

# THE POLICY FOR THE MANAGEMENT OF THE FREEDOM OF INFORMATION ACT 2000 Version 2.0

**Compliance with all CCG policies, procedures, protocols, guidelines, guidance, standards and strategies is a condition of employment. Breach of policy may result in disciplinary action.**

## Version Control

Version	Section Amended	Date	Requested by	Actioned by
2.0	Approved	4.09.15		Corporate Governance Committee

<b>Serial Number:</b>	The Policy for the Management of the Freedom of Information Act 2000 Version 1
<b>Version Number:</b>	V2.0
<b>Operative date:</b>	October 1, 2015
<b>Author:</b>	Nikki Roberts Senior Governance Officer
<b>Review date:</b>	October 1, 2016
<b>Policy statement:</b>	This policy is a statement of the framework within which the NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups (CCGs) will work to ensure compliance with the Freedom of Information Act 2000 (FOIA)
<b>Responsibility for dissemination to new staff:</b>	NHS Fareham & Gosport and South Eastern Hampshire Clinical Commissioning Groups (CCGs) Managers
<b>Training Implications:</b>	None
<b>Further details and additional copies available from:</b>	Corporate Governance Team
<b>Equality Impact Assessment Completed?</b>	To be completed
<b>Consultation Process</b>	Not applicable as the policy meets the legal requirements of the FOI Act
<b>Endorsed by:</b>	Corporate Governance Committee
<b>Approved by:</b>	Corporate Governance Committee
<b>Date approved:</b>	4 September 2015
<b>Electronic document library location</b>	G:\FGSEH - All Staff\Policies\IG policies
<b>Website location</b>	

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# The Policy for the Management of the Freedom of Information Act 2000

## 1. Introduction and Policy Statement of Statutory Compliance

### 1.1 Purpose

This policy is a statement of the framework within which NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups (CCGs) will work to ensure compliance with the Freedom of Information Act 2000 (FOIA). In particular it:

- Outlines the role of legislation (see Section 1.2)
- Defines roles and responsibilities (see Section 3)
- Indicates the way in which compliance with the policy will be monitored (see Section 8)
- Details guidelines for the implementation of legislation (see Section 4).

### 1.2 Background

The FOIA 2000 replaces the non-statutory “*Code of Practice on Openness in the NHS*”, and is part of the Government’s commitment to greater openness and transparency in the public sector and enables the public to question the actions and decisions of public authorities more closely. Section 1 of the FOIA gives a general right of access to recorded information held by a public authority, subject to certain conditions and exemptions. The main features of the FOIA are:

- A duty on every public authority to maintain a Publication Scheme
- A general right of access from 1 January 2005 to recorded information held by public authorities
- Introduction of the office of Information Commissioner to promote good practice and with wide powers to enforce the rights created by the FOIA.

### 1.3 Principles

This policy supports the principle that openness, and not secrecy, should be the norm in public life. NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups intend to create openness and dialogue with all stakeholders and improved access to information about the Clinical Commissioning Groups and support the following:

- Individuals have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provision that prevent the disclosure of personal identifiable information under the Data Protection Act 1998 (See ‘*Procedure for the disclosure of records under the Data Protection Act 1998 and Access to Health Records Act 1990*’)
- Public authorities should be allowed to discharge their functions effectively. NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will use the exemptions contained in the FOIA where an absolute applies or a qualified exemption can be reasonably applied in terms of the public interest of disclosure (see Appendix 1 – Exemptions)
- Staff should have access to advice to support their understanding of the FOIA.

## **1.4 Relevant Linking Documents**

This policy should be read in conjunction with:

- The Freedom of Information Act 2000
- Data Protection Act 1998
- Procedure for the disclosure of records under the Data Protection Act 1998 and Access to Health Records Act 1990
- Environmental Information Regulations 2004.

All policies/documents relating to the application of Information Governance:

- Information Governance Policy
- Records Management and Information Lifecycle Policy
- Information Security Policy.

## **2. Scope**

This policy provides a framework for NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups to ensure compliance with the FOIA and applies to:

- All employees of NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups
- Contracted third parties, including hosted organisations and agency staff
- Students and trainees
- Staff on secondment and other staff on placement within NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups.

## **3. Responsibilities**

### **3.1 Statutory Responsibility**

All public authorities in England, Wales and Northern Ireland are covered by the FOIA. In addition any company that is wholly owned by a public authority is also covered by the FOIA.

### **3.2 Managerial Accountability and Responsibility**

All line managers should ensure their staff are aware of the obligations of NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups under the FOIA and related legislation, of the rights of individuals making requests under the FOIA and of the process for dealing with requests under the FOIA.

### **3.3 Individual Responsibility**

By law, all staff are responsible for any requests that they receive. Therefore it is the responsibility of all staff to be aware of the obligations of NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups under the FOIA and related legislation, of the rights of individuals making requests under the FOIA and of the process for dealing with requests.

It is also the responsibility of all staff to support the Freedom of Information function as required, to ensure that requests are handled in accordance with legislation. This may involve locating, retrieving and extracting (including editing and redacting) the information.

Guidance for staff is set out in:

- *“Procedure for handling Freedom of Information enquiries”* (Appendix 4.1 and 4.2).

### **3.4 Freedom of Information function**

The FOI function sits within the Corporate Governance Team, and serves to ensure that legislation is appropriately and effectively implemented. Specific roles are:

- Chief Development Officer – has overall responsibility for implementation of the FOIA within the CCGs
- Senior Governance Officer – is responsible for the day-to-day management of handling and response of all requests made to the CCGs under the FOIA and compliance with the Information Governance Toolkit
- FOIA and Compliance Co-ordinator – is responsible for the day-to-day handling and response of all requests made to the CCGs under the FOIA
- The Communications and Engagement Team will provide advice and support regarding requests made under the FOIA as required.

