



South Warwickshire  
Clinical Commissioning Group

# Freedom of Information Policy



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## **1. Introduction**

1.1 The Freedom of Information Act 2000 (the Act) is part of the government's commitment to greater openness in the public sector. It will enable members of the public to scrutinise the decision of public authorities more closely and ensure that services are delivered properly and efficiently. The Act replaces the non-statutory Code of Practice on Openness in the NHS and does not put a limit on the amount of information an organisation can disclose i.e. it may release more information than is allowed for in the Act, but must at least release the information that the Act suggests it should.

1.2 The main features of the Act are:

- A general right of access to everyone from 1 January 2005 to all recorded information held by public authorities, subject to certain conditions and exemptions set out in the Act.
- A public interest test in cases where information may be exempt from disclosure, except where an absolute exemption applies.
- A duty on public authorities to:
  - (i) inform the applicant whether they hold the information requested, and
  - (ii) communicate the information to him or her not later than the twentieth working day following the date of receipt., 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 (a guide to information held by each public authority).
- An Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice.

1.2 As a public authority, NHS South Warwickshire CCG therefore has obligations under the Act. NHS South Warwickshire CCG is committed to being as open and transparent as possible in the way that it works and will use all appropriate means to ensure that it complies with the Act and the associated Codes of Practice.

1.3 This document sets out the policy for NHS South Warwickshire CCG with regard to its legal obligations to comply with the Act in providing access to anyone who wishes to see NHS South Warwickshire CCG's information.

## **2. Objectives**

2.1 To set out NHS South Warwickshire CCG's approach to ensuring all Freedom of Information (FOI) requests are dealt with consistently and receive a high quality response.

- 2.2 To ensure that NHS South Warwickshire CCG complies with all relevant regulations, laws and guidance.
- 2.3 To ensure that there are clear routes for members of the public to make contact with the service so that they can appropriately request documents and information.
- 2.4 To ensure that NHS South Warwickshire CCG has an up to date and inclusive Publication Scheme in order to provide the public with easy access to information and to reduce the number of written requests that the public have to make.
- 2.5 To ensure that the necessary administrative infrastructure is in place to enable compliance with the Act.
- 2.6 To ensure that all staff are aware of their responsibilities with regard to the Act, whether it be directing any FOI requests to the correct person, or in ensuring that they provide the requested information within the required timescales.
- 2.7 To ensure that FOI requests are dealt with within the appropriate timescales.
- 2.8 To ensure that the Governing Body is informed of the Act's implementation and any implications of this for NHS South Warwickshire CCG.

### **3. Scope**

- 3.1 This policy must be adhered to by all staff of NHS South Warwickshire CCG, whether permanent or temporary.
- 3.2 This policy applies to every piece of recorded information held by NHS South Warwickshire CCG, whether paper or electronic. It includes all final documents, agendas, minutes, emails, diaries and even rough handwritten notes.

### **4. Definitions**

- 4.1 **The Act** – the Freedom of Information Act 2000.
- 4.2 **FOI** – an acronym for Freedom of Information.
- 4.3 **ICO** – an acronym for the Information Commissioner's Office.
- 4.4 **Exemption** – categories of information that are not required to be disclosed (see Appendix 2). They can be absolute or qualified.

- 4.4.1 **Absolute exemption** – does not require a test of prejudice or the balance of public interest to be in the favour of non-disclosure. NHS South Warwickshire CCG is not under any obligation under the Act to consider the request for information any further if an absolute exemption applies.
- 4.4.2 **Qualified exemption** - is subject to the public interest test. Qualified exemptions do not justify withholding information unless, following a proper assessment, the balance of the public interest comes down against disclosure.

4.5 **Redaction** – the process of editing or revising a piece of writing in preparation for publication or responding to a request.

## 5. Roles and Responsibilities

5.1 **NHS South Warwickshire CCG's Governing Body** has a duty to ensure compliance with the Act. The Governing Body will be kept informed of any risks or issues in relation to compliance with this policy via the Clinical Quality and Governance Committee.

5.2 The **Accountable Officer** has ultimate responsibility for compliance with the Act.

5.3 The **Director Lead for FOI** at NHS South Warwickshire CCG is the Director of Strategy and Engagement who is responsible for overseeing the implementation of the Act.

