



**Somerset
Clinical Commissioning Group**

FREEDOM OF INFORMATION ACT 2000 (FOIA) POLICY

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FREEDOM OF INFORMATION ACT 2000 (FOIA) POLICY

1 INTRODUCTION

1.1 The Freedom of Information Act (FOIA) 2000 provides clear statutory rights granting the public access to information held by organisations who conduct public affairs, subject to certain conditions as detailed in the Act. It is intended to promote a culture of openness and accountability amongst public sector bodies, therefore facilitating better public understanding of how public authorities carry out their duties, why they make the decisions they do, and how they spend public money.

1.2 The main features of the FOIA designed to achieve these aims are:

- ‘a duty on all public bodies to ensure any person making a request for information to a public authority is:
 - informed in writing by the public authority whether it holds information of the description specified in the request, and
 - if that is the case, to have that information communicated to him’ (Freedom of Information Act 2000 Pt 1, Sc 1)
- ‘a general right of access to recorded information held by public authorities, subject to certain conditions and exemptions’ (Freedom of Information Act 2000 Pt 1)
- ‘a duty on all public bodies to adopt and maintain a Publication Scheme listing those classes of information which it will routinely makes available to the public’ (Freedom of Information Act 2000 Pt 1, Sc 19)
- ‘the powers of the Information Commissioner to enforce the rights created by the Act’ (Freedom of Information Act 2000 Pt 1, Sc 18)’

2 PURPOSE

2.1 The aim of this document is to outline the Somerset Clinical Commissioning Group’s (CCG) policy to ensure that it meets its obligations under the FOIA.

3 DEFINITIONS

3.1 Definitions and terminology are explained throughout this policy when appropriate.

4 ROLES AND RESPONSIBILITIES

The Somerset CCG

4.1 The Somerset CCG supports openness within the public sector and is therefore committed to the implementation of FOIA. In particular, the Somerset CCG will ensure that:

- requests are processed in a timely and effective manner

- information is disclosed wherever possible, except when it is not in the public interest to do so
- requests are processed in accordance with an individual's right to privacy and confidentiality as required by the Data Protection Act 1998, other relevant legislation, common law, NHS Caldicott and Caldicott 2 guidelines and the Department of Health's publication *Confidentiality: NHS Code of Practice* (2003)
- the local population can access information explaining how to make a request and about the organisation's commitment to greater openness and transparency
- appropriate records management strategies are implemented so that the organisation is able to fulfil its statutory duties under FOIA

Managing Director

4.2 The Managing Director is the accountable officer for the proper and effective implementation of this policy.

Directors

4.3 It is the duty of all directors to ensure that this policy is upheld and communicated with the staff within their directorate who are responsible for processing requests under FOIA.

4.4 The Director for Quality, Safety and Governance with the support of the FOIA Lead will be responsible for the operation of this policy and in particular for:

- setting up and maintaining systems and procedures to support the co-ordination of requests under FOIA
- ensuring that the systems and procedures to support the FOIA process are regularly reviewed and updated in line with new legislation, common law, guidance and Decision Notices generated by the Information Commissioner's Office (ICO)
- providing assistance to members of the public making, or wishing to make, a request under the FOIA
- advising staff on the appropriate handling of requests for information
- deciding whether the information requested falls within an exemption, acting objectively and in the public interest when doing so
- application of the public interest test for qualified exemptions
- seeking legal advice, if required
- drafting refusal notices when it has been decided to withhold information from disclosure using an exemption
- maintaining the Guide to Information
- maintaining an FOIA disclosure log
- ensuring the Information Governance, Records Management and Caldicott Committee are provided with reports on the operation of this policy

- keeping this policy and any associated procedures under review
- processing requests under the Re-Use of Public Sector Information Regulations 2005
- processing requests under the Environmental Information Regulations 2004

All Staff

4.5 It is the duty of all staff to adhere to the principles of this policy and in particular to:

- ensure that records are kept, organised, retained and disposed of appropriately, in accordance with Somerset CCG records management policies
- respond to routine requests for information in a timely manner
- notify the Freedom of Information Team of any complex requests that require further investigation, or of any specific requests made under FOIA
- co-operate with any request for the retrieval of information within the necessary timescales

Information Governance, Records Management and Caldicott Committee (IGRMCC)

4.6 Ongoing monitoring of the policy and FOIA issues are the responsibility of the IGRMCC and will be escalated to the Governance Committee as required.

