



**Southport and Formby
Clinical Commissioning Group**

NHS Southport and Formby Clinical Commissioning Group

**Freedom of Information Policy
2014-2016**

Title:		Document Number		
NHS Southport and Formby CCG Freedom of Information Policy				
Next Revision Due: October 2016		Author	Consultation and Communication	Approved by
Department responsible for this document:	Cheshire and Merseyside Commissioning Support Unit (North West CSU)	Senior Governance Manager (Information Governance)	Corporate Governance Support Group	SFCCG Quality Committee
DESIGNATION	NAME	SIGNATURE		DATE
Chief Finance Officer	Martin McDowell			October 2014

Version Control:

Version History:		
Version Number	Reviewing Committee / Officer	Date
1.0	Corporate Governance Support Group	8 th October 2014
	SFCCG Quality Committee	17 th December 2014

Table of Contents

Section	Page
1. INTRODUCTION	4
2. SCOPE	4
3. ROLES AND RESPONSIBILITIES	5
4. PROCESS, PUBLIC INTEREST TEST AND EXEMPTIONS	6
5. REQUESTS FOR AN INTERNAL REVIEW	9
6. PERSONAL INFORMATION AND RECORDS	12
7. RE-USE REGULATIONS AND COPYRIGHT	12
8. CHARGING AND THE APPROPRIATE LIMIT	12
9. DUTY TO ADVISE AND ASSIST	13
10. PROCESS FOR MONITORING, EFFECTIVE IMPLEMENTATION AND REVIEW	13
11. MONITORING	14
12. EQUALITY IMPACT ASSESSMENT	14
13. ASSOCIATED DOCUMENTS	14
Appendix 1 - Publication Scheme	15
Appendix 2 – Summary of the FOI Fee Regulations 2004	17
Appendix 3 - How to make a Freedom of Information request to the CCG	22

1. INTRODUCTION

- 1.1. The Clinical Commissioning Group (CCG) is committed to openness and transparency in the conduct of all of its business. It has a duty to comply with all aspects of the Freedom of Information Act 2000 (FOIA).
- 1.2. The FOIA came into force at the beginning of 2005, and deals with access to information held by public bodies. The FOIA provides individuals or organisations with the right to request information held by a public authority.
- 1.3. The FOIA supplements and complements the Data Protection Act (DPA) 1998, which gives individual's access to their personal information, which is held by organisations. For further information about access to personal or health records please see Section 6.
- 1.4. The FOIA gives access to all other information, as such has a wider remit than the DPA. However, together the two Acts along with the EIR will enable public access to most records held by the CCG.
- 1.5. In addition, there are also regulations which provide access to environmental information; these are the Environmental Information Regulations 2004 (EIR). Please see Section 4 for further information regarding the EIR.
- 1.6. The Re-use of Public Sector Information Regulations 2005 are also contained within this Policy. Please see Section 7 for further information regarding the re-use of CCG information in accordance with the Re-use of Public Sector Information Regulations 2005.

2. SCOPE

- 2.1. This Policy applies to those members of staff that are directly employed by the CCG and for whom the CCG has legal responsibility. For those staff covered by a letter of authority/honorary contract or work experience the organisation's policies are also applicable whilst undertaking duties for or on behalf of the CCG. Further, this Policy applies to all third parties and others authorised to undertake work on behalf of the CCG.
- 2.2. This Policy provides a framework for the CCG to ensure compliance with the FOIA, Re-use of Public Sector Information Regulations 2005 and EIR.
- 2.3. The CCG will, wherever possible, make all information we hold available.
- 2.4. The aim of this Policy is to:
 - ensure all Freedom of Information (FOI) requests are dealt with consistently and receive a high quality response however and wherever the contact is made;
 - ensure that the CCG complies with all relevant regulations, laws and guidance;

- provide clear routes for members of the public to make contact with the organisation so that they can appropriately request documents and information;
- ensure that our Publication Scheme is up to date in order to provide access to information and to lessen the number of written requests the public have to make;
- ensure that the necessary internal structures are in place for the FOIA to be complied with;
- ensure staff at all levels are aware of their responsibilities with regards to the FOIA;
- ensure timescales are met; and
- ensure the Governing Body of the CCG is fully informed on the operation of the FOIA and its implications for the organisation.

