## REVISIONS/AMENDMENTS SINCE LAST VERSION

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<th>Date of Review</th>
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<tr>
<td>October 2013</td>
<td>New policy developed from the previous PCT Freedom of Information and Environmental Information Regulations Policy and procedure.</td>
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| December 2016     | Policy reviewed in accordance with forward policy review schedule.  
|                   | • Minor updates to 4.3 and 4.4 (p.15-17)                                                                                                           
<p>|                   | • Refresh of flowchart on p.22.                                                                                                                     |</p>
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## DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Absolute exemption</strong></td>
<td>Applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Freedom of Information Act 2000 (FOIA). Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of non-disclosure. This information may be releasable under alternative legislation or regulations.</td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>The individual(s), group or organisation requesting access to information.</td>
</tr>
<tr>
<td><strong>Duty to confirm or deny</strong></td>
<td>Any person making a request for information under FOIA or EIR to a public authority, is normally entitled to be informed in writing by that authority if the information specified in the request is in their possession.</td>
</tr>
<tr>
<td><strong>Environmental Information</strong></td>
<td>Categories of information which relate to the Environment in any way – this broadly includes issues relating to land, air, sea, pollution, waste, landscape, noise, radiation, emissions, plans, food safety, impacts of developments etc. See Appendix D for further detail.</td>
</tr>
<tr>
<td><strong>Environmental Information Regulations 2004</strong></td>
<td>Regulations relating to the release of information concerning the environment intended to enact the European Directive and the international treaty (Aarhus).</td>
</tr>
<tr>
<td><strong>Exceptions</strong></td>
<td>Refusals to release information under Environmental Information Regulations must be made using exceptions rather than exemptions used for Freedom of Information requests.</td>
</tr>
<tr>
<td><strong>Fees – EIR</strong></td>
<td>Public authorities can charge a reasonable fee provided the schedule of fees is published but cannot refuse EIR requests on the grounds of cost alone.</td>
</tr>
<tr>
<td><strong>Fees Notice</strong></td>
<td>A written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses.</td>
</tr>
</tbody>
</table>
| **Fees Regulations**       | FOIA national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on
amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

General right of access

Section 1 of the FOI Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether that authority holds the information requested and, if it is held, to have it communicated to them.

Information Commissioner

The Information Commissioner enforces and oversees the Data Protection Act 1998, Environmental Information Regulations 2004 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

Lord Chancellor's Department

The Lord Chancellor’s Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:
• The effective management of the courts.
• The appointment of judges, magistrates and other judicial office holders.
• The administration of legal aid.
• The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.
• Management of Public Records

Public authority

The legislation and guidance are intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the FOIA and EIR it is not feasible to list each body individually. The Environmental Information Regulations include all the usual categories of public authority but have a wider scope to include other bodies providing public functions.

Publication Scheme

A scheme specifying the classes of information which it publishes or intends to publish, the manner of publication
and whether the information is available to the public free of charge or on payment.

**Qualified exemption**

FOIA Information to which a qualified exemption applies requires a public authority (q.v.) to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure.
SECTION A – POLICY

1. Policy Statement, Aims & Objectives

1.1. The Freedom of Information Act 2000 is part of the Government’s commitment to greater openness in the public sector, a commitment supported by NHS Doncaster CCG. The Freedom of Information Act 2000 (FOIA) is furthering this aim by helping to transform the culture of the public sector to one of greater openness. The FOI Act replaced the non-statutory Code of Practice on Openness in the NHS.

1.2. The Environmental Information Regulations 2004 (EIR) came into force at the same time as the FOIA and are intended to improve public access to environmental information in line with an EU Directive and the international treaty (Aarhus). EIR is focused on openness and public involvement in decision making on issues affecting the environment and these regulations are enforced in line with the intentions underlying the EU Directive and the treaty.

1.3. The organisation aims to create a climate of openness and dialogue with all stakeholders and improved access to information about our work.

1.4. This Policy does not overturn the duties of confidence or statutory provisions that restrict disclosure of personal identifiable information. The release of such information for living individuals is still covered by the subject access provisions of the Data Protection Act 1998 hereafter referred to as the DPA and is dealt with in the Data Protection Policy and Records Management Policies. Not all personal data will automatically be exempt under FOIA and EIR and consideration needs to be given to each circumstance.

