


Freedom of Information & Environmental Information Policy

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Implementation Plan

Development and Consultation:	<p>The following individuals were consulted and involved in the development of this document:</p> <ul style="list-style-type: none"> ▪ Bedfordshire, Luton & Milton Keynes Clinical Commissioning Group (the CCG) Commissioning Operational Group ▪ The CCG Governance & Compliance Team
Dissemination:	<p>Staff can access this document via the website and will be notified of new / revised versions via the staff briefing.</p> <p>This document will be included in the organisation's Publication Scheme in compliance with the Freedom of Information Act 2000.</p>
Training:	<p>The following training will be provided to make sure compliance with this document is understood:</p> <ul style="list-style-type: none"> ▪ All staff must undertake Information Governance mandatory training on an annual basis, including Freedom of Information. ▪ Role specific training will be provided to the Complaints & Freedom of Information Team including refresher training.
Monitoring:	<p>Monitoring and compliance of this document will be carried out via:</p> <ul style="list-style-type: none"> ▪ Quarterly and annual reports to evidence Key Performance Indicators (KPIs) have been met.
Review:	<p>The Document Owner will ensure this document is reviewed in accordance with the review date on page 2.</p>
Equality, Diversity and Privacy:	<p>Appendix 1 - Equality Impact Assessment</p> <p>Appendix 2 - Data Protection Impact Assessment</p>
Associated Documents:	<p>The following documents must be read in conjunction with this document:</p> <ul style="list-style-type: none"> ▪ Information Governance Policy ▪ Records Management and Information Lifecycle Policy ▪ Risk Management Strategy and Policy
References:	<p>The following articles were accessed and used to inform the development of this document:</p> <ul style="list-style-type: none"> ▪ Freedom of Information Act 2000 ▪ Data Protection Act 2018 ▪ Records Management Code of Practice 2021 ▪ Environmental Information Regulations 2004 ▪ Access to Health Records (deceased) Act ▪ Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ▪ Protection of Freedoms Act 2012

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1.0 Introduction

- 1.1 NHS Bedfordshire, Luton and Milton Keynes Integrated Care Board (ICB) aims to ensure robust governance through its formal written procedural documents, such as this document, which communicate standard organisational ways of working. These documents help clarify operational requirements and consistency within day-to-day practice. They can improve the quality of work, increase the successful achievement of objectives and support patient safety, quality and experience. The ICB aims to ensure its procedural documents are user friendly, up-to-date and easily accessible.
- 1.2 The ICB must design and implement procedural documents that meet the diverse needs of our service and workforce, ensuring that none is placed at a disadvantage over others, in accordance with the Equality Act 2010. The Equality Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to the individual protected characteristics is incorporated at Appendix 1.
- 1.3 A Data Protection Impact Assessment is a process which helps assess privacy risks to individuals in the collection, use and disclosure of personal information. The Data Protection Impact Assessment initial screening, which was used to determine the potential impact this policy might have with respect to an individual's privacy is incorporated at Appendix 2.
- 1.4 The Freedom of Information Act 2000 (the Act) provides public access to information held by public authorities. The aim of the Act is to create greater openness, transparency and accountability through access to information. It does this in two ways:
 1. Public authorities are obliged to publish certain information about their activities; and,
 2. Members of the public are entitled to request information from public authorities.
- 1.5 The Act came into force on 1 January 2005 and sets out the basic rights of an individual to request and receive information held by public authorities, including the NHS. The public is entitled to be informed in writing whether requested information is held (duty to confirm or deny) and, if so, to have the information communicated to them unless an exemption to withhold the information applies – see section 6.
- 1.6 The Environmental Information Regulations 2004 (the Regulations) makes provision for the dissemination of environmental information by public authorities and for public authorities to make available environmental information in response to a request.
- 1.7 The Information Commissioner's Office (ICO) is an independent public authority which upholds Information Rights in the UK. Compliance is monitored and enforced by the ICO who has the powers to issue undertakings, serve information and enforcement notices and initiate court proceedings to ensure compliance.