2.5. The FOIA applies to all recorded information held by the CCG.

2.6. Information can be held in any form, including recordings or notes of telephone calls, file notes, the web, and any other service that the CCG will introduce in the future.

2.7. It is important that this Policy is read carefully and thoroughly understood.

2.8. The Cheshire and Merseyside Commissioning Support Unit (CSU) will manage the processing of requests for the CCG.

2.9. Email requests for CCG information should be sent to the appropriate CCG FOI mailbox indicated below:

NHS Southport and Formby CCG - southportandformbyccg.foi@nhs.net

2.10. The CCG will not normally charge for the provision of information that is provided as the result of an FOI request. However, there may be occasions where this is necessary. Please see Section 8 for details concerning our charging Policy.

3. ROLES AND RESPONSIBILITIES

3.1. The Chief Clinical Officer has overall responsibility for ensuring the CCG complies with the FOIA.

3.2. The Senior Information Risk Owner will act as the CCG's appropriate 'qualified person' in relation to the application of Section 36 of the FOIA (an exemption in relation to the prejudice to the effective conduct of public affairs).

3.3. The CCG Governing Body is responsible for approving the CCG FOI Policy.

- 3.4. The Senior Information Risk Owner will act as FOI lead at Governing Body level to:
- ensure organisational compliance with the FOIA;
 - have lead responsibility for FOIs and the CCG's Publication Scheme;
 - act as the champion for FOI awareness throughout the organisation;
 - ensure that the general public and CCG staff have access to information about their rights under the FOIA;
 - ensure that a process is in place to assist with investigations into complaints and appeals; and
 - ensure that sufficient resources, processes and structures are in place to administer FOI.
- 3.5. The Information Governance Manager (CSU) will provide leadership and advice in terms of responding to requests, the use of exemptions and where necessary gain legal advice as to whether it is appropriate to disclose the information requested.
- 3.6. Senior Managers in the CCG are responsible for ensuring that information held by them and their teams is up to date and accessible, and for ensuring a timely response is made to enquiries under the FOIA.
- 3.7. All staff are responsible for ensuring enquirers receive accurate information about how to apply for information should it not be available online, and for ensuring that any information requested from them in relation to an enquiry under the FOIA is supplied within the timescales allowed.
- 3.8. Under the FOIA all public bodies are obliged to have a Publication Scheme. A Publication Scheme is a commitment from the organisation to routinely and proactively supply information to the public.
- 3.9. Appendix 1 sets out the seven classes of information of our Publication Scheme and describes what we will publish under each class.

4. PROCESS, PUBLIC INTEREST TEST AND EXEMPTIONS

- 4.1. All requests for information with FOIA should be made in writing, in the form of a letter, fax or email. The enquirer should clearly identify the documents or information that they require, and supply a return address (which can be an email address) for the delivery of the information.
- 4.2. The FOIA only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.
- 4.3. The Cheshire and Merseyside CSU Customer Solution Centre will manage FOI requests for the CCGs.

- 4.4. Where a request does not give sufficient detail to enable the CSU to process the request, the CSU will contact the applicant and advise them of the information that is required to make their application and offer help with their request.
- 4.5. Requests for information specifically under the EIR can be accepted verbally. It is recommended that enquirers are still advised to put their request in writing, as this will ensure there is no ambiguity about their request. Where they still wish to make a verbal request the member of staff taking the request will note as many details as possible, which must include contact information.
- 4.6. The CSU will acknowledge receipt of the request within the first two full working days, and provide the documents/information, or an explanation about why the information has not been disclosed within 20 full working days. A working day is defined by the Information Commissioner's Office (ICO) as one day within the working week (Monday to Friday), excluding Bank Holidays and any other Public Holidays granted.
- 4.7. It might sometimes be necessary to extend this timeframe, for example to assess the public interest in releasing information. In these circumstances the CSU will respond within 40 working days, and notify the requester.
- 4.8. Under the FOIA, information may be withheld if it is covered by an exemption. There are two categories of exemptions: qualified and absolute. Information covered by a qualified exemption can only be withheld if the public interest in withholding the information is greater than the public interest in releasing it. Information covered by an absolute exemption is not subject to this public interest test and can be withheld. The public interest test can be summarised as follows:
- In the majority of cases where an exemption applies, to some or all of the information requested, the authority will then have to consider whether it must override the exemption because it is in the public interest to release the information. This public interest test involves considering the circumstances of each particular case and the exemption that covers the information. The balance will lie in favour of disclosure, in that information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it.*
- 4.9. The ICO categorises qualified and absolute exemptions as below:

