

Freedom of information policy CG15

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Applies to:	All NHS Resolution employees, Non-Executive Directors, secondees and consultants, and/or any other parties who will carry out duties on behalf of the NHS Resolution. Contractors and panel firms are required to adhere to the terms of their contractual agreements.
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Author:	Tinku Mitra
Owner:	Joanne Evans

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1. Introduction

NHS Resolution is a designated Public Authority for the purposes of the Freedom of Information (FOI) FOIA (FOIA) 2000. Under the terms of the FOIA, the organisation is expected to respond to any written request for recorded information from a named applicant within 20 working days, subject to exemptions and limits on the amount of work to be undertaken.

The Environmental Information Regulations (EIR) require similar measures for all environmental information held by the organisation. The FOIA also requires that NHS Resolution maintains a publication scheme which lists all recorded information which is routinely made available. NHS Resolution supports and is committed to the principles of openness, transparency and accountability embodied in the FOIA and the Environmental Information Regulations 2004. This policy establishes a framework which underlines this commitment, providing a benchmark against which implementation can be audited.

2. Purpose

The purpose of this policy is to set out, in broad terms, the requirements with which we need to comply in with the provisions of the FOIA. The associated guidance sets out in more detail how we operationalize our requirements.

3. Equality Impact Assessment

As part of its development, this policy has had an equality impact assessment. No detriment was identified.

4. Duties

Organisational objective

We will aim to fully discharge our obligations under freedom of information law in accordance with the statutory schemes and timeframes and to minimise complaints about our responses. We aim to be transparent and comprehensive in our responses to FOI requests (including through the provision of contextual information to help them understand) whilst recognising that by its nature, some information held by NHS Resolution will be properly exempt from disclosure under the information rights regime.

Chief Executive and Accounting Officer

Accountable for all information governance matters including compliance with the requirements of freedom of information law and is our 'qualified person' for the purposes of the exercise of the exemption in s. 36(2) FOIA.

Audit and Risk Committee

Has responsibility for the strategic processes for risk identification, control and governance.

Senior Information Risk Owner (SIRO)

The SIRO has overall responsibility for leading and fostering a culture that values, protects and uses information for the success of the organisation and benefit of its customers. The SIRO the organisation's overall information risk policy and risk assessment processes, information incident management framework, and ensure they are implemented consistently by Information Asset Owners. It is their job to advise the Chief Executive on the information risk aspects of their statement on internal controls. The Director of Finance and Corporate Planning fulfills this role for NHS Resolution.

Caldicott Guardian

The Caldicott Guardian is an advisory role held by a senior health professional who is responsible for ensuring patient data is kept secure, oversight of all procedures affecting access to person-identifiable health data and to advising on appropriate sharing of patient data. The Director of Safety and Learning fulfills this role for the NHS Resolution.

Information Governance Group

Has operational oversight of all Freedom of Information issues.

Head of IT & Facilities

As the Information Security Officer, the Head of IT & Facilities has overall responsibility for the provision of systems and facilities to support accurate, legally compliant, secure and efficient information governance.

Information and Security Governance Manager

The Information Governance Manager is responsible for the day-to-day oversight of freedom of information issues and for ensuring that data are handled in accordance with NHS Resolution policy and legal requirements.

Information Access Manager/Information Access Officer

Has responsibility for dealing with requests under the DPA, FOI and EIR and for ensuring that sufficient fair processing information is available to users of NHS Resolution services.

Line Managers

All line managers are responsible for the promotion of the principles of the freedom of information law outlined within this policy and associated policies, within their teams.

Employees

All employees and secondees who are carrying out duties on behalf of the NHS Resolution are responsible for adherence to the principles of freedom of information law outlined within this policy and implemented in associated guidance and for reporting any related adverse incidents in line with CG11 – Incident Reporting Policy and Procedure. Employees are responsible for (1) forwarding any request received to the Information Access Manager; (2) cooperating in a timely way with the Information Access Manager in the preparation of responses to requests. All employees should be aware that it is an offence to alter or conceal information with the intention of preventing disclosure by NHS Resolution of the information in question.

5. The Freedom of Information FOIA 2000

Under the Freedom of Information FOIA 2000 (hereby referred to as “the FOIA”), anyone has the right to make a written request for information held by a public authority. The FOIA covers all recorded information held by a public authority. It is not limited to official documents and it covers, for example, drafts, emails, notes, statistics and CCTV recordings. Whilst applications should be made to our FOI mailbox, individuals may make a request through any reasonable route to NHS Resolution including on social media.

A public authority must comply with this request within twenty working days of receipt and provide the requested information subject to any exemption as prescribed in Part II of the FOIA.

The public authority must also adopt a publication scheme, detailing what information it holds, and where this can be found or how it can be accessed, along with any charges for this information. The publication scheme for NHS Resolution is managed by the Corporate Governance team and kept under review by the Information Access Manager, and all departments are expected to consider annually what information and data about their work should be proactively placed in the public domain by NHS Resolution.

