NHS
North Lincolnshire
Clinical Commissioning Group

FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY

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The on-line version is the only version that is maintained. Any printed copies should, therefore, be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

POLICY AMENDMENTS

Amendments to the Policy will be issued from time to time. A new amendment history will be issued with each change.

New Version Number	Issued by	Nature of Amendment	Approved by & Date	Date on Internet
2	CSU FOI Manager	Change to CCG FOI Lead (Section 1)		
2	CSU FOI Manager	Amended terminology for a review of an FOI response from 'appeal' to 'review' (Section 3.3 and 5.28)		
2	CSU FOI Manager	5.14 added regarding Datasets		
2	CSU FOI Manager	Amended terms of re-use (Section 5.26)		
2	CSU FOI Manager	Minor process amends		
3	FOI Manager	References to CSU removed and replaced with the FOI Team after the FOI Team have transitioned into NHS ERY CCG	Awaiting full review due in March 2016.	Awaiting full review due in March 2016.
3	FOI Manager	Added in some references to new ICO Guidance in 5.27 regarding Outsourcing		
4	FOI Manager	Minor process amends, update of FOI Manager details and CCG FOI lead title. Update of Appendix A – Process Map removing references to CSU, and removal of EIA from appendices – to be attached separately.		

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1 INTRODUCTION

This policy provides a framework for NHS North Lincolnshire Clinical Commissioning Group (NL CCG) to ensure compliance with the Freedom of Information (FOI) Act and the Environmental Information Regulations (EIR) 2004.

Administration support for FOI and EIR is provided to the NL CCG by the FOI Team based at NHS East Riding of Yorkshire CCG.

It is important that this policy is read carefully and thoroughly understood. Any issues can be discussed with the FOI Officer, the FOI Manager or the CCG FOI lead.

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1.1 FREEDOM OF INFORMATION ACT 2000

FOI Act 2000 is part of the Government's commitment to greater openness in the public sector. Subject to some exemptions, it gives a right of access to

recorded information that is held by public organisations, the right applying to anyone, anywhere in the world.

The Act is fully retrospective and replaces the non-statutory Code of Practice on openness in the NHS.

The FOI Act is supported by two Codes of Practice issued under Section 45 and 46 of the Act:

- Code of Practice on the discharge of public authorities' functions
- Code of Practice on the management of records

These provide guidance to the public authorities as to the practices they should follow in respect of the discharge of their functions under the FOI Act and in order for them to ensure effective records management.

1.2 THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

Environmental Information Regulations (EIR) 2004 gives rights of public access to environmental information held by public authorities.

Environmental information is any information that is, about, concerning, or relating to the following:

a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements

b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a)

c) measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements

d) reports on the implementation of environmental legislation

e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c)

f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)

EIR is supported by a Code of Practice which provide guidance to the public authorities as to the practices they should follow in respect of the discharge of their functions under the EIR

1.3 ABOUT THE ACT AND REGULATIONS

The main features of the FOI Act and the EIR include:

- A general right of access to all types of recorded information held by public authorities, subject to certain conditions exemptions and exceptions (see 5.24).
- Subject to exemptions under the FOI Act and exceptions under EIR there is a duty on public authorities to:
    - Inform the applicant, in writing, whether the information exists (the duty to confirm or deny).
    - Provide the applicant with the information specified.

- A statutory requirement under section 16 of the FOI Act and Part 2.9 of the EIR is to assist applicants who have made, or wish to make, a request. If it is not clear what information is required, the applicant is to be contacted for clarification.

- There is a duty under FOI on every public authority to adopt and maintain a Publication Scheme (including information which is, or will be, routinely published and available to anyone who asks for it).

- An independent Information Commissioner's Office oversees the implementation and compliance with the FOI Act, EIR and the Data Protection Act 1998.

2 ENGAGEMENT

In developing this policy discussion has taken place between NL CCG and the FOI Team. The policy has been reviewed and approved by the Quality Group and the Governing Body.

No further engagement was deemed necessary.

3 IMPACT ANALYSIS

3.1 EQUALITY IMPACT ANALYSIS

In developing this policy, an equalities impact assessment has been undertaken, details are available alongside this policy on the CCG's website. An adverse impact is unlikely, and on the contrary the policy has the clear potential to have a positive impact by reducing and removing barriers and inequalities that currently exist.

NL CCG will respond to all enquiries under the FOI Act and EIR regardless of the needs of the requestor. Information can be requested and provided in various formats including alternative languages, Braille, large print and audio.

If, at any time, this policy is considered to be discriminatory in any way, the author of the policy should be contacted immediately to discuss these concerns.

3.2 SUSTAINABILITY

A Sustainability Impact Assessment has been completed, details are available alongside this policy on the CCG's website. Wherever possible the CCG will encourage the use of electronic documents. However, in line with the FOI Act hard copies will be available if requested.

3.3 BRIBERY ACT 2010

On July 2011 the Bribery Act 2010 came into force, making it a criminal offence to give, promise, or offer a bribe and to request, agree or receive a bribe. It increased the maximum penalty for bribery to 10 years' imprisonment, with an unlimited fine. Furthermore the act introduces a 'corporate offence' of failing to prevent bribery by the organisation not having adequate preventative procedures in place. An organisation may avoid conviction if it can show that it had such procedures and protocols in place to prevent bribery.

NHS organisations are included in the Bribery Act's definition of a "relevant commercial organisation". Any senior manager or executive who consents to or connives in any active or passive bribery offence will, together with the organisation, be liable for the corporate offence under the act.

Any individual associated with an organisation who commits acts or omissions forming part of a bribery offence may be liable for a primary bribery offence

under the act or for conspiracy to commit the offence with others – including, for example, their employer.

A risk of bribery has been identified within the processing of FOIs where staff may be bribed to provide or not provide information requested. This risk is reduced by processes in place which instructs requestors how to request a review of decisions made regarding their request. When a review is requested the process requires that it is undertaken by staff not involved in the original decision. If requestors are still not satisfied following an internal review of their case they are advised to contact the Information Commissioner's Office who will make a decision as an independent organisation.

