



*Wigan Borough
Clinical Commissioning Group*

Freedom of Information Policy



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Author	GMSS Patient Services CCG Assistant Director of Governance
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1. Introduction

- 1.1.** This document sets out the Freedom of Information Policy for the CCG. It explains what the CCG will do to comply with their obligations under the Freedom of Information (FOI) Act 2000 (hereafter referred to as the Act).
- 1.2.** This policy is guided by the Lord Chancellor's Code of Practice on the Discharge of Public Authorities Functions under Part 1 of the Freedom of Information Act 2000 issued under Section 45 of the Act.
- 1.3.** This policy will be published on the Greater Manchester Shared Services intranet and CCG website.

2. Purpose

- 2.1.** It is the duty of each NHS body to establish and keep in place arrangements for the purpose of monitoring and improving the quality of healthcare provided by and for that body. The CCG is committed to this duty and its implementation.
- 2.2.** This policy applies to those members of staff that are employed by the CCG, both permanent and non-permanent, and for whom the CCG has legal responsibility, including contractors and those who undertake work on behalf of contractors.
- 2.3.** The CCG supports the Government's commitment to greater openness in the public sector. The Act will further this aim of greater openness, by enabling members of the public to be able to access key documents and as such scrutinise and question the decisions of public authorities more closely and ensure that the services provided are properly delivered. The CCG wishes to create a climate of openness and dialogue with all of its stakeholders.
- 2.4.** Improved access to information about the CCG will help to support this aim. The CCG will make such information available in a range of formats as required to meet the needs of the person requesting the information.
- 2.5.** The CGG believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duty of confidence or the statutory provisions that prevent disclosure of personal confidential data. The release of such information is covered by the Data Protection Act 1998 and is dealt with in other relevant policies including the Data Protection Policy. However, some personal information may be released under the provisions of the Act.
- 2.6.** The CCG considers that public authorities should be allowed to discharge their functions effectively. This means that the CCG will use the exemptions contained in the Act where either:
 - an absolute exemption applies, or;

- where a qualified exemption can reasonably be applied in terms of the public interest in disclosure.

2.7. This policy provides a framework within which the CCG will ensure compliance with the requirements of the Act and will underpin any operational procedures and activities connected with the implementation of the Act.

2.8. The aims of this policy are to:

- ensure all FOI requests are dealt with consistently and receive a high quality response
- ensure that the CCG complies with all relevant laws, regulations and guidance
- provide clear routes for members of the public to make contact with the CCG so that they can appropriately request documents and information
- ensure the CCG publication scheme is up to date in order to provide access to information and to lessen the number of requests the public have to make
- ensure the necessary internal structures are in place for the Act to be complied with
- ensure staff at all levels are aware of their responsibilities with regards to the Act
- ensure timescales are met
- ensure the CCG Governing Body is informed of the operation of the Act and the implications for the organisation.

2.9. The Act applies to all recorded information held by the CCG.

2.10. Information can be held in any form including recording or notes of telephone calls, file notes, websites, and any other service the CCG may introduce in the future.

2.11. It is important that this policy is read carefully and understood. Any issues can be discussed with the Patient Services team.

3. Roles and Responsibilities

3.1. The Chief Officer of the CCG has ultimate responsibility for the organisation's compliance with the Act.

3.2. The CCG will provide an FOI lead person to be the first point of contact for the Patient Services team on all issues in connection with the Act.

3.3. The CCG needs to have secure and robust information governance processes in place to ensure it meets its statutory responsibilities. Information Governance encompasses all aspects of data handling and management, Freedom of Information being ones of these.

