Access to Information Policy

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* Information Governance Steering Group.
* Audit Committee.
 |
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# Version History

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| Version | Date | Author (Name and Title) | Summary of amendments made |
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| 1.0 | 06/07/22 | David Triggs, Governance Lead | Final review against policy checklist |
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## Introduction

The MSE Integrated Care Board (the ICB) is committed to openness and transparency in the conduct of all of its business. It has a duty to comply with all aspects of the Freedom of Information Act 2000 (FOIA).

The FOIA came into force at the beginning of 2005 and gives individuals or organisations rights of access to information held by public bodies, including the right to request information held by a public authority. The Act also places an obligation on public authorities to proactively publish information within a publication scheme, this is available on the ICB website.

In addition, there are also regulations which provide access to environmental information; these are the Environmental Information Regulations 2004 (EIR). Requests under EIR will be treated as an FOI request as per this policy, except where the regulations drastically differ. Please see Appendix B for further information regarding the EIR and differences with the FOIA.

The ICB also has a duty to comply with the General Data Protection Regulation (GDPR) and the Data Protection Act (DPA) 2018, which gives every living person (or their authorised representative) the right to apply for access to their own records, irrespective of when they were compiled; this is known as a Subject Access Request (SAR).

The GDPR and DPA 2018 supersedes the DPA 1998 and the Access to Health Records Act (AHRA) 1990. The exception to this is in relation to records of the deceased, which are still governed by the AHRA1990. This Act limits access to manual records made since 1st November 1991 unless earlier entries are necessary to make any later part of the records intelligible.

## Purpose / Policy Statement

This policy applies to those members of staff who are directly employed by the ICB and for whom the ICB has a legal responsibility. For those staff covered by a letter of authority, honorary contract or work experience, the organisation’s policies are also applicable whilst undertaking duties for, or on behalf of, the ICB. Further, this policy applies to all third parties authorised to undertake work on behalf of the ICB, including interims and contractors.

This policy provides a framework for the ICB to ensure compliance with the FOIA, GDPR, DPA, AHRA, Re-use of Public Sector Information Regulations 2005 and EIR.

The ICB, wherever possible and within the limits set out by the Act’s exemption, will make all information we hold available.

The aim of this policy is to:

* ensure all Freedom of Information (FOI) requests are dealt with consistently, receiving a high-quality response however and wherever the contact is made.
* ensure that the ICB complies with all relevant regulations, laws, and guidance.
* provide clear routes for members of the public to contact the organisation so that they can appropriately request documents and information.
* ensure that the ICB’s Publication Scheme is up to date to provide access to information and to lessen the number of written requests the public must make.
* ensure that the necessary structures are in place for compliance with the FOIA.
* ensure staff at all levels are aware of their responsibilities under the FOIA.
* ensure timescales are met.
* ensure the Board of the ICB is fully informed on the operation of the FOIA and its implications for the organisation.
* ensure that the ICB meets its obligations regarding ‘subject access requests’ under the terms of the General Data Protection Regulation (GDPR) and Data Protection Act 2018.
* ensure that the ICB meets its obligations regarding ‘access to health records requests’ under the terms of the Access to Health Records Act 1990.
* set out clear guidelines for ICB staff to help make the access timely and within the legislation laid down by the Government.
* ensure that all staff are aware of their responsibilities in the management of access to records.
* Ensure any action taken to comply with access to information requests will not amount to discrimination because of protected characteristics as set out in the Equality Act 2010.

## Definitions

* **Freedom of Information Act (FOIA) 2000** – provides public access to information held by the public sector. It does this in two ways: public sector organisations are obliged to publish certain information about their activities and members of the public are entitled to request information from public authorities.
* **Environmental Information Regulations (EIR) 2004** – provide public access to environmental information held by public authorities. The Regulations do this in two ways, public authorities must make environmental information available proactively; and members of the public are entitled to request environmental information from public authorities.
* **Subject Access Requests** – the General Data Protection Regulation and the Data Protection Act (DPA) 2018, gives individuals access to their personal information held by organisations upon request.
* **Access to Health Records Act (AHRA) 1990** – gives access in certain circumstances to a deceased individual’s health records.
* **The Re-Use of Public Sector Information Regulations (RPSI) 2005** – is about permitting re-use of information obtained from the public sector and how it is made available.

## Roles and Responsibilities

### All ICB Employees and Board members

* + 1. Many staff handle information in one form or another. Staff that in the course of their work create, use, or otherwise process information have a duty to keep up to date with and adhere to, relevant legislation, case law and national guidance.

* + 1. The ICB policies and procedures will reflect such guidance and compliance with these strategies and will ensure a high standard of Information Governance compliance within the organisation. All staff and officers, whether permanent, temporary, contracted, agency or contractors are responsible for ensuring that they are aware of their responsibilities in respect of information governance.
		2. All staff are responsible for:
* Ensuring any Access to Information request directly received is forwarded to the Access to Information Team in a timely fashion.
* Ensuring enquirers receive accurate information about how to apply for information should it not be available online and for ensuring that any information requested from them, in relation to an enquiry under the FOIA, Data Protection Act and Access to Health Records Act is supplied within the timescales allowed.