2.0 Scope

2.1 This policy applies, as appropriate, to the following relevant persons:

- All ICB employees.
- All Members of the Board of the Integrated Care Board (including Participants).
- All NHS, but non-ICB employees when serving on a joint committee / Board level committee or sub-committee with the ICB or when involved in a joint procurement / commissioning / decision.
- All non-NHS employees, for example, Local Authority staff when serving on a joint committee / Board level committee or sub-committee with the ICB or when involved in a joint procurement / commissioning / decision.
- All voluntary individuals, for example, patient or public representatives or residents who serve as members of ICB Board level committees or sub-committee or are regular Participants.

2.3 This policy provides a framework within which the ICB will work to ensure compliance with the Act and the Regulations, which sets out the way requests should be handled, outlines the exemptions to providing requested information and details obligations of public authorities.

2.4 An individual cannot use the Act to request access to personal data. Individuals who wish to request information held about themselves, or another person who they are acting on behalf of, may request such information under the Data Protection Act 2018 or the Access to Health Records (deceased) Act. These requests are out of scope for this policy – please refer to the ICB Subject Access & Access to Health Records Policy.

3.0 Definitions

3.1 This section provides individuals with an explanation of terms used within this policy.

3.2 **Applicant:** Refers to whoever has requested the information.

3.3 **Datasets:** A dataset is a collection of factual information in electronic form (e.g., statistics or figures) that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation. The Protection of Freedoms Act amends the FOIA meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use at the point of release under the Open Government Licence, and where reasonably practicable, they will be published in a reusable format.

3.4 **FOI Response Lead:** Reviews the FOI request, ensuring it is comprehensible and is within the ICB's responsibility, and ensures the request is processed and completed within the agreed timeframes (considering points 3.3 and 3.5). Liaises with the Complaints & FOI Team if there are any issues or delays in a timely manner.

- 3.5 **Exemption:** Provisions within the Act that allow a public authority to withhold information under certain circumstances.
- 3.6 **Exception:** Provisions within the Regulations that allow a public authority to withhold information under certain circumstances.
- 3.7 **Information:** In the context of the Act ‘information’ is defined as each item of material held by the ICB e.g., draft documents, agendas, minutes, emails, diaries, handwritten notes, CCTV footage, audio recordings, visual recordings, electronic messages held in either paper or electronic format.

4.0 Policy Statement

- 4.1 The ICB is committed to ensuring it complies with the requirements of the Act and associated Codes of Practice pursuant to sections 16, 45 and 46 of the Act. Section 16 of the Act places a duty on public authorities to provide reasonable advice and assistance to applicants. The section 45 Code of Practice fulfils the duty set out in the Act and provides guidance on the practice it would be desirable for the ICB to follow in connection with the discharge of its FOI duties. The section 46 Code of Practice provides guidance to public authorities on keeping, managing and destroying records.
- 4.2 The ICB will maintain a Publication Scheme on its website as per the ICOs Model Definition Document for Health Bodies in England. The Scheme sets out the ICB commitment to make information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information. It will be regularly maintained and updated and will include a disclosure log detailing requests received, and responses given.
- 4.3 The ICB will acknowledge requests for information under the Act or the Regulations within 3 working days and respond to applicants where possible within 20 working days. In circumstances where the ICB does not hold the information requested, the applicant will either be signposted to the organisation who may / does hold the information or the ICB will transfer the request.
- 4.4 The statutory time limit for responses to requests for information is 20 working days, though this may be extended by a further 20 working days if the requests are deemed to be complex or voluminous in nature.
- 4.5 The ICB will process requests for information which relate to the environment in accordance with the Environmental Information Regulations 2004. This applies to information in all formats which are held by the ICB and may be made verbally.

5.0 Roles and Responsibilities

5.1 The following individuals have specific responsibilities in relation to this policy.

5.2 Chief of System Assurance & Corporate Services

Delegated responsibility from the Chief Executive Officer to ensure compliance with the requirements of the Act and the Regulations.

5.3 Executive Directors

Responsible for approving responses to requests in relation to their Directorate / functions and for the quality of the information being provided.

5.4 Head of Office to the Chief Executive Officer and Chair

Responsible for undertaking requests for Internal Reviews and conducting Public Interest Tests.

5.5 Associate Directors / FOI Response Lead

Responsible for managing and completing the FOI response within the agreed timeframe on behalf of their Executive.

