

FREEDOM OF INFORMATION POLICY

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1. Introduction

This Freedom of Information Policy is a statement of what NHS High Weald Lewes Havens CCG intends to do to ensure compliance with The Freedom of Information (Fol) Act (2000).

The Act places various requirements on public authorities in the sphere of information provision and openness. As a public authority, NHS High Weald Lewes Havens CCG ('the CCG') therefore has obligations under the Act.

This policy is not a statement of how compliance will be achieved. This will be a matter for operational procedures outlined in the Freedom of Information Procedures document

2. Policy statement

NHS High Weald Lewes Havens CCG has made a commitment to both patients and staff to be as open and transparent as possible in the way that it works. This is a commitment which is supported by the Freedom of Information Act (2000). This is an Act of Parliament which gives people more rights to access information held by public authorities. The CCG will use all appropriate and necessary means to ensure that it complies with the Fol Act 2000 and the associated Codes of Practice.

3. Objective and Aims

The objective of this policy is to address the range of issues concerned with data protection throughout the CCG and will aim to:

3.1 Ensure availability

Ensure that the policy is available for users. Accurate information on Freedom of Information must be available and delivered to the right person, at the time when it is needed.

3.2 Preserve integrity

Keep records accurate and take steps to ensure information is up to date and that everyone who works in or on behalf of the NHS understands their duty of confidentiality and both paper and electronic records are only made available to people who have a right to see them.

3.3 Preserve Confidentiality

Protect records against unauthorised access or disclosure. Access must be confined to those with specific authority to view the data.

3.4 Ensure Equal Access

Ensure that the application of any part of this policy does not have the effect of discriminating, directly or indirectly, on grounds of race, colour, age, nationality, ethnicity (or nationality) origin, sex, sexual orientation, marital status, religious belief or disability. Members of staff may request assistance with this policy if they have particular needs.

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4. Scope

This policy is structured to ensure that staff are aware of their responsibilities, roles and accountability in regards to the Freedom of Information Act (2000), and outlines the duty to comply with guidance issued by the Department of Health, the NHS Executive, and other advisory groups to the NHS and guidance issued by professional bodies.

The Freedom of Information Act Policy will apply to all CCG employees and to Non-Executive Directors and provide a framework within which the CCG 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.

5. Purpose

This Freedom of Information Policy details how staff will meet the CCG's legal obligations and NHS requirements concerning confidentiality and information security standards based upon the Freedom of Information Act 2000.

6. Special requirements

Staff with sensory impairments are able to request the available access software options for any sensory impairment, which may include text size enlargement, font changes, language translation, or reader software that the CCG provides as standard. If staff do not have access to the internet to print a copy of this policy, they should ask their line manager to provide a printed copy.

7. Monitoring arrangements

Monitoring arrangements for compliance and effectiveness of this procedure will be via regular review of any changes to the Freedom of Information Act or upon advice from the Information Commissioner's Office and through annual review at the Information Governance Sub-Committee. Monitoring of the effectiveness of the policy will be via the Information Governance Sub-Committee.

8. Compliance

This Policy complies with associated guidance and legislation:

- Freedom of Information Act (2000)
- Data Protection Act 1998
- Human Rights Act 1998.

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9. Associated Documents

This document is to be read in conjunction with the Freedom of Information Procedures document.

Other documents associated with this document are (for reference):

- Records Management policy
- Data Protection & Confidentiality Policy
- CCG Publication scheme
- Complaints Policy
- 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

10. Background

The Freedom of Information Act 2000 ('the Act') is part of the Government's commitment to greater openness in the public sector and this is a commitment which is supported by NHS High Weald Lewes Havens CCG. The Freedom of Information Act enables members of the public to question the decisions of public authorities more closely and thereby ensure that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory Code of Practice on Openness in the NHS.