5.4 The **Director of Strategy and Engagement** will regularly report to the Governing Body in relation to FOI activities and compliance.

5.5 The **Director of Strategy and Engagement** will be responsible for dealing with all appeals/complaints in relation to decisions on FOI requests. Where necessary an internal review will take place and a panel will be convened if required.

The **Director of Strategy and Engagement** will delegate responsibilities for FOI to the Arden Commissioning Support Compliance Lead as necessary.

5.6 The **Director of Strategy and Engagement** is responsible for the NHS Publication Scheme of NHS South Warwickshire CCG.

5.7 The **Arden Commissioning Support Compliance Lead** is responsible for processing and handling FOI requests received by NHS South Warwickshire CCG, advising on the use of exemptions and providing assistance to those who request it. The Arden Commissioning Support Compliance Lead will assist with the implementation of this policy and will keep the Clinical Quality and Governance Committee informed of any issues.

- 5.8 **Directors** are responsible for:
- 5.8.1 ensuring that current and complete information is provided to the Arden Commissioning Support Compliance Lead so that the Publication Scheme can be kept up to date.
  - 5.8.2 ratifying responses to FOI requests that relate to their Directorate before they are released.
- 5.9 **Line Managers** at all levels ***are responsible for ensuring that staff they are responsible for are aware of their obligations under the Act and that they adhere to this policy.***
- 5.10 **All staff (including lay members)** of NHS South Warwickshire CCG will:
- 5.10.1 comply with the most up-to-date version of this policy.
  - 5.10.2 ensure that where a breach of this policy has occurred, or a significant risk has been identified, it is reported to the Line Manager so that NHS South Warwickshire CCG's Incident Management process is invoked in accordance with the Policy and Procedure for the Reporting and Management of Clinical and Non-Clinical Incidents.
  - 5.10.3 be aware that any breach of this policy may result in disciplinary proceedings. Furthermore, any breach of legal obligations may result in legal proceedings against an individual and/or NHS South Warwickshire CCG.

## **6. Publication Scheme**

- 6.1 NHS South Warwickshire CCG will adopt the model publication scheme as provided by the Information Commissioner's Office (ICO).
- 6.2 The publication scheme will set out the categories of information that NHS South Warwickshire CCG undertakes to publish. It will detail the format in which the information is held and whether there is a charge for its provision.
- 6.3 The publication scheme will be available on NHS South Warwickshire CCG's website and in hard copy upon request to the Arden Commissioning Support Compliance Lead.
- 6.4 Some of the information listed in the publication scheme will be available to view or download from NHS South Warwickshire CCG's website. However, other publications will have to be requested from NHS South Warwickshire CCG.
- 6.5 Documents available through the publication scheme will be final approved versions – no draft documents will be available.

- 6.6 Requests for information listed in the publication scheme should be in writing.
- 6.7 The publication scheme will be subject to regular review for content. Information that is frequently requested by the public will be available for viewing or downloading from NHS South Warwickshire CCG's website.
- 6.8 The publication scheme covers a wide range of information from all areas of NHS South Warwickshire CCG. Directors are responsible for ensuring that up to date and complete information for NHS South Warwickshire CCG is provided to the Arden Commissioning Support Compliance Lead for inclusion in the publication scheme.

## **7. Classes of Information within the Publication Scheme**

- 7.1 The classes of information (listed in 7.2) are those which are expected to be published in order to meet the commitments under the model publication scheme of the ICO. NHS South Warwickshire CCG is expected to make this information available unless:
- the information is not held
  - the information is exempt under one of the FOI exemptions or Environmental Information Regulations (EIRs) exceptions, or its release is prohibited under another statute
  - the information is archived, out of date or otherwise inaccessible
  - it would be impractical or resource intensive to prepare the material for routine release
- 7.2 The specific classes, as per the New Model Publication Scheme (Health Bodies)<sup>1</sup> of the Information Commissioner in 2008 are:
- 7.2.1 Who we are and what we do
  - 7.2.2 What we spend and how we spend it
  - 7.2.3 What are our priorities and how are we doing
  - 7.2.4 How we make decisions
  - 7.2.5 Our policies and procedures
  - 7.2.6 Lists and registers
  - 7.2.7 The services we offer

