requested;
- decision taken and details of any exemptions used;
- date completed and date information forwarded to the applicant;
- time taken to provide response to applicant.

8.6 When requests for information are made from the media they will be copied to the Communications Team for information.

#### **9.0 TIME LIMITS FOR COMPLYING WITH REQUESTS**

9.1 The CCG has systems and procedures in place to ensure that it meets the commitment to confirm or deny and/or to provide information, not later than 20 working days after receiving a request in accordance with the Act. All staff and non-executive directors must comply with the requirements of this procedure; failure to do so may result in disciplinary action.

9.2 The 20-day time limit is subject to the following:

- on receipt of the request the CCG may need to clarify with the individual exactly what information is required. The 20 working days begins to run after this clarification has been given;

- the CCG is entitled to issue a fees notice, setting out the amount they intend to charge for supply of the requested information. The 20 working day limit does not begin to run till the fee, has been received. (If a fee is applicable see section 12.).

## **10.0 MEANS OF COMMUNICATION**

- 10.1 If an applicant states a preference for receiving information in a specific format the CCG shall, aim to meet this preference as far as is reasonably practicable. Applicants may, for instance, request to receive the information in an electronic or hard copy format.
- 10.2 If it is determined that it is not reasonably practicable to comply with the applicant's preference, they will be notified of the reasons and the information will be provided by such means as is deemed to be reasonable.

## **11.0 EXEMPT INFORMATION**

- 11.1 Whilst the Act creates a general right of access to information held the CCG does not have to comply with information requests where the information requested is exempt under the provisions of the Act, (see Appendix A).
- 11.2 There are two types of exemption relating to FOI requests.
- **Absolute** – where the information falls within the scope of an absolute exemption a public body is not obliged to provide the information e.g. Personal Information relating to a patient;
  - **Qualified** – where the information falls within the scope of a qualified exemption this is subject to the public interest test. The public interest in non-disclosure must outweigh the public interest in disclosure e.g. commercial interests.
- 11.3 An interpretation of these exemptions is carried out in accordance with guidelines issued by the Information Commissioner's Office (ICO).

## **12.0 THE PUBLIC INTEREST**

- 12.1 The majority of the exemptions set out in the Act must only be relied upon if the CCG is satisfied that maintaining the exemption in question outweighs the public interest in disclosure.
- 12.2 For some, or all of the information requested, the CCG will have to consider whether it must override the exemption because it is in the public interest to release it. This involves considering the circumstances of each particular case and the exemption that covers the information, in accordance with ICO guidelines.

12.3 It is acknowledged by the ICO that it may take longer than the 20 working-day limit to consider the Public Interest Test. It is best practice for the extension for a decision to be made, to be no more than a further 20 working days. The applicant will be advised the Public Interest Test is being undertaken and notified of the new deadline when a response will be given.

## **13.0 FEES**

13.1 It is an option for the CCG to charge for the cost of providing information requested under the Act. Where the CCG intends to charge for the cost of providing information, a fees notice will be sent, stating the amount to be paid, including how this has been calculated, as soon as possible within the 20 working day response period. The notice should inform applicants:

- that the 20 working day period for responding to the request will be paused until payment is received (the CCG will apply a three-month deadline for the fee to be paid);
- how to pay the fee; and
- their rights of complaint via internal review and to the Information Commissioner about the fee levied.

13.2 The CCG may charge for:

- actual production expenses (e.g. redacting exempt information, printing or photocopying);
- transmission costs (e.g. postage); and
- complying with the applicant's preferences about the format in which they would like to receive the information.

13.3 It is not possible to charge for any staff time where the cost of compliance falls below the cost limit (see 12.5). There is no obligation to comply with any request exceeding the cost limit.

13.4 Once the fee is received, the CCG will process it promptly. Should the CCG underestimate the costs to be charged, it will not issue a second fees notice and will bear the additional cost.