1.5. Public authorities should be allowed to discharge their functions effectively. This means that the organisation will use the exemptions and exceptions allowed for within FOIA and EIR where appropriate. The purpose of this document is to provide guidance to staff leading on the development of procedural documents. The aim is to ensure that there are documented, up-to-date, authorised organisation-wide procedural documents in place which enable the organisation to achieve its objectives.

1.6. The main common features of the FOIA 2000 and EIR 2004 are:

- a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions
- a duty on public authorities to inform the applicant whether they hold the information requested (subject to some restrictions)
- a duty to provide support and assistance to the applicant in relation to their request
• a duty to provide the information to the applicant subject to the application of exemptions and exceptions as appropriate
• a duty on every public authority to adopt and maintain a Publication Scheme in line with Information Commissioner’s model schemes
• a duty to advise applicants of their right to ask for an internal review of the public authority’s response to their request and to seek further assistance from the information commissioner.

1.7 The aims of this policy are:

• To ensure NHS Doncaster Clinical Commissioning Group complies with the requirements of the FOI Act 2000 and EIR 2004
• To describe the management and accountability arrangements for the FOIA and EIR across NHS Doncaster Clinical Commissioning Group and to provide guidance for implementing the procedures

1.8 To ensure continuous improvement in risk management, the organisation has a range of key performance indicators (KPIs) which it uses for monitoring purposes:

<table>
<thead>
<tr>
<th>No.</th>
<th>Key Performance Indicator</th>
<th>Method of Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Compliance with requests.</td>
<td>Quarterly Corporate Assurance Reporting.</td>
</tr>
<tr>
<td>2.</td>
<td>Publication Scheme complies with model scheme</td>
<td>Review by Chief of Corporate Services and external review by Information Commissioner</td>
</tr>
<tr>
<td>3.</td>
<td>Compliance with Information Governance requirements relating to FOI and EIR</td>
<td>Information Governance Toolkit self-assessment completed as required by the Health and Social Care Information Centre and annual audit.</td>
</tr>
</tbody>
</table>

2. Legislation & Guidance

2.1. The following legislation and guidance has been taken into consideration in the development of this procedural document:
• Data Protection Act 1998
• Freedom of Information Act 2000
• Environmental Information Regulations 2004
• Human Rights Act 1998
• The Records Management NHS Code of Practice 2009
3. Scope

3.1. This policy applies to those members of staff that are directly employed by NHS Doncaster CCG and for whom NHS Doncaster CCG has legal responsibility. For those staff covered by a letter of authority / honorary contract or work experience this policy is also applicable whilst undertaking duties on behalf of NHS Doncaster CCG or working on NHS Doncaster CCG premises and forms part of their arrangements with NHS Doncaster CCG. As part of good employment practice, agency workers are also required to abide by NHS Doncaster CCG policies and procedures, as appropriate, to ensure their health, safety and welfare whilst undertaking work for NHS Doncaster CCG.

4. Accountabilities & Responsibilities

4.1. Overall accountability for ensuring that there are systems and processes to effectively manage procedural documents lies with the Chief Officer. Responsibility is also delegated to the following individuals:

<table>
<thead>
<tr>
<th>Role</th>
<th>Has delegated responsibility for:</th>
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| Chief of Corporate Services (or equivalent)     | • Ensuring the administration of the Freedom of Information Act 2000 and Environmental Information Regulations 2004 within the organisation  
|                                                  | • Establishing systems and procedures that will support the implementation of this Policy, which, all employees will be expected to adhere to.  
|                                                  | • Providing additional guidance and support on the legal aspects of access to information.          |
| FOI Coordinator                                  | • Logging requests, acknowledging receipt of requests and forwarding requests to the appropriate manager for the appropriate response.  
|                                                  | • Liaising with the Chief of Corporate Services prior to sending responses                          |
| Managers | Managers at all levels are responsible for ensuring that
|          | - Employees for whom they are responsible are aware of
|          |   and adhere to this Policy. They are also responsible for
|          |   ensuring employees are updated in regard to any
|          |   changes in this Policy
|          | - Requests under the Freedom of Information Act 2000 and
|          |   Environmental Information Regulations 2004 are
|          |   forwarded to the Corporate Services team upon receipt.

| Staff    | Responsibilities of Staff (including all employees, whether
|          |   full/part time, agency, bank or volunteers) are:
|          |   - Complying with this policy and procedure.
|          |   - Identifying any gaps in the policy to the responsible
|          |   officers.

