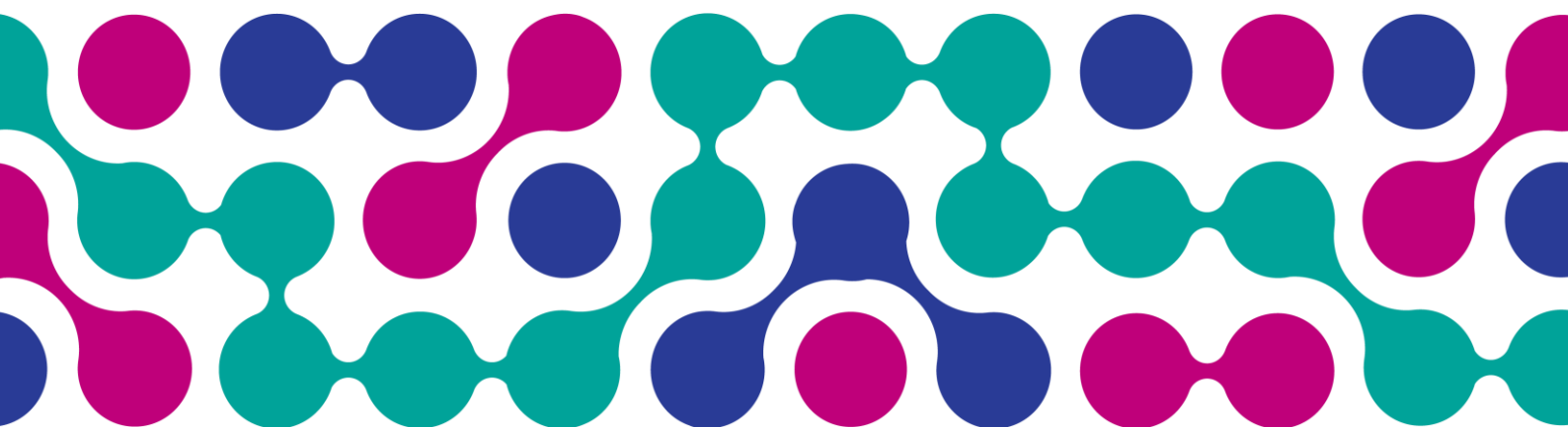


Freedom of Information Policy

BSW ICB policies can only be considered to be valid and up-to-date if viewed on the intranet. Please visit the intranet for the latest version.



Freedom of Information Policy

Purpose	The purpose of this policy is to provide BSW ICB with guidance in relation to the compliance with the Freedom of Information Act 2000 (FOIA).
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Freedom of Information Policy

Review Log

Version Number	Review Date	Name of reviewer	Approval Process	Reason for amendments
V0.1	Mar 20	IGSG	IGSG	Minor changes
V0.2	Apr 20	Gov Body	Gov Body	None (Amended to V1)
V1.1 V1.3	Jan 23 Mar 23	IGSG	IGSG (v2.0)	Recognition of ICB – minor amendments

Freedom of Information Policy

Summary of Policy

The purpose of this policy is to provide BSW ICB with guidance in relation to the compliance with the Freedom of Information Act 2000 (FOIA).

Applications must be written (letter, fax or e-mail). Any letters or FOI emails received must be emailed immediately to the FOI Team scwcsu.foi@nhs.net.

All applications are managed by the SCW CSU FOI Team and the ICB will be 'Applicant and Purpose blind'.

All responses must be sent to the applicants within 20 working days.

The ICB will not charge for information. If the FOI will cost more than £450 to provide, calculated at a rate of £25 per person per hour regardless of grade, the request will usually be refused.

Exemptions may be applied to withhold some information.

Vexatious and repeated requests may be refused.

Information for release must be sent to the FOI Team within 10 days of receiving their email.

All information held is in scope for a request even where it originated with a third party.

All contracts entered into by the ICB will include appropriate FOI clauses to ensure that both parties are aware of their responsibilities under the FOIA.

The ICB will not agree to hold information 'in confidence' which is not in fact confidential in nature.

Colleagues must not deliberately alter, deface, block, erase or destroy information which is subject to an application in order to prevent its release. Doing so is a criminal offence under the FOIA and EIR, for which colleagues could be held individually responsible.

This policy applies to:

- all colleagues within BSW ICB
- contracted third parties, including hosted organisations and agency colleagues
- students and trainees
- colleagues on secondment and on placement within the ICB.

Freedom of Information Policy

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INTRODUCTION & PURPOSE

1. The purpose of this policy is to provide BSW ICB with guidance in relation to the compliance with the Freedom of Information Act 2000 (FOIA). It is a statement of the framework within which the ICB will work to ensure the organisation meets its obligations under the FOIA. In particular it:
 - defines roles and responsibilities (see paragraphs 53 to 59)
 - indicates the way in which compliance with the policy will be monitored (see Section 7).

The Environmental Information Regulations (EIR) 2004 are also covered by this policy (see Appendix 5).