4 SCOPE

This policy applies to:

- All employees of the CCG
- CCG Governing Body Members
- Contracted third parties (including agency staff)
- Students and trainees
- Staff on secondment and other staff on placement with the CCG

5 POLICY PURPOSE & AIMS

5.1 GENERAL PRINCIPLES

NL CCG supports the principle that openness should be the norm in public life.

NL CCG believes that individuals have a right to privacy and confidentiality, and will ensure that this policy does not overturn the common law duty of

confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information will be dealt with under the provisions of the Data Protection Act 1998.

NL CCG must still be able to carry out its duties effectively and, to ensure this, the exemptions and exceptions outlined in the FOI Act and EIR will be applied appropriate.

5.2 INFORMATION SUBJECT TO THE FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

All information held by, or on behalf of NL CCG may be subject to the FOI Act or EIR. The legislation applies regardless of the age, format, origin or classification of information. It covers files, letters, databases, reports, emails, videos, photographs, wall charts etc. It also extends to closed files and archived materials as well as information in current use. Please note that the FOI Act entitles applicants to have access to information not documents.

It is the responsibility of staff at NL CCG to consider all information held by the organisation when a request is received, historical and archived information as well as information in current use.

The legislation also applies to information that has been received by others which could include other public authorities, companies, organisations and members of the public. It is necessary to consult with the parties before disclosure of the information (see 5.22)

5.3 PUBLICATION SCHEME

NL CCG has implemented a publication scheme, which includes information which is, or will be, routinely published and made available to anyone who asks for it.

The publication scheme template is approved by the Information Commissioner and is monitored, updated and reviewed at regular intervals.

5.4 AVAILABILITY AND ACCESS

The Publication Scheme is available in hard copy on request from NL CCG. It is also included on NL CCG's Internet site at http://www.northlincolnshireccg.nhs.uk/

Information listed in the publication scheme can be downloaded directly from the website or requests may be made, via email at nlccg.foi@nhs.net, verbally or in writing to:

North Lincolnshire Clinical Commissioning Group
Health Place,
Wrawby Road,
Brigg,
North Lincolnshire, DN20 8GS

5.5 GENERAL RIGHTS OF ACCESS

The FOI Act and EIR are fully retrospective and relate to documents produced from 1 April 2013, i.e. when NL CCG was originally established. They also relate to documents from previous organisations if they are still working documents and NL CCG is the author/owner of the document, e.g. policies or procedures which are still to be updated.

Requests under FOI must be made in writing and can be treated as made in writing if transmitted by electronic means, is received in a legible form and is capable of being used for subsequent reference. These could include audio or transcripts of verbal requests, verified by the requestor, using a Verbal Freedom of Information Request form (Appendix E).

Requests can also be submitted via social media such as Facebook and Twitter provided the request states the name of the applicant, this may be through a linked profile. As the limitations to the length of tweets may impede a full response an email address can be requested to provide a response to or, the response can be published on the CCG's website and a link to it can be tweeted.

Requests under the EIR can be accepted in writing or by electronic means but applicants can also make requests in person.

Where a person is having difficulty putting their request in writing in a legible form capable of being used for subsequent reference, NL CCG will advise them of another person or agency who may be able to assist them with their application or make the application on their behalf (such as Citizen's Advice).

Requests must state the name of the applicant and an address for correspondence. Requests must clearly describe the information that is requested. Requests should be made to: nlccg.foi@nhs.net

Or;

North Lincolnshire Clinical Commissioning Group
Health Place,
Wrawby Road,
Brigg,
North Lincolnshire, DN20 8GS

The FOI Act and EIR give a right of access that is not based upon need to know and therefore the organisation does not have the right to question an applicant or the reason or purpose of their request. The applicant can, however, be

requested to provide further details or clarification in order to narrow down what might otherwise be a vague or broad request.

The FOI Act and EIR require that requests are responded to within 20 working days[1]. If NL CCG decides to apply a condition, exemption or exception (see 5.24) to withhold information, the applicant will be informed within 20 working days. The EIR allows for an extension of up to 20 additional working days to the period for response if requests are particularly complex and voluminous. If the extension is claimed, the applicant will be informed.

As recommended in the Lord Chancellors Section 45 code of practice[2] and the Environmental Information Regulations code of Practice[3], we set out below details of how requests for information will be dealt with, ensuring that this is available to the public.

5.6 RECORDING INFORMATION

When dealing with a request, the following information will be recorded:

- Initial date received by the CCG
- Date received by the FOI Manager
- Name of the applicant
- Contact details of the applicant
- Description of the information requested
- The medium by which the information was requested

[1] A working day is any other than Saturday, Sunday, Christmas Day, Good Friday or a bank holiday (according to the Banking and Financial Dealings Act 1971) in any part of the UK (FOIA s10(6))
[2] Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under Section 45 of the Act (November 2002)
[3] Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) (February 2005)

- Decision taken and details of any exemptions or exceptions used
- Date completed and when information forwarded to the applicant
- Time taken to provide response to applicant

Where requests for information are made from the media they are forwarded for information to the Communications Team.

5.7 CONFIRMATION

The FOI Team will write to the applicant acknowledging receipt of the request within 2 working days. This will state that NL CCG intends to deal with the request under the FOI Act or EIR within 20 working days unless there are exceptional circumstances or fees and charges to be levied (see 5.19).

Where Environmental Information is requested specifically under the FOI Scheme a refusal notice will be issued quoting Section 39 – Environmental Information, which exempts information if the public authority holding it *'is obliged by regulations under Section 74 to make information available to the public in accordance with the regulations'*. The request will then be handled automatically as a request for Environmental Information.

Where relevant requests will be transferred internally if the applicant is the subject of the request and it becomes a Subject Access Request under the Data Protection Act 1998 (see 5.23).

Whilst every effort is made to ensure all requests are forwarded for processing in a timely manner, some requests may inadvertently go astray. If confirmation that we are dealing with a request is not received within 5 working days, the applicant should contact NL CCG straightaway so this can be investigated. Any 'missed requests' are logged and, where possible, actions taken to avoid similar situations occurring in the future.