Qualified exemptions:

- information intended for future publication;
- national security;
- defence;
- international relations;
- relations within the United Kingdom;
- the economy;
- investigations and proceedings conducted by public authorities;

- law enforcement;
- audit functions;
- formulation of government Policy, etc;
- prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords);
- communications with Her Majesty, etc and honours;
- health and safety;
- environmental information (as this can be accessed through the Environmental Information Regulations);
- personal information (as this is covered by the Data Protection Act 1998);
- legal professional privilege; and
- commercial interests.

Absolute exemptions:

- information accessible to applicant by other means;
- information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals process against such certificates);
- court records;
- parliamentary privilege (a certificate signed by the Speaker of the House for the House of Commons, or by the Clerk of the Parliaments for the House of Lords is conclusive proof that the exemption is justified);
- prejudice to effective conduct of public affairs (only applies to information held by House of Commons or House of Lords);
- personal information (as this is covered by the Data Protection Act);
- information provided in confidence; and
- prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

4.10. The FOIA itself should be consulted for more detailed information on each exemption. If there is any doubt over whether an exemption applies the decision will be escalated within the CCG to the Senior Officer responsible and legal advice gained where necessary.

4.11. If the CCG intend to withhold the information, we have a duty to explain our decision. This should be done within 20 working days, however if we need to

consider the public interest test we are entitled to a reasonable extended period. In this case, within the 20 working day period we should provide an estimate of when we expect to reach a decision and stick to this unless we have a good reason not to. If, while trying to reach a decision, we realise that our original estimate is unrealistic we must keep the applicant informed. We will keep a record of any instances where we fail to meet our estimates.

- 4.12. If the CCG does not hold the information that has been requested, but believes that some, or all of the information requested, is held by another public authority, we will endeavour to advise the requester. In most cases this will mean:
- contacting or formally responding to the applicant and informing him or her we do not hold the information, but that the information requested may be held by another public authority;
 - suggesting that the applicant reapplies to the authority which we believe may hold the information; and
 - providing him or her with contact details for that authority.
- 4.13. Where a document contains some information that is disclosable and some that is exempt, it should still be released, with the exempt information carefully blocked out (redacted).
- 4.14. Exempt information on hard copies should be concealed with a black marker pen and then double photocopied to ensure that it cannot be read. The exempt information should be blocked out from electronic versions and then saved as a new document. All redacted information must be accompanied by an explanation.
- 4.15. We are not required to provide assistance to vexatious or repeated requests. A request would be classed as repeated if we had already responded to the same or very similar request from the same applicant in a recent time period (i.e. within 3 months). A vexatious request can be identified as a request which subjects the organisation to inconvenience, harassment or expense and could be sent by one person or a number of persons working together.
- 4.16. It is also important to consider whether any third parties may be affected by the disclosure of information, for example if the information contains personal data. In these cases we must obtain consent wherever possible.
- 4.17. If the third party refuses to consent, under the FOIA this does not always mean that the information should be withheld. Similarly, consent is not required if exemptions do not apply as the information will have to be disclosed regardless.
- 4.18. If a GP Practice receives a request for 'commissioning data' and the CCG holds the data, the GP Practice can redirect the applicant to the CCG.

5. REQUESTS FOR AN INTERNAL REVIEW

- 5.1. Although a public body is not legally required to have an internal review procedure for FOI requests, the Section 45 Code of Practice makes clear that

it is good practice to have a review procedure in place. The internal review procedure will ensure applicants are able to ask the CCG for an internal review if they are dissatisfied with the response to a request or the handling of a request.