## **8. General Rights of Access**

- 8.1 Section 1 of the Act gives a general right of access to recorded information held by NHS South Warwickshire CCG, subject to certain conditions and exemptions contained in the Act. Any person making a request for information to NHS South Warwickshire CCG is entitled:

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<sup>1</sup> See Appendix 3



- (i) to be informed in writing whether NHS South Warwickshire CCG holds the information of the description specified in the request, and
- (ii) to have information held by NHS South Warwickshire CCG communicated to them

- 8.2 These provisions are fully retrospective in that if NHS South Warwickshire CCG holds the information, it must provide it, subject to certain conditions and exemptions. NHS South Warwickshire CCG will ensure that procedures and systems are in place to facilitate access by the public to recorded information.
- 8.3 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 describing the information requested. A request is written if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.
- 8.4 It is the duty of NHS South Warwickshire CCG to provide advice and assistance to persons who have made, or wish to make, requests for information. NHS South Warwickshire CCG will ensure that systems and procedures are in place to meet this duty.
- 8.5 NHS South Warwickshire CCG will have a dedicated email account for FOI requests. This dedicated email account will allow delegate access to authorised staff to cover periods when the person who manages the email account is absent, for example on annual leave.
- 8.6 NHS South Warwickshire CCG's website will provide clear instructions to the public on how they can make an FOI request electronically (by email or fax) or by traditional postal means.
- 8.7 Should an applicant make 'repeated' or 'unreasonable' requests for identical or substantially similar information, NHS South Warwickshire CCG will inform the applicant in writing that it will not fulfil the request. Equally, where a number of requests made by different people appear to form part of an organised campaign, NHS South Warwickshire CCG may calculate the cost of complying with any of the requests as the cost of complying with them all. If this cumulative cost is estimated to exceed the appropriate limit (currently £450) that is set in the national Fees Regulations, then NHS South Warwickshire CCG is not required to comply with the requests.

## **9. Dealing with Information Requests**

- 9.1 NHS South Warwickshire CCG will establish systems and procedures to ensure that the organisation responds to information requests not later than the 20<sup>th</sup> working day following the date of receipt of a request (unless a public interest test is being considered). All staff and lay members will be required to comply with the requirements of these procedures.

- 9.2 Whilst technically all requests for information are FOI requests, routine day to day requests may continue to be dealt with by individual staff members in the normal way and do not need to be recorded as FOI requests. Staff should respond to all requests for information in a timely manner – ideally within 10 working days, but within 20 working days maximum.
- 9.3 All paper requests for information must be date stamped with the date first received within NHS South Warwickshire CCG. This date of receipt will be used to start the calculation of the 20 working days timescale for response.
- 9.4 All electronic requests will bear an electronic date of receipt (email or fax). If a request arrives during a weekend or public/bank holiday, then date of receipt will effectively be the first working day after this. (see Section 10 below).
- 9.5 NHS South Warwickshire CCG will endeavour to acknowledge all FOI requests within three working days.
- 9.6 All NHS South Warwickshire CCG FOI requests will be processed by Arden Commissioning Support as part of the Service Level Agreement.
- 9.7 A response to the request will be compiled by the appropriate manager and approved by their Director before the response is sent to the Arden Commissioning Support Assurance and Compliance Officer. Final responses will be sent to the requester by the Arden Commissioning Support Assurance and Compliance Officer (or by an authorised person in their absence).
- 9.8 If NHS South Warwickshire CCG chooses to apply an exemption to any information, or decides to refuse a request because it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice will be issued within twenty working days informing the applicant of this decision.
- 9.9 Where a fees notice is issued, the period between the fees notice being issued by NHS South Warwickshire CCG and the fee being paid will be disregarded for the purposes of calculating the twentieth working day following receipt of the request.
- 9.10 If NHS South Warwickshire CCG needs to apply the public interest test to a request for information, it may not be possible to reach a decision relating to disclosure within the 20 day time limit. In this situation, NHS South Warwickshire CCG will write to the applicant within 20 days of receipt of the request with a realistic estimate of when a decision will be reached.