- 3.4.** The Patient Services team will be involved in the decision making process and risk assessment in denying any request and claiming a qualified or absolute exemption. The Director of Quality & Safety will make the final decision with the support of the Patient Services team.
- 3.5.** The Patient Services team supports the CCG and will ensure that the work required to comply with the Act is carried out. They also ensure that all processes and procedures put in place have been tested to ensure they meet the requirements of the Act.
- 3.6.** The duties of the Patient Services team with the support of the CCG FOI lead where appropriate, will include:
- providing advice and assistance to applicants requesting information under the Act; discussing the applicants particular requirements e.g. format in which the information is to be provided;
 - production and maintenance of the FOI policy and procedures and ensuring they are available in alternative formats as required;
 - promotion of FOI awareness across the CCG and GM Shared Services through training and the dissemination of the FOI procedures to all staff;
 - working with the Head of Communications to ensure that all staff and the general public are provided with information about their rights and responsibilities under FOI, in an accessible format;
 - regularly updating the Publication Scheme;
 - maintaining appropriate records of requests for information.
- 3.7.** All staff, Governing Body members, contractors and those who undertake work on behalf of contractors are obliged to adhere to this policy. They should be familiar with the requirements of the Act and be aware of their personal responsibilities under the Act.
- 3.8.** In certain circumstances, to support equality and diversity, line managers will need to consider individual requirements of staff to support good practice in complying with this policy.

4. Environment Information Regulations 2004

- 4.1.** The CCG recognises that in addition to the Act, there is also an obligation on public authorities to respond to requests for environment information under the Environment Regulations (EIR) 2004.
- 4.2.** The CCG will, as far as possible, respond to request for environmental information using the same procedures as for responding to Freedom of Information (FOI) requests, while recognising that there are some differing regulations between EIR and FOI on the provision of information. These include rules governing what

environmental information may be disclosed (exceptions under EIR) and the requirement to respond to requests for environmental information whether the request is in writing or verbal form.

5. The Freedom of Information Act 2000

5.1. 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; Communicate the information to them, subject to certain conditions and exemptions;
- a duty on every public authority to adopt and maintain a Publication Scheme. This duty has been applicable to the NHS since 1st January 2009;
- the establishment of the office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice together with a First Tier Tribunal;
- a duty on the Lord Chancellor to establish Codes of Practice for guidance on specific issues.

6. Publication Scheme

6.1. Section 19 of the Act makes it the duty of every public authority to adopt a Publication Scheme.

6.2. The Information Commissioner's Office (ICO) defines seven classes of information that a public authority should be making available via their publication scheme. These are:

- **Who we are and what we do:** Organisational information, locations and contacts, constitutional and legal governance.
- **What we spend and how we spend it:** Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- **What our priorities are and how we are doing:** Strategy and performance information, plans, assessments, inspections and reviews.
- **How we make decisions:** Policy proposals and decisions; Decision making processes, internal criteria and procedures, consultations.
- **Our policies and procedures:** Current written protocols for delivering our functions and responsibilities.
- **Lists and registers:** Information held in registers required by law and other lists and registers relating to the functions of the Authority.

- **The services we offer:** Advice and guidance, booklets and leaflets, transactions and media releases; A description of the services offered.

- 6.3.** The CCG Publication Scheme details the information that the CCG has published 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.
- 6.4.** The ICO guidance is clear that an organisation should not create information purely for the purposes of completing the model publications scheme. As a relatively new organisation, the CCG does not expect to hold all the information suggested in the ICO guidance for some time. However, the CCG will start to hold increasing amounts of information, and needs to continually consider how we can proactively make this freely available, most commonly via the website.
- 6.5.** The CCG will publish and make available the following information:
- The minutes and papers of Governing Body meetings, and further information about upcoming meetings
 - information about our Governing Body and senior team
 - press releases and corporate communications
 - a disclosure log of any information the CCG releases in response to specific FOI enquires
 - information about key partners as we build up relationships with stakeholders information about the CCGs procurement processes and any live contracts and tenders
 - quarterly FOI statistics
 - internal policies and equalities analysis
 - the CCG business plan
 - annual reports
- 6.6.** The Publication Scheme is available on the public website of the CCG and is available in all other formats on request.
- 6.7.** The contents of the Publications Scheme will be regularly reviewed and updated.
- 6.8.** Applications for information listed in the Publication Scheme may be received verbally or in writing.

