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Bwrdd Iechyd Prifysgol  
Betsi Cadwaladr  
University Health Board

## PROCEDURE FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

|                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |            |            |          |  |
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| <b>Documents to be read alongside this document:</b> | IG04 Access to Information Policy<br>IG01 Records Management Policy<br>IG02 Corporate Records Management Procedure (including retention and destruction schedule)<br>IG13 Confidentiality Code of Conduct<br>IG14 Procedure for Information Management & Technology (IM&T) Security<br>WP6 BCUHB Code of Conduct (Disciplinary Rules and Standards of Behaviour)<br>All Wales Information Security Policy<br>All Wales Information Governance Procedure |            |            |          |  |
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*N.B. Staff should be discouraged from printing this document. This is to avoid the risk of out of date printed versions of the document. The Intranet should be referred to for the current version of the document.*

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## **1. INTRODUCTION**

1.1 The Freedom of Information Act (FOIA) 2000, referred to hereafter as the Act, and the Environmental Information Regulations (EIR) 2004, referred to hereafter as the Regulations, are part of the government's commitment to greater openness in the public sector, a commitment that is supported by Betsi Cadwaladr University Local Health Board, referred to hereafter as the Health Board.

1.2 The Act and the Regulations will support this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public and other groups to question the decisions of public authorities more closely, ensuring that the services provided by the Health Board are delivered effectively and appropriately.

1.3 This procedure supports the Health Board's 'Access to Information Policy' in compliance with the Act and Regulations, and should be read in conjunction with that policy.

## **2. PROCEDURE STATEMENT**

This procedure assists the Health Board to enable and maintain compliance with its responsibilities and duties under the FOIA, EIR and Data Protection legislation.

## **3. PURPOSE**

This procedure sets out:

- the main process for the Health Board when handling requests for information;
- the main areas of responsibility for FOIA and EIR matters within the Health Board;
- good administrative practice to ensure that the Health Board's Publication Scheme is kept up to date and accessible.

## **4. AIMS**

In common with the Code of Practice on the Discharge of Public Authorities' Functions, under Section 45 and 46 of the Act, and the Code of Practice on the Discharge of the Obligations of Public Authorities, under Regulation 16 of the Regulations, this procedure will ensure that the Health Board will:

- process all applications under general rights of access promptly and appropriately;
- disclose all information required by the Act and Regulations promptly and appropriately;
- provide advice and assistance where required;
- deal with complaints about any aspect of the Health Board's compliance with the Act and Regulations promptly and impartially;
- respect the interests of third parties who may be affected by any disclosure of information

## 5. SCOPE

- 5.1 This procedure applies to all staff employed by the Health Board, including agency and temporary staff. Failure to adhere to these procedures may result in disciplinary action.
- 5.2 This procedure applies to all requests for information made under the FOIA and EIR

## 6. ROLES AND RESPONSIBILITIES

- 6.1 **Chief Executive** - The Chief Executive takes overall responsibility for the Health Boards information governance performance and in particular is required to ensure that:
- the Health Board can demonstrate accountability against the requirements within the Data Protection Act.
  - decision-making is in line with the Boards policy and procedure for information governance and any statutory provisions set out in legislation;
  - the information risks are assessed and mitigated to an acceptable level and information governance performance is continually reviewed;
  - suitable action plans for improving information governance are developed and implemented;
  - ensure IG training is mandated for all staff and is provided at a level relevant to their role.

To satisfy the above, the Chief Executive has delegated this responsibility to the Board Secretary who will be accountable for the Boards overall information governance arrangements.

- 6.2 **Senior Information Risk Owner (SIRO)** – The Director of Finance is also the identified Senior Information Risk Owner (SIRO), and will take ownership of information risk. The SIRO is a key factor in successfully raising the profile of information risks and embedding information risk management into the Health Board's culture.
- 6.3 **Caldicott Guardian** - The Associate Medical Director has been nominated as the Boards Caldicott Guardian and is responsible for protecting the confidentiality and reflecting patients' interests regarding the use of patient identifiable information. They are responsible for ensuring patient identifiable information is shared in an appropriate, ethical and secure manner. The Caldicott Guardian is the Chair of the Information Governance Group.
- 6.4 **Data Protection Officer** – The Assistant Director of Information Governance and Assurance has been appointed as the Data Protection Officer as required by GDPR. This role plays a key part in fostering a data protection culture to help implement essential elements of the GDPR such as, principles of data processing, data subjects' rights, data protection by design and by default – privacy impact assessments. The Information Governance structure sits within this department.
- 6.5 **Information Governance Team** - The Head of Information Governance will be responsible for the development, communication and monitoring of policies,

procedures and action plans ensuring the Board adopts information governance best practice and standards. This role will report to the Assistant Director of Information Governance and Assurance and will be supported by the Information Governance Team who will also work in collaboration with the Information Governance Leads and Information Asset Owners.

