



Freedom of Information (FOI) and Environmental Information Regulations (EIR) Policy

ICB document reference:	ICB IG 005
Name of originator/author:	Philip Humphreys, Corporate Senior Manager, Arden & GEM CSU
Date of approval:	
Name of responsible Committee:	
Responsible Director/ICB Officer:	
Category:	Information Governance
EIA undertaken:	Section 6
Date issued:	June 2022
Review date:	June 2023
Target audience:	All staff
Distributed via:	Email, Website, Intranet and Board Portal

Document Control Sheet

Document Title	Freedom of Information and Environmental Information Regulations Policy
Version	1
Status	
Authors	Philip Humphreys
Date	June 2022

Document history			
Version	Date	Author	Comments
1	June 2022	Philip Humphreys	Creation of policy

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Freedom of Information Policy

1. Introduction

This policy applies to Lincolnshire Integrated Care Board (the ICB).

This document sets out the Freedom of Information Policy for the ICB. It explains what the organisation will do to comply with its obligations under the Freedom of Information Act 2000 (the Act).

The Freedom of Information Act 2000 (FOIA) (Ref 1) came into effect for all public sector organisations on 1 January 2005 and gives the public a general right of access to 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. The policy is guided by the Lord Chancellor's Code of Practice on the Discharge of Public Authorities Functions under Part 1 of the Freedom of Information Act 2000 issued under Section 45 of the Act (Ref 2).

This policy is supported by the procedures for responding to requests for information, as set out in Appendix A and B.

This policy will be published on the intranet and internet.

2. Scope

It is the duty of each NHS body to establish and maintain arrangements for the purpose of monitoring and improving the quality of healthcare provided by and for that body. The organisation is committed to this policy and its implementation.

This policy applies to all contracted (permanent and temporary) staff employed by the organisation including lay members, students, trainees, researchers, trainers, volunteers, and staff of other organisations including consultants and contractors.

The organisation supports the Government's commitment to greater openness in the public sector. The Act will further this aim of greater openness by enabling members of the public to be able to access key documents and as such scrutinise and question the decisions of public authorities more closely and ensure that the services provided are properly delivered.

The organisation wishes to create a climate of openness and dialogue with all their stakeholders; improved access to information about the organisation will help to support this aim. The organisation will make such information available in a range of formats as required to meet the needs of the person requesting the information.

The organisation recognises that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duty of confidence or the statutory provisions that prevent disclosure of personal identifiable information. The release of such information is covered by the Data Protection Act 2018, and associated General Data Protection Regulation, and is dealt with in the Subject Access Request (SAR) Procedure and associated procedures.

3. Purpose

The policy will provide a framework within which the organisation will ensure compliance with the requirements of the Act and will underpin any operational procedures and activities connected with the implementation of the Act.

4. Duties and Accountability

The Accountable Officer has the ultimate accountability for the organisation's compliance with the Act. The Accountable Officer will ensure that responsibility for bringing FOI issues to the Board is delegated to an appropriate Director (or equivalent).

The ICB has commissioned FOI services from Arden & GEM CSU who provide a locality FOI lead to liaise directly with the ICB.

The FOI Lead, or in their absence an authorised person, is responsible for the operational management of the FOI service and ensures compliance with the Act through appropriate processes and procedures.

The duties of the FOI Lead include:

- providing a centralised point of contact for handling all ICB related FOI enquiries, liaising with colleagues across the organisation to agree responses
- providing advice and assistance to applicants requesting information under the Act
- production and maintenance of FOI policy and procedures (see Appendix A and B)
- promotion of FOI awareness across the organisation through training and the dissemination of the FOI procedures to all staff
- ensuring that all staff and the general public are provided with information about their rights and responsibilities under FOI, in an accessible format
- monitoring the Guide to Information required under the Publication Scheme (i.e. the ICB's FOI website)
- maintaining appropriate records of requests for information
- production of monitoring reports
- supporting the appeals/complaints procedure in respect of FOI.