7. Process

- 7.1.** All requests for information under the Act should be made in writing, in the form of a letter, fax or email to the Greater Manchester Shared Services (GMSS) Patient Services team. Contact details are outlined in Appendix 4.
- 7.2.** The enquirer should clearly identify the documents or information that they require, and supply a return address for the delivery of the information. There will be two potential exceptions to the need for a request to be put in writing (outlined below).
- 7.3.** The Act only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.
- 7.4.** Where a request does not give sufficient detail to enable the CCG to process the request, the Patient Services team will contact the applicant and advise them of the information that is required to make their application and offer help with their request.
- 7.5.** The CCG will accept verbal requests in circumstances where the enquirer would have great difficulty in putting a request in writing. On these occasions, Patient Services will note as many details as possible, which must include contact information.
- 7.6.** Requests for information specifically under the EIR can be accepted verbally. It is recommended that enquirers are still advised to put their request in writing, as this will ensure there is no ambiguity about their request. Where they still wish to make a verbal request the member of staff taking the call will note as many details as possible, which must include contact information.
- 7.7.** The Patient Services team on behalf of the CCG will acknowledge receipt of the request within the first three full working days, and provide the documents/ information, or an explanation about why the information has not been disclosed within 20 full working days.
- 7.8.** All responses will be approved and signed off by either the Assistant Director of Governance or the Governance Support Manager.
- 7.9.** A working day is defined by the Information Commissioner's Office (ICO) as one day within the working week (Monday to Friday).
- 7.10.** It might sometimes be necessary to extend this timeframe, for example to assess the public interest in releasing information. In these circumstances the Patient Services team on behalf of the CCG will respond within 40 working days, and notify the requester.
- 7.11.** Under the FOIA, information may be withheld if it is covered by an exemption. There are two categories of exemptions: qualified and absolute. Information covered by a

qualified exemption can only be withheld if the public interest in withholding the information is greater than the public interest in releasing it. Information covered by an absolute exemption is not subject to this public interest test and can be withheld.

7.12. See appendix 5 for the FOI process map.

8. General Rights of Access

8.1. Section 1 of the Act gives a general right of access from 1 January 2005 to recorded information held by the CCG, subject to certain conditions and exemptions.

8.2. Any person making a request for information to the CCG is entitled to:

- be informed in writing, or any other appropriate format on request, whether the CCG holds the information described in the request; and
- have that information communicated to them if it is held by the CCG and is an appropriate format on request.

8.3. This is referred to as the “duty to confirm or deny”. These provisions are fully retrospective, meaning, that if the CCG holds the information when the request is received, it must be provided, subject to certain conditions and exemptions.

8.4. The Act states that requests for information under the General Rights of Access must be received in writing and to include the name of the applicant, an address for correspondence, and a description of the information requested. As long as the request has a valid email address for acknowledgment and response this is acceptable. The Patient Services officer will be able to provide assistance if necessary.

8.5. Requests transmitted by electronic means will be treated as written requests if they are received in legible form and contain sufficient information to process the request.

9. Conditions and Exemptions

9.1. The “duty to confirm or deny” and to provide information is subject to certain conditions and exemptions.

9.2. The duty to confirm or deny does not arise where the CCG requires further information in order to identify and locate the information requested and had informed the applicant of that requirement. The CCG is required to contact the applicant for additional information should it be required.

9.3. The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

- 9.4.** The duty to comply with a request for information does not arise if the CCG estimates that the cost of compliance with the request would exceed the appropriate limit in national fees regulations. The CCG will work with applicants to keep compliance costs to a minimum but reserves the right to either refuse to comply with the request or to charge for the communication of information that exceeds this limit
- 9.5.** The CCG is not obliged to comply with a request for information if the request is considered vexatious. Where the CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or similar request from that person unless a reasonable interval has elapsed between the two requests. The CCG will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.
- 9.6.** Under Section 2 of the Act, the CCG does not have to comply with the duty to confirm or deny if the information is exempt under the provisions of Part II of the Act, Sections 21 and 44. These provisions either confer an absolute exemption or a qualified exemption.
- 9.7.** Qualified exemptions:
- information intended for future publication
 - national security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise)
 - defence
 - international relations
 - relations within the United Kingdom
 - the economy
 - investigations and proceedings conducted by public authorities
 - law enforcement
 - audit functions
 - formulation of government policy
 - prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
 - communications with Her Majesty and honours
 - health and safety

- environmental information (as this can be accessed through the Environmental Information Regulations)
- personal information (as this is covered by the Data Protection Act); legal professional privilege
- commercial interests.