## **10. The 20 Working Day Clock**

- 10.1 NHS South Warwickshire CCG will start the 20 working day clock:

- the day **after** the request is received (provided that it is received on a working day – see 10.2 below). According to section 10(1) of the Act the time limit for compliance is the twentieth working day following the date of receipt.

or

- the day the authority receives further information it reasonably requires in order to identify and locate the information requested:- section 1(3) of the Act.

10.2 In accordance with the Act, a working day is Monday through to Friday, with the exception of public/bank holidays.

## **11. Advice and Assistance**

11.1 If the applicant has not provided enough information for the request to be dealt with (e.g. it is not clear what information has been requested), the applicant will be contacted as soon as it is realised that further clarification is needed so that this can be obtained. Although the 20 working day deadline for a response begins when NHS South Warwickshire CCG receives further information or the clarification requested, it would be unreasonable for NHS South Warwickshire CCG to delay making such a request for clarification.

11.2 Where necessary, the applicant will be given advice on how to access information from the publication scheme.

11.3 Where NHS South Warwickshire CCG estimates that it will exceed the appropriate cost limit (see Section 12 below), the applicant will be offered assistance in refining or narrowing the scope of the request.

11.4 If NHS South Warwickshire CCG does not hold the information requested, but it is known that the information is held by another public authority, the applicant will be redirected accordingly.

11.5 NHS South Warwickshire CCG will offer advice and assistance to applicants in situations where some or all of the information requested is not held by NHS South Warwickshire CCG, so they can, if they choose, raise a request to the source organisation.

11.6 The basis for any fees levied or exemptions applied will be clearly explained.

11.7 If the applicant is seeking advice or assistance, they will be redirected accordingly.

## **12. The Limit on the Cost of Complying With a Request**

12.1 The Freedom of Information and Data Protection (appropriate Limit and Fees)

Regulations 2004 <sup>2</sup> (hereafter referred to as the Fees Regulations) currently entitles NHS South Warwickshire CCG to apply a cost limit of £450 equating to 18 working hours. This represents the cost NHS South Warwickshire CCG would reasonably expect to incur in:

- determining whether it holds the information
- locating the information, or a document which may contain the information
- retrieving the information, or a document which may contain the information, and
- extracting the information from a document containing it

12.2 This does not include the cost of reproducing any document containing the information e.g. printing or photocopying, or posting and packing the information requested, or any time taken to redact exempt information.

12.2 Where it is estimated that the appropriate limit will be exceeded, NHS South Warwickshire CCG will work with applicants to keep compliance costs to a minimum (see 11.3) but reserves the right to either refuse to disclose the information or charge whatever the costs of disclosure are above the appropriate limit.

### **13. Charges and Fees**

13.1 Where a request falls within the appropriate limit, NHS South Warwickshire CCG will generally not charge for information that is requested under the Act, but reserves the right to apply charges in accordance with the Fees Regulation <sup>3</sup> for example, if multiple page hard copies are requested, or information is to be copied onto other media (eg CD-ROM).

13.2 In all cases where NHS South Warwickshire CCG chooses to make a charge, a fees notice (in the form of a letter) will be issued to the applicant to be paid within a period of three months beginning with the day on which the fees notice is issued. Payment will be required prior to the release of information.

### **14. Consultation with Third Parties**

14.1 Where information cannot be disclosed without affecting the legal rights of a third party (e.g. where information (other than personal data) has been obtained from a third party and disclosure without their consent would constitute an actionable breach of confidence), NHS South Warwickshire CCG will make reasonable efforts to gain the consent of the third party to the disclosure of information. In such cases where necessary, NHS South Warwickshire CCG will need to take specialist legal advice.

14.2 Where information requested is personal data as defined by the Data Protection Act (see the Confidentiality and Data Protection Policy for further information on

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<sup>2</sup> See Appendix 3

<sup>3</sup> See Appendix 3

personal data), NHS South Warwickshire CCG will refer to the exemption in Section 40 of the FOI Act.

