

# FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY

**Date Policy Approved  
November 2022**

|                                    |  |
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| <b>Committee Approved:</b>         | ICB Board  |
| <b>Approved date:</b>              | November 2022  |
| <b>Review Date:</b>                | September 2026   |
| <b>Equality Impact Assessment:</b> | Completed  |
| <b>Target Audience:</b>            | ICB and its Committees and Sub-Committees,<br>ICB Staff, agency and temporary staff & third parties under contract |
| <b>Policy Number:</b>              | ICB 37   |
| <b>Version Number:</b>             | 0.1  |

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## POLICY AMENDMENTS

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

| New Version Number | Nature of Amendment | Approving Body | Approval Date | Date Published on Website |
|--------------------|---------------------|----------------|---------------|---------------------------|
| 0.1                | New ICB Policy      | ICB Board      | 09.11.22      | 16.11.22                  |

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## **1.0 Introduction**

This policy provides a framework for NHS Humber and North Yorkshire Integrated Care Board (ICB) to ensure compliance with the Freedom of Information (FOI) Act 2000 and the Environmental Information Regulations (EIR) 2004.

## **2.0 Purpose**

The purpose and objectives of this policy are to protect the ICB along with its, service users, patients, staff and other stakeholders, as well as the assets of the ICB, whilst ensuring delivery of its strategic and corporate objectives.

The ICB supports the principle that openness should be the norm in public life.

The ICB believes that individuals have a right to privacy and confidentiality and will ensure that this policy does not overturn the common law duty of confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information will be dealt with under and in compliance with the provisions of the Data Protection Act 2018 and UK General Data Protection Regulations.

The ICB must carry out its duties effectively and lawfully to ensure this, the exemptions and exceptions outlined in the FOI Act and EIR will be applied appropriately.

## **3.0 Definitions / Explanation of Terms**

### **3.1 Freedom of Information Act 2000**

The Freedom of Information Act 2000 (FOI Act) is part of the Government's commitment to greater openness in the public sector. Subject to certain exemptions, it gives a right of access to recorded information that is held by public organisations, the right applies to anyone, anywhere in the world.

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

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

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

The Codes provide guidance to public authorities in relation to best practice and standards in meeting their responsibilities under the FOI Act and to ensure effective records management.

## 3.2 The Environmental Regulations 2004

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

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

- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.
- b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).
- c) measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.
- d) reports on the implementation of environmental legislation.
- e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c).
- f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

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

## 3.3 About the Act and Regulations

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

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

- Provide the applicant with the information specified.
- A statutory requirement under section 16 of the FOI Act and Part 2.9 of the EIR is to assist applicants who have made, or wish to make, a request, including contacting the applicant for clarification if it is not clear what information is required.
- There is a duty under FOI on every public authority to adopt and maintain a Publication Scheme.
- The independent Information Commissioner's Office (ICO) oversees the implementation and compliance with the FOI Act, EIR and the Data Protection Act 2018 and the UK General Data Protection Regulations (UK GDPR).

#### **4.0 Scope of the Policy**

The FOI Act and EIR are fully retrospective and relate to recorded information held by the ICB including information transferred to the ICB from its predecessor organisations.

The policy applies to all ICB employees and all who work for the organisation, including the Governing Body, contracted third parties including temporary agency or honorary contracts, secondments, pool staff, contractors, students and trainees.

Failure to comply with this policy will be considered to be in breach of the terms and conditions of employment and may be treated as a disciplinary offence under the ICB's disciplinary procedure.

#### **4.1 Information Subject to the Freedom of Information Act 2000 and Environmental Information Regulations 2004**

All information held by, or on behalf of, the ICB may be subject to the FOI Act or EIR. The FOI Act entitles applicants to have access to information held not to documents.

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

The legislation may also apply to information that has been received from others, which could include other public authorities, companies, organisations and members of the public. It may be necessary to consult with third parties before disclosure of the information (see Section 12.0).