5.8 PROCESSING A REQUEST

It is important to note that a request for information need not be marked as such; there is no need for the applicant to state that they are making a FOI or EIR request. The FOI Act and EIR cover all requests for information and could be included in, for example, a compliment or complaint letter. It is, therefore, imperative that all staff are aware of this policy and the need to refer requests to the FOI team in a timely manner.

It is not appropriate to refer requests to the FOI Team where staff are:

- Providing information leaflets or other material that has already been approved by the organisation; this would include service information and the Annual Report.
- Discussing an information leaflet/booklet with another individual, informing them of their options.
- Providing information on the current care and treatment of an individual using established practices.

Appendix A summarises the overall process for dealing with an FOI or EIR request, whilst Appendix B shows the organisation's detailed Request Process that will be followed by all employees.

5.9 ACCESSING INFORMATION

The FOI Team will forward information requests to the lead manager in those directorates who it is thought may hold the information that has been requested. This person will be sent the request within 2 working days of it being received. Staff then have 8 working days to deal with the request and retrieve the relevant

information. Any problems should be immediately brought to the attention of the FOI Team. This time may be extended in certain complex circumstances.

The gathered information will be forwarded to the FOI Team for review prior to disclosure.

In instances where an exemption or exception might be applicable, the retrieved information and options available will be discussed with the relevant manager, the CCG FOI Lead (where relevant) and the FOI Manager to decide whether information is relevant, and whether exemptions/redactions apply to any parts of the information.

The Caldicott Guardian may be consulted on an ad hoc basis, in cases where clarification is required regarding personal indefinable information.

5.10 AMBIGUOUS OR WITHDRAWAL OF REQUESTS

If further clarification from the requestor is required or not enough information has been provided for the request to be processed, the requestor will be contacted at the earliest opportunity. If clarification is not received within 3 months of initial contact the FOI or EIR request will be closed.

Once clarification has been requested the 20 working days countdown will stop. The time for compliance will not begin until the necessary clarification to allow the CCG to answer the request has been received. If at any time the requestor advises that they wish to withdraw their FOI or EIR request the request will be closed.

5.11 VEXATIOUS AND REPEATED REQUESTS

An FOI request can be considered vexatious when an activity is likely to cause distress or irritation, literally to vex a person to whom it is directed without due cause. Factors include:

- Previous possession of the information
- Tendentious language
- Background history between the requestor and the public authority
- Reopening issues

If NL CCG has recently complied with a request for information then it is not required to comply with a subsequent identical or similar request unless a reasonable time interval has elapsed.

A log of all requests will be kept for monitoring purposes and this can be used to identify vexatious and repeated requests.

Where Environmental Information is requested it cannot be refused as vexatious. However, NL CCG will refuse a request that is “manifestly unreasonable”, under Regulation 12 (4)(b) – Nuisance Requests, subject to a public interest test.

5.12 AGGREGATION OF REQUESTS

When a number of requests are received from either the same person or different people asking for the same or similar information within a short time of each other, NL CCG may consider aggregating these requests and take an overall view of the resources which would have to be committed to answering all of the requests.

Aggregation of requests can be considered when two or more requests for information have been made and:

- They are either from the same person, or from 'different persons who appear to be acting in concert or in pursuance of a campaign'
- The requests relate to the same or similar information

- They have been received by the public authority within a space of 60 consecutive working days.

5.13 PROVIDING THE INFORMATION

In all instances prior to providing the information the FOI Team will seek approval from an identified senior manager at NL CCG.

If no exemptions apply and there are no fees or charges to be levied, the information requested by the applicant will be provided within 2 working days of the FOI Team receiving approval from the CCG.

Information will normally be provided in the format in which the request was made, i.e. electronic or hardcopy, unless specified otherwise. Formats for response can include:

- A photocopy or printed copy of the information.
- Provision of a pdf file transferred by electronic means.
- Provision of a pdf file transferred on CD-ROM.
- Provision of a summary of the information, in one or a combination of the formats mentioned in the first 3 points.
- Alternative language, large print, audio or Braille which will be fully funded by NL CCG.

5.14 DATA SETS

As of 1 September 2013 Section 102 of the Protection of Freedoms Act 2012 added new provisions to the FOI Act (in particular Sections 11 and 19) regarding how information held in datasets is released under FOI.

A data set is a collection of factual information in electronic form to do with the services and functions of the CCG that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

Where a request is made for a dataset the CCG will provide this information in a re-usable form so far as reasonably practicable. A re-usable form means that the dataset is in a machine readable form.

Factors which can affect whether it is reasonably practicable to provide the dataset in a re-usable form can include the time and cost of conversion, technical issues and resources of the CCG.

If a dataset is a relevant copyright work (the CCG owns the copyright and database rights), the CCG will provide it under the terms of a specified license. The Open Government License OGL is the default license for datasets that can be re-used without charge. Other licenses which can be used if appropriate are the Non Commercial Government License (the information cannot be used for Commercial purposes) and the Charged License (where it is appropriate to charge for the re-use of information).

The CCG will publish datasets requested and any updated versions unless the CCG feels that it is not appropriate to do so. Reasons for it not being appropriate may include:

- The information is exempt from disclosure under the FOI Act
- The information may cover a very narrow area of information. Although the requestor is entitled to ask for the information under the FOI Act the CCG may consider that there is no benefit in continuing to publish the dataset routinely.
- The cost or technical issues involved in making the information routinely available on the Publication Scheme.

The dataset provisions do not apply to EIR, however, Regulation 6 does require that a public authority should make information available in the format requested by the applicant unless it is reasonable not to.

5.15 REDACTIONS

Where a document contains information which should not be put into the public domain the document should be released with the relevant information redacted.

If an applicant has requested all the information in a document but it is necessary to redact some of the information because an exemption or exception applies, the applicant must be notified that the redactions have taken place and of the exemption or exception which has been applied.

