

# Freedom of Information and Environmental policy

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## Version control

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## 1. Introduction

- 1.1 The NHS Counter Fraud Authority (NHSCFA) supports the Government's commitment to greater openness in the public sector, furthering the aims of the Freedom of Information Act 2000. Enabling members of the public to apply to access key documents, to scrutinise and question the decisions of public authorities more closely and judge whether functions performed or services provided are properly delivered.
- 1.2 NHSCFA wishes to facilitate a climate of openness and dialogue with all their stakeholders, to improve access to information about the organisation that will help support this aim. NHSCFA will make such information available in a range of formats, required to meet the needs of the person requesting the information.
- 1.3 NHSCFA recognises that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duty of confidentiality or the statutory provisions that prevent disclosure of personal identifiable information. The release of such personal identifiable information is covered by the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 and is dealt with in associated information governance policies.

## 2. Policy statement

- 2.1 This document outlines the Freedom of Information and Environmental policy for the NHSCFA.
- 2.2 The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 are adhered to. Both regimes have been in force since 1 January 2005.
- 2.3 The Minister for the Cabinet Office under section 45 and the Secretary of State under section 46 of the Freedom of Information Act, have issued codes of practice. These provide guidance to relevant public authorities as to the practice which in their opinion, would be desirable for authorities to follow in connection with the discharge of their functions under Part 1 of the Act; as well as the practice to be followed in connection with the keeping, management and destruction of their records.

## 3. Principles

- 3.1 The purpose of this policy is to ensure timely access to information held by the NHSCFA to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These aims will be balanced against the need to ensure the confidentiality of some information relating to areas

such as personal privacy, commercial sensitivity and where disclosure would not be in the public interest.

- 3.2 The policy and procedure will be reviewed periodically by the NHSCFA Senior Management Team (SMT), with recommendations made to the Board. Where review is necessary due to legislative change this will happen immediately.
- 3.3 In line with NHSCFA policies this policy will not discriminate, either directly or indirectly, on the grounds of gender, race, colour, ethnic or national origin, sexual orientation, marital status, religion or belief, age, union membership, disability, offending background or any other personal characteristic.

## **4. Freedom of Information Act - main features**

4.1 The main features of the Act are:

- a 'general right of access' from 1 January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions
- a duty on public authorities to inform the applicant whether they hold the information requested and subject to certain conditions and exemptions, communicate the information to them
- a duty on every public authority to adopt and maintain a model Publication Scheme. This duty has been applicable to all public authorities since 2009
- the establishment of the office of Information Commissioner (ICO) with wide powers to enforce the rights created by the Act and to promote good practice together with an information tribunal, in the General Regulatory Chamber.

This chamber is one of 7 chambers of the First-tier Tribunal which settles legal disputes and is structured around particular areas of law. The chamber is responsible for handling appeals against decisions made by government regulatory bodies in cases relating to information rights.

## **5. Environmental Information Regulations - main features**

5.1 The main features of the Regulations are:

- the range of bodies covered by the Regulations is wider to allow for consistency with EC Directives, e.g. includes public utilities, certain

public/private partnerships and private companies such as transport and energy sectors

- requests for environmental information need not be made in writing
- the requirement for public authorities to have in place a complaints and reconsideration procedure to deal with representations alleging non-compliance with the Regulations is mandatory
- no exception is made for requests that will involve costs in excess of the 'appropriate limit' within the meaning of the Fees Regulations made under sections 9, 12 and 13 of the Freedom of Information Act. Except in specified limited circumstances, ALL requests must be dealt with and any charges imposed must be reasonable.

## 6. Publication Scheme and guide to information

- 6.1 Section 19 of the Act makes it the duty of every public authority to adopt a Publication Scheme approved by the Commissioner and proactively publish the information of the authority.
- 6.2 NHSCFA has adopted the Model Publication Scheme issued by the Information Commissioner in 2015, which gives an overview of the information that the organisation publishes and intends to publish in the future. It details the format in which the information is available and whether or not a charge will be made for the provision of that information.
- 6.3 The Publication Scheme is available on the NHSCFA website <https://cfa.nhs.uk>  
The organisation's compliance with the requirement to publish information as set out in the ICO's guidance will be regularly reviewed by the Information Governance and Risk Management Lead and the content of the website will be updated accordingly.
- 6.4 Information in the Publication Scheme will be made automatically and proactively available. In most cases information which is made available via the Publication Scheme will be downloadable from the website. In the event that an enquirer is unable to download the information, applications for the information to be supplied in another format may be made verbally or in writing.