## **13.5 Cost limit**

13.6 The Act allows the CCG to refuse to deal with any requests where it is estimated that responding to the request would exceed the 'cost limit'.

13.7 If the CCG calculates that responding to a request will take it over the cost limit it is not obliged to provide a substantive response. The cost limit is calculated at a flat rate of £25 per hour and equates to £450 (18 hours).

- 13.8 Only certain activities can be included when estimating whether responding to a request would breach the cost limit. These are:
- establishing whether information is held;
  - locating and retrieving information; and
  - extracting relevant information from the document containing it.
- 13.9 Other factors including redaction time or any other expenses likely to occur in cost limit calculations cannot be included when estimating whether the response would exceed the cost limit.
- 13.10 The cost limit can be applied on the basis of a reasonable estimate at the time the request is received. Public authorities are not under any obligation to make a precise calculation although estimates should be sensible and realistic.

#### **14.0 AGGREGATION OF REQUESTS**

- 14.1 When a number of requests are received from either the same person or different people asking for the same or similar information within a short time of each other, the CCG may consider aggregating these requests and take an overall view of the resources which would have to be committed to answering all of the requests. Aggregation of requests can be considered when two or more requests for information have been made and:
- they are either from the same person, or from 'different persons who appear to be acting in concert or in pursuance of a campaign;'
  - the requests relate to the same or similar information;
  - they have been received by the public authority within a space of 60 consecutive working days.

#### **14.2 Reducing the cost of a request**

- 14.3 Where it is estimated the cost of answering a request would exceed the "cost limit" beyond which the CCG is not required to answer a request (and the CCG is not prepared to answer it), the CCG will provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit. Any refined request will be treated as a new request for the purposes of the Act.

#### **15.0 AMBIGUOUS OR WITHDRAWAL OF REQUESTS**

- 15.1 If further clarification from the requestor is required, or not enough information has been provided for the request to be processed, the requestor will be

informed at the earliest opportunity. If clarification is not received within 3 months of initial contact the FOI or EIR request will be closed.

- 15.2 Once clarification has been requested the 20 working days' countdown will stop. When the clarification has been received the countdown will recommence from where it stopped.

## **16.0 VEXATIOUS/REPEATED REQUESTS**

- 16.1 The CCG is not obliged to provide a substantive response to a request if the request is vexatious.
- 16.2 The CCG will consider a request vexatious where the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Factors for consideration include:
- the burden it places on the CCG and its staff;
  - the likely motives for the request;
  - the potential value or purpose of the request;
  - any harassment or distress to staff;
  - what other requests have been made by the same requester to the public authority;
  - the number and subject matter of the requests if there are multiple requests; and
  - previous dealings with the requester.
- 16.3 The public interest in obtaining the material does not act as a 'trump card', overriding the vexatious elements of the request and requiring the public authority to respond to the request.
- 16.4 If the CCG considers a request to be vexatious, a refusal notice will be provided to the applicant. This will be issued within 20 working days and will explain that the CCG considers the request vexatious. Details of CCG internal review procedures will be included, along with notification of the right to appeal to the Information Commissioner. Although there is no obligation to explain why the request is vexatious, the CCG will do so as part of its duty to provide advice and assistance.
- 16.5 All requests for information are logged in order to assist monitoring and therefore the CCG is able to identify repeated or vexatious requests.
- 16.6 Requests can be refused as vexatious if they are part of a campaign to disrupt or distress and/or come from a number of applicants acting together.

## **16.7 Repeated Requests**

16.8 Section 14(2) of the Act allows refusal of requests if they are identical or substantially similar to a previous request and no reasonable interval has passed.

## **17.0 REFUSAL OF REQUESTS**

17.1 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 requested is personal Information. The provisions of the Data Protection Act 2018 (DPA) always takes precedence over those of the FOIA. Personal information must be obtained, processed, stored and disclosed in accordance with the DPA, even where a request for information has been made under the provisions of the FOIA;
- the information falls under one of the exemptions;
- a fees notice has been issued to an applicant and the fee has not been paid within three months;
- the request is repeated or vexatious;
- the cost of compliance with the request for information exceeds the cost limit.

