NHS
Cornwall and
Isles of Scilly

Freedom of information policy

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1. Introduction

This sets out NHS Cornwall and Isles of Scilly (NHS COIS) freedom of information (FOI) policy. It supports greater openness and transparency about the organisation, our role in commissioning healthcare for Cornwall and Isles of Scilly, and our accountability for decision making in healthcare.

The policy sets out the steps to be followed to ensure compliance with requests for information under the provisions of the Freedom of Information Act. This policy covers all records created or held, both electronically and on paper.

2. Purpose

The policy has been developed to ensure compliance with the Freedom of Information Act 2000. It strengthens procedures and activities arising from the act and is designed to inform employees and the wider public of our response to the act.

3. Definitions

Freedom of information is the right of any person to make a request for information to a public authority. They are entitled to be informed by the public authority whether it holds information requested, and to have the information communicated to them.
Applicant refers to the individual making a request for information to the public body
Disclosure is the information given to the applicant in response to their request.
Public interest test is a requirement for some exemptions to resolve if information should be provided.

4. Responsibilities

NHS COIS is a public body and as such all employees are responsible for responding to requests for information. All staff are also responsible for the records they create and for adhering to the records management and information governance policies and processes.

The FOI team is responsible for:

- the administrative process
- compiling and collating responses
- reporting and audit of responses
- ensuring compliance with the Information Commissioner Team's (ICO) guidance and advice
- reviewing this policy

Directors and line managers are responsible for ensuring staff are made aware of freedom of information and are working to this policy. They are also responsible for approving responses for subject matter within their portfolio.

The senior information risk owner has responsibility for freedom of information compliance for the organisation.

5. Publication Scheme

An important part of NHS COIS' responsibility under the FOI act is to have a publication scheme which is compliant with the Information Commissioner's model publication scheme. This sets out the information public authorities should publish as a matter of course. NHS CIOS will publish information through its website about the organisation, in line with the model publication scheme.

The website is frequently reviewed and updated to ensure that relevant and accurate information is published. When NHS CIOS is unable to publish information this way, or if an applicant would prefer to view information using a different format, the FOI team will inform an applicant how this can be provided.

NHS CIOS has a disclosure log; this has details of previous requests and the responses provided and is updated on a regular basis.

6. Records Management

NHS CIOS adheres to the NHS records management code of practice, and FOI records are retained within line with this code of practice. This policy promotes the successful implementation of NHS CIOS records management policy to ensure that NHS CIOS can account for the actions and decisions it makes under the FOIA.

Employees of NHS CIOS are not expected to keep records relating to FOIs as these are retained by the FOI team and will be disposed of at the end of the retention period. FOI records are kept for 3 years from the date of creation unless a review has been requested when the records must be retained for 10 years.

7. How to make a Freedom of Information request

A freedom of information request must be submitted in writing. This can be by email to kccg.foi@nhs.net or by post to our head office. A request must contain the name and contact address of the applicant and a clear description of the information being requested. There is no requirement for someone to state the reason they are requesting the information. Applicants do not have to mention the Freedom of Information Act for their request to be treated under the act.

Under the act verbal requests for information do not have to be considered. However, the FOI team will assist anyone who wishes to make a request of NHS CIOS. For people who are unable to read and write, or for whom English is not their first language, all reasonable steps will be taken to enable them to make their request.

The applicant will be informed in writing whether NHS CIOS holds the information and if NHS CIOS does hold the information, the applicant will be provided with the information, unless an exemption applies. If an exemption applies this will be explained.

NHS CIOS will make a preliminary assessment to determine if the request falls under:

- the Freedom of Information Act 2000
- the Environmental Information Regulations 2004
- other available legislation or business as usual

If the request falls outside of the act, then advice and guidance will be given to support the individual.

Timescale for responses

All requests will be answered within 20 working days. The act does not allow extra time for searching for information. No extensions will be given to teams to provide the information. NHS CIOS can extend the 20 working day limit when it requires more time to decide whether providing the information is in public interest. NHS CIOS will inform the applicant within the original 20 working day timescale of the need to extend the deadline because of these circumstances.

Teams who hold the information are given 15 working days to provide what is requested, leaving 5 working days for the FOI team to collate the information and organise service lead and director approval. If employees are contacted regarding a FOI request and do not hold the information, they should inform the FOI team at the earliest opportunity to allow a response to be redirected.