### **3.5 Corporate Governance Committee**

Responsibility for the determination of the arrangements for handling FOIA requests and the review and response to these requests is the responsibility of the Corporate Governance Committee.

### **3.6 Freedom of Information request reviews**

The Corporate Governance Committee of NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups is responsible for the oversight and final approval of requests for review received under the FOIA (see Appendix 3: *“Complaints / Review Process”*).

## **4. Procedure for handling Freedom of Information enquiries**

### **4.1 Introduction**

Any member of staff may be approached and asked for information under this legislation. Section 16 of the FOIA states that public authorities have a duty to provide advice and assistance to applicants, therefore every member of staff in NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups has a legal duty to assist someone in making a request. Guidance for staff is set out in *“Procedure for handling Freedom of Interest requests”* (Appendix 4.1 and 4.2).

### **4.2 Making FOIA Requests**

Under the terms of the FOIA, enquiries must be written (letter or email). Written requests may come from any source and be directed to any member of staff. If the Policy for the Management of the Freedom of Information Act 2000  
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request for information is not classified as a complaint, solicitor's letter or request for access to personal records it should be considered as a possible Freedom of Information enquiry. Written requests should be made to:

NHS Fareham and Gosport and/or South Eastern Hampshire CCG(s)  
Commissioning House  
Fort Southwick  
James Callaghan drive  
Fareham  
Hampshire PO17 6AR

Email: [fgccg.foi@nhs.net](mailto:fgccg.foi@nhs.net) and/or [sehccg.foi@nhs.net](mailto:sehccg.foi@nhs.net)

This should include a full name and correspondence address, which can be an email address.

#### **4.3 Verbal Requests**

If, however, a verbal request is received by NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups, staff have a duty to advise that:

- The information requested may be in the Publication Scheme
- There are a number of exemptions under the FOIA under which NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups may not be obliged to provide the information requested
- A fee may be charged, depending on the type and size of request.

The FOIA gives a right of access that is not based on 'need to know' and therefore NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups do not have the right to question an applicant on the reason or purpose of their request. NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups can, however, request the applicant provide further detail or clarification in order to define a vague or broad request.

#### **4.4 Requests for Information received by Staff**

Any member of staff receiving a request for information, regardless of whether this is for information contained within the Publication Scheme or not, is expected to follow the staff process for handling requests. Guidance for staff is set out in:

- *"Procedure for handling Freedom of Information enquiries"* (Appendix 4.1 and 4.2)

#### **4.5 Requests for Information Received by the Freedom of Information Team**

The Freedom of Information Team will follow the relevant processes for handling requests as set out in Appendix 2.2: *"Procedure following receipt of an enquiry made under the Freedom of Information Act 2000"*.

## 4.6 Timescales

The FOIA requires that requests are responded to by the twentieth working day following the date of receipt. If NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups decide to apply a condition or exemption (see Appendix 1: “*Exemptions*”) to withhold information, the applicant will be informed within 20 working days.

The 20 working days timescale may be extended only if NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups:

- Request further clarification relating to the enquiry from the applicant, in which case the 20 working days is suspended until a reply is received
- NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups advise the applicant it is unable to complete the enquiry within the 20 working days and a revised timescale is agreed between the enquirer and the CCG(s)
- A fees notice is issued, in which case the 20 working days is suspended until payment is received by NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups
- Consider a qualified exemption is applicable, in which case, in exceptional circumstances, response may be extended by a further 20 working days to consider the Public Interest Test.

## 4.7 Public Interest Test

Where a qualified exemption is considered requiring the consideration of the Public Interest Test (PIT) this will be agreed between the persons/departments holding the information and the FOIA team. Final approval of the PIT will rest with the Information Governance Group. NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups may extend the timescale for response by up to 20 working days if necessary and will advise the applicant in this circumstance.

## 4.8 Low volume data

A response to a Freedom of Information enquiry is effectively a provision of information to the general public, and not to one individual. NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups have an obligation to maintain patient confidentiality under the Data Protection Act 1998 and will generally adhere to guidance provided by the ‘*Code of Practice for Official Statistics*’ (UK Statistics Authority) and further advice on using low data and maintaining confidentiality, from the Association of Public Health Observatories, generally suppressing data with counts of less than five.

## 4.9 Charging and Fees

In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will not charge for information that costs less than £450 to provide, calculated at a rate of £25 per person per hour. The following table illustrates what activities will and will not be included in this calculation:

Activities Included	Activities Not Included
Determining whether the requested information is held	Checking that the request is valid
Locating the information	Considering whether the request is repeated or vexatious
Retrieving the information	Considering whether the information may be exempt
Extracting the information (including editing or redacting)	Obtaining authorisation to send out the information
	Calculating any fee to be charged
	Providing advice and assistance

Additionally where NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups consider it appropriate to charge a fee it will also consider the additional charge for non-staff costs or disbursements i.e. photocopying, printing or postage.

For aggregate requests, where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will aggregate the requests and charge in accordance with the fees regulations.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed.

#### 4.10 Complaints / Reviews

NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will deal with complaints and requests for review to ensure that the requirements of the FOIA and EIRs are met (see Appendix 3: “*Complaints / Review Process*”).

