

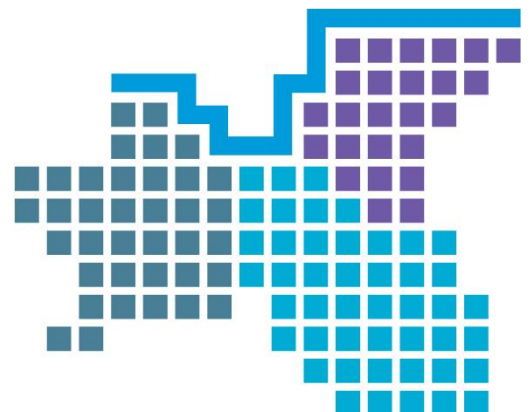
Freedom of Information Policy

Date Approved: 21 January 2017

Date for Review: 1 January 2020

Lead Director: Sandra Iskander

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DOCUMENT CONTROL AND AMENDMENT RECORD

Freedom of Information Policy

Version	Date	Details	Author / Reviewer	Approving Committee (s)	Date of Approval
0.1	24/06/2013	Draft circulated for comments	SLCSU IG Governance leads /Equality lead		
1.0	26/11/2013	Draft circulated for comments	Wandsworth CCG		
1.1	25/02/2016	Review policy to reflect SECSU changes	Principal Associate – FOI (SECSU)		
1.2	25/11/2016	Review policy following IGSG comments	Principle Associate – IG SME	IGSG	
2.0	21/01/2017	Revisions agreed at IGSG	Wandsworth CCG	IGSG	21/01/2017

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Introduction

The Freedom of Information (FOI) Act 2000 states that any person making a request for information to a public authority is entitled to:

- Be informed in writing by the public authority whether it holds information of the description specified in the request.
- If that is the case, to have that information communicated to him/her within 20 working days.

Purpose / Rationale

This policy aims to provide a general understanding of the principles of the FOI Act and what is required of NHS Wandsworth CCG to comply with these regulations.

The Act also specifies a number of exemptions (see Appendix 5) which can be claimed by public authorities when denying a request. These fall into two main types: Absolute and Qualified. Qualified exemptions are subject to the Public Interest Test.

Aims & Objectives

The objective of this Policy is to set out the main features of the Act, along with the responsibilities of departments and individuals to ensure the CCG deals with requests for information within statutory regulations and guidelines, in a consistent manner and delivers quality responses.

Scope

This policy applies to NHS Wandsworth's statutory obligation under the FOI Act (hereafter referred to as the Act) and how it meets these obligations. The policy will apply to all NHS Wandsworth CCG staff. The policy will provide a framework within which the organisation will ensure compliance with the requirements of The Act. The policy will underpin any operational procedures and activities connected with the implementation of The Act.

This policy is intended to cover all records created in the course of the business of NHS Wandsworth CCG, i.e. corporate records which are also public records under the terms of the Public Records Acts 1958 and 1967. This includes e-mail messages and other electronic records.

Equality

This document demonstrates the organisation's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners. The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities. Please see Appendix 1, the Equality Analysis Template.

Duties

Chief Officer

The Chief Officer has overall responsibility for NHS Wandsworth CCG's Freedom of Information programme and ensuring that this operates effectively.

Director of Corporate Affairs, Performance and Quality

The Director of Corporate Affairs, Performance and Quality is responsible for the Freedom of Information strategy within NHS Wandsworth CCG and will liaise with other senior members of the CCG as required.

Directors

The Directors of the CCG are responsible for overseeing Freedom of Information activities within their service areas/teams, in accordance with the CCG's Freedom of Information Policies and Procedures and advising the **Director of Corporate Affairs, Performance and Quality** on risk issues in relation to Freedom of Information.

Senior Associate – Freedom of Information

The Senior Associate - FOI is the designated FOI advisor for NHS Wandsworth CCG and has day-to-day responsibility for the management of all aspects relating to the Act. The Senior Associate FOI is responsible for advising all staff throughout the organisation on issues relating to all areas of the Act.

The Senior Associate FOI will provide quarterly reports to the Director of Corporate Affairs, Performance and Quality detailing all aspects of the disclosure and non-disclosure of recorded information by the CCG under The Act. They will be responsible for providing the reports to relevant management committees as required.