Acknowledging a request for information

All FOIs will be acknowledged within 3 working days by the FOI team. If the request is not clear the team will contact the individual to clarify the question. They will offer examples of how the question could be interpreted and answered and provide suggestions to help the individual.

The 20 working-day time limit for responding is reset once clarification has been received from the applicant. If the applicant does not respond with clarification within one month, the request will be closed. The applicant will be advised that the request has been closed but they can submit a new, clarified request at any time. If a request for information contains information about different subjects, these should be separated into different requests and acknowledged separately.

If there are 3 or more requests from different people relating to the same subject, the communications team will be informed. The communications team will also be informed if there are requests from the media which may require their input.

If a request is for information relating to the environment (including air, water, soil, land, flora and fauna, genetically modified organisms, emission and discharges, noise, energy, radiation, waste and human health and safety) it will be dealt with under the Environmental Information Regulations (EIR). Please note that requests for environmental information do not have to be in writing so if staff receive any phone calls asking for such information, please make a note and inform the FOI Team. The deadline for response is also 20 working days.

How NHS CIOS processes requests

Each request is logged onto a FOI electronic database system, this generates a reference number and a deadline. Each stage of the process is tracked as a means of managing the request. This allows progress to be monitored and reports to be produced as required.

The request will be acknowledged within 3 working days. An email folder is created with the reference number for the request and all correspondence relating to the request is filed within the folder. FOI records are kept for 3 years from the date of creation unless a review has been requested when the records must be retained for 10 years.

NHS CIOS will always seek to answer FOI requests as quickly as possible and no later than 20 working days. If a request for information is considered part of the usual course of business and is readily available and frequently released, this can be dealt with informally using professional judgement of the FOI team.

The FOI team carries out a check to see whether information is already in the public domain and if so, the response will make clear how this information can be accessed, providing a link to the relevant web page. This is in accordance with Section 21 – Information accessible to applicant by other means.

If the information is not already in the public domain, the FOI team will contact the relevant colleague who holds the information and ask them to draft a response.

The information holder is given 15 working days to collate their information into a draft response and return it to the FOI team. If they are not the correct person to contact, they should inform the FOI team as soon as possible for the request to be redirected to another team.

When the request requires information from multiple departments, it is the responsibility of the FOI team to coordinate the response. All pivot tables received must be checked for hidden data by double clicking on numbered cells. The FOI team will carry out a final check for this before sending the response.

If there are concerns about releasing the information requested, then a discussion will take place with the FOI Team about the exemptions available under the FOI act.

Staff must provide the information as they have it, and not create data or information to fulfil an FOI request. The act only covers information that is held by organisations. It is not appropriate to offer substitute or create information if NHS CIOS does not hold the information requested. NHS CIOS will only answer the question as it is asked.

If the information requires redacting, staff must provide the FOI team with clean, un-redacted copies in order to be compliant with section 77 of the freedom of information act as it is a criminal offence to alter records to prevent disclosure.

Redacting will be done with advanced software that cannot be undone. For additional security, documents can be printed and scanned back in prior to being sent but will usually be resaved as a pdf.

NHS CIOS employees are reminded to keep a proper disposal schedule for records which are deleted, so that a copy can be provided if an applicant asks for information that has been deleted. This helps ensure compliance with the act. If staff have any queries regarding freedom of information, they should contact the FOI team who will advise further.

Treating requests applicant blind

NHS CIOS considers FOI and EIR requests without reference to the identity or motives of the applicant. Rather the focus is on whether the information is held and able to be released.

Anyone can make a request for information regardless of who they are or where they live. There is no requirement for the applicant to disclose why they require the information or provide a justification for their request.

NHS CIOS will refer to the ICOs latest guidance on identity when considering the need to be made aware of the identity of the applicant. Requests for information are processed blind through the organisation so as not to prejudice disclosure.

8. Disclosure

The FOI team will work with the information holder to determine if the request can be fulfilled within the costs permitted by the act. This is equal to one person working two and a half days or 18 hours. If the estimated time to fulfil the request exceeds this, the FOI team will explain that this information is exempt under section 12 of the freedom of information act. The applicant will be provided with the option of reducing the scope of their request to what could be provided within the time limit. NHS CIOS' does not charge for information requested under the freedom of information act.