The legislation applies regardless of the age, format, origin or classification of information. It covers files, letters, databases, reports, emails, videos, photographs, wall charts etc. It also extends to closed files and archived

materials as well as information in current use.

## **5.0 Duties / Accountabilities and Responsibilities**

### **5.1 Duties within the organisation**

The ICB fully supports the principle of openness which underpins the Freedom of Information (FOI) Act 2000. This policy describes how the ICB will ensure compliance with the Act and Environmental Information Regulations 2004.

### **5.2 Responsibilities of the Employer**

Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. Advice or assistance regarding this policy, the FOI Act or EIR can be obtained from the senior lead for corporate affairs or the FOI Manager.

### **5.3 Chief Executive**

The Chief Executive has delegated authority for determining arrangements for handling FOI requests including maintaining the Publication Scheme. The Chief Executive is also the Qualified Person for the purposes of this policy (see section 10.8.2).

### **5.4 Executive Director of Corporate Affairs**

The Executive Director of Corporate Affairs has delegated responsibility from the Chief Executive for the operational management of FOI and EIR and will be supported by senior Corporate Affairs Managers.

### **5.5 ICB Board**

The ICB Board is responsible for approving the ICB FOI and EIR Policy.

### **5.6 Information Governance Steering Group (IGSG)**

The IGSG is responsible for monitoring the ICB's performance in relation to responding to FOI and EIR requests for information and providing assurance/raising concerns to the relevant Board/Committee.

### **5.7 Audit Committee**

The Audit Committee is responsible for receiving assurance around the FOI and EIR policy, systems and processes and reporting to the ICB Board as deemed necessary.



## **5.8 Senior Lead for Corporate Affairs**

The Senior Lead for Corporate Affairs is responsible for the administrative co-ordination of this policy and oversight of the FOI Team.

## **5.9 Freedom of Information Team**

The FOI Team is responsible for:

- Ensuring that all requests for information are acknowledged, co-ordinated and responded to within the legislative timescales.
- Providing advice and assistance to staff and public who propose to make, or have made, requests for information under the FOI Act or EIR.
- Maintaining a database to manage and monitor information requests.
- Advising on the use of exemptions or exceptions.
- Ensure the ICB conforms with the Publication Scheme by regularly reviewing the Guide to Information and providing advice on the content.
- Producing performance reports.

## **5.10 Executive Directors**

Executive Directors or their delegated responsible person(s), are responsible for approval of FOI/ EIR responses before issue in relation to their areas of work.

## **5.11 Lead Managers**

Lead managers will be the initial point of contact for their area. They are responsible for:

- Providing a draft response that is full and appropriate within the set timescale.
- Ensuring that newly created information that falls within the scope of the Publication Scheme is available on the website promptly, and for the replacing and updating information that has been superseded.

## **5.12 All Staff**

All staff are expected to understand the content of this policy, agree to abide by it, and:

- Identify FOI requests and forward to the FOI Team at [hnyicb.foi@nhs.net](mailto:hnyicb.foi@nhs.net) immediately.
- Respond to requests made by the FOI Team within the set timescales.
- Ensure that all relevant information to meet the requirements of the request is provided and does not include information of a sensitive or

personal nature (i.e., staff, patients or clients information).

- Signpost people correctly who may wish to make an FOI request.
- Ensuring that newly created information that falls within the scope of the Publication Scheme is available on the website promptly, and for the replacing and updating information that has been superseded.

### **5.13 Information Commissioner**

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

### **5.14 Responsibilities for Approval**

The ICB Board is responsible for the review and approval of this policy.

## **6.0 Policy Document Requirements Details**

### **6.1 Publication Scheme**

The ICB has adopted the model Publication Scheme as prepared and approved by the Information Commissioner, which includes a guide to information and specifies information the ICB publishes and how it is available.

### **6.2 General Rights of Access**

Requests under the FOI Act must be made in writing (including the ICB on-line form or by email), be legible and include an address for a response.

Requests can also be submitted via social media such as Facebook and Twitter provided the request states the name of the applicant, this may be through a linked profile. As the limitations to the length of tweets may impede a full response an email address will be requested to provide a response.