4.2. The Audit Committee of the Governing Body has delegated
   responsibility for approval of this policy. If the policy requires only minor
   updates the Chief of Corporate Services may approve as lead officer
   as listed under 4.1. above and the policy will not be required to be
   reviewed by the Approving Body.

5. Dissemination, Training & Review

5.1. Dissemination

5.1.1. The effective implementation of this policy will support openness and
   transparency. NHS Doncaster CCG will:
   
   - Ensure all staff and stakeholders have access to a copy of this
     procedural document via the organisation’s website.
   - Communicate to staff any relevant action to be taken.
   - Ensure that relevant training programmes raise and sustain
     awareness of the importance of effective information management.

5.1.2. This policy is located in the General Policy Folder. A set of hardcopy
   Procedural Document Manuals are held by the Corporate Services
   Team for business continuity purposes and all procedural documents
   are available via the organisation’s website. Staff are notified by email
   of new or updated procedural documents.

5.1.3 The Information Governance Policy (including the Information
   Governance Strategy Framework and associated Procedures) are
   linked to this Freedom of Information and Environmental Information
Regulations Policy and all employees should be aware and refer to the Information Governance Policy for guidance as relevant.

5.2. Training

5.2.1. All staff will be offered relevant training commensurate with their duties and responsibilities. Staff requiring support should speak to their line manager in the first instance. Support may also be obtained through the HR Department. Managers should contact the Corporate Services Team if there are specific training needs.

5.3. Review

5.3.1. As part of its development, this policy and its impact on staff, patients and the public has been reviewed in line with NHS Doncaster CCG’s Equality Duties. The purpose of the assessment is to identify and if possible remove any disproportionate adverse impact on employees, patients and the public on the grounds of the protected characteristics under the Equality Act.

5.3.2. The policy will be reviewed every three years, and in accordance with the following on an as and when required basis:

- Legislatives changes
- Good practice guidelines
- Case Law
- Significant incidents reported
- New vulnerabilities identified
- Changes to organisational infrastructure
- Changes in practice

5.3.3. Procedural document management will be performance monitored to ensure that procedural documents are in-date and relevant to the core business of the CCG. The results will be published in the quarterly Corporate Assurance Reports.
SECTION B – FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS PROCEDURE

1.0 Introduction

1.1 This document sets out the approach to be taken within NHS Doncaster Clinical Commissioning Group to provide a robust framework for the management of compliance with the Freedom of Information Act and the Environmental Information Regulations.

1.2 The Freedom of Information and Environmental Information Regulations Policy and procedure will be available to staff via the website and shared drive to improve staff awareness of the organisation’s approach.

2.0 Publication Scheme

2.1 NHS Doncaster CCG has adopted a Publication Scheme which details the information that we publish and is available via the CCG website and in hard copy (on request). This scheme has been reviewed in line with the Information Commissioner’s model publication scheme for health.

2.2 It is the responsibility of all teams to keep the publication scheme up to date for their area and to include all releasable information in line with the guidance set.

3.0 Rights of Access

3.1 The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) give a general right of access to recorded information held by NHS Doncaster Clinical Commissioning Group, subject to certain conditions, exemptions and exceptions contained in the Act and Regulations. Any person making a request for information is entitled:

- To be informed in writing if the information is held
- To be offered advice and assistance

This is referred to as the ‘duty to confirm or deny’.

3.2 Information under the general rights of access for FOIA must be received in writing (which includes a request transmitted by electronic means that is received in legible form and is capable of being used for subsequent reference), stating the name of the applicant and an address for correspondence, and describes the information
requested. EIR permits verbal applications for information related to the environment.