- 5.2. Internal reviews should be conducted by a person who was not party to the original decision on whether to release the information requested.
- 5.3. An internal review must be a fair and impartial review of the decisions made during the original decision of whether to release the information.
- 5.4. The person conducting the review must consider the information released against the information requested and make a full review of the papers associated with the original application.
- 5.5. It is best practice that the internal reviewer discusses the decisions made with the staff member, or members, who dealt with the original application in order to build a full picture as to how decisions were made.
- 5.6. The circumstances relating to the original decision may have changed between the time the CCG made its decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames. The FOIA does not stipulate a time limit for completion of an internal review but the Section 45 Code states that they should be dealt with in a reasonable time and the ICO recommend that:
 - reviews should be completed within 20 working days of receiving the complaint;
 - for complex complaints, or where it is necessary to reconsider the public interest test – reviews should be completed within 40 working days of receipt; and
 - if it appears that the deadline will not be met then the applicant must be advised as soon as possible and a second deadline set by which a response will be sent.
- 5.7. The internal review can have two outcomes:
 - the original decision is reversed; or
 - the original decision is upheld.
- 5.8. Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided to them.
- 5.9. Where the original decision is upheld the applicant must be told and made aware of their further rights of appeal to the ICO.
- 5.10. The outcome of the internal review must be recorded.

Person Responsible	Action to be taken
--------------------	--------------------

- 5.11. The procedure on receiving a request for an internal review is as follows:

FOI lead (from CSU)	If complaint cannot be handled on an informal basis then request for internal review to be acknowledged within five working days along with details of internal review procedure
FOI lead	Independent person to be assigned to conduct internal review and relevant papers forwarded to them
Head of CSU function, plus one other CCG senior member of staff e.g. Senior Information Risk Owner	Independent panel to review the original decision and discuss with people who handled the original request
FOI lead	Outcome of internal review to be discussed and agreed with the FOI lead, who communicates this to the applicant
FOI lead	If outcome is to reverse the decision then information to be sent to the applicant as soon as possible
FOI lead	If outcome is to uphold the decision then the applicant to be informed of their right to appeal to the Information Commissioner's Office (ICO)
FOI lead	Outcome of internal review to be recorded
CCG Chief Officer	If procedures have not been correctly followed, the CCG (and CSU where appropriate) will apologise to the applicant and take appropriate steps to prevent a recurrence

- 5.12. All complaints regarding FOI requests should be forwarded to the Cheshire and Merseyside Commissioning Support Unit.
- 5.13. To complain to the Information Commissioner, please see the ICO web page at: <http://www.ico.gov.uk/complaints/getting/complain.aspx>

6. PERSONAL INFORMATION AND RECORDS

- 6.1. Requests for personnel staff records, or other personal records relating to the enquirer or third parties will be managed outside of this FOI Policy.
- 6.2. Requests for health related information about identifiable living or deceased individuals will be dealt with in accordance with the Data Protection Act (DPA) 1998 or Access to Health Records Act 1990, accordingly.
- 6.3. All such requests will be managed under the Subject Access Requests Policy.

7. RE-USE REGULATIONS AND COPYRIGHT

- 7.1. If there are concerns about information reaching a wider audience, without sufficient briefing relating to the circumstances surrounding the production of the data/document, or its context, then the CCG may indicate that the information is being supplied only for the use of the initial enquirer, and cannot be re-used or reproduced in any format, or relayed on to other people, without the consent of the CCG.
- 7.2. CCG information supplied under the FOIA continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988.
- 7.3. For other forms of re-use, for example publishing the information, the applicant would need the permission of the organisation or person who owns the copyright. In the case of information produced by government departments and agencies, you can re-use the information under the Open Government Licence. For information about this, please see: <http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm>
- 7.4. If, however, the copyright is identified as belonging to somebody else, the applicant will need to apply for permission.
- 7.5. For information about how to obtain permission from a third party, please go to Intellectual Property Office's website at: <http://www.ipo.gov.uk/>
- 7.6. Publishing the information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2005 and will require permission of the CCG and may require a fee.