NHS Resolution will have regard to the FOIA Codes of Practice issued under s. 45 and 46 of the FOIA.

NHS Resolution is committed to openness and transparency and this policy will ensure that it fulfils its full obligations under this FOIA.

Any request made under FOI or the Environmental Information Regulations should be directed to the Corporate Governance Team. Staff should be aware that (1) where a request specifically references FOI (or the EIRs) it must be dealt with under that FOIA; (2) a request does not specifically have to reference FOI in order to be treated as such. Where it is unclear whether a request should be treated as an FOI request or as general correspondence, advice should be taken from the Corporate Governance Team on the appropriate response.

Associated Legislation

Data Protection FOIA 2018 and General Data Protection Regulation (GDPR)

Requests for an individual’s own personal data fall to be considered under GDPR and the Data Protection FOIA and GDPR and an individual’s own personal information is exempt from disclosure under FOI. Please refer to the Data Protection Policy [CG15] for more information on how to handle requests for personal information.

Environmental Information Regulations 2004 (EIR)

The EIR came into force on the 1 January 2005. Like FOIA, the Data Protection Act, and GDPR it is being enforced by the Information Commissioner.

Some of the key differences between the EIR and FOI are listed below:

- Fewer exemptions (referred to within EIR as 'exceptions')
- Some of the FOI's class exemptions are replaced by harm tested exemptions (exceptions)
- The public interest test applies to every EIR exception
- There is no Ministerial veto
- Requests cannot be refused on the grounds that costs exceed a fixed limit
- The request does not have to be in writing, an oral request is acceptable

In general terms, environmental information covers a wide range of areas and has a very broad definition. It covers information that relates to:

- Air Flora and Fauna
- Water Built environment
- Land Public Health
- Natural sites

Requests received under the EIR should be directed to the Corporate Governance Team

6. Complaints

Any complaints received regarding either the handling of a request under the FOIA, or of the information received under the FOIA will be handled as an internal review, details of which are set out on our website and not the standard NHS Resolution complaints procedure. Any further complaints will then be referred to the Information Commissioners Office (ICO).

7. Implications for NHS Resolution

Any breach of the FOIA could result in either an Enforcement Notice or Information Notice from the ICO. This may cause undue scrutiny and publicity to NHS Resolution for non-compliance and/or result in NHS Resolution being taken to the High Court for contempt of court under Section 54 of the FOIA.

8. Training and support

NHS Resolution will provide appropriate training to all staff on information governance, and specific requirements are addressed within individual policies where applicable. All staff are required to complete NHS Resolution's online Information Governance e-learning and Assessment tool, which details the process staff should follow when they receive a request under the FOIA.

Managers and other staff may request advice from the Corporate Governance Team should they require support with the implementation of this policy.

9. The process for monitoring effective implementation

The effective implementation of this policy will be monitored by the Information Governance Group and through review of monthly, quarterly and annual reporting figure with updates provided to the Board together with any reported incidents related to this policy and associated FOIA actions taken.

Other relevant procedural documents

- CG02 Information Governance Strategy
- ITFA02 Guidance for Working with Confidential or Sensitive Information
- CG14 Data Protection FOIA Policy
- CG15 FOI Guidance
- CG16 Records Management Policy

References

- Freedom of Information FOIA 2000
- The Information Commissioner's Office has published a series of Awareness Guidance documents that provide explanations and advice on the exemptions and other aspects of the FOIA: <https://ico.org.uk/>

The Ministry of Justice has detailed guidance on exemptions on its website. This was developed for use by central government departments but it contains useful information for all public authorities on how the exemptions may be interpreted: <http://webarchive.nationalarchives.gov.uk/20100512160448/http://www.foi.gov.uk/practitioner/index.htm>

10. Document control

Date	Author	Version	Reason for change
19/11/13	Joe Stock	V1_0 draft	Initial draft
24/01/14	Joe Stock	V2_0 draft	Comments from IG Group
03/02/14	Joe Stock	V3_0 draft	Further comments from SMT
19/02/15	Joe Stock	V4_0 draft	Amendments made to ensure consistency with other policies.
24/02/15	Joe Stock	V5_0 draft	Amended in line with other IG policies
26/02/15	Joe Stock	V6_0 draft	Minor format amendments
22/04/15	Joe Stock	V6_0 final	SMT approved
15/05/17	Anthony Palmos	V7_0 final	Changes to include organisational name change and updated web links
04/04/18	Evelyn Lucien	V7_0 final	Update related policy codes
03/07/2018	Julian Marku	V7.0	Update references to Data Protection legislation to include the DPA 2018 and GDPR.
20/08/2018	Evelyn Lucien	V7.0	Change name from Anthony Palmos to Carol Conway
19/11/2018	Evelyn Lucien	V7.0	Change name from Carol Conway to Julian Marku. Extended review date to May 2020 – Tinku Mitra's request – 19 November 2018
2020 Review			
20/08/20	Tinku Mitra	1.0	Review of policy
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26/08/20	IG review	V3.0	Review
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