5 MAKING INFORMATION ACCESSIBLE THROUGH THE GUIDE TO INFORMATION (PUBLICATION SCHEME)

5.1 As part of the Somerset CCG's commitment to ensuring greater openness and transparency, the Guide to Information, a 'live' document, detailing the classes of information that the Somerset CCG publishes and intends to publish in the future, will be regularly reviewed and updated. It details the format, how the information can be accessed and whether a charge will be made for the provision of that information.

5.2 The 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, procurements 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 and 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

5.3 The Guide to Information can be found on the Somerset CCG's website. It is regularly reviewed so that it remains accurate and up to date.

5.4 Wherever possible, the Somerset CCG will proactively disseminate information through its website and Guide to Information. Our website is frequently reviewed and updated to ensure that relevant and accurate information is published.

5.5 When we are unable to publish information this way, or, if an applicant would prefer to view information using a different format, we will indicate how information can be alternatively obtained.

5.6 Specific information which is not published under our Guide to Information can be requested in writing, subject to the provisions of the FOIA.

5.7 In exceptional circumstances some information may be available only by viewing in person. Where this manner is specified, contact details will be provided. An appointment to view the information will be arranged within a reasonable timescale. Whenever possible, we will try and release any information in the format in which it was requested.

5.8 Information will be provided in the language in which it is held or in any other language/format that is legally required.

6 REQUESTS FOR INFORMATION

6.1 The FOIA gives a general right of access to information held by the Somerset CCG, subject to certain conditions and exemptions. Any person may request information from the Somerset CCG in writing, providing they state their name, an address for correspondence and a description of the information required.

6.2 The applicant has a right:

- to be informed in writing whether the Somerset CCG holds the requested information
- if the Somerset CCG does hold the information, the applicant has the right to be provided with it

6.3 These provisions are fully retrospective, subject to certain conditions and exemptions.

6.4 The Somerset CCG will make a preliminary assessment and communicate to the applicant whether the request falls under:

- the Freedom of Information Act 2000
- the Data Protection Act 1998
- the Environmental Information Regulations 2004

6.5 The applicant does not need to state that their request is being made under the FOIA; it is the responsibility of the Somerset CCG to quantify the request.

6.6 Any requests that fall under the aforementioned legislations in section 6.4, will be processed in accordance with the Somerset CCG-related policies and procedures.

6.7 The Somerset CCG will acknowledge any request under the FOIA and respond within the statutory timescale of 20 working days (see Appendix 2), in accordance with its internal procedure on processing requests under the FOIA.

7 CONSIDERATION OF REQUESTS WITHOUT REFERENCE TO THE IDENTITY OF THE APPLICANT OR THE REASONS FOR THE REQUEST

7.1 The Somerset CCG upholds the principles of the FOIA as applicant and motive blind, recognising that the FOIA is not about specified individuals, but about disclosure in the public interest.

7.2 All requests under the FOIA are therefore considered on the basis that it could have been made by any person; the identity of that person is not a material consideration when deciding whether or not to release information, subject to certain exemptions specified by the FOIA.

8 PROVIDING ADVICE AND ASSISTANCE

8.1 The Somerset CCG does not expect the public to have a full understanding of all the information that it does or does not hold, and appreciates that some requestors may have difficulty framing their information access request in a way that enables it to respond.

8.2 The Somerset CCG will offer advice and assistance to requestors:

- where there is any confusion about the nature of the request
- if it is so unspecific as to not be clear what information is being sought
- the request is too broad or complex for response

8.3 Although requestors do not need to state the reason for their information access request, there will be occasions where knowing this can facilitate providing advice and assistance. The Somerset CCG will ask about the

reasons in a manner that clearly explains why we are asking and that the requestor is not obliged to answer.

- 8.4 The Somerset CCG will provide advice and assistance to requestors who have difficulty making an information access request in writing due, for example, to communication issues or disability.

9 VEXATIOUS OR REPEATED REQUESTS

- 9.1 Should an applicant make a vexatious request or a repeated request for identical or substantially similar information, the Somerset CCG will inform the applicant that they will not comply with the request. The applicant will be informed of how to appeal against that decision – see section 16 for more information.