The FOI team will work with the information holder should an exemption be applicable.

Once the information holder has provided the information for release, the FOI team will collate the information and covering letter and arrange for the relevant director to approve it prior to sending.

Any particularly complex or controversial issues may also need to be approved by the accountable officer as the qualified person.

If the applicant submits multiple requests relating to the same subject within a 60 working day period, the time spent collating these requests can be aggregated in line with section 12 of the Act.

If we do not hold the information but believe that another public body may hold the information NHS CIOS will advise the applicant to contact the correct public authority, providing a contact email address.

9. Non-disclosure

There are occasions when the information requested is not able to be disclosed. These are known as exemptions. Below are the common exemptions that can be engaged under the act with links to the full legal detail of the exemption. This is not intended to be a full list of all exemptions.

Absolute exemptions (no public interest test required):

Section 21 – Information accessible to applicant by other means. A link to the relevant webpage must be provided or information on how to access the information provided
Section 23 – Information supplied by or relating to bodies dealing with the security matters This may include emergency preparedness information.
Section 40 – Personal Information.
Section 41 – Information provided in confidence; this would need to be actionable if released.
Section 44 – Information prohibited from disclosure.

Qualified exemptions (these are subject to public interest test):

Section 22 – Information intended for future publication. Please note, this exemption does not exempt the release of drafts once the final has been published.
Section 36 – Prejudice to the effective conduct of public affairs. This exemption can only be applied if the qualified person thinks that the disclosure would have the specified effect. The qualified person in NHS CIOS is the most senior person in the organisation, the accountable team.
Section 38 – Health and safety.
Section 39 – Environmental information
Section 40 – Personal information.

Section 42 – Legal professional privilege. Employees are reminded that that legal advice is only exempt under section 42 of the act if it remains confidential between lawyer and client. Once this information is shared it then becomes releasable under FOI. It is important to establish who the client is, noting that this can be more than one person, but not usually an entire organisation.
Section 43 – Commercial interests. This only applies whilst the tendering process is current.

How an exemption applies must be fully explained in the response. For more information on how exemptions apply, please contact the FOI team.

Public interest test

A public interest test is held when a qualified exemption is to be used. The FOI manager will convene the panel. The panel for the public interest test (PIT) will include the FOI team, the information holder, someone arguing in favour of public interest (usually the FOI manager) and the responsible director or deputy director. The ICO expects our default position to be in favour of disclosure.

During a PIT, consideration must be given for all aspects of disclosure and notes kept by the FOI team. The guidance from the ICO will be followed to determine what should be considered as either for or against disclosure

When engaging the exemption in section 36 – prejudice to the effective conduct of public affairs, the qualified person will make the decision whether this exemption is applicable.

In the case of a request for information about a patient's care or information about themselves, the applicant should be advised to submit a subject access request under section 7 of the data protection act. These will be passed to the data protection team with the permission of the applicant.

10. Vexatious or repeated requests

NHS CIOS is not obliged to comply with repeated and vexatious requests for information, which may be the latest in a series of requests and likely to cause a disproportionate or unjustified level of disruption. Indicators for this as per the ICO's advice are as follows:

- Abusive or aggressive language.
- Burden on the authority.
- Personal grudges.
- Unreasonable persistence and/or unfounded accusation.
- A frequent or overlapping request.
- Deliberate intention to cause annoyance.

- Scattergun approach.
- Disproportionate effort.
- No obvious intent to obtain information.
- Futile requests and/or frivolous requests.

The ICO also states that the wider context and history of the request should be considered; a request in isolation may not be considered vexatious but when considered in context of a long line of requests that overlap may be part of a pattern of behaviour that makes it vexatious. It should be made clear that it is the request that is to be considered vexatious, never the applicant.

If a request has been answered NHS CIOS does not have to comply with another identical or substantially similar request from that applicant unless a 'reasonable' period has elapsed, in line with section 14(2) of the Freedom of Information Act.

11. Requests regarding third parties

If the information requested contains information provided by a third party, NHS CIOS has a clear commitment to consult with them prior to any decision being made on whether an exemption should be applied.

Contracted providers of NHS services are required to assist NHS CIOS to deal with requests for information under the Freedom of Information Act. This includes supporting NHS CIOS to make documents available in response to FOI requests, obtained through contracts with NHS CIOS, although companies are not themselves subject to Freedom of Information legislation. In these cases, NHS CIOS may use its judgement whether to release information without consent from the provider or information holder. NHS CIOS commits to informing providers if it intends to release information about them and other relevant legislation regarding confidentiality and commercial sensitivity will be upheld.