#### 4.11 Information Format

Information will be provided in the applicant’s preferred format (so far as this is reasonably practicable). NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will notify the applicant of the reasons if it considers it is not practicable to comply.

#### 4.12 Vexatious or Repeated Requests

NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will not facilitate requests from applicants if that request could be considered vexatious or repeated, which would be identified by monitoring data, and it is the view

of the Senior Governance and Committee Officer, that the enquiry could be considered to be vexatious, with advice taken from the Information Commissioner's guidance to S14 of the FOIA:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx). <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/?q=Section+14>

#### **4.13 Liaising with Partner Organisations**

The Senior Governance and Committee Officer will liaise with partner organisations to co-ordinate responses as appropriate. For example, where a partner CCG is lead commissioner for a service on behalf of our CCG. Responses issued from NHS Fareham and Gosport CCG and South Eastern Hampshire CCG will be compliant with this policy.

### **5. Contracts and Confidentiality Clauses**

#### **5.1 Public Sector Contracts**

Contracts entered into by NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will not include contractual terms that restrict the disclosure of information held by the CCGs, or NHS South Commissioning Support Unit on its behalf beyond the restrictions permitted by the FOIA, unless an exemption provided for under the FOIA is applicable. All contracts entered into by NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will include appropriate FOIA clauses to ensure that both parties are aware of their responsibilities under the FOIA.

When entering into contracts, NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner.

NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups 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 would only apply if disclosure of the information would constitute a breach of confidence actionable by that, or any other person.

## **5.2 Accepting Information “In Confidence” from Third Parties**

NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided.

NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified under the terms of the FOIA.

## **6. Records Management**

NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups have a records management and information lifecycle policy that meets the requirements of the Code of Practice issued under Section 46 of the FOIA. Together with the records management function this will serve to ensure that effective records management is undertaken within the organisations, thereby enabling the speedy location and retrieval of requested information.

## **7. Re-use of Information/Copyright**

Information provided under the Act is provided for an applicant to use for such things as research, criticism, review or news reporting, however information provided remains the intellectual property of NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups and permission should be sought should the enquirer wish to publish the information provided in its entirety.

The documents provided in the Publication Scheme, and those published as disclosure documents in requests are protected by copyright, which except where indicated, belongs to NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups. Permission for re-use of copyright material should be sought from the copyright owners concerned.

## **8. Review and Reiteration**

NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will log all requests on a database. This will be regularly reviewed to determine the type of request received and the originator. Information that is regularly requested will be considered for routine publication in the Publication Scheme.

By making information routinely available, NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups will be able to proactively meet the information needs of the public and reduce the need for requests under the FOIA.

Applicant satisfaction will be monitored via an evaluation form issued either electronically or by post with the final notice from the FOI team. The FOI team will record all responses and report a synopsis to the Information Governance Group on a regular basis.

## **9. Training**

Record keeping and records management training, to include Freedom of Information will be provided at induction and via the mandatory training schedule provided by the CSU Information Governance department. Ad hoc training will be provided on request by the Freedom of Information team.

## **10. Legal Advice**

The Chief Development Officer will be the conduit through which legal advice on FOIA is sought and given, and will liaise with the CCG's legal advisors as appropriate.

## Appendix 1

### Exemptions under Part II of the Freedom of Information Act 2000

There are two types of class exemption:

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

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

The absolute exemptions under the FOIA are:

- Section 21 Information accessible to applicant by other means** – It may be reasonably accessible even if the applicant has to pay for it.
- Section 23 Information supplied by, or relating to, bodies with security matters** – This is aimed at the Security Services, Government Communications Headquarters and the National Criminal Intelligence Service.
- Section 32 Court records** – Covers documents in the custody of a court, created by a court or served on or by a public authority for court proceedings.
- Section 34 Parliamentary privilege** – To avoid infringing the privileges of either House of Parliament.
- Section 40 Personal information** – Where the applicant is the subject of the information the request must be dealt with in accordance with the Subject Access rights provided in the Data Protection Act 1998. Where the applicant is not the subject of the information, then it is exempt if disclosure of it would breach the Data Protection Act.
- Section 41 Information provided in confidence** – If the disclosure of the information would constitute a breach of confidence that could lead to action against the CCG(s).
- Section 44 Prohibitions on disclosure** – Information is exempt if its release is prohibited under any enactment, it is incompatible with Community obligation or would constitute contempt of court.

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

- Section 22 Information intended for future publication** – Covers information held with a view to publication by the public authority or another person at some future date.

- Section 24** **National security** – Information can be exempt if it is required to safeguard national security.
- Section 26** **Defence** – Information can be exempt if its release would affect the defence of the British Isle, any British colony or the capability and effectiveness of the Armed Forces.
- Section 27** **International relations** – Information is exempt if its release would prejudice relations with another state, international organisation, international court or the interests of the UK abroad.
- Section 28** **Relations within the United Kingdom** – Covers information that would prejudice the economic interest of the UK or of any administration in the UK.
- Section 29** **The economy** – Covers information that would prejudice the economic interest of the UK or of any administration in the UK.
- Section 30** **Investigations and proceedings conducted by public authorities** – Covers information held for an investigation that the authority has a duty to conduct to decide if a person should be charged with or found guilty of an offence, relates to criminal proceedings that the authority has power to conduct or relates to civil proceedings brought by or on behalf of the authority.
- Section 31** **Law enforcement** – Information is exempt if its release would prejudice law enforcement. This includes the prevention and detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security of prisons.
- Section 33** **Audit functions** – This applies to authorities that have functions in relation to the audit of other authorities' accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.
- Section 35** **Formulation of government policy** – Relates to government departments and the National Assembly for Wales.
- Section 36** **Prejudice to effective conduct of public affairs** – Information is exempt if, in the opinion of a qualified person, it would prejudice how the CCG conducts its public affairs.
- Section 37** **Communications with Her Majesty, with other members of the Royal Household, and the conferring by the Crown of any honour or dignity.**
- Section 38** **Health and safety** – Information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.