- 14.3 Even where a third party's legal rights are not affected, NHS South Warwickshire CCG will undertake consultation with third parties where their views will assist NHS South Warwickshire CCG in assessing exemptions and the public interest.
- 14.4 NHS South Warwickshire CCG will make reasonable efforts to contact third parties where necessary, but may consider that consulting the third party is not appropriate where the cost of consulting would be disproportionate.
- 14.5 Where the interests of a number of third parties may be affected by a disclosure, NHS South Warwickshire CCG may consider that consultation with their representative organisation or a representative sample of the third parties in question is sufficient to determine the basis upon which disclosure can be made.
- 14.6 In all cases, it is for NHS South Warwickshire CCG (not the third party) to determine whether information should be disclosed under the Act. Non-response or refusal by a third party to consent to disclosure do not, in themselves, provide sufficient reason for information to be withheld

## **15. Public Sector Contracts**

- 15.1 When entering into contracts, NHS South Warwickshire CCG will limit the contractual terms which are intended to restrict the disclosure of information held by NHS South Warwickshire CCG. The Lord Chancellor's Code of Practice<sup>4</sup> states that "unless an exemption provided under the Act is applicable in relation to any particular information, a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract".
- 15.2 NHS South Warwickshire CCG will not yield to pressure from contractors to accept confidentiality clauses covering information about the terms of the contract, its value or performance. Where it is necessary to include a non-disclosure provision in a contract (exceptional circumstances only), a schedule will be agreed with the contractor that clearly identifies the information that should not be disclosed. Both parties must be aware that any restrictions on disclosure in such a schedule could be overridden by obligations under the Act.
- 15.3 An exemption for confidential information only applies if the release of such information constitutes a breach of confidence actionable in a court of law.

## **16. Confidentiality of Information**

- 16.1 Unless an exemption under the FOI Act is applicable in relation to any particular

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<sup>4</sup> See Appendix 3

information, NHS South Warwickshire CCG will be obliged to disclose that information in response to a request.

- 16.2 NHS South Warwickshire CCG will not agree to hold information “in confidence” which is not, in fact, confidential in nature. Advice from the Lord Chancellor’s Department indicates that the exemption provided for in section 41 of the Act only applies if information has been obtained by a public authority from another person, who may be an individual, a company or any other “legal entity”; and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable through a court of law by that person in question, or any other person.
- 16.3 As outlined in 16.2 above, if it becomes necessary for NHS South Warwickshire CCG to question whether information provided “in confidence” by a contractor should be disclosed in response to an information request, NHS South Warwickshire CCG will consult with the contractor in answering that question where it is reasonably possible to do so.
- 16.4 NHS South Warwickshire CCG will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of NHS South Warwickshire CCG’s functions, and it would not otherwise be provided. However, NHS South Warwickshire CCG will not agree to hold information in confidence if it is not confidential in nature

## 17. Exemptions

- 17.1 Part II of the Act specifies several different exemptions and when they can be applied. The exemptions are either absolute or qualified:
- 17.1.1 **absolute exemption** - there is no obligation under the Act to consider the request for information further if an absolute exemption applies.
  - 17.1.2 **qualified exemption** - are subject to the public interest test. Qualified exemptions do not justify withholding information unless, following a proper assessment, the balance of the public interest comes down against disclosure.
- 17.2 In both cases NHS South Warwickshire CCG will provide an informative response to the applicant explaining clearly why it is that the information that they have requested cannot be provided.
- 17.3 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 in itself would disclose information that it is reasonable to withhold.
- 17.4 The absolute and qualified exemptions and the section of the Act in which they are contained are listed in Appendix 2.
- 17.5 Where NHS South Warwickshire CCG needs to apply the public interest test to

a request that is subject to a qualified exemption, it may not be possible to reach a decision relating to disclosure within the twenty day limit. In this situation, NHS South Warwickshire CCG will write to the applicant within twenty days of receipt of the request with a realistic estimate of when a decision will be reached, keep to this estimate where at all possible and keep the applicant informed at all times.

- 17.6 Advice and guidance on the application of exemptions will be sought from the Arden Commissioning Support Compliance Lead in consultation with the Director of Strategy and Engagement.
- 17.7 The response will detail which exemptions have been applied and the reasons for this.
- 17.8 Documentation/communication records of the decision process will be kept.