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.
- Public interest test - in cases where information is exempt from disclosure, except where an absolute exemption applies, a duty on public authorities to:
 - Inform the applicant whether they hold the information requested, and
 - Communicate the information to him or her, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.
- A duty on every public authority to adopt and maintain a Publication Scheme, specifically applicable to the NHS from 31 October 2003.
- An office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice and a new Information Tribunal.
- A duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

11. Courses of Action Required

11.1 The publication scheme

NHS High Weald Lewes Havens CCG has adopted the [model publication scheme](#) developed by the Information Commissioner's Office (ICO). This is permissible under section 20 of the Act and ensures compliance with Section 19 of the Act.

NHS High Weald Lewes Havens CCG's publication scheme details the information that the CCG makes routinely available to the general public. It details the format in

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which the information is held and whether there is a charge for its provision. The publication scheme is available on the CCG website and in hard copy on request. It is subject to regular reviews for content.

Some of the information listed in the CCG publication scheme is available to view on the CCG website. However, other publications must be requested from the CCG. Requests for information listed in the publication scheme may be received verbally or in writing. These requests will be handled as per the Freedom of Information Procedures document

11.2 General rights of access

Section 1 of the Act gives a general right of access from 1 January 2005 to recorded information held by the CCG, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information (see 5.2.2) to the CCG is entitled:

- to be informed in writing whether the CCG holds the information of the description specified in the request (this is referred to as the "duty to confirm or deny"); and,
- if the CCG holds the information, to have that information communicated to them.

These provisions are fully retrospective in that if the CCG holds the information, it must provide it, subject to certain conditions and exemptions. The CCG will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

In accordance with Section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describing the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

The CCG has established procedures to process applications arising from the introduction of general rights of access on 1 January 2005. These are detailed in the Freedom of Information Procedures document

11.3 Duty to provide advice and assistance

Under Section 17 of the Act, it is the duty of the CCG to provide advice and assistance to persons who have made, or wish to make, requests for information. The CCG will ensure that systems and procedures are in place to meet this duty.

The systems and procedures will conform to the Code of Practice issued under Section 45 of the Act.

11.4 Handling requests which appear to be part of an organised campaign

Where a number of requests made by different people appear to form part of an organised campaign, the CCG may calculate the cost of complying with any of the requests as the cost of complying with them all. If this cumulative cost is estimated

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to exceed the appropriate limit that is set in the national Fees Regulations, the CCG is not required to comply with the requests.

In the situation described above, the CCG will consider if it is possible to publish the requested information on the CCG website and forward details of the website to each of the applicants within the appropriate cost limit.

11.5 Timeliness in dealing with information requests

In line with Section 10 of the Act, the CCG will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and provides the information requested within twenty working days of receipt of a request. All staff and members (clinical and lay) will be required to comply with the requirements of these procedures.

Where a fees notice is issued, the 20 working day time limit for responses begins on the day that the request is first received. However, the working days between the fees notice being received and the fee being paid will be disregarded for the purposes of calculating the twentieth working day following receipt of the request.

If the CCG chooses to apply an exemption to any information, or chooses to refuse a request because it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice will be issued within twenty working days informing the applicant of this decision.

If the CCG needs to apply the public interest test to a request for exempt information, it may not be possible to reach a decision relating to disclosure within the twenty day time limit. In this situation, the CCG will write to the applicant within twenty days of receipt of the request with a realistic estimate of when a decision will be reached.

11.6 Charges and fees

NHS High Weald Lewes Havens CCG will not generally charge for information that it has chosen to publish in its publication scheme. However, as detailed in Chapter 15 of the scheme, charges may be raised where multiple page hard copies are requested, or information is to be copied onto other media. These charges will be regularly reviewed.

The CCG will follow the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, the method for calculating appropriate fees and the circumstances in which a fee should be levied. In all cases where the CCG chooses to charge for information published through the publication scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by Section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

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11.7 Transferring requests for information

A request for information may be transferred where the CCG receives a request for information which it does not hold, but which is held by another public authority. If a request is partly for information which the CCG does hold, and partly for that which it does not, the transfer will only be made in respect of the part of the information it does not hold.

The CCG will offer advice and assistance to applicants in situations where some or all of the information requested is not held by the CCG.

