

# Freedom of Information Act 2000 Policy



# Freedom of Information Act 2000 Policy For Walsall Clinical Commissioning Group

The Audit & Governance Committee approved this document on:

Date: 17 September 2018

Signed:

Signed:

Chair of the committee

Designated Senior Officer



Please note that the Intranet version of this document is the only version that is maintained. Any printed versions should therefore be viewed as 'uncontrolled' and may not be the most up-to-date.

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| Version:   | <b>V5.0</b>   |
| Status   | Ratified  |
| CCG Lead   | Head of Corporate Governance, Sara Saville  |
| Senior Officer responsible                       | Chief Officer, Simon Brake  |
| Ratified by:                                     | Audit & Governance Committee  |
| Date ratified:                                   | 17 September 2018   |
| Date Policy is Effective From                    | Ratification date   |
| Expiry date:                                     | March 2019  |
| Review date:                                     | February 2019   |
| Date of Equality and Diversity Impact Assessment |   |
| Date of Health Inequalities Impact Assessment    |   |
| Target audience:                                 | CCG staff   |
| National Documents                               | Freedom of Information Act 2000<br>Data Protection Act 2018<br>General Data Protection Regulation<br>Access to Health Records 1990  |
| CCG linked documents                             | Information Governance policy   |
| Distribution of the document                     | Hard copies available at reception, accessible from Website, IG team and IG Newsletter.   |
| Implementation of the document                   |   |
| Document Control and Archiving                   | Obsolete or superseded documents will be removed from the intranet and where relevant replaced with an updated version. Previous versions will be archived in the safeguard system in accordance with the Records Management NHS Code of Practice; disposal and retention schedule. |
| Monitoring Compliance and Effectiveness          |   |
| References                                       | BCC FOI Policy v 0.4  |

## CONTRIBUTION LIST

### Key individuals involved in developing the document

| Name                               | Designation                             |
|------------------------------------|---|
| Kirstie Macmillan and Adrian Percy | Authors of version 1.0                  |
| Sally Roberts                      | Director of Governance Quality & Safety |
| Sara Saville                       | Head of Corporate Governance            |
| Serena Causer                      | Corporate Governance Officer            |
|                                    |   |
|                                    |   |

Freedom of Information Policy 2018 v5.0

This policy is subject to further revision and will be reviewed on a six monthly basis

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**Circulated to the following for consultation**

| <b>Name/Committee/Group/</b>       | <b>Designation</b> |
|------------------------------------|--------------------|
| SQP                                |                    |
| Strategic leads                    |                    |
| IG Function Leads                  |                    |
| Audit & Governance Committee (A&G) |                    |

**Comments received from consultation**

| <b>Name/Committee/Group</b> | <b>Comments</b>  |
|-----------------------------|--|
| SQP                         | Formalise link with communications with the information that they give out to the media etc  |
|                             | Staff names and contact details should be removed from the documents prior to them being available on the website as this information would not be released under FOI to protect staff identification. |
|                             |  |

**Version Control Summary**

**Significant or Substantive Changes from Previous Version**

| <b>Version</b> | <b>Date</b> | <b>Comments on Changes</b>                 | <b>Author</b> |
|----------------|-------------|--|---------------|
| V2.0           | Dec 2012    | Reflect CCG structure and process          | Sara Saville  |
| V3.0           | Sept 2015   |  | Sara Saville  |
| V4.0           | Sept 2017   |  | Sara Saville  |
| V4.1           | May 2018    | Reflect General Data Protection Regulation | Serena Ellis  |
| V4.2           | August 2018 | Reflect Data Protection Act 2018           | Serena Ellis  |

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## **1.0 Introduction**

The Freedom of Information Act 2000 is part of the Government's commitment to greater openness in the public sector. Freedom of Information Act 2000, referred to hereafter as the Act, will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities more closely and ensuring that the services we provide are efficiently and properly delivered. The Act replaces the non-statutory *Code of Practice on Openness in the NHS*.

## **2.0 Main features of the Act**

The main features of the FOIA are:

- a) A general right of access from 1st January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions. This places on Walsall CCG a duty to:
  - i) inform the applicant whether they hold the information requested, and
  - ii) communicate the information to him or her, except in certain circumstances. Those circumstances include where information is exempted from disclosure because an absolute exemption applies or the public interest in maintaining a non-absolute exemption in question outweighs the public interest in disclosure
- b) a duty on every public authority to adopt and maintain a Publication Scheme, specifically applicable to the NHS from 31<sup>st</sup> October 2003;
- c) an office of the Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;
- d) a duty on the Lord Chancellor to publish Codes of Practice for guidance on specific issues

The Freedom of Information Act Policy is a statement of what the CCG intends to do to ensure compliance with the Act. The policy will underpin any operational procedures and activities connected with the implementation of the Act.

## **3.0 Principles**

- a) The Policy supports the principle that openness and not secrecy should be the norm in public life. Walsall CCG wants to create a climate of openness and dialogue with all stakeholders and improved access to information about Walsall CCG will facilitate the development of such an environment.