Associate – Freedom of Information

The Associate FOI is the day to day lead and contact for FOI requests on behalf of South East Commissioning Support Unit with Wandsworth CCG.

All Staff and Managers

All staff across NHS Wandsworth CCG have a responsibility to ensure they comply with the CCG's statutory obligation under the Act, and any policies and procedures lay down to ensure compliance. Failure to do so may result in disciplinary action.

All managers are to ensure that the staff they are responsible for are aware of, and adhere to, the Policy. They are also responsible for ensuring that all staff are updated with regards to any changes in the Policy.

NHS South East Commissioning Support Unit

Wandsworth CCG is responsible for ensuring that appropriate Freedom of Information Systems are in place to support in the organization in meeting its statutory obligations. South East Commissioning Support Unit provide the FOI service under SLA.

Information Governance Steering Group

The Information Governance Steering Group or equivalent within the CCG is responsible for reviewing all aspects of FOI. It reports to the Quality, Finance and Delivery Committee.

The Policy

- 1 Any area of the CCG may receive requests for information but not all of these will be classed as a FOI request. Some requests may be deemed as 'business as usual'. A 'business as usual' request is one which is defined, under guidance from the Information Commissioner's Office (ICO), as a general business request and can be responded to outside of the requirements of the Act.
- 2 Requests from individuals for details of their own health records come under the Data Protection Act 1998 and should not be dealt with under this policy. Please refer to the Information Governance policy and your Subject Access Request procedure for how these types of request should be handled.
- 3 Under Freedom of Information legislation, requests can be received in writing via email or a letter. FOI requests must contain a contact name, email address or postal address but they do not have to provide a reason why they want the information or specifically state they are requesting information under the Act.
- 4 Requests for information under the Act should be promptly forwarded to the FOI staff.
- 5 The FOI staff will manage all FOI requests for information requested under statutory regulations whilst complying with other legal requirements such as the Data Protection Act 1998.
- 6 We are required under the Act to respond to requests within 20 working days.
- 7 The CCG have a requirement to comply with all requests for information except where information requested is subject to certain regulations and exemptions. These exemptions, which will be applied by the FOI staff, include personal information, information accessible to the applicant by other means, information subject to future publication and commercial interest. Repeated or vexatious requests may also be refused. See section 4.19 on Vexatious/Repeated requests in this policy.
- 8 The CCG has a duty under the Act to adopt and maintain the ICO model publication scheme to assist the public in finding trust information already in a published format. The publication scheme can be found on the Wandsworth website www.wandsworthccg.nhs.uk within the Freedom of Information pages.

Timescales for Responding to Requests

- 9 In line with good practice all FOI requests will be acknowledged by the FOI team. Where possible, this will be done within 2 working days.
- 10 The Trust has a statutory requirement to respond to all requests promptly but within 20 working days. The 20 days are considered to start the day after the CCG (not the FOI Office) receives a request.
- 11 If we require clarification of a request or if we request a fee for the information, the 20 day rule is suspended until we receive the clarification or receive the fee.
- 12 The CCG nominated FOI leads must respond to all requests for information within 12 working days to ensure adequate time for any queries to be resolved and for the approval process to be completed where applicable.

Internal Reviews

- 13 If the applicant is unhappy with either the way their request has been handled or the response, they may appeal to the FOI manager for an internal review to be conducted into the response or the handling of the request. The internal review will be carried out promptly and in no more than 20 working days from the date of the request for review. If the applicant remains unhappy, they will be notified of their right to complaint to the Information Commissioner's Office.
- 14 There may be a small number of cases which involve exceptional circumstances where it may be reasonable to take longer to review a case. In these cases the total time taken to review a complaint will not exceed 40 working days.

The Appropriate Limit (Fees)

- 15 The Fees Regulations (Section 12) of the FOIA provides an exemption from our obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The Fees Regulations state £450 for our type of public authority. We must still confirm or deny whether we hold the information requested unless the cost of this alone would exceed the appropriate limit.
- 16 In estimating whether responding to a request would exceed the appropriate limit, the CCG may only take into account the costs we would reasonably expect to incur in:
 - determining whether we hold the information
 - locating the information
 - retrieving the information
 - extracting the information

Costs are calculated at £25 per hour per person (total of 18 hours). The figure of £450 relates only to the appropriate limit and not to the fees that may be charged.

