

CCG Freedom of Information Policy

Document Reference Information

Version	5
Status	Final
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Directorate Responsible	Communications Directorate
Date Effective	March 2017
Date of Next Formal Review	March 2018
Target Audience	CGG staff including interims and contractors General public

CONTENTS

1. SUMMARY	3
2. SCOPE OF THIS DOCUMENT	4
3. ROLES AND RESPONSIBILITIES	5
4. SCOPE OF THE FOI ACT	5
5. PROCEDURE FOR DEALING WITH FOI QUERIES	7
6. USE OF EXEMPTIONS	9
7. REQUESTS FOR AN INTERNAL REVIEW (COMPLAINTS)	11
8. PUBLICATION SCHEME	11
9. SECTION 77 – DELETION OR ALTERATION TO RECORDS	12
10. RE-USE REGULATIONS	12
11. CONTRACTS AND CONFIDENTIALITY	12
12. MONITORING PERFORMANCE AND REVIEW PROCESS	13
GLOSSARY	14
APPENDIX ONE SUMMARY OF PROCEDURE	15

1. SUMMARY

1.1 This policy sets out how the Clinical Commissioning Group (CCG) will respond to Freedom of Information requests in line with the Freedom of Information Act 2000 (FOI Act). The policy covers the CCG and the North West London Collaborative of Clinical Commissioning Groups shared resource teams.

1.2 On the 1 January 2005 the FOI Act came into force in England, Wales and Northern Ireland. The Act forms part of the Government's commitment to greater openness in the public sector.

1.3 Under the FOI Act, anybody may request information from a public authority. The FOI Act confers two statutory rights on the applicants:

- to be told whether or not the public authority holds information; and if so
- to have that information communicated to them.

1.4 The Information Commissioner's Office (ICO) promotes disclosure of as much information as possible and encourages the idea that information should be disclosed as default or in other words, information should not be made public only when there is a good reason to do so.

1.5 In addition, there are two other important pieces of legislation covering access to information held by public authorities:- The Environmental Information Regulations 2004 (EIR), which provides access to environmental information on matters as relating to air, water, soil, land and natural sites and includes information on policies, plans, programmes and other activities that may affect the environment; and the Data Protection Act (DPA) 1998 which gives an individual access to their personal information held by the organisation.

1.6 The requests the CCG will receive will be predominately FOI and this policy will apply. Where a request is received for someone's personal information the request must be dealt with under the DPA as a Subject Access Request. It would not be considered under the FOI Act.

1.7 Under the FOI Act the CCG has 20 working days from receipt of a valid request to respond providing the information requested or, where an exemption has been applied, an explanation to what information is not being disclosed, under which exemption, and justification for doing so.

1.8 The FOI Act includes some limited exemptions that allow the CCG not to disclose information. See *Section 6 – use of exemptions*. Staff should speak to the FOI Team about applying exemptions as there is a formal process for their engagement.

1.9 The requestor has the right to complain to the ICO if they are unsatisfied with the CCG's response or when the CCG has failed to respond within the statutory 20 working days without good reason. The ICO has the responsibility and statutory duty to investigate and where necessary issue a decision notice which the CCG is duty bound to follow.

1.10 It is an organisation wide responsibility to fulfil the FOI duties rather than just an individual's or team's responsibility. All staff members are responsible for ensuring that the CCG fulfils its statutory duties under the Act. It is essential that all staff asked to support gathering information for a FOI request do so within the given time. Staff must take responsibility for information they or their team manages or/and owns.

1.11 If you receive an FOI request direct you should speak to the FOI team as soon as practicable. See Section 4 – *the scope of the FOI Act* for further guidance and the difference between ‘business as usual’ and FOI requests.

1.12 The ICO has set a target that 85% of FOI requests should be responded to within the statutory timeframe of 20 working days. Persistent failure in meeting the target could result in the ICO placing the CCG on a ‘watch list’ and monitoring FOI responses for a 3 month period with the expectation that the CCG improve.

1.13 This policy outlines:

- scope of the FOI Act;
- roles and responsibilities of staff;
- summary of exemptions and the principles in applying them;
- summary of process and complaints;
- publication scheme;
- monitoring performance and review procedures.

1.14 A separate staff procedural note will explain the FOI process, the timelines, and the responsibilities of staff for those involved in collating information for responses.