5.16 REFUSAL NOTICES

A request for information may be refused if:

- The information is exempt under Part II of the FOI Act or an exception applies under EIR (see 5.24).
- A fees notice or charge has not been paid within the 3 months' time period (see 5.19)
- In the case of FOI requests – where the cost of compliance exceeds the appropriate limit of £450 (18 hours), in accordance with the National Fees Regulations. There is no appropriate limit for EIR requests (see 5.20).
- An FOI request can be demonstrated to be vexatious or repeated (see 5.11).

- An EIR cannot be considered as vexatious or repeated although Regulation 12 – Nuisance Requests can be applied.

- The information is not held.

The applicant will be informed in writing of the decision within 20 working days of the request and will be told the following:

- The exemption(s) that has been applied.

- The justification for the use of the exemption(s) or exception(s). Where an exception is applied, if the exemption is qualified, the Public Interest Test must be applied (see 5.25).

- Details of how the applicant can request a review of the decision if they are dissatisfied with the outcome (see 5.28).

- Details of the right to further appeal to the Information Commissioners Office.

Where a request has been demonstrated to be vexatious or repeated and a refusal notice has already been issued there is no requirement to issue further refusal notices where it would be unreasonable to do so again.

5.17 THE DUTY TO CONFIRM OR DENY

Section 1 of the FOI Act provides two distinct but related rights of access to information which impose corresponding duties on public authorities. These are:

- The duty to inform the applicant whether or not information is held by the authority, and, if so,

- The duty to communicate that information to the applicant.

In circumstances where confirming or denying whether information is held under the FOI Act or EIR or whether an exemption or exception applies would in itself entail the disclosure of exempt information. NL CCG is not required to explain the exclusion of the duty to confirm or deny the information is held, why an exemption applies or why the public interest favours maintaining an exemption.

However, the Public Interest Test will be applied to ensure it is appropriate for NL CCG to issue a response neither confirming nor denying that the information requested is held.

In these circumstances, the applicant will be issued a refusal notice within 20 working days.

5.18 TRANSFERRING A REQUEST

If NL CCG does not hold some or all of the information requested but believes that another public authority may hold it then advice and assistance will be provided to the applicant. This will usually involve:

- Contacting the applicant and informing them that the information requested may be held by another public authority.
- Suggesting that the applicant re-applies to the authority which the CCG believes may hold the information.
- Provide them with the contact details for that authority.

If the applicant wishes that NL CCG transfers the request on their behalf the applicant will be asked for their consent to transfer their request for information to this public body. A request will not be transferred outside the organisation without the applicant's consent.

Where relevant requests will be transferred internally within NL CCG if the applicant is the subject of the request and it becomes a Subject Access Request under the Data Protection Act 1998 (See 5.23) or if it is to be dealt with in accordance with the Environmental Information Regulations 1992.

In cases where it is apparent that other public authorities as well as NL CCG are holding information relevant to a request, the applicant will be advised in writing.

Where it is not possible to advise the applicant which public authority holds or may hold the information further advice and assistance will be considered to enable the applicant to pursue their request if possible.

Where a request is transferred from another public authority to NL CCG it will be treated in the same way as it would if it had been received direct from the applicant. To calculate the timescale for responding, the date of transfer will be used as the date of receipt of request.

5.19 CHARGES AND FEES

In relation to requests under FOI, fees will be in accordance with Statutory Instrument 3244 (Fees Regulations). NL CCG will charge for photocopying and disbursement costs where these exceed £50. Charges for photocopying will be set at 10p per sheet. Where disbursement costs are below £50, there will be no charge levied to the applicant.

Where NL CCG chooses to levy a fee, a fees notice will be issued to the applicant, as required by section 9 of the FOI 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 issued to them. The working days in the period from when the applicant received the fees notice to when they paid will not be included in the 20 working days requirement to respond to the initial request. If payment is not received within three months, NL CCG will close the FOI request.

5.20 APPROPRIATE LIMITS

Section 12 of the FOI Act makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit, which for Public Bodies is set at £450. This represents the estimated cost of one person spending 18 hours in determining whether the department holds the information, locating, retrieving and extracting the information. Under these circumstances NL CCG is not obligated to provide the information, however, the applicant can request advice and assistance under Section 16 of the FOI Act to discuss ways in which their request could be adapted and brought within the appropriate limit.

If requests have been aggregated as outlined in 5.12 and the total cost of handling the requests exceeds the appropriate limit, the request can be refused under Section 12.

There is no appropriate limit set for EIR requests. However, it may be relevant for some exceptionally costly requests to be considered as 'manifestly unreasonable' under regulation 12(4)(b).

5.21 ADVICE AND ASSISTANCE

NL CCG has a duty under Section 16 of FOI Act and Regulation 9 (1) under EIR to assist members of the public requesting information. If an applicant or potential applicant is requesting advice or assistance, one or more of the following steps will be taken, depending on the situation:

- Guidance will be given on how to access the information from NL CCG under the Publication Scheme or the general rights.
- The applicant will be informed of the progress of their current request.

- The basis for any charges or fees levied or exemptions applied will be explained.
- Other routes through which the applicant may wish to access information, including directing them to other public authorities, will be suggested.
- Applicants will be directed to the appeals process and/or the Information Commissioner's Office if they are dissatisfied with any outcome.
- Support will be given to applicants who are unable to put their request in writing.

5.22 CONSULTATION WITH THIRD PARTIES

In the event that a request contains information about third parties, the CCG will, wherever possible, contact the third party providing them with the opportunity to comment or raise concerns regarding the response.

Ultimately the decision as to whether the information should be provided or if any exemptions apply will be made by NL CCG, as the holder of the information.

5.23 PERSONAL INFORMATION AND THE DATA PROTECTION ACT

Personal data is information about a living individual from which that individual can be identified. It may take any of the following forms:

- Computer documents.
- Information processed by a computer or other equipment (e.g. CCTV).
- Information in medical and other records.

- Information in some forms of structured manual records.
- Unstructured personal information held in manual form by a public authority (the applicant is likely to be asked to provide extra details to locate the information requested).

If an applicant requests information where they are the subject of that information, they have no right to it under the FOI Act and the request becomes a Subject Access Request under the Data Protection Act 1998 and this will be redirected within the organisation to the appropriate department.