11.8 Consultation with third parties

Where information cannot be disclosed without affecting the legal rights of a third party (e.g. where information has been obtained from a third party and disclosure without their consent would constitute an actionable breach of confidence as set out in Section 41 of the Act), the CCG will make reasonable efforts to gain the consent of the third party to grant disclosure of the information.

Where information requested is personal data as defined by the Data Protection Act, the CCG will refer to Section 40 of the Fol Act. In such cases, it is likely that the CCG will need to take specialised legal advice.

Even where a third party's legal rights are not affected, the CCG will undertake consultation with third parties where their views will assist the CCG in assessing exemptions and the public interest.

The CCG will make reasonable efforts to contact third parties where necessary, but may consider that consulting the third party is not appropriate where the cost of consulting would be disproportionate.

Where the interests of a number of third parties may be affected by a disclosure, the CCG may consider that consultation with their representative organisation or a representative sample of the third parties in question is sufficient.

In all cases, it is for the CCG (not the third party) to determine whether information should be disclosed under the Act. Non-response or refusal to consent to disclosure by a third party do not, in themselves, provide sufficient reason for information to be withheld.

11.9 Public Sector contracts

When entering into contracts, the CCG uses the NHS Standard Contract which is mandated by NHS England for use by commissioners for all contracts for healthcare services other than primary care. This contract has been drawn up with knowledge of the Fol Act.

Unless an exemption under the Act is applicable in relation to any particular information, the CCG will be obliged to disclose that information in response to a request.

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The CCG will not agree to hold information "in confidence" which is not, in fact, confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in Section 41 of the Act only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable by that, or any other person.

If it becomes necessary for the CCG to question whether information provided "in confidence" by a contractor should be disclosed in response to an information request, the CCG will consult with the contractor in answering that question.

11.10 Accepting information in confidence from third parties

NHS High Weald Lewes Havens CCG will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of the CCG's functions, and it would not otherwise be provided. However, the CCG will not agree to hold information in confidence if it is not confidential in nature.

11.11 Exempt information and refusal of requests

The CCG's duty to confirm or deny does not arise where further information is required from the applicant to identify the information being requested and the applicant has been informed of this. However, in this situation, the CCG will provide advice and assistance.

The CCG does not have to comply with information requests where the information requested is exempt under the provisions made in Part II of the Act, Sections 21 - 44.

A full list of exemptions is provided in Appendix A to this policy.

Where required to do so by the Act, the CCG will apply the public interest test to exempt information to determine whether the public interest in disclosing the information outweighs the public interest in maintaining its confidentiality. If this is found to be the case, the CCG will disclose the information in question.

The CCG will not comply with a request for information when a fees notice has been issued to an applicant and the fee has not been paid within three months.

The CCG will not comply with a request for information if it estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations.

The CCG will work with applicants to keep compliance costs to a minimum but reserves the right to either;

- Refuse to disclose the information; or
- Charge whatever costs of disclosure are above the appropriate limit.

Where charges are raised, the applicant will be issued with a fees notice.

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The CCG is not obliged to comply with a request for information if the request is deemed vexatious or repeated as defined by the Act.

The CCG will log all requests for information for monitoring purposes so will be able to identify repeated or vexatious requests.

Where a request is refused, the CCG will notify the applicant, within 20 working days of receiving the request, that this is the case and explain why the request is being refused. Similarly, where the public interest test has been applied and the request is still being refused, the CCG will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.

If the CCG needs to apply the public interest test to a request for exempt information, it may not be possible to reach a decision relating to disclosure within the twenty day time limit. In this situation, the CCG will write to the applicant within twenty days of receipt of the request with a realistic estimate of when a decision will be reached, keep to this estimate where at all possible and keep the applicant informed at all times.

The CCG will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

A further notice will not be issued where the CCG has already issued a notice that a request is being refused because it is vexatious or repeated.

Any notice issued by the CCG to the effect that it is refusing to comply with a request for information will inform the applicant of the CCG complaints procedure and of their right to apply to the Information Commissioner.

The CCG will keep a record of all applications where some or all of the requested information is withheld.

11.12 Complaints procedure

The CCG's complaints procedure has a section which outlines the procedure to be followed in the case of complaints relating to the way in which the CCG has complied with its obligations under the Act.