17.2 The CCG will keep a record of all refusal notices issued to applicants. These will be subject to quarterly review to maintain consistency in decision-making.

17.3 All notices issued by the CCG advising the applicant that it is refusing to comply with a request for information will inform the applicant of the CCG's internal review procedure and of their right to apply to the Information Commissioner.

## **18.0 INTERNAL REVIEW**

18.1 Under the Act, there is no obligation for an authority to provide a complaints process. However, the Section 45 Code of Practice makes clear that it is good practice to have a review procedure in place. This is endorsed by the Information Commissioners Office.

18.2 A complaint is also generally referred to as an internal review.

18.3 In the first instance complaints about the CCG's Freedom of Information procedures, and decisions not to supply exempt information, should be made to the Data Protection Officer who will refer this to a chosen panel.

18.4 An internal review:

- should be conducted by a panel which does not include anyone involved in the original decision;
  - must be a fair and impartial review of the original decisions made.
- 18.5 The panel conducting the review must consider the information released and the information requested and make a full review of the papers associated with the original application.
- 18.6 It is best practice that the panel discusses the decisions made with the staff member(s) who dealt with the original application in order to understand the reasons that decisions were made.
- 18.7 The circumstances relating to the original decision may have changed between the time the CCG made its decision about a request and the time of an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request.
- 18.8 The FOIA does not stipulate a time limit for completion of an internal review but the ICO recommends that reviews should be completed within 20 working days of receiving the complaint; or, for complex reviews, within 40 working days of receipt. If it appears that the deadline will not be met, then the applicant must be advised as soon as possible and a second deadline notified by which a response will be sent.
- 18.9 The internal review can have two outcomes: the original decision is either reversed or upheld.
- 18.10 Where the original decision is upheld the applicant must be told and made aware of their right to contact the Information Commissioner directly.
- 18.11 The outcome of the internal review must be recorded.
- 18.12 For the procedure on receiving a request for an internal review see Appendix C.

## **19.0 REQUESTS KNOWN TO BE FROM THE MEDIA OR OF POTENTIAL MEDIA INTEREST**

- 19.1 There is no difference in the compilation of a response to a request from the media, on the basis that disclosure under FOI is considered to be disclosure to any member of the public.
- 19.2 Where the request is known to be from a journalist, the media, or likely to be of media interest, the response will be agreed with the CCG Communications team prior to sending, to ensure awareness of the media interest in the topic.

## **19.3 Advice and assistance**

- 19.4 The Act sets out a duty for the CCG to provide reasonable advice and assistance to applicants requesting information. This duty to advise and assist is enforceable by the Information Commissioner. If the CCG does not meet this duty, the Commissioner may issue an enforcement notice.
- 19.5 There is no requirement for a request for recorded information specifically to mention the Act in order to be a valid FOI request. Where an applicant asks the CCG to disclose recorded information but does not specifically mention the Act, and the request is 'valid', the CCG will consider the request under the Act in any case and let the applicant know that this is how the request is being handled. Where a person seeks to make a request orally they should be advised to put their application in writing.
- 19.6 There may be circumstances where a person is unable to frame their request in writing, for example owing to a disability. In these instances, the CCG will ensure that assistance is given to enable them to make a request for information. For example, advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf.
- 19.7 There may be instances when the CCG needs to contact an applicant to seek clarification either regarding their name or the information they are seeking.
- 19.8 There may also be occasions when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the CCG can conduct a search for it. In these cases, the CCG will ask for more detail to enable us to identify the information sought.
- 19.9 Where the CCG asks for further information or clarification, the 20 working day response period will not start until a satisfactory reply constituting a valid request is received. If no response is received within 3 months, the request will be closed.