If the personal data relates to someone other than the applicant, there is an exemption if disclosure would breach any of the Data Protection principles. The subject of the information has the right to object to the disclosure. NL CCG will undertake to ensure that all requests for personal information are handled in consultation with the subject.

NL CCG will endeavour to balance an individual member of staff's right to privacy with the accountability that goes with working in the public sector.

NL CCG will not hold information 'in confidence' that is not confidential in nature. The confidential information exemption under the FOI Act only applies if the release of such information constitutes a breach of confidence actionable in a court of law.

5.24 CONDITIONS, EXEMPTIONS AND EXCEPTIONS

Conditions

NL CCG can postpone dealing with a request if:

- It reasonably requires additional information or clarification of the initial request, in order to identify and locate the information requested, and has written to the applicant informing them of this. NL CCG will make

reasonable efforts to contact the applicant for the additional information (see 5.10).

- A fees notice has been served to the applicant and has not been paid within three months (beginning on the day the fees notice is issued).

Exemptions - FOI

The FOI Act specifies several different exemptions and when they can be applied.

Any decision to use the exemptions will initially be taken by the FOI Manager in discussion with the manager providing the information.

The Section 36 exemption states that information is exempt if, it is the reasonable opinion of a qualified person that disclosure of the information would prejudice the effective conduct of public affairs.

In accordance with the Department of Health guidelines, the qualified person for the purposes of the FOI Act will be the Chief Officer.

Appendix C contains details of the exemptions available under the FOI Act.

Exceptions - EIR

The EIR specifies several different exceptions which can be applied. These are all subject to the Public Interest Test (see 5.25).

Any decision to use the exceptions will initially be taken by the FOI Manager in discussion with the manager providing the information.

Appendix D contains details of the exceptions available under the EIR.

5.25 PUBLIC INTEREST TEST

The public interest must be considered where, in the case of FOIs, a qualified exemption applies or where any exception is applied for an EIR request. The Information Commissioner's Office states that "in effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information."[4]

The public interest will vary with each request and the exemption being considered. It may include ensuring honesty, accountability, transparent decision making and the absence of bias.

It is acknowledged by the Information Commissioner's Office that it may take longer than the 20 working day limit to consider the Public Interest Test. Where NL CCG requires a longer period to consider the Public Interest Test, a refusal notice will still be issued within the 20 working day timescale stating the exemptions being applied and an estimate of the time by which a decision will be made. A decision regarding the Public Interest Test would normally be made within an additional 20 working days.

NL CCG will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary, e.g. colleagues, legal experts etc. The public interest does not include protecting an authority or individual from embarrassment. There is no exemption under the Act for embarrassment.

5.26 REQUESTS FOR RE-USE OF INFORMATION

Information provided under FOI and EIR may be re-used for personal use. This means that brief extracts of any of the material may be reproduced without permission, under the fair dealing provisions of the Copyright, Designs and Patents Act 1988 (sections 29 and 30) for the purposes of research for non-

[4] Information Commissioner's Awareness Guidance No. 3 – Public Interest Test

commercial purposes, private study, criticism, review and news reporting, subject to an acknowledgement of NL CCG as the copyright owner.

Copyright law does not give applicants a right to re-use information in a way that would infringe or breach that copyright, by making copies, publishing and issuing copies to the public or to any other person. This means that wider re-use requires express permission in writing.

Under the Re-use of Public Sector Information 2005 Regulations you are free to use this information for your own use or for the purposes of news reporting. However, any other type of re-use under the regulations, for example; publication of the information or circulation to the public, will require permission and may be subject to terms and conditions such as:

- Organisations must ensure that the information is reproduced accurately and indicates the date at which the information was released by the CCG.
- Any publication which incorporates the CCG's information must include an acknowledgement of the source of the information.
- Any comments associated by you to the information must clearly state that it is not necessarily the view of the CCG.
- Readers of the information must not be given the impression that the CCG is responsible for, or has in any way approved, the publication in which the information has been reproduced.
- The information may not be altered or amended unless such material is clearly marked as altered or amended by the organisation or others.
- When reproducing the CCG's materials, organisations must not use the information in a misleading way and have regard to any qualifying statements or descriptions attached to the information, (for example, descriptions such as 'consultation document', 'discussion paper', or 'preliminary view' are important as are statements concerning the audience

at which the material is directed). If the information is reproduced in full, or substantial extracts are reproduced, any qualifying statements attached to the information must be included.

- .

Any requests for re-use of information must be in writing and the applicant must state their full name, postal address, specify the document being requested for re-use and the purpose for which the document is to be re-used.

The request will be acknowledged within 3 working days and responded to within 20 working days of receipt of the request. This period may be extended where the request is extensive or complex; and the requester must be informed of this in writing.

Re-use can be refused if the information requested falls within one or more of the exclusions permitted by Re-use of Public Sector Information Regulations 2005 (RPSI).

Where requests are refused, the applicant will be advised of the decision and has a right to ask for that decision to be reviewed under the CCG's FOI and EIR appeals procedures. If the information is still not released, the applicant will be advised of their right to ask the Information Commissioner to review the decision.

5.27 PUBLIC SECTOR CONTRACTS

When entering into contracts NL CCG will limit the contractual terms which are intended to restrict the disclosure of information held. NL CCG cannot 'contract out' its obligations under the FOI Act or EIR. Both the Lord Chancellors Code of Practice[5] and Environmental Information Regulations Code of Practice[6],

[5] Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under Section 45 of the Act (November 2002)

states that unless an exemption or an exception provided for under the FOI Act is applicable in relation to any particular information and the balancing of public interest favours refusal; a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

Contractors may put pressure on NL CCG to accept confidentiality clauses covering information about the terms of the contract, its value and performance. Where it is necessary to include a non-disclosure provision in a contract (exceptional circumstances only) an option could be to agree a schedule with the contractor that clearly identifies the information that should not be disclosed.

NL CCG and the Contractor should be aware that any restrictions on disclosure in such a schedule could be overridden by the obligations of the FOI Act.

The Information Commissioner's Office has produced the following documents for public bodies outsourcing services which provide practical guidance for public authorities when procuring services.