3.3 There is a route of access available via the organisation’s website, www.doncasterccg.nhs.uk.

4.0 Dealing with Applications for Information

4.1 Upon Receipt of a Request

4.1.1 It is accepted that requests for information can come from many sources (via email, letter, over the telephone and in person) and it is important all employees are able to recognise a request so it can be processed quickly and appropriately. All NHS Doncaster Clinical Commissioning Group staff have a responsibility to ensure that all FOIA and EIR applications are identified and reported.

4.1.2 Not every application will clearly indicate the nature of the request and employees must follow the ‘Requests for Information Flow Chart’, which can be found within Appendix A. All general requests for information must be referred to the FOI Coordinator in the Corporate Services Team.

4.1.3 NHS Doncaster Clinical Commissioning Group has a statutory responsibility to ensure that all requests are actioned within a limited time frame. All requests that are identified as an FOIA/EIR request or are being treated as one must be forwarded to the FOI Coordinator immediately on receipt. If the application is in the form of a paper copy, the original documentation should also be sent.

4.1.4 Once the FOI Coordinator has received the request, the procedure for processing requests for information applies and the following information will be recorded by NHS Doncaster Clinical Commissioning Group:

- Request Identifier/Reference
- Initial date received
- Name of applicant
- Contact details of applicant
- Information requested

4.1.5 On receipt of any request for information, the details will be recorded as above and an acknowledgement sent.

4.1.6 NHS Doncaster Clinical Commissioning Group has a general duty to confirm whether it holds the information requested and to release it if it is not subject to exceptions or exemptions under legislation (see Appendix B & C).
4.1.7 The duty to confirm may not apply to certain circumstances relating to Personal Data or where issues of Security and Safety apply. Advice on this can be obtained from the FOI Coordinator.

4.1.8 NHS Doncaster Clinical Commissioning Group is not obliged to comply with a request for information if the request is vexatious. All requests under the FOIA/EIR which come from known vexatious complainants should be copied to the Chief of Corporate Services to agree a handling strategy. If the FOI request is not necessarily connected to a complaint for which an individual has been registered as a vexatious complainant, a response can be sent in the usual way subject to discussion with the Chief of Corporate Services. Repeated and possibly vexatious requests for information from other persons should be considered individually in accordance with legislation and guidance.

4.1.9 NHS Doncaster Clinical Commissioning Group may receive a number of related requests that take the cumulative cost of compliance over the “appropriate limit” as prescribed in the Fee Regulations. In such circumstances the FOI Coordinator will consider whether the information could be disclosed in another, more cost effective manner. For example, the information that has been requested could be published on our website, with the applicants being notified of this, thus bringing the cost within the appropriate limit.

4.2 Fees and Charges

4.2.1 NHS Doncaster Clinical Commissioning Group’s Publication Scheme gives free access for the public. Charges may be levied for multiple hard copies, or copying onto media such as a CD-ROM. For those without internet access, a single printout of the information available on the website will be available by post on personal application. NHS Doncaster Clinical Commissioning Group will not provide printouts of other organisations’ websites.

4.2.2 If the FOI Coordinator estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations the applicant will be notified in writing of the estimated cost, or given the opportunity to reduce the content of the request.

4.2.3 EIR regulations allow for fees but do not set limits. The usual accepted practice is to follow the FOIA guidelines but EIR requests cannot be refused on the grounds of cost alone.
4.3 Accessing the Information

4.3.1 The FOI Coordinator will identify who holds the information that the applicant has requested and will forward the request on to them. A record will be kept of this contact.

4.3.2 When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant

- the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

- the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the organisation shall so far as reasonably practicable give effect to that preference.

4.3.3 Upon receipt of the information request, this will be initially assessed by the FOI Coordinator, in order to allocate the appropriate timescale for a response to be received to meet the legislative 20 working day deadline. This will then be forwarded to the nominated lead manager for the area concerned. The lead manager will be contacted should an appropriate response not be received by the given deadline. It is considered good practice for staff to respond as soon as is practically possible within their allocated time period. Staff must inform the FOI Coordinator immediately if they are aware that they do not hold the information requested. A record will be kept of these contacts.