The latest NHS standard contracts are clear that providers must assist with FOI requests which involve them. The standard contract for 21/22 states 'The Provider acknowledges that the Commissioners are subject to the requirements of FOIA and EIR. The Provider must assist and co-operate with each Commissioner to enable it to comply with its disclosure obligations under FOIA and EIR'

The FOI team will refer to the full text of the relevant clause of the contract when considering requests for third party information.

12. Complaints and reviews

If an applicant is unhappy about the way their request was handled, in the first instance they will be encouraged to discuss this with the FOI team. If following this conversation, the issue is not resolved then they should request an internal review of the response.

An internal review will be carried out within 20 working days of receipt of the request. It will be carried out by an employee who has not been involved in the original request. The applicant will be kept fully informed during the internal review process and will be notified any delays. As part of this process, the investigator will decide if the complaint is upheld or not upheld and produce a report into the handling of the request and into the information disclosed.

The FOI manager will then put together all the information connected with the request, together with the relevant guidance from the Information Commissioner's Office and the Ministry of Justice and present the information to the relevant director to review and approve.

If further information is required to be sent to the applicant because of the review, this should be completed within 15 working days of the report being sent. If the applicant is not content with the outcome of their formal complaint or internal review, they may refer the matter to the Information Commissioner. Information about how to make a complaint or request an internal review will be included in the response provided to the applicant.

13. Re-using information

NHS CIOS allows the re-use of information provided under the Freedom of Information Act; this is permitted using the Open Government Licence (OGL). In accordance with the licence, NHS CIOS requires the source of the information reused to be acknowledged. NHS CIOS remains the copyright holder of all information provided.

14. Implementation plans and monitoring effectiveness

Annual reports are produced by the FOI team highlighting areas where there has been a lot of interest, months when there have been high levels of activity, average response times. This helps to build a picture of the communication received by the organisation.

Employees receive awareness training for Freedom of Information provisions as part of mandatory information governance training and it is part of the induction sessions offered corporately.

15. Update and review

This policy will be reviewed in three years or should any substantial changes be made to the existing Freedom of Information Act or guidance.

16. Policies referred to in this document

Freedom of Information Act

Public records act

NHS records management

Records management policy

Information governance policies

Environmental Information Regulations

NHS Standard contract

Appendix 1. Equality impact assessment

An equality impact assessment is used to establish how a policy or similar document may impact on individuals, communities, or equality groups to identify and minimise or remove any disproportionate impact.

Name of policy or service to be assessed: FOI policy
Department or section: Corporate governance
Date of assessment: June 2022
Person(s) responsible for the assessment: Jodeigh Phelps
Is this a new or existing policy? Existing

Aims, objectives and purpose of the policy

Describe the aims, objectives, and purpose of the policy.
This policy sets out the way in which NHS Cornwall and Isles of Scilly Integrated Care Board (NHS CIOS) handles Freedom of Information (FOI) requests. This includes responsibilities of staff. It aims to inform requestors how NHS CIOS will deal with requests made to the organisation. To inform staff of the FOI policy and process and to ensure the organisation is compliant with legal requirements.

Who is intended to benefit from this policy, and in what way?
All employees of NHS CIOS, those involved in the handling of requests and requestors in understanding how FOI requests will be handled.

What outcomes are wanted from this policy?
To ensure that all members of staff, service users, patients are clear regarding how FOI requests will be handled and reported.

What factors or forces could contribute or detract from the outcomes?
Awareness of the policy and the legal requirements respond to FOI requests.
Willingness of the FOI manager and officer to support staff with FOI requests.
Reluctance of staff to look for or provide information they may hold which may be due to concerns about use of information or time constraints.

Who are the main stakeholders in relation to the policy?
All staff of NHS CIOS and people making FOI requests.

Who implements the policy, and who is responsible for the policy?
The FOI requests manager.

Differential impacts

Does this have a positive or negative impact on people who have a black, Asian and minority ethnic (BAME) background? How will any negative impact be mitigated?
FOI requests may be received from all sections of society regardless of ethnicity. All requests are treated applicant blind.