### Senior Information Risk Owner (SIRO)

* + 1. The role of the Senior Information Risk Owner (SIRO) is further described within the ICBs Information Governance Framework and Policy.
		2. The SIRO is responsible for leading on Information Risk and for overseeing the development of an Information Risk Policy.
		3. The SIRO is also responsible for ensuring the corporate risk management process includes all aspects of information risk and for guaranteeing the ICB Board is adequately briefed on information risk issues.
		4. The Senior Information Risk Owner will act as the ICB’s appropriate ‘qualified person’ in relation to the application of Section 36 of the FOIA (an exemption in relation to the prejudice to the effective conduct of public affairs).
		5. The Senior Information Risk Owner will act as FOI lead at Board level to:
* ensure organisational compliance with the FOIA.
* have lead responsibility for FOIs and the ICBs Publication Scheme.
* act as the champion for FOI awareness throughout the organisation.
* ensure that the general public and ICB staff have access to information about their rights under the FOIA.
* ensure processes are in place to assist for investigations into complaints / appeals.
* ensure that sufficient processes and structures are in place to administer FOI.
	1. **Information Asset Owners (IAOs)**
		1. The role of the Information Asset Owners (IAOs) is further described within the ICBs Information Governance Framework and Policy.
		2. Designated Information Asset Owners (IAOs) are senior members of staff at director / assistant director level or heads of department responsible for providing assurance to the SIRO that information risks, within their respective areas of responsibility are identified and recorded and that controls are in place to mitigate those risks, and supporting the ICBs compliance with Data Protection Legislation and any DSPT assertions within the area they are responsible for.
		3. Information Asset Owners must:
			+ Establish and maintain clear pathways for Freedom of Information (FOI) and Subject Access Requests (SARs) to be submitted to the teams/areas under the Information Asset Owners' (IAOs) responsibility.
			+ Develop and keep an updated publication scheme for these teams/areas. Proactively publishing information may reduce the volume of FOI requests. However, when FOI requests relate to already published information, the FOI team can simply direct the requester to the publication scheme, saving time and effort for departments.
			+ Oversee the processing of FOI requests within the teams/areas under the IAOs' responsibility. IAOs will be included in the FOI request workflow from the initial email, through all follow-up communications, and will provide input for any public interest tests (to be considered by the Senior Information Risk Owner - SIRO) for potentially exempt information. Ultimately, IAOs will sign off the response or relevant parts for which they are responsible.
			+ Offer guidance to the SIRO and Data Protection Officer (DPO) in cases of Internal Reviews, or if the response has been escalated to the Information Commissioner’s Office. IAOs may need to assist in defending the response or provide additional context.
			+ When a Subject Access Request (SAR) is received by the teams/areas under the IAOs' responsibility, the IAOs will be involved in oversight and, where necessary, sign off the response. This includes reviewing the screening form for exemptions or restrictions applied to the response.

### Caldicott Guardian

* + 1. The role of Caldicott Guardian is further described within the ICBs Information Governance Framework and Policy.
		2. The Caldicott Guardian has responsibilities for protecting the confidentiality of patients / service-users information and enabling appropriate information sharing.
		3. Acting as the 'conscience' of the organisation, the Caldicott Guardian will actively support work to enable information sharing where it is appropriate to do so, and for advising on options for lawful and ethical processing of information.

### Chief Executive

* + 1. The Chief Executive, as the Accountable Officer, has overall responsibility for Information Governance within the ICB. The Chief Executive is responsible for the management of Information Governance and for ensuring appropriate mechanisms are in place to support service delivery and continuity.
		2. The Chief Executive has delegated operational responsibility for information governance to the Senior Information Risk Owner (SIRO).

## Freedom of Information (FOI) Act 2000

### Process, Public Interest Test and Exemptions

* + 1. The Access to Information Team will manage FOI requests for the ICB. For a summary of this process with the ICB, please see Appendix C.
		2. All requests for information with FOIA should be made in writing, in the form of a letter, fax or email. The enquirer should clearly identify the documents or information that they require and supply a return address (which can be an email address) for the delivery of the information.
		3. The FOIA only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations, or unrecorded discussions are requested.
		4. Where a request does not give sufficient detail to enable the ICB to process the request, the Access to Information Team will contact the applicant and advise them of the clarification that is required to make their application more detailed and to offer help with their request.
		5. When clarification is sought from the requester the 20-working day deadline is restarted from when the clarification is received. The ICB will endeavour to ask for this clarification at the earliest opportunity. If, when sought, clarification is not received within a reasonable timescale (approximately 3 months), the request will be considered cancelled, and the requester will be notified of this.
		6. The Access to Information Team will acknowledge receipt of the request within the first two full working days and provide the documents / information, or an explanation about why the information has not been disclosed within 20 full working days. A working day is defined by the Information Commissioner’s Office (ICO) as one day within the working week (Monday to Friday), excluding all UK bank holidays (not just English bank holidays) and any other public holidays granted.
		7. It might sometimes be necessary to extend this timeframe, for example to assess the public interest in releasing information. In these circumstances the Access to Information Team will endeavour to respond within 40 working days and notify the requester. Appendix C outlines the timescales for handling FOI requests.
		8. Under the FOIA, information may be withheld if it is covered by an exemption. There are two categories of exemptions: qualified and absolute. Information covered by a qualified exemption can only be withheld if the public interest in withholding the information is greater than the public interest in releasing it. Information covered by an absolute exemption is not subject to this public interest test and can be withheld.
		9. The public interest test can be summarised as follows:

“In the majority of cases where an exemption applies, to some or all of the information requested, the authority will then have to consider whether it must override the exemption because it is in the public interest to release the information. This public interest test involves considering the circumstances of each particular case and the exemption that covers the information. The balance will lie in favour of disclosure, in that information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it.”