## 7. Charges and fees

- 7.1 Charges and fees will only be levied in exceptional circumstances, for example where large volumes of hard copy materials are requested, in which case the NHSCFA will follow the Fees Regulations<sup>1</sup>. In general, no charge will be made.

## 8. Time limits for compliance with request

- 8.1 The NHSCFA has established systems and procedures in place to ensure that the organisation complies with the duty to respond to requests within 20 working days of receipt, in accordance with Section 10 of the Act. All staff are required to comply with the requirements of these procedures by ensuring that requests are forwarded to the appropriate persons in a timely manner.

## 9. Datasets and re-use of information

- 9.1 Section 102 of the Protection of Freedoms Act 2012, adds new provisions to the Freedom of Information Act (section 11) regarding datasets.

- 9.2 A dataset consists of a collection of information held in electronic form, which has been obtained or recorded for the purpose of providing information in connection with the provision of a service or the carrying out of any function of the authority.

It is factual information which is not the product of analysis or interpretation other than calculation. It is not statistical information and remains presented in a way (other than forming part of the collection) that has not been organised, adapted or otherwise, materially altered since it was recorded.

- 9.3 The new provisions relate to how information is released and any information the NHSCFA holds as a 'dataset', which is a defined term in the new provisions. If the NHSCFA provides information that constitutes a dataset and the requester has expressed a preference to receive the information in electronic form, the organisation must provide it in a re-usable format so far as reasonably practicable.

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

- 9.5 Metadata is data that describes other data it is connected to, whether that data is video, photography, web pages, content or spreadsheets. It summarises basic information about data such as its author, date created, usage, file size etc.

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<sup>1</sup> The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

- 9.6 The dataset provisions do not only create a duty under the Freedom of Information Act section 11(1A), for the NHSCFA to provide datasets in a form that is technically 'capable of re-use', but also a duty under section 11A (2) to provide datasets that are relevant copyrighted works under a license that permits re- use. These provisions do not remove those rights and any third party rights also need to be taken into consideration.
- 9.7 The NHSCFA will grant re-use of any datasets that it owns/holds under the Open Government License (OGL) that can be re-used without charge.

## 10. Policy

- 10.1 The NHSCFA regards the lawful and correct management of all its information as critical to the success of its functions and to maintaining the confidence of those with whom we work and provide services to.
- 10.2 We must ensure that at all times the NHSCFA manages this resource lawfully and correctly. The NHSCFA acknowledges its obligations as set out under the Freedom of Information Act and the Environmental Information Regulations. It fully endorses the requirement to provide greater accessibility to all information, thereby promoting a culture of openness, enabling greater public scrutiny.
- 10.3 The NHSCFA accepts everyone has a general right of access to information it holds and therefore the following rights as set out within the Act will be adhered to:
- the right to be informed whether or not the information requested is held by the NHSCFA
  - the right to have that information communicated to the applicant
  - the right for the applicant to receive advice and assistance to help them make and frame their request.

The NHSCFA will not release information to which any of the exemptions detailed in the Act and set out below applies.

**Procedural Exemptions** (no requirement to consider the test for public interest):

- Section 12 - Where cost of compliance exceeds appropriate limit<sup>2</sup>

**Absolute Exemptions** (no requirement to consider the test for public interest):

- Section 21- Information accessible to the applicant by other means

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<sup>2</sup> For a public authority listed in Part I of Schedule 1, the appropriate limit is £600. In the case of any other public authority (The NHS), the appropriate limit is £450.