- Section 39 Environmental information** – Covers information that can be accessed via the Environmental Information Regulations.
- Section 42 Legal professional privilege**
- Section 43 Commercial interests** – Information is exempt if it constitutes a trade secret or would prejudice or be likely to prejudice the commercial interests of any person or organisation.

## Appendix 2.1

### NHS Fareham and Gosport and South Eastern Hampshire CCGs procedure following receipt of an enquiry made under the Freedom of Information Act 2000

#### Summary of Key Actions and Timescales

Stage	Key Action	Timescale	Who?	Other Actions
<b>Initial application</b>	Details of enquiry to FOI Team by e-mail or post Original documentation also sent to FOI team	One working day from receipt of request	Recipient of request	FOI team log request on database
<b>Processing request</b>				
<b>On receipt</b>	Acknowledge receipt of request to applicant	Two working days from receipt of request	FOI team	The FOI team, as necessary: Keeps applicant informed of progress Provides advice and assistance if required Requests clarification
<b>Accessing information</b>	Identification of person(s) holding relevant information	Two working days from receipt of request	FOI team	Decides if a fee/charge is applicable Decides if request can be met within applicable limits set in Fees Regulations
	Information provider to confirm that they hold the information	Four working days from receipt of request		Considers if information is exempt Decides if request is repeated or vexatious

Stage	Key Action	Timescale	Who?	Other Actions
	Locate and provide relevant information to FOI team <i>Note: Timescale suspended if insufficient information provided by applicant to identify and locate information requested.</i>	Ten working days from date of request	Staff	
	Additional time discussed with FOI Team / applicant if information requested is difficult to retrieve	8 working days from receipt of request	Staff / FOI team	
	Information reviewed in respect of fees/charges and exemptions  <i>If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The twenty working day timescale is suspended until the fee/charge is paid.</i>	10 working days from receipt of request	FOI team	FOI team requests public interest test to Information Governance Group where a relevant exemption is qualified  FOI Team provide advice and assistance in the event of applicant being unable/unwilling to pay fee/charge  If an exemption is applicable the FOI team will issue a notice informing the applicant of this  If a request is refused for any other reason, the FOI team will notify the applicant of this

<b>Stage</b>	<b>Key Action</b>	<b>Timescale</b>	<b>Who?</b>	<b>Other Actions</b>
<b>Providing Information</b>	Information provided to applicant	Within 20 working days from receipt of request	FOI team	The FOI team will consider the preferences of the applicant in regard to the format in which they wish to receive the information they have requested

## Appendix 2.2

### **NHS Fareham and Gosport and South Eastern Hampshire CCGs Freedom of Information team procedure following receipt of an enquiry made under the Freedom of Information Act 2000**

#### **1 PROCESSING REQUESTS FOR INFORMATION**

##### **1.1 Receipt of a Request**

Once the FOI team receives an applicant's request for information the following information will be recorded on the confidential FOI database:

- Request identifier (FOI – Database ID)
- Initial date received by NHS Fareham and Gosport and South Eastern Hampshire CCGs
- Name and contact details for initial recipient
- Date received by FOI team
- Name of applicant
- Contact details
- Information requested.

The FOI team will write in the same format as the original request within two working days to inform the applicant that the request has been received and is being processed. A record will be kept of this contact.

If the FOI team has sufficient information to respond to the request, they will inform the applicant in the letter of acknowledgement that their request will be processed within twenty working days.

The FOI team will also inform the applicant in writing of any fees or charges, if known, that are payable for the provision of the information and that no information will be provided unless the fee or charge is paid within three months. In regard to the general right of access from 1 January 2005, this will constitute the issue of a Fees Notice as described in section 9 of the FOIA. Charges and fees are addressed in Section 4.8.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed

If the applicant has not provided sufficient information for the request to be processed, the FOI team will contact the applicant for clarification. If further clarification is not received within three months from the day on which the applicant receives the request for clarification the enquiry will be closed.

In accordance with sections 12 and 13 of the FOIA, if the FOI team estimates that the cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations (Section 4.8), they will notify the applicant in writing of the estimated cost. Under the FOI guidelines to advise and assist the Senior Governance and Committee Officer will discuss with the applicant ways of bringing costs within

appropriate limits. If it is not possible to comply with the request within appropriate limits, a Fees Notice will be issued.

If the FOI team believes that any of the information requested is exempt from disclosure under Part II of the Act, the applicant will be advised referencing to the appropriate exemption. This includes circumstances where the information requested is available from another source other than the CCG(s), unless that source is a public authority, in which case the request may be transferred to that authority (see 6).

If a qualified exemption requiring consideration of the Public Interest Test is under consideration, and might delay response, the FOI team will advise the applicant of an extension of the time for response, the reason and an estimated date for final decision. If the FOI team has evidence to demonstrate that the request is vexatious or repeated, as defined under section 14 of the Act, the request will be refused.

## **1.2 Accessing the Information**

The FOI team will identify who holds the information that the applicant has requested. They will, within two working days, identify and contact the person(s) in NHS Fareham and Gosport CCG, NHS South Eastern Hampshire CCG or NHS South Commissioning Support Unit who are most appropriately placed to meet the requirements of the applicant. The FOI team will keep a record of this contact.