2. Background

The FOIA 2000 replaced the non-statutory “*Code of Practice on Openness in the NHS*”; it is part of the Government’s commitment to greater openness and transparency in the public sector and enables the public to question the actions and decisions of public authorities more closely. The Act gives a general right of access to recorded information held by a public authority, subject to certain conditions and exemptions. The main features of the FOIA are:

- a duty on every public authority to maintain a Publication Scheme;
- a general right of access to recorded information held by public authorities;
- the introduction of the office of Information Commissioner to promote good practice; and with wide powers to enforce the rights created by the FOIA.

SCOPE

3. This policy applies to:
 - all colleagues within BSW ICB
 - contracted third parties, including hosted organisations and agency colleague
 - students and trainees
 - colleagues on secondment and on placement within the ICB.

DEFINITIONS

4. **Application**
An approach made from outside the organisation to access information held by the ICB.
5. **Colleagues**
All colleagues, those employed by the organisation as contractors, NHS professionals, temporary colleagues, voluntary organisations and anyone duly authorised to view or work with information held by the organisation.

6. **Confidentiality**

The property that information is not made available or disclosed to unauthorised individuals, entities or processes.

7. **Personal confidential data (PCD) and sensitive data**

This is where an individual can be identified:

- a. from the data, or
- b. from the data and other information which is in the possession of, or is likely to come into the possession of, the data controller

Includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

8. **Request**

An item within an application requiring an ICB response.

PROCESS

Principles

10. This policy supports the principle that openness, and not secrecy, should be the rule in public life. BSW ICB works under the principle of openness and dialogue with all stakeholders and improved access to information about the ICB, and supports the following:
 - Individuals have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provision that prevent the disclosure of personal identifiable information under the Data Protection Legislation (See '*Procedure for the disclosure of records under the Data Protection Legislation and Access to Health Records Act 1990*').
 - Public authorities should be allowed to discharge their functions effectively. The ICB will use the exemptions contained within the FOIA where an absolute exemption applies or a qualified exemption can be reasonably applied in terms of the public interest of disclosure (see Appendix 1 – Exemptions).
 - Colleagues should have access to advice to support their understanding of the FOIA.
11. Any colleague in BSW ICB may be approached and asked for information under this legislation. Section 16 of the FOIA states that public authorities have a duty to provide advice and assistance to applicants, therefore every ICB colleague has a legal duty to assist potential applicants in making a request.

Applications

12. Under the terms of the FOIA, applications must be written (letter, fax or e-mail). However, if a verbal request is received, ICB colleagues have a duty to advise that a written application must be made including full name and correspondence address (this can be an e-mail address). Colleagues must also inform the applicant of the e-mail and postal addresses for the FOI team (see below). Ideally FOI applications should come in via the FOI mailbox: bswicb.foi@nhs.net .
13. Written requests may come from any source and be directed to any department or colleague. If the request for information is not classified as a complaint, solicitor's letter, request for access to personal records, or anything that can be classed as 'business as usual', it should be considered as a possible FOI application and forwarded by e-mail to:
E-mail: scwcsu.foi@nhs.net
Freedom of Information Team
NHS South, Central and West Commissioning Support Unit
14. The FOI team will follow the relevant processes for handling requests as set out in Appendix 2: *"Procedure following receipt of an enquiry made under the Freedom of Information Act 2000"*.
15. Any colleague receiving an application/request for information is expected to follow the process for handling requests. Guidance for colleagues is set out in Procedure for handling Freedom of Information enquiries (Appendix 4).
16. The FOIA gives a right of access that is not based on 'need to know' and therefore the ICB does not have the right to question an applicant on the reason for or purpose of their request. The ICB can, however, request that the applicant provides further detail or clarification to define a vague or broad request.

Timescales

17. The FOIA requires that requests are responded to by the twentieth working day following the date of receipt. If the ICB decides to apply an exemption (see Appendix 1: *"Exemptions"*) to withhold information, the applicant will be informed within 20 working days. The 20 working day timescale may be extended only if the ICB:
 - requests further clarification relating to the enquiry from the applicant, in which case the 20 working day deadline restarts from the beginning once a reply is received;
 - advises the applicant it is unable to complete the request within the 20 working days and a revised timescale is agreed between the applicant and the ICB;
 - issues a fees notice: the statutory timescale is suspended until payment is received;
 - considers a qualified exemption applies, in which case, in exceptional circumstances, the response time may be extended by 20 working days to consider the Public Interest Test.

Charging and fees

18. In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, the ICB will not charge for information that costs less than £450 to provide, calculated at a rate of £25 per person per hour regardless of grade. The ICB will normally refuse the request where it would cost more than £450 to provide. Only in exceptional circumstances will the ICB proceed and charge a fee. The table below illustrates what activities will and will not be included in this calculation:

Activities Included	Activities Not Included
Determining whether the requested information is held	Checking that the request is valid
Locating the information	Considering whether the request is repeated or vexatious
Retrieving the information	Considering whether the information may be exempt
Extracting the information	Obtaining authorisation to send out the information
	Calculating any fee to be charged
	Providing advice and assistance
	Redacting information

19. Additionally, where the ICB considers it appropriate to continue and charge a fee, it will also consider the additional charge for administration costs or disbursements i.e. photocopying, printing or postage.