## **20.0 TRANSFER OF REQUESTS FOR INFORMATION**

- 20.1 When the CCG receives a request for information which it does not hold, but recognises that it is held by another public authority, the requester will be signposted to the relevant authority.

## **21.0 CONTRACTS**

- 21.1 When entering into a contract with a third party the CCG will reject contractual terms that would negate the disclosure of information under the terms of the Act.

- 21.2 If a contractor holds information relating to the contract “on behalf” of the CCG, this information should be considered in the same way as information held by a public authority and so will be subject to the Act.
- 21.3 Given the statutory obligations of public authorities to respond to requests under the Act, and the fact that information held on their behalf by contractors is information subject to the Act, contractors must comply with requests by the CCG for access to such information, and must do so in a timely manner.

## **22.0 CONSULTATION WITH THIRD PARTIES**

- 22.1 There will be circumstances when the CCG will consult third parties about information held in scope of a request in order to consider whether information is suitable for disclosure.
- 22.2 The CCG will directly consult third parties in these circumstances particularly if there are contractual obligations which require consultation before information is released. In other circumstances it may be good practice to consult third parties, for example, where the CCG proposes to disclose information relating to third parties, or information which is likely to affect their business or private interests.
- 22.3 The CCG is not required to accept views provided by third parties about whether or not information should be released. It is ultimately for the CCG to take the final decision on release following any consultation it undertakes.
- 22.4 If a decision is made to release information following consultation with a third party, the CCG will give the third party advance notice or draw it to their attention as soon as possible.

## **22.5 Accepting Information in Confidence from Third Parties**

- 22.6 The CCG will only accept information from third parties in confidence if it is necessary to obtain that information for the running of any of its functions and it would not otherwise be provided.

## **23.0 DATASETS**

- 23.1 The Protection of Freedoms Act 2012 amended sections 11 and 19 of the Freedom of Information Act giving a person the right to request datasets in an electronic form capable of re-use.
- 23.2 Public authorities are required to make datasets available, either in response to an FOI request or proactively under a publication scheme, in a way that allows them to be re-used

- 23.3 The requester does not have to specify when submitting their request that they want a re-usable dataset. If the information that the requester wants happens to be held in a dataset, and the requester expresses a preference for receiving the information in electronic form, then the duty to provide the dataset in a re-usable form is triggered. If the requester has asked to receive the information in hard copy, then there is no duty to provide it in an electronic form capable of re-use.
- 23.4 The amendments also require the CCG to publish any requested datasets as part of the Publication Scheme, if appropriate.
- 23.3 The Freedom of Information (Release of Datasets for Re-use) (Fees) Regulations 2013 set out how a public authority can charge for making a certain datasets available for re-use.

## **24.0 REQUESTS FOR RE-USE OF INFORMATION**

- 24.1 Information provided under FOI and EIR may be re-used for personal use. This means that brief extracts of any of the material may be reproduced without permission, under the fair dealing provisions of the Copyright, Designs and Patents Act 1988 (sections 29 and 30).
- 24.2 Copyright law does not give applicants a right to re-use information in a way that would infringe or breach that copyright, by making copies, publishing and issuing copies to the public or to any other person. This means that wider re-use requires express permission in writing.
- 24.3 Under the Re-use of Public Sector Information 2005 Regulations the information can be re-used for the purposes of research, private study, criticism, review, news reporting and for non-commercial purposes, subject to an acknowledgement of Dorset CCG as the copyright owner. However, any other type of re-use under the regulations, for example; publication of the information or circulation to the public, will require permission and may be subject to terms and conditions.
- 24.4 When reproducing the CCG's materials, organisations must not use the information in a misleading way and must have regard to any qualifying statements or descriptions attached to the information. For example, descriptions such as 'consultation document', 'discussion paper', or 'preliminary view' are important as are statements concerning the audience at which the material is directed.
- 24.5 Any requests for re-use of information must be in writing and the applicant must state their full name, contact details, specify the document being requested for re-use and the purpose for which the document is to be re-used.
- 24.6 The request will be acknowledged within 3 working days and responded to within 20 working days of receipt. This period may be extended where the request is extensive or complex; and the requester must be informed of this in writing.

