

FREEDOM OF INFORMATION ACT POLICY

Author	Lynn Casey-Sturt
Role	Governing Body Secretary, Corporate Affairs and Governance Team
Date / version	March 2018 / V0.1
Considered by CCG committee	CCG Management Team
Approved	30 April 2018
Notified to:	Governing Body
Date	12 June 2018
Next Review date:	May 2019

DOCUMENT CONTROL SUMMARY

Title	Freedom of Information Act Policy
Lead Officer	Nurse Director & Chief Finance Officer
Purpose of document	To ensure that information is efficiently managed, and that appropriate policies, procedures and management accountability and structures provide a robust governance framework for information management and ensuring where needed, confidentiality is maintained
Status	Draft
Version No.	0.1
Date	March 2018
Author(s)	Corporate Affairs and Governance Team
Date of approval by Governing Body	
Next Review Date	

VERSION CONTROL SUMMARY

Version	Date	Status	Comment/Changes
0.1	22/03/2018	DRAFT	Standard CCG Policy

Section	Title	Page No.
1	Purpose of the Policy	4
2	Scope of the policy	4
3	Roles and responsibilities	5
4	Guiding Principles	6
5	Publication Scheme	7
6	Requests for Information within the Publication Scheme	7
7	Request to Re-use Information Provided	7
8	Managing and Defining Requests	7
9	Cost of Compliance	8
10	Vexatious Requests	9
11	Applying an Exemption	9
12	Requests from the Media	10
13	Requests for Internal Review and Complaints Process	10
14	Information Provided by Other Organisations	10
15	Contracts with Other Organisations	11
16	Environmental Regulations	11
17	Distribution	11
18	Monitoring Compliance and Review of policy	11
19	Related Policies and Procedures	11
20	References	12
Appendices		
A	Publication Scheme	13
B	Exemptions	15

FREEDOM OF INFORMATION POLICY

1. PURPOSE OF THE POLICY

This policy explains the principles which underpin the commitment of the Berkshire West Clinical Commissioning Group (CCG) to openness and transparency in the decisions which we make about the provision of health care to the local community.

It sets out our commitment to full implementation of the Freedom of Information Act.

It acknowledges that the CCG at the same time, and in conjunction with this Policy, adopts and manages equivalent procedures for the provision of Environmental Information under the Environmental Information Regulations.

The CCG recognises the general right of access to information.

In accordance with the CCG Equality and Diversity Policies it is important for all members of staff to remember that applicants may be unable to write to the CCG as they may not have English as their first language or may suffer from disabilities which make it difficult for them to express their complaint in writing. Members of CCG staff will offer assistance and support to all applicants who request it.

This policy applies to all CCG staff and is approved by the BW CCG Management Team and presented to Governing Body for noting.

2. SCOPE OF THE POLICY

Within the context of the Freedom of Information Act (FoIA), "information" means every piece of information held by the CCG, whether paper or electronic. It includes all draft documents, agendas, minutes, emails and handwritten notes. There is an interface between FoIA and the Data Protection Act (DPA), with regard to information about living individuals and therefore staff are also required to consult these policies.

The Act applies to information held by the CCG; this could include information created by other organisations, such as providers, contractors, etc.

The FoIA makes it an offence to alter, deface, block, erase, destroy or conceal any information held by the CCG with the intention of preventing disclosure to all or part of it.

Penalties can be imposed on both the CCG and employees for non-compliance under FoIA.

This policy applies to all staff employed by or working on behalf of the CCG.

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

The Policy provides a framework within which the CCG will ensure compliance with the requirements of the Act.

The Policy is applicable to all the activities which the CCG conducts with other public, bodies including other NHS organisations, partnership bodies as well as voluntary organisations and commercial suppliers of goods and services.

All staff are responsible to the Chief Officer for their compliance with the policy, for ensuring the adoption of appropriate procedures in managing a request for information and for monitoring the effectiveness of those procedures and the implementation of this policy.

All individual employees responsible for responding to requests for information need to be aware of the responsibilities of the CCG under the Act and, in particular, the continuing duty to advise and assist any member of the public.

Freedom of Information should be adequately reflected in all relevant strategies, policies and procurement exercises.

