

# Freedom of Information Policy

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<b>Author</b>	Not Available
<b>Responsible Director</b>	Medical Director
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**Related Policies & Guidelines:**

- Information Governance Policy
- Information Sharing Policy and Data Protection Act

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## **Amendment History**

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Version	Status	Date	Reason for Change	Authorised
1.0		December 2014	Initial policy for consultation	

## 1. Introduction

The Freedom of Information Act 2000 (the Act) is part of the Government's commitment to greater openness in the public sector, a commitment supported by Central London Healthcare (CLH). The Act will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensuring that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory "Code of Practice on Openness in the NHS".

The main features of the Act are:

- a general right of access from 1st January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions;
- in cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
  - inform the applicant whether they hold the information requested, and
  - communicate the information to him or her,unless the public interest in maintaining the exemption in question outweighs the
- public interest in disclosure;
- a duty on every public authority to adopt and maintain a Publication Scheme, specifically applicable to the NHS from 31st October 2003;
- a new office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
- a duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

The Freedom of Information Policy is a statement of what CLH intends to do to ensure compliance with the Act. It is not a statement of how compliance will be achieved.

## 2. Scope

The Freedom of Information Policy will apply to all CLH employees and Directors.

The Policy will provide a framework within which the Trust will ensure compliance with the requirements of the Act.

## 3. Principles

The Policy supports the principle that openness and not secrecy should be the norm in public life. CLH wants to create a climate of openness and dialogue with all stakeholders and improved access to information about the CLH will facilitate the development of such an environment.

CLH believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 1998, which is dealt with in CLH's Records Management Policy.

CLH believes that public authorities should be allowed to discharge their functions effectively. This means that the Trust will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of public interest of disclosure.

CLH believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this knowledge.

CLH believes that common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other CLH policies and procedures.

#### **4. Freedom of Information Act (2000) and Policy Statement**

CLH will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act.

#### **5. General Rights of Access**

Section 1 of the Act gives a general right of access from 01 January 2005 to recorded information held by the organisation, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information to CLH is entitled:

- to be informed in writing whether CLH holds the information of the description specified in the request, and
- if the organisation holds the information to have that information communicated to them.

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if CLH holds the information it must provide it, subject to the certain conditions and exemptions. The organisation will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describes the information requested. For the purposes of general rights of access, a request is to

be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

## **6. Conditions and Exemptions**

The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where CLH:

reasonably requires further information in order to identify and locate the information requested, and

has informed the applicant of that requirement.

CLH will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

Under section 2 of the Act, CLH does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether CLH holds the information. The Part II exemptions are listed in Appendix A of this Policy. CLH will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act, justify the use of such exemptions.

The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

The duty to comply with a request for information does not arise if CLH estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. CLH will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse, or (b) charge for the communication of information that exceeds this limit.

CLH is not obliged to comply with a request for information if the request is vexatious. Where CLH has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

## **7. Charges and Fees**

CLH will follow the national Fees Regulations for general rights of access under the Act. These set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.

In all cases where CLH chooses to levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay fees within a period of three months beginning with the day on which the fees notice is given to them.

## **8. Time Limits for Compliance with Requests**

CLH has systems and procedures to ensure that the organisation complies with the duty to confirm or deny, and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with section 9(2), the working days in the period from when the applicant received the fees notices to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.

If CLH chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of the decision.

## **9. Means By Which Information Will be Convened**

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,

CLH shall, so far as reasonably practicable, give effect to that preference in accordance with section 11 of the Act.

In determining whether it is reasonably practicable to communicate information by a particular means, CLH will consider all the circumstances, including the cost of doing so. If CLH determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, CLH will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

## **10. Refusal of Requests**

As indicated above, the duty to confirm or deny, does not arise if CLH:

- using section 2 of the Act, applies an exemption under part II of the Act, as illustrated in Appendix A,
- has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant,
- under section 12 of the Act, estimates that the cost of compliance with the request for information exceeds the appropriate limit,
- can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

If CLH chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of CLH under the Act and of the right conferred by section 50 of the Act.

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

- state that fact,
- specify the exemption in question, and
- state (if that would not otherwise be apparent) why the exemption applies.

Where CLH is relying on a claim:

- that any provision of Part II which related to the duty to confirm or deny and is not specified in section 2(3) of the Act as an absolute exemption is relevant to the request, or
- that the information is exempt only by virtue of a qualified exemption, a provision not specified in section 2(3),

and at the time when the notice (described above) is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 of the Act ‘the application of an exemption’, the notice will indicate that no decision as to the application of an exemption has been reached, and contain an estimate of the date by which CLH expects that a decision will have been reached.