## **18. Refusal of Requests**

- 18.1 NHS South Warwickshire CCG's duty to confirm or deny does not arise where further information is required from the applicant to identify the information being requested and the applicant has been informed of this. However, in this situation NHS South Warwickshire CCG will provide advice and assistance (as per paragraph 10.1).
- 18.2 NHS South Warwickshire CCG does not have to comply with information requests where an absolute exemption applies (see Appendix 2 for the list of absolute exemptions).
- 18.3 NHS South Warwickshire CCG will apply the public interest test to information where a qualified exemption (see Appendix 2) could apply to determine whether the public interest in disclosing the information outweighs the public interest in maintaining its confidentiality. If this is found to be the case, NHS South Warwickshire CCG will disclose the information in question.
- 18.4 NHS South Warwickshire CCG will not comply with a request for information if it estimates that the cost of compliance with the request would exceed the appropriate limit that has been established in the Fees Regulations <sup>5</sup> (as per Section 12).
- 18.5 NHS South Warwickshire CCG will work with applicants to keep compliance costs to a minimum but reserves the right to either:
  - (i) refuse to disclose the information
  - (ii) charge whatever costs of disclosure are above the appropriate limit.
- 18.6 Where charges are raised, the applicant will be issued with a fees notice as

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<sup>5</sup> See Appendix 3

described in 13.3 above. NHS South Warwickshire CCG will not comply with a request for information when a fees notice has been issued to an applicant and the fee has not been paid within three months.

- 18.7 NHS South Warwickshire CCG is not obliged to comply with a request for information if the request is deemed to be vexatious or repeated as defined by the Act. As all requests will be logged for monitoring purposes, NHS South Warwickshire CCG will be able to identify those which fall into this category.
- 18.8 Where a request is refused, NHS South Warwickshire CCG will notify the applicant within 20 working days of receiving the request and explain why the request is being refused. Similarly, where the public interest test has been applied and the request is still being refused, NHS South Warwickshire CCG will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.
- 18.9 A further notice will not be issued where NHS South Warwickshire CCG has already issued a notice that a request is being refused because it is vexatious or repeated.
- 18.10 NHS South Warwickshire CCG will keep a record of all applicants where some or all of the requested information is withheld.
- 18.11 All notices issued by NHS South Warwickshire CCG to the effect that it is refusing to comply with a request for information will inform the applicant of the procedure for submitting an appeal/complaint and of their right to apply to the Information Commissioner.

## **19. Redactions**

- 19.1 If an applicant has requested all the information in a particular document but it is necessary to redact some of that information because it is exempt, it must be made clear that redactions have taken place, and cite the relevant exemption as to why the information has been redacted.
- 19.2 The FOI Act applies to information, and not documents. Whilst the information requested is likely often to be contained in a document, this does not mean that the document has to be released with exempt material redacted from it. Rather, it may be more appropriate to release solely the information that can be released by creating a new document with only that information contained. This is likely to be particularly relevant where the majority of the information contained in the document does not fall within the scope of the applicant's request.
- 19.3 Any hard copy information which should not be released because it is exempt will be deleted by 'black-penning' or "whiting out" the information to be protected prior to disclosure of the remaining contents. A check must be made to ensure that the method used has been effective (for example, ensure that it cannot be



read from the reverse, or by holding it up to the light). Where necessary, photocopy it after redaction to ensure complete obscurity.

- 19.4 Consideration will be given as to whether redactions made in electronic documents could be technologically reversed. Where necessary, the information will be printed and scanned back into electronic format. An indication must be made where a redaction has taken place and the exemption cited.

## **20. Public Interest Test**

The public interest will be considered in every case where a qualified exemption may apply. Defining the public interest will vary according to the information being requested. It may often involve issues around accountability, transparent decision making and good management. When considering the public interest to reach a decision on a qualified exemption, NHS South Warwickshire CCG will seek appropriate professional advice (including legal advice). NHS South Warwickshire CCG will aim to use the qualified exemptions sparingly and will, in accordance with Section 17 of the Freedom of Information Act 2000, justify their use.