4.3.4 Once compiled, the information that the applicant has requested will be forwarded to the FOI Coordinator who will then review the information

4.3.5 It is the responsibility of the identified lead manager, to ensure appropriate sign off of the information and that the FOI Coordinator is fully briefed on any identified sensitivities.

4.4 Procedure for Refusal of Requests

4.4.1 A refusal of a request may apply to all, or part of the information requested by an applicant. A request for information may be refused if:
a) the information is exempt from disclosure under Part II of the FOI Act (Appendix B).
b) an exception applies under the EIR regulations (Appendix C)
c) a fee notice or charge has not been paid within three months beginning on the day on which the applicant receives the Fees Notice or is informed of the charge.
d) the cost of compliance exceeds the appropriate limit for FOIA.
e) the request is demonstrably vexatious or repeated.

4.4.2 If the Chief of Corporate Services (or their nominated deputy) decides to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within the 20 working day legislative timeframe, including details of the relevant exception or exemption and why it applies.

4.4.3 If the Chief of Corporate Services/FOI Coordinator anticipates that it will take more than 20 working days to reach a decision on the release of all or part of the information they will make a request to the applicant accordingly and give an estimate of the date by which the expected decision will be provided. It is to be noted that there is no formal “right” for an organisation to request an extension. All time estimates provided to applicants must be realistic and reasonable and NHS Doncaster Clinical Commissioning Group will ensure compliance unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason for the delay and offered an apology by the FOI Coordinator.

4.4.4 In relation to an EIR request, a timescale can be extended to 40 working days in certain limited circumstances. This only applies to requests where the volume and complexity of the information makes it impracticable for the authority to comply with or refuse the request within the 20 working day time limit.

4.4.5 If the applicant is dissatisfied with the response they receive regarding their request they will be advised of their right to request an internal review of the decision and informed of NHS Doncaster Clinical Commissioning Group’s Complaints Procedure.

4.4.6 Applicants should be advised of their right to contact the Information Commissioner about any concerns they may have.

4.4.7 The requirement to confirm or deny that information is held does not apply when utilising some exemptions under FOIA. With EIR the only circumstances in which an organisation does not need to comply is for issues of national security, defence, international relations or public safety.
4.4.8 The FOI Coordinator will keep a record of all refusal notices issued to applicants. A summary will be included within the quarterly Corporate Assurance Report.

4.4.9 The Chief of Corporate Services (or their nominated deputy) will provide advice on the use of refusal notices and the application of exemptions and exceptions.

4.5 **Provision of Advice and Assistance to All Applicants**

4.5.1 The FOI Coordinator will act as a key contact point for applicants.

4.5.2 Applicants may request advice on the following:

- how to access information from NHS Doncaster Clinical Commissioning Group under the general right of access and the Publication Scheme,
- the basis upon which any charges or fees have been levied or exemptions applied,
- alternative sources of information,
- additional information to assist NHS Doncaster Clinical Commissioning Group in meeting the information needs of the applicant.

4.5.3 Where an applicant requires additional support to formulate their request, they will be signposted to the Healthwatch service.

4.5.4 Applications under EIR may be made verbally but NHS Doncaster Clinical Commissioning Group will provide assistance as above if required and will record the request in writing.

4.6 **Where the Applicant has provided insufficient information to fulfil their request**

4.6.1 Where the applicant has not described the information sought in a way that would enable the organisation to identify or locate it, or the request is ambiguous as above, the FOI Coordinator will contact the applicant. They will provide assistance to the applicant to enable him or her to describe more clearly the information requested.

4.6.2 In seeking to clarify a request, it is important not to give the impression that the applicant needs to disclose the nature of their intent or their intended use of the information.

4.6.3 The 20 working day time limit is not formally activated until the applicant has provided sufficient information for the organisation to supply them with the information they require, however the
organisation would seek to collate the other information whilst waiting for clarification.