Requests under the EIR can be accepted in writing including email or verbally.

Where a person is having difficulty putting their request in writing in a legible format capable of being used for subsequent reference, the ICB will advise them of another person or agency who may be able to assist them with their application or make the application on their behalf (such as Citizen's Advice). If anyone has difficulties making a request in writing, requests can also be made by telephone and verified by the requestor, using a Verbal Freedom of Information Request form (Appendix One).

Requests must state the name of the applicant and an address for correspondence and clearly describe the information requested.

Requests should be made to: [hnyicb.foi@nhs.net](mailto:hnyicb.foi@nhs.net) or via the postal address:

NHS Humber and North Yorkshire ICB  
FOI Team  
Health House  
Grange Park Lane  
Willerby  
HU10 6DT

The FOI Act and EIR give a right of access that is not based upon need to know and therefore the organisation does not have the right to question an applicant or the reason or purpose of their request. The applicant can, however, be requested to provide further details or clarification to narrow down what might otherwise be a vague or broad request.

The FOI Act and EIR require that requests be responded to within 20 working days<sup>1</sup>. If the ICB applies a condition, exemption, or exception (See Section 10.8) to withhold information, the applicant will be informed within 20 working days. The EIR allows for an extension of up to 20 additional working days to the period for response if requests are particularly complex and voluminous. If the extension is utilised, the applicant will be informed.

As recommended in the Cabinet Office Section 45 code of practice<sup>2</sup> and the Environmental Information Regulations code of Practice<sup>3</sup>, the details set out below include how requests for information will be dealt with, ensuring that this is available to the public.

## **7.0 Receipt of Requests for Information**

### **7.1 Recording Information**

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

- Initial date received by the ICB
- Surname of the applicant
- Contact details of the applicant
- Brief description of the information requested
- Decisions taken and exemptions or exceptions applied
- Date the response was sent

Further information on why we collect, how we will use and protect your

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<sup>1</sup> A working day is any other than Saturday, Sunday, Christmas Day, Good Friday or a bank holiday (according to the Banking and Financial Dealings Act 1971) in any part of the UK (FOIA s10(6))

<sup>2</sup> Cabinet Office Freedom of Information Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under Section 45 of the Act (July 2018)

<sup>3</sup> Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) (February 2005)

information can be found in the Privacy Notice on the ICB's website:

[Privacy Policy - Humber and North Yorkshire Integrated Care Board \(ICB\)](#)

## 7.2 Confirmation of receipt

The FOI Team will acknowledge receipt of the request advising the ICB will deal with the request under the FOI Act or EIR within 20 working days unless there are exceptional circumstances or fees/ charges to be levied (see Section 10.2).

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

Where relevant, requests will be transferred internally if the applicant is the subject of the request, it will be managed as a Subject Access Request under the Data Protection Act 2018 and UK GDPR (see section 10.6) and the applicant will be informed.

## 8.0 Processing a Request

Requests do not have to state that they are an FOI or EIR request. The FOI Act and EIR cover all requests for information and could be included within other correspondence received by the organisation. It is, therefore, imperative that all staff are aware of this policy and the requirement to forward requests to the FOI Team in a timely manner (See section 5.12).

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

- Providing general information such as leaflets or other material that has already been approved by the organisation; this would include service information and the Annual Report.
- Providing information on the current care and treatment of an individual.

## 8.1 Advice and Assistance

The ICB has a duty under the FOIA (Section 16) and EIR (Regulation 9(1)) to provide advice and assistance to applicants or potential applicants requesting information, utilising one or more of the following steps:

- Guidance will be provided on how to access the information via the Publication Scheme or the general rights.
- The applicant will be informed of the progress of their current request if applicable and the basis for charges or fees levied and exemptions/exceptions applied will be explained.

- Advice on potential alternative routes the applicant may wish to access information, including directing to other public authorities.
- Advice regarding the ICB Appeals and Internal Review Process and the Information Commissioner's Office contact details if they are dissatisfied with the outcome, are included in response letters.
- Support will be given to applicants who are unable to put their request in writing (See Section 6.2).