5.6 Complaints & FOI Manager

- Managing requests for information and processes.
- Providing clear, accurate reports for committees, groups and directorates.
- Ensuring the appropriate application of exemptions/exceptions.
- Providing advice and assistance to applicants, directorates and services to provide responses.

5.7 All Staff

- Have a legal duty to preserve records and ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices may lead to an inability to comply with requirements of the Act and the Regulations.
- Be aware that ultimately the general public may have access to any piece of information held by the ICB and so must pay due regard to how they record information as part of their normal duties.
- On receipt of a request for information (which does not need to specify a named Act or Regulation), forward it immediately to the Complaints & FOI Team for processing via blmkicb.contactus@nhs.net

6.0 Processes and Procedures

The Complaints & FOI Team have controls in place for the management and processing of FOI requests. These operating procedures are based on the requirements of the Act and the Regulations, which are detailed in this section.

6.1 Defining a Valid Request

6.1.1 A request is a valid request if it:

- Is in writing e.g., hard copy letter and electronic form, including email and those sent using social media (e.g., Twitter and Facebook).
- States the name of the applicant and a valid address for correspondence (an email address is valid).
- Describes the information requested.
- Is in legible form.
- Is capable of being used for subsequent reference.
- EIR requests can be verbal as well as written.

6.1.2 A request does not need to refer to the Act or the Regulations, and the request does not need to be the main or sole theme of the correspondence.

6.1.3 The Environmental Information Regulations 2004 (EIR) are similar to the Freedom of Information Act but are limited specifically to information regarding the environment and applies to all information which relates to the environment, in its broadest sense, including land, air, water, soil, buildings, animals and people, pollution of all kinds, waste, health and safety. This also includes reports, measures, and analysis of environmental information.

6.2 Identity of the Applicant

6.2.1 The Act does not mandate that the identity of an applicant must be disregarded, though the ICO has advised that, as the Act enables disclosure of information on grounds of public interest, requests ought to be made applicant and motive blind when responses to requests are formulated.

6.2.2 On this basis, the ICB will assess all requests on the understanding that the applicant's identity is not relevant for the processing of the request. However, there are possible exceptions to this e.g., a request is deemed to be repeated, situations where the ICB is confident that the identity of the applicant means the requested information is reasonably accessible to that person by other means and is therefore exempt by way of Section 21 of the Act.

6.2.3 Applicants do not have to declare the organisation they represent or their reasons or motive for requesting the information.

6.3 Time Limits for Compliance

- 6.3.1 The Act requires all requests to be acknowledged and responded to within at least 20 working days starting with the first working day after the request is received.
- 6.3.2 The response may confirm or deny if the ICB holds the requested information by providing it in the format requested or informing the applicant that an exemption or exception to withhold the information has been applied.
- 6.3.3 If a request is unclear the Complaints & FOI Team can contact the applicant for clarity, at which point the 20-working day countdown will stop and start again on the day the clarification is received.
- 6.3.4 If the applicant is sent a 'Fees Notice' the 20-working day count down stops the day it was sent and starts again on the day the fee is received.

6.4 Fees and Re-use Charges

- 6.4.1 The ICB will wherever possible publish information without charge in its Publication Scheme. However, it may make a small charge for disbursements such as photocopying costs, postage and packing or information produced on other portable electronic media.
- 6.4.2 The Complaints & FOI Team will issue a Fees Notice to the applicant or refuse their request. Such decision will be made in line with the requirements of the Act and guidance issued by the ICO.
- 6.4.3 Upon refusal of a request for information, the applicant will be informed of the reasons for this decision within 20 working days, and at the same time, will be informed of the procedures for making a complaint about the discharge of the duties of the ICB and their rights.

6.5 Format Preference

- 6.5.1 On making their request for information the applicant may state a preference of how they would like to receive or view the information. The ICB is required, so far as is reasonably practicable, provide it in the requested format.
- 6.5.2 In determining whether it is reasonably practicable to communicate information by a particular means, the Complaints & FOI Manager will consider all the circumstances, including the cost. If it is determined that it is not reasonably practicable to comply with the preference, the applicant will be notified of the reasons and be provided with the information in a format which is reasonable in the circumstances.