4.7 Where the Applicant is unprepared or unable to pay a charge or fee or fees exceed the appropriate limit

4.7.1 In some circumstances an applicant may indicate that he or she is not prepared or is unable to pay the fee notified in any fees notice or the charge levied for the information they have requested. In such cases the Chief of Corporate Services in liaison with the FOI Coordinator will consider whether there is any information that may be of interest to the applicant that is available free of charge. The FOI Coordinator will contact the applicant and explore ways in which the fee or charge may be reduced. For example by:

- Providing information electronically instead of in hard copy or
- Inviting the applicant to view the information and take their own notes or to select the information they feel to be most relevant to them.

4.7.2 In the event of a request exceeding the cost ceiling, the FOI Coordinator will, with the applicant, attempt to seek a way in which the information can be provided within the cost ceiling and/or examine with them what information could be provided within the cost ceiling.

4.7.3 If the applicant is willing to pay the full fees for the information they have requested a Fees Notice will be issued. If the applicant is unwilling to pay the full fees the Procedure for Refusal of a Request will be activated.

4.8 Providing the Information

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

a) as a copy of the information in permanent form or another form acceptable to the applicant.
b) through the provision of a reasonable opportunity to inspect a record containing the information.
c) the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

4.8.2 The FOI Coordinator will record the date on which the information was provided and will maintain of the information and correspondence.
4.9 Transferring Requests for Information

4.9.1 If the FOI Coordinator believes that some or all of the information requested is held by another public authority, consideration will be given to what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

- contacting the applicant and informing him or her that the information request may be held by another public authority;
- suggesting that the applicant re-applies to the authority which the organisation believes to hold the information and providing him or her with contact details for that authority.

5.0 Consultation with Third Parties

5.1 NHS Doncaster Clinical Commissioning Group recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998 (DPA). In these circumstances the exemptions and exceptions must be correctly applied.

5.2 Where information has been obtained from a third party in confidence and its disclosure, without their consent, would constitute an actionable breach of confidence, the FOI Coordinator will consult with the third party with a view to seeking their opinion as to the disclosure. It cannot be assumed that just because information is marked confidential, or a contract designates it as such, that it cannot be released.

5.3 Where information constitutes "personal data" within the meaning of the Data Protection Act 1998, the organisation will have regard to that Act when dealing with FOIA and EIR requests including such information.

5.4 Where the interests of a number of third parties may be affected by a disclosure, it may be appropriate to consult with a representative organisation.

5.5 In all cases, it is for NHS Doncaster Clinical Commissioning Group to determine whether or not information should be disclosed. A refusal to consent to disclosure by a third party does not, in itself, mean information should always be withheld. A record should be kept of all referrals to third parties and the outcome of any discussions. Where the data is personal information, NHS Doncaster Clinical Commissioning Group must comply with the Data Protection Act.
1998, and the Common Law Duty of Confidentiality, and the Caldicott Guardian should be consulted where appropriate.

6.0 Public Sector Contracts

6.1 When entering into contracts NHS Doncaster Clinical Commissioning Group will refuse to include contractual terms that purport to restrict the disclosure of information held by the organisation and relating to the contract beyond the restrictions permitted by FOIA and EIR. Contractors should be made aware that the organisation may be obliged to disclose.

6.2 When entering into contracts with non-public authority contractors, the organisation may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. Contractors should be invited at an early stage in the procurement process to identify particularly sensitive information and any timescale for which it should be confidential. Model contracts should be used which make provision for the organisation’s legal liabilities and details of information which should not be disclosed.

6.3 It is for NHS Doncaster Clinical Commissioning Group to disclose information in accordance with the FOIA and EIR and not the non-public authority contractor. The organisation will take steps to protect from disclosure by the contractor, information which NHS Doncaster Clinical Commissioning Group has provided to the contractor which would clearly be exempt from disclosure under the appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, NHS Doncaster Clinical Commissioning Group will not impose terms of secrecy on contractors.

7.0 Accepting Information in Confidence from Third Parties

7.1 NHS Doncaster Clinical Commissioning Group will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority’s functions and it would not otherwise be provided.

7.2 NHS Doncaster Clinical Commissioning Group will not agree to hold information received from third parties “in confidence” which has no quality of confidence. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
8.0 Complaints about the discharge of the duties of NHS Doncaster Clinical Commissioning Group under FOIA and EIR

8.1 Concerns about the way in which NHS Doncaster Clinical Commissioning Group has handled any request for information can be made by requesting an Internal Review. This can be done by contacting the FOI Coordinator, NHS Doncaster Clinical Commissioning Group’s Complaints Officer or the Chief of Corporate Services.