* + 1. When the information requested falls under an exemption that is subject to the public interest test, the Access to Information Team will notify the provider of that information and the ICB FOI Liaison, both for awareness and to assist with assessing under the public interest test. The ICO categorises qualified and absolute exemptions, as laid out in Appendix D.
		2. The FOIA itself should be consulted for more detailed information on each exemption. If there is any doubt over whether an exemption applies the decision will be escalated to the Freedom of Information Lead responsible and legal advice gained where necessary.
		3. If the ICB intend to withhold the information, there is a duty to explain this decision. This should be done within 20 working days, however if the ICB needs to consider the public interest test they are entitled to a reasonable extended period. In this case, within the 20-working day period the Access to Information Team should provide an estimate of when a decision can be expected and adhere to this, unless there is a good reason not to. If, while trying to reach a decision, it is realised that the original estimate was unrealistic the applicant must be kept informed. A record will be kept of any instances where estimates are not met.
		4. If the ICB does not hold the information that has been requested, but believes that some, or all of the information requested, is held by another public authority, the team will endeavour to advise the requester. In most cases this will mean:
* contacting or formally responding to the applicant and advising that we do not hold the information, but that it may be held by another public authority.
* suggesting that the applicant reapplies to the authority which the team believe holds the information.
* Providing contact details for that authority where possible.
	+ 1. Where a document contains some information that can be disclosed and some that is exempt, it should still be released, with the exempt information carefully blocked out (redacted).
		2. Exempt information on hard copies should be concealed with a black marker pen and then double photocopied to ensure that it cannot be read. The exempt information should be blocked out from electronic versions and then saved as a new document. All redacted information must be accompanied by an explanation.
		3. The Access to Information Team is not required to provide assistance to vexatious or repeated requests. A request would be classed as repeated if the team had already responded to the same or very similar request from the same applicant, or applicants appearing to act in concert, in a recent time period (approximately 3 months, but potentially longer / shorter dependent on the information and how frequently it is produced). A vexatious request can be identified as a request which subjects the organisation to inconvenience, harassment or expense and could be sent by one person or several persons working together.
		4. It is also important to consider whether any third parties may be affected by the disclosure of information, for example if the information contains personal data or potentially commercially sensitive information. In these cases, consent must be obtained wherever possible. If the third-party refuses to consent, this does not always mean that the information should be withheld. Similarly, consent is not required if exemptions do not apply as the information will have to be disclosed regardless. Any such decisions will be taken amongst the SIRO, Caldicott and DPO.

### Requests for an Internal Review

* + 1. Although a public body is not legally required to have an internal review procedure for FOI requests, the Section 45 Code of Practice makes clear that it is good practice to have a review procedure in place. The internal review procedure will ensure applicants are able to ask the ICB for an internal review if they are dissatisfied with the response to a request or the handling of a request.
		2. Internal reviews should be conducted by a person who was not party to the original decision on whether to release the information requested. An internal review must be a fair and impartial review of the decisions made during the original discussion of whether to release the information. The person conducting the review must consider the information released against the information requested and make a full review of the papers associated with the original application.
		3. It is best practice that the internal reviewer discusses the decisions made with the staff member, or members, who dealt with the original application in order to build a full picture regarding how decisions were made.
		4. The circumstances relating to the original decision may have changed between the time the ICB made its decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames. The FOIA does not stipulate a time limit for completion of an internal review but the Section 45 Code states that they should be dealt with in a reasonable time and the ICO recommend that:
* reviews should be completed within 20 working days of receiving the complaint.
* for complex complaints, or where it is necessary to reconsider the public interest test – reviews should be completed within 40 working days of receipt.
* If it appears that the deadline will not be met, then the applicant must be advised as soon as possible, and a second deadline set by which a response will be sent.
	+ 1. The internal review can have two outcomes; the original decision is reversed or is upheld. The outcome of the internal review must be recorded.
		2. Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided to them. Where the original decision is upheld the applicant must be told and made aware of their further rights of appeal to the ICO.
		3. The procedure on receiving a request for an internal review is as follows:

| **Person Responsible**  | **Action to be taken**  |
| --- | --- |
| FOI Lead | If complaint cannot be handled on an informal basis then request for internal review to be acknowledged within five working days along with details of internal review procedure  |
| FOI Lead  | Independent person to be assigned to conduct internal review and relevant papers forwarded to them  |
| Head of IG, ICB SIRO / IAO / Other senior ICB staff | Reviewer to look at the original decision and discuss with people who handled the original request, with advice from Head of Information Governance. |
| The internal review can have two outcomes; the original decision is reversed or the original decision is upheld. |
| FOI Lead  | Outcome of internal review to be discussed and agreed with the FOI lead, who communicates this to the applicant  |
| FOI Lead  | If outcome is to reverse the decision, then information to be sent to the applicant as soon as possible  |
| FOI Lead  | If outcome is to uphold the decision, then the applicant to be informed of their right to appeal to the Information Commissioner’s Office (ICO)  |
| FOI Lead  | Outcome of internal review to be recorded  |

* + 1. All complaints regarding FOI requests should be sent to the ICB in the first instance, either by email or post, following the same route that a FOI request would. Contact details can be found in Section 28.
		2. To complain to the Information Commissioner, please see the ICO web page at: <http://www.ico.gov.uk/complaints/getting/complain.aspx>

### Personal Information and Records

* + 1. Requests for access to or copies of personnel, staff, health or other personal records relating to the enquirer or third parties will be managed outside of the FOI section of this policy, please see page 16 onwards for further information on the management of Subject Access and Access to Health Records requests.
		2. Requests for health related information about identifiable, living or deceased, individuals will be dealt with in accordance with the Data Protection Act (DPA) 2018 or Access to Health Records Act 1990, accordingly.

### Re-Use Regulations and Copyright

* + 1. If there are concerns about information reaching a wider audience, without sufficient briefing relating to the circumstances surrounding the production of the data / document, or its context, then the ICB may indicate that the information is being supplied only for the use of the initial enquirer and cannot be re-used or reproduced in any format, or relayed on to other people, without the consent of the ICB.

* + 1. ICB information supplied under the FOIA continues to be protected by the Copyright, Designs and Patents Act (CDPA) 1988.
		2. For other forms of re-use, for example publishing the information, the permission of the organisation or person who owns the copyright would be needed. In the case of information produced by government departments and agencies, this can be re-used under the Open Government Licence. For information about this, please see: http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm
		3. If, however, the copyright is identified as belonging to somebody else, an application for permission would be needed.
		4. For information about how to obtain permission from a third party, please go to Intellectual Property Office’s website at: <http://www.ipo.gov.uk/>
		5. Publishing the information or issuing copies may be subject to the provisions of the Re-use of Public Sector Information Regulations 2005 and will require the permission of the ICB and may require a fee.

### Charging and the Appropriate Limit

* + 1. The ICB may, in some circumstances, charge for releasing information in accordance with regulations.
		2. A public authority is not obliged to comply with a request if it estimates that the cost of determining if it holds the relevant information, locating and retrieving this and, where necessary, extracting from a document would exceed the appropriate limit (see Appendix E for further details).
		3. The appropriate limit is set down under Section 12 of the FOIA (£450 for public authorities). This figure is calculated at a rate of £25 per hour and therefore any request that exceeds 18 hours of combined work will normally be rejected.
		4. Wherever possible, the Access to Information Team will work with the enquirer to try to reduce the amount of work involved so that some of the information can be provided. In certain circumstances the ICB can offer the enquirer the option of paying for the information. In this instance, the enquirer would have to pay the full cost.