6.6 Vexatious or Repeated Requests

- 6.6.1 Should an applicant make a 'vexatious' or 'repeated' request for identical or substantially similar information, they will be informed in writing by the Complaints & FOI Team that their request/s will not be processed. However, the threshold for meeting vexatious or repeated under the Act is very high and must be considered carefully. Identical or very similar requests, or frequent requests from the same applicant cannot and will not always be treated as repeated or vexatious.

6.7 Exemptions and the Public Interest Test

- 6.7.1 The ICB will consistently encourage the release of information to the public. However, it is not always appropriate or practicable for information to be disclosed and there are exemptions / exceptions (See Appendix 4) under the Act and the Regulations, which may be applied to withhold information.
- 6.7.2 Under the Act there are two types of exemptions:
- Absolute – does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
 - Qualified – by public interest test – this requires a public interest test to decide whether it is in the balance of public interest to not disclose information.
- 6.7.3 The Public Interest Test is set out in section 2 of the Act. It provides that, even where the information meets the requirements of a qualified exemption, the information may only be withheld where, *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*.
- 6.7.4 A Public Interest Test requires the ICB to consider the competing public interest factors in disclosure and the maintenance of secrecy by weighing of competing information and circumstances. Public Interest Tests must be conducted without bias, in line with guidance set by the ICO and with a view to release of the requested information unless a clear margin of public interest in maintaining the exemption exists.
- 6.7.5 The strength of the factors both in favour of disclosure and maintaining the exemption will be assessed on a case-by-case basis.
- 6.7.6 Section 36 of the FOI Act enables information to be made exempt if its disclosure may inhibit the ability of an authority to conduct its business effectively. Reliance upon this exemption requires the approval of the Director with responsibility for FOI.
- 6.7.7 Public Interest Tests will be conducted by the Complaints & FOI Manager who will request input from responders.

6.8 Consultation with Third Parties

- 6.8.1 The ICB will undertake consultation with third parties where the views of the third party may assist in determining, whether an exemption under the Act applies or assist in determining where the Public Interest lies. However, it is for the ICB, not the third party, to determine whether information should be disclosed or not. A refusal to consent to disclosure by a third party does not automatically mean information will be withheld.
- 6.8.2 Consultation will be unnecessary where there is no intention to disclose the information or the view of the third party can have no effect on the decision as to whether to disclose the requested information.

6.9 Staff Names and Contact Details

- 6.9.1 It is acknowledged that as a public authority, some justification exists for the disclosure of employee names and contact details. The ICB will release the names and contact details of those who are Bands 8d and above unless a valid exemption applies or where the release of information is deemed to cause damage or distress to any individual.

6.10 Staff Salary Information

- 6.10.1 Requests for salary information should be answered by providing 'Agenda for Change' pay bands. Where a person falls outside of Agenda for Change pay bands, their salary will be given in £5,000 bands. Applicants will be referred to the ICB's Annual Report if requesting information regarding Executive Director salaries.

6.11 Datasets

- 6.11.1 The datasets amendments to the FOI Act came into force on 1 September 2013. Section 102 of the Protection of Freedoms Act 2012 adds new provisions to the Act (in particular sections 11, 19 and 45) regarding datasets.
- 6.11.2 There is no new duty to provide any information in response to an FOI request that was previously inaccessible and there are no new exemptions from that duty. The new provisions:
- Are about how information is released, rather than what information is released.
 - Only relate to information that the public authority holds as datasets.
 - Are about the re-use of those datasets that the ICB provides in response to a request or under the Publication Scheme.

6.11.3 A reusable form means that the dataset is in a machine-readable form and based on open standards. The data set amendment requires that:

- When a public authority is providing response to a request, if that information is a dataset, then the public body has to provide it in a re-usable form so far as reasonably practicable.
- If the public body owns the copyright in the dataset and it's not a Crown copyright work, then it also has to licence the dataset for reuse.
- It may charge a fee for licensing re-use of the dataset.
- The public authority also has to make requested datasets available for re-use under its Publication Scheme unless it is inappropriate to do so.

6.11.4 When dealing with a request involving a dataset, the ICB will first consider whether the information is exempt from disclosure under any FOI exemption. In particular, the ICB will consider whether any personal data may be disclosed.

6.11.5 Dataset provisions do not apply to the Environmental Information Regulations, but regulation 6 of the EIR in relation to form or format should be considered.