## OFFICIAL

- Section 23 - Information supplied by, or relating to, bodies dealing with security matters
- Section 32 - Court records
- Section 34 - Parliamentary privilege
- Section 40 - Personal information of the applicant or third party information
- Section 41 - Information provided in confidence
- Section 44 - Information, the disclosure of which is prohibited by law

**Qualified Exemptions** (*consider whether it is in the public interest to disclose the information*):

- Section 22 - Information held is intended for future publication
- Section 22A - Research which may prejudice interest of the holding authority or any other person
- Section 24 - National security
- Section 26 - Prejudice defence or armed forces
- Section 27 - Prejudice international relations
- Section 28 - Prejudice relations between parliaments / assemblies in the UK
- Section 29 - Prejudice the economic interests of the UK
- Section 30 - Investigations and proceedings
- Section 31 - Law enforcement
- Section 33 - Audit functions
- Section 35 - Formulation of government policy
- Section 36 - Prejudice the effective conduct of public affairs
- Section 37 - Communications with her Majesty
- Section 38 - Health & Safety
- Section 39 - Environmental information
- Section 40 - Personal Information of a third party in some cases

- Section 42 - Legal professional privilege
- Section 43 - Commercial interests

10.4 If access to information is refused because of an exemption, the applicant has a right to appeal against the decision for it to be reviewed. This will initially be dealt with by the Information Governance and Risk Management Lead of the NHSCFA. If the appeal is not resolved, the applicant will have the right to appeal to the Information Commissioner (IC) for an independent review. The NHSCFA also has the right to appeal to the Information Commissioner in regard to a complaint or appeal from an applicant.

**Note:**

An appellant can appeal to the Information Commissioner at any time during the processing of their request, but it is unlikely that they will accept the appeal unless the requester has exhausted all of the NHSCFA's internal appeal processes.

10.5 Information that can be downloaded from the NHSCFA's website will be free of charge. The NHSCFA aims to publish as much relevant information on its website as possible. There may be additional charges for work undertaken to obtain and provide the information requested, where information is not included within our publication scheme or where considerable expense will be involved in enabling the release of this information. The charges for these will not exceed the level prescribed by the Fees Regulations.

## 11. Managing requests for information

- 11.1 Where NHSCFA has existing processes in place for providing information to members of the public and other persons, these will not be superseded by this policy. Requests for information generated as part of NHSCFA's existing processes may be answered as 'business as usual' if it is deemed reasonable to do so.
- 11.2 Requests for information outside of 'business as usual' processes, or those specifically defined as FOI requests, will be managed by the Finance and Corporate Governance Unit.

## 12. Defining a valid request for information

- 12.1 To meet all of the requirements of a valid Freedom of Information request as outlined in section 8 of the Act, a request must:
- be in writing (*can be transmitted by electronic means, must be in legible form and can be used for subsequent reference*)
  - state the name and valid address of the applicant for correspondence (*e-mail address can be accepted*)

- describe the information requested

- 12.2 The term 'in writing' covers requests submitted by letter and electronic means, including those sent via social media (e.g. Twitter and Facebook). The request does not have to make any direct reference to the Freedom of Information Act or be the sole or main theme of the requester/applicant's correspondence.
- 12.3 We will only accept applications to exercise the general right of access under the Act if it is clear that you are applying from a valid email address and using your real identity to do so. Where doubt is cast on this matter you will be asked to provide further information until we are satisfied that you meet these requirements.

## 13. Duty to provide advice and assistance

- 13.1 Under sections 16 and 45 of the Freedom of Information Act, the NHSCFA has a duty to provide advice and assistance to persons making requests. NHSCFA will endeavour to undertake all reasonable steps to meet this obligation.

## 14. Consultation with third parties

- 14.1 NHSCFA recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where the information is subject to the common law duty of confidentiality. Unless an exemption applies in relation to any particular information, NHSCFA will be obliged to disclose the information in response to a request.
- 14.2 Where disclosure of information cannot be made without the consent of a third party and would constitute an actionable breach of confidence such that an exemption would apply, NHSCFA will consult that third party with a view to seeking their consent, unless such consultation is impracticable.
- 14.3 NHSCFA will undertake consultation where:
- the views of the third party may assist in determining whether an exemption under the Freedom of Information Act applies, or
  - the views of the third party may assist in determining where the Public Interest lies.
- 14.4 NHSCFA may consider that consultation is not appropriate where the cost of consulting with the third party would be disproportionate. In such cases it will consider the most reasonable course of action to take in light of the requirements of the Act. Consultation will be not be necessary where:
- NHSCFA does not intend to disclose the information

- the view of the third party has no effect on the decision on whether to disclose; and an exemption applies.