## **8.2 Ambiguous or Withdrawal of Requests**

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

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

## **8.3 Aggregation of Requests**

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

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

- They are either from the same person, or from 'different persons who appear to be acting in concert or in pursuance of a campaign'
- The requests relate to the same or similar information
- They have been received by the public authority within a space of 60 consecutive working days.

## **9.0 Providing the Information**

### **9.1 The Duty to Confirm or Deny**

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

- The duty to inform the applicant whether or not information is held by the

authority, and, if so,

- The duty to communicate that information to the applicant.

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

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

In these circumstances, the applicant will be issued a refusal notice within 20 working days (see Section 10.1).

## **9.2 Response and Format**

In all instances prior to providing the response, the FOI Team will seek approval from the relevant person (at the ICB) as identified.

Information will be provided in the format the request was made, i.e., electronic or hardcopy, unless specified otherwise and may also be provided in alternative languages, large print, audio, or Braille on request which will be fully funded by the ICB.

## **9.3 Data Sets**

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

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

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

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

If a dataset is a relevant copyright work (the ICB owns the copyright and database rights), the ICB will provide it under the terms of a specified licence. The Open Government Licence OGL is the default licence for datasets that can be re-used without charge. Other licences which can be used if

appropriate are the Non-Commercial Government Licence (the information cannot be used for Commercial purposes) and the Charged Licence (where it is appropriate to charge for the re-use of information).

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

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

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

#### **9.4 Requests for Re-Use of Information**

Information provided under FOI and EIR may be re-used for personal use. This means that brief extracts of any of the material may be reproduced without permission, under the fair dealing provisions of the Copyright, Designs and Patents Act 1988 (sections 29 and 30) for the purposes of research for non-commercial purposes, private study, criticism, review and news reporting, subject to an acknowledgement of the ICB as the copyright owner.

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

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

- Acknowledge the source and our copyright in cases where you supply the information to others.
- Reproduce the information accurately.
- Not use the information in a misleading way.
- Not use the information for the principal purpose of advertising or promoting a particular product or service.

- Ensure that it is acknowledged that the information is accurate as of the date it has been provided.

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

The request will be acknowledged within 2 working days and responded to within 20 working days of receipt of the request. This period may be extended where the request is extensive or complex; and the requester must be informed of this in writing.

Re-use can be refused if the information requested falls within one or more of the exclusions permitted by RPSI.

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

## **10.0 Not Disclosing Information**

### **10.1 Refusal Notices**

A request for information may be refused if:

- The information is exempt under Part II of the FOI Act, or an exception applies under EIR (see Section 10.8)
- Fees notice or charge has not been paid within the 3 months' time period (see Section 10.2)
- In the case of FOI requests – where the cost of compliance exceeds the appropriate limit of £450 (18 hours), in accordance with the National Fees Regulations. There is no appropriate limit for EIR requests.
- An FOI request can be demonstrated to be vexatious or repeated (see Section 10.4)
- An EIR cannot be considered as vexatious or repeated although Regulation 12 – Nuisance Requests can be applied.
- The information is not held.

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

- The exemption(s) and/or exception(s) that has been applied.
- The justification for the use of the exemption(s) or exception(s). Where an exception is applied, if the exemption is qualified, the Public Interest Test



must be applied (see Section 10.8.4).

- Details of how the applicant can appeal against the decision if they are dissatisfied with the outcome (see Section 11.0).
- Details of the right to further appeal to the ICO.

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

## **10.2 Charges and Fees**

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

Where the ICB chooses to levy a fee, a fees notice will be issued to the applicant, as required by section 9 of the FOI Act. Applicants will be required to pay any fees within a period of three months, beginning with the day on which the fees notice is issued to them. The working days in the period from when the applicant received the fees notice to when they paid will not be included in the 20 working days requirement to respond to the initial request. If payment is not received within three months, the ICB will close the FOI request.