Where a reasonable estimate has been made that the appropriate limit may be exceeded, there is no requirement for the CCG to undertake work up to the limit. However the applicant may be offered a lesser amount of information, which will come below the cost/time limit.

- 17 The CCG will not charge for the majority of requests however we are entitled to charge a fee for the photocopying and postage of information, although we will not make a charge if the cost of raising and processing an invoice is greater. If the request exceeds the appropriate time limit we have the right to make a charge or refuse the request.

Advice and Assistance to Applicants

- 18 We will always endeavour to provide advice and assistance in all aspects of a request but particularly:
- to clarify unclear requests
 - help to provide the information requested in an acceptable format
 - to narrow responses which exceed the appropriate limit
 - where information is readily accessible to the applicant
 - when a request is transferred to another public authority because the information is held by it, and not by us.

Vexatious/Repeated Requests

- 19 Under section 14 (1) of the Act, NHS Wandsworth CCG do not have to comply with a request for information if the request is deemed vexatious. Section 14 (1) can only be applied to the request itself and not the individual who submitted it

Some of the typical key features of a vexatious request are:

- Abusive or Aggressive Language
- Burden on the Authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- Disproportionate effort
- No obvious intent to obtain information
- Futile requests
- Frivolous requests

This is not a list of qualifying criteria and the indicators above should not be regarded as either definitive or limiting. NHS Wandsworth CCG remains free to refuse a request as vexatious based on their own assessment of all relevant circumstances.

For a request to be deemed vexatious, the Chief Officer, Director of Corporate Affairs, Performance and Quality and the Senior Associate FOI should agree that one or more of the above conditions have been met.

- 20** Where the CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

What is a reasonable interval will largely depend on the circumstances, including:

- how likely the information is to change;
- how often records are updated; and
- any advice previously given to the requester (e.g. on when new information is likely to be available)

Taking into account the circumstances given above, NHS Wandsworth CCG deems this period to be three months.

Applying Exemptions

- 21** An applicant may ask for any information that is held by the CCG. However, this does not mean you are always obliged to provide the information. In some cases, there will be a good reason why you should not make public some or all of the information requested.

The Freedom of Information Act contains a number of exemptions that allow the CCG to withhold information from an applicant. Full details of these exemptions are given in Appendix 5 and a more detailed explanation of their use can be found on the Information Commissioner's website at the following link:

http://www.ico.org.uk/for_organisations/freedom_of_information/guide/refusing_a_request.

Please note that if an exemption or redaction is used, the manager using the exemption should be aware that they may need to substantiate their decision if challenged by the Information Commissioner's office. It is therefore advisable to document and date all decisions made in relation to using exemptions.

Next formal review

- 24** Review will take place of the 1st anniversary of adoption and subsequently every three years until rescinded or superseded.

Dissemination and Implementation

Dissemination

This Policy will be distributed to staff by the staff bulletin and placed on the Wandsworth CCG website.

Latest Version

The audience of this document should be aware that a physical copy may not be the latest version. The latest version, which supersedes all previous versions, is available at the location indicated in the document control section of this document. Those to whom this policy applies are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times.

Implementation

South East Commissioning Support Unit on behalf of Wandsworth CCG is committed to providing training to help support and advise staff on the handling of FOI requests. The SECSU FOI Team will design and deliver training sessions (capped numbers per year) for CCG staff on the functions of the FOI service as appropriate and scheduled on request.

Monitoring & Compliance

The **Information Governance Steering Group** will annually evaluate the effectiveness of the Freedom of Information process. This review mechanism will be supported by:

- Information Governance Toolkit annual submissions;
- Quarterly reports on Information requests received.
- Complaints;
- Audits and Reviews.

Non Compliance

Non compliance with this policy by staff will be brought to the attention of the Chief Officer and the Director of Corporate Affairs, Performance and Quality.

Other relevant policies

Policies and procedures relating to:

- Being open
- Incident management & reporting
- Information governance related policies such as confidentiality, access to records, information sharing and data management
- Serious incident management

- Whistle blowing
- Disciplinary action and appeals
- Safeguarding adults and children
- Claims management
- Complaints Policy

References

Legislative and Regulatory Environment

The Freedom of Information (FOI) Act 2000 gives members of the public a right to request access to all types of recorded information held by public authorities, promoting a culture of openness and accountability across the public sector. It is within this environment that this Policy has been written to reflect how the Act will be implemented within NHS Wandsworth CCG.