The procedure refers applicants to their right under Section 50 of the Act, to apply to the Information Commissioner if they remain dissatisfied with the conduct of the CCG following attempts at local resolution of their complaint.

In line with the CCG's complaints procedure, any expression of dissatisfaction from an applicant (written or verbal) with reference to the CCG's response to a valid request for information will be treated as an internal review.

Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question will be disclosed as soon as possible and the applicant will be informed how soon this will be.

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11.13 Records management

The CCG has a separate Records Management Policy that will ensure compliance with the Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000 NHS Code of Practice: Records Management.

The policy addresses issues of active records management (creating, keeping, maintenance and disposal) according to the requirements that the law places upon the CCG. All staff are expected to comply with the CCG policy and procedures.

11.14 Data protection and confidentiality

The CCG has a separate Data Protection and Confidentiality Policy with supporting systems and procedures that ensure compliance with the Data Protection Act 1998. All CCG staff have a personal common law duty of confidence to patients and to the CCG and must comply with the CCG policy and procedures in this area.

Information covered by the Data Protection Act is generally exempt from disclosure under the Fol Act. All staff are required to have a basic understanding of the types of information covered by the Data Protection Act.

11.15 Informing Stakeholders of Fol requirements

The CCG will inform CCG staff of Fol responsibilities via normal communication media within the CCG, including induction training and information cascade. In addition, as detailed in Section 6, it is the responsibility of managers to ensure that their staff are aware of CCG policies and procedures

The CCG will include a standard disclaimer on external emails to the effect that correspondence between the CCG and other stakeholders may be disclosed under the Fol Act.

12. Responsibilities

12.1 General responsibilities of all staff and members

All staff and members (clinical and lay) are obliged to adhere to this policy. Failure to adhere to this Policy and its associated procedures may result in disciplinary action.

Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this Policy. They are also responsible for ensuring staff are updated in regard to any changes in this policy.

The Head of Corporate Services in the CCG will oversee the implementation of this Policy and will oversee the systems and procedures that support the implementation of this Policy.

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12.2 Specific responsibilities of all staff and Non-Executive Directors

The points below outline the responsibilities of staff in ensuring that information requests are dealt with according to the CCG procedures. The procedures are contained in the Freedom of Information Procedures document but for ease of use, those which apply to all staff are summarised below.

- The CCG makes information available to stakeholders through staff on a regular basis (e.g. patient information leaflets). Staff will respond to requests for such information in a timely manner and in any case in less than twenty working days. Such routine requests may be dealt with by individual staff members and do not have to be recorded.
- Where requests for information are more complex, or the member of staff does not know how to access the information being requested, and the request has been made in writing, the original request should be passed on to the Fol Officer within one working day. If the request is received verbally, the applicant's name, contact number and the date and details of the request should be passed on to the Fol Officer within one working day.
- Upon receipt of a request for information from the Fol Officer, CCG staff will provide the information requested within a maximum of five working days. Where, in exceptional circumstances, staff are unable to meet this deadline, they will inform the Fol Officer as soon as possible within the five working days.
- Complaints about the discharge of the duties of the CCG in regard to the Act, verbal or written, will be transferred to the Head of Corporate Services who will liaise with the Fol Officer.

12.3 Training

This Policy will be explained to staff as part of the induction process and a computer based training package will be available on the Intranet.

12.4 Reporting

The Fol Officer will be responsible for compiling a quarterly report for the Information Governance Sub-Committee, which provides information on requests received under the Fol Act and the CCG responses to these.

Information relating to Fol complaints will be summarised within the complaints report.