### Duty to Advise and Assist

* + 1. All public bodies have a duty to advise and assist applicants in requesting information (under Section 16 of the FOIA). This could involve assisting applicants in making their requests by suggesting what information is available and / or contacting applicants who have made broad requests in order to specify information required so that it may be identified.

## Subject Access Requests and Access to Health Records Act 1990

### Right of Access / Subject Access Request

* + 1. The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 is applicable to requests for access to records relating to living persons.
		2. Under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, individuals have the right to:
* Access their records, subject to certain safeguards.
* Have copies of their records.
* Have these records explained if they are illegible or unintelligible.
* Be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller.
* Applicants do not have to give a reason for requesting access to records. The applicant’s motives in requesting the records are irrelevant.
* The ‘data subject’ could be a patient, contractor, member of staff or member of the public.

### Individuals Who Can Make a Request

Subject access requests can be made by:

* The individual themselves.
* Individuals requesting access on behalf of a child for whom they have parental responsibility.
* A representative nominated by the individual to act on their behalf such as solicitors or a relative, where there is valid consent by the individual granting this authority.
* In certain situations a person granted an attorney or agent by the Court of Protection on behalf of an adult who is incapable of consent.
	+ 1. Requests for information quoting the General Data Protection Regulation or the Data Protection Act may in fact be relevant to FOI and will therefore be processed as such.

### Individuals living abroad

* + 1. Under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, former patients now living outside the United Kingdom have the same rights to apply for access to their UK health records. A request for access to health records will be treated in the same way as a request from within the UK.

### Subject Access Requests – the rights of individuals

* + 1. The ICB has the following guidance for managing requests.
		2. The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 ensures the transparency of data processing by obliging organisations to explain to individuals how their data is used and by providing the right of subject access.
		3. Article 15 of the General Data Protection Regulation, and Schedules 2, 3 and 4 of the Data Protection Act 2018, provides that individuals have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:
* the purpose of the processing.
* the categories of personal data concerned.
* the recipients or categories of recipient to whom the personal data have been or will be disclosed.
* Where possible, the envisaged period for which the personal data will be stores, or, if not possible, the criteria used to determine that period.
* The existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing.
* The right to lodge a complaint with a supervisory authority.
* Where the personal data are not collected from the data subject, any available information as to their source.
* The existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) [of the GDPR] and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
	+ 1. Appendix F set out the procedures for Access to Health Records and Subject Access Requests.

### Consent Issues

* + 1. In most cases the consent to access personal information will be provided by the individual who is requesting the information, however, there may be cases where the individual is unable to consent, or the individual is a child.
		2. When an applicant is not able to produce written consent from the patient to access the patient information or is not able to evidence that he / she is entitled to access the patient information, the Access to Information Team will request further information from the applicant on the reason for the request to decide whether it would be justifiable to release the information to the applicant in any event.
		3. In the event that the applicant is a solicitor the subject’s written authority for release and identification must be obtained.

### Shared Records

* + 1. There are situations where a subject access request involves a health record that is shared between healthcare organisations. The modernisation and integration of health and social care will place a greater emphasis on shared records. In developing an integrated health and social care service, the IG Team will set out its arrangements for managing the requirements of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 and Subject Access requests with its partners as part of any service reconfiguration or development.
		2. The following principles will be followed where this is the case:
* Obligations are, in general, placed on the holder of the record. If records are shared between two health or NHS bodies, they will be joint data controllers. Responsibility for ownership of the record rests with the Secretary of State for Health although essentially, where both organisations are joint data controllers for the shared record, both are controlling how they are used. In order to deal with Subject Access requests effectively, the organisation receiving the Subject Access request will take responsibility for processing the request and for obtaining consent or refusal for the release of parts of the record relating to the other organisation. The Access to Information Team is obliged to deal with the access request and the authorisation to release the parts of the record in order to ensure the request is processed within the one month timescale as required by the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
* The Access to Information Team takes responsibility for the access request and joint liability for their release where each organisation has authorised its release.
* If the Access to Information Team does not agree with the decision made by the other organisation to withhold data from release and subsequently releases that element of the record, it will accept full liability.
* The Access to Information Team must document the reasons for withholding certain information lawfully in the request log. The applicant may challenge the decision not to release information.
* If there is a refusal to disclose the record from the partner organisation, the organisation dealing with the access request should, in their response to the applicant explain the reason for the refusal and refer them to the other partner organisation directly if they wish to contest the refusal.

### Other Records

* + 1. In addition to health records, all other records held by the ICB containing individual’s information are liable to subject access requests by those individuals or their representatives. This includes personnel, finance, complaints and administration records. Any ‘third party’ content of the record must be referred to the originating organisation for consent to release.

### The Access to Health Records Act 1990 and Deceased Patient Records

* + 1. This legislation has been repealed, except for the sections dealing with requests to records relating to the deceased.

* + 1. The rights to access under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 extend only to living individuals. Requests for deceased patients’ records are made under the Access to Health Records Act 1990. Requests can only be made by:
* The patient’s personal representative (usually the executor of the will or administrator of the estate) or
* Any person who may have a claim arising out of the patient’s death - release of any information will only be the minimum necessary to process their claim. Only relevant information relating to any claim made should be released.
* A health professional must inspect records taking into account the following:
* If it is known whether the deceased patient did not wish for their records to be disclosed or the records contain information that the deceased patient expected to remain confidential.
* If the release of the information is likely to cause serious harm to the physical or mental health of any individual.
	+ 1. The same rules apply to third party information as with other health records. The ICB should afford the same level of confidentiality to deceased patient’s records as for living ones. The Department of Health and General Medical Council agree that there is an ethical obligation to the relatives of the deceased in requiring that confidential obligations continue to apply, subject to certain mandatory disclosures.