- 9.2 Designation of requests as vexatious should only be used as a last resort and after all reasonable measures have been taken to assist the applicant and provide the information they require. A request will not be vexatious just because it is difficult to see why the applicant would want the information requested, or because considerable effort is required to retrieve the information.

- 9.3 Designation of requests as vexatious should only be made following careful consideration by, and with the authorisation of the Managing Director.

10 RESPONDING TO REQUESTS

Provision of Information

- 10.1 The Somerset CCG will respond to all requests under the FOIA within the statutory timescale of 20 working days, in accordance with its internal procedure on processing requests under the FOIA.

- 10.2 The Somerset CCG will advise the applicant:

- whether it holds the information requested (unless an exemption applies)
- whether it considers any exemptions may apply and the reasons (unless to do so would defeat the exemption)
- of their right to appeal if an exemption is being invoked
- the fee to be charged (if any)

- 10.3 The Somerset CCG will provide advice and assistance to aid the applicant in making their request, in accordance with the FOIA

Exemptions and the Public Interest Test

- 10.4 The FOIA contains a number of exemptions to the general right of access to information. A full list of exemptions is at Appendix 1. The Somerset CCG will ensure the appropriate application of any such exemptions.

- 10.5 If an 'absolute' exemption applies, the Somerset CCG will refuse to disclose the information requested.
- 10.6 If a 'qualified' exemption applies, the Somerset CCG will make a decision whether it is nevertheless in the public interest for the information be disclosed. Such decisions must be made on a case-by-case basis and it will be necessary to apply the public interest test for a qualified exemption. The presumption should be in favour of disclosure, unless the public interest in withholding it is greater than the public interest in disclosure.
- 10.7 If the Somerset CCG withhold some or all of the information requested, a refusal notice will be issued explaining what exemption has been applied and why, the public interest confidentiality taken into account (where applicable, together with information in relation to the applicants right of appeal).
- 10.8 The Somerset CCG takes its duties and responsibilities for confidentiality and security of personal information very seriously and will generally remove or redact personal information from documents or records provided in response to an information access request unless:
- the individual concerned has consented to the disclosure
 - the individual concerned is a staff member in a senior position
 - the personal information is already in the public domain
 - it is reasonable in all the circumstances to disclose the personal information

Consultation with Third Parties

- 10.9 The Somerset CCG holds substantial information provided by, obtained from or relating to third parties, for example in relation to contracts or joint working with other organisations. The Somerset CCG will endeavour, where possible, to consult and work with other public authorities and third parties to ensure that information is disclosed appropriately under FOIA.
- 10.10 The Somerset CCG 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 its functions and it would not be otherwise provided, and will not agree to hold information 'in confidence' which is not truly confidential in nature.
- 10.11 In addition, information that is confidential at the time of acceptance by the Somerset CCG may no longer be confidential at the time of an information access request due to the passage of time or having already entered the public domain.

Contracts

- 10.12 When entering into contracts, the Somerset CCG will refuse contractual terms which seek to restrict the disclosure of information relating to the

contract, beyond those restrictions permitted by law. Unless a legal exemption is applicable in relation to any particular information, the Somerset CCG will be obliged to disclose in response to an information access request, regardless of the terms of the contract.

- 10.13 In exceptional circumstances the Somerset CCG may agree to include non-disclosure provisions in a contract, by means of a schedule which clearly identifies the information that should not be disclosed. The Somerset CCG will however, ensure when drawing up any such schedule that the contractor understands restrictions on disclosure could potentially be overridden by its legal obligations to respond to information access requests.

Transfer of Requests for Information

- 10.14 For the purposes of the FOIA, the Somerset CCG is obligated to provide information, subject to certain exemptions, in response to an FOIA request if it holds the information. Information is 'held' by a public authority if:

- it is held by the authority, otherwise than on behalf of another person, or
- it is held by another person on behalf of the authority

- 10.15 The Somerset CCG is not required to release any information that relates to another organisation. The originating public authority will 'hold' the information for the purposes of the FOIA.

- 10.16 If such a request under the FOIA is received by the Somerset CCG, the applicant will be advised that the Somerset CCG does not hold the requested information. The Somerset CCG will then in the majority of cases ask the applicant to re-direct their request to the originating public authority. The Somerset CCG may in certain circumstances transfer the request to the originating authority, or deal with the request, but consult with the originating authority, whose responsibility it is to make the disclosure decision.