6.12 Redaction of Information

6.12.1 Redaction is a process which is carried out to make information unreadable or to remove exempt information from a document. This is achieved by blocking out individual words, sentences or paragraphs or by removing whole pages or sections of information prior to the release of the document. However, if so much information is deemed to be exempt and the document becomes illegible the entire document can be withheld.

6.12.2 Redaction can only be applied if an exemption or exception is being relied upon which supports the redaction.

6.12.3 A 'clean' (non-redacted) copy of the requested information must be provided to the Complaints & FOI Team as well as the redacted copy.

6.13 Internal Review

6.13.1 If an applicant is unhappy with the way in which their request has been dealt with, including the application of an exemption or exception, the quality of the information provided or the timeliness of the response, they may request an internal review.

6.13.2 An internal review involves looking at all relevant aspects of the request including, where applicable decisions made and rational in applying an exemption, the outcome of any public interest tests, timelines etc.

6.13.3 The Complaints & FOI Team will identify and communicate with all relevant staff that were involved in the processing of the request and the review will be undertaken by the Head of Office to the Chief Executive Officer and Chair.

6.13.4 Applicants who may remain unsatisfied following the outcome of an internal review will be advised that they may exercise their right to appeal to the ICO.

6.14 Complaints

6.14.1 All formal complaints received via the ICB's complaints process about the discharge of its duties under the Act or the Regulations will be handled in the same manner and using the same procedures as any other formal complaint which the ICB receives. However, internal reviews will be undertaken in the first instance.

6.14.2 Applicants who are not satisfied with the outcome of their request for information may ask the ICO to investigate how the ICB has performed in response to the complainant's request. For more information visit the ICO website at <https://ico.org.uk/>

6.15 Re-use of Information

6.15.1 Regulations apply in respect of the 're-use' of information where the ICB holds the intellectual property / copyright of information and where re-use has been requested by a body that is not a public authority.

6.15.2 The regulations around re-use requires organisations to publish details of information available for re-use. Information that the ICB publishes as part of its Publication Scheme can be considered as the list of information available for re-use. Any published document can be re-used without charge, provided the ICB is quoted as the source and retains copyright.

6.15.3 Requests for re-use will be granted or denied by the Head of Office to the Chief Executive Officer and Chair in consultation with the relevant subject matter expert.

6.16 Record Keeping

6.16.1 The Act and the Regulations are wholly retrospective and apply to all information held by public authorities regardless of its date. It does not oblige public authorities to retain information which is no longer useful to the authority.

6.16.2 Requests and responses should be retained for a minimum of three years. At the end of the retention period the file should be reviewed and destroyed if no longer needed. Where there has been a subsequent appeal, correspondence should be retained for six years beginning with the closure of the appeal.

Appendix 1 - Equality Impact Assessment Initial Screening

Please answer the questions against each of the protected characteristic and inclusion health groups. If there are significant impacts and issues identified a full Equality / Quality Impact Assessment (EQIA) must be undertaken. It is against the law to discriminate against someone because of these protected characteristics. For support and advice on undertaking EQIAs please contact: agcsu.equalities@nhs.net

Name of Policy:	Freedom of Information & Environmental Information Policy
Date of assessment:	01-02-2022
Screening undertaken by:	Interim Complaints & Freedom of Information Manager

Protected characteristic and inclusion health groups. Find out more about the Equality Act 2010, which provides the legal framework to tackle disadvantage and discrimination: https://www.equalityhumanrights.com/en/equality-act/protected-characteristics	Could the policy create a disadvantage for some groups in application or access? (Give brief summary)	If Yes - are there any mechanisms already in place to mitigate the potential adverse impacts identified? If not, please detail additional actions that could help. If this is not possible, please explain why
Age A person belonging to a particular age (for example 32 year olds) or range of ages (for example 18 to 30 year olds).	No	
Disability A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.	No	
Gender reassignment The process of transitioning from one gender to another.	No	
Marriage and civil partnership Marriage is a union between a man and a woman or between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'.	No	
Pregnancy and maternity Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this	No	

includes treating a woman unfavourably because she is breastfeeding.		
Race Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour and nationality (including citizenship) ethnic or national origins.	No	
Religion or belief Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.	No	
Sex A man or a woman.	No	
Sexual orientation Whether a person's sexual attraction is towards their own sex, the opposite sex, to both sexes or none.	No	
Carers Individuals within the ICB which may have carer responsibilities.	No	
Please summarise the improvements which this policy offers compared to the previous version or position.		
Not Applicable		
Has potential disadvantage for some groups been identified which require mitigation?		
No		