- b) Individuals also have a right to privacy and confidentiality. This Policy does not overturn the Common Law Duties of Confidentiality or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 2018, the General Data Protection Regulation and is dealt with in other Walsall CCG policies.
- c) Public Authorities should be allowed to discharge their functions effectively. This means that Walsall CCG will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.
- d) Staff should have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this knowledge.
- e) Common standards are required to ensure that Walsall CCG is compliant with the Act. The Policy outlines the areas in which common standards will be established through other CCG policies and procedures

#### **4.0 Publication Scheme**

Walsall CCG will adopt the model Publication Scheme as developed by the Information Commissioner's Office (ICO) and link to the Walsall CCG website as appropriate. The Information Commissioner approved the original Publication Scheme in March 2003, the Scheme must be updated in accordance with ICO guidance. The Publication Scheme has been formally monitored by the ICO from April 2009 onwards. This is permissible under section 20 of the FOIA and ensures compliance with section 19 of the legislation.

The Walsall CCG Publication Scheme will be constantly updated documents, detailing the information that Walsall CCG publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Schemes will be available in hard copy by contacting Walsall CCG

Access to documents contained within the Publication Scheme are directly available via the website <http://www.walsallccg.nhs.uk/index.php> Any staff names, and contact details will be removed from the documents prior to them being made available on the website. Any documents that are loaded onto the Publication Scheme for the public to access must be within a PDF format to ensure that these cannot be altered.

The Publication Scheme will be subject to regular review in terms of content and accessibility. Documents that are automatically added to the publication scheme include policies, procedures and patient information documents.

## **5.0 Disclosure Log**

The disclosure log provides information which has been released via requests made to Walsall CCG for information under the FOIA. The disclosure log forms part of the publication scheme and can link to documents available on the scheme.

Within the Publication Scheme the Cluster must maintain the disclosure log. The disclosure log provides information that has been released under a Freedom of Information Request. The Integrated Governance Team must ensure that information from multiple requests regarding the same subject is available via the disclosure log. If there has been a request made for information which is currently part of a public debate, for example the subject is within the media, this information must be published within the disclosure log.

By having an up to date disclosure log this can reduce the amount of time spent answering FOI requests as the information can be made readily available on the log. The disclosure log also benefits public understanding of information released, for example, if information released via a FOI request was published within the Media, the public will be able to check the information available within the Media with the information provided by Walsall CCG.

The requests within the disclosure log must remain anonymous and so the requester's details must not be made available. The only information provided on the disclosure log is the questions asked and the answers to these questions. The reference numbers will also be provided to provide a reference if a member of the public contacts Walsall CCG regarding the information contained within the disclosure log.

## **6.0 General rights of access**

Section 1 of the FOIA gives a general right of access from 1<sup>st</sup> Jan 2005 to recorded information held by Walsall CCG, subject to certain conditions and exemptions. Any person making a written request for information to Walsall CCG is entitled to:

- a) Be informed in writing whether Walsall CCG holds the information of the description specified in the request and
- b) If Walsall CCG holds the information, to have that information communicated to them. This is referred to as the 'duty to confirm or

deny'. These provisions are fully retrospective in that if Walsall CCG holds the information, it must provide it, subject to certain conditions and exemptions and Walsall CCG will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

A request for information under the general rights of access (section 8) must be received in writing, stating the name of the applicant and an address for correspondence, and a description of the information requested. For the purposes of general rights of access, a valid request is to be treated as made in writing if it is transmitted by e-mail or fax, is received in legible form and is capable of being used for subsequent reference.

The Corporate Governance team will monitor requests and if a trend occurs then this information should be considered for inclusion on the publication scheme.

## **7.0 Conditions and Exemptions**

The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where Walsall CCG:

- a) reasonably requires further information in order to identify and locate the Information requested and has informed the applicant of that requirement.
- b) Walsall CCG will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

Under section 2 Walsall CCG does not have to comply with the duty to confirm or deny if an absolute exemption is applied. Walsall CCG will consider the duty to confirm or deny in relation to non-absolute exemptions in all circumstances of the case, the public interest test in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether Walsall CCG holds the information.

- a) absolute exemptions do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- b) qualified exemptions or non-absolute exemptions, involve a test of establishing prejudice as to whether harm or prejudice would result from the disclosure of information and/or whether it is in the balance of public interest to not disclose information. A qualified exemption may be applied if, in all circumstances, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether Walsall

CCG holds the information. Walsall CCG will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions

The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

The duty to comply with a request for information does not arise if Walsall CCG estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. Walsall CCG will work with applicants to keep compliance costs to a minimum but reserves the right to either refuse or charge for the communication of information that exceeds this limit. If upon agreement between the applicant and Walsall CCG, it is agreed to process an application that has been estimated by Walsall CCG to exceed the national Fees Regulations limit, the portion of cost over and above this limit will be notified to the applicant in a fees notice. The costs will be required to be paid in advance of the search for the information taking place. Applicants will be required to pay the fees within a period of three months beginning on the day on which the fees notice is given to them to maintain the validity of the request for information.