8. CHARGING AND THE APPROPRIATE LIMIT

- 8.1. The CCG may, in some circumstances, charge for releasing information in accordance with regulations.

- 8.2. A public authority is not obliged to comply with a request for information if it estimates that the cost of determining if it holds the relevant information, locating and retrieving the information and, where necessary, extracting the information from a document would exceed the Appropriate Limit (see Appendix 2 for further details).
- 8.3. The Appropriate Limit is set down under Section 12 of the FOIA (£450 for public authorities). This figure is calculated at a rate of £25 per hour and therefore any request that exceeds 18 hours of combined work will normally be rejected.
- 8.4. Wherever possible, the CSU will work with the enquirer to try to reduce the amount of work involved so that some of the information can be provided. In certain circumstances the CCG can offer the enquirer the option of paying for the information. In this instance, the enquirer would have to pay the full cost.

9. DUTY TO ADVISE AND ASSIST

- 9.1. All public bodies have a duty to advise and assist (under Section 16 of the FOIA), applicants in requesting information. This could involve assisting applicants in making their requests by suggesting what information is available and/or contacting applicants who have made broad requests in order to specify information required so that it may be identified.
- 9.2. Appendix 3 sets out 'How to make a Freedom of Information request to the CCG'.

10. PROCESS FOR MONITORING, EFFECTIVE IMPLEMENTATION AND REVIEW

- 10.1. The CSU will continually review and monitor the handling and logging of information requests.
- 10.2. The Customer Solution Centre will produce monthly performance reports, which will provide information regarding the number of requests received to the CSU for the CCG and their completion dates.

11. MONITORING

- 11.1. Compliance with this Policy will be monitored via the CCG SIRO, CCG Caldicott Guardian, the Information Governance Senior Manager (CSU), together with independent reviews by both Internal and External Audit on a periodic basis.
- 11.2. The Information Governance Senior Manager is responsible for the monitoring, revision and updating of this Policy on a 2 yearly basis or sooner if the need arises.
- 11.3. This Policy will be made available to all Staff via the CCG Intranet site.

12. EQUALITY IMPACT ASSESSMENT

- 12.1. This Policy forms part of the CCG's commitment to create a positive culture of respect for all staff and service users. The intention is to identify, remove or minimise discriminatory practice in relation to the protected characteristics (race, disability, gender, sexual orientation, age, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity), as well as to promote positive practice and value the diversity of all individuals and communities.
- 12.2. As part of its development this Policy and its impact on equality has been analysed and no detriment identified.

13. ASSOCIATED DOCUMENTS

The following documents will provide additional information:

- Information Governance Strategy
- Information Governance Policy
- Confidentiality and Data Security Policy
- Subject Access Request Policy
- Corporate Records Management and Retention Policy
- The suite of ICT security policies

Appendix 1 - Publication Scheme

The Information Commissioner's Office (ICO) defines seven classes of information that a public authority should be making available via their Publication Scheme. These classes are listed below.

- **Who we are and what we do:** Organisational information, locations and contacts, constitutional and legal governance.
- **What we spend and how we spend it:** Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- **What our priorities are and how we are doing:** Strategy and performance information, plans, assessments, inspections and reviews.
- **How we make decisions:** Policy proposals and decisions; Decision making processes, internal criteria and procedures, consultations.
- **Our policies and procedures:** Current written protocols for delivering our functions and responsibilities.
- **Lists and registers:** Information held in registers required by law and other lists and registers relating to the functions of the CCG.
- **The services we offer:** Advice and guidance, booklets and leaflets, transactions and media releases; A description of the services offered.

The CCG Publication Scheme

The ICO guidance is clear that an organisation should not create information purely for the purposes of completing the model publications scheme. As a young organisation, we do not expect to hold all the information suggested in the ICO guidance for some time. However, we will of course start to hold increasing amounts of information, and need to continually consider how we can proactively make this freely available, most commonly via our website.

By continually challenging ourselves to release as much information about our work as possible, in as timely and accessible way as possible, we can ensure that the body of information in the public domain grows in line with our growth as an organisation.

Classes of information

The Information Commissioner's Office (ICO) defines seven classes of information that a public authority should be making available via their Publication Scheme. These classes are listed below.