The FOI Lead, or authorised person, will oversee the development and updating of FOI policies and procedures and ensure that awareness of FOI is maintained across the organisation.

All staff including Governing Body members are obliged to adhere to this policy. They should be familiar with the requirements of the Act and be aware of their personal responsibilities under the Act.

In certain circumstances, to support equality and diversity, line managers will need to consider individual requirements of staff to support good practice in complying with this policy.

5. Environmental Information Regulations 2004

The organisation recognises that, in addition to the Act, there is also an obligation on public authorities to respond to requests for environmental information under the Environmental Information Regulations (EIR) 2004.

The organisation will, as far as possible, respond to requests for environmental information using the same procedures as for responding to FOI requests, while recognising that there are some differing regulations between EIR and FOI on the provision of information. These include rules governing what environmental information may be disclosed (exceptions under EIR) and the requirement to respond to requests for environmental information **whether the request is verbal or in writing.**

6. Equality and Diversity

The ICB aims to design and implement policy documents that meet the diverse needs of the services, population and workforce, ensuring that none are placed at a disadvantage over others. It considers 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 gender identity, socio-economic status, immigration status and the principles of the Human Rights Act.

In carrying out its functions, the ICB must have due regard to the Public Sector Equality Duty (PSED). This applies to all the activities for which the organisation is responsible, including policy development, review and implementation.

7. Freedom of Information Act 2000

7.1 Main Features of the Act

The main features of the Act are:

- a General Right of Access from 1 January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions
- a duty on public authorities to inform the applicant whether they hold the information requested and communicate the information to them, subject to certain conditions and exemptions
- a duty on every public authority to adopt and maintain a Publication Scheme. This duty has been applicable to the NHS since 31 October 2003
- the establishment of the office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice together with an Information Tribunal
- a duty on the Lord Chancellor to establish Codes of Practice for guidance on specific issues, such as Records Management (Ref 3).

7.2 Publication Scheme and Guide to Information

Section 19 of the Act makes it the duty of every public authority to adopt a Publication Scheme.

The ICB has adopted the Model Publication Scheme issued by the

Information Commissioner in 2008 (Ref 4) which gives an overview of the information that the organisation publishes and intends to publish in the future. It details the format in which the information is available and whether a charge will be made for the provision of that information. The Publication Scheme is available on the public website. The ICB's compliance with the requirement to publish information as set out in the Information Commissioner's Office (ICO) Definition Document for Health Organisations will be regularly reviewed by the FOI Lead in accordance with ICO guidelines and the content of the website should be updated accordingly.

Information in the Publication Scheme will be made automatically and proactively available. In most cases information which is made available via the Publication Scheme will be downloadable from the website. In the event that an enquirer is unable to download the information, applications for the information to be supplied in another format may be made verbally, in the case of environmental information, or in writing.

7.3 Requests for Information (General Right of Access)

Section 1 of the Act gives a general right of access from 1 January 2005 to recorded information held by the ICB, subject to certain conditions and exemptions. Any person making a request for information to the organisation is entitled to:

- be informed in writing, or any other appropriate format on request, whether the organisation holds the information described in the request; and
- have that information communicated to them if it is held by the organisation and in an appropriate format on request
- receive the information in a re-usable format
- the provisions are fully retrospective, meaning, that if the organisation holds the information when the request is received, it must be considered for disclosure, subject to certain conditions and exemptions
- the Act states that requests for information under the General Rights of Access must be received in writing and include the name of the applicant, an address for correspondence, and a clear description of the information requested. This includes email, which is the preferred method of correspondence for the majority of FOI enquirers.

7.4 Charges and Fees

Charges and fees will only be levied in exceptional circumstances, for example where large volumes of hard copy materials are requested, in which case the ICB will follow the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (see Appendix E).

In general, no charge will be made.

7.5 Time Limits for Compliance with Requests

The ICB will establish systems and procedures to ensure that the organisation complies with the duty to respond to requests within 20 working days of receipt of a request, in accordance with Section 10 of the Act. All staff will be required to comply with the requirements of these procedures; failure to do so

may result in disciplinary action.