- 24.7 Re-use can be refused if the information requested falls within one or more of the exclusions permitted by Re-use of Public Sector Information Regulations 2005.
- 24.8 Where requests are refused, the applicant will be advised of the decision and has a right to ask for that decision to be reviewed under the CCG'S FOI and EIR internal review procedure. If the information is still not released, the applicant will be advised of their right to ask the Office for Public Sector Information (OPSI) to review the decision.

## **25.0 PERSONAL INFORMATION AND THE DATA PROTECTION ACT**

- 25.1 Personal identifiable data is information about a living individual from which that individual can be identified. It may take any of the following forms:
- computer documents;
  - information processed by a computer or other equipment (e.g. CCTV);
  - information in records (e.g. Continuing Healthcare, Complaints);
  - information in some forms of structured manual records;
  - unstructured personal information held in manual form.
- 25.2 If an applicant requests information and they are the subject of that information, the Freedom of Information Act does not apply. A request of this nature is termed a 'Subject Access Request' and will be dealt with in accordance with the requirements of the Data Protection Act 2018. This should be redirected to the Data Security and Protection Team for action.
- 25.3 If the personal data relates to someone other than the applicant, there is an exemption if disclosure would breach any of the Data Protection principles.
- 25.4 Requests relating to staff in their capacity as a member of Dorset CCG**
- 25.5 Requests for information relating to a public authority's staff can cover a wide range of topics, including the names of staff, organisation charts and internal directories, as well as other data.
- 25.6 There must be an expectation that information will be released about an employee's actions, or decisions, when undertaking their role within a public authority. Dorset CCG will not, however, release information of a personal nature relating to employees e.g. information held in a personnel file.
- 25.7 Dorset CCG will endeavour to balance an individual member of staff's right to privacy with the accountability that goes with working in the public sector.

## **26.0 ENVIRONMENTAL INFORMATION REGULATIONS**

26.1 For any information held by the CCG relating to the environment, the definition in the Environmental Information Regulations (2004) will apply. This includes (but is not limited to) any information about the impact on the elements (air, water etc.), substances released into the environment, measures (including policies and plans) that might affect the environment and the state of human health and safety. This applies to information in written, visual, aural, electronic or any other material form.

26.2 The policy and procedure for dealing with requests under EIR is the same as those laid down for the Freedom of Information Act, except for the following points:

- EIR requests do not have to be made in writing; they can be made via the phone or in person. When received in such a manner, the request will be formally documented and then processed as though made under the Freedom of Information Act;
- requests under EIR can be charged for at any time, provided the cost is reasonable. EIR requests cannot be refused on cost grounds alone. However, it is the policy of the CCG not to charge. This can be reviewed if required at any time;
- the time limit for the provision of a response is 20 working days; however, it can be extended by a 20 further days if the EIR request is complex and/or large;
- there are some differences in the 'exceptions' under EIR, when compared to the 'exemptions' in the Freedom of Information Act. They are not listed in this document, but are centrally available for consideration should the need arise.

26.3 As a request under EIR can be made orally, via telephone or during a meeting, it is possible that any member of staff may be the recipient of a request. If appropriate, the individual making the request should be directed to the DSP team for assistance with the request. This will not always be possible, so the staff member should take adequate steps to date and record the request along with the contact details of the individual, and forward these to the DSP team. It is important that the date is recorded as the 20 working day time limit starts at the point the request is received.