### Exemptions to the Release of Information

* + 1. The General Data Protection Regulation (GDPR), the Data Protection Act 2018 and the Access to Health Records Act 1990 make provisions for withholding information in certain circumstances, which must be considered when a request is received.
		2. Further information is available on the ICO website: [ICO Right of Access - Exemptions](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/#exemptions)

### Data identifying a Third Party

* + 1. Where personal data relating to the applicant also identifies another individual, the applicant’s right of access must be weighed against the other data subject’s right to privacy.
		2. The Access to Information Officer will attempt, where practicable, to seek the consent of the third party to the release of their data. Where consent is obtained then the information can be released.
		3. Given the sensitive and confidential information that the ICB may hold, if there is any doubt about divulging third party information, legal advice must be sought before making a decision to release information.

### Time Limits for Access

* + 1. The Act imposes very specific duties, which have to be carried out within a very tight timescale.

* + 1. From receipt of the request, 14 days are allowed if the record holder needs more information, either to identify the record(s) asked for, or to check the identity of the person applying for access.
		2. The information is to be supplied within one month from the date of the request for access or within one month from the date the Team has sufficient information to enable them to satisfy themselves regarding the identity of the person making the request and to locate what is requested.

## Monitoring Compliance

The Access to Information Team will continually review and monitor the handling and logging of information requests.

The Access to Information Team will produce monthly performance reports for the IG Steering Group, which will provide information regarding the number of requests received, types of requesters, how requests have been responded to and their compliance with the time limit.

## Staff Training

All staff (permanent, temporary, contract or seconded) likely to be in post for 3 months or longer, are required to complete the online mandatory IG training module- Data Security Awareness Level 1 within the first month of employment (or within two weeks of joining if they work with person identifiable information).

The Data Security Awareness Level 1 e-learning module can be accessed either through ESR (https://my.esr.nhs.uk/) or e-learning for health (https://www.e-lfh.org.uk/)

Further training is required for staff who process personal information, and staff within specific roles. A Training Needs Analysis (TNA) has been developed for staff in key roles, as part of effective delivery of training program, this is available within the Information Governance Framework and Policy.

## Arrangements for Review

This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## Associated Policies, Guidance and Documents

The following documentation relates to the management of information and together underpins the ICB’s Information Governance Assurance Framework. This policy should be read in conjunction with other IG policies & the IG Resource Guide:

* Information Governance Framework and Policy
* Information & Cyber Security Policy
* Information Sharing Policy
* IG Resource Guide
* Records Management Policy

## Equality Impact Assessment

The EIA has identified no equality issues with this policy.

The EIA has been included as Appendix A.

## Appendix A - Equality Impact Assessment

#### Assessor’s Name: Iain Gear

#### Assessor’s Job Title: Information Governance Lead

#### Date: 18th March 2025

#### Outcomes

Briefly describe the aim of the policy and state the intended outcomes for staff

The Access to Information Policy will support the organisation with achieving its legislative requirements under the Freedom of Information Act, the Right of Access elements of the Data Protection Act 2018 and the Access to Health Records Act 1990

#### Evidence

What data/information have you used to assess how this policy might impact on protected groups?

The processes for handling requests do not take into account any characteristic of those making requests and ensures that enquirers are equally able to access information.

Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?

Mid and South Essex Information Governance Steering Group; Mid and South Essex Audit Committees meeting in common.

#### Analysis of impact on equality

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* **Positive outcome** – the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups
* **Negative outcome** – protected group(s) could be disadvantaged or discriminated against
* **Neutral outcome** – there is no effect currently on protected groups

Please tick to show if outcome is likely to be positive, negative or neutral. Please fill all boxes, any that aren’t applicable enter N/A.

Consider direct and indirect discrimination, harassment and victimisation.

| ProtectedGroup | Positiveoutcome | Negativeoutcome | Neutraloutcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | X | The policy refers to ensuring that “any action taken to comply with access to information requests will not amount to discrimination because of protected characteristics as set out in the Equality Act 2010.” |
| Disability(Physical and Mental/Learning) |  |  | X | As above |
| Religion or belief |  |  | X | As above |
| Sex (Gender) |  |  | X | As above |
| Sexual Orientation |  |  | X | As above |
| Transgender/Gender Reassignment |  |  | X | As above |
| Race and ethnicity |  |  | X | As above |
| Pregnancy and maternity (including breastfeeding mothers) |  |  | X | As above |
| Marriage or Civil Partnership |  |  | X | As above |

#### Monitoring Outcomes

Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals.

What methods will you use to monitor outcomes on protected groups?

Monitoring complaints or issues raised by requesters (or potential requesters) in relation to either a FOI, SAR or AHRA request.

#### Review

How often will you review this policy / service?

Every two years

If a review process is not in place, what plans do you have to establish one?

N/A

## Appendix B – Environmental Information Regulations 2004 (EIR)

An EIR request may be made verbally as well as in writing and will be defined as an application for environmental information in written, visual, aural, electronic or any other material form on:

* the state of the elements of the environment – for example, air, atmosphere, water, soil, land, landscape and natural sites such as wetlands, coastal and marine areas, biological diversity and the interaction of these elements.
* factors affecting (or likely to affect) the environment – including energy, noise, radiation, waste, emissions, discharges and other releases into the environment.
* measures – such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to above.
* reports – on the implementation of environmental legislation.
* economic analyses – including cost benefit and other analyses and assumptions used within the framework of measures and activities referred to in (c); and
* the state of human health and safety – including the contamination of the food chain, conditions of human life, cultural sites and built structures insofar as they are or may be affected by the state of the elements of the environment.

Under the EIR, information is held by the public authority if it has been produced or received by it; is held by another person on its behalf; or which the public authority holds on behalf of a third party.

The EIR places various rights and duties on public authorities which include:

* A duty to actively disseminate environmental information.
* A duty to make information available on request. Information requests must be answered within 20 working days, unless the public authority reasonably believes that it is impracticable to answer the request in that timescale due to its complexity and volume, in which event the public authority may have 40 days in which to provide the information.
* A duty to provide advice and assistance to applicants.
* A right to charge for information provided. Under the EIR, there is no cost limit beyond which information requests need not be answered. The EIR states that a charge may not exceed “an amount which the public authority is satisfied is a reasonable amount”.