2. SCOPE OF THIS DOCUMENT

2.1 This policy applies to all CCG staff and staff based in any shared team providing resources to the 8 North West London CCGs including contractors and interims.

2.2 All staff members are corporately responsible for ensuring the CCG meets the requirements of the FOI Act. Any staff member may be contacted for information in response to an FOI request. It is important that staff members recognise when a request from the public they receive directly is an FOI, what to do with such a request, how to collate information and how to treat a request for help in preparing an FOI response. All staff members must have an understanding of this policy and related information governance documents, such as the Records Management Policy.

2.3 The aim of this policy is to ensure that:

- all FOI requests are dealt with consistently and receive a high quality response, however and wherever, the contact is made;
- ensure the CCG complies with all relevant regulations, laws and guidance;
- there are clear routes for members of the public to make contact with the CCG so that they can appropriately request documents and information;
- ensure a publication scheme is up to date and inclusive in order to provide access to information;
- the necessary administrative infrastructure is in place for the Act to be complied with;
- staff at all levels are aware of their responsibilities with regards to the Act, be it in directing any Freedom of Information queries to the correct person, or in ensuring they provide any information requested in a timely fashion;
- deadlines for staff to respond to queries as set out in the Act are met and internal process is adhered to.

3. ROLES AND RESPONSIBILITIES

3.1 The North West London Collaboration of Clinical Commissioning Groups' (NWLCCGs) Communications Directorate manages the FOI function for the 8 CCGs as a shared resource and co-ordinates compliance with the FOI Act. The FOI Team contact details are available on *insite* and can be contacted through the FOI email address.

FOI email address – ccgfoi@nw.london.nhs.uk

3.2 All FOIs directly received by staff members should be forwarded to ccgfoi@nw.london.nhs.uk. The 20 working days in which the CCG should respond to a request start as soon as the CCG receives the request not as soon as the FOI Team receives the request. It is essential staff forward requests as soon as practicable.

3.3 The summary of staff responsibilities are:

CCG Governing Body

- Overall responsibility for approving and reviewing the FOI Policy.

Chief Officer

- Overall responsibility for ensuring that the CCG has an effective system in place to meet the requirements of the Act.
- Is the accountable officer to ensure exemptions are correctly engaged.

FOI Team

- Operational management of the FOI process.
- Assurance of FOI process to the Chief Officer.
- Performance & records management.
- Providing expert advice and leadership on dealing with individual requests.
- Process cases – record, acknowledge and respond.
- Co-ordination of cases liaising with information holders.

CCG FOI Case Lead (local CCG staff)

- Process FOI requests for information locally held by the CCG.
- Liaise with the FOI Team about any issues or delays.
- Ensuring information is collated and response is prepared.
- Get approval from suitable CCG person.

All staff

- Ensuring they have a basic understanding of the Act.
- Understand their role in supporting the FOI process and acting accordingly in a timely manner.
- Take responsibility for the information in their team and the FOI responses.
- Escalating any concerns about information disclosure.
- Identifying information within their area of responsibility which may be appropriate to add to the publication scheme.

4. SCOPE OF THE FOI ACT

4.1 Information is defined as 'information recorded in any form' and includes electronic documents, emails, hand written notes, databases, photographs, plans, video, and audio. Staff should be aware that even personal e-mails could be covered by the Act where they refer to both personal matters and to the duties of an employee.

4.2 The Act only covers requests for information held. Where a request is for an opinion or justification for a decision this does not fall under the remit of the Act and should be treated as routine correspondence.

4.3 The CCG will, wherever possible, make all information it holds available.

4.4 The CCG is responsible for releasing information that it holds irrespective of whether it is the author. When the CCG receives a request for information it holds but is not the author it must still consider the request and apply a suitable exemption if it considers it acceptable to do so.

4.5 Each CCG has the statutory duty to ensure it fulfils the requirements of the Act. To note, the Federation, Collaborative or Collaboration are not formal organisations and are hosted by a specific CCG.

4.6 Information is CCG information irrespective of where that information is located in the organisational structure; for example if shared services or the Strategy and Transformation Team hold the information. It is still CCG information and all colleagues need to work together to respond to information requests and to ensure an accurate response.

What constitutes an FOI request?

4.7 In order for a request to fall under the FOI Act it must meet the following criteria:

- it must be made in writing (letter or email);
- it must state the full name of the applicant and provide an address (email or postal) for correspondence;
- it must describe the information requested.