8.2 If the applicant remains dissatisfied with the conduct of NHS Doncaster Clinical Commissioning Group, they may apply to the Information Commissioner who will decide whether the request has been handled properly. Details of how to do this are available at www.ico.gov.uk

9.0 Legal Advice

9.1 The Chief of Corporate Services will provide additional advice internally and will liaise with the FOI Coordinator as to whether additional external legal advice should be sought. A record will be kept of the advice sought from, and given by, legal advisors.
APPENDIX A

Freedom of Information Act (FOIA) Flowchart

RECEIPT
FOI Request received by NHS Doncaster CCG.

ACKNOWLEDGEMENT
FOI Request acknowledged to Requester by FOI Coordinator.
E-folder with reference number set up.

RISK ASSESSMENT OF REQUEST
FOI Coordinator assesses the Request and determines which Lead Officer(s) should be asked to collate the response, reviews whether the information has previous been released and any potential exemptions.

INFORMATION REQUESTED
FOI Request sent via email by FOI Coordinator to the identified Lead Officer(s) for a response within 10 working days. Requests should be copied to the relevant Chief of Service, for information, if deemed extensive or requiring senior coordination (designated “high risk”).

INFORMATION COLLATION
FOI Request response collated by Lead Officer(s). “High Risk” responses must be reviewed by the relevant Chief of Service prior to the response being sent.

RESPONSE
FOI Request response sent back to Requester by FOI Coordinator within 20 working days.
EXEMPT INFORMATION UNDER PART II OF THE
FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:
(a) absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
(b) qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

With the exception of Section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The absolute exemptions under the Act are:

- section 21, Information accessible to applicant by other means
- section 23, Information supplied by, or relating to, bodies dealing with security matters.
- section 32, Court Records
- section 34, Parliamentary Privilege
- section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- section 41, Information provided in confidence
- section 44, Prohibitions on disclosure

The exemptions that are qualified by the public interest test are:

- section 22, Information intended for future publication
- section 24, National Security
- section 26, Defence
- section 27, International Relations
- section 28, Relations within the United Kingdom
- section 29, The Economy
- section 30, Investigations and proceedings conducted by public authorities
- section 31, Law Enforcement
- section 33, Audit Functions
- section 35, Formulation of Government Policy
- section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- section 37, Communications with Her Majesty, etc. and honours
- section 38, Health and Safety
- section 39, Environmental Information
- section 42, Legal Professional Privilege
- section 43, Commercial Interests

More information on the exemptions can be found on the Information Commissioner Officer at:
APPENDIX C

EXCEPTIONS UNDER ENVIRONMENTAL INFORMATION REGULATIONS 2004

Under the Environmental Information Regulations a request for information can be refused (or part of the information withheld) if:

- Information is not held (the request may be transferred)
- The request is manifestly unreasonable
- The request is too general (after fulfilling duty to advise and assist)
- The request is for unfinished documents or data (in which case estimated time for completion must be given)
- The request is for internal communications

A public authority may also refuse to disclose information or withhold part of it in order to protect the following:

- Confidentiality of proceedings
- International relations / public security / defence
- The course of justice and right to fair trial
- Commercial confidentiality
- Intellectual property rights
- Personal / voluntary data
- Environmental protection

If information relates to emissions, a public authority cannot refuse to disclose it on grounds of confidentiality of proceedings, commercial confidentiality, personal/voluntary data or environmental protection.
APPENDIX D

WHAT IS ENVIRONMENTAL INFORMATION?

The definition of environmental information in the EIRs is very wide and includes information which may not be considered environmental at first glance. For public authorities, it is important to understand the definition and to use the correct regime for dealing with information requests. It is not essential for requesters of information to fully understand the definition provided that public authorities deal with their request correctly.

The definition given in the regulations must be followed and so it is quoted in full here. It is as follows:

Any information in written, visual, aural, electronic or any other material form on:

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); and

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).

Guidance from DEFRA