- 6.6 **Chief Digital Information Officer** – This role has overall responsibility for the technical infrastructure to ensure the security and data quality of the information assets and systems held within the Board. This role is also the Deputy SIRO.
- 6.7 **Head of ICT** – is the Health Board’s identified IT Security Lead and provides expert technical advice on matters relating to IT Security and ensures compliance and conformance against the NHS Wales Code of Connection and NIS Directive.
- 6.8 **Head of Digital Records** – This role is responsible for the overall management and performance of the Health Records Service within BCUHB including the provision of organisation-wide access to health records.
- 6.9 **Executive Director/Secondary Care Director/Area Director** - Each Director is responsible for the information within their Division and therefore must take responsibility for information governance matters. In particular they must appoint an Information Governance Lead.
- 6.10 **Information Governance Leads** – The IG Leads work with the IG Team to ensure compliance with corporate IG policies, procedures, standards, legislation and to promote best practice.
- 6.11 **Information Asset Owners (IAO)** - their role is to understand what information is processed by their department i.e. what information is held, added, removed, how it is moved, who has access to it and why. As a result, they are able to understand and address risks to the information, to ensure that information is processed within legislative requirements.
- 6.12 **Information Asset Administrator (IAA)** - will recognise actual or potential security incidents, consult with their IAO on appropriate incident management and ensure that information asset registers are accurate and up to date.
- 6.13 **System Owners** – will be responsible for identifying and managing system risks; understand procurement requirements around contracts and licencing; put in place and test business continuity and disaster recovery plans, control access permissions and ensure the system asset record is regularly reviewed and updated on the asset register.
- 6.14 **All Staff** - All employees, contractors, volunteers and students working for or supplying services for the Health Board are responsible for any records or data they create and what they do with information they use.

Staff must attend mandatory information governance training and/or refresher/ awareness sessions to maintain their knowledge and skills every two years.

All staff, whether clinical or administrative, including temporary and agency, have a responsibility to adhere to information governance policies, procedures and standards. Breaches of this document must be reported via the Datix incident

reporting system, and processed in accordance with WP9 Disciplinary Policy where appropriate. This also applies to contractors, students, volunteers and anyone else providing a service on behalf of the Health Board, as well as Health Board employees working from a non-Health Board site.

- 6.15 **Third Party Contractors** – appropriate contracts and confidentiality agreements shall be in place with third parties where potential or actual access to the Health Boards confidential information assets is identified

## **7. INITIAL REQUESTS FOR INFORMATION**

Requests for information under the Act and Regulations will be released either through the Health Board's Publication Scheme, or under the general rights of access to recorded information held by public authorities.

### **7.1 *Publication Scheme applications***

- 7.1.1 The Act requires public authorities to have an approved publication scheme in place, which is a means of providing access to business related information proactively published by the Health Board. The Health Board has produced a publication scheme which incorporates seven classes of information.
- 7.1.2 The Publication Scheme directs all applicants who require assistance in obtaining published information from the Health Board to the Information Governance team.
- 7.1.3 Requests received for information which is available through the Publication Scheme do not have to be in writing.
- 7.1.4 Where the request, either written or verbal, relates to information held within the Publication Scheme, the IG administrator will contact the applicant to establish the best means for the applicant to obtain the information. This may be by visiting the website if the applicant has internet access, or in hard copy. The IG administrator will advise the applicant of any charges that may apply.
- 7.1.5 If a charge applies for the requested information, payment must be received from the applicant prior to the information being provided. See section 13 below for details on charges and fees.
- 7.1.6 Hard copies of information published through the Publication Scheme should be provided promptly as the 20 day rule does not apply to such information.
- 7.1.7 The Publication Scheme is accessible through the Health Board's website; [www.bcu.wales.nhs.uk](http://www.bcu.wales.nhs.uk)

### **7.2 *General Rights of Access applications***

- 7.2.1 General rights of access to recorded information came into force on the 1<sup>st</sup> January 2005, giving any person or organisation the right to make a request for information covered by the Act and Regulations, which is not routinely published.
- 7.2.2 Requests under the Act must be made in writing.