9.8. Absolute exemptions:

- information accessible to applicant by other means
- information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals process against such certificates)
- court records
- Parliamentary privilege (a certificate signed by the Speaker of the House for the House of Commons, or by the Clerk of the Parliaments for the House of Lords is conclusive proof that the exemption is justified)
- prejudice to effective conduct of public affairs (only applies to information held by House of Commons or House of Lords)
- personal information (as this is covered by the Data Protection Act); information provided in confidence
- prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

9.9. If the CCG intends to withhold the information, there is a duty to explain the decision. This should be done within 20 working days, however if the CCG needs to consider the public interest test they are entitled to a reasonable extended period. In this case, within the 20 working day period the CCG should provide an estimate of when we expect to reach a decision and stick to this unless we have a good reason not to. If, while trying to reach a decision, it is realised that the original estimate is unrealistic the applicant must be informed.

9.10. The CCG should keep a record of any instances where they fail to meet estimates.

9.11. The FOI Act itself should be consulted for more detailed information on each exemption. If there is any doubt over whether an exemption applies the decision will be escalated within the CCG and / or legal advice gained where necessary.

9.12. By applying an absolute exemption the CCG may refuse to confirm or deny whether they hold the information requested.

- 9.13.** A qualified exemption also allows the CCG the same right to neither confirm nor deny but subject to a “public interest test”. This means that the CCG must demonstrate, in all circumstances of the case, that the public interest in refusing to confirm or deny outweighs the public interest in favour of disclosure.
- 9.14.** Requests for access to records of deceased health care service users may be considered under either the Access to Health Records Act 1990 or the FOI Act dependent on the request for information. If a request relates to the Access to Health Records Act 1990, this will be dealt with as a subject access request. In considering such a request the CCG will apply any relevant exemptions. The Information Commissioner’s Office (ICO) has ruled that when a public authority has received a request for access to the records of a deceased person consideration must be given to any duty of confidence.

10. The Public Interest Test

- 10.1.** The public interest will be considered in every case where a qualified exemption may apply.
- 10.2.** Defining the public interest will vary according to the information being requested. It may often involve issues around accountability, transparent decision making and good management. When considering the public interest to reach a decision on a qualified exemption, the CCG will seek appropriate professional advice (this may include legal advice).
- 10.3.** The CCG will aim to use the qualified exemptions sparingly and will, in accordance with Section 17 of the Act, justify their use.
- 10.4.** Most public bodies which govern access to information held by Government are based on the same building blocks:
- A general right of access to information held by public authorities.
 - The right of access is subject to a range of exemptions covering issues like security, international relations, formulation of government policy and commercial confidentiality.
 - Some of the exemptions are subject to a public interest test which requires the decision-maker to take public interest considerations into account when deciding whether to release information even where an exemption applies.
- 10.5.** This mechanism is referred to as a “public interest override” or “public interest test” because the public interest considerations “override” the exemption.
- 10.6.** It is often suggested that the fact that the term “the public interest” is not defined in FOIA leads to difficulty. This should not be the case. From time to time weighing competing interests may be difficult. However, this does not mean that the nature of the task facing a public authority when applying the public interest test is unclear. In

effect something “in the public interest” is simply 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.