## **10.3 Appropriate Limits**

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

If requests have been aggregated as outlined in section 8.3 and the total cost of handling the requests exceeds the appropriate limit, the request can be refused under Section 12.

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

## **10.4 Vexatious and Repeated Requests**

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

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

If the ICB has recently responded to a request for information, it is not required to comply with a subsequent identical or similar request unless a reasonable time interval has elapsed.

A log of all requests is kept for monitoring purposes (in accordance with the ICB's records management policy), and this can be used to identify vexatious and repeated requests.

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

## **10.5 Transferring a Request**

If the ICB does not hold some or all of the information requested, but believes that another public authority may hold it, then advice and assistance will be provided to the applicant. This will involve advising the applicant that the information requested may be held by another public authority and providing contact details for the authority.

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

A request will be transferred internally within the ICB if the applicant is the subject of the request and will be handled under a Subject Access Request; under the Data Protection Act 2018 and UK GDPR (see Section 10.6).

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

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

## **10.6 Personal Information and Data Protection Legislation**

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

- Computer documents.
- Information processed by a computer or other equipment (e.g., CCTV).
- Information in medical and other records.
- Information in some forms of structured manual records.
- Unstructured personal information held in manual form by a public authority (the applicant is likely to be asked to provide extra details to locate the information requested).

If an applicant requests information where they are the subject of that information, they have no right to it under the FOI Act, however, the request becomes a Subject Access Request and is managed under Data Protection Act 2018 and UK GDPR. The Subject Access Request will be redirected within the organisation to the appropriate team.

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

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

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

## 10.7 Personal Data about Employees

Under UK GDPR, for the purpose of considering the potential disclosure of staff information under the FOI Act or the EIR, the ICB can rely on *Lawful Basis (f) – legitimate interests*. Section 40(8) of FOIA, and Regulation 13(6) of the EIR, confirm that for the purposes of considering disclosure, a public authority may consider the legitimate interest lawful basis for processing.

To assess whether this lawful basis is engaged the ICB will consider the following three key questions:

- 1) Purpose: what is the legitimate interest in the disclosure of the information?
- 2) Necessity: is disclosure necessary for that purpose?

- 3) Balancing test: does the legitimate interest outweigh the interests and rights of the individual?

Further information on these questions is available in the following documents:

[ICO Guidance on GDPR – Legitimate Interests](#)

[ICO Guidance on Personal Information](#)

### **10.7.1 Balancing test –key questions regarding the personal data of public authority employees**

- 1) What potential harm or distress may disclosure cause?

The ICB must consider the likely consequences of disclosure in each case. Personal information must not be used in ways that has unjustified adverse effects on the employee concerned.

- 2) What are the reasonable expectations of the individual?

When considering the balancing test, it is important for the ICB to take account of whether the proposed disclosure is within the employee's reasonable expectations.

*Public vs Private Life* - Information about an employee's actions or decisions in carrying out their job is still their personal data. However, given the need for accountability and transparency about public authorities, there must be some expectation of disclosure.

*Seniority* - It is reasonable to expect that more information is disclosed about senior public authority employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds.

*Public facing roles* - It may also be fair to release more information about employees who are not senior managers but who represent the ICB to the outside world, as a spokesperson or at meetings with other bodies.

*Existing policy or standard practice of the public authority* - Current government policy is to promote greater transparency throughout the public sector by more proactive publication of information. This has a bearing on what information employees may reasonably expect the ICB to disclose.

*Privacy notices* - The privacy notices also help to shape employees' expectations.

- 3) Does the legitimate interest outweigh the interests and rights of the

individual?

Even though disclosure may cause distress to the employee, and they may have a reasonable expectation that the ICB will not disclose their personal data, this does not necessarily mean that the ICB should not disclose it. The ICB must consider the legitimate public interest in disclosure and balance this against the rights of employees.

### **10.7.2 Types of staff information**

The following is a list of typical information requested under FOI related to staff information. The ICO guidance [Requests for personal data about public authority employees](#) will be followed in relation to these areas.