- 7.2.3 Where a verbal request for information under the FOIA is made, the applicant should be asked to put their request in writing to the Information Governance office at Wrexham Maelor Hospital or by email to [BCU.FOI@wales.nhs.uk](mailto:BCU.FOI@wales.nhs.uk). If the applicant is unable to do this they should be referred to the IG administrator, thus activating the systems for the Provision of Advice and Assistance to Applicants under Section 16 of the Act, see section 10 below.
- 7.2.4 Unlike the Act, requests for information under the Regulations do not have to be made in writing. The request can be made by e-mail or verbally. See Appendix 3 for the definition of EIR.
- 7.2.5 General rights of access requests can be made for historic information i.e. the applicant may seek information which is held by the organisation but is no longer active or has been archived.
- 7.2.6 Requests for non-health information relating to deceased individuals cannot be processed under IG07 Procedure for dealing with Subject Access Requests under Data Protection legislation, as this legislation refers to living individuals only. Therefore these types of requests must be processed under FOIA, however exemptions such as 'S40 – Personal Information' or 'S41 - Information Provided in Confidence' are likely to apply.
- 7.2.7 If a request is received by a member of staff the correspondence must be forwarded to the IG administrator without delay [[bcu.foi@wales.nhs.uk](mailto:bcu.foi@wales.nhs.uk)].
- 7.2.8 The Act contains provision for the Health Board to make charges when responding to a request which costs over £450. In the spirit of openness the Health Board will endeavour to provide as much information as possible free of charge. However, if a request is particularly complex or voluminous, or has a commercial implication, the Health Board may request a fee in accordance with the Fees Regulations as set out by the Ministry of Justice, see section 13 below.
- 7.2.9 The Act also contains provisions for the Health Board to refuse a request should the cost of the request exceed the 'appropriate limit'; see point 13.5 below.

### **7.3 Requests under the Environmental Information Regulations (EIR)**

The procedure for dealing with EIR requests will be the same as the one for dealing with FOI requests with the following exceptions:

- EIR requests can be received verbally;
- Environmental information can be considered for release if the Health Board is in possession of the information, regardless of whether it is only held on someone else's behalf;
- EIR requests can be extended up to 40 days where the request is complex or voluminous;
- Reasonable charges can be made for complying with EIR requests; there is no appropriate cost limit, however requests that cost a disproportionate amount can be refused on the basis that they are manifestly unreasonable, these would be subject to a public interest test. See point 13.4.

- EIRs have their own specific list of exceptions restricting release of information under Regulation 12 of the Regulations. All exceptions are subject to a public interest test; see Appendix 5 for a list of EIR exceptions.

#### **7.4 Receiving a verbal request for information under EIR**

7.4.1 The IG administrator should record the following information on the EIR record of verbal application, see Appendix 1:

- the name of the applicant
- the date received
- the information required
- an address for correspondence

7.4.2 A written request which requires or partly requires environmental information should be passed as normal to the IG administrator.

### **8. PROCEDURE FOR PROCESSING REQUESTS FOR INFORMATION**

#### **8.1 Stage One – Receipt of request**

8.1.1 Information requests under FOIA and EIR will generally be received as email requests via [bcu.foi@wales.nhs.uk](mailto:bcu.foi@wales.nhs.uk) or as postal requests received at the Health Board's Information Governance office in Wrexham Maelor Hospital.

8.1.2 Once an email request is received, the IG administrator, with assistance from the IG Co-ordinator, will review the request to ensure it falls within the remit of FOI.

8.1.3 Written requests received will be scanned and sent to [bcu.foi@wales.nhs.uk](mailto:bcu.foi@wales.nhs.uk). The process will then follow as outlined in point 8.1.2 above.

8.1.4 The IG administrator will log the request onto the DATIX system, giving each request a unique identifier reference using the following format: ascending number/year/ FOI or EIR e.g. 001/09/FOI

8.1.5 If the request has sufficient information and does not require further clarification, the IG administrator will post or email (depending on the method the request was received) the applicant a letter of acknowledgment stating that their request will be processed within twenty working days, using Standard Letter template 1, together with a copy of the Health Board's FOIA and EIR leaflet.

8.1.6 If the applicant has not provided sufficient information for the request to be processed the IG administrator will acknowledge the request and ask for clarification using Standard Letter template 2, together with a copy of the Health Board's FOIA and EIR leaflet. See point 10.2 below.

#### **8.2 Stage Two – Accessing the information**

8.2.1 The IG administrator, with the assistance of the Head of Information Governance, will review the request to establish whether the information required has already been

published. If the information is already publicly available the IG administrator will advise the applicant and signpost to the published documents.