- 10.7.** The question of where the public interest lies has often been considered by the courts in newspaper cases, particularly where an individual or organisation attempts to prevent publication of a story. The courts have often distinguished between things which are in the public interest from things which merely interest the public. It will be helpful to bear the distinction in mind. It is also important to bear in mind that the competing interests to be considered are the public (rather than private) interest favouring the withholding of information.
- 10.8.** There will often be a private interest in withholding information which would reveal incompetence on the part of or corruption within the public authority or which would simply cause embarrassment to the authority. However, the public interest will favour accountability and good administration and it is this interest that must be weighed against the public interest in not disclosing the information. Of course, there will be many occasions when public and private interests coincide.
- 10.9.** There is a presumption running through the Act that openness is, in itself, to be regarded as something which is in the public interest. Setting out the considerations for a public authority when adopting or reviewing its publication scheme, FOI Act requires that “... a public authority shall have regard to the public interest:-
- In allowing public access to information held by the authority, and
 - In the publication of reasons for decision held by the authority
- 10.10.** It may be helpful to think about why openness should be regarded as being for the public good. In the Introduction to the Freedom of Information Act 2000, the Commissioner lists the following public interest factors that would encourage the disclosure of information:
- Furthering the understanding of and participation in the public debate of issues of the date. This factor would come into play if disclosure would allow a more informed debate of issues under consideration by the Government or a local authority. Promoting accountability and transparency by public authorities for decisions taken by them. Place an obligation on authorities and officials to provide reasoned explanations for decisions made improve the quality of decisions and administration.
 - Promoting accountability and transparency in the spending of public money. The public interest is likely to be served, for instance in the context of private sector delivery of public services, if the disclosure of information ensures greater competition and better value for money that is public. Disclosure of

information as to gifts and expenses may also assure the public of the personal probity of elected leaders and officials.

- Allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions.
- Bringing to light information affecting public health and public safety.

- 10.11.** A public interest test is by no means an unusual feature in freedom of information legislation. On the contrary, virtually everywhere there is a freedom of information legislation there is a public interest test. For UK public authorities, the most useful case law is from the decisions of the First Tier Tribunal.
- 10.12.** The Patient Services team will work with the CCG FOI lead to decide whether to apply the Public Interest test.
- 10.13.** The CCG Director of Quality & Safety will have the final decision on whether the Public Interest test is applied.
- 10.14.** If a decision is taken to exempt the information, then the Director of Quality & Safety will be required to provide justification with the appropriate exemption as to why the information should not be disclosed.

11. Charges and Fees

- 11.1.** The FOI Act and the associated Fees Regulations stipulate that the CCG cannot levy a fee for information unless there is a statutory basis for doing so or the amount of time taken to locate the information exceeds 18 hours.
- 11.2.** However, the CCG is allowed to charge for disbursements related to the provision of information and any reformatting requested by the applicant provided it ensures that applicants are aware of any charges which may be made.
- 11.3.** Where charges are applicable, a fees notice will be issued to the applicant, as required under Section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

12. Time Limits for Compliance with Requests

- 12.1.** The CCG is required to establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within 20 working days of a request, in accordance with Section 10 of the Act.
- 12.2.** When a charge or a fee has been incurred and the applicant has paid this in accordance with Section 9(2) of the Act, the working days in the period between the

applicant's receipt of the fees notice and the CCG's receipt of their payment will not be included when calculating the 20 working days for responding to a request.

- 12.3.** If the CCG chooses to apply an exemption of any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within 20 working days informing the applicant of this decision.
- 12.4.** If the CCG is unable to reach a decision within the 20 working day period on whether or not an exemption is to be applied the applicant must be informed.

13. Method of Providing Information

13.1. In accordance with Section 11 of the Act and where it is reasonably practicable, the CCG will convey information by any one or more of the following means, subject to any preference expressed by the applicant:

- the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant;
- the provision to the applicant of a reasonable opportunity to inspect a record containing the information;
- the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

13.2. If the CCG decides that it is not reasonably practicable to comply with any preference expressed by the applicant, the CCG will inform the applicant of the reasons for their decision and will discuss if it is possible to provide the information by another means.

13.3. The CCG will establish systems and procedures to monitor the provision of information arising from requests under the Act.

14. Refusal of Requests

14.1. As indicated above, the duty to confirm or deny the existence of information or provide the information to the applicant does not arise if the CCG :

- applies an exemption under Part II of the Act (as illustrated in Appendix A);
- has issued a fees notice to the applicant under Section 9 of the Act and the fee has remained unpaid after a three month period;
- estimates that the cost of compliance with the request for information exceeds the appropriate limit. If the cost exceeds the appropriate limit, information may still be provided up to £450.
- can demonstrate that the request for information is vexatious or repeated.