Appendix 2 - Data Protection Impact Assessment Initial Screening

Data protection is the fair and proper use of information about people. Before completing this form, please refer to the Data Protection Impact Assessment (DPIA) Guidance in the Information Governance (IG) section on the staff Intranet or contact the Data Protection Officer for support via blmkicb.ig@nhs.net

A DPIA is a process to help you identify and minimise the data protection risks. You must do a DPIA for processing that is likely to result in a high risk to individuals. You can use our screening checklist below to help you decide when to do one. If you have answered 'Yes' to any of the 10 screening questions, you must then carry out a full DPIA using the Stage 2 form, which is also available on the Intranet in the IG section.

Name of Policy:	Freedom of Information
Date of assessment:	01-02-2022
Screening undertaken by:	Interim Complaints & Freedom of Information Manager

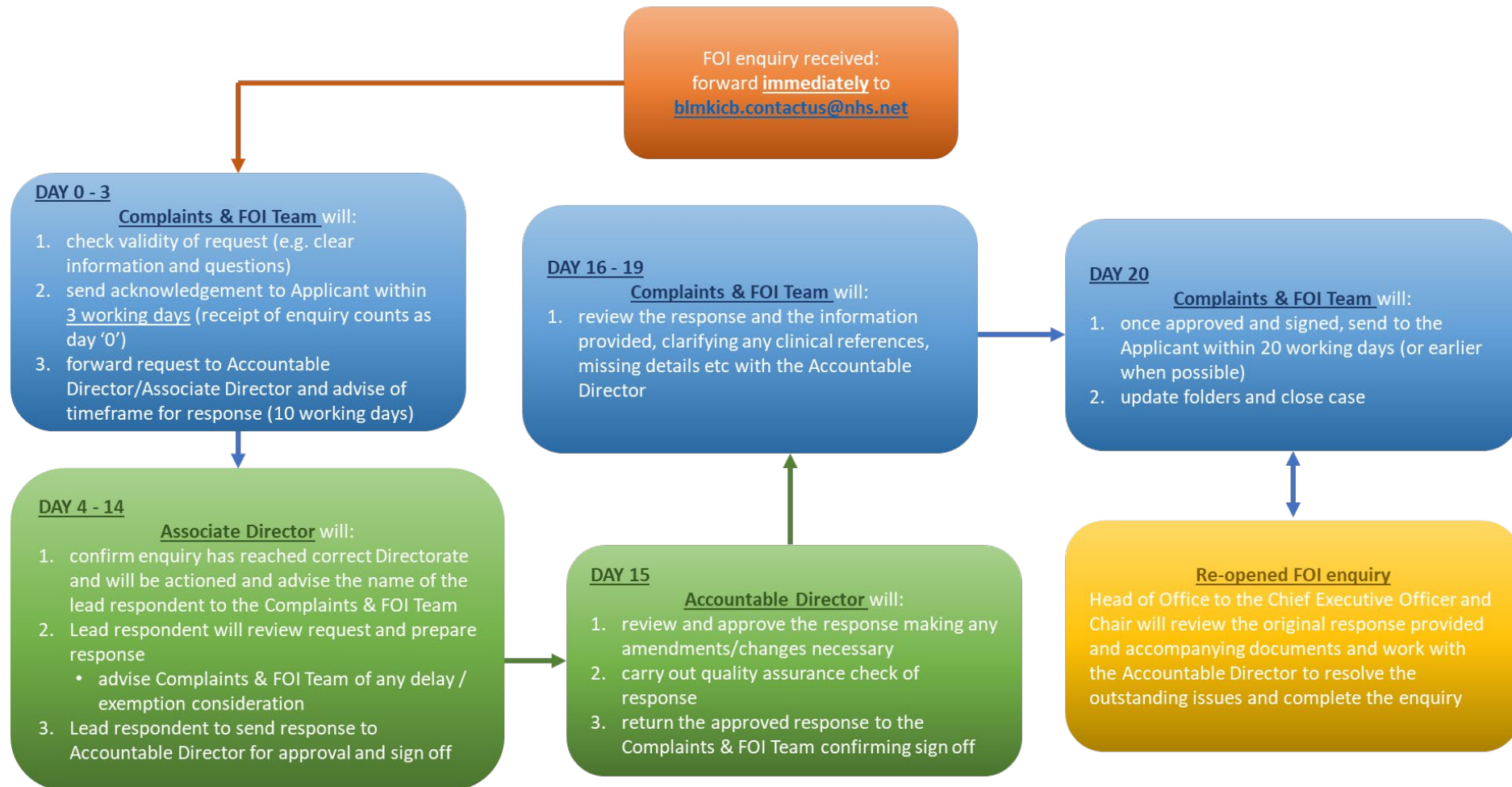
Stage 1 – DPIA form

please answer 'Yes' or 'No'

1. Will the policy result in the processing of personal identifiable information / data? This includes information about living or deceased individuals, including their name, address postcode, email address, telephone number, payroll number etc.	Yes
2. Will the policy result in the processing of sensitive information / data? This includes for living or deceased individuals, including their physical health, mental health, sexuality, sexual orientation, religious belief, National Insurance No., political interest etc.	No
3. Will the policy involve the sharing of identifiers which are unique to an individual or household? e.g., Hospital Number, NHS Number, National Insurance Number, Payroll Number etc.	No
4. Will the policy result in the processing of pseudonymised information by organisations who have the key / ability to reidentify the information? Pseudonymised data - where all identifiers have been removed and replaced with alternative identifiers that do not identify any individual. Re-identification can only be achieved with knowledge of the re-identification key. Anonymised data - data where all identifiers have been removed and data left does not identify any patients. Re-identification is remotely possible, but very unlikely.	No
5. Will the policy result in organisations or people having access to information they do not currently have access to?	No
6. Will the policy result in an organisation using information it already holds or has access to, but for a different purpose?	No
7. Does the policy result in the use of technology which might be perceived as being privacy intruding? e.g., biometrics, facial recognition, CCTV, audio recording etc.	No
8. Will the policy result in decisions being made or action being taken against individuals in ways which could have a significant impact on them? Including profiling and automated decision making. (This is automated processing of personal data to evaluate certain things about an individual i.e., diagnosis and then making a decision solely by automated means - without any human involvement)	No