4.8 However, requestors do not have to state a reason for requesting the information, and it is important to note that the Act does not specify that a request needs to mention or refer to the FOI Act for it to be required to be handled as an FOI.

4.9 Any request for information that a member of staff receives directly should be reviewed and a decision taken if it is an FOI. There are three other types of correspondence/requests; Business as usual, Personal/Medical Records, and Environmental Information requests.

Business as usual requests

4.10 It is important to make a distinction between requests for recorded information and routine correspondence. Staff should, on receipt of correspondence, review it and decide if it is general correspondence and therefore, answer it or a request for information held by the authority and therefore, consider it to be an FOI.

4.11 Requests for general information that would usually be provided, for example, annual reports, recruitment brochures, press releases, and leaflets, should be treated as business as usual and dealt with outside the formal FOI procedure. Where such information is already made public through the publication scheme, the requestor should be pointed to the website publications section.

4.12 Similarly, written requests that pose general questions or queries rather than asking for recorded information should be treated as routine correspondence rather than an FOI, and dealt with by the team responsible for the area of work the enquiry relates to. Correspondence asking for justification or opinion would not be considered an FOI.

Personal information

4.13 Where a requestor asks for information held about them, including their medical records, this is covered by the Data Protection Act 1998 (DPA). All written requests for personal data or medical records should be dealt with under DPA. It provides protection to an individual right to access their own personal data and also who else can access another person's data. This is known as a Subject Access Request (SAR). The CCG's governance team has the responsibility for processing SARs.

Environmental Information Regulations

4.14 These regulations give members of the public the right to access environmental information, such as planning or emissions information, held by public authorities. The request can be made by letter, email, telephone or in person. EIR requests should be directed to the FOI lead in the same way as FOI requests.

4.15 If people apply for information stating the wrong Act, the CCG should aim to provide a helpful response to the request as if the right regulations had been quoted.

4.16 Any doubt or queries should be sent to the FOI Team which will be able to assist.

Duty to assist

4.17 All public bodies have a duty to assist enquirers in their quest for information as Section 16 of the Act states. For example:

- if vague requests are received we have a duty to help people identify the specific information they are looking for, which in turn is essential to be able to answer the request.
- for large and complex requests that may be exempt due to the cost of compliance we should provide options such as suggesting that the request is broken down into smaller requests.
- where we do not hold the information requested we should give them details for other organisations if we are aware of the information being held elsewhere.

Summary timescales

4.18 The key timescales for responding to FOI requests are that:

- an acknowledgement should be sent within 2-3 working days of the request being received by the CCG,
- a final response should be sent within 20 working days.

4.19 Time starts once the CCG receive the request for information, wherever in the CCG it is received, not when it reaches the FOI Team.

4.20 It should be noted that the 20 working days is seen by the ICO as a maximum limit, and, the CCG should aim, where it is possible, to provide the final response earlier.

5. PROCEDURE FOR DEALING WITH FOI QUERIES

5.1 **Appendix One** provides a summary of an FOI request. A separate procedural note will detail the process of how FOIs will be processed.

Valid request

All FOI requests must be made in writing and either sent to ccgfoi@nw.london.nhs.uk or posted to the FOI Team/Communications Directorate, 15 Marylebone Road, London, NW1 5JD.

5.2 Requests received by staff members should be forwarded to the ccgfoi@nw.london.nhs.uk immediately. Hardcopy letters should be scanned and emailed. The statutory 20 working days deadline starts once a request is received by the CCG, and not just when the FOI Team receives it.

5.3 **Staff should not withhold information or tell a requestor they are not going to provide information.** If the CCG is considering applying an exemption, the FOI Team will lead the formal process to ensure the necessary records are kept and the CCG Chief Officer is consulted as necessary.

Logging and acknowledging requests

5.4 The FOI Team will make an initial assessment of the request to determine if it is a reasonable request and meets the requirements of the Act. Where the request is invalid the FOI team will communicate with the requestor to get the necessary clarifications. Once the request becomes valid it will be acknowledged and the 20 working days will commence.

5.5 The FOI request is recorded in the case management system.

5.6 If the request requires further clarification before it can be dealt with the 20 working days time limit will stop whilst further clarification is requested. The 20 working days will start once a clarified response is received from the requestor. The CCG can ask for clarification at any point within the 20 working days, however, it should do so as early as possible.