Upon receipt of an information request from the FOI team, staff will normally be asked to respond within eight working days to locate and provide the information requested to the FOI team. If it is not possible to meet this deadline, the FOI team must be informed immediately; up to five additional working days may then be allowed to comply with the initial request. The Senior Governance and Committee Officer will keep a record of these contacts.

The information that the applicant has requested will be forwarded to the FOI team who will review the information in respect of any exemptions and/or fees payable, within two working days before providing the information to the applicant. If any exemptions are applicable, the applicant will be advised in the final response. If fees are payable the applicant will be issued with a Fees Notice.

If the FOI team feels that releasing particular information under the general rights of access could be contentious, the matter will be taken to the CCGs' Information Governance Group. The Information Governance Group will make a decision to release or deny access to the contentious information within the required time frame for responding to requests. If it is not possible to meet this timeframe the FOI team will contact the applicant to agree an extension. The FOI team will ensure that the applicant is kept informed as to the progress of their request. The Information Governance Group will be convened on an *ad hoc* basis, as required and if necessary, under the guidance of the FOI Lead.

## **1.3 Providing the Information**

If no fees or charges are either payable or outstanding, or if no exemptions are applicable, the FOI team will provide the information requested directly to the applicant.

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

- As a copy of the information in permanent form (i.e. PDF) or another form acceptable to the applicant
- Through the provision of a reasonable opportunity to inspect a record containing the information
- The provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The FOI team will consider all the circumstances of the request for the communication of information by a particular means, including the cost of doing so. If the FOI team determines that it is not reasonably practicable to comply with any preference for the provision of the information as requested by the applicant in their request, they will notify the applicant of the reasons for this. The information will then be provided by such means as the FOI team deems to be reasonable. In the discharge of this function, the FOI team will have regard to other statutory obligations upon NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups such as those established under the Disability Discrimination Act 1995.

The FOI team will record within the FOI database:

- The date upon which the information was provided to the applicant
- The form in which the information was requested
- The form in which the information was provided

## **2 REFUSAL OF REQUESTS**

A refusal of a request may apply to all the information requested by an applicant or a part thereof. A request for information may be refused if:

- The information is exempt from disclosure under Part II of the Act
- A fees notice or charge has not been paid within three months beginning on the day on which the fees notice was given to the applicant or the applicant was notified of the charge
- The cost of compliance exceeds the appropriate limit
- The request is demonstrably vexatious or repeated.

If the FOI team chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. The applicant will also be informed of NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups complaints procedures and of their right to appeal to the Information Commissioner (Appendix 3).

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

- State that fact
- Specify the exemption in question

- State (if not otherwise apparent) why the exemption applies.

If the FOI team anticipates that it will take more than twenty working days to reach a decision as to whether any part of the information requested by the applicant is exempt under Part II of the Act, the applicant will be notified that no decision concerning the application of an exemption has been reached. An estimate of the date that a decision will be reached will be given.

Such estimates should be realistic and reasonable, and compliance expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given the reason(s) for delay and offered an apology by the FOI team. If the FOI team finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. A record will be kept of instances where estimates are exceeded, and where this happens more than occasionally, steps will be taken to identify the problem and rectify it.

If a qualified exemption is being applied, the FOI team will, either in the notice issued above or a separate notice given within a reasonable timescale for the circumstances, state the reasons for claiming:

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

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

If the FOI team believes that the information requested is exempt as either the cost of compliance exceeds the appropriate limit, or the request is demonstrably repeated or vexatious, the notice will state that fact. If NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups are relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

The FOI team will keep records of all notices issued to refuse requests for information. When implementing this procedure, the FOI team will seek advice from those person(s) who hold the information that the applicant has requested and from senior staff.

### **3. EVALUATION**

Applicant satisfaction will be monitored via evaluation forms received either electronically electronic evaluation system. The FOI team will record all responses and report a synopsis to the NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups Corporate Governance Committee on a regular basis.

## Appendix 3

### Freedom of Information Act 2000 and Environmental Information Regulations 2004

#### Complaints/Review Process

If you think that NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups have not supplied you with information in accordance with the Freedom of Information Act (FOIA) or the Environmental Information Regulations 2004 (EIR) and wish to make a complaint or request a review regarding any of the following:

- A refusal of a request for information under FOI Act or EIR
- Dissatisfaction with a response to a request
- NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups FOI and EIR policy
- Non-compliance with the scheme.

Please contact:

Chief Officer, NHS Fareham and Gosport and/or South Eastern Hampshire CCG(s)  
Commissioning House, Fort Southwick, James Callaghan Drive  
Fareham, Hampshire PO17 6AR

Email: [fgccg.foi@nhs.net](mailto:fgccg.foi@nhs.net) and/or [sehccg.foi@nhs.net](mailto:sehccg.foi@nhs.net)

What we will do:

- Acknowledge the complaint within two working days
- Review the procedure and the handling of your request in conjunction with the FOI Act and EIR. The re-evaluation will be carried out by members of the Corporate Governance Committee, including staff members more senior than the staff members who dealt with the original request for information. The senior staff member will be independent, in that they will have not been involved in the original request for information
- A fresh decision will be made on consideration of all the factors relevant to the issue
- We will aim to provide a full response within 20 working days. If for any reason we are unable to meet this target you will be kept informed of the progress of your complaint.