- Transparency in outsourcing: a roadmap
- Outsourcing and freedom of information – guidance documents

5.28 COMPLAINTS AND REVIEW PROCESS

If the applicant wishes to make a complaint about the staff involved in their response then this should be processed as a complaint using the procedure outlined in the NL CCG Complaints Policy.

If the applicant feels that they have not been given proper advice and help, have not been given the information they requested within 20 working days, is unhappy with the information that has been provided or wishes to request a

[6] Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) (February 2005)

review of an exemption which has been applied they should, in the first instance contact the FOI Team to try to resolve the issue. This should be done within the first two months of receiving the response to their request.

If the applicant is still not happy with their response, a request for an internal review can be made in writing to the Chief Officer at: nlccg.foi@nhs.net

or;

North Lincolnshire Clinical Commissioning Group
Health Place,
Wrawby Road,
Brigg,
North Lincolnshire, DN20 8GS

NL CCG will appoint an independent senior manager from within the organisation to investigate the original decision made. The senior manager will be supported by a Manager with FOI experience. Neither manager will have been involved in the original decision. The managers will consider the findings and decide whether the request was processed as in line with the NL CCG Freedom of Information Policy and the Section 45 Code of Practice and where relevant, if the original exemption should be upheld or not.

The applicant will be informed of this decision within 20 working days of receipt of their request for an internal review.

If the applicant is still not satisfied with the outcome of their internal review, they can contact the Information Commissioners Office at:

FOI/EIR Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Helpline telephone: 01625 545 745

5.29 LEGAL ADVICE

The CCG FOI Lead and FOI Manager will decide when legal advice should be sought and will then seek such advice through the relevant channels.

5.30 RECORDS MANAGEMENT

Good records management is the key to complying with the FOI Act. NL CCG has a Records Management Policy for dealing with records management that is consistent with the Records Management: NHS Code of Practice (April 2006).

Staff should also see the Lord Chancellor's Code of Practice on the management of records issued under section 46 of the FOI Act 2000.

Good records management will allow the organisation to deal with requests in an efficient and accurate manner. Not knowing whether or not a record is held is not a valid reason for not complying with a request.

6 ROLES / RESPONSIBILITIES / DUTIES

6.1 RESPONSIBILITIES OF THE EMPLOYER

Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. Any advice or assistance regarding this policy or the FOI Act 2000 or EIR can be obtained from the FOI Manager.

6.2 CCG CHIEF OFFICER

The CCG Chief Officer has overall responsibility for the management of NL CCG's response to enquiries under the FOI Act and EIR.

6.3 CCG GOVERNING BODY

The Governing Body is responsible for approving the NL CCG Freedom of information and Environmental Information Regulations Policy

6.4 FREEDOM OF INFORMATION MANAGER

The Freedom of Information Manager is responsible for:

- Ensuring that all requests for information are co-ordinated and responded to within the set timescales, though this does not negate the responsibility of all other employees in ensuring a timely response to requests.
- Providing advice and assistance to staff and those who propose to make, or have made, requests for information under the Act.
- Maintaining a database of information requests that have been made.
- Advising on the use of exemptions.

- Advising on maintaining and reviewing the publication scheme.
- Producing regular monitoring reports.

6.5 LEAD MANAGERS (CCG)

Lead managers will be the initial point of contact for the area in which they are the lead. They are responsible for:

- Providing information within the set timescale.
- Assisting with reviewing the publication scheme.
- Ensuring that appropriate information to be included in the publication scheme is forwarded to the website lead to keep the publication scheme up to date.

6.6 ALL STAFF

All staff (referred to in section 4) are expected to understand the content of this policy, agree to abide by it, and:

- Identify FOI requests and forward it to the FOI Team at nlccg.foi@nhs.net immediately.
- Respond to requests made by the FOI Team within the set timescales.
- Ensure that all relevant information to meet the requirements of the request is retrieved.
- Ensure that responses made in relation to a request do not include information of a sensitive personal nature (i.e. for staff, patients or clients).

- Provide advice and assistance to those who propose to make, or have made, requests for information.
- Remember that not everyone will be aware of the Act, or Regulations made under it, and help draw these to the attention of potential applicants who appear unaware of them.
- Ensuring that appropriate information to be included in the publication scheme is forwarded to the website lead to keep the publication scheme up to date.

6.7 INFORMATION COMMISSIONER

The Information Commissioner has a duty to enforce the requirements of the FOI Act 2000.

7 IMPLEMENTATION

This policy will be disseminated by the approved process and will be available on NL CCG's website.

Breaches of this policy may be investigated and may result in the matter being treated as a disciplinary offence under the CCG's disciplinary procedure.

8 TRAINING AND AWARENESS

Training will be provided for new staff at induction. Training will be available to staff who require it. Any further requirements for training should be discussed with the staff members' line manager.

9 MONITORING AND AUDIT

An annual report and quarterly reports will be produced by the FOI Team. These reports will detail the number of FOI requests received, a brief description of the information requested and whether this information was provided or an exemption applied. The reports also show the average time taken to respond to FOI requests and how these figures compare to the previous quarters/year.