Collating information

5.7 The FOI request will be sent to the individual CCGs for processing and it will be responsible for collating its information and for preparing a suitable response and any further narrative that it wishes to be included.

5.8 The CCGs should ensure that the FOI is processed in a timely manner and that the draft reply that it wishes to be sent is passed back as quickly as possible and within the time period stipulated in the consultation emails. The CCG should raise any problems or issues, such as the engagement of an exemption, immediately with the FOI Manager.

5.9 Staff members asked to contribute to a FOI request must prioritise their workload to ensure a response can be provided within the stated timeframe.

5.10 If a staff member believes that information should not be disclosed, they should first discuss with their Manager or Director and should raise the concern with the FOI Manager; explaining the nature of the information and why it should not be disclosed. It may require the CCG to carry out a Public Interest Test. Remember, the FOI Act encourages public organisations to be open and to release as much information as possible however, the Act does allow some information to be exempt from disclosure. It is essential that the CCG keeps excellent records of how a request has been dealt with, how and why exemptions have been applied and how it communicated with the requestor, who has the right to challenge the CCG's decision through the ICO.

5.11 Where a request will take longer than 18 hours to collate Section 12 of the Act exempts the information being provided. See *Section 6 – use of exemptions*.

Shared services or joint working teams

5.12 In October 2014 the North West London CCGs jointly decided terminate its contract with the North West London Commissioning Support Unit and to in-house all support services. Brent CCG acts as host CCG to these shared services and along with the Strategy and Transformation Team (hosted by Central London CCG), BHH Federation (hosted by Brent CCG) and the CWHHE Collaborative (hosted by Central London CCG) these teams will hold information. However, these are not formal organisations but a way of working collaboratively and formally hosted by one of the CCGs. The CCG is the only statutory organisation and it must ensure it fulfils the requirements of the Act.

5.13 Information held by any of the shared or joint teams is, and will always be, CCG information and will fall under the FOI Act and any request the CCG receives.

5.14 It should be noted that a request will cover all information held so where a CCG may not hold the information locally a shared team may hold it. It is still held by the CCG and must be considered in the response.

Providing a partial response

5.15 Where some information can be provided before others then the CCG should do so. Where an exemption is being applied and further time is required to consider the Public Interest Test, any information which is not included should be provided within the 20 working days. The CCG should provide some communication, either as a full response, partial response, or explanation to why a delay with the requestor within the 20 working days.

6. USE OF EXEMPTIONS

6.1 There are a limited number of exemptions within the Act that allow public authorities to withhold information. The ICO expects exemptions to be used sparingly and only where it is entirely appropriate to do so. Exemptions are not a way of avoiding dealing with complex or sensitive requests and qualified exemptions require a Public Interest Test to be carried out.

6.2 The FOI Manager will co-ordinate any use of an exemption and information holders should raise any concerns as soon as possible.

6.3 In line with the ICO expectations, principles for applying exemptions are:

- minimal, essential and appropriate use;
- based on professional advice from trained FOI staff;
- authorised by the CCG.

6.4 The most common exemptions are:

- **Section 21** – the information is accessible by other means.
- **Section 22** – the information is held with a view to publication at a future date. **Q**
- **Section 40** – the information which constitutes personal data of any person other than applicant, where disclosure would not be permitted under Data Protection Act 1998. **Q**
- **Section 41** – the information was obtained from another person in confidence. **Q**
- **Section 42** – the information is covered by legal professional privilege. **Q**
- **Section 43** – the disclosure of the information is likely to prejudice commercial interests of any person. **Q**

6.5 Q identifies those “qualified” exemptions that require a Public Interest Test prior to applying the exemption. See *below*.

6.6 There are also provisions to refuse to fulfil a request under two further sections of the Act:

- **Section 12** - where the cost of compliance is excessive.
- **Section 14** - vexatious requests.

6.7 The procedural note provides greater detail in the day to day application of exemptions where necessary.

The Public Interest Test when applying an exemption

6.8 Qualified exemptions require the CCG to carry out a Public Interest Test. That is to take the decision that *“in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”* Our justification should be explained in our reply and excellent records kept for any appeal to the ICO.

6.9 If the CCG decides that the public interest in withholding the information outweighs the public interest in disclosure, it should be withheld. Where the interests are evenly balanced, the information commissioner would usually expect the information should be disclosed. It is essential that the CCG keeps excellent records of how a request has been dealt with, how and why exemptions have been applied and how it is communicated with the requestor, who has the right to challenge our decision through the Information Commissioner’s Office. These records are kept in the case management system.