If you are dissatisfied with the outcome of the re-evaluation you have the right to refer your complaint to the Information Commissioner at:

*Address:* Wycliffe House, Water Lane,  
Wilmslow, Cheshire, SK9 5AF.

*Information Line:* 08456 306060 or 01625 545745 (national rate number)

*Switchboard:* 01625 545700

*Fax:* 01625 524510

Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)  
Website: [www.ico.gov.uk](http://www.ico.gov.uk)

The Information Commissioner has responsibility for enforcing the Freedom of Information Act 2000 and Environmental Information Regulations 2004 and is an independent public official responsible directly to Parliament. The Commissioner's role is to:

- Promote good practice
- Approve and assist in the preparation of publication schemes
- Provide information about the public's rights under the Act and EIR
- Enforce compliance with the Act and EIR.

The Information Commissioner's guidance "Freedom of Information and Environmental Information Regulations – When and how to complain" can be obtained from the address above.

## **Appendix 4.1**

### **Clinical Commissioning Group staff procedure for handling Freedom of Information enquiries**

#### **1. Introduction**

Any member of staff may be approached and asked for information under this legislation. Section 16 of the Freedom of Information Act (FOIA) states that public authorities have a duty to provide advice and assistance to applicants, therefore every member of staff in the Clinical Commissioning Groups has a legal duty to assist someone in making a request.

#### **2. Verbal requests addressed to the CCGs**

Under the terms of the FOIA enquiries must be written (letter or email) however if a verbal request is received NHS Fareham and Gosport and South Eastern Hampshire Clinical Commissioning Groups staff have a duty to advise and assist:

- The information requested may be in the Publication Scheme
- Requests must be written (letter or email) to the CCG FOI address:

NHS Fareham and Gosport and/or South Eastern Hampshire CCG(s)  
Commissioning House  
Building 003  
Fort Southwick  
James Callaghan drive  
Fareham  
Hampshire PO17 6AR

Email: [fgccg.foi@nhs.net](mailto:fgccg.foi@nhs.net) and/or [sehccg.foi@nhs.net](mailto:sehccg.foi@nhs.net)

- Requests should include a full name and correspondence address, which can be an email address
- There are a number of exemptions under the FOIA under which the Clinical Commissioning Groups may not be obliged to provide the information requested
- A fee may be charged, depending on the type and size of request.

#### **3. Written requests addressed to the CCGs**

Written requests may come from any source and be directed to any member of staff. If the request for information is not classified as a complaint, solicitor's letter or request for access to personal records it should be considered as a possible Freedom of Information enquiry, which should be forwarded to:

NHS Fareham and Gosport and/or South Eastern Hampshire CCG(s)  
Commissioning House  
Building 003  
Fort Southwick  
James Callaghan drive  
Fareham  
Hampshire PO17 6AR

Email: [fgccg.foi@nhs.net](mailto:fgccg.foi@nhs.net) and/or [sehccg.foi@nhs.net](mailto:sehccg.foi@nhs.net)

The FOIA gives a right of access that is not based on 'need to know' and therefore the Clinical Commissioning Groups does not have the right to question an applicant on the reason or purpose of their request. The Clinical Commissioning Groups can, however, request the applicant to provide further detail or clarification in order to define a vague or broad request.

#### **4. Requests for Information received by Clinical Commissioning Group staff**

Any member of staff receiving a request for information, regardless of whether this is for information contained within the publication scheme or not, is expected to follow the staff process for handling requests.

#### **5. Timescales**

The FOIA requires that requests are responded to by the twentieth working day following the date of receipt and the FOI team will work to this timeframe.

If the Clinical Commissioning Groups decides to apply a condition or exemption (see Appendix 1 of the FOI Policy: "*Exemptions*") to withhold information the applicant will be informed within 20 working days.

The 20 working days timescale may be extended only if the FOI team:

- Requests further clarification relating to the enquiry from the applicant, in which case the 20 working days is suspended until a reply is received
- Advises the applicant it is unable to complete the enquiry within the 20 working days and a revised timescale is agreed between the enquirer and the Clinical Commissioning Groups
- A fees notice is issued, in which case the 20 working days is suspended until payment is received by the Clinical Commissioning Groups
- Considers a qualified exemption is applicable, in which case, in exceptional circumstances, response may be extended by a further 20 working days to consider the Public Interest Test.

#### **6. Public Interest Test**

Where a qualified exemption is considered requiring the consideration of the Public Interest Test (PIT) this will be agreed between the persons/departments holding the information and the FOI team. Final approval of the PIT will rest with a Director not associated with the request for information and will generally be the CCG's Information Governance Group. The Clinical Commissioning Groups may extend the timescale for response by up to 20 working days if necessary and will advise the applicant in this circumstance via the FOI team.

#### **7. Charging and Fees**

In accordance with the FOIA (Appropriate Limit and Fees) Regulations 2004, the Clinical Commissioning Groups will not charge for information that costs less than £450

to provide, calculated at a rate of £25 per person per hour. The following table illustrates which activities will and will not be included in this calculation:

<b>Activities Included</b>	<b>Activities Not Included</b>
Determining whether the requested information is held	Checking that the request is valid
Locating the information	Considering whether the request is repeated or vexatious
Retrieving the information	Considering whether the information may be exempt
Extracting the information (including editing or redacting)	Obtaining authorisation to send out the information
	Calculating any fee to be charged
	Providing advice and assistance

Additionally where the Clinical Commissioning Groups considers it appropriate to charge a fee it will also consider the additional charge for non-staff costs or disbursements i.e. photocopying, printing or postage.