7.6 Datasets and Re-use of information

Section 102 of the Protection of Freedoms Act 2012 adds new provisions to the FOIA regarding datasets.

The new provisions are about how information is released and relate to information the ICB holds as a dataset, which is a defined term in the new provisions.

If the ICB is providing information that constitutes a dataset and the requester has expressed a preference to receive the information in electronic form, the ICB must provide it in a re-usable form as far as reasonably practicable.

In accordance with the Re-use of Public Sector Information Regulations 2005 and 2015 a public authority has to make information and metadata available through standard licences and machine-readable formats wherever possible.

The dataset provisions do not only create a duty under s 11(1A) for the ICB to provide datasets in a form that is technically 'capable of re-use', but also a duty under s11A (2) to provide datasets that are relevant copyright works under a license that permits re-use. However, those provisions do not remove those rights, third party rights need also be taken into consideration.

In accordance with the s45 code of practice and the recommendation of the UK Government Licensing Framework the ICB will grant re-use under the Open Government License (OGL) for datasets that can be re-used without charge. It is also the default license for Crown Copyright works.

8. Provision for dealing with FOI Applications

8.1 Service Management

The FOI Lead (Arden & GEM CSU) manages the provision of this service.

8.2 Receipt of a Request

It is accepted that requests for information can come from many sources and it is important for all members of staff to be able to recognise an FOI request so it can be processed quickly and appropriately. All staff have a responsibility to ensure that all FOI applications are identified and reported.

Not every application will clearly indicate the nature of the request as being FOI.

For all requests for information, staff must follow the 'Requests for Information Flow Chart' which can be found at Appendix A and the Procedure to Process Freedom of Information Requests Appendix B.

8.3 Provision of Advice and Assistance to Applicants

The FOI Lead will act as a key contact point for applicants for the ICB and will provide advice and assistance to potential and actual applicants for information under the Act.

The FOI Lead will act as a source of advice and support for staff regarding the Act.

8.4 Circular or “Round Robin” requests

If circular or ‘Round Robin’ requests are received within the Arden & GEM CSU area the FOI Lead will liaise with the partners across the area to ensure that a cohesive approach will be taken and a consistent response for all can be provided to the applicant.

9. Complaints/Internal Review

Requests for review or complaints about handling of applications for information under the Act are specifically exempt from the NHS Complaints Regulations (NHS Complaint Regulations Part II, para 7(g)). A separate complaints/appeals process applies to such requests for review or complaints (see Appendix D).

10. Records Management

The ICB and other organisations holding information on behalf of the ICB will have systems and processes in place for managing their corporate records in both electronic and paper format to respond effectively to requests for information.

In line with the ICB’s Records Management Policy and 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 and an exemption applied, in which case they should be retained for 7 years.

11. Monitoring Compliance

The ICB will regularly review its FOI arrangements to ensure compliance with this policy.

The FOI Lead (Arden & GEM CSU) 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 FOI Lead (Arden & GEM CSU) will produce regular reports to the ICB to assess performance in meeting the statutory timeframes and applicant satisfaction with the process.

Review findings will also be used by the FOI Lead (Arden & GEM CSU) 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.

12 Due Regard

This policy has been reviewed in relation to having due regard to the Public Sector Equality Duty (PSED) of the Equality Act 2010 to eliminate discrimination, harassment, victimisation; to advance equality of opportunity; and foster good relations.

13. Training, Distribution and Implementation

NHS Lincolnshire ICB/Arden & GEM CSU

Training

The Freedom of Information team (Arden & GEM CSU) will provide training to those managers tasked with handling FOI requests within the ICB and will consider specific training to identified groups as required or requested by the ICB.

Distribution

This policy will be published on the ICB's website.

All staff will be notified of this and any new or revised document via the email policy alert system.

Implementation

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.

14. Related Policies/Organisational Functions

Several other policies are related to this Freedom of Information Act Policy and all employees should be aware of the full range:

- Records Management Policy
- Subject Access Request Procedure (incorporating Access to Health Records Procedure)
- Complaints Management Policy and Claims Management Policy
- Access to Health Records Policy.