The Protections of Freedoms Act 2012 adds new provisions to the FOI Act regarding datasets. The new provisions are about how information is released rather than what information is released. They only relate to information that the CCGs holds as a dataset which is a defined term in the new provisions. Please see Appendix 4 for further information.

Other References

Further information on and relating to the Freedom of Information Act, the Environmental Information Regulations, the model publication scheme and the Data Protection Act can be found at www.ico.org.uk.

Appendix 1: Equality Analysis Template

An Equality Analysis is a review of a policy, function or service which establishes whether there is a negative effect or impact on particular social groups. In turn this enables the organisation to demonstrate it does not discriminate and, where possible, it promotes equality.

This check list is a way to help staff think carefully about the likely impact of their work on equality groups and take action to improve services and projects for local people where it has a positive or negative impact.

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
Age Think about different age groups and think about the policy / function / service and the way the user would access, is it user friendly for that age?	This policy is aimed at staff and does not adversely affect any age group.	Not applicable	Not applicable	Not applicable	Not applicable
Disability Think outside the box, you may not be able to see the disability. It could be physical (hearing, seeing) or a learning disability (Autism). <ul style="list-style-type: none"> • Accessibility – venue, location, signage, furniture, getting around • Disability awareness training for staff 	The CCG will make adjustments for staff with disabilities should this policy adversely affect them.	Not applicable	Not applicable	Not applicable	Not applicable

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<ul style="list-style-type: none"> Actively involve the service user and talk it through with them 					
<p>Gender Reassignment Think about creating an environment within the service / policy or function that is user friendly and non-judgemental.</p> <p>If the policy / function / service are specifically targeting this protected characteristic, think carefully about training, confidentiality and communication skills.</p>	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people.</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>Marriage and Civil Partnership Think about access and confidentiality, the partner may not be aware of involvement or access to the service.</p> <p>Staff training.</p>	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>Pregnancy and maternity</p>					

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<p>The policy / function / service must be accessible for all e.g. opening hours.</p> <p>Are the chairs appropriate for breast feeding, is there a private area? Are there baby changing facilities and is there space for buggies?</p>	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>Race</p> <p>You need to think carefully about the local demographics of the population who will be accessing the policy / function / service. Talk to public health. Think about:</p> <ul style="list-style-type: none"> • Cultural issues (gender, clothing etc) • Languages • Support to access • Staff training on cultural awareness, interpreting 	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people.</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>Religion or Belief</p>					

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<p>As above, think about local population and what religion or belief they may have.</p> <p>Think about:</p> <ul style="list-style-type: none"> • Staff training on respecting differences, religious beliefs • Are you trying to implement during a time of religious holidays e.g. Ramadan • Is there an area for prayer times? 	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>Sex</p> <p>This is the impact on males / females.</p> <p>For example same sex accommodation, are their areas for privacy?</p> <p>Is it accessible for both taking into account working service users? Would it be a venue they would go to?</p>	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people.</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>

1. Equality Group	2. What evidence has been used for this analysis?	3. What engagement and consultation has been used	4. Identify positive and negative impacts	5. How are you going to address issues identified?	6. Lead and Timeframe
<p>Sexual Orientation Don't make assumptions as this protected characteristic may not be visibly obvious.</p> <p>Providing an environment that is welcoming for example visual aids, posters, leaflets.</p> <p>Using language that respects LGB&T people.</p> <p>Staff training on how to ask LGB&T people to disclose their sexual orientation without fear or prejudice.</p>	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people.</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>Carers Does your policy / function / service impact on carers? Ask them. Do you need to think about venue, timing? What support will you be offering?</p>	<p>The CCG will make adjustments as may be required to ensure that this policy does not adversely affect any group of people</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>