For aggregate requests, where two or more requests are received for the same or similar information from the same person, or different people acting together or as part of a campaign, within a 60 day period, the Clinical Commissioning Groups will aggregate the requests and charge in accordance with the fees regulations, via the FOI team.

If the fee or charge is not paid within three months from the day on which the applicant receives the Fees Notice or is informed of the charge, the enquiry will be closed.

## **9. Complaints / Reviews**

Complaints and requests for review will be directed to the CCGs' Information Group and will be handled by the FOI team to ensure that the requirements of the FOIA and EIRs are met (see Appendix 3 of the FOI Policy: "*Complaints / Review Process*"). Final decisions will be sent from the Clinical Commissioning Groups' Chief Officer.

## **10. Information Format**

Information will be provided in the applicant's preferred format (so far as this is reasonably practicable). The Clinical Commissioning Groups will notify the applicant, via the FOI team, of the reasons if it considers it is not practicable to comply.

## **11. Vexatious or Repeated requests**

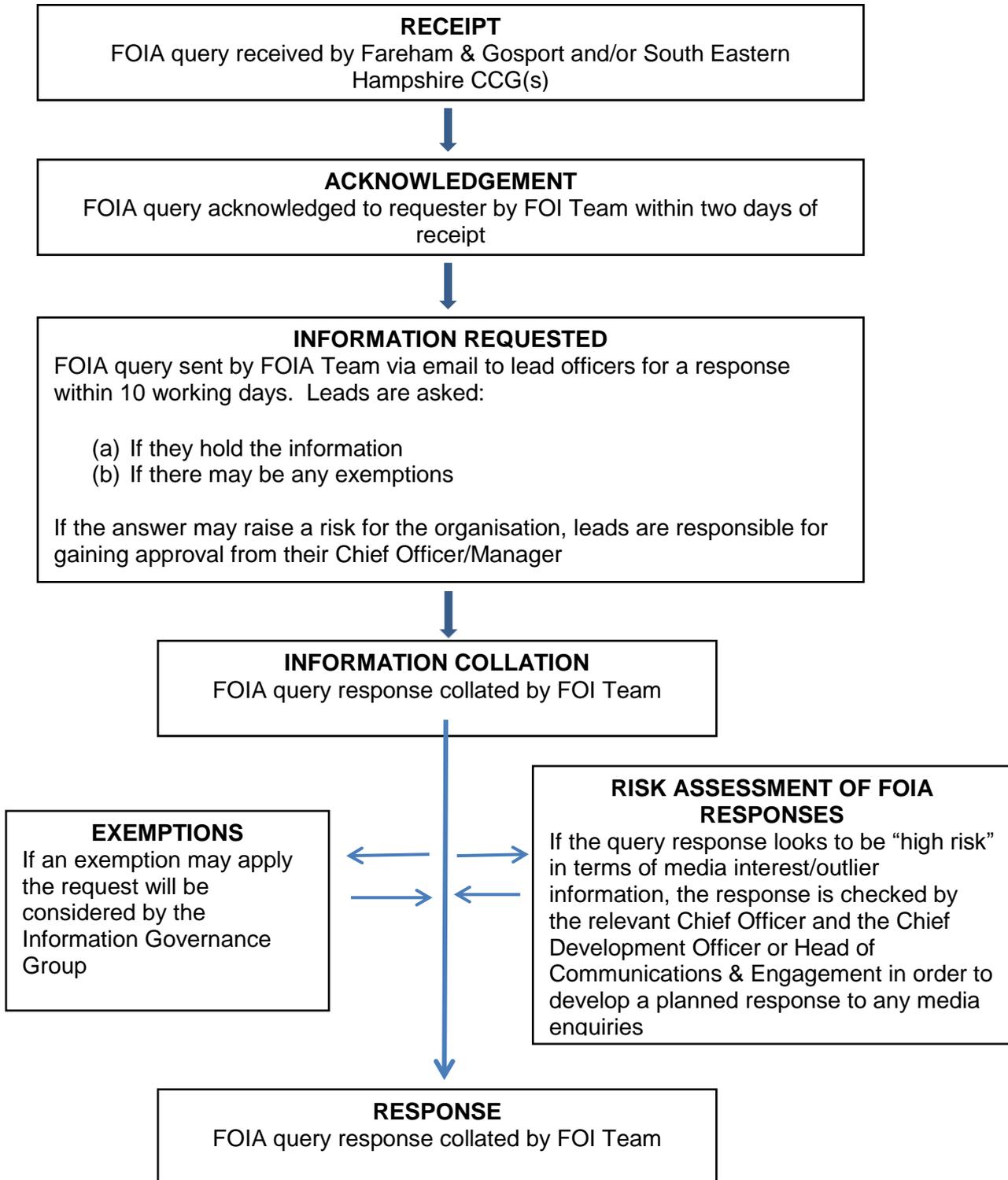
The Clinical Commissioning Groups will not facilitate requests from applicants if that request could be considered vexatious or repeated, which would be identified by monitoring data, and it is the view of the Information Governance Group that the enquiry could be considered to be vexatious, with advice taken from the Information Commissioner's guidance to S14 of the FOIA:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.aspx).