- 8.2.2 If the information is not already published, the IG administrator will issue an information enquiry to the relevant FOI Lead using Standard Letter template 2, asking them to confirm within 2 working days whether or not they hold the information, how long they estimate it will take to collate, and whether they think an exemption applies.
- 8.2.3 The IG co-ordinator will then decide whether to continue with the request, and if appropriate, request that the relevant FOI Lead provide the information and appropriate approval to release within 10 working days.
- 8.2.4 The clinical / corporate division holding the information must then arrange for the information to be collated and forwarded on to the FOI Lead.
- 8.2.5 If the requested information has already been identified for disposal or deletion, but it has yet to be carried out, the FOI Lead must delay this action and provide the information to the IG co-ordinator.
- 8.2.6 If information has been deleted but is still technically present, for example, in a “recycle bin” or “back up tape”, and is easily retrievable without the use of specialist staff time or software, then restoration should be attempted.
- 8.2.7 In accordance with Sections 12 and 13 of the Act, if the estimated cost of compliance with the request for information exceeds the appropriate limit set by the Fees Regulations, the IG co-ordinator may suggest ways of bringing the costs within the appropriate limit to the applicant, see point 13.5 below, using Standard Letter template 6.
- 8.2.8 If the FOI Lead has any concerns regarding the release of the requested information, their concerns should be discussed with a member of the IG team. Should there be a conflict of opinion, the Head of Information Governance and/or Lead Officer may be consulted.
- 8.2.9 Once the requested information has been collected, collated and approved, the FOI Lead must forward the information, and confirmation to release, to the IG co-ordinator to review and consider any exemptions / exceptions (Appendices 4 and 5).
- 8.2.10 Once the draft response has been formulated by the IG co-ordinator, it must be shared with the IG officers, IG managers and Communications lead (where appropriate if there is a media interest) for quality assurance.
- 8.2.11 Should any of the identified information be complex or contentious, the IG co-ordinator must refer the request to the Head of Information Governance for discussion with the Lead Officer.
- 8.2.12 The information will be quality assured considering any data protection exemptions which may apply. Any third party information, or information that may cause harm or distress to the data subject or others will be redacted using the Health Board’s approved redaction software which is currently **Nitro Pro**. Where there is personal

information relating to more than one person, consideration will be given to the interests of all the parties before deciding whether or not to disclose the information.

8.2.13 If it is identified that fees are chargeable a Fees Notice should be issued using Standard Letter template 4, see section 13 below.

8.2.14 Once the final draft is approved, the IG co-ordinator will send to the appropriate executive director for approval.

8.2.15 If the response is for an AM / MP / Trade Union, the IG co-ordinator must also seek approval from the Chief Executive.

8.2.16 Every attempt will be made to ensure that the applicant is kept up to date with the progress of their request. Should any delay be experienced, the IG administrator will issue a holding letter / email, apologising for the delay and providing an estimated response date.

### **8.3 Stage three – Providing the information**

8.3.1 If no fees or charges are payable or outstanding, or if no exemptions or exceptions are applicable, the IG co-ordinator will provide copies of the information directly to the applicant as soon as it is available, but taking no longer than 20 working days, using Standard Letter template 9.

8.3.2 Information will be provided to applicants by one or more of the following means:

- as a copy of the information in permanent form or another form acceptable to the applicant;
- through the provision of a reasonable opportunity to inspect a record containing the information;
- the provision of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

8.3.3 The IG co-ordinator will consider all circumstances of a request for communication of information by a particular means, including the cost of doing so. If they determine that it is not reasonably practicable to comply with the applicant's preference, they will notify the applicant of the reasons for this determination. The information will then be provided by such means as is deemed reasonable. The IG co-ordinator will consider other statutory obligations placed upon the Health Board, such as those established under the Disability Discrimination Act 1995, together with the Health Board's duty of Provision of Advice and Assistance, see section 10 below.

8.3.4 The IG administrator will record on DATIX:

- the information supplied;
- the date the information was provided to the applicant;
- the format the information was requested in; and
- the format in which the information was provided.

8.3.5 If an exemption or exception is identified as valid, follow the procedure for the refusal of requests in section 9 below.

## **8.4 Stage four – Disclosure Log**

- 8.4.1 The IG co-ordinator will update the Health Board's disclosure log <http://www.wales.nhs.uk/sitesplus/861/page/41504> on a monthly basis with non-identifiable details of all completed requests and response letters.
- 8.4.2 Requests will be published on the disclosure log one month following the issue of the final response letter.
- 8.4.3 Under the Act the applicant has 2 months, from the date the response was issued, to challenge the final response. Should the initial response provided be overturned, amended or updated, the IG co-ordinator will update the disclosure log.