- Salaries and bonuses
- Termination of employment
- Lists, directories and organisation charts
- Job descriptions
- Names in documents
- Registers of interest
- Disciplinary files
- Representatives of other organisations

## **10.8 Conditions, Exemptions and Exceptions**

### **10.8.1 Conditions**

The ICB can postpone dealing with a request if:

- It reasonably requires additional information or clarification of the initial request, in order to identify and locate the information requested, and has written to the applicant informing them of this. The ICB will make reasonable efforts to contact the applicant for the additional information (see Section 8.2).
- A fees notice has been served to the applicant and has not been paid within three months (beginning on the day the fees notice is issued).

### **10.8.2 Exemptions - FOI**

There are two types of exemption that can be applied under the Freedom of Information Act: absolute and qualified. A qualified exemption means that the public interest test applies (see Section 10.8.4) before making the decision.

The Section 36 exemption states that information is exempt if, it is the reasonable opinion of a qualified person that disclosure of the information

would prejudice the effective conduct of public affairs.

In accordance with the FOI Act ([www.legislation.gov.uk](http://www.legislation.gov.uk)), the Qualified Person will be the Chief Executive.

### **10.8.3 Exceptions - EIR**

The EIR specifies several different exceptions which can be applied. These are all subject to the Public Interest Test (see Section 10.8.4).

### **10.8.4 Public Interest Test**

The public interest must be considered where, in the case of FOIs, a qualified exemption applies or where any exception is applied for an EIR request. The ICO states that *“in effect something in the public interest is something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.”*

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

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

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

### **10.8.5 Redactions**

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

If an applicant has requested all the information in a document but it is necessary to redact some of the information because an exemption or exception applies, the applicant will be notified regarding the redactions and the exemption or exception applied.

## **11.0 Appeals and Internal Reviews**

If the applicant feels that they have not been given proper advice and help, have not been given the information they requested within 20 working days, is unhappy with the information that has been provided or wishes to appeal against an exemption which has been applied they should, in the first instance contact the FOI Team to try to resolve the issue or to request an internal review:

[hnyicb.foi@nhs.net](mailto:hnyicb.foi@nhs.net)

NHS Humber and North Yorkshire ICB  
FOI Team  
Health House  
Grange Park Lane  
Willerby  
HU10 6DT

This should be done within the first two months of receiving the response to their request.

In the event of an internal review, the ICB will appoint an independent senior manager from within the organisation to investigate the original decision(s) made. The senior manager will be supported by the FOI Team or by a manager with FOI experience. The manager(s) will consider the findings and decide whether the request was processed in line with the ICB FOI and EIR Policy and FOI /EIR Codes of Practice and legislation and where relevant, if the original exemptions/exceptions should be upheld.

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

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

FOI/EIR Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Helpline telephone: 0303 123 1113

## **12.0 Public Sector Contracts and Third Party Information**

When entering into contracts the ICB will limit the contractual terms which are intended to restrict the disclosure of information held. The ICB cannot 'contract out' of its obligations under the FOI Act or EIR. Both the FOI Code

of Practice<sup>4</sup> and EIR Code of Practice<sup>5</sup>, state that unless an exemption or an exception provided for under the FOI Act or EIR is applicable in relation to any particular information and the balancing of public interest favours refusal; a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

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

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

The ICO has produced the following documents for public bodies outsourcing services which provide practical guidance for public authorities when procuring services.

[Transparency in outsourcing: a roadmap](#)

[Outsourcing – FOIA and EIR obligations](#)

## **12.1 Consultation with Third Parties**

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

Ultimately the decision as to whether the information is provided or any exemptions apply will be made by the ICB, as the holder of the information.

## **13.0 Legal Advice**

Advice will be sought from the ICB legal team in the first instance.

## **14.0 Records Management**

Good records management is the key to complying with the FOI Act. The ICB has a Records Management Policy for dealing with records management that is consistent with the Records Management Code of Practice for Health and Social Care 2021.