**Appendix 4.2**

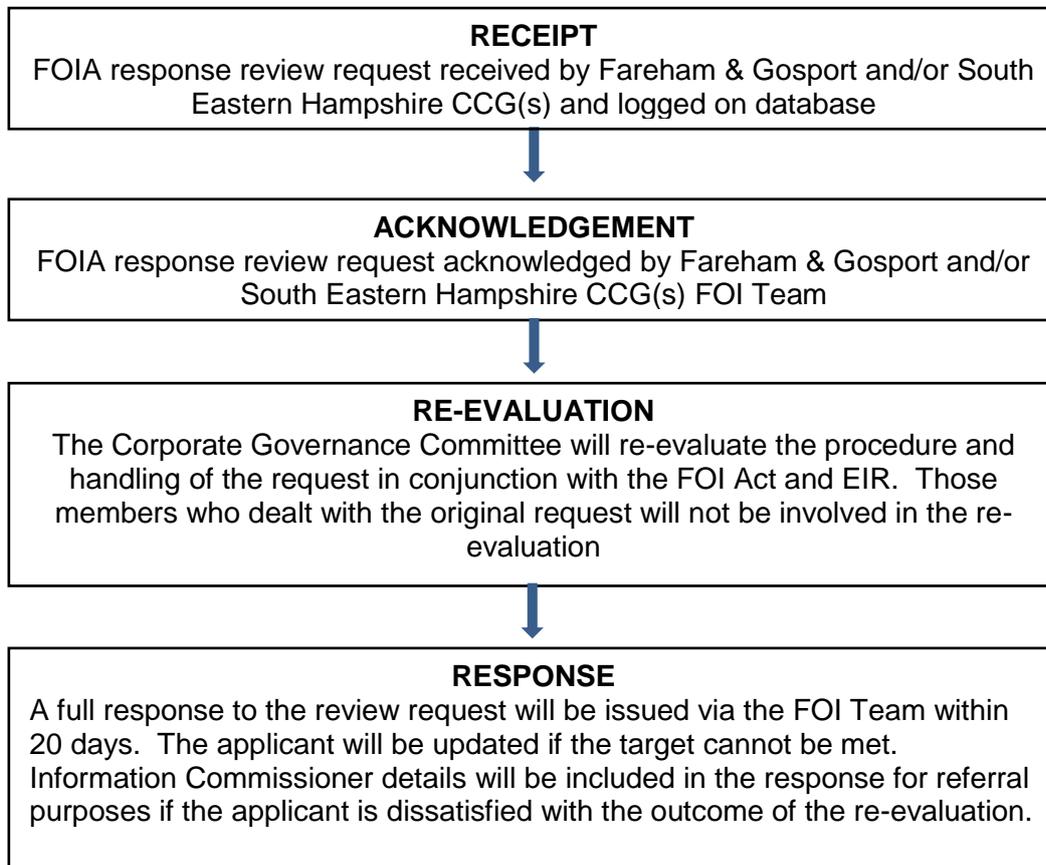
**Clinical Commissioning Group staff procedure for handling Freedom of Information enquiries flowchart**

Any member of staff may be approached and asked for information under the Freedom of Information Act and is required to follow the following procedure.



## Appendix 4.3

### Clinical Commissioning Group staff procedure for handling Freedom of Information request response review flowchart



## Appendix 5

### Equality Impact Assessment

<p><b>1. Title of policy/ programme/ framework being analysed</b> Freedom of Information Act Policy</p>
<p><b>2. Please state the aims and objectives of this work and the <i>intended equality outcomes</i>. How is this proposal linked to the organisation's business plan and strategic equality objectives?</b></p> <p>To provide NHS Fareham &amp; Gosport &amp; South Eastern Hampshire Clinical Commissioning Groups (CCGs) staff with a clear Freedom of Information Act framework which includes advice and guidance and to inform staff of their operational and legal responsibilities.</p>
<p><b>3. Who is likely to be affected? e.g. staff, patients, service users, carers</b> Staff</p>
<p><b>4. What evidence do you have of the potential impact (positive and negative)?</b></p> <p>None expected.</p>
<p><b>4.1 Disability</b> (Consider attitudinal, physical and social barriers) No impact</p>
<p><b>4.2 Sex</b> (Impact on men and women, potential link to carers below) No impact</p>
<p><b>4.3 Race</b> (Consider different ethnic groups, nationalities, Roma Gypsies, Irish Travellers, language barriers, cultural differences). No impact</p>
<p><b>4.4 Age</b> (Consider across age ranges, on old and younger people. This can include safeguarding, consent and child welfare). No impact</p>
<p><b>4.5 Gender reassignment</b> (Consider impact on transgender and transsexual people. This can include issues such as privacy of data and harassment). No impact</p>
<p><b>4.6 Sexual orientation</b> (This will include lesbian, gay and bi-sexual people as well as heterosexual people). No impact</p>
<p><b>4.7 Religion or belief</b> (Consider impact on people with different religions, beliefs or no belief) No impact</p>
<p><b>4.8 Marriage and Civil Partnership</b> No impact</p>
<p><b>4.9 Pregnancy and maternity</b> (This can include impact on working arrangements, part-time working, infant caring responsibilities). No impact</p>
<p><b>4.10 Carers</b> (This can include impact on part-time working, shift-patterns, general caring responsibilities, access to health services, 'by association' protection under equality legislation). No impact</p>
<p><b>4.11 Additional significant evidence (See Guidance Note)</b> Give details of any evidence on other groups experiencing disadvantage and barriers to access due to:</p> <ul style="list-style-type: none"> <li>• socio-economic status</li> <li>• location (e.g. living in areas of multiple deprivation)</li> <li>• resident status (migrants)</li> <li>• multiple discrimination</li> <li>• homelessness</li> </ul>

No impact
<b>5 Action planning for improvement (See Guidance Note)</b> Please give an outline of the key action points based on any gaps, challenges and opportunities you have identified. An Action Plan template is appended for specific action planning. None identified
Date analysis completed 21 January 2015