20. Where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, the ICB will aggregate the requests and consider charging in accordance with the fees regulations.

21. If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the application will be closed.

Exemptions

22. There are two types of class exemption:

- Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- Qualified, by the public interest test, which requires the public body to decide whether it is in the balance of public interest not to disclose information.

23. With the exception of section 21 (information available by other means) absolute 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.

24. Where a qualified exemption is thought appropriate, requiring the consideration of the Public Interest Test (PIT), this will be agreed between the colleague(s)/department(s) holding the information and the FOI team. Final approval of the PIT will rest with the ICB's FOI Lead.
25. Information regarding exemptions can be found in Appendix 1.
26. BSW ICB will not facilitate requests from applicants if that request could be considered vexatious or repeated. This will be identified by monitoring data. Please refer to the ICB Management of Vexatious Applicants Policy for further information.

Responding to a request

27. A response to an FOI application is effectively a provision of information to the general public and not to one individual as the ICB will not be able to control any onward distribution of the information. The ICB has an obligation to maintain patient confidentiality under the Data Protection Legislation. Therefore, the ICB will generally adhere to guidance provided by the 'Code of Practice for Official Statistics' (UK Statistics Authority) and advice on using low data and maintaining confidentiality from the Association of Public Health Observatories, generally suppressing data with counts of less than five or in some cases less than ten.
28. Information will be provided in the applicant's preferred format (so far as this is reasonably practicable). The ICB will notify the applicant of the reasons if it considers it is not practicable to comply. For specialist formats a charge may be applied.
29. BSW ICB (via the SCW FOI team) will log all requests via a database. This will be regularly reviewed to determine the type of request received and the originator. Information that is regularly requested will be considered for routine publication in the publication scheme.
30. By making information routinely available the ICB will be able to proactively meet the public's information needs and reduce requests made under the FOIA.

Public sector contracts

31. Contracts entered into by the ICB will not include contractual terms that restrict the disclosure of information held by the ICB, beyond the restrictions permitted by the FOIA, unless an exemption provided for under the FOIA is applicable. All contracts entered into by the ICB will include appropriate FOI clauses to ensure that both parties are aware of their responsibilities under the FOIA.
32. When entering into contracts, the ICB may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the ICB will reject such clauses wherever possible.

33. In exceptional circumstances, where it is necessary to include non-disclosure provisions in a contract, the ICB will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. The ICB will take care when drawing up any such schedule and will be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the FOIA. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the ICO.
34. The ICB will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption would only apply if disclosure of the information would constitute a breach of confidence actionable by that, or any other person.
35. BSW ICB 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 the ICB's functions and it would not otherwise be provided.

Consultation with third parties

36. BSW ICB recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes 'personal data' within the meaning of the data protection legislation. Unless an exemption provided for in the legislation applies in relation to any particular information, the ICB will be obliged to disclose information held in response to a request.
37. Where a disclosure of information cannot be made without the consent of a third party (for example where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of the confidence such that the exemption at section 41 of the FOIA would apply), the ICB will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting with them would be disproportionate. In such cases, the ICB will consider and record the most reasonable course of action for it to take in light of the requirements of the FOIA and the individual circumstances of the request. Where the interests of the third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.
38. Where information constitutes 'personal data' within the meaning of the Data Protection legislation, the ICB will have regard to section 40 of the FOIA, which makes detailed provision for such cases and an absolute exemption may be applied. The ICB will generally not release the names and direct contract details (including emails) of ICB colleagues graded below Agenda for Change Band 8a.

39. The fact that the third party has not responded to consultation does not relieve the ICB of its duty to disclose information under the FOIA, or its duty to reply within the required time frame. In all cases, it is for the ICB, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the FOIA. A refusal to consent to disclosure by a third party does not, in itself, mean that information should be withheld. It may be necessary for the third party to seek an injunction to prevent the documentation from being released.

Transferring applications and requests

40. An application/request can only be transferred where the ICB receives a request for information which it does not hold, within the meaning of section 3(2) of the FOIA, but which it believes is held by another public authority.

41. The ICB recognises that 'holding' information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the FOIA).

42. Upon receiving the initial request for information, the ICB will process it in accordance with the FOIA. The ICB will advise the applicant where it does not hold all or part of the requested information. Prior to doing this, the ICB must be certain as to the extent of the information relating to the request that it holds.

43. If the ICB believes that some or all of the information requested is held by another public authority, the organisation will consider what would be the most helpful way of assisting the applicant with his or her request. This will generally involve either transferring the applicant to that organisation having once gained their approval to do so **or** responding to the applicant suggesting that they contact the other public authority themselves. BSW ICB will generally respond to the applicant suggesting that they contact the other public authority themselves and will not normally transfer an application.

44. Where the ICB is unable either to advise the applicant whether it holds or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable them to pursue their request.