Exceptions – Under the EIR there is an express presumption in favour of disclosure. However, the public authority can refuse to disclose the information if it would adversely affect the following matters:

* international relations, defence, national security or public safety.
* the course of justice, ability of a person to receive a fair trial or ability of a public authority to conduct a criminal or disciplinary inquiry.
* intellectual property rights.
* the confidentiality or proceedings of any public authority where such confidentiality is protected by law.

## Appendix C – FOI Request Process and Timescales

**Info not held within department**

**Info held**

FOI request received into organisation

Forward request to ICB FOI inbox

Acknowledgement to requester within 48 hours

* Information Asset Owner copied into forwarding email for awareness and oversight.
* Comms liaison copied in if request is from a media source.
* If request is to multiple Essex ICBs (round robin), we will explore collaborative responses

For each question:

* Assess where information may be held and forward request to ICB/CSU Service to consider and provide information.
* Address question(s) to an individual (except where going to a team)
* Provide guidance and assistance where possible. This may not be possible if the FOI Team has no prior knowledge of the subject matter, or necessary where the request is simple and self-explanatory.

**If nothing is heard from respondent within 10 days, a follow up phone call will be made to ensure the request has not been overlooked**

Information gathered, or notification that information is not held by ICB, and returned to FOI Team via ICB FOI inbox **within 10 working days**.

If any information is potentially exempt, raise with FOI Team for consideration and discussion.

Consideration of exemptions and checking completeness of answers.

Information Asset Owners to review questions answered by their areas and OK for release.

Determine whether information is collected and / or held in department

Respond to ICB FOI inbox, if possible with suggestions for location of information

If request from MP, Councillor, or Media, response sent to comms liaison for approval prior to release.

**Part 1 – Requests in & shared**

1. Request received
	1. Create new email & network folder
	2. File email & acknowledge
	3. Log
2. Create draft response
	1. Paste questions into the draft
	2. Any questions that clearly meet an exemption, or can be answered by the knowledge of the Access to Info team need to be pre-populated with text for exemptions / answer
	3. save in network folder and ensure tracked changes are turned on
3. Dissemination to ICB
	1. Forward acknowledgement email
	2. Create shareable link to the draft response
		1. Right click word document
		2. Share
		3. Go to “Link settings”, the cog next to “Copy Link”
		4. Select “People in the NHS”, then click the “Apply” button
		5. Then click the “Copy link” button
	3. Paste this link into the forwarding email
	4. Based on the questions asked, determine where in the ICB the request needs to go
		1. Refer to the “FOI Contacts” tab of the Access to Information Log
		2. Information Asset Owner should be cc’d into the forwarding email for visibility
		3. If a request is from a media source or about particularly contentious issues, Comms team to be copied in for awareness
	5. Send the draft response link to these areas, using the template / email signature

**Part 2 – Answering the request within the draft response**

Rather than back and forth over email, the respondents will provide their answers within the shared draft response. Tracked changes are enabled so it can be seen who has added what, and the draft is saved in SharePoint, so version control is enabled and any changes can be undone if needed.

If questions, queries or clarifications are needed within the draft response, we encourage the use of comments as well as the tagging function.

For example:

To produce a comment, highlight the section that needs to be commented on, right click, and choose “New comment”. Within the comments box that appears, type @iain… this will produce a selection of users that you can tag – PLEASE ENSURE YOU TAG THE CORRECT ICB USER.

That user will then receive an email summarising the comment made and linking it back to the draft response, enabling them to review, add / amend, or answer queries as needed:



Once respondents have finished the response (or their section of it if multiple respondents), this should be confirmed back to the FOI Team by responding to the forwarding email.

**Part 2 – Chasing**

***Relevant Information Asset Owner to be copied into ALL chaser emails***

1. Respondent is asked to acknowledge within 2 working days to ensure the request has had an initial review and has been sent to the correct ICB area
	1. If this acknowledgement is not received, chaser 1 to be sent at end of day 2

(i.e. received on the 3rd, chaser sent CoP on the 5th)

1. Respondent is asked to provide a response by the 10th working day, if the draft response in the network folder has not been added to or FOI team notified then send chaser 2
	1. This asks for response to be completed by end of the 15th day
	2. Goes to the respondent and IAO
2. CoP 15th day, chaser 3
	1. By end of 17th day
	2. Respondent, IAO, IG Manager & Exec
3. CoP 17th day, chaser 4
	1. By end of 19th day
	2. Respondent, IAO, IG Manager, Exec, DPO & SIRO
4. First thing on the 19th day, Chaser 5 – DUE TOMORROW
	1. ASAP
	2. Respondent, IAO, IG Manager, Exec, DPO & SIRO
5. First thing on the 20th day, chaser 6 – URGENT DUE TODAY
	1. Request must be responded to immediately
6. If the request has breached it’s deadline, first thing on the 21st day, send Overdue
	1. ASAP
	2. Respondent, IAO, IG Manager, Exec, DPO & SIRO
	3. Repeat daily until responded

**Part 3 – Final response, Sign off & Release**

Once responses have been completed and confirmed as such back to the FOI team, the draft response to be saved as a final version, to be reviewed & approved for release by the IAO.

1. Create FINAL response
	1. save in network folder and ensure tracked changes are turned on
2. Dissemination to IAO
	1. Forward the email from respondents confirming completion of the response, and use template X
	2. Create shareable link to the FINAL response
		1. Right click word document in folder
		2. Share
		3. Go to “Link settings”, the cog next to “Copy Link”
		4. Select “People in the NHS”, then click the “Apply” button
		5. Then click the “Copy link” button
	3. Paste this link into the forwarding email

As per Part 1, 3.d.III, if it is a media FOI request then this FINAL response also needs to go to comms liaison for their review and approval.

Highlight the deadline date and request that the response is reviewed in order to release by that time.