Does this have a positive or negative impact on people who identify as male, female or intersex? How will any negative impact be mitigated?
FOI requests may be received from all sections of society regardless of gender. All requests are treated applicant blind.

What is the positive or negative differential impact on people from the perspective of disability? How will any negative impact be mitigated?
The law requires that FOI requests be made in writing. In order to meet the needs of those unable to put their request in writing, the policy outlines that verbal FOI requests may be made and agreed with the individual.

Does this have a positive or negative impact on people who identify as heterosexual, lesbian, gay, bisexual, pansexual or asexual? How will any negative impact be mitigated?
FOI requests may be received from all sections of society regardless of sexuality. All requests are treated applicant blind.

What is the positive or negative differential impact on people from the perspective of age? How will any negative impact be mitigated?
No anticipated impact.

What is the positive or negative differential impact on people from the perspective of religion or belief? How will any negative impact be mitigated?
No anticipated impact.

What is the positive or negative differential impact on people from the perspective of marriage and civil partnership? This is particularly relevant for employment policies. How will any negative impact be mitigated?
Not expected as marital status should not prevent an individual raising or responding to a request for information.

Does this have a positive or negative impact on people who identify as trans or transgender, non-binary, or gender fluid? How will any negative impact be mitigated?
No anticipate impact

Does this have a positive or negative impact on people who are pregnant, breast feeding mothers, or those on maternity leave? How will any negative impact be mitigated?
No anticipated impact.

Are they any other identified groups? How will any negative impact be mitigated?
None

Human rights values

How have the core human rights values of fairness, respect, equality, dignity, and autonomy been considered in the formulation of this policy, service, or strategy?
The FOI requests regulations are in line with the requirements of the Human Rights Act. This policy outlines how NHS CIOS puts the FOI requests regulations into practice. The values of fairness, respect, equality, dignity and autonomy underpin the contents of the FOI requests and compliments policy. These are especially relevant with regard to article 6, right to a fair trial.

Which of the human rights articles does this document impact?

☒ To life
☐ Not to be tortured or treated in an inhuman or degrading way
☒ To liberty and security
☐ To a fair trial
☒ To respect for home and family life, and correspondence
☒ To freedom of thought, conscience, and religion
☒ To freedom of expression
☐ To freedom of assembly and association
☐ To marry and found a family
☒ Not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention
☐ To peaceful enjoyment of possessions

What existing evidence (either presumed or otherwise) do you have for this?
Reference to the Human Rights Statement and Guidance.

How will you ensure that those responsible for implementing the policy are aware of the human rights implications and equipped to deal with them?
The Human Rights Statement and Guidance accompanies the equality impact assessment guidance and full impact assessment guidance, to provide comprehensive information for staff.

Public Sector Value Act 2012

NHS Kernow is committed and obliged to fulfil the requirements of the Public Sector Social Value Act 2012. This Act requires the organisations to consider how services commissioned or procured might improve the economic, social, and environmental wellbeing of an area.

Please describe how this will support and contribute to the local system, wider system, and community.
The FOI requests policy details how people can make a request for information held about the local health system and services provided by the system, this allows for feedback and intelligence within the system.

Describe how the policy contributes towards eliminating discrimination, harassment, and victimisation.
This policy outlines what is considered to acceptable behaviour with regard to the FOI requests process.

Describe how the policy contributes towards advancing equality of opportunity.
Advancing equality of opportunity between disabled people and non-disabled people includes consideration of the need to make reasonable adjustments. This policy clearly outlines that NHS CIOS will be mindful that the reasons for perceived difficult behaviour may be of an individual having genuine issues.

Describe how the policy contributes towards promoting good relations between people with protected characteristics.
Not applicable

If the differential impacts identified are positive, explain how this policy is legitimate positive action and will improve outcomes, services and or the working environment for that group of people.
The FOI manager and officer will provide advice and guidance to those wishing to make a request for information and will offer to take a verbal request and confirm it in writing.

Explain what amendments have been made to the policy or mitigating actions have been taken, and when they were made.
See above

If the negative impacts identified have been unable to be mitigated through amendment to the policy or other mitigating actions, explain what your next steps are using the following equality impact assessment action plan.
Not applicable

Signed (completing officer): Jodeigh Phelps

Date: 31 May 2022

Signed (head of department or section): Trudy Corsellis

Date: 21 June 2022