3. ROLES AND RESPONSIBILITIES

The Governing Body

It is the role of the Governing Body to define the CCG policy in respect of Freedom of Information, taking into account legal and NHS requirements. The Governing Body is also responsible for ensuring that sufficient resources are provided to support the requirements of the policy.

Chief Officer

The Chief Officer as Accountable Officer of the CCG has overall accountability and responsibility for Freedom of Information within the CCG and setting a culture of openness, transparency and compliance with the Act.

Senior Information Risk Owner

The Senior Information Risk Owner (SIRO) is an Executive Director of the CCG Governing Body.

The SIRO provides guidance when a Freedom of Information Act request raises issues of information risk.

Caldicott Guardian

The Caldicott Guardian will guide the CCG on matters of confidentiality relating to patient information and acts as a “conscience” on its use.

The CCG Management Team will:

- discuss and agree the specific operational actions to ensure the BWCCGs are compliant with their IG obligations.
- Seek assurance that the BWCCGs’ activities are managed in accordance with information governance law and regulations governing the NHS, and the requirements of the IG Toolkit Return.
- Periodically review the adequacy/effectiveness of the system of information governance in place across the BWCCGs.

The Clinical Commissioning Committee will:

- Make recommendations to each CCG to enable it to maximise the Federation’s ability to assist the BWCCGs to fulfil their statutory duties in relation to Information Governance, and then implement the CCGs’ joint instructions.

All Managers

Managers within the CCG are responsible for ensuring that the policy and its supporting standards and guidelines are built into local processes and that there is on-going compliance. This compliance will be regularly audited.

Managers are responsible for ensuring all staff attend mandatory awareness training. Managers shall promote a culture that supports transparency and openness as set out within the Freedom of Information Act.

All Staff

All staff, whether permanent, temporary or contracted, are responsible ensuring that they are aware of the requirements incumbent on them and for ensuring they comply with these on a day to day basis.

All staff are responsible for:

- Creating and maintaining records, which are accurate, appropriate and retrievable.
- Ensuring that requests for information and possible re-use are passed in a timely manner to the FoI Team for processing.
- Ensuring that disclosures to formal FoIA requests are not made outside the defined processes, so that inappropriate disclosures are avoided.
- Ensuring that documents relevant to or required by the CCG publication scheme are provided for publication.
- Alerting their line manager, should they feel they need additional training or guidance

Failure to comply with this policy may result in disciplinary action.

4. PRINCIPLES

The CCG will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act.

The CCG will deploy appropriate systems and procedures to ensure that the organisation complies with its duty to confirm or deny and to provide requested information within 20 working days or within a reasonable period of time where a public interest test has to be considered. All staff and directors will be required to comply with the requirements and failure to do so may result in disciplinary action.

The CCG will implement and resource a Corporate Records Policy so that requests for information can be handled efficiently and effectively.

The CCG will ensure that all staff receive appropriate and relevant training such that they are able to identify a Freedom of Information Request and be able to support any request that the organisation may receive.

The CCG will ensure that its Publication Scheme is periodically reviewed and updated.

The CCG will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

The CCG will ensure that exemptions are applied appropriately, consistently and a refusal notice will be issued detailing why the exemption applies (see Appendix B)

The CCG will advise and assist requesters, as set out within the Act.

The CCG Freedom of Information Lead will ensure that training in relation to the Act is available to all staff.

The CCG will ensure that awareness raising material is made available to all staff.

The CCG will monitor the effectiveness of its compliance with the FoIA and its performance and implementation of this policy.

The CCG will adopt similar standards and policies in relation to the implementation of the Environmental Information Regulations.

5. PUBLICATION SCHEME

Section 19 of the FoIA makes it a duty for every public authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner.

The CCG uses the approved model issued by the Information Commissioners Officer (ICO) in January 2009. The Outline for this scheme can be found in Appendix A.

6. REQUESTS FOR INFORMATION WITHIN THE PUBLICATION SCHEME

If a request is received for information that is covered by the scope of the publication scheme, the requester will be directed to download the information from the CCG website.