Re-use and copyright

45. If there are concerns about information reaching a wider audience, without contextual or additional briefing, then BSW ICB may indicate that the information is being supplied only for the use of the initial applicant and cannot be re-used or reproduced in any format, or relayed on to other people, without the organisation's consent. ICB information supplied under the FOIA continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988.

46. Other forms of re-use, for example publishing the information, would need the permission of the organisation or person who owns the copyright. Information produced by government departments and agencies can be re-used under the Open Government Licence. Advice about this can be found via: <http://www.nationalarchives.gov.uk/doc/open-government-licence/opengovernment-licence.htm>. If, however, the copyright is identified as belonging to somebody else, then permission will need to be applied for. Information about how to obtain permission from a third party can be found on the Intellectual Property Office's website at: <http://www.ipo.gov.uk/>.
47. Publishing information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2005 and will require ICB permission and possibly a fee.

Complaints and requests for internal review

48. BSW ICB will deal with complaints and requests for internal review to ensure that the requirements of the FOIA and EIRs are met (Appendix 3: "*Complaints / Review Process*").

Records management

49. BSW ICB has a Records Management Policy that meets the requirements of the Code of Practice issued under Section 46 of the FOIA. Together with the records management function this will serve to ensure that effective management is undertaken within the organisation, thereby enabling the speedy location and retrieval of requested information.
50. Although by its nature, e-mail seems to be less formal than other written communication, the same laws apply. Therefore, it is important that ICB colleagues are aware of the legal risks of e-mail. An e-mail is an electronic record; a printed copy of an e-mail is a hard copy record. Information contained in an e-mail may be disclosed either in part or in whole to the public through the FOIA and whilst exemptions exist, the ICB will not be able to guarantee confidentiality of correspondence conducted by e-mail.
51. Colleagues should be aware that under no circumstances should they deliberately alter, deface, block, erase or destroy information which is subject to an application in order to prevent its release. Doing so is a criminal offence under the FOIA and EIR, for which colleagues could be held individually responsible.
52. Outside the period of an FOI application, normal retention rules must be applied as detailed in the Retention and Disposal Schedule.

ROLES & RESPONSIBILITIES

53. **BSW Accountable Officer**

The organisation's Accountable Officer has overall accountability for adherence to the FOIA. The Accountable Officer is the ICB Chief Executive. All public authorities in England, Wales and Northern Ireland are covered by the FOIA. In addition, any company that is wholly owned by a public authority is also covered by the FOIA.

54. BSW Senior Information Risk Officer

The ICB Senior Information Risk Owner (SIRO) is responsible for providing leadership on the management of Information Governance including Freedom of Information Applications.

55. BSW ICB FOI Lead

Within the ICB there will be one or more designated individuals with responsibility for approving FOI responses prepared by the SCWCSU. The ICB FOI Lead will also be involved as an escalation point where ICB colleagues fail to respond within designated time scales or have questions regarding the information to be released.

The ICB FOI Lead is responsible, with support from the FOI team, for the oversight and final approval of any complaints, or requests for internal review received under the FOIA (see Appendix 3: "Complaints / Review Process").

56. NHS South, Central and West Commissioning Support Unit Freedom of Information Team

SCW's Freedom of Information Team provide expert advice and manage the procedure for the response to FOI applications, under contract to the ICB. It serves to ensure that legislation is appropriately and effectively implemented. Quarterly and Year-end FOI reports will be provided to the ICB's Information Governance Steering Group by the SCW's FOI Team.

57. Information Asset Owners

The ICB SIRO is supported by Information Asset Owners (IAO). The role of IAO is to understand what information is held, what is added and what is removed, who has access and why, in their own area. As a result they are able and expected to facilitate the response to FOI applications.

58. Line Managers

All line managers should ensure their team members are aware of the obligations under the FOIA and related legislation, of the rights of individuals making requests under the FOIA and of the process for dealing with requests under the FOIA.

59. Colleagues

By law, all colleagues are responsible for any requests they receive. Therefore, it is the responsibility of all colleagues to be aware of both their individual obligations and those of the ICB under the FOIA and related legislation. These may involve locating, retrieving and extracting (including editing and redacting) the information requested. Colleagues should also have knowledge of the rights of individuals making requests under the FOIA and of the process for dealing with requests. Colleagues will be expected to respond to the SCW CSU FOI Team within stipulated time frames.

TRAINING

60. There is no specific mandatory training for FOI, however, all colleagues are required to complete the NHS Data Security Awareness Level 1 training provided by NHS Digital via the e-LfH platform, accessible through ConsultOD on an annual basis. Managers and the BSW Information Governance Steering Group are responsible for monitoring colleague compliance.
61. Guidance for colleagues is set out in the '*Procedure for handling Freedom of Information enquiries*' (Appendix 4).
62. Teams and individuals may be invited to attend face-to-face FOI training on an ad-hoc basis.

EQUALITY IMPACT ASSESSMENT

63. An Equality Impact Assessment (EIA) has been completed for this policy and no significant issues were identified.

MONITORING EFFECTIVENESS

64. The BSW Information Governance Steering Group (IGSG) will receive the Quarterly and Annual FOI report detailing compliance and reports of any Information Commissioner's Office (ICO) enquiries. SIRO will determine actions to mitigate any shortcomings identified.
65. This policy includes an Evaluation Standard (Appendix 6) for use by IAO and/or local managers as a quick check of local understanding and compliance.