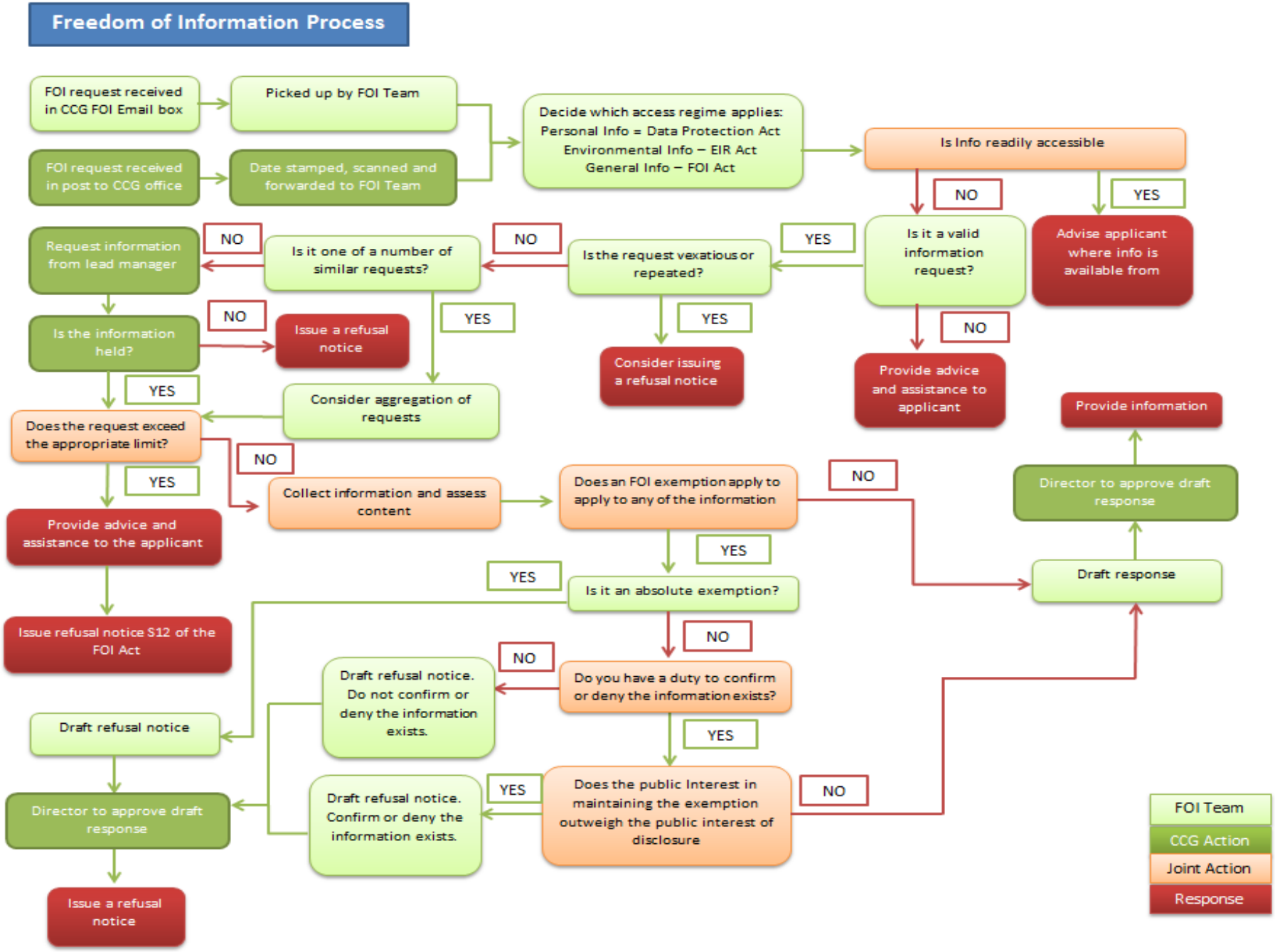
10 POLICY REVIEW

This policy will be reviewed in 2 years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation/guidance, as instructed by the senior manager responsible for this policy.

11 REFERENCES

- Caldicott and Data Protection Policy
- Data Protection Act 1998
- Disciplinary Procedure
- Freedom of Information Act 2000
- HSC 1999/053 – For the Record: Managing NHS Records
- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act (November 2002)
- Publication Scheme
- Statutory Instrument 1992 No 3240 – The Environmental Regulations 1992

APPENDIX A - PROCESS MAP



APPENDIX B - A QUICK GUIDE TO RESPONDING TO A FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REQUESTS

The following process will be adopted for the handling of information requests.

1. Information request is received and date stamped (if hard copy).
2. If the request has been received directly into the CCG FOI inbox it will be picked up by the FOI Team.
3. If the request has **not** been received directly into the CCG FOI inbox it will be scanned and emailed immediately to the CCG FOI inbox.
4. If an applicant is unable to request the information in writing a Verbal Freedom of Information Request Form can be completed and sent to the requestor to sign confirming that it is a true representation of their request. Once the signed copy is returned the request will be processed.
5. The information request is logged by the FOI Team.
6. A standard acknowledgement letter is sent by the FOI Team to the requestor within 2 working days.
7. The FOI Team will forward an anonymous version of the request for information to the identified lead managers to provide the information by an 8 day deadline.
8. All emails relating to the FOI request should be sent from and to the CCG FOI Inbox including the retrieved information. The mailbox is checked regularly on a daily basis by a member of the FOI Team.
9. If clarification is required the requestor will be informed as soon as possible. If the requestor has not provided clarification within 3 months the request will be closed.
10. Conditions, exemptions, exceptions and redactions will be considered and applied if necessary.
11. Fees notice is sent to the requestor if applicable.
12. Response will be approved by the relevant CCG Director for that subject area.
13. On receipt of payment of fees (if applicable) the response will be sent to the requestor.
14. The requestor will be advised of any exemptions and redactions in writing. When information has not been provided the applicant will be advised of their right to request an internal review of the decision to withhold the information and also how to appeal to the Information Commissioner's Office if they are still unhappy with the decision.
15. When a requestor makes a request for an internal review the FOI Manager will coordinate for senior managers from the CCG and the FOI Team, who were not involved in the original decision, to meet and review the response.

APPENDIX C - EXEMPTIONS AVAILABLE UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:

1 Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

2 Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

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.

The absolute exemptions under the FOI Act are:

Section 21 **Information accessible to applicant by other means** – it may be reasonably accessible even if the applicant has to pay for it.

Section 23 **Information supplied by, or relating to, bodies with security matters** – this is aimed at the Security Services, Government Communications Headquarters and the National Criminal Intelligence Service.

Section 32 **Court records** – covers documents in the custody of a court, created by a court or served on or by a public authority for court proceedings.

Section 34 **Parliamentary privilege** – to avoid infringing the privileges of either House of Parliament.

Section 40 **Personal information** – where the applicant is the subject of the information the request must be dealt with in accordance with the Subject Access rights provided in the Data Protection Act 1998. Where the applicant is not the subject of the information, then it is exempt if disclosure of it would breach the Data Protection Act.