- **Who we are and what we do:** Organisational information, locations and contacts, constitutional and legal governance.
- **What we spend and how we spend it:** Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- **What our priorities are and how we are doing:** Strategy and performance information, plans, assessments, inspections and reviews.
- **How we make decisions:** Policy proposals and decisions; Decision making processes, internal criteria and procedures, consultations.
- **Our policies and procedures:** Current written protocols for delivering our functions and responsibilities.
- **Lists and registers:** Information held in registers required by law and other lists and registers relating to the functions of the CCG.
- **The services we offer:** Advice and guidance, booklets and leaflets, transactions and media releases; A description of the services offered.

Appendix 2 – Summary of the FOI Fee Regulations 2004

The following summary is in line with:

Statutory Instrument 2004 No. 3244:

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

<http://www.legislation.hmso.gov.uk/si/si2004/20043244.htm>

Introduction

Under the FOIA, the Regulations governing the appropriate limit, and the fees that can be charged for requests for information, came into force, along with the Act's new rights of access to information, on 1 January 2005.

The appropriate limit

The 'appropriate limit', for the purposes of Section 12 of the Freedom of Information Act 2000 and Section 9A of the Data Protection Act 1998, has been set at:

- £600 for central government and Parliament; and
- **£450** for other public authorities, including local authorities, police, the **health service** and education.

The appropriate limit has to be applied, separately, to the duty under Section 1(1)(a) of the FOIA to confirm or deny whether the information is held. It is only if it would cost more than the appropriate limit to confirm or deny, by itself, that the obligation to do so is removed.

It will often be immediately obvious that the cost will not exceed the appropriate limit. But if a request is more complicated and likely to take longer to answer, the public authority will have to consider on a case by case basis if it wishes to estimate whether the appropriate limit would be exceeded in advance.

The Regulations set out what may be taken into account when public authorities are estimating whether the appropriate limit has been exceeded. The costs are limited to those that an authority reasonably expects to incur in:

- determining whether it **holds** the information requested,
- **locating** the information or documents containing the information,
- **retrieving** such information or documents, and
- **extracting** the information from the document containing it (including editing or redacting information).

The authority may take into account the costs attributable to the time that persons are expected to spend on these activities.

In order to achieve consistency, all public authorities should use the same hourly rate when estimating staff-time costs, regardless of the actual costs. The **hourly rate** is set at **£25** per person per hour. If the costs attributable to the time spent on these activities, at **£25** per person per hour, would cost **more** than the appropriate limit of £450 to answer, the public authority is not obliged to answer it.

But, if a request would cost **less** than the appropriate limit to answer, it **cannot charge for** the areas listed above under what may be taken into account in relation to the request.

An authority may not take into account any costs other than those set out in the Regulations. In particular it may not take account of the expected costs of:

- the time taken to **check** that a **request** for information **meets the requirements** of the FOIA;
- **considering** whether the information requested should be withheld in reliance on **an exemption** (this includes any costs incurred through seeking legal advice about whether exemptions apply);
- **considering** whether a request is **vexatious** or a **repeated** request;
- **obtaining authorisation** to send out the information;
- the time taken to **calculate any fee** to be charged; or
- **advice and assistance** provided under Section 16 of the FOIA.

Requests costing less than the appropriate limit

If a request would cost less than the appropriate limit to answer, and there is no other basis on which it may be refused or otherwise dealt with, the public authority must comply with the request. It **cannot charge for** the areas listed above under what may be taken into account in relation to the request. The fees that can be charged are much more restricted than when the appropriate limit is exceeded, with the public authority bearing the majority of the costs of the request.

Authorities can **develop their own policies** on charging fees below the maximum, with the discretion to charge a lower fee or waive fees altogether.

In cases where the appropriate limit has not been exceeded, the maximum fee that could be charged is based on an authority's estimate of the costs that it reasonably expects to incur in:

- informing the person making the request whether it holds the information; and
- communicating the information to the person making the request.

