

Freedom of Information (FOI) Policy



Better health for our city

Contents

Introduction.....	3
Process.....	3
Exemptions.....	4
Number suppression.....	7
FOI Good Practice	7
Policy category.....	9
Version history.....	9
Appendix: FOI Process.....	10



Introduction

The Freedom of Information Act (2000) (FOIA), which came into effect on 1st January 2005, allows any individual or body, anywhere in the world, to make a written request for information (RFI) held by any UK public authority or agency, subject to certain conditions and exemptions, and to expect an acknowledgement within 3 working days and a reply within 20 working days, where possible in the format requested.

The underlying purpose of the Act is to ensure that public bodies can be held accountable for their actions by enshrining the principle of openness in everything they do.

The FOIA applies to any information that is held; including information recorded both before and after the Act was passed. This covers all paper and electronic records, including leaflets, documents, accounts, meeting minutes, letters or emails stored on a computer, in a filing cabinet or in a desk drawer. This also includes any audio or visual records.

FOI requests must:

- be in writing (either electronic or paper form)
- include the name of the applicant and a return address (either postal or email)
- describe the information being requested clearly and concisely.

All FOI requests must be acknowledged within 2 days and responded to within 20 days of receipt.

Process

The process below details the main steps that should be followed, and the issues that need to be considered, when an FOI request is received by the CCG.

All FOI requests should be forwarded **immediately** to the FOI dedicated email BHCCG.FOI@nhs.net in order to ensure that they are processed correctly. Routine requests for information such as patient information leaflets can be dealt with by individual staff members with no recording action necessary.

When an FOI request is received, the FOI Officer will request the information being sought through the appropriate staff member within the Directorate that holds the information. All requests are anonymised before they are forwarded to the appropriate staff member to ensure that they are applicant and motive-blind and are treated the same with regardless of the motive behind the request or what the enquirer is likely to do with the information. This includes requests from the press/media, MPs, pressure groups, trade unions, ex-members of staff or those seeking commercial information in order to set up their own business, or those who may be seeking further evidence if they have not been happy with the way a complaint has been handled.

Each request should be read carefully. If it is felt to be ambiguous or unclear, the FOI Officer should be contacted immediately. Where appropriate, the requester can be asked to clarify their question; this should be sought as soon as possible.

Directorates must provide the information requested within the timescale within the agreed CCG internal process (**Appendix 1**). If the information is not available, or the request needs to be directed elsewhere in the organisation, the FOI Officer should be informed immediately.

The appropriate staff member will need to consider if the cost of gathering the information and preparing a response is likely to exceed the appropriate cost limit. For public authorities, this is £450. Costs are calculated at £25 per hour per person, regardless of the actual cost or rate of pay, which means that the limit will be exceeded if these activities exceed 18 working hours. Should the request be likely to exceed this cost, the FOI Officer should initially ask the requester to simplify the request. Should this not be considered possible, the FOI Officer should bring this to the attention of the FOI Manager, and agreement sought before responding to the requester.

The FOIA does not require the public body to undertake any analysis or preparation of information. It simply asks for information that is held ON RECORD. This means that if the information is held in a report which covers wider issues then consideration should be given to releasing the whole report rather than extracting the information required.

A charge can be made for disclosing information that exceeds the appropriate limit as well as disbursements such as postage and photocopying, although the processes to enable these charges have not been put in place in the CCG. Where accessing the information is complex and the CCG timescale for response likely to be exceeded, the requester should be informed.

Exemptions

Exemptions: Once the information has been located, it should be reviewed against exemption categories to ensure it can be disclosed. There are 23 exemptions that relate to information held for a variety of functions including commercial interests and personal data, which can be considered if there are concerns about disclosing information; If an exemption is applied the FOI Officer will escalate to the Executive team for agreement to the exemption and response. The exemptions most frequently used by the NHS are:

a) **Section 21 – [Information reasonably accessible to the applicant by other means](#)**

This exemption can be used if the information is easily accessible in another way. The most common place for this to be found is in the publication scheme on the CCG website. However, we still need to consider whether the requester is able to access the information.