## **27.0 TRAINING**

27.1 All staff will be made aware of their responsibilities for dealing with requests under the Act/EIR in their induction training and thereafter in their mandatory Data Security and Protection Training

27.2 Data Security and Protection Training is mandatory for all staff regardless of designation.

## **28.0 CONSULTATION**

28.1 This policy is a legislative requirement and as such, no consultation is required.

## **29.0 RECOMMENDATION AND APPROVAL PROCESS**

29.1 Refer to Section C – Document Details at the front of this policy.

## **30.0 COMMUNICATION/DISSEMINATION**

30.1 Refer to Section C – Document Details at the front of this policy.

## **31.0 IMPLEMENTATION**

31.1 This policy does not require any new aspects to be implemented.

31.2 This policy will be made available to staff through the intranet as detailed in the CCG's policy for the management of procedural documents.

## **32.0 MONITORING COMPLIANCE AND EFFECTIVENESS OF THE DOCUMENT**

32.1 The Data Security and Protection Group (DSPG) takes overall responsibility for ensuring compliance with this policy and any procedures contained within this policy.

32.2 Details provided to the DSPG include:

- number of requests received;
- number of requests closed within the required 20-day time frame;
- number of requests not completed in the required 20-day timescale with reasons why;
- number of Internal Reviews received and the outcome;
- any communications from the Information Commissioner in relation to responses to requests outside of the 20-day time period.

32.3 Following each DSPG meeting, a report summarising the issues discussed at the meeting is prepared and issued to the Governing Body, Audit and Quality Committee and the Directors Performance Group.

32.4 Compliance with this policy will also be measured against the criteria for the receiving and responding to requests as detailed in the Freedom of Information Act and guidance produced by the Information Commissioners Office.

### **33.0 DOCUMENT REVIEW FREQUENCY AND VERSION CONTROL**

33.1 This policy will be reviewed bi-annually, or earlier if appropriate, to take into account any changes to legislation that may occur, and/or guidance from the Information Commissioner.

## EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption: -

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

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

With the exception of s21 (information available by other means) exemptions apply both to the communication of information AND the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The **absolute** exemptions under the FOI Act are: -