As indicated by the Lord Chancellor’s Code of Practice issued under section 45 of the Act, such estimates should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by CLH. If CLH finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. CLH will keep a record of

instances where estimates are exceeded, and where this happens more than occasionally, takes steps to identify the problem and rectify it.

If applying a qualified exemption under subsection (1)(b) or (2)(b) of section 2 of the Act, CLH will, either in the notice issued or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:

- that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether CLH holds the information, or
- that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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

If CLH is relying on a claim that section 12 or 14 of the Act apply, the notice will state that fact. If CLH is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

CLH will keep a record of all notices issued to refuse requests for information.

## **11. Duty to Provide Advice and Assistance**

CLH has nominated a manager to take responsibility for all Freedom of Information matters in order to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect CLH to do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the Act.

CLH will ensure that the systems and procedures that are deployed to meet the section 16 duty, also conform to the Code of Practice issued under section 45 of the Act.

## **12. Transferring Requests for Information**

A request can only be transferred where CLH receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If CLH is in receipt of a request holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). CLH recognises that “holding” information includes a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2) of the Act).



Upon receiving the initial request for information, CLH will always process it in accordance with the Act in respect of such information relating to the request as it holds. CLH will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, CLH must be certain as to the extent of the information relating to the request that it holds itself.

If CLH believes that some or all of the information requested is held by another public authority, the Trust will consider 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 requested may be held by another public authority;
- suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
- providing him or her with contact details for that authority.

If CLH considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, CLH will consider:

whether the transfer is appropriate; and if so

whether the applicant is likely to have any grounds to object to the transfer;

If CLH reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so.

Where there are reasonable grounds to believe an applicant is likely to object, CLH will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where CLH is unable to advise the applicant which it holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

### **13. Consultation with Third Parties**

CLH recognises that in some cases the disclosure of information pursuant to an 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 (the DPA). Unless an exemption provided for the Act applies in relation to any particular information, CLH will be obliged to disclose that information in response to a request.

Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that the exemption at section 41 of that Act would apply), CLH will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

Where information constitutes “personal data” within the meaning of the DPA, CLH will have regard to section 40 of the Act, which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.

CLH will undertake consultation where:

- the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
- the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

CLH may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, CLH will consider what is the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
- no exemption applies and so under the Act’s provisions, the information must be provided.

Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation, which can express views on behalf of those parties, CLH will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation CLH may consider that it would be sufficient to consult a representative sample of the third parties in question.

The fact that the third party has not responded to consultation does not relieve CLH of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for CLH, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

#### **14. Accepting Information in Confidence From Third Parties**

CLH 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.

CLH will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

#### **15. Complaints About the Discharge of the Duties of CLH Under the Act**

CLH has a procedure for dealing with complaints relating to the discharge of the duties of the Trust, including the handling of requests for information.

For complaints relating to Freedom of Information, CLH will refer applicants to the right under section 50 of the Act, to apply to the Information Commissioner if they remain dissatisfied with the conduct of CLH following attempts at local resolution of their complaint.

#### **16. Records Management**

Hard copies of all correspondence will also be retained for 5 years, in line with the Lord Chancellors Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000.

## **Appendix 1 – Exempt Information**

There are two types of class exemption:

- absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest 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 HMSO website at [www.legislation.hmso.gov.uk/acts/en/2000en36.htm](http://www.legislation.hmso.gov.uk/acts/en/2000en36.htm).

## **Appendix 2 – Glossary of Terms**

**Absolute exemption** – 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 Act.

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 nondisclosure. Reference to absolute exemptions can be found in Part I, Section 2 and Part II of the Act.

**Applicant** - the individual(s), group or organisation requesting access to information under the Act.

**Duty to confirm or deny** - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

**Fees Notice** – 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.

**Fees Regulations** – 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 Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

**Information Commissioner** - The Information Commissioner enforces and oversees the Data Protection Act 1998 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.

**Public authority** - The Act is 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 Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

- on the face of the Act (in Schedule 1), using generic descriptions where appropriate, which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
- by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
- by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or (d) by reference to the definition of a publicly-owned company in section 6.

**Qualified exemption** - 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. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

## **Appendix 3 – References**

Freedom of Information Act 2000

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

Data Protection Act 1998

<http://www.legislation.gov.uk/ukpga/1998/29/contents>

HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities, Department of Health 1999

[http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/publicationsandstatistics/lettersandcirculars/healthservicecirculars/dh\\_4003513](http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/publicationsandstatistics/lettersandcirculars/healthservicecirculars/dh_4003513)

Records Management: NHS Code of Practice

<https://www.gov.uk/government/publications/records-management-nhs-code-of-practice>

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

<https://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>