7. REQUEST TO RE-USE INFORMATION PROVIDED

Information that the CCG publishes as part of its publication scheme and website will be the list of information available for re-use. Any published document can be re-used without charge, provided the CCG is credited as the source and retains copyright where appropriate.

8. MANAGING AND DEFINING REQUESTS

Any CCG member of staff receiving an FoI request must forward them to the FOI Manager, so that they may be logged and processed.

A Request for Information (RfI) must meet the following criteria:

- Be in writing – such as emails, letters, etc
- Contains a name and address for correspondence – including email
- Has sufficient detail to enable the CCG to identify the information requested
- Is a request for information that is not already part of the CCG publication scheme

Once the request that fulfils the above criteria is received, the CCG has a maximum of 20 working days to respond.

There is no provision for extending the 20 working day limit, unless consideration needs to be given to a Public Interest Test.

The CCG has a duty to “advise and assist” under the Act and must take reasonable steps to help a requester appropriately compile a request that meets the criteria. The timing for response does not begin until sufficient detail has been received to consider a response.

Any communications to clarify a request will be undertaken without necessary delay.

All requests that have not expressly asked for the information to be re-used will have a clause in place, stating that permission must be sought before the information may be re-used.

Requests for re-use must be authorised by a Director of the CCG, taking advice from Communications and Information Governance professionals, as appropriate.

9. COST OF COMPLIANCE

The Freedom of Information Act recognises that FoI requests are not the only demand on resources and should not be allowed to cause a drain on time, energy and finances to the extent that they negatively affect your normal functions.

Currently, the cost limit for complying with a request or a linked series of requests from the same person or group is set at £450.

The CCG can refuse a request if the estimate of the cost of compliance would exceed this limit. This provision is found at section 12 of the Act.

The CCG can refuse a request if deciding whether the organisation holds the information would mean that the cost limit would be exceeded, for example, because it would require an extensive search in a number of locations.

Otherwise, it should be stated that the information is held, even if we cannot provide the information itself under the cost ceiling.

When calculating the costs of complying, the costs can be aggregated of all related requests received within 60 days from the same person or from people who seem to be working together.

The CCG is only required to estimate whether the limit would be exceeded. However, the estimate must be reasonable and must follow the rules in the Freedom of Information (Appropriate Limit and Fees) Regulations 2004.

When estimating the cost of compliance, the CCG can only take into account the cost of the following activities:

- determining whether you hold the information;
- finding the requested information, or records containing the information;
- retrieving the information or records; and
- extracting the requested information from records.

The biggest cost is likely to be staff time. Staff time can be costed at £25 per person per hour, regardless of who does the work, including external contractors. This means a limit of 18 staff hours.

The CCG cannot take into account the time needed to decide whether exemptions apply, to redact exempt information, or to carry out the public interest test.

However, if the cost and resources required to review and remove any exempt information are likely to be so great as to place the organisation under a grossly obsessive burden then we may be able to consider the request under Section 14 instead. (Vexatious requests – see below).

If the CCG wishes to use section 12 (cost limit) of the Act as grounds for refusing the request, the requester should be sent a written refusal notice.

This should state that complying with their request would exceed the appropriate cost limit. However, the CCG should still say whether we hold the information, unless finding this out would in itself incur costs over the limit.

10. VEXATIOUS REQUESTS

Should an applicant make vexatious or repeated requests for identical or substantially similar information, the CCG will inform the applicant in writing, stating that they will not be fulfilling the request and outlining why they consider the request to be vexatious. They will also advise the applicant of how to proceed if they are not satisfied with the response.

Guidance is available on the Information Commissioners website on how to decide whether an applicant's requests may be considered vexatious.

11. APPLYING AN EXEMPTION.

Whilst a response is being compiled, if there is a concern raised about release, then consideration should be given to if an exemption may apply.

The Act details 23 legally complex exemptions. These are separated into "absolute" and "qualified".

An absolute exemption applies in all cases and is not subject to a public interest test.

If the exemption is "absolute" then the response should be completed within the usual 20 working day limit.

A qualified exemption is subject to a public interest test, which determines whether the public interest is best served by applying an exemption or disclosing the information.