REVIEW

66. This document is reviewed every three years unless organisational changes, legislation or guidance prompt an earlier review. Recurrent instances of non-compliance will be investigated to ascertain the source of non-compliance. If it is found that the policy itself is a source of non-compliance, e.g. is not sufficiently clear, this will also trigger a review.

REFERENCES AND LINKS TO OTHER DOCUMENTS

Legislation

This includes:

- The Freedom of Information (FOI) Act 2000;
- The Environmental Information Regulations (EIR) 2004;
- the General Data Protection Regulations (GDPR);
- the Data Protection Act (DPA) 2018;
- the Access to Health Records Act (AHRA) 1990;
- the Law Enforcement Directive (Directive (EU) 2016/680) (LED) and any applicable national Laws implementing them as amended from time to time;
- all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations.

Guidance

- [ICO Guidance](#)
- [NHS Digital looking after your information](#)
- [Records management: Code of Practice for Health & Social care](#)
- [Confidentiality: NHS Code of Practice - Publications - Inside Government - GOV.UK](#)
- [Confidentiality: NHS Code of Practice - supplementary guidance](#)
- [GMC guidance for managing and protecting personal information](#)

Other documents

Document title
Information Governance Framework
Individual Rights Policy
Confidentiality and Safe Haven Policy
Management of Vexatious Applicants Policy

APPENDICES

APPENDIX 1 EXEMPTIONS UNDER PART II OF THE FOIA 2000

There are two types of class exemption:

- Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest not to disclose information.

With the exception of section 21 (information available by other means) absolute 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 FOIA 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 – Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject. Any information to which a request for information relates is also exempt information if it constitutes personal data relating to a third party and meets one of the following conditions: <u>Condition 1</u> a) the disclosure of the information to a member of the public would contravene any of the data protection principles or b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded. <u>Condition 2</u> It is also exempt if the disclosure of the information to a member of the public would contravene Article 21 of the GDPR (general processing: right to object to processing).

	<p>Condition 3</p> <p>a) it is also exempt if the information was requested under Article 15(1) of the GDPR (general processing: right of access by the data subject) but would be withheld in reliance on a relevant provision in the Data Protection Act 2018</p> <p>b) It is also exempt if the information was requested under section 45(1)(b) of the GDPR (law enforcement processing: right of access by the data subject) and it would be withheld in reliance on subsection (4) of that section.</p>
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 ICB.
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 would prejudice the economic interest of the UK or of any administration in 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 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 in 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 Trust conducts its public affairs.
Section 37	Communications with Her Majesty, with other members of the Royal Household, and the conferring by the Crown of any honour or dignity.
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 of any person or organisation.

APPENDIX 2 PROCEDURE FOLLOWING RECEIPT OF AN ENQUIRY MADE UNDER FOIA 2000

Summary of Key Actions and Timescales

Timescale	Action	SCW FOI Team Actions
Note: the 20 working day clock starts the day after the enquiry is received		
Day 0	Request received into ICB via e-mail or post (FOI Mailbox bswicb.foi@nhs.net)	
Immediately	If received by colleague or alternative mailbox to the FOI mailbox – forwarded to SCW FOI team via: scwcsu.foi@nhs.net If postal request, scan and email to the ICB FOI Inbox.	
Within 3 working days	Request acknowledged by SCW FOI team and response date provided to applicant	<p>The FOI team:</p> <ul style="list-style-type: none"> Keeps applicant informed of progress. Provides advice/assistance if required. Requests clarification. Decides if a fee/charge is applicable and discusses with ICB FOI Lead. Decides if request can be met within applicable limits set in Fees Regulations. Considers if information is exempt. Decides if request is repeated/vexatious.
	Request for Information (RFI) with deadline for receipt of response information sent directly to the relevant ICB colleague(s) from a contact list. Where SCW colleague identified as more appropriate to assist with response, RFI sent directly to SCW colleague.	
Within 10 working days	Information located and provided by colleagues/SCW colleague and returned to SCW FOI Team	<p>The FOI team:</p> <ul style="list-style-type: none"> Will consider the applicant's preferences regarding response format. Will show the draft response to a qualified person where an exemption is required.
10 th working day	Information not received, a reminder is sent to the appropriate person	
15th working day	1 st breach warning sent to appropriate person and any agreed escalation manager	

18th working day	Final breach warning sent to appropriate person and any agreed escalation manager	<ul style="list-style-type: none"> • Will provide advice/assistance in the event of the applicant being unable or unwilling to pay the fee/charge. • Will write any exemption. • Will notify applicant if the request is refused for any other reason.
Before the 20 th working day	Final response sent to ICB FOI Lead for approval	
Within 20 working days	Response sent to applicant	
Within 40 working days	If complex public interest test was considered, response sent to applicant.	
If a request for clarification is made to the applicant then the 20 working day clock stops and restarts from the beginning once the information required is received by the ICB.		
If a fee or charge is applicable to the information requested and the ICB has agreed, a Fees Notice/notification of a charge will be issued. The 20 working day timescale is suspended until the fee/charge is paid.		
Additional time to respond can be requested from the applicant if the information is difficult to retrieve. This will only occur in exceptional circumstances.		