15. Review

The policy will be reviewed June 2023

16. Reference documents

- Data Protection Act 2018
- General Data Protection Regulation (GDPR)
- 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.

17. References

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. Model Publication Scheme 2009
<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/>
4. Definition Document for the Model Publication Scheme for Health Bodies in England
<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/definition-documents/>
5. Information Commissioner's Guide: Vexatious or repeated requests, Version 4 (December 2008)
<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>)
6. Information Commissioner's Guide: When should names be disclosed? Version 1 (August 2008)
https://ico.org.uk/media/1187/section_40_requests_for_personal_data_about_employees.pdf)
7. Information Commissioner's Guide: The exemption for personal information, Version 3 (September 2008)
<https://ico.org.uk/media/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>
8. Statutory Instrument 2004 3244: The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004)
<http://www.opsi.gov.uk/si/si2004/20043244.htm>
9. Information Commissioner's Awareness Guidance 2: Information provided in Confidence, Version 4 (September 2008) <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>
10. Information Commissioner's Guide: Information provided in confidence related to contracts, Version 1 (October 2008) <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>
11. Records Management: NHS Code of Practice (April 2006)
http://systems.digital.nhs.uk/infogov/iga/resources/rmcop/index_html
12. <http://www.parliament.uk/>
13. Information Commissioners Office Freedom of Information Act webpage:
<https://ico.org.uk/for-the-public/official-information/>
14. Secretary of State's Code of Practice (datasets) on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act, issued under section 45 of the FOIA
<https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>
15. UK Government Licensing Framework for public sector information.

NHS Lincolnshire ICB/Arden & GEM CSU

<https://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/>

16. Open Government License
<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2/>
17. Information Commissioners Guidance on Datasets
<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/charging-for-information-in-a-publication-scheme/datasets/>
18. <http://www.nationalarchives.gov.uk/documents/information-management/psi-implementation-guidance-public-sector-bodies.pdf>

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DETAILED PROCEDURE TO PROCESS FREEDOM OF INFORMATION ACT (FOI) REQUESTS

Introduction

The purpose of this procedure is to give staff a clear guide on how to manage incoming Freedom of Information Act 2000 (FOI) requests. The request must be made in writing (this includes emails, letters, faxes). A request for information does not need to quote the FOIA.

Legal Requirement

The Organisation has 20 working days from the date of the request being received to comply with the legal requirements.

This requires staff to act without delay on receiving a request following the guidance below:

Steps to Follow:

1. Forward the document for processing

Arden & GEM CSU provides a central processing service and requests must be forwarded to the **CSU FOI Team**.

Website: <http://www.lincolnshire.icb.nhs.uk>

The most appropriate transmission method must be considered in relation to the format of the original request (electronic or paper) and any delay will impact on the 20 working days.

2. Acknowledgement of Request

Acknowledgement of the request should be made by the Arden & GEM FOI team within two-working days of receipt.

3. Providing the Information Requested

The person who was identified holding the information will be notified of the details of the request and given a deadline date for supplying the information to the FOI team.

The FOI team will then review the information and, if necessary, liaise with the person who provided the information in relation to further clarification or the potential application of exemptions. Where it is considered that an exemption applies to release information the FOI team will forward the draft response to the ICB for approval.

Response Monitoring and Logging

This will be carried out by Arden & GEM FOI team who will liaise with the holder of the information and the applicant who has lodged the request.

4. Collection of Costs

If applicable the Arden & GEM FOI team will request, collect and deposit any fees received with the Finance Department prior to the release of the records.

5. Information Release

The information will be brought together and a response in the form of a Decision Notice will be sent to the applicant by the Arden & GEM FOI team.