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13. References

- Freedom of Information Act 2000 www.legislation.gov.uk/ukpga/2000/36/contents
- Environmental Information Regulations 2004 www.legislation.gov.uk/uksi/2004/3391/contents/
- Data Protection Act 1998 www.legislation.gov.uk/ukpga/1998/29/contents
- Code of practice on the discharge of public authorities' functions under part 1 of the Freedom of Information Act 2000 - dealing with requests for information <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>
- NHS Code of practice: Records Management <https://www.gov.uk/government/publications/records-management-nhs-code-of-practice>

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Appendix A: List of exemptions

- Section 21 - Information reasonably accessible to the applicant by other means (AG6) Section 22 - Information intended for future publication (AG7)
- Section 26 - Defence (AG10)
- Section 27 - International relations (AG14) Section 28 - Relations within the UK (AG13) Section 29 - Economy (AG15)
- Section 30 - Investigations (AG16) Section 31 - Law enforcement (AG17)
- Section 32 - Information contained in court records (AG9) Section 33 - Public audit (AG18)
- Section 34 - Parliamentary privilege - under review
- Section 35 - Policy formulation, Ministerial communications, Law Officers' advice and the operation of Ministerial Private Office (AG24)
- Section 36 - Effective conduct of public affairs (AG25)
- Section 37 - Communications with Her Majesty and the awarding of honours (AG26) Section 38 - Health and safety (AG19)
- Section 39 - Environmental information (EIR guidance pages) Section 40 - Personal Information (AG1) - recently updated Section 41 - Information provided in confidence (AG2)
- Section 41 - The duty of confidence and the public interest – new
- Section 41 - Information provided in confidence relating to contracts - new
- Section 42 - Legal professional privilege (AG4) - recently updated
- Section 43 - Commercial interest (AG5)
- Section 43 - Public sector contracts - Fol annexe Section 43 - Commercial detriment of third parties - new Section 44 - Prohibitions on disclosure (AG27)

For further information regarding these exemptions, please see the full Act at:
www.legislation.gov.uk/ukpga/2000/36/contents

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Appendix B: Standard Text for Contractors re the Freedom of Information Act

The following statement is standard text which can be used to inform contractors of the CCG's responsibilities under the Fol Act:

NHS High Weald Lewes Havens CCG is committed to openness and transparency and this commitment is supported by the Freedom of Information Act. Under the Act, any recorded information held by the CCG, unless legally exempt, may be subject to public disclosure.

This includes information provided by contractors, or information contained within contract documentation.

Where information is genuinely exempt from disclosure under the Act, and this is capable of being justified to the Information Commissioner, the CCG will keep this information confidential. However, the CCG will not agree to hold information "in confidence" if it is not, in fact, confidential in nature.

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Appendix C: Freedom of Information requests - guidance for staff

What action you need to take to ensure we keep within the law

Under the Freedom of Information (Fol) Act, anyone can make a written request to NHS High Weald Lewes Havens CCG for information that we hold. We don't have to release information that is particularly personal or sensitive but much of the data we hold must be released, if requested, within 20 working days or we risk breaking the law. The Fol Act aims to help ensure that organisations are open and transparent about what they do.

What do I do if I receive an FOI request?

All Fol requests should be forwarded immediately to the Fol email address: HWLHCCG.FOI@nhs.net so we can deal with them appropriately.

You might be asked by us to provide information to respond to an Fol request. If the request is unclear, or if you forward it on to someone else to deal with, please let us know. Also tell us if gathering information together is going to take several hours' work.

What information should I release?

All sorts of information we hold, including minutes and notes of internal meetings, can be requested via Fol. If we do hold the information but you don't think we should be releasing it for any reason, please speak to the Complaints and Fol Officer who will be able to help you.

Sometimes the information requested will contain details, such as names and addresses, that you will need to redact (remove) before it is sent out. We can provide advice on this.

Take care with spreadsheets and make sure that only the intended worksheet is included in our Fol response. Always ensure there are no hidden sheets.

Please ensure that responses are easy to understand and avoid the use of acronyms.

What is my responsibility?

We rely on staff to provide accurate, up-to-date information and ensure that Fol responses are signed off by an appropriate senior manager before they are sent back to the Fol team. Make sure you keep a copy of your response to us in case of queries or future Fol requests.

We have to meet strict Fol deadlines so please ensure any Fol responses you are working on are dealt with before any planned leave is taken.

Make sure that your 'out of office' email message includes the following in case you receive an Fol request while you're away: 'If you are requesting information under the Freedom of Information Act (2000), please redirect your request to HWLHCCG.FOI@nhs.net for action'.

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