Fees

- 10.17 In accordance with the FOIA, the Somerset CCG intends to make information readily available at minimum inconvenience and cost to the public. Any charges made by the Somerset CCG will be justified and kept to a minimum.
- 10.18 Material which is published and accessible on our website will be provided free of charge.
- 10.19 Charges may be made for information subject to a charging regime as specified by Parliament. Charges may be made for actual costs incurred only, such as:

- photocopying
- postage and packaging
- the costs directly incurred as a result of viewing information

10.20 Charges may also be made for information, where they are legally authorised, and are in accordance with a published schedule or schedules of fees which is readily available to the public.

10.21 If a charge is made, confirmation of the payment due will be given before the information is provided. Payment may be requested prior to provision of the information.

10.22 For a summary of the FOIA Fee Regulations 2004 please see Appendix 4.

11 RECORDS MANAGEMENT

11.1 Under section 46 of the FOIA, 'the Lord Chancellor shall issue, and may from time to time revise, a code of practice providing guidance to relevant authorities ... in connection with the keeping, management and destruction of their records' (Freedom of Information Act 2000 Pt 3, Sc 46).

11.2 NHS records, in particular, are public records under the terms of the Public Records Act 1958 sections 3 (1)-(2). The Secretary of State for Health and all NHS organisations have a duty under the Public Records Act to make arrangements for the safe keeping and eventual disposal of all types of their records (Public Records Act 1958).

11.3 This policy promotes the successful implementation of the Somerset CCG records management policies and procedures to ensure that the Somerset CCG can account fully and transparently for the actions and decisions it makes under the FOIA.

12 DATASETS

12.1 Section 102 of the Protection of Freedoms Act 2012 added new provisions to the FOIA regarding datasets. These provisions came into effect on 1 September 2013 and relate to how information is disclosed rather than what information is disclosed. The provisions mean that where possible the Somerset CCG should provide datasets in a reusable form and under licensing conditions that permit reuse.

Provision of Datasets in Reusable Format

12.2 This provision mean that if the Somerset CCG is providing information under FOIA that constitutes a dataset, they must, where reasonably practicable, provide a copy of that dataset in a reusable form.

12.3 The term dataset means a collection of factual information in electronic form (for example statistics or figures) that has not been materially altered

since it was recorded. To be a dataset, the information must not have been the product of analysis or interpretation (it must be 'raw data').

- 12.4 There is no duty to provide information that was not previously accessible under the FOIA, and it may be that exemptions to disclosure still apply. The duty only relates to the provision of datasets in a reusable format. A reusable format is one that is machine readable (in a structured format such as a spreadsheet), and is based on open standards.

Reasonably Practicable

- 12.5 There is no definition of what is classed as reasonably practicable, and no cost limit. Factors that the Somerset CCG can take into consideration when deciding whether it is reasonable practicable to provide the dataset in a reusable format include:

- time and cost of converting the data to a reusable format
- technical issues
- resources of the Somerset CCG

- 12.6 If the Somerset CCG decides that it would not be reasonably practicable to provide the dataset in a reusable format, the requestor has the right to appeal (please refer to section 16 of this policy).

Dataset Flowchart

- 12.7 The flowchart in Appendix 3 detailing the decisions and steps which the Somerset CCG must take when releasing information that it holds as a dataset. It is intended to provide practical guidance for public authorities in applying the dataset provisions. The starting point for the flowchart is that the Somerset CCG has received a request and has identified information which is not exempt and which it is going to release under FOIA.

13 CONFIDENTIALITY

- 13.1 This policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The implementation of this policy adheres to the principles of the Data Protection Act 1998 and also to the Somerset CCG-related policies and procedures.

14 RE-USE OF PUBLIC SECTOR INFORMATION

- 14.1 Information routinely published by the Somerset CCG through its Guide to Information, its corporate publications or its website may be re-used by any individual or organisation subject to the following conditions:

- acknowledgment of the Somerset CCG as the source
- acknowledgment of the document title

- recognition that the document remains copyright of the Somerset CCG
- 14.2 All information supplied by the Somerset CCG in response to a request for information under FOIA will be subject to the Re-Use of Public Sector Information Regulations 2005.
- 14.3 Requests for re-use must be:
- made in writing
 - state the name of the requestor with an address for correspondence
 - specify the document or information requested
 - state the purpose for which re-use is requested
- 14.4 The Somerset CCG will:
- respond within 20 working days making the requested document available to the requestor for re-use
 - advising of the charges applicable for re-use (if any)
 - advising the requestor of any conditions on which re-use will be permitted (if any) or
 - refusing the request and explaining why
- 14.5 The Somerset CCG's response will advise the requestor of their right to appeal to either the Somerset CCG directly or their right of appeal to the Office of Public Section Information.
- 14.6 Information made available for re-use to the requestor can also be re-used by any other person or organisation as the Somerset CCG will not enter into 'exclusive use' agreements.