b) **Section 22 – [Information intended for future publication](#)**

This applies to work, projects or reports that are under preparation but can only be used if a formal publication date has been set and there is evidence to support this. If you are working on a particular piece of work that has a completion date, it is always a good idea to consider giving it a publication date so that a half-finished report does not need to be disclosed. However, the 'Public Interest Test' would still be applicable.

c) Section 36 – [Effective conduct of public affairs](#)

This is intended for use when release of the information is likely to prejudice the free and frank exchange of views. It can only be agreed by the Chief Executive (Qualified person) who must issue a Certificate. This exemption is only intended for use in very rare circumstances that could not have been foreseen and is not covered by any other exemption.

d) Section 37 – [Communications with Her Majesty and the awarding of honours](#)

This is self-explanatory

e) Section 38 – [Health and safety](#)

This is used when disclosure of the information may cause a health and safety issue.

f) Section 39 – [Environmental information](#)

The Environmental Information Regulations cover any information that is requested which appertains to the environment or 'green' issues. These are also dealt with by the FOI lead. EIR requests do not have to be in writing and do not have a time limit.

g) Section 40 – [Personal Information](#)

Personal information cannot be disclosed under the FOIA. However, if the data subject is requesting information about themselves, this is disclosable under the Data Protection Act. Requests for patient or staff identifiable data made specifically under the Data Protection Act are classed as Subject Access Requests and should be referred to the Information Governance Manager at the PCT (if unsure consult your line manager).

If a request for information does not specifically mention the Data Protection Act but it is clear that patient or staff identifiable data is being requested, the above directions should be followed.

h) Section 41 – [Information provided in confidence](#)

This exemption states that only if legal action can be taken as a result of the disclosure will the 'In confidence' exemption be applicable. This needs to be noted when writing reports and papers; merely annotating them 'private and confidential' does not necessarily mean that they cannot be disclosed when requested under the FOIA.

i) Section 43 – [Commercial interest](#)

Details of an agreement or contract are often exempt on 'commercial in confidence' grounds. However, once a contract has been agreed, the final 'bottom line' costs generally are disclosable. When information about a third party is disclosed, it is courteous, although not legally required (unless it is personal information), to inform them that the information is being disclosed.

An exemption is either Qualified or Absolute. With the exception of Section 40 (Personal Information), each of the exemptions quoted are qualified. This means that even if the public authority thinks that the exemption applies, they must undertake the 'Public Interest Test'. This process is applied in order to assess whether the disclosure is in the public

interest and must be documented and the rationale provided if it is decided that it is not applicable. The FOI Officer will provide details of the Public Interest Test, if required.

j) Non-disclosure

If staff think the information being requested, or any part thereof, is not disclosable, this needs to be discussed with the FOI Officer. In most cases, even if the information is to be withheld, the authority is required to confirm or deny whether they hold the information. Directorate leads are also responsible for identifying to the FOI Officer any concerns that the Directorate has about the disclosure, which may include:.

- 1) **Vexatious requests.** Information can also be withheld if the request is considered vexatious; the information has already been provided or is not held.
- 2) **Another organisation has the data.** If the information is held by another organisation then the requester's consent must be sought before the request is forwarded to them, or the response can signpost the requester to the other organisation.
- 3) **Redaction.** In some circumstances, the information requested will contain details such as names and addresses that need to be redacted. It is also important to ensure with spreadsheets that only the intended worksheet is included and any other sheets have been removed. When minutes of meetings are disclosed there are some occasions, especially where contentious issues have been discussed, when the names of junior members of staff may also be redacted.

All staff should be aware that all information (non-personal) they produce internally can be requested under the FOI Act. This especially applies to minutes or notes of meetings. These must be written in a style that avoids the use of names of individuals (apart from the list of those present), and should include only an outline of the issue being debated, the key points arising in discussion and the decision/action.

k) Altering Data

Under Section 77 of the FOIA, it is a criminal offence for any person to alter, deface, block, erase, destroy or conceal any record held by a public authority with the intention of preventing the disclosure of the information to an applicant who has made an individual request. Information, if disclosable, must be released even if it could have been destroyed under the NHS Code of Practice: Records Management. If found guilty, the person will be liable on summary conviction to a fine of up to £5,000.

l) Review and appeal

If the requester is not satisfied with a response, they can request a review which the CCG must carry out within a reasonable period of time. If the requester is still not satisfied, they can then complain to the Information Commissioner's Office. The Act is monitored by the Information Commissioner. If a public authority fails to provide the information requested, the Information Commissioner can serve them with an Information Notice requiring them to provide the relevant information (Section 51).

