

Freedom of Information (FOI) Policy

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1. Introduction

- 1.1. The Freedom of Information Act (FOI) 2000 gives anyone the right to request information held by public authorities such as the NHS. The aim of the Act is to create greater openness in public services and is a commitment to inform people how public authorities make operational decisions and how public money is spent. This commitment is supported by Luton CCG.
- 1.2. The key messages contained in this policy are as follows:
 - Requests under the Freedom of Information (FOI) Act must, by law, be responded to within 20 working days.
 - All requests must be forwarded immediately to the FOI Officer.
 - This document sets out the CCG's policy on FOI and (in Appendix 1) the processes to be followed by all staff to ensure that the policy is implemented.
 - This policy applies to all CCG employees, including staff on honorary contracts, contractors working on behalf of the CCG, and members of its governing boards.

2. Purpose

The purpose of this policy is to ensure that:

- The CCG is fully compliant with its statutory responsibilities under the Freedom of Information Act 2000 (the Act);
- All requests under the Act are dealt with within the 20-working-day legal requirement;
- All FOI requests, regardless of route received, are immediately forwarded to the FOI Officer;
- Responses are consistent and of a high standard;
- Requests are dealt with fairly and consistently and that the CCG fulfils its obligation to 'advise and assist' requestors;
- That the CCG's publication scheme – also a legal requirement – is up to date and fit for purpose;
- That all staff is aware of their responsibilities under the Act.

3. Responsibilities

While ultimate responsibility for compliance with the Act rests with the CCG's Accountable Officer, all members of staff have responsibilities under the Act and this policy. In addition, all members of staff are responsible for creating their own records and for adhering to the CCG's records management and information governance policies and processes.

4. Development process

- 4.1 The Freedom of Information Act was introduced in 2000 and became effective in 2005. It covers (with very few exceptions) all public bodies, including NHS organisations and the CCG. Anyone is entitled to submit a request for information under the Act and to receive a response within 20 working days.
- 4.2 The response must (except in specific circumstances):
 - State whether or not the CCG holds the information requested;

- Provide the information, or if withholding it, cite a valid exemption under the Act to explain why it is being withheld.
- 4.3 The Act is overseen by the Information Commissioner’s Office (ICO), which has powers to enforce compliance. The ICO has the power, for example, to order an organisation to release information if it feels the grounds it gave for withholding it was insufficient: further failure to comply could result in the organisation being found to be in contempt of court.
 - 4.4 Under FOI, information can be requested on almost any subject. An important exception is that an individual cannot request information about themselves under the FOI Act. For example, a patient wanting copies of their own medical notes would need to request these under the Data Protection Act 2018 (DPA)/General Data Protection Regulation (GDPR) 2018 not the FOI Act. These enquiries should be directed to the Information Governance Team.
 - 4.5 Please note: information recorded in any form can be subject to an FOI request, this includes information held electronically and/or in hard copy, such as reports, agendas, minutes, emails, letters, memos, databases, hand-written notes, video/audio recordings, etc, and in some cases may also include personal emails.
 - 4.6 In addition to the FOI Act, there are separate Environmental Information Regulations 2004 (EIR). EIR requests should be directed to the FOI Manager in the same way as FOI requests.
 - 4.7 Requests under the Act must be received in writing (whether by email, post or fax) and the legal 20-working-day deadline starts when the CCG receives the request – not when it reaches the FOI Officer. Requests cannot be made anonymous; either a personal name (not necessarily a full name) and/or a company/organisation name must be provided, however the requestor does not have to declare the organisation they represent or their reasons for seeking the information.
 - 4.8 The Act does not stipulate that a request needs to state that it is a Freedom of Information request or mention ‘Freedom of Information’ or ‘FOI’ to be classed as FOI request. As a general guide, requests for information which do not mention the Act can be answered as general enquiries. However, if a request specifically mentions the FOI Act, they should be passed to the FOI Manager.

5. Responding to requests

- 5.1 In compliance with good practice, the information requested should, where held, be disclosed. In certain circumstances, the CCG may refuse to supply all, or some, of the information requested. For example, the information requested may be commercially sensitive and possibly damage the CCG. Also patient-identifiable information will not be disclosed. In compliance with good practice, the information requested should, where held, be disclosed.
- 5.2 All documents provided by the CCG should include appropriate disclaimers about the CCG’s responsibility to comply with the Act. The CCG can only withhold information requested if a valid exemption applies and, in cases where the public interest test applies, the balance is in favour of withholding the information.
- 5.3 While it is possible under the Act to refuse requests on the grounds of duplication or vexatious material, these exemptions apply only in specific circumstances. Identical or very similar requests, or frequent requests from the same source, will not necessarily be treated as duplicative or vexatious.

- 5.4 Information about services carried out on behalf of the CCG by other public bodies (NHS trusts, local government, etc.) will not usually be supplied by the CCG; however the enquirer will be signposted to the relevant public body.
- 5.5 Where data is withheld, the relevant exemptions(s) will be cited and, where applicable, the “public interest test” will be applied.