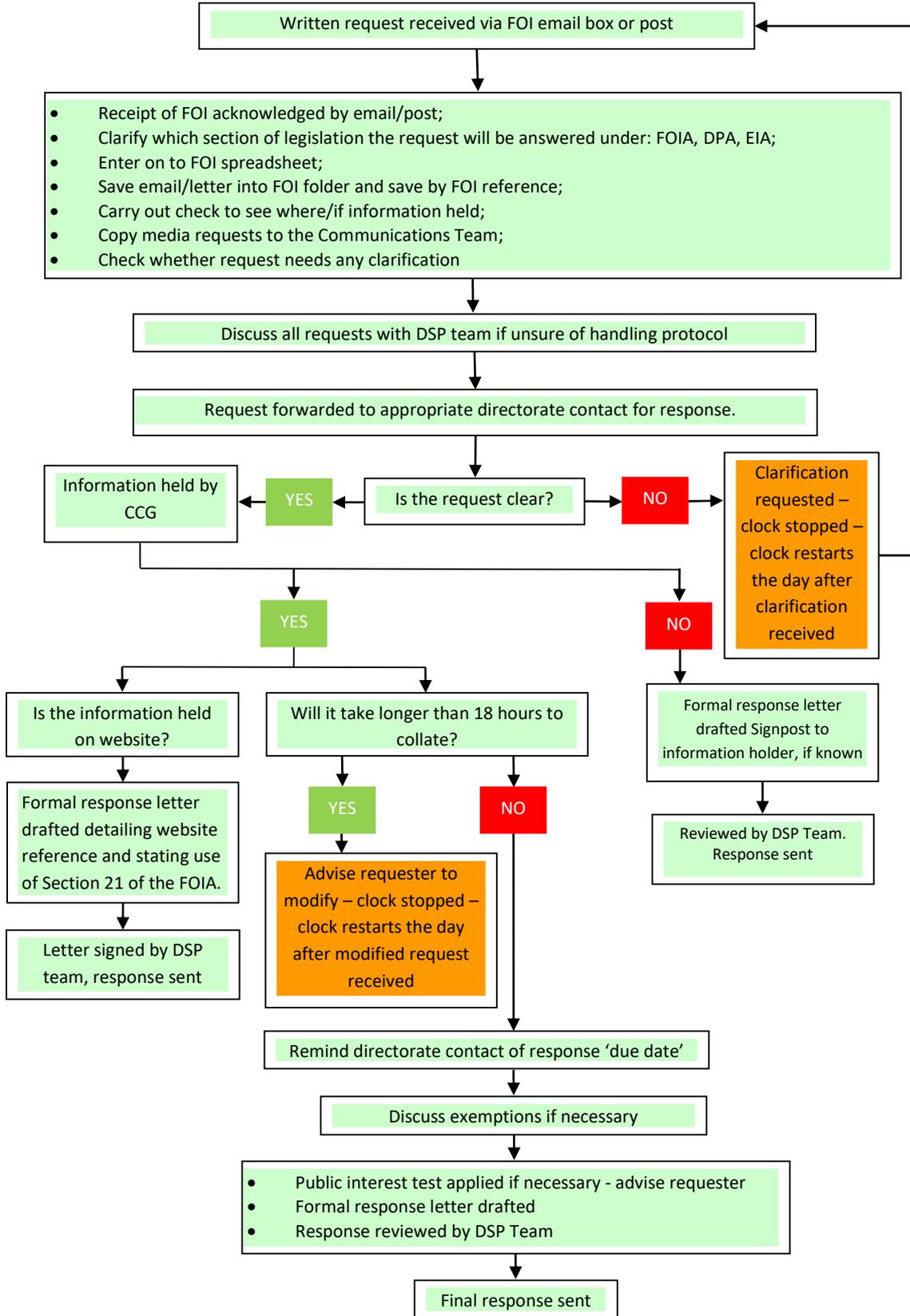
- Section 21: Information accessible to applicant by other means
- Section 23: Information supplied by, or relating to, bodies dealing with security matters.
- Section 32: Court Records
- Section 34: Parliamentary Privilege
- Section 36: Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40(1): Personal Information (where disclosure may contravene the Data Protection Act 2018)
- Section 41: Information provided in confidence
- Section 44: Prohibitions on disclosure

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

- Section 22: Information intended for future publication
- Section 22(A): Research Information
- Section 23: Security Bodies
- Section 24: National Security

Section 26:	Defence
Section 27:	International Relations
Section 28:	Relations within the United Kingdom
Section 29:	The Economy
Section 30:	Investigations and proceedings conducted by public authorities
Section 31:	Law Enforcement
Section 33:	Audit Functions
Section 35:	Formulation of Government Policy
Section 36:	Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
Section 37:	Communications with Her Majesty, etc. and honours
Section 38:	Health and Safety
Section 39:	Environmental Information
Section 40(2):	Data Protection
Section 42:	Legal Professional Privilege
Section 43:	Commercial Interests

Procedure for Dealing with FOI/EIR Requests



**PROCEDURE ON RECEIVING A REQUEST FOR AN INTERNAL REVIEW**

<b>Step</b>	<b>Action</b>
1.	If complaint cannot be handled on an informal basis then request for internal review to be acknowledged within five working days along with details of internal review procedure.
2.	Independent panel to be assigned to conduct internal review and relevant papers forwarded to them
3.	Outcome of internal review to be discussed and agreed with the Chief Finance Officer/SIRO
4.	If outcome is to reverse the decision then information to be sent to the applicant as soon as possible
5.	If outcome is to uphold the decision then the applicant to be informed of their right to appeal to the Information Commissioner's Office
6.	Outcome of internal review to be recorded
7.	If procedures have not been correctly followed, the CCG should apologise to the applicant and take appropriate steps to prevent a recurrence. Apology to be from the Chief Finance Officer/SIRO