9. Will the policy result in the collection of additional information about individuals in addition to what is already collected / held?	No
10. Will the policy require individuals to be contacted in ways which they may not be aware of and may find intrusive? e.g., personal email, text message etc.	No

Appendix 3 - Freedom of Information Flowchart and Timeframes

Freedom of Information (FOI) Enquiry Process Flowchart



Appendix 4 - Exemptions under part II of the Freedom of Information Act

There are two types of exemption:

Absolute – does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

Qualified - by **public interest test** – this requires a public interest test to decide whether it is in the balance of public interest to not disclose information (all EIR exemptions are subject to the public interest test).

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

The Absolute exemptions 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 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 2018. 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 ICB
- Section 44 Prohibitions on disclosure**
Information is exempt if its release is prohibited under any enactment; it is incompatible with Community obligations or would constitute contempt in 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 UK**
Covers information that would prejudice the economic interests 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 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 36 Prejudice to effective conduct of public affairs**
Information is exempt if, in the opinion of a qualified person, it would be prejudicing how the ICB 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

Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information

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.

Exceptions – Environmental Regulations

Regulation 12(4)(a) Information not held – please see ‘Holding information’ below.

Regulation 12(4)(b): Manifestly unreasonable requests

Regulation 12(4)(c): Requests formulated in too general a manner

Regulation 12(4)(d): Material in the course of completion, unfinished documents and incomplete data

Regulation 12(4)(e): Internal communications

Regulation 12(5)(a): International relations, defence, national security or public safety

Regulation 12(5)(b) – The course of justice and inquiries exception

Regulation 12(5)(c): Intellectual property rights

Regulation 12(5)(d): Confidentiality of proceedings

Regulation 12(5)(e): Confidentiality of commercial or industrial information

Regulation 12(5)(f): Interests of the person who provided the information to the public authority

Regulation 12(5)(g): Protection of the environment

Regulation 12(9): Information on emissions

Regulation 13: personal information