Datasets

- 14.7 If a dataset is a relevant copyright work, the Somerset CCG must provide it under the terms of a specified license. A relevant copyright work is one that the Somerset CCG owns the copyright and database right, and it is not a Crown or Parliamentary copyright work. The Somerset CCG cannot license the reuse of a dataset or part of a dataset if it is not the copyright owner.
- 14.8 The Somerset CCG must disclose their own copyrighted datasets with a license for them to be reused. Where the only copyright holder is the Somerset CCG, the Open Governance License is the recommended license that will allow datasets to be reused without charge and allows both commercial and non-commercial reuse.
- 14.9 Where there is no copyright on a dataset, the Somerset CCG should inform the requestor that there are no restrictions on reuse.
- 14.10 The Somerset CCG may charge a fee for communicating the information and a fee for making a copyright dataset available for reuse. A fee must

not exceed the cost of collection, production, reproduction and dissemination of the relevant copyright work, plus a reasonable return on the investment. There is no set fee.

15 ENVIRONMENTAL INFORMATION REGULATIONS (EIR) 2004

15.1 The EIR 2004 applies to all public authorities covered by the FOIA, but extends to include all organisations, private contractors or individuals carrying out 'public administration functions'. The EIR enforces a Europe wide directive allowing the public a right of access to a broad range of information about the environment, including:

- the state of the elements of the environment such as air, water, soil, land
- emissions and discharges, noise, energy, radiation, waste and other such substances
- measures and activities such as policies, plans and agreements affecting or likely to affect the state of the elements of the environment
- reports, cost benefit and economic analyses used in these policies, plans and agreements
- the state of human health and safety, contamination of the food chain and cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment)

15.2 Public authorities are also required to pro-actively publish environmental information and to progressively make that information available by electronic and easily accessible means.

15.3 Requests for information specifically under EIR 2004 can be accepted verbally. It is recommended that enquiries are still advised to put the request in writing, as this will ensure there is no ambiguity about the request. Where an applicant still wishes to make a verbal request, the member of staff taking the request will note as many details as possible which must include contact information for the requestor.

15.4 Responses to information access requests under EIR 2004 will be issued promptly and no later than 20 working days from receipt.

15.5 The Somerset CCG may withhold information under one or more of the exceptions if disclosure relates to internal communications or would adversely affect:

- international relations
- defence
- national security or public security
- the ability of a person to receive a fair trial
- or a public authority to conduct an inquiry of a criminal or disciplinary nature
- intellectual property rights

- confidentiality proceedings of the Somerset CCG
- confidentiality of commercial or industrial information
- the interests of any person who provided information voluntarily and has not consented to its disclosure
- the protection of the environment to which the information relates

15.6 These exceptions are not absolute, but are all subject to the ‘public interest test’. The Somerset CCG will disclose information if, on balance, the public interest in disclosing accepted information is equal to or greater than the public interest in withholding.

15.7 The Somerset CCG may refuse a request if it manifestly unreasonable or too general, but will provide advice and assistance to make the request more manageable. Requests relating to unfinished documents or data can also be refused, although the Somerset CCG will inform the requestor when the information is expected to become available.

15.8 If the Somerset CCG withhold some or all of the information requested based on application of exceptions, the Somerset CCG will

- issue a refusal notice explaining what exception it has applied and why
- the public interest considerations taken into account
- the internal review process
- the requestor’s right to complain to the ICO

15.9 Requestors have a legal right to make representation for review within 40 working days of the Somerset CCG’s response. This will be undertaken by a senior member of staff not involved in the handling of the original request. The Somerset CCG will advise the outcome promptly and no later than 40 working days after receipt.

15.10 Regardless of whether the review upholds or overturns the original decision, in whole or in part, the Somerset CCG will advise the requestor of his/her right of appeal to the Information Commissioner.