Processing Requests for Information

Receipt of a Request

Once the SCW FOI team receives an applicant's request, the following information will be recorded on the FOI database:

- Request Identifier
- Date received by the ICB
- Name of applicant and organisation, if known
- Information requested
- Due date for response and closure of application.

The FOI team will respond to the applicant by email within two working days to inform the applicant that the request has been received and is being processed. A record of this contact will be kept.

If the FOI team has sufficient information to ask the ICB to respond to the request, they will inform the applicant in the acknowledgement that their request will be processed within 20 working days.

The FOI team will also inform the applicant in writing of any fees or charges, if known, that are payable for the provision of the information and that no information will be provided unless the fee or charge is paid within three months. With regard to the general right of access from the 1 January 2005, this will constitute the issue of a 'Fees Notice' as described in section 9 of the FOIA. Charges and fees are addressed in Section 4.8.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the application will be closed.

If the applicant has not provided sufficient information for the request to be processed, the FOI team will contact the applicant for clarification; if further clarification is not received within three months from the day on which the applicant is sent the request for clarification the enquiry will be closed. The 20 working day clock restarts from the beginning once clarification is received and the enquirer will be informed of the new due date for the response to their request.

In accordance with sections 12 and 13 of the FOIA, if the FOI team estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations (Section 4.8), and this has been agreed with the ICB, they will notify the applicant in writing of the estimated cost. Under the FOI guidelines to advise and assist, the FOI Manager will discuss with the applicant ways of bringing costs within appropriate limits. If it is not possible to comply with the request within appropriate limits, the FOI will be rejected or, in exceptional circumstances, a Fees Notice will be issued.

If the FOI team believes that any of the information requested is exempt from disclosure under Part II of the Act, the applicant will be advised referencing the appropriate exemption. This includes circumstances where the information is available from another source other than the ICB, unless that source is a public authority, in which case the request may be transferred to that authority.

If a qualified exemption requiring consideration of the Public Interest Test is under consideration, and might delay the response, the FOI team will advise the applicant of an extension of the time for response, the reason and an estimated date for final decision.

If the FOI team has evidence to demonstrate that the request is vexatious or repeated, as defined under section 14 of the Act, the request will be refused having referred this to the ICB FOI Lead.

Accessing the Information

The FOI team will either identify who within SCW holds the information the applicant has requested or will ask the ICB to do so from the colleagues within the organisation. Within two working days, the person(s) in either the ICB or the SCW who are most appropriately placed to meet the requirements of the applicant will be identified and contacted. The FOI team will keep a record of this contact.

Upon receipt of an information request, colleagues will be asked to respond within 10 working days and to locate and provide the information requested to the FOI team. If it is not possible to meet this deadline, the FOI team must be informed immediately; up to five additional working days may then be allowed to comply with the initial request; a record of these contacts will be kept. The requested information will be forwarded to the FOI team who will review it in respect of any exemptions and/or fees payable. If exemptions are applicable, the applicant will be advised in the final response. If fees are payable the applicant will be issued with a Fees Notice.

If the FOI team feels that releasing particular information under the general rights of access could be contentious, the matter will be discussed with the ICB. The ICB will make a decision to release or deny access to the contentious information within the required time frame for responding to requests. If it is not possible to meet this timeframe the FOI team will contact the applicant to agree an extension. The FOI team will ensure that the applicant is kept informed as to the progress of their request.

Providing the Information

If no fees or charges are either payable or outstanding, and if no exemptions are applicable, the FOI team will provide the information requested directly to the applicant, generally by email.

Information will be provided to applicants by any one or more of the following means, namely:

- as a copy of the information in permanent form (i.e. PDF) or another form acceptable to the applicant
- through the provision of a reasonable opportunity to inspect a record containing the information
- the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The FOI team will consider all the circumstances of the request for the release of information by a particular means, including the cost of doing so. If the FOI team determines that it is not reasonably practicable to comply with any preference for the provision of the information as requested by the applicant, they will notify the applicant of the reasons for this. The information will then be provided by such means as the FOI team deems to be reasonable. In the discharge of this function, the FOI team will have regard to other statutory obligations upon the ICB such as those established under the Disability Discrimination Act 1995.

The FOI team will record within the FOI database:

- the date upon which the information was provided to the applicant
- any exemptions used.

Refusal of Requests

A refusal of a request may apply to all the information requested by an applicant or a part thereof.

A request for information may be refused if:

- the information is exempt from disclosure under Part II of the Act
- a fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant or the applicant was notified of the charge
- the cost of compliance exceeds the appropriate limit
- the request is demonstrably vexatious or repeated.

If the FOI team chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within 20 working days. The applicant will also be informed of the ICB's complaints procedures and of their right to appeal to the Information Commissioner (Appendix 3).