- 14.2.** If the CCG intends to refuse a request for information, the applicant will be informed of the reasons for this decision within 20 working days. The applicant will also be informed of their rights, conferred by Section 50 of the Act, to appeal to the Information Commissioner against the decision if the applicant is not satisfied with the outcome of the internal complaints procedure.
- 14.3.** If the CCG decides to refuse to confirm or deny whether it holds the information requested and/or to refuse to provide that information, an exemption notice will be issued to the applicant within 20 working days which will:
- state the fact;
 - specify the exemption in question; and
 - explain why the exemption applies (if it is not already apparent).
- 14.4.** If the CCG is unable to reach a decision on the application of an exemption within the 20 working day period then the applicant will be given notice that no decision has been reached and an estimate of the date by which the CCG expects that the decision will have been reached.
- 14.5.** As indicated by the Lord Chancellor’s Code of Practice, issued under Section 45 of the Act, the CCG will endeavor to make such estimates realistic and reasonable. If an estimate is exceeded, the applicant will be given a reason for the delay and offered an apology. The CCG finds, whilst considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The CCG will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify and any problems and rectify them.
- 14.6.** If applying a qualified exemption under Section 2 of the Act using the “public interest test”, the CCG will, in its notice to the applicant, state the reasons for claiming:
- that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the information is held; or
 - that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 14.7.** The notice should not involve the disclosure of information which would itself be exempt information.
- 14.8.** If the CCG refuses a request because it can be demonstrated that it is vexatious or repeated and a notice has already been issued to the applicant stating this fact, a further notice is not required.
- 14.9.** The CCG will keep a record of all notices issued to refuse requests for information.

15. Duty to Provide Advice and Assistance

15.1. The CCG will ensure that systems and procedures are in place to provide advice and assistance to members of the public who propose to make, or have made requests for information. This is a duty under Section 16 of the Act.

15.2. The CCG will ensure that the systems and procedures to provide advice and assistance also conform to the Lord Chancellor's Code of Practice issued under Section 45 of the Act.

16. Transferring Requests for Information

16.1. When responding to requests for information, the CCG can only provide information that it holds.

16.2. If the CCG receives a request for information which it does not hold (or holds only in part) but which is held by another public authority, then the CCG will consider what would be the most helpful way of assisting the applicant with their request. This is likely to involve:

- informing the applicant that the information requested may be held by another public authority;
- suggesting that the applicant re-applies to that authority;
- providing the applicant with contact details for that authority;
- transferring a request to that authority where they hold information relating to part of a request made to the CCG, and vice versa, due to the closer working arrangements of these two bodies. Any transfer of a request must be with the consent of the applicant.

17. Consultation with Third Parties

17.1. There will be instances where information requested under the Act will include information relating to third parties (i.e. references to organisations or individuals other than the CCG). Such information will normally be disclosed unless:

- It is "personal data", as defined by the Data Protection Act 1998 (DPA) and in guidance issued by the Information Commissioner;
- Where disclosure without consent would constitute an actionable breach of confidence as described in Section 41 of the Act;
- Where common law duty of confidence is owed (e.g. information concerning a deceased patient).

17.2. Where none of the conditions described above apply and where there are no other exemptions, the CCG will normally be obliged to disclose the information requested.