When a Public Interest Test is being applied, the response time should be "paused" and the requester should be informed that a public interest test is being undertaken.

Public Interest Tests must be conducted objectively and it is not sufficient to merely state that the public interest is best served by an exemption. Should the requester challenge the exemption, the CCG would be required to demonstrate that both sides of the argument had been sufficiently explored and that those with relevant experience, skills and knowledge had engaged with the Public Interest Test. Therefore the discussions around disclosure v non-disclosure and where the interests of the public are best served should be documented.

The response will usually detail why the CCG believes that an exemption applies and which exemption is being used.

A full list of exemptions is attached in Appendix B.

12. REQUESTS FROM THE MEDIA.

Requests under the Freedom of Information Act are both motive and applicant blind. However, it may be appropriate for the CCG Communications Lead to be informed of requests from the media and the CCG may wish to consider handling them as a media request.

Requests that are likely to be of media interest should also be copied to the CCG Communications Lead, in order that the CCG can consider any response they may wish to make.

This does not alter the requester's rights under the Act.

13. REQUESTS FOR INTERNAL REVIEW AND COMPLAINTS PROCESS.

The FoIA response to the requester will detail what steps the requester can take if they are unhappy with the response received by the CCG. The steps to resolve a complaint are:

1. Request for internal review to the CCG.
2. Complaint to the Information Commissioner.

Both routes will be identified in all responses.

If the requester asks for an internal review, then the following aspects will be considered:

- How the request was handled – including meeting timescales.
- Whether the response addressed key aspects of the Act – including advising the requester whether the information was held.
- Whether any exemption has been applied appropriately.

The composition of the review team will include:

- A senior member of CCG management, ideally a Director.
- A subject matter expert well versed in the information requested, ideally not the person originally responsible for responding, although this may be unavoidable.
- The CCG FoI lead
- A member of the Information Governance team.

The outcome of the review will be prepared within 40 days of the original request for review.

If the outcome of the review is to release previously withheld information, then ideally this should be sent with the review, or no longer than 20 days after the completion of the review.

Should the CCG receive any notices served by the Information Commissioner it will endeavour to comply unless it feels the need to appeal to the Information Tribunal.

14. INFORMATION PROVIDED BY OTHER ORGANISATIONS.

The Freedom of Information Act covers information held by the CCG. The CCG would generally have to disclose the information requested, however it may be appropriate to advise the originator of the information that it will be released.

If the information is known to be available more readily from another source, i.e. a website, it may be appropriate to advise the requester of this.

Guidance should be sought from the CSU Information Governance team if the CCG believe that the release of information may impact on the other party.

15. CONTRACTS WITH OTHER ORGANISATIONS.

All operational contracts the CCG has must have a clause detailing that information may be disclosed under the terms of FoIA.

The CCG will give consideration to FoIA during procurement processes and ensure that those who wish to tender understand that information may be disclosed under the Act.

16. ENVIRONMENTAL REGULATIONS.

Many similarities exist between the FoIA and the Environmental Information Regulations (EIR). The EIR relates to any information that the CCG holds around our impact on the environment – this includes impact on any of the elements (air, water, etc), substances released into the environment, planning policies and plans that may impact the environment and any impact on humans.

The main difference between FoIA and EIR is that requests for EIR do not have to be in writing and may be made verbally.

The CCG will handle EIR requests within the FoIA process.

Should the CCG receive an EIR request then specialist advice will be sought from the Information Governance Team.

17. DISTRIBUTION

This policy will be available at all CCG locality locations. Copies will also be available from the CCG Head of Corporate Affairs and Governance and on the CCG Intranet.

18. MONITORING COMPLIANCE AND REVIEW OF POLICY

The Governing Body Secretary will maintain records and give an annual report to Management Team,

Performance under this policy will be measured by quarterly and annual reporting to the Management Team for action as required.

This policy will be reviewed annually and amendments made to meet BW CCG objectives to achieve compliance.

19. RELATED POLICIES and PROCEDURES

This policy should be read in conjunction with the CCG:

- Information Governance Framework
- Information Governance Policy
- Information Security Policy
- Data Protection Act Policy
- Corporate Records Policy
- Staff Information Governance Handbook

Other policies and procedures may become available during the lifespan of this policy.