- 14.5 Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative, the NHSCFA if it considers consultation appropriate, may consider that it would be sufficient to only contact some of those third parties.
- 14.6 If an approached third party does not respond to a consultation request, it does not relieve NHSCFA of its duty to disclose information under the Act, or its duty to reply within the specified timeframes. In all cases, it is for NHSCFA not the third party, to determine whether or not information should be disclosed. A refusal to consent to disclosure by a third party does not automatically mean the information will be withheld.

## 15. Staff names and details

- 15.1 It is acknowledged that as a public authority, justification may exist for the disclosure of employee names, contact details and pay.
- 15.2 Information regarding remuneration of NHSCFA employees, will where appropriate be published on the website as part of our existing publication scheme. This will be provided where applicable, by providing Agenda for Change pay bands.

## 16. Disclosure log

- 16.1 In addition to proactively updating its Publication Scheme, NHSCFA will maintain an online disclosure log that identifies the main types of requests received and the responses given.
- 16.2 A disclosure log lists responses to requests made to us under the Freedom of Information Act and Environmental Information Regulations which are felt to be of wider public interest.
- 16.3 NHSCFA will assess each response to determine if it should be published in the disclosure log and will make a judgement accordingly by using the following criteria:
- demonstrable evidence that key decisions have been made within NHSCFA
  - whether disclosure passes the Public Interest Test.
  - where NHSCFA has spent public money or disclosed information around resources
  - all published responses will be anonymised before publication

- NHSCFA will not publish any personal complainants or correspondence from their complaint file where it constitutes personal data (see section 40 - qualified exemptions above).

## 17. Freedom of information responsibilities

### Corporate responsibilities

- 17.1 The NHSCFA recognises its responsibility under the Freedom of Information Act to provide a general right of access to information held. Overall responsibility for this policy rests with the Board.
- 17.2 Section 77 of the Freedom of Information Act makes it an offence for any person to alter, deface, block, erase, destroy or conceal any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part of the information, to the communication of which the applicant would have been entitled.
- 17.3 The Board have delegated adherence to the provisions of the Freedom of Information Act and the Environmental Information Regulations to the Information Governance and Risk Management Lead.

### Information Governance Lead's responsibilities

- 17.4 The Information Governance and Risk Management Lead's responsibilities include:
- ensuring the Freedom of Information policy for the NHSCFA is produced and kept up to date
  - ensuring that appropriate procedures and practices are formulated and adopted by the NHSCFA
  - responding on behalf of NHSCFA on Freedom of Information Act and Environmental Information Regulation matters
  - providing appropriate leadership and direction for the Finance and Corporate Governance team within NHSCFA
  - assisting in setting the standard of Freedom of Information Act and the Environmental Information Regulation training for NHSCFA staff
  - ensuring the requirements of the Publication Scheme are adhered to as required by the Information Commissioner
  - having oversight of all Freedom of Information Act and the Environmental Information Regulation matters within the NHSCFA

- implementing an effective framework for the management of Freedom of Information Act and Environmental Information Regulation requests/queries
- ensuring that there is a robust records management, retention and destruction policy in place, to support compliance with the Freedom of Information Act, the Environmental Information Regulations and Data Protection legislation.

## **Employees' responsibilities**

- 17.6 Penalties can be imposed upon the NHSCFA and all staff, including temporary and contract staff can be penalised for breaching the Act.
- 17.7 All employees have a legal duty to preserve business records; ensuring information is recorded correctly, accurately and appropriately named (or indexed) for easy retrieval or publication. Poor records management practices which do not facilitate the proper preservation of information records are not offences in themselves, however this may lead to an inability to comply with requirements of the Freedom of Information Act.
- 17.8 All employees are responsible for ensuring that any request for information they receive is dealt with under the Act in compliance with this policy.

## **18. Validity of this policy**

- 18.1 This policy is designed to avoid discrimination and comply with the provisions of the Human Rights Act 1998 and the Equality Act 2010.
- 18.2 This policy will be reviewed at least annually under the authority of the NHSCFA Board. Associated Freedom of Information and Environmental Information Regulation standards will be subject to ongoing development and review.