- 17.3.** The CCG will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of their functions and it would not be otherwise provided.
- 17.4.** The CCG will not agree to hold information received from third parties “in confidence” which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.
- 18. Managing Contracts**
- 18.1.** When entering into contracts, the CCG will refuse to include contractual terms which seek to restrict the disclosure of information relating to the contract, beyond the restrictions permitted by the Act or the Data Protection Act.
- 18.2.** Unless an exemption provided for under the Act is applicable in relation to any particular information, the CCG will be obliged to disclose that information in response to a request, regardless of the terms of the contract.
- 18.3.** When entering into contracts with non-public authority contractors, the CCG may be asked to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance are exempt from disclosure. Such clauses will be rejected wherever possible.
- 18.4.** Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the CCG will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed.
- 18.5.** When drawing up any such schedule the CCG will be mindful that any restrictions on disclosure could potentially be overridden by obligations under the Act and that such confidentiality provisions must be for good reasons and be capable of being justified to the Information Commissioner.
- 18.6.** In order to avoid unnecessary secrecy, any such constraints on disclosure will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the CCG will not impose terms of secrecy on contractors.
- 18.7.** The CCG will not agree to hold information “in confidence” where it is not in fact confidential in nature, that is, where the information has been obtained by the CCG from another organisation or individual and the disclosure of the information to the public, otherwise than under the Act, would constitute an actionable breach of confidence.

19. Requests for internal review (complaints)

- 19.1.** Although a public body is not legally required to have an internal review procedure, the Section 45 Code of Practice makes it clear that it is good practice to have a review procedure in place.
- 19.2.** The internal review procedure will ensure applicants are able to ask the CCG for an internal review if they are dissatisfied with the response to a request or the handling of a request.
- 19.3.** The review will consider:
- whether the complainant was given adequate advice and guidance about their request for information;
 - whether the procedures for responding to requests for information were followed correctly in this instance;
 - whether, if an exemption was applied, the reasons were explained adequately to the complainant
- 19.4.** Internal reviews should be conducted by a person who was not party to the original decision on whether to release the information requested.
- 19.5.** An internal review must be a fair and impartial review of the decisions made during the original decision of whether to release the information.
- 19.6.** The person conducting the review must consider the information released against the information requested and make a full review of the papers associated with the original application.
- 19.7.** It is best practice that the internal reviewer discusses the decisions made with the staff member, or members, who dealt with the original application in order to build a full picture as to how decisions were made.
- 19.8.** The circumstances relating to the original decision may have changed between the time the CCG made its decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames.
- 19.9.** The Act does not stipulate a time limit for completion of an internal review but the Section 45 Code states that they should be dealt with in a reasonable time and the ICO recommend that:
- reviews should be completed within 20 working days of receiving the complaint
 - for complex complaints, or where it is necessary to reconsider the public interest test – reviews should be completed within 40 working days of receipt; and

- if it appears that the deadline will not be met then the applicant must be advised as soon as possible and a second deadline set by which a response will be sent.

19.10. The internal review can have two outcomes:

- the original decision is reversed or
- the original decision is upheld.

19.11. Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided to them.

19.12. Where the original decision is upheld the applicant must be told and made aware of their further rights of appeal to the ICO.

19.13. The outcome of the internal review must be recorded.

19.14. Complaints to the Information Commissioner should be addressed to:

Wycliffe House

Water Lane

Wilmslow

Cheshire, SK9 5AF

20. Records Management

20.1. The CCG will have systems and processes in place for managing their corporate records in both electronic and paper format in order to respond effectively to requests for information.

20.2. The Records Management Policy and supporting procedures will be compliant with the Department of Health guidance “Records Management: NHS Code of Practice” as well as the “Lord Chancellor’s Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000”.

21. Equality Impact Assessment (EIA)

21.1. All public bodies have statutory duties under the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006 to set out arrangements to assess and consult on how their policies and functions impact on race, gender and disability equality, in effect to undertake equality impact assessments on all policies/guidelines and practices. Best practice also suggests that Equality Impact Assessments should be extended to include equality and human rights with regard to age, religion and sexual orientation and as such the CCG have adopted this best practice approach within its EIA as from the date of the adoption of the Policy for the Development and Management of Corporate Documents.

21.2. This policy has been Equality Impact assessed; recommendations from the assessment have been incorporated into the document and have been considered by the approving committee.

22. Document Consultation, Approval & Ratification

22.1. This document has been produced by the Greater Manchester Shared Services' Patient Services Team on behalf of NHS Wigan Borough CCG.