Appendix 2: The Process

FOI Request Processing Procedure

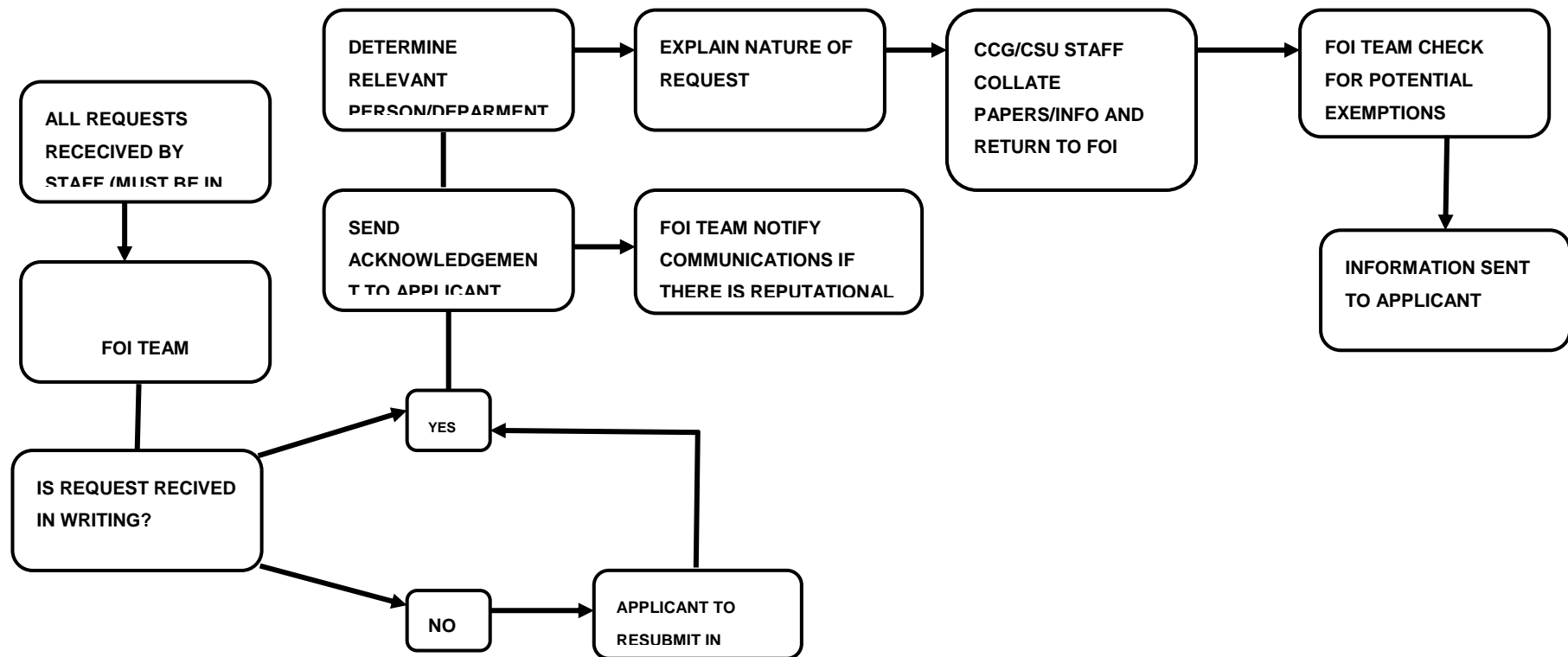
1. All new requests received must be sent to the FOI team who will log each request on the SharePoint database. The FOI team will allocate a unique reference number and electronic folders are then to be set up for each request.
2. All applicants will be sent a standard FOI acknowledgment of receipt email within two working days of receipt of request.
3. All information requests received will be assessed to ascertain whether:
 - It is a valid Freedom of Information request
 - The request is clear. If not the applicant will be asked to clarify their request.
 - The estimate of time needed to comply with request will exceed the appropriate time limit. If this is the case, the applicant will be asked if they wish to redefine their request.
 - Part or all of the information requested falls under one of the exemptions contained within the Act
 - The information requested can be found on the CCG publication scheme or website.
 - The information been requested previously.
 - Which service area of the CCG is best placed to provide the information requested.
4. Once the FOI request has been assessed, it will be sent to the appropriate service lead of the relevant department to gather the information requested. The name of the applicant and their contact details will be removed prior to sending to ensure that the applicant's personal data is protected under the Data Protection Act. In some cases it will be necessary for these details to be disclosed to staff outside of the FOI department.
5. CCG staff will acknowledge to the FOI team that they have received the request. If the request is not relevant to their area or not for their team they will notify the FOI team immediately.
6. Requests that have a potential reputational impact on the CCG will be notified to the Communications Manager at NHS Wandsworth CCG and the communications team at South East Commissioning Support Unit.
7. CCG Staff will have 10 working days in which to comply with requests. A reminder will be sent to staff by the FOI team if the information is not received back by the 10th working day.
8. It is the responsibility of the service leads to ensure that the manager/director of the department has cleared the response before returning the information to the FOI team within the time limit of 10 working days. This allows time for queries, amendments and the drafting of the response by the FOI manager.