If a public authority fails to comply with an Information Notice, the Information Commissioner may certify that fact in writing to the High Court who may then deal with the authority as if it had committed a contempt of court, which carries a maximum punishment of two years imprisonment for our Chief Accountable Officer.

Number suppression

The CCG must ensure that all information released as part of FOI requests (or otherwise published) avoids the risk of disclosing personal information.

The following rules will be applied to small number data released as part of FOI requests or otherwise published:

- All numbers are rounded to the nearest multiple of 5
- Any number lower than 2.5 is rounded to 0
- Halves are always rounded upwards (e.g. 2.5 is rounded to 5)
- Percentages based on fewer than 22.5 individuals are suppressed
- Averages based on 7 or fewer individuals are suppressed

Where a number is suppressed and there are totals in the table a second number should be suppressed to ensure the initial suppressed number cannot be 'back calculated'.

Where numbers have been suppressed in line with the above the CCG will mark the space with an asterisk (*) and add the following note:

** The CCG holds this information however values have been suppressed due to the potential risk of disclosure and to help maintain patient confidentiality.*

FOI Good Practice

- As requests may be sent to members of staff when they are away, all staff must activate their 'out of office' when they are on leave. The 'Out of office' message should read, "If you are requesting information under the Freedom of Information Act (2000), please redirect your request to BHCCG.FOI@nhs.net for action" and also include alternative contact details. Arrangements should also be made for staff to share email accounts with at least one other appropriate person to allow for unforeseen circumstances such as sick leave.
- All members of staff should ensure that any outstanding FOI requests are responded to before any planned leave is taken or passed to someone else to deal with in their absence. Heads of Team will be copied into final FOI responses in case of The FOI Officer is reliant on Directorates providing the most up to date information and ensuring all responses are accurate before they are released into the public domain. Directorates must ensure that all responses are signed off by the Head of Team before they are submitted to the FOI Officer
- Responses must be written with the general public in mind using simple language that is easily understood and avoiding the use of acronyms. Where applicable, a brief

supporting statement contextualising the CCG's position should be provided if the information you provide is open to misinterpretation.

- The Act's provisions apply retrospectively so any person may submit a request for information dating back many years. The onus is on all employees to store and be able to retrieve information and responses provided to FOI requests should be retained as a matter of course so that the information is easily accessible in case of queries or for future FOI requests.
- As any piece of information held by the CCG is liable to be disclosed under the FOIA, it is good practice when writing reports or minutes in particular, to consider whether they can be disclosed or not. If they can, then they should, if at all possible, be published. If not, then the author should consider which exemption they think applies and mark the document accordingly.

Policy category

Relevant to
(Staff Group):

All staff in Brighton & Hove CCG

Version history

1	February 2014	Approved: Information Governance Committee
2	March 2014	Approved: Operational Leadership Team
3	March 2017	Reviewed: FOI Manager, Head of Participation and Voluntary Sector Partnerships (FOI Manager)
4	May 2017	Approved: Information Governance Committee
5	May 2019	Next Review

Appendix: FOI Process

Receipt
2 days

- **Received** by CCG - entered on SafeGuard by FOI team.
- **Acknowledgement** (2 days) sent to requester.
- **Assigned** to Investigator.

Investigate
5-7 days

- **Investigator** - confirms correct details with FOI team and whether information is available.
- **Investigation phase** (5-7 days) or response to FOI team **with timescale and reason**.
- Investigator and manager **draft response**.
- **Returned** to FOI team.

Head Sign-off
8 days

- **Action 'Closed'** on SafeGuard.
- FOI team formats, drafts and checks formal letter (spelling, plain English, grammar).
- To **Head of Participation and Voluntary Sector Partnerships** to **agree full response and sign off**.