Section 41 **Information provided in confidence** – if the disclosure of the information would constitute a breach of confidence that could lead to action against the CCG.

Section 44 **Prohibitions on disclosure** – information is exempt if its release is prohibited under any enactment, it is incompatible with Community obligation or would constitute contempt of court.

The exemptions that are qualified by the public interest test are:

Section 22 **Information intended for future publication** – covers information held with a view to publication by the public authority or another person at some future date.

Section 24 **National security** – information can be exempt if it is required to safeguard national security.

Section 26 **Defence** – information can be exempt if its release would affect the defence of the British Isle, any British colony or the capability and effectiveness of the armed forces.

Section 27 **International relations** – information is exempt if its release would prejudice relations with another State, international organisation, international court or the interests of the UK abroad.

Section 28 **Relations within the United Kingdom** – covers information that may prejudice relations between the administrations within the UK.

Section 29 **The economy** – covers information that would prejudice the economic interest of the UK or of any administration in the UK.

Section 30 **Investigations and proceedings conducted by public authorities** – covers information held for an investigation that the authority has a duty to conduct to decide if a person should be charged with or be found guilty of an offence, relates to criminal proceedings that the authority has power to conduct or relates to civil proceedings brought by or on behalf of the authority.

Section 31 **Law enforcement** – information is exempt if its release would prejudice law enforcement. This includes the prevention and detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons.

Section 33 **Audit functions** – this applies to authorities that have functions relation to the audit of other authorities accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.

Section 35 **Formulation of government policy** – relates to government departments and the National Assembly for Wales.

Section 36 **Prejudice to effective conduct of public affairs** – information is exempt if, in the opinion of a qualified person, it would prejudice how the CCG conducts its public affairs.

Section 37 **Communications with Her Majesty, etc. and honours** – covers Her Majesty, other members of the Royal Family.

Section 38 **Health and safety** – information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.

Section 39 **Environmental information** – covers information that can be accessed via the Environmental Information Regulations.

Section 42 **Legal professional privilege**

Section 43 **Commercial interests** – information is exempt if it constitutes a trade secret or would prejudice or be likely to prejudice the commercial interests or any person or organisation.

APPENDIX D - EXCEPTIONS AVAILABLE UNDER THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

The public interest test applies to all the exceptions contained in the EIR, except those relating to personal data.

Regulation 12(3) – Personal Data
If the information requested under the EIR includes third party personal data, a public authority may only disclose it in accordance with regulation 13.

Regulation 12(4)(a) Information not held when receiving a request

Regulation 12(4)(b) Manifestly unreasonable
There are no cost limits for responses to requests for environmental information; it may therefore be possible for some exceptionally costly requests to be considered manifestly unreasonable.

Regulation 12(4)(c) The request is too general
To claim the exception, an authority must follow the requirements of regulation 9(2). Where it receives a request which is "too general", it must contact the applicant within 20 working days and help him or her to refine or clarify the request

Regulation 12(4)(d) Material in the course of completion, unfinished documents and incomplete data
This exception covers most work in progress. The authority must consider the status of the information at the time of the request.

The public interest test is an important consideration; we consider that the public interest in maintaining this exception will decline once the final version of a document has been completed.

Regulation 12(4)(e) Disclosure of internal communications
This exception should be interpreted broadly and may cover a wide range of internal communications. In practice the scope of this exception is likely to be narrowed by the application of the public interest test.

Whether a communication from an external adviser amounts to an internal communication depends on the facts of the case. In the exceptional circumstances of the following case, the tribunal found that such a communication did constitute an internal communication. However regulation 12(4)(e) will not be applicable in all situations involving external advisers.

Regulation 12(5) Adverse effect
This criterion of "adverse effect" is similar to that of "prejudice" under the FOI Act, although not identical. For instance, the "prejudice" criterion under the FOI Act is "would, or would be likely to, prejudice", whereas for adverse effect the harm must be at least probable rather than merely likely.

Regulation 12(5)(a) International relations, defence, national security or public safety
In accordance with regulation 12(6), an authority is able to opt neither to confirm nor deny whether the information exists and is held, if this would adversely affect any of the matters listed under regulation 12(5)(a). This is subject to the public interest test.

Regulation 12(5)(b) The course of justice, the ability of a person to obtain a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature

Regulation 12(5)(c) Intellectual property rights
The exception protects the rights of the authority as well as third parties. An authority must be able to demonstrate that there is a real risk that disclosure would undermine the intellectual property rights.

Regulation 12(5)(d) The confidentiality of the proceedings of a public authority where such confidentiality is provided by law
A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.

Regulation 12(5)(e) The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.

This exception may cover a wide range of "commercial or industrial information" in the circumstances specified. It could cover either an individual or a body or the public authority itself. For instance, it could include information supplied in relation to a tendering or procurement process and information held by regulators.

Regulation 12(5)(f) The interests of the person who provided the information where that person –
(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
(iii) has not consented to its disclosure.
A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.
This exception covers the interests of a person who:

- supplied information voluntarily,
- supplied it in the expectation that it would not be disclosed to a third party, and
- has not consented to disclosure of the information supplied.

Regulation 12(5)(g) The protection of the environment to which the information relates
A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.

Regulation 12(9) Information relating to emissions
A public authority cannot use the following exceptions for environmental information that relates to information on emissions:

- Confidentiality of the proceedings of a public authority 12(5)(d)
- Confidentiality of commercial or industrial information 12(5)(e)
- Interests of the person who provided the information 12(5)(f)
- Protection of the environment to which the information relates 12(5)(g)

APPENDIX E - VERBAL FREEDOM OF INFORMATION REQUEST FORM

Request taken by:	
Team Name:	
Date of Request:	
Reference Number:	
Name of Applicant	
Address for the information to be sent to:	
E-mail:	
Phone:	
Information requested as interpreted by NHS North Lincolnshire CCG	

I, [Applicants Name] confirm that the above interpretation of my request is correct/ is not correct and the correct request is below (delete as appropriate)

Description of information requested. To be filled out by the applicant if NHS North Lincolnshire CCG's interpretation was incorrect.	