9. Once the information has been returned to the FOI staff, it will be considered against the original request and where applicable, exemptions may be considered. Providing the information has been agreed by the service manager/director or the Chief Officer where applicable, the FOI staff will use the data provided to write a response.
10. All final responses must be responded to within 20 working days. If this isn't possible, and before the deadline expires, a further communication must be sent to the applicant by the FOI Office advising of this along with an expected response date.
11. The SharePoint database must be updated when a request is completed. Electronic responses are filed in the applicant's file within SharePoint for compliance and audit purposes.
12. A quarterly report will be completed at the end of each quarter and presented to the Information governance lead of NHS Wandsworth CCG and the Director of Corporate Affairs, Performance and Quality. This quarterly report will be completed a month in arrears after the end of the quarter.

Appendix 3: Process Flowchart

FREEDOM OF INFORMATION FLOWCHART

All FOI requests are subject to a 20 day deadline



Appendix 4: Protection of Freedoms Act 2012 Amendments

- Section 102 of the Protections of Freedoms Act 2012 adds new provisions to FOI regarding datasets. They are about the reuse of datasets that the CCG provides in response to a request or under a publication scheme. There is no new duty to provide any information in response to a FOI request that was not previously accessible.
- A dataset is a collection of factual information in electronic form to do with the services and functions of public authorities that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.
- If the CCG provides information that constitutes a dataset and the applicant expresses a preference to receive the information in electronic form, the CCG must provide the information in a reusable form.
- If the dataset is relevant copyright work, the CCG must provide it under the terms of a specified licence. A relevant copyright work is one for which the CCG owns the copyright and the database rights.
- The CCG may charge a fee for communicating the information and a fee for making the dataset available for reuse. There are new fees regulations dealing with making the dataset available for reuse.
- Under the publication scheme, the CCG is obliged to publish datasets that have been requested and any updated versions it holds unless it is satisfied that it is not appropriate to do so.
- When dealing with a request involving a dataset, the CCG should first consider whether the information is exempt from disclosure under any FOI exemption. Particular care should be taken to ensure that personal data is not disclosed.

Appendix 5: The Exemptions

Exemptions & Provisions

Although the CCG will try to comply with all requests for information there are a number of exemptions and provisions within the Act that can be considered. The exemptions are split into two main categories:

Absolute Exemptions - where the public interest test* does not apply.

- s21 - Information reasonably accessible to the applicant by other means
- s23 - Information supplied by or relating to security bodies
- s32 - Information contained in court records
- s34 - Parliamentary privilege
- s36 - Effective conduct of public affairs
- s40 - Personal information (on occasion may also be a qualified exemption)
- s41 - Information provided in confidence
- s44 - Prohibitions on disclosure

Qualified Exemptions - where the public interest test* applies.

- s22 - Information intended for future publication
- s24 - The national security exemption
- s26 - Defence
- s27 - International relations
- s28 - Relations within the UK
- s29 - Economy
- s30 - Investigations
- s31 - Law enforcement
- s33 - Public audit
- s35 - Government policy formulation
- s37 - Communication with Her Majesty and the awarding of honours
- s39 - Environmental information (falls under EIR)
- s40 - Personal information (majority would fall under an absolute exemption)
- s42 - Legal professional privilege
- s43 - Defined areas of commercial interest

In addition the following provisions allow refusal of a request:

- s12 - Where the cost of collating the evidence is excessive
- s14 - Repeated or vexatious requests

***The public interest test requires weighing the public interest considerations in favour of release against the public interest in withholding the information. Where the interests are evenly balanced the ICO would usually expect the information to be released.**