6. Publication

The CCG is obliged under the Act to have a formal Publication Scheme, which is the CCG’s website. As well as the information dictated by the Act – such as information on the CCG’s role within the NHS structure, its chief partner organisations etc., the CCG will pro-actively publish other information, such as reports, minutes, and selected material released in response to FOI requests. This will:

- Demonstrate good governance and accountability;
- Support the principles of openness and transparency which are enshrined by the FOI Act and supported by the CCG; and
- Save CCG staff and the general public time, as material will increasingly be made available online which might otherwise have been requested under the Act.

7. Requests for review

Requestors who are dissatisfied with the way their request has been handled or with a decision to withhold information are entitled to request an internal review. The request must be made in writing to the CCG’s Associate Director Strategy and Governance.

Name: Associate Director Strategy and Governance

Address: Luton Clinical Commissioning Group, Arndale House, 3rd Floor, The Mall, Luton, LU1 2LJ

7.1 Requests for a review must be received within two months of the CCG’s original response. If the requestor remains dissatisfied after receiving notice of the outcome of an internal review, they may appeal to the Information Commissioner’s Office (ICO)

Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

ICO Helpline: 0303 123 1113 (local rate) or 01625 545 745 for the national rate number. For more information visit the ICO website: ico.org.uk

8. Re-use Regulations

The CCG’s FOI response letter contains standard wording that the information provided is for the requestor’s personal use, is the property of the CCG, and is subject to any existing Intellectual Property and Database Rights, and that any commercial application may be subject to the provisions of the “Re-use of Public Sector Information Regulations 2005” and the CCG’s permission must be sought before any re-use. Requests for re-use should be directed to the Information Governance Team.

9. Fees

- 9.1 There is not usually a charge to the requestor for information obtained under the Act. However, in certain circumstances, eg a requestor requires a substantial amount of material in hard-copy, then a charge may be made to cover postage, printing and photocopying.
- 9.2 There may be a few cases where the costs of meeting the request would exceed the appropriate limit, set at £450.00. If this is the case, the CCG is allowed to refuse to answer the request. The limit is applied first to the organisation's duty to confirm or deny that it holds the information and then to its duty to supply the information. Therefore, if it would cost more than £450 to confirm or deny there is no duty to do so.

10. Records Management

The Records Management Code of Practice for Health and Social Care 2016 – Information Governance Alliance (IGA) states that FOI requests and responses should be retained for a minimum of three years after closure of the FOI request. At the end of the retention period the file should be reviewed and destroyed if no longer needed. For FOI requests where there has been a subsequent appeal, correspondence should be retained for 6 years. For more information on records management visit: <https://digital.nhs.uk/article/1202/Records-Management-Code-of-Practice-for-Health-and-Social-Care-2016>

11. Training Requirements

All staff receives FOI training as part of their mandatory Information Governance training.

12. Monitoring

The CCG will receive quarterly reports from the FOI Manager on the numbers of requests received, compliance, and also notification of any emerging themes, areas of particular interest, etc., and will also highlight any problem with departments or teams who are slow to respond with information for FOI responses.

13. Exemptions

- 13.1 There are two types of class exemption:
- Absolute – do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure
 - Qualified by the public interest test – require the public body to decide whether it is in the balance of public interest to not disclose information
- 13.2 With the exception of section 21 (information available by other means), exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.
- 13.3 The absolute exemptions under the Act are:
- Section 21: Information accessible to the 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: Investigations and proceedings conducted by public authorities
- Section 31: Law enforcement
- Section 33: Audit functions
- Section 35: Formulation of Government policy
- Section 36: Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37: Communications with Her Majesty etc and honours
- Section 38: Health and safety
- Section 39: Environmental information
- Section 42: Legal professional privilege
- Section 43: Commercial interests

More information on the exemptions can be found on the Information Commissioners website at <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

14. Equality Impact Assessment

Luton Clinical Commissioning Group is committed to promoting equality in all its responsibilities and ensuring that we meet the requirements of the Equality Act 2010 – as commissioner of services, as a provider of services, as a partner in the local economy and as an employer. This policy will contribute to ensuring that all users and potential users of services and employees are treated fairly and respectfully with regard to the protected characteristics of age, disability, gender, reassignment, marriage or civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.

15. References

- Freedom of Information Act 2000
- Data Protection Act 1998
- The Records Management Code of Practice for Health and Social Care 2016 - Information Governance Alliance (IGA)

The Complaints and FOI Manager is responsible for the monitoring, revision and updating of this document. This policy will be reviewed taking in to consideration operational experience and national guidance. This policy will be reviewed bi-annually, or when new legislation or guidance is issued. The next review due in February 2020

16.Review and Amendment Log

Version No	Type of Change	Date	Description of change
3	Review	March 2018	Update to reflect current legislation
3.1	Review	May 2019	Update to reflect current legislation and formatting changes
3.2	Ratification	16 July 2019	Ratified by the Audit and Risk Management Committee