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<sup>4</sup> Code of Practice issues under section 45 of the Freedom of Information Act 2000, providing guidance to public authorities on the discharge of their functions and responsibilities under Part I (Access to information held by public authorities) of the Act. (July 2018)

<sup>5</sup> Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) (February 2005)



Staff should also see the relevant policy relating to email and internet for additional guidance, and the [Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000](#).

Good records management allows organisations to deal with requests in an efficient and accurate manner. Not knowing whether a record is held is not a valid reason for not complying with a request.

FOI Records will be reviewed annually with consideration given to disposal or retention as per the Records Management Policy. Following a decision to dispose records will be recorded on the ICB Destruction Log and reported to the Information Governance Steering Group.

## **15.0 Public Sector Equality Duty**

In developing this policy an Equality Impact Analysis (EIA) has been undertaken. As a result of performing the analysis, the policy does not appear to have any adverse effects on people who share Protected Characteristics, and no further actions are recommended at this stage.

## **16.0 Bribery Act 2010**

A risk of bribery has been identified within the processing of FOI requests where staff may be bribed to provide or not provide information requested. This risk is reduced by effective processes in place.

Requests are anonymised when circulated for information and therefore applicant blind to staff supplying the information.

Requestors are advised how to appeal or request an internal review against decisions made regarding their request. The appeal or review is undertaken by staff not involved in the original decision if possible. Where requestors are still not satisfied following an internal review, they are advised they may contact the ICO who will make a decision as an independent organisation.

## **17.0 Consultation**

In developing this policy discussion has taken place between the FOI Team and staff supporting the process. The policy has been reviewed by the Information Governance Steering Group and approved by the ICB. No further engagement was deemed necessary.

## **18.0 Training**

The FOI Team has received specific training in relation to the management of FOI and EIR requests and will provide training to identified staff on request.

All staff are required to complete mandatory annual e-learning Data Security and Awareness Training which incorporates an introduction to the FOI Act.

Additional training may be delivered depending on the role of the individual.

## **19.0 Monitoring Compliance with the Document**

The IGSG is responsible for monitoring the delivery of the FOI service.

The IGSG will receive quarterly reports on the FOI service and assurance/ significant issues will be reported to Board/ Audit Committee.

An audit of compliance will also be built into the internal audit plans.

## **20.0 Arrangements for Review**

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

## **21.0 Dissemination**

This policy will be communicated to all staff via team meetings, the staff newsletter and will be published on the ICB website.

## **22.0 Associated Documentation**

- Humber and North Yorkshire ICB Corporate Records Management Standards and Procedural Guidance
- Humber and North Yorkshire ICB Data Protection and Confidentiality Policy
- Humber and North Yorkshire ICB Subject Access Request Policy
- Humber and North Yorkshire ICB Information Security Policy

## **23.0 References**

- [Freedom of Information Act 2000](#)
- [Data Protection Act 2018](#)
- [Records Management Code of Practice for Health and Social Care 2021](#)
- [Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000](#)
- [Cabinet Office 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 \(July 2018\)](#)
- [Statutory Instrument 1992 No 3240 – The Environmental Regulations 1992](#)

- [Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 \(SI 2004 No. 3391\) \(February 2005\)](#)
- [The Re-use of Public Sector Information Regulations 2015](#)
- [Copyright Designs and Patents Act 1988](#)
- [Open Government License](#)
- [ICO Guidance on GDPR – Legitimate Interests](#)
- [ICO Guidance on Personal Information](#)
- [ICO Guidance on Requests for personal data about public authority employees](#)
- [ICO Guidance on Transparency in outsourcing: a roadmap](#)
- [Outsourcing – FOIA and EIR obligations](#)
- [Banking and Financial Dealings Act 1971](#)
- [Privacy Policy - Humber and North Yorkshire Integrated Care Board \(ICB\)](#)

#### **24.0 Appendices**

- Appendix One - Verbal Freedom of Information Request Form Template

## Appendix one - Verbal Freedom of Information Request Form Template

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

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

|   |  |
|---|--|
| Description of information requested.<br>To be filled out by the applicant if the ICB's interpretation was incorrect. |  |
|---|--|