6.10 Some exceptions require a **Prejudice Test** which examines the likely prejudice or harm that may arise from disclosure of the information, the relevant interests which are impacted and explain the nature of the prejudice. This will be led by the FOI Team to ensure that excellent records are kept for any future review.

6.11 It should be noted that exemptions are not mandatory and the CCG is free to disclose information which could be exempt if it chooses to do so.

Excessive costs

6.12 A public authority is not obliged to comply with a request for information if it estimates that the cost of determining if it holds the relevant information, locating and retrieving the information and, where necessary, extracting the information from a document would exceed the appropriate limit set down under Section 12 of the Act.

6.13 The appropriate limit has been set as a figure of £450 for public authorities. This figure is calculated at a rate of £25 per hour and therefore, **any request that exceeds 18 hours of work could be refused**. The authority should provide an explanation to why it would take over 18 hours to collate the information.

6.14 Section 16 of the Act provides a duty to assist the requestor in his request where it is considered that it would exceed the time limit and therefore, offer suggestions to how the request could be reduced so it would fall under 18 hours.

Vexatious & Repeated request

6.15 Under Section 14 of the Act the organisation can refuse to respond to a request that is vexatious/manifestly unreasonable. Vexatious could be applied to a request where it forms

part of an extended campaign, is obsessive, is unreasonable, or the tone of the correspondence is tendentious or haranguing.

6.16 The CCG is required to fully explain its decision. The CCG must keep excellent records management and audit for an appeal to the ICO.

7. REQUESTS FOR AN INTERNAL REVIEW (COMPLAINTS)

7.1 If a requestor is not satisfied with a response or the way it has been handled they have the right to request a review. All responses explain how the requestor can request a review about the response.

7.2 Requests for a review of the information provided, the decision to exempt some or all of the information or where the CCG has failed to respond in 20 working days should be made in writing to the FOI Team who will ensure that an Internal Review is instigated.

7.3 The review stage is an opportunity for the CCG to consider a case completely afresh and should be a fair and impartial review of decisions made during the original consideration of whether to release information or where a response is pending or was responded to after the 20 working days.

7.4 The timescale for a review is 20 working days from the time the request for a review is received.

7.5 Whatever the outcome of the review, the requestor must be advised of the decision. Where the review overturns the original decision to exempt information the requestor should be advised and provided with the information. Where the review up-holds the original decision the requestor should be advised of this, with any further reasoning or explanation.

7.6 In the reply outlining the result of the review, the requestor must be advised that if they are still not satisfied that they have the right to complain to the Information Commissioner's Office who has the authority to investigate.

7.7 It is essential that full records are kept on the progress of the review and any outcomes as a result of the review. This will assist in any further investigations by the ICO.

8. PUBLICATION SCHEME

8.1 The CCG has a legal duty to compile and to make available a publication scheme, setting out what information is made available proactively to the public and how.

8.2 With the growing number of FOI requests being received it should be noted that a proactive programme of publishing information through the scheme could be an effective way of reducing the time spent by staff collating information in order to respond to individual requests. A regular programme of publishing data/information would allow individual requests to be declined as the information would be reasonably accessible through other means.

8.3 The CCG's Publication Scheme will be developed and maintained by the FOI Manager and published on the CCG website.

9. SECTION 77 – DELETION OR ALTERATION TO RECORDS

9.1 Section 77 of the Freedom of Information Act states that where a request for information has been made to a public authority and the applicant would have been entitled to information it is an offence if any member of staff alters, defaces, erases, destroys or conceals any record held by the authority with the intention of preventing the disclosure by that authority at all or any part of the information which the applicant would have been entitled to.

10. RE-USE REGULATIONS

10.1 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 CCG may indicate to the original requestor that information is being supplied only for their use and cannot be re-used or reproduced in any format for commercial gain.

10.2 The FOI response should contain re-use advice and instructions such as:

Please note, that the supply of information in response to a FOI request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purpose of private study and non commercial research without requiring permission. Similarly, information supplied can also be reused for the purposes of news reporting. An exception to this is photographs.

10.3 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 permission of the CCG and may require a fee.