22.2. The Corporate Governance Committee has delegated authority for the approval and ratification of this document. The committee has considered the content of the document in terms of current best practice, guidelines, legislation and mandatory and statutory requirements before formally approving and ratifying it on behalf of the CCG Governing Body.

23. Review

23.1. The policy will be reviewed every 2 years by the Corporate Governance Committee or as and when significant changes make earlier review necessary.

24. Training

24.1. Freedom of Information training is available to all staff via the corporate induction programme. A range of other ad hoc training sessions will be considered in relation to identified needs for either individuals or groups.

24.2. The FOI lead will consider training for specific groups.

25. Distribution

25.1. This policy is available for all staff to access via the CCG SharePoint and website.

25.2. Line managers should ensure that staff without computer network access have access to the policy in alternative media.

25.3. This document will be included in the Publication Scheme for Wigan Borough CCG in compliance with the Freedom of Information Act 2000.

26. Implementation

26.1. It will be the responsibility of the CCG FOI lead with the support of the Patient Services team to ensure that this policy is implemented effectively across the CCG, through action planning, awareness raising and training.

26.2. Line managers must ensure that their staff are aware of this policy and procedure and how to deal with a Freedom of Information request should they receive one.

26.3. Information Governance issues, including Freedom of Information, will be highlighted on a routine basis through the Corporate Governance Committee.

27. Monitoring Compliance

- 27.1.** The CCG will regularly review its Freedom of Information arrangements to ensure compliance with this policy.
- 27.2.** The Patient Services team will maintain records of all FOI requests for monitoring purposes in accordance with the Lord Chancellor's Code (further details are shown in Appendix B).
- 27.3.** The Patient Services team will produce quarterly reports to the CCG to assess performance in meeting the statutory timeframes and applicant satisfaction with the process.

Appendix 1 – Definitions

Publication Scheme:	A Publication Scheme contains all published corporate information held by a public authority. It is both a public commitment to make certain information available and a guide to how that information can be obtained. The CCG has adopted a model publication scheme and will be reviewed annually by the Patient Services team in partnership with the CCG nominated FOI lead to ensure they are accurate and up to date.
Vexatious request:	The dictionary definitions refer to “causing annoyance or worry”. S14 (1) of the Act states that public authorities do not have to comply with vexatious requests. There is no public interest test. To decide whether a request is vexatious, its context and history need to be looked at. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. Guidance and support is available from the Patient Services team.
Recorded Information held:	Recorded information held is that which has been captured and can be reproduced in a readable form. The Act does not oblige the CCG to provide analysis of any “raw data” which they may hold, e.g. entries to a database, unless such analysis already exists.

Appendix 2 - Related Documents

Other documents linked to this policy are:

- Records Management Policy
- Records Retention and Disposal Schedule
- Access to Health Records Policy
- Data Protection Policy
- Equality and Diversity Policy
- Document Control Policy
- Confidentiality Code of Conduct
- Information Governance Framework and Policy

Appendix 3 – References

Freedom of Information Act 2000

<http://www.opsi.gov.uk/acts/acts2000/20000036.htm>

Information Commissioners Office Freedom of Information Act webpage

<http://ico.org.uk/>

Code of Practice on the discharge of public authorities' functions under Section 45 of the Freedom of Information Act

<https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

Lord Chancellor's Code of Practice on management of records issued under section 46 of the Freedom of Information Act 2000

<https://ico.org.uk/media/for-organisations/documents/1624142/section-46-code-of-practice-records-management-foia-and-eir.pdf>

Appendix 4 – Useful contacts

CCG FOI lead

Governance Support Manager

Governance Team

Wigan Life Centre, 3rd Floor, College Avenue, Wigan WN1 1NJ

Tel: 01942 482885

Email: foi.information@wiganboroughccg.nhs.uk

Greater Manchester Shared Services

Patient Services Team

NHS Oldham Clinical Commissioning Group, Ellen House, Waddington Street, Oldham
OL9 6EE

Tel: 0161 212 6270

Email: foi.gmcsu@nhs.net

Information Commissioner's Office

Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate number)

Fax: 01625 524 510

Email: casework@ico.org.uk

Appendix 5 – FOI Process