## **21. Information that has been Deleted or Amended**

- 21.1 The right of access to information under the Act applies to information held by NHS South Warwickshire CCG at the time that the request is received.
- 21.2 Altering, defacing, blocking, erasing, destroying or concealing information in order to avoid providing it in response to an FOI (after a request has been received) may constitute a criminal offence under section 77 of the Act for which the person convicted will be held personally responsible.
- 21.3 Instructing a computer to delete a particular item may not result in the item being destroyed immediately. At least for a period, the information might still be retrievable albeit with substantial cost and disruption to the system. However, where it is the intention that data should be permanently deleted, and this is not achieved only because the technology will not permit it, NHS South Warwickshire CCG will regard such data as having been permanently deleted. This information is no longer considered to be "held" by NHS South Warwickshire CCG and does not have to be retrieved or provided in response to a request.

This approach is not justified where the information has only been temporarily deleted and is stored in such a way that it could easily be recovered, for example from the Deleted Items folder in Outlook. This information is still considered to be "held" by NHS South Warwickshire CCG and may have to be provided if a request is received.

## **22. Appeals/Complaints**

- 22.1 Initial appeals (requests for review of decisions) or complaints about the handling of a request for information under the Act will be directed to the Director of Strategy and Engagement.
- 22.2 Upon receipt of an appeal/request, The Director of Strategy and Engagement will conduct an internal review. A panel of relevant CCG staff will be convened as appropriate.
- 22.3 The internal review will examine the handling of the request as appropriate to the appeal/complaint, for example:
- Whether the requestor was given adequate advice and guidance about their request for information;
  - Whether the procedures for responding to requests for information were followed correctly in that instance;
  - Whether, if an exemption was applied, the reasons were explained adequately to the requestor
  - Where information was withheld, the application of any exemption will be re-examined as will any application of the public interest test in the case of a qualified exemption.
- 22.4 Any applicant has a right under the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of NHS South Warwickshire CCG following attempts at local resolution of their appeal/complaint. When the complainant is informed of the outcome of their initial appeal/complaint, they must be given full contact details of the Information Commissioner's Office.
- 22.5 Where the outcome of an appeal/complaint is that information should be disclosed which was previously withheld, the information in question will be disclosed as soon as possible and the applicant will be informed when this will be.
- 22.6 In the event that the Information Commissioner issues a decision/enforcement notice as a result of an appeal/complaint, the complainant or NHS South Warwickshire CCG may appeal to the Tribunal against the notice.

## **23. Communication of FOI Requirements**

- 23.1 NHS South Warwickshire CCG will inform their staff of FOI responsibilities via normal communication avenues within NHS South Warwickshire CCG including induction training and information cascade. In addition, as stated in paragraph 5.9, it is the responsibility of managers to ensure that their staff are aware of NHS South Warwickshire CCG policies.

- 23.2 NHS South Warwickshire CCG will include a standard statement in all e-mails to the effect that correspondence between NHS South Warwickshire CCG and other stakeholders may be subject to public disclosure unless the information is legally exempt from disclosure under the FOI Act.

## **24. Round Robin Requests**

- 24.1 Where it seems clear that a number of local NHS organisations have been targeted for the same information, the Arden Commissioning Support Compliance Lead will contact local FOI groups and the Area Team to advise of receipt and see if further guidance on the response is available.

## **25. Reporting and Analysis**

- 25.1 A quarterly report will be compiled by the Assurance and Compliance Officer containing summarised information on FOI requests for NHS South Warwickshire CCG. This will include a category of the type of requester (e.g. journalists, researchers, students etc), number of requests responded to in full, exemptions, refusals and time taken to respond. These reports will be submitted to the Information Governance Steering Group which will report to the Clinical Quality and Governance Committee.
- 25.2 NHS South Warwickshire CCG will keep a record of instances where estimated completion times, referred to in 10.1 above, are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.
- 25.3 FOI requests will be analysed to determine the type and frequency of information that is being requested with a view to ensuring that such information is included in NHS South Warwickshire CCG's publication scheme.

## **26. Training and Awareness**

- 26.1 Basic FOI training will feature in the staff induction process.
- 26.2 The Arden Commissioning Support Compliance Lead will ensure that training on the implementation of the Freedom of Information Act is available to NHS South Warwickshire CCG staff who require it.
- 26.3 This policy and staff guidance will be available on NHS South Warwickshire CCG's intranet.