11. CONTRACTS AND CONFIDENTIALITY

11.1 The CCG must be clear with all individuals and organisations it has contracts with that it is subject to the FOI Act. All contracts drawn up should include appropriate disclaimers about the trust's responsibility to comply with the Act. The NHS England's NHS standard contract (general conditions) 2014/2015 has included section GC21 which covers FOI and a contractor's duty. The draft NHS standard contract 2015/2016 contains a similar section.

11.2 When entering into contracts the CCG (or authority acting on the CCG's behalf) should not accept contractual terms which restrict the disclosure of information beyond the exemptions permitted by the Act. The CCG cannot contract out its obligations under the Act. Unless an exemption provided for under the Act is applicable, the CCG would be obliged to disclose information. A contradicting clause in a contract would put the CCG in the unacceptable position of having to decide between breaching the terms of a contract or not complying with its legal duties under the FOI Act.

11.3 Any request for confidentiality clauses in contracts should be considered in line with the Freedom of Information Act.

11.4 Any acceptance of confidentiality clauses must be for good reasons and capable of being justified to the ICO.

12. MONITORING PERFORMANCE AND REVIEW PROCESS

12.1 The FOI Team will continually review and monitor the handling and logging of information requests. This policy will be reviewed annually unless required to do so through exceptional circumstances, organisational change or changes to legislation or guidance.

12.2 For monitoring and assurance purposes the FOI Team will produce:

- a weekly case list detailing FOIs received.
- a monthly performance management report which will provide information regarding the number of requests received and their completion dates and will identify any areas of concern.
- an annual compliance report along with the FOI policy review and will analyse the workings of the FOI process as outlined in this policy and will suggest changes and improvements where appropriate.

GLOSSARY

‘the Act’ – in this policy refers to the Freedom of Information Act 2000.

‘FOI’ – Freedom of Information.

‘DPA’ – the Data Protection Act 1998.

‘ICO’ – Information Commissioner’s Office. This is the UK's independent authority set up to promote access to official information and to protect personal information. The ICO covers Data Protection, Freedom of Information, privacy and electronic communications and the Environmental Information Regulations.

‘Exemption’ – provisions within the Act that define particular types of information that public bodies are not obliged to disclose.

‘Public Interest Test’ – the test a public body must apply if it feels the information requested falls under a qualified exemption such as Section 43 (2) disclosure would likely to prejudice commercial interests of any person. This requires weighing the public interest considerations in favour of releasing information against the public interest considerations in favour of non disclosure.

‘Prejudice Test’ – the test a public body must apply to decide if the disclosure of information is likely to lead to prejudice or harm to an organisation, the nature of the prejudice and identify the relevant interests which would be impacted.

‘Publication Scheme’ – a published list of the types of information we publish or intend to publish, stating how/where information is published and whether there is a charge for obtaining it. Routinely published online, public authorities must continually review and update their publications scheme.

‘Business as Usual’ – requests for information that the CCG routinely provides information on such as a request for the date of the next CCG Board Meeting.

‘NHS England’ – previously referred to as the National Commissioning Board is the new NHS organisation providing strategic guidance to the commissioning landscape of the NHS and the direct specialised and primary care commissioning.

‘CCG’ – Clinical Commissioning Group.

‘BHH Federation’ – Brent, Harrow and Hillingdon CCGs joint working group.

‘CWHHE Collaborative’ – Central London, West London, Hammersmith & Fulham, Hounslow, and Ealing CCGs joint working group.

‘NWLCCGs’ – the North West London Collaboration of Clinical Commissioning Groups. The joint working group formed of the eight North West London CCGs.

APPENDIX ONE SUMMARY OF PROCEDURE

All Freedom of Information requests must be made in writing and either posted to:

Freedom of Information Team
Communications Directorate
15 Marylebone Road
London NW1 5JD

Or emailed to: ccgfoi@nw.london.nhs.uk

Indicative timetable:

Working Day 1	Starts the first working day after receipt of request. FOI Team to assess and record request.
Working Day 3	Request acknowledged. Case set up on records management system. Consultation email sent to CCG. CCG has 10 working days to process case.
Working Day 5	CCG confirms it can provide a response. Initial issues or concerns to be raised
Working Day 12	CCG draft response and approve approach / response. Exemptions identified and processed with the FOI Manager. Approval sought as necessary.
Working Day 15 -16	Process any further information received and deal with any problems. Communications Director/Assistant informed as required.
Working Day 19 – 20	Final response sent. Records updated.