Walsall CCG is not obliged to comply with a request for information if the request is vexatious. Where Walsall CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. Walsall CCG will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

## **8.0 Summary**

Walsall CCG will generally not charge for information that it has chosen to publish in its Publication Scheme once linked documents make information available direct to applicants over the Internet. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM.

Walsall CCG will follow the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.

The fee calculation should be completed with the prior knowledge of the Corporate Governance Team. The first £450 worth of information/staff time must be provided free. If the cost of providing information comes to more than £450 the staff with FOI responsibility must complete a fees calculation. In order to complete a fees calculation an estimate of the time required to complete the request must be made. A calculation is then made from the time taken in relation to the amount of information required. The fees calculation is then made by the £25 per hour of staff's time.

In all cases where Walsall CCG chooses to charge for information published as a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

### **9.0 Time Limits for compliance with requests**

Walsall CCG must ensure its compliance with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All staff will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this within three months of receiving the fees notice, the working days in the period from when Walsall CCG issued the fees notice to when the fee is received by Walsall CCG will be disregarded for the purposes of calculating the twentieth working day following receipt. In essence, once the applicant has been requested to pay a fee the twenty working day clock is paused until the fee is paid.

If Walsall CCG chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision (refusals will be in accordance with section 10.0).

Once a FOI request has been received and processed by the Information Governance Team the request will be forwarded to the relevant FOI Lead or Deputy who will be given a time scale to respond by the Corporate Governance Team.

### **10.0 Means by which information will be conveyed**

When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

Walsall CCG shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.

In determining whether it is reasonably practicable to communicate information by a particular means, Walsall CCG will consider all the circumstances, including the cost of doing so. If Walsall CCG determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, Walsall CCG will notify the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.

## **11.0 Refusal of requests**

As indicated previously, the provision of information does not arise if Walsall CCG:

applies an absolute exemption under Part II of the Act, with the exclusion of section 21, or in all exemption circumstances of the case, if the public interest in maintaining the exclusion to provide the information, outweighs the public interest in disclosing the information and in disclosing whether Walsall CCG holds the information.

has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant,

under section 12 of the Act, estimates that the cost of compliance with the request for information exceeds the appropriate limit,

can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

If Walsall CCG chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days by issue of a refusal notice. The applicant will also be informed of the procedures for making a complaint about the discharge of the duties of Walsall CCG under the Act.

If Walsall CCG decides that an exemption applies, a refusal notice will be issued within twenty working days.

The notice will

- a) state that fact
- b) specify the exemption in question, and
- c) state (if that would not otherwise be apparent) why the exemption applies.
- d) include a copy of the complaints process

Where it is not possible to confirm that an exemption applies, Walsall CCG will inform the applicant that the issue remains under consideration and will estimate the date at which a firm judgment will be made. This will be notified to the applicant by issue of an exemption pending notice.

If Walsall CCG finds, while considering the public interest, that the estimate is proving unrealistic, Walsall CCG will endeavour to keep the applicant informed.

If Walsall CCG claims that the request is vexatious or repeated, and a refusal notice has already been issued to the applicant stating this fact, a further notice is not required.

The Integrated Governance Team will keep a record of all notices issued to refuse requests for information and any information regarding the Public Interest Test process.

## **12.0 Transferring Requests for Information**

Walsall CCG will transfer a request where it does not hold the information but which is held by another public authority. Upon receiving the initial request for information, Walsall CCG will process it in accordance with the Act in respect of information it holds. Walsall CCG will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, Walsall CCG must be certain as to the extent of the information relating to the request which it holds itself.

## **13.0 Complaints about the discharge of duties of Walsall CCG under the Act**

Walsall CCG will implement a procedure for dealing with complaints about the discharge of the duties of Walsall CCG under the Act, including the handling of requests for information.

## **14.0 Responsibilities of Senior Managers**

If any request is made directly to a department then the senior manager must immediately forward the request to the FOI lead.

## **15.0 Monitoring**

The policy will be monitored within the information governance report to the Audit & Governance committee on a quarterly basis.

## **16.0 Freedom of Information Request Process**

### **Step one**

#### **Sense check – risk rating**

- Green – routine - minimal (money spent, policies, commissioning/contracting queries, information available in the public domain)
- Amber – check - moderate (MP, councilor, media) all media FOIs to be shared with Communications Team
- Red – Escalate - major (relates to a complaint, purdah, vexatious requests)

### **Step two**

1. sense check the request for clarity
2. Send request to appropriate member of staff, advising them to review the content of the request and advise within 24 hours if anything listed needs clarity, is not applicable, or whether it needs to be re-directed to another department or organisation (separate questions into department if needed)
3. Also provide deadline to return response (10 working days)  
Send a reminder email out on the 9<sup>th</sup> working day

### **Step three**

5. If response is not received on time send a chasing email - clarify if there is an issue, or if an extension is needed
6. If the response is not received or any contact has been made within 24 hours send a second chase cc Sara Saville who will speak to the appropriate manager
7. If the response is not received within 24 hours inform Simon Brake

### **Step four**

#### **Responses**

- Green – send out
- Amber – send response to Sara for sign off
- Red – send to Simon for sign off
- Note – Always send FOI responses to Sara which include sign off or exemptions