This **includes the costs of:**

- putting the information in the applicant's preferred format, so far as this is reasonably practicable, as set out in Section 11(1) of the Act;
- reproducing any document containing the information, e.g. photocopying or printing; and

- postage and other forms of communicating the information.

When the appropriate limit has not been met, it is only these costs which may be taken into account for the purposes of calculating the maximum fee. In addition, no account can be taken of staff time in undertaking these activities, nor of the costs involved with calculating whether the appropriate limit would be exceeded. For example, if the appropriate limit was not exceeded and you were providing information to an applicant:

- you could not charge for the time taken to locate, retrieve or extract the information or to write a covering letter to the applicant explaining that the information is being provided,
- you could charge for the cost of paper when photocopying or printing the information and printing the covering letter, as well as the cost of postage.

Public authorities have a duty to give effect to an applicant's **preferred format** for receiving information, so far as this is reasonably practicable. This may include:

- summarising the information;
- providing the applicant with a copy (for example by photocopying or printing);
- allowing the applicant reasonable opportunity to inspect a record containing the information;
- producing material in an applicant's preferred format (for example by putting it onto CD-Rom); or
- translating information into a different language at the request of the applicant. If a public authority regularly works in the language requested and has an in-house translation service, it should consider waiving any translation costs. However, public authorities are not obliged under the Act to translate documents if this would not be 'reasonably practicable'.

Authorities can charge for the actual costs incurred, but charges are expected to be reasonable. For example, in most cases, **photocopying and printing** would be expected to cost no more than 10 pence per sheet of paper.

In some cases, authorities may be required by **other legislation** to produce information in a particular format or a different language at no additional cost (and should not therefore charge for it as part of complying with the FOIA). For example, the requirement to make reasonable adjustments for disabled people under the Disability Discrimination Act 1995 could require an authority to produce material in a format such as Braille or on audio tape.

Where the maximum fee would be very low - say **less than £5 or £10** - public authorities are encouraged to consider waiving the fee altogether.

If a public authority proposes to charge a fee for answering a request, it must **issue a fees notice** to the applicant, stating the fee. The fees notice should usually be issued before any costs are incurred in preparing to communicate the answer to the request. When an authority issues a fees notice, the applicant has three months to pay. If payment is not forthcoming, the authority does not have to answer the request (Section 9(2) of the Act).

Requests for information have to be answered promptly, and in any event not later than the **twentieth working day** following date of receipt. However, where the authority has given a fees notice to the applicant, the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating the twentieth working day following the date of receipt.

If the actual cost of answering the request turns out to be greater than the estimated cost charged by way of a maximum fee, the authority must **bear the additional cost**. The FOIA does not allow for authorities to issue another fees notice to cover the additional cost. But if the actual cost of answering the request proves to be less than the fee charged, the public authority should consider **refunding** the excess money to the applicant.

Requests costing more than the appropriate limit

If requests would cost more than the appropriate limit to answer, the public authority is not obliged under Section 1 of the FOIA to answer it. However, Section 16(1) requires the authority to '**provide advice and assistance**, and see if the question could be refined to a more manageable level, or resubmitted in part, to bring it below the appropriate limit'.

Fees and information that is exempt under the FOIA

Information that is exempt through one of the exemptions listed in Part II of the Act is not affected by the FOI fees regime.

Information is (absolutely) exempt if it is 'reasonably accessible' to the applicant.

Information will always be considered reasonably accessible if:

- the authority is obliged to communicate it to the applicant under some other Act, or
- the information is made available in accordance with the authority's Publication Scheme.

Authorities **can charge fees** outside the terms of the Regulations for providing information **through the Publication Scheme**, provided that this is made clear as part of the scheme. For example, this could include set fees for specific pieces of information, or information about how any fees would be charged (such as a set rate per hour of work, a scale of charges, or the market rates for the work).

VAT

The rules apply equally to requests that are above or below the appropriate limit. The key determining factor as to whether VAT is charged is whether the information is available from another source that is not a public authority.

- If an authority was asked for information, and the information was only available from that authority or another public authority, any fees charged would not attract VAT.
- If an authority was asked for information that was available from another source that is not a public authority, any fees would attract VAT.
- Fees charged for information that is provided in accordance with a public authority's Publication Scheme will attract VAT.