## **27. Records Management**

- 27.1 NHS South Warwickshire CCG will have systems and processes in place for managing corporate records in any format in order to respond effectively to requests for information.
- 27.2 NHS South Warwickshire CCG will comply with the Department of Health publication "Records Management: NHS Code of Practice, as well as the "Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000". Please see NHS South Warwickshire CCG's Records Management Policy which complies with these requirements.

## **28. Equality**

- 28.1 NHS South Warwickshire CCG recognises the diversity of the local community and those in its employment. Our aim is therefore to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need.
- 28.2 NHS South Warwickshire CCG recognises that equality impacts on all aspects of its day to day operations and has produced an equality impact assessment tool (EIA) to assess and address any potential or actual adverse effects. This is in respect of local communities and staff we employ. All policies, procedures and functions have a comprehensive impact assessment to determine the level and extent of the potential or actual adverse effects and remedial solutions to them.

## **29. Policy Review**

This policy will be reviewed every three years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

## **30. Monitoring**

- 30.1 The effectiveness of the policy will be monitored by the Clinical Quality and Governance Committee through the reporting of requests received and responses given.

## **31. Appendix 1 - Related NHS South Warwickshire CCG Policies**

Related PCT documents, which are available from within the Information Governance folder on the intranet:

The Confidentiality and Data Protection Policy  
The Access to Health Records Policy

### **Most Relevant Legislation**

1. The Freedom of Information Act 2000
2. The Data Protection Act 1998
3. The Human Rights Act 1998

## 32. Appendix 2 - Freedom of Information Act 2000 Exemptions

### 32.1 The Absolute Exemptions:

These are the exemptions where, if the exemption applies, it is not necessary to go on to consider disclosure in the public interest:

Section 21	Information accessible to applicant by other means whether within the PCT or externally (therefore, all information accessible through a Publication Scheme will be covered by this exemption)
Section 23	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 mechanism against such certificates.
Section 32	Court records, etc.
Section 34	Parliamentary privilege (a certificate signed by the Speaker of the House in respect of the House of Commons, or by the Clerk of the Parliaments in respect of the House of Lords is conclusive proof that the exemption is justified).
Section 40	Personal information (where applicant is the subject of the information, the applicant has the right of 'subject access' under the Data Protection Act 1998; where the information concerns a third party and if disclosed would likely to endanger the physical or mental health or safety of an individual. If disclosed would breach a duty of confidentiality owed to another).
Section 41	Information provided in confidence.
Section 44	Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.

### 32.2 The Qualified Exemptions where the public interest test applies:

Section 22	Information intended for future publication
Section 24	National Security (other than information supplied by or relating to named security organisations, where the duty to consider public interest disclosure does not arise).
Section 26	Defence
Section 27	International Relations
Section 28	Relations with 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, etc.
Section 36	Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
Section 37	Communications with Her Majesty, etc and Honours
Section 38	Health and Safety
Section 39	Environmental information

Section 40	<p>Personal information (the PCT is only required to consider release in the public interest:</p> <ul style="list-style-type: none"> <li>(i) where the information concerns a third party and a 'Section 10 Notice' under the Data Protection Act 1998 applies to that information, and</li> <li>(ii) (ii) – where the information concerns a third party who would not be entitled to access that information themselves because a 'subject access exemption' applies to it under the Data Protection Act 1998).</li> </ul>
Section 42	Legal professional privilege
Section 43	Commercial interests

### 33. Appendix 3 - Reference Documents:

1. Model Publication Scheme, January 2009  
The Information Commissioner's Office  
[http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/publication\\_schemes.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes.aspx)
2. The Freedom of Information and Data Protection (appropriate Limit and Fees) Regulations 2004  
The Office of Public Sector Information  
<http://www.opsi.gov.uk/si/si2004/20043244.htm>
3. The Freedom of Information and Data Protection (appropriate Limit and Fees) Regulations 2004  
The Office of Public Sector Information  
<http://www.opsi.gov.uk/si/si2004/20043244.htm>
4. The Lord Chancellors' Code of Practice on the Management of Records  
November 2002,  
Ministry of Justice/National Archives  
<http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>
5. The Freedom of Information and Data Protection (appropriate Limit and Fees) Regulations 2004  
The Office of Public Sector Information  
<http://www.opsi.gov.uk/si/si2004/20043244.htm>