16 THE RIGHT TO APPEAL

16.1 If an applicant is dissatisfied with the way their request was handled, they are encouraged in the first instance to contact the Somerset CCG to resolve any issues internally and/or request a formal review of the decision, in line with the ICO section 45 Code of Practice and in accordance with the Somerset CCG’s internal procedure on processing requests under the FOIA. An internal review will be undertaken by a senior member of staff not involved in the handling of the original request. The Somerset CCG will advise of the outcome as promptly as possible, within 20 working days but no later than 40 working days.

16.2 Regardless of whether the internal review upholds or overturns the original decision, in whole or in part, the Somerset CCG will advise the requestor of his/her right of appeal to the ICO.

Information Commissioner's Office

- 16.3 Under section 50 of the FOIA, an applicant has the right to approach the Information Commissioner to formally appeal the Somerset CCG decision and/or to appeal their handling of an information request.
- 16.4 The Information Commissioner's Office will then investigate the decision made by the Somerset CCG and may issue a Decision Notice. This is the Commissioner's final view on whether or not the authority has complied with the Freedom of Information Act 2000.
- 16.5 When a Decision Notice is issued, the authority and the applicant are informed along with details of their right to appeal to the Information Tribunal, which hears appeals regarding notices issued by the Information Commissioner.
- 16.6 The Somerset CCG is consequently obliged to accept and act upon a Decision Notice, or ruling by the Information Tribunal, if it is contrary to the original decision.

17 TRAINING REQUIREMENTS

- 17.1 All staff on Induction will receive training on the Somerset CCG FOIA policy including information about their roles and responsibilities as outlined in this policy.
- 17.2 Additional training shall be provided to members of staff who are involved with investigating and processing requests under the FOIA.
- 17.3 All staff are reminded by this policy that information held in any form, including recordings, or notes of telephone calls, file notes, notepads, the website or any other service that the Somerset CCG introduces in the future could be subject to an FOIA request and can subsequently be made public.

18 MONITORING, COMPLIANCE AND REVIEW

- 18.1 Quarterly reports will be submitted to the IGRMCC on matters relating to the FOIA and this policy.
- 18.2 The Director for Quality, Safety and Governance will ensure that this policy is presented to the IGRMCC regularly for review.
- 18.3 The IGRMCC will review any changes to this policy and make recommendations to ensure compliance with the FOIA.
- 18.4 The Somerset CCG Publication Scheme details the information that the Somerset CCG publishes and is available via the website. It will be subject to regular review in terms of content and will be formally reviewed by the IGRMCC at regular intervals.

18.5 This policy will be disseminated to all staff on the website.

19 ASSOCIATED DOCUMENTS

- Data Protection Act 1998 Policy
- Subject Access Requests Policy
- Being Open Policy
- Caldicott Policy
- Information Governance Systems Security Policy and Procedures
- Records Management Strategy
- Internal Procedure for Processing Requests under the Freedom of Information Act 2000
- Freedom of Information Act 2000 Staff Leaflet

20 REFERENCES

- Freedom of Information Act 2000
- Data Protection Act 1998
- Environmental Information Regulations 2004
- Information Commissioners Web Site
<http://www.informationcommissioner.gov.uk/>
 - Information Commissioners section 45 Code of Practice
 - Information Commissioners section 46 Code of Practice
 - Information Commissioners – Guide to FOIA 2000
 - Information Commissioners – Guide to EIR 2004

EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT (2000)

There are two types of class exemption under the Freedom of Information Act (2000):

1. **Absolute**, which does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure;
2. **Qualified by the public interest**, which requires the public body to decide whether it is in the balance of public interest not to disclose the information.