Appendix 3 - How to make a Freedom of Information request to the CCG

The Freedom of Information Act 2000 provides a right of access to a wide range of information held by public authorities, including the NHS. The purpose is to promote greater openness and accountability.

Our duty to you

The Freedom of Information (FOI) Act 2000 requires us to:

- Provide information to you about the CCG through a publication scheme
- Provide a guide to this information
- Respond appropriately to requests for information

Before you request information from the CCG

Check whether the information you seek is already available. The CCG publishes information on their website and you may well find the answer to your question is already there. We have a publication scheme setting out what information we currently release or expect to release.

If you request information from the CCG that is already published, we will simply refer you to the published source.

Who can request information?

Anyone, anywhere in the world, can make a FOI request to the CCG.

What can I request?

You can seek any recorded information that you think the CCG may hold.

If the information is environmental, we will respond according to the Environmental Information Regulations (EIR) 2004. You do not have to know whether the information you want is covered by the EIR or the FOI Act. When you make a request, we will decide which law applies.

If the information is your own personal data, then you should make a subject access request under the Data Protection Act (DPA) 1998, and not under the FOI Act.

How do I request information?

Your request must be in writing and can be either posted or emailed to the CCG.

Email requests should be sent to:

NHS Southport and Formby CCG - southportandformbyccg.foi@nhs.net

If emailing, please write "Freedom of Information" in the subject line.

What information must I include in my request?

The FOI Act requires certain information to be supplied before the CCG can respond to your request:

- your real name – we do not have to respond to requests submitted under a pseudonym;
- your address (email addresses are acceptable);
- a description of the information you wish to obtain; and
- any preferences for the format in which you wish to receive the information e.g. electronic or hard copy. We will endeavour to meet your preferences but cannot guarantee that we will be able to.

What you do not need to do:

- explicitly mention the FOI Act, although it may help to do so;
- know whether the information is covered by the FOI Act or the EIR as we will decide this;
- say why you want the information; or
- specify particular documents. You have a right to information, however it is recorded.

How should I word my request?

Comprehensive guidance on submitting effective requests for information is available from the Information Commissioner's Office. However, to frame an effective request for the information you need:

Do:

- do clearly identify the information you want. Be clear about date ranges or timescales. If it is not clear what you are requesting, we may need to seek further clarification;

- do be as specific as possible. If your request is too general, it may be refused on the grounds that replying would exceed the cost limit laid down in the Fees Regulations, which is equivalent to one person working for three and a half days. If this happens, we will ask you to re-submit a narrower, more specific request which could be met within the cost limits and give you advice and assistance to do so;
- do ask questions such as “what” or “how much” as this is much more likely to result in a useful response;
- do use straightforward, polite language.

Don't:

- don't use open-ended questions such as “why”. We do not have to answer your question if this would mean creating new information or giving an opinion or judgment that is not already recorded;
- don't base your request on assumptions or opinions;
- don't mix your request with complaints or comments.

What happens when my request is received?

The CCG has a legal obligation to reply to your FOI request and must do so within 20 working days of receipt. We will do one of the following:

- supply you with the information you requested;
- inform you that we don't hold the information and, if we are able, advise you who does;
- inform you that your request will exceed the cost limit specified in the Fees Regulations and invite you to submit a narrower request;
- inform you that we hold the information requested but refuse to provide all or part of it and explain why, citing one or more of the exemptions from the FOI Act;
- inform you that we are refusing your request on the basis it is repeated or vexatious; or
- inform you that we need more time to consider the public interest test in relation to your request and let you know when to expect a further response. This should not be later than 40 working days after receipt of your request.

What can I do if I am unhappy with the reply I receive or the way my request was handled?

You can ask the CCG for an internal review of your FOI request. When you write to us requesting an internal review, we will acknowledge your letter and tell you how long we think the review will take. We aim to complete internal reviews within 20

working days, although more cases that are complex may take longer. Where internal reviews go over 20 working days, we will keep you informed of progress.

If, after an internal review, you are still not satisfied you can then complain to the Information Commissioner (ICO). Details of how to do this are available at the [ICO website](#).