

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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Next review date:	April 2027
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Owner:	Joanne Evans, Director of Finance and Corporate Planning

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1. Introduction

NHS Resolution is a designated Public Authority for the purposes of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

FOIA requires NHS Resolution 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; and
- maintain a publication scheme which lists all recorded information which is routinely made available.

The EIR require similar measures for all environmental information held by NHS Resolution.

NHS Resolution supports and is committed to the principles of openness, transparency and accountability embodied in the FOIA and the EIRs. 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 with the provisions of the FOIA and the EIRs. The associated guidance sets out in more detail how we operationalise our requirements.

3. Equality Impact Assessment

NHS Resolution aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It is a requirement that we conduct equality impact assessments on all policies and services within the organisation.

The purpose of the assessment is to minimise and, if possible, remove any disproportionate impact on employees on the grounds of race, sex, disability, age, pregnancy and maternity, marriage and civil partnership, gender reassignment, sexual orientation, religious or other belief. As part of its development, this policy has had an equality impact assessment in line with NHS Resolution's equality impact assessment tool (Appendix 1). No detriment was identified.

5. Roles and Responsibilities

NHS Resolution

We will aim to fully discharge our obligations under FOIA and the EIRs 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 and EIR requests (including through the provision of contextual information to help individual's 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 the FOIA and the EIRs 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 NHS Resolution and benefit of users of NHS Resolution services. This includes responsibility for NHS Resolution's overall risk management framework, incident management framework, and ensuring they are implemented consistently by Information Asset Owners (as identified in ITFA05 - Information Security Policy). 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 advising on appropriate sharing of patient data. The Director of Safety and Learning fulfills this role for the NHS Resolution.

Information Governance Group

The Information Governance Group (IG Group) is a sub-group of the Senior Management Team (SMT) and also provides reports to the Audit and Risk Committee (ARC). The IG Group is made up of key staff from across the organisation who are responsible for information governance, including the SIRO and Caldicott Guardian, and is chaired by the Director of Finance and Corporate Planning/SIRO. The IG 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.

Deputy Data Protection Officer

The Deputy Data Protection Officer 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 UK GDPR / Data Protection Act 2018 (DPA), FOIA 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 FOIA outlined within this policy and associated policies, within their teams.

Employees

All employees and secondees who are carrying out duties on behalf of 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) Identifying FOI requests (2) forwarding any request received to the FOI Mailbox; (3) 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.

6. The Freedom of Information Act 2000 (FOIA)

Under 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, voicemails and CCTV recordings.

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

Whilst applications should be made to the NHS Resolution FOI mailbox, individuals may make a request through any reasonable route to NHS Resolution, including on social media. If an oral request is made, the requestor should be advised to put their request in writing.

NHS Resolution will provide the requested information (subject to any exemption as prescribed in Part II of the FOIA) within twenty working days of receipt, request unless clarification of the request has been sought from the requester or an extension to the statutory timescales is sought under section 10(3) of the FOIA.

NHS Resolution 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. NHS Resolution's publication scheme is managed by the Corporate and Information 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.

7. Associated Legislation

Data Protection Act 2018 and UK General Data Protection Regulation (UK GDPR)

Requests for an individual's own personal data fall to be considered under UK GDPR and the DPA, and an individual's own personal information is exempt from disclosure under section 40 of the FOIA. 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 DPA, and the UK GDPR, the EIR is being enforced by the Information Commissioner. Any request made under the EIR should be directed to the Corporate and Information Governance Team and sent to the FOI Mailbox. Staff should be aware that (1) where a request specifically references the EIR it must be dealt with under the EIR; (2) a request does not specifically have to reference EIR in order to be treated as such. Where it is unclear whether a request should be treated as an EIR request or as general correspondence, advice should be taken from the Corporate and Information Governance Team on the appropriate response.

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

- Fewer exemptions (referred to within EIR as 'exceptions')
- Some of the FOIA'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 is 'about' the environment, for instance because it relates to elements of the environment such as land, water, biological organisms etc. It also covers measures and activities which may affect these, including economic analysis of these measures and activities. In the context of NHR's work, information about our offices, carbon reduction/sustainability measures is the most likely area of request which touches on EIR issues

Requests received under the EIR should be directed to the Corporate and Information Governance Team and sent to the FOI Mailbox.

8. 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).

9. 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.

10. 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 the Data Security and Awareness e-learning module as part of mandatory and statutory training (MAST) which includes information about FOIA. The Corporate and Information Governance Team provides additional training for staff 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 and Information Governance Team should they require support with the implementation of this policy.

All staff should also refer to the published FOI guidance on the CONNECT intranet.

11. Implementation and monitoring

This Policy will be reviewed every three years. There may also be a need to review the Policy in advance of the planned review date where there is a reason to do so such as a change in legislation or regulation, accepted audit recommendations, or outcome of learning from incidents.

Any updates to the Policy will be implemented across the organisation including publication to the intranet and external website; informing staff of the updated document through communication channels; and providing support to staff through training (if necessary).

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.

12. Links to related documents

Other relevant procedural documents

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

References

- Freedom of Information FOIA 2000
- [Freedom of Information guidance \(sharepoint.com\)](#)
- [Freedom of Information - Publication scheme \(resolution.nhs.uk\)](#)
- 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: <https://www.gov.uk/government/publications/hints-for-practitioners-handling-foi-and-eir-requests>

13. 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
20/8/20	ORG review	V2.0	Review
26/08/20	IG review	V3.0	Review
02.09.20	SMT review	V3.0	Approval
2023/24 Review			
04/9/23	Bunmi Ogunseye	V4.0 Draft	Review of policy with amendments
07/03/24	CIG team	V4.1 Draft	Updated following minor feedback from Capsticks and consideration by Deputy Data Protection Officer
18/04/24	IG Group	V4.1 Draft	Review and endorsement of Policy for final approval by SMT.
10/04/24	SMT	V4 Final	Approved by SMT

Appendix 1 - Equality impact assessment tool

No.	Does the document/guidance affect one group less or more favourably than another on the basis of:	Yes/No	Comments
1.	Race	No	
2.	Ethnic origins (including gypsies and travellers)	No	
3.	Culture	No	
4.	Nationality	No	
5.	Age	No	
6.	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
7.	Gender	No	
8.	Gender reassignment	No	
9.	Marriage and civil partnership	No	
10.	Pregnancy and maternity	No	
11.	Religion and belief	No	
12.	Sex	No	
13.	Sexual orientation including lesbian, gay and bisexual people	No	
14.	Is there any evidence that some groups are affected differently?	No	
15.	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?	N/A	
16.	Is the impact of the document/guidance likely to be negative?	No	
17.	If so, can the impact be avoided?	N/A	
18.	What alternative is there to achieving the document/guidance without the impact?	N/A	
19.	Can we reduce the impact by taking different action?	N/A	
Name/s and job title/s of individual/s who carried out the Assessment:			Date of the Assessment
Tinku Mitra, Deputy Director of Corporate and Information Governance			March 2024