**Timescales**

| **Timeline** | **Action**  |
| --- | --- |
| Day 0 | Request received into organisation via email, post or website. |
| **IMMEDIATELY** | Request forwarded to ICB FOI inbox.If postal request, scan and forward to ICB FOI Inbox. |
| Within 2 working days | Request acknowledged and deadline provided to requester. |
| Within 2 working days | Request forwarded to appropriate ICB / CSU staff members to obtain and provide information back to the Access to Information Team. |
| **Within 10 working days** | Information returned Access to Information Team, via either the central FOI email address, or the individual ICB inboxes. |
| 10 working days | If nothing has been heard from respondent, either acknowledgement of request, or confirmation that request is being looked into, call to ensure the request has not been overlooked. |
| 10, 15, 17 and 19 working days | If information not yet received:Reminder sent to appropriate person, escalated to SIRO and Heads of Department as deadline draws nearer. |
| Within 10 – 20 working days | Exemptions considered.If complex public interest test considerations then notify requester that extra time is needed and estimate response (no longer than 40 days)Approval for release gained via communications where necessary. |
| Within 20 working days | Response sent to requester. |
| Within 40 working days | If complex public interest test was considered response sent to requester. |

## Appendix D – Exemptions under Part 11 of the Freedom of Information Act 2000

The ICO categorises qualified and absolute exemptions as below:

**Qualified exemptions:**

* information intended for future publication.
* national security.
* defence.
* international relations.
* relations within the United Kingdom.
* the economy.
* investigations and proceedings conducted by public authorities.
* law enforcement.
* audit functions.
* formulation of government policy.
* prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords).
* communications with Her Majesty and honours.
* health and safety.
* environmental information (as this can be accessed through the Environmental Information Regulations).
* personal information (as this is covered by the Data Protection Act 2018).
* legal professional privilege; and
* commercial interests.

**Absolute exemptions:**

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

Further information and guidance on the exemptions can be found on the website of the Information Commissioners Office (ICO): <https://ico.org.uk/>

## Appendix E – Summary of the FOI Fee Regulations 2004

The following summary is in line with Statutory Instrument 2004 No. 3244:

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

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

**Introduction**

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

**The appropriate limit**

The ‘appropriate limit’, for the purposes of Section 12 of the Freedom of Information Act 2000, has been set at £600 for central government and Parliament; and **£450** for other public authorities, including local authorities, police, the **health service** and education.

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

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

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

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

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

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

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

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

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

**Requests costing less than the appropriate limit**

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

Authorities can **develop their own policies** on charging fees below the maximum, with the discretion to charge a lower fee or waive fees altogether. In cases where the appropriate limit has not been exceeded, the maximum fee that could be charged is based on an authority's estimate of the costs that it reasonably expects to incur in:

* informing the person making the request whether it holds the information; and
* Communicating the information to the person making the request.
* This includes the costs of:
* putting the information in the applicant's preferred format, so far as this is reasonably practicable, as set out in Section 11(1) of the Act;
* reproducing any document containing the information, for example photocopying or printing; and
* postage and other forms of communicating the information.

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

* you could not charge for the time taken to locate, retrieve or extract the information or to write a covering letter to the applicant explaining that the information is being provided,
* you could charge for the cost of paper when photocopying or printing the information and printing the covering letter, as well as the cost of postage.
* Public authorities have a duty to give effect to an applicant's preferred format for receiving information, so far as this is reasonably practicable. This may include:
* summarising the information;
* providing the applicant with a copy (for example by photocopying or printing);
* allowing the applicant reasonable opportunity to inspect a record containing the information;
* producing material in an applicant's preferred format (for example by putting it onto CD); or
* translating information into a different language at the request of the applicant. If a public authority regularly works in the language requested and has an in-house translation service, it should consider waiving any translation costs. However, public authorities are not obliged under the Act to translate documents if this would not be ‘reasonably practicable’.

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

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

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

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

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

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

**Requests costing more than the appropriate limit**

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

**Fees and information that is exempt under the FOIA**

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

Information is (absolutely) exempt if it is ‘reasonably accessible’ to the applicant. Information will always be considered reasonably accessible if:

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

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

**VAT**

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

If an authority was asked for information which was only available from that or another public organisation, any fees charged would not attract VAT.

If an authority was asked for information that was available from another source that is not a public organisation, any fees would attract VAT.

Fees charged for information that is provided in accordance with a public authority’s Publication Scheme will attract VAT.

## Appendix F – SAR / AHRA Flow Chart and Procedure

Information gathered and presented to Information Asset Owner for checking and sign off.

Checking involves ensuring that any information that potentially activates an exemption is marked for consideration by the Access to Information Team. For example, third party data is flagged, so the Access to Information team can liaise with the third party regarding the release of this; information that, should access be granted, would be likely to cause harm to the physical or mental health of the individual / requester; personal data relating to human fertilisation and embryology, adoption records and reports, statements of a child’s special educational needs and parental order records and reports.

Further information on the exemptions available can be found within the Data Protection Act 2018.

Consideration of exemptions and applying redactions where necessary. Explanation of information withheld will be provided if the explanation is allowed the General Data Protection Regulation, or the Data Protection Act 2018

Subject Access Request (SAR) received into organisation

Forward request to SAR inbox if received directly by member of ICB (MSEICB.SAR@nhs.net )

Acknowledge request within 48 hours of receipt.

Use either AHR Template A or B (found in AHRA folder of I Drive) which can be sent via post or email.

A – Identification required

B – Identification provided

**SAR** – proof of identification must be provided by the requester. Consent must be provided from the individual in question (may be different from requester).

**AHRA** – solicitors must provide consent from client that they are entitled to see requested information. Client must also provide evidence they are entitled to records (executive of estate/stand to gain from a claim).

Based upon information requested, the request itself should be forwarded to the most appropriate department (i.e. HR, CHC)

A screening sheet is sent alongside to be signed by an appropriate Information Asset Owner

Provide response to requester

***Stage one – receipt of request***

Subject access requests (SARs) may be received either by the ICB, or directly into a CSU working on behalf of the ICB. This should be in writing, but can be verbal where a member of staff has means to record the request.