If the FOI team is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information, a notice will be issued within 20 working days under section 17 of the Act. The notice will:

- state that fact
- specify the exemption in question
- state (if not otherwise apparent) why the exemption applies

If the FOI team anticipates that it will take more than 20 working days to reach a decision as to whether any part of the information requested by the applicant is exempt under Part II of the Act, the applicant will be notified. A realistic and reasonable estimate of the date that a decision will be reached will be given and compliance expected unless there are extenuating circumstances.

If an estimate is exceeded, the applicant will be given the reason(s) for delay and offered an apology. If the FOI team finds, whilst considering the public interest, that the estimate is proving unrealistic, the applicant will be informed.

If a qualified exemption is being applied, the FOI team will, either in the notice issued above or a separate notice given within a reasonable timescale, 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 ICB holds the information, or
- that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement will not involve the disclosure of information which would itself be exempt information.

If the FOI team believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit, or the request is demonstrably repeated or vexatious, the notice will state that fact. If the ICB is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

The FOI team will keep records of all notices issued to refuse requests for information.

When implementing this procedure, the FOI team will seek advice from those person(s) who hold the information that the applicant has requested and from senior colleagues (SCW and ICB).

APPENDIX 3 COMPLAINTS / REVIEW PROCESS

The right to appeal

The right to appeal is a fundamental part of the Freedom of Information Act and the Environmental Information Regulations. This right can be exercised in two ways: by an internal review using the ICB's procedures and by an external appeal to the regulatory body.

An applicant can make a complaint or request a review regarding any of the following:

- a refusal of a request for information under FOI Act or EIR
- dissatisfaction with a response to a request
- the ICB FOI and EIR policy
- non-compliance with the Publication Scheme

The ICB has one internal appeals process covering both Freedom of Information and Environmental Information requests, this gives dissatisfied applicants the opportunity for an initial review of how their request for information was handled. Having gone through this process, applicants who are still unhappy can complain to the Information Commissioner and the appeal will be dealt with according to the Commissioner's procedures.

Formal requests for an internal review

Applicants who are dissatisfied with the response that they have received to their request are advised within the response to write to the ICB via the FOI team. A request may also be received via the ICB Complaints and PALS Team.

The ICB will:

- acknowledge the complaint within two working days
- review the procedure and the handling of the request in conjunction with the FOIA and EIR
- ensure that, normally, the review will be under the control and direction of a senior ICB colleague who had no involvement in the original process or decision
- make a fresh decision on consideration of all the factors relevant to the issue
- aim to provide a full response within 20 working days; if for any reason the ICB is unable to meet this target the applicant will be kept informed of the progress of their 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.

If the applicant is dissatisfied with the outcome of the re-evaluation, they have the right to refer their complaint to the Information Commissioner.

The ICO will investigate the case and may serve the ICB with an Information Notice specifying information which the Commissioner needs the organisation to provide to be able to make a determination. The Commissioner's judgment upholding or rejecting the complaint will eventually be published as a Decision Notice. If the complaint is upheld in whole or part, the Decision Notice may require the ICB to release information to the applicant which had previously been withheld or not provided.

The ICB and the applicant have the right to appeal the Commissioner's decision to the Information Tribunal. Decisions of the Tribunal can then be appealed to the courts on points of law.

APPENDIX 4 COLLEAGUE PROCEDURE FOR HANDLING FREEDOM OF INFORMATION ENQUIRIES

1. Introduction

Any ICB colleague may be approached and asked for information under this legislation. Section 16 of the Freedom of Information Act (FOIA) states that public authorities have a duty to provide advice and assistance to applicants, therefore every colleague has a legal duty to assist someone in making a request.

2. Verbal requests

Under the terms of the FOIA, applications must be written (letter, fax or e-mail), however, if a verbal request is received, ICB colleagues have a duty to advise and assist:

- the information requested may be in the Publication Scheme
- requests must be written (letter, fax or e-mail) to the address in Section 3 and include a full name and correspondence address (this can be an e-mail address)
- there are a number of exemptions under the FOIA under which the ICB may not be obliged to provide the information requested
- a fee may be charged, depending on the type and size of request.

3. Written requests

Written requests may come from any source and will usually come into the ICB FOI mailbox bswicb.foi@nhs.net but may be received by any colleague. If the request for information is not classified as a complaint, solicitor's letter or request for access to personal records it should be considered as a possible Freedom of Information enquiry, which should be scanned and forwarded to:

E-mail: scwcsu.foi@nhs.net

Freedom of Information Team

NHS South, Central and West Commissioning Support Unit

The FOIA gives a right of access that is not based on 'need to know' and therefore the ICB does not have the right to ask the purpose of the request and will remain blind to the name of the applicant. The ICB can request further detail or clarification if a request is vague or broad.

4. Requests for Information received by ICB colleagues

Any colleague receiving a request for information is expected to follow this process for handling requests, regardless of whether this is for information contained within the publication scheme or not.