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

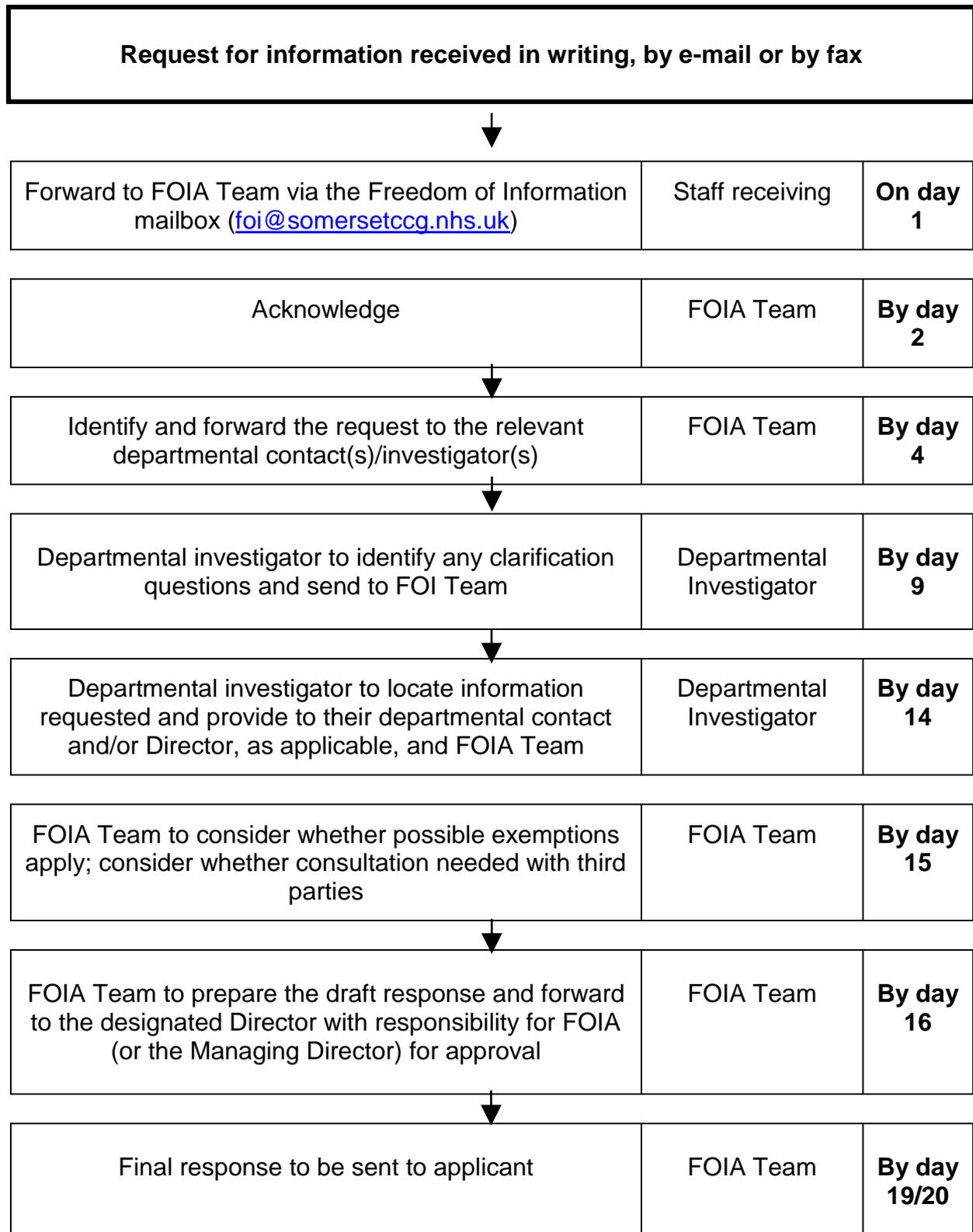
Absolute Exemptions under the Act

- Section 21: Information accessible to the 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