APPENDIX B

Exempt Information under Part II of the Freedom of Information Act 2000

FOI Absolute Exemptions

- s 21 Information reasonably accessible to the applicant by other means
- s 23 Information supplied by, or relating to, bodies dealing with security matters
- s 32 Court records
- s 34 Parliamentary privilege
- s 36 Prejudice to the effective conduct of public affairs (but only absolute in relation to information held by the Commons or House of Lords)
- s 40 Personal Information
- s 41 Information provided in confidence (but only if this would constitute an actionable breach of confidence)
- s 44 Prohibitions on disclosure

FOI Qualified Exemptions subject to Public Interest test

- s 22 Information intended for future publication
- s 24 National Security
- s 26 Defence
- s 27 International relations
- s 28 Relations within the UK
- s 29 The Economy
- s 30 Investigations and proceedings conducted by public authorities
- s 31 Law enforcement
- s 33 Audit functions
- s 35 Formulation of government policy etc.
- s 36 Prejudice to effective conduct of public affairs
- s 37 Communications with Her Majesty etc. and honours
- s 38 Health and Safety
- s 39 Environmental information
- s 42 Legal professional privilege
- s 43 Commercial Interests

Public Interest Test

The public interest will be considered in every case where a qualified exemption may apply. When applying the public interest test in the FOI context it means the public good, not what is of the interest to the public, and not the private interests of the requester.

In carrying out the public interest test the organisation should consider the circumstances at the time of the request or within the normal time of compliance.

Public interest arguments for the exemption must relate specifically to that exemption and the organisation must consider the balance of public interest in the circumstances of the request.

When considering the public interest to reach a decision on a qualified exemption, the organisation will seek legal advice when necessary. The organisation will aim to use the qualified exemptions sparingly and will, in accordance with Section 17 of the Act, justify their use.

APPENDIX C

Freedom of Information (FOI) Appeals (Internal Review) Procedure and Appeals Panel Terms of Reference

1. Introduction

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

2. Freedom of Information (FOI) Internal Review Procedure

Appeals must be submitted in writing within 40 days after receiving the organisation's response. After this time period, the organisation will not hear appeals and applicants will be advised to contact the ICO directly.

On receipt, the request for internal review will be acknowledged before it is assigned to one of a panel of reviewers, who are usually senior members of staff and **were not involved** in the original decision making. The FOI Lead will provide the reviewer with a summary and details of the original handling of the request. The job of the internal reviewer is threefold:

1. To assess whether the authority has complied with its responsibilities under the FOIA, including timeliness and the duty to advise and assist.
2. To consider the information released against the information requested and make a full review of the papers associated with the original application, if appropriate, discussing the decisions with staff who dealt with the initial application.
3. To re-consider any public interest in disclosure and determine whether the information should be disclosed.

The internal review constitutes a fresh inquiry into the request, rather than taking as a starting point the decision already reached and submitting it to a test of reasonableness. Reviews are also undertaken in the light of the general presumption in the FOIA in favour of release of information. Useful procedural guidance and advice on the application of the exemptions can be obtained from the FOI Lead or the ICO. The ICO recommends that an internal review should take no longer than 20 working days.

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 to assist in any investigation by the Information Commissioner.

APPENDIX D

FEES FOR APPLICATIONS UNDER THE FREEDOM OF INFORMATION ACT 2000

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 indicate that the scheme set in place by the Act is not expected to be self-financing. These Regulations provide that an applicant would be charged the full cost of the authority's 'disbursements' (such as costs for photocopying, printing and postage)

The following charges may apply:

Photocopies:	
A4 Black and White	10p per sheet
A3 Black and White	20p per sheet
A4 Colour	£1.00 per sheet
A3 Colour	£1.50 per sheet
Fax:	
To UK and Ireland	£1.00 per page
To Europe	£1.75 per page
To Rest of the World	£2.00 per page
Print-Outs from a Computer	
Black and White:	10p per page
Colour	50p per page
Photo Quality Paper Prints	£1.00 per page
Electronic Media:	
CD-R Disc in a Plastic 'Jewel' Case	£1.00
Floppy Disc (1.44MB)	£1.00
Scanning of A4 Paper Records	£1.40 per image
Scanning of A3 Paper Records	£2.10 per image
Email Attachment	No Charge