5. Requests for Information Received by SCW FOI team

The SCW FOI team will follow the relevant process for handling requests as set out in Appendix 2 of the FOI Policy: '*Procedure following receipt of an enquiry made under the Freedom of Information Act 2000*' and will ensure that the ICB receives timely notification of receipt.

6. Timescales

The FOIA requires that requests are responded to by the twentieth working day following the date of receipt and the SCW FOI team will work to this timeframe.

If the ICB decides to apply a condition or exemption (see Appendix 1 of the FOI Policy: “*Exemptions*”) to withhold information, the applicant will be informed within 20 working days.

The 20 working day timescale may be extended only in specific and limited circumstances.

7. Public Interest Test

Where a qualified exemption is considered a Public Interest Test (PIT) will be undertaken between the persons/departments holding the information and the SCW FOI team. Final approval of the PIT (as part of the overall response as necessary) will rest with the ICB’s FOI Lead Officer with advice from the SCW Senior FOI Manager. The ICB may extend the timescale for response by up to 20 working days if necessary and will advise the applicant in this circumstance via the FOI team.

8. Charging and Fees

In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, the ICB will not charge for information that costs less than £450 to provide, calculated at a rate of £25 per person per hour regardless of grade. The ICB will normally refuse the request where it would cost more than £450 to provide. Only in exceptional circumstances will the ICB proceed and charge a fee.

Where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, the ICB will aggregate the requests and may charge in accordance with the fees regulations.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed.

9. Complaints / Reviews

Complaints and requests for review will be directed to the ICB FOI Lead and will be handled on behalf of the ICB by the SCW FOI team, to ensure that the requirements of the FOIA and EIRs are met (see Appendix 3 of the FOI Policy: “*Complaints / Review Process*”).

10. Information Format

Information will be provided in the applicant’s preferred format (so far as this is reasonably practicable). The ICB will notify the applicant, via the SCW FOI team, of the reasons if it considers it is not practicable to comply.

11. Vexatious or Repeated requests

The ICB will not facilitate requests from applicants if that request could be considered vexatious or repeated.

APPENDIX 5 ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

An EIR request may be made verbally as well as in writing and will be a request for environmental information if it is information in written, visual, aural, electronic or any other material form on:

- the state of the elements of the environment – e.g. air, atmosphere, water, soil, land, landscape and natural sites such as wetlands, coastal and marine areas, biological diversity and the interaction of these elements;
- factors affecting (or likely to affect) the environment – including energy, noise, radiation, waste, emissions, discharges and other releases into the environment;
- measures – such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to above;
- reports – on the implementation of environmental legislation;
- economic analyses – including cost benefit and other analyses and assumptions used within the framework of measures and activities referred to in (c); and f) the state of human health and safety – including the contamination of the food chain, conditions of human life, cultural sites and built structures insofar as they are or may be affected by the state of the elements of the environment.

Under the EIR, information is held by the ICB if it has been produced or received by it; is held by another person on its behalf; or is information which the ICB holds on behalf of a third party. EIR applications will be processed following the same procedure as FOI enquiries.

The EIR places various rights and duties on public authorities which include:

- a duty to actively disseminate environmental information
- a duty to make information available on request. Information requests must be answered within 20 working days, unless the ICB reasonably believes that it is impracticable to answer the request in that timescale due to its complexity and volume, in which event the ICB may have 40 days in which to provide the information
- a duty to provide advice and assistance to applicants
- a right to charge for information provided. Under the EIR, there is no cost limit beyond which information requests need not be answered. The EIR states that a charge may not exceed 'an amount which the public authority is satisfied is a reasonable amount'.

Exceptions – Under the EIR there is an express presumption in favour of disclosure. However, the ICB can refuse to disclose the information if it would adversely affect the following matters:

- international relations, defence, national security or public safety;
- the course of justice, ability of a person to receive a fair trial or ability of a public authority to conduct a criminal or disciplinary inquiry;
- intellectual property rights;
- the confidentiality or proceedings of the organisation where such confidentiality is protected by law.

APPENDIX 6 EVALUATION STANDARD

Policy Name: Freedom of Information Act Policy

Standard statement

The ICB will ensure that all requests for information are identified and managed in line with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 to create a climate of openness and dialogue with all stakeholders and improve access to information about the activities of the ICB.

Criteria - Corporate

1. All applicants are sent an acknowledgement of their request(s).
2. All requests are responded to within the statutory timeframe of 20 working days.

Criteria - Departmental

3. All paper FOIA applications are stamped with the date of receipt, scanned and emailed to the scwcsu.foi@nhs.net within one working day to be processed by the FOI Team.
4. All emailed FOIA applications are immediately forwarded to the scwcsu.foi@nhs.net inbox to be processed by the FOI Team.
5. All document search requests received from the FOI Team by ICB colleagues are responded to within the stipulated time frame.
6. All colleagues have received appropriate training in line with the Training Needs Analysis (TNA).
7. All contracts will be reviewed to ensure they meet FOI requirements.

Conclusion

Please explain any discrepancies below:

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Please detail remedial action to prevent re-occurrence, giving details of monitoring arrangements to assess improvement:

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Date of assessment:	
Assessed by:	