Exemptions Qualified by the Public Interest Test

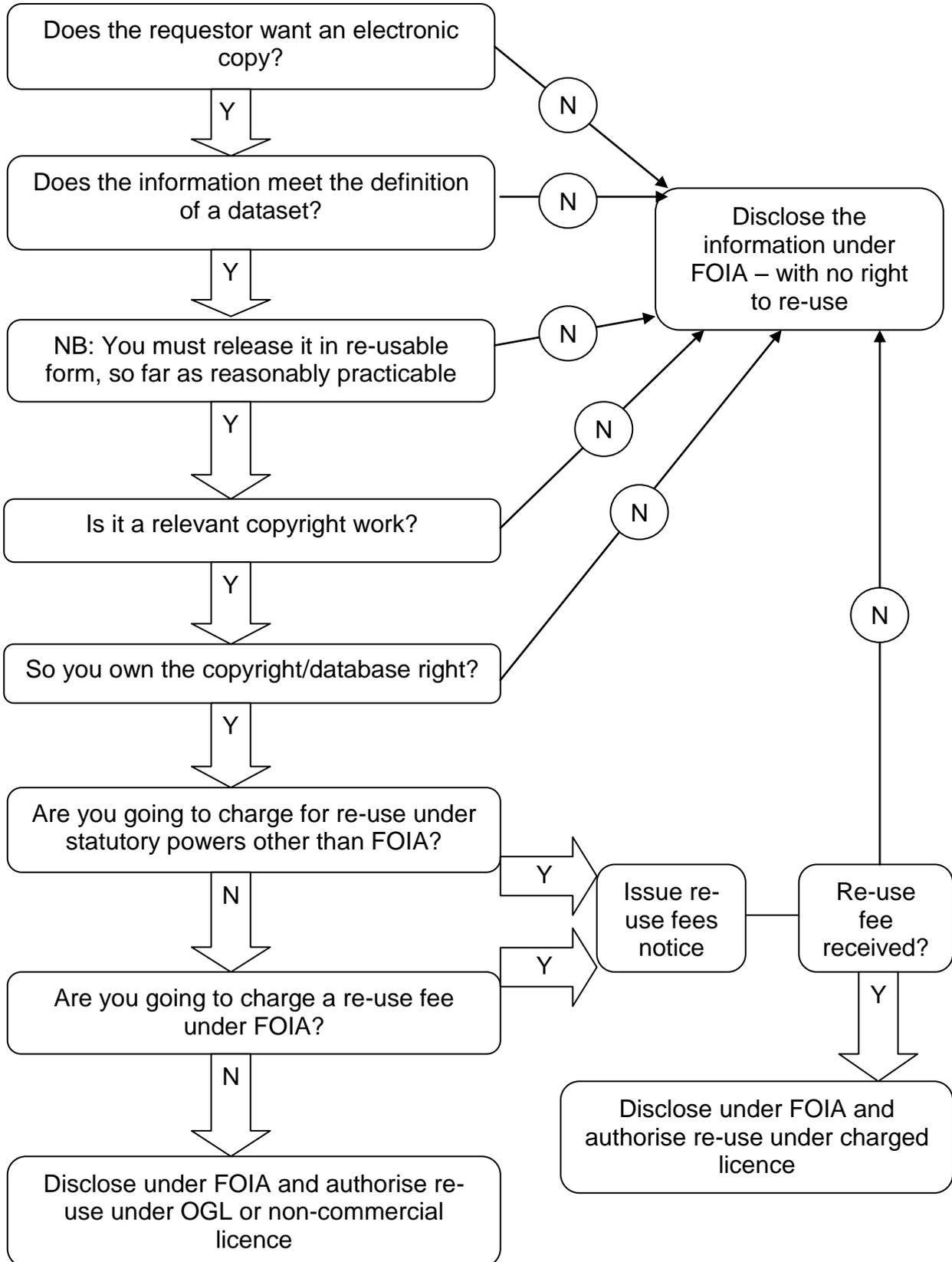
- Section 22: Information intended for future publication
- Section 24: National Security
- Section 26: Defence
- Section 27: International Relations
- Section 28: Relations within the United Kingdom
- Section 29: The Economy
- Section 30: Investigations and proceedings conducted by public authorities
- 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

**FLOWCHART WITH TIMESCALES
GUIDE TO BEST PRACTICE**



DATASET FLOWCHART

This flowchart shows the decisions and the steps which the Somerset CCG must take when releasing information that it holds as a dataset.



SUMMARY OF THE FREEDOM OF INFORMATION AND DATA PROTECTION (APPROPRIATE LIMIT AND FEES) REGULATIONS 2004

1 INTRODUCTION

1.1 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.

2 THE APPROPRIATE LIMIT

2.1 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

2.2 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.

2.3 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.

2.4 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)

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

2.6 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.

2.7 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.

3 REQUESTS COSTING LESS THAN THE APPROPRIATE LIMIT

3.1 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.

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

3.3 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

3.4 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.

3.5 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

3.6 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'.

3.7 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.

3.8 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.

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

3.10 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).

3.11 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.

3.12 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.

4 REQUESTS COSTING MORE THAN THE APPROPRIATE LIMIT

4.1 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'.

5 FEES AND INFORMATION THAT IS EXEMPT UNDER THE FOIA

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

5.2 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.

5.3 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).

6 VAT

6.1 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