On receipt of a SAR the administrator will:

* Log the request onto the SAR spread sheet under the next available reference number
* Create a folder, with the reference number as the name, within the AHR section of the IG drive. All templates filled in to be sent to the applicant should be saved in this folder
* (using the format “SAR [Template Name] XX[patient initials] YYYYMMDD”)
* Create a sub-folder within the SAR inbox, with the reference number as the name. All electronic communications sent in relation to this request should be stored in this folder until the request is closed.

If the request has sufficient information to be processed and the applicant’s identity has been proven (and consent provided if via a nominated representative), the administrator will send the applicant a letter of acknowledgement stating that their request will be processed within one month, and provide them with the deadline.

If the applicant has not supplied sufficient information for the request to be processed the administrator will send a standard letter to the applicant, requesting proof of identity. The one month timescale will then start upon receipt of the proof of identity.

If the request is from a representative of the individual, a signed letter of consent must also be included with the request.

***Stage two – processing of request***

On receipt of proof of identity a member of the team must confirm that the accompanying identification documents are valid. This is to ensure that the applicant is authorised to access the information. Forms of identity should include a photocopy of the applicant’s driving licence, passport or birth certificate; in addition to other relevant information confirming the applicant’s address, for example, a copy of a utility bill.

Following receipt of identity documents, the date received should be entered onto the spread sheet, this will automatically calculate the due date. An acknowledgement letter should be sent to the applicant notifying them when they should expect to receive a response.

A request for the information should be made to the relevant department. If an individual has requested all information held on them within the organisation, a search of all relevant databases and filing systems (including archived systems) should be initiated.

Types of personal information that might be held by the ICB are:-

* HR files if the applicant is / was a member of staff or applied for a post within the ICB
* Complaints files
* Patient or client files or reports such as delayed transfers or applications for funding
* Payments made or received by the applicant
* Information held by other organisations on behalf of the ICB.

***Stage three – reviewing the information***

When a Subject Access Request (SAR) is received by the teams/areas under the IAOs' responsibility, the IAOs will be involved in oversight and, where necessary, sign off the response. This includes reviewing the screening form for exemptions or restrictions applied to the response.

If any ‘third party’ individual, not including health professionals, is named or has provided information about the applicant, the following must be considered by the team prior to releasing the information:

Is it possible to comply with the request without revealing information which relates to and identifies any third-party individuals? If so the third-party information must either be removed prior to releasing the information or alternatively consent of the third party must be obtained.

Careful consideration must be given prior to disclosure to ensure that the applicant would not suffer any harm or distress on receipt of the information. This will be the subject of discussion with the relevant departmental manager.

If a third party individual does not consent to releasing the information and the IG Team are not satisfied that it would be reasonable to disclose the information, it should be withheld. However, as much of the information requested should be given without disclosing the identity of the third party where possible unless it is reasonable given all of the circumstances to disclose without consent.

If the third-party information has previously been provided to or is already known by the applicant, or it is generally available, it would be considered reasonable to disclose the information without third party consent. The spread sheet must be updated with details of the course of action and reasoning behind why consent was not sought or considered not appropriate.

The IG Team must check the information thoroughly to ensure that any codes or acronyms are explained to the applicant.

It must be decided by the IG Team whether there are any grounds for withholding the information under the Act’s exemptions. Examples include safeguarding national security, crime and taxation, and parliamentary privilege.

Any police requests recorded by the IG Team should not be routinely disclosed when dealing with a subject access request without considering the following:-

How long is it since the police request was received? Is the investigation now closed?

What details were obtained from the police officers requesting the information?

If there is any doubt as to whether the information regarding police requests should be disclosed, the Head of Information Governance should be consulted. Enquiries will then be made to establish if releasing the information would prejudice the detection and prevention of a crime.

The spread sheet must be updated with details of any information which is withheld and the exemptions used.

Once the review is completed, the screening form should be filled in by the reviewer, indicating any information to be redacted or withheld, and signed to show they approve of the release once the redactions have been applied.

***Stage four – releasing / refusing the information***

As soon as the request has been processed, the information which has been judged to be the applicant’s personal data should be released using the applicant’s preferred method (sent via post or email; or attending the offices for collection or viewing). In all instances the applicant should be informed of what information, if any, is available and the purpose of holding this information.

If the information is to be sent to the applicant, the standard letter should be used and copies included. The information must be sent by Special Delivery annotated **‘Private and Confidential’, ‘Addressee only’** and packaged securely in a double envelope. The Special Delivery reference number should be logged onto the SAR spread sheet.

If the applicant has chosen to collect the information from the relevant ICB office, then a receipt will be required to be signed and photographic ID (for example, passport or driving licence) must be provided to confirm the recipient’s identity.

If the applicant has chosen, and the ICB has agreed to allow the information to be viewed, a member of the IG Team will write to the applicant to arrange a convenient time and place that is both suitable to the ICB and the applicant within one month of receiving the request.

Ideally the viewing should be of photocopied information. Any copies required by the applicant can then be removed as they are being viewed. If there is no other choice but to view the original record, the process must be witnessed by a member of the IG Team, or senior ICB staff member, who must ensure that the applicant is not left alone with the records at any time.

Up to a maximum of one hour will normally be allowed for the applicant to spend viewing the information. However, this time may be extended, if justified, with the Team’s discretion. The applicant will be informed of the time allowance prior to and as a condition of the viewing.

Following release of the information, copies of the documentation should be stored manually in accordance with the Records Management Procedures. However, any redacted documents will be retained in accordance with the requirements of the Data Protection Act. The date of release and file reference should then be recorded onto the spread sheet.

If the application has been denied, restricted, or no information has been found, the applicant should be notified in writing using the standard letter. There is no requirement to explain the reason for denying or restricting the information. However, a member of the IG Team may consider disclosing if this would not contravene any of the Act’s principles.

All decisions must be recorded on the spread sheet.

Once a request is closed all emails within the sub-folder of the SAR inbox should be dragged and dropped into the folder within the IG drive, and the sub-folder deleted from Outlook.