Related Guidance:

- Records Management: NHS Code of Practice
- Guide on Confidentiality in Health and Social Care

20. REFERENCES

- Freedom of Information Act 2000
- Environmental Information Regulations 2000
- Caldicott Principles

APPENDIX A

PUBLICATION SCHEME Classes of Information

1 – Who we are and what we do.

Berkshire West Clinical Commissioning Group (CCG) is being led by clinicians, mainly GPs. This is important because GPs are the first point of contact with the NHS for most people and are the clinicians who know most about their patients' health and wellbeing needs. Approximately 80% of NHS contacts are with GPs. When decisions are being made about how the budget should be spent or which services should be developed or changed, it will be GPs and other clinicians leading the way. A key priority for local GPs is to have a greater focus on the quality of services. It is also expected that CCGs will be more accountable to the public.

The CCG has been provided with a budget that reflects the health needs of this area. As with all public services, we need to make our money work well for us. We will make sure we make the best use of the money available and that local people have access to good quality services that they need.

Further information is available here:

<http://www.berkshirewestccg.nhs.uk/about-us/>

You may also find this further information about clinical commissioning helpful:

<http://www.berkshirewestccg.nhs.uk/newsroom/news/posts/2017/november/berkshire-west-clinical-commissioning-groups-formal-approval-to-merge/>

Further information on how to make contact with the CCG is available here:

<http://www.berkshirewestccg.nhs.uk/contact-us/>

2 – What we spend and how we spend it.

In this section we will add information on how to access financial information about the CCG.

<http://www.berkshirewestccg.nhs.uk/about-us/who-we-are/publications/>

3 – What our priorities are and how we are doing.

The GP practices in Berkshire West have been considering what should be the priorities for the CCG for the coming year. They have been looking at the evidence about the health needs of the population and a number of priorities have been identified:

Berkshire West CCG goals are:

- Developing clinical leadership
- Demonstrating excellence in public and patient involvement
- Ensuring the patient and public voice is heard
- Delivering financial sustainability
- Commissioning services based upon quality and outcomes

Berkshire West CCG has six clinical priorities:

- To improve uptake of screening programmes
- To improve outcomes for patients with diabetes
- To improve care for frail elderly individuals
- To improve access to mental health services
- To improve the health of those in need

- To ensure high quality local services, where possible

4 – How we make decisions.

Details about membership of the CCG Governing Body can be found here:

<http://www.berkshirewestccg.nhs.uk/about-us/who-we-are/whos-who/>

Dates of Board Meetings Being Held in Public can be found here:

<http://www.berkshirewestccg.nhs.uk/about-us/who-we-are/governing-body-meetings/>

5 – Our policies and procedures.

In this section we will add information on how to access current written protocols for delivering our functions and responsibilities.

<http://www.berkshirewestccg.nhs.uk/about-us/who-we-are/publications/>

6 - Lists and Registers.

In this section we will add information on how to access information held in registers required by law and other lists and registers relating to the functions of the authority.

<http://www.berkshirewestccg.nhs.uk/about-us/who-we-are/publications/>

7 – The Services we Offer.

In this section we will add information on how to access information about the NHS services available in the CCG area can be found here:

<http://www.berkshirewestccg.nhs.uk/>

8 – Written Requests

Information held by a public authority that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act. Details of how to make such a request can be found here:

<http://www.berkshirewestccg.nhs.uk/contact-us/freedom-of-information-foi/>

APPENDIX B

Freedom of Information Act Exemptions

There are two types of class exemption:

- (a) Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) Qualified by the public interest test, which require the public body to decide whether any public interest in disclosure is outweighed by the public interest in non-disclosure.

With the exception of s21 (information available by other means) qualified exemptions require organisations to consider whether it is in the public interest not to disclose information.

The absolute exemptions under the 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, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- 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 24, National Security
- Section 26, Defence
- Section 27, International Relations
- Section 28, Relations within the United Kingdom
- Section 29, The Economy
- Section 30, Investigators 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 42, Legal Professional Privilege
- Section 43, Commercial Interests.