## **9. PROCEDURE FOR REFUSAL OF REQUESTS**

- 9.1 Some, or all of the information requested by an applicant may be refused. A request for information may be refused if:
- the information is exempt from disclosure under Part II of the Act, Schedules 1, 2, 3 and 4 of the Data Protection Act 2018, or is an exception under Part 3, Regulation 12 of the Regulations, see Appendix 4 and 5;
  - a fees notice or charge has not been paid within 60 working days, beginning on the day on which the fees notice was issued, or the applicant was notified of the charge, see point 12.1 below;
  - the cost of compliance exceeds the appropriate limit, see point 12.5 below;
  - the request is demonstrably vexatious or repeated, see point 9.4 below;
  - the information requested is not held by the Health Board
  - the information is held by another public authority, in which case the request may be transferred to them, see section 11 below.
- 9.2 If the Health Board partially or fully refuses a request, the applicant will be informed within twenty working days using Standard Letter template 10 or Standard Letter template 11, as appropriate. As set out in Section 17(7) of the Act and Regulation 18 of the Regulations the applicant should also be informed of the Health Board's FOI complaints procedures and their right to complain to the Information Commissioner, see section 14 below.
- 9.3 If the IG co-ordinator is relying on a claim that any provision of Part II of the Act or Part 3 of the Regulations, relating to the duty to confirm or deny, is relevant to the request, or on a claim that information is exempt under the Act or an exception under the Regulations, a refusal notice will be issued within twenty working days under Section 17 of the Act and Regulation 14 of the Regulations, using Standard Letter template 10. The notice will:
- state that fact;
  - specify the exemption or exception in question; and
  - state (if that would not otherwise be apparent) why the exemption or exception applies.

- 9.4 If the IG co-ordinator anticipates that it will take more than twenty working days to establish whether any part of the information requested by the applicant is exempt under Part II of the Act, or Part 3 of the Regulations, the IG co-ordinator will notify them that no decision as to the application of an exemption or exception has been reached, and more time is required to consider the public interest test. The IG co-ordinator will notify the applicant accordingly using Standard Letter template 5, giving an estimate of the date by which they can expect a decision.
- 9.5 Estimates as described in point 9.4 above should be realistic, reasonable and compliant unless there are extenuating circumstances. Section 10 of the Act and Regulation 7 of the Regulations makes provision for the Health Board to extend the time to deal with complex and voluminous requests, and to inform the applicant, using Standard Letter template 5, if the Health Board intends to rely on such an extension. If an estimate is exceeded, the applicant will be given a reason(s) for the delay. If the IG co-ordinator finds that the estimate is proving unrealistic, the applicant will be kept informed. A record will be kept on DATIX where estimates are exceeded, and where this happens frequently, steps will be taken to identify the problem and rectify it.
- 9.6 If a qualified exemption under the Act or an exception under the Regulations is being applied, the IG co-ordinator will, either in the notice issued under 9.3 above, or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:
- that the public interest in maintaining the exclusion of the duty to confirm or deny, outweighs the public interest in disclosing whether the Health Board holds the information; or
  - that, in all circumstances of the case, the public interest in maintaining the exemption or exception outweighs the public interest in disclosing the information.

The statement will not involve the disclosure of information which would otherwise itself be exempt information.

- 9.7 If the IG co-ordinator believes that information requested under the Act is exempt because the cost of compliance exceeds the appropriate limit, or the request is demonstrably repeated or vexatious, the notice will state that fact. If the Health Board is relying on a claim that the request is vexatious or repeated under Section 14 of the Act, and a notice under Section 17 has already been issued to the applicant stating this fact, a further notice is not required.
- 9.8 The IG co-ordinator will keep records of all refusal notices issued. These will be subject to periodic review to maintain consistency in decision-making.

## **10. PROVISION OF ADVICE AND ASSISTANCE TO APPLICANTS**

### **10.1 IG co-ordinator & IG officer**

- 10.1.1 The IG co-ordinator or IG officer will provide advice and assistance to potential and actual applicants for information under the Act and Regulations. The advice and assistance will include:
- guidance on how to access information from the Health Board;

- informing the applicant of the progress of their request where appropriate;
- explaining the basis upon which any charges or fees have been levied or exemptions and exceptions applied (this is in addition to Fees Notices and notice issued under Section 17 of the Act and Regulation 12 of the Regulations);
- suggesting other routes through which applicants may wish to access information, including from other public authorities;
- obtaining additional information to assist the Health Board in meeting the information needs of the applicant;
- consulting with third parties as required;
- identifying sources of independent help for applicants; and
- directing applicants to the FOI complaints procedure and/or the Information Commissioner if they are dissatisfied with the discharge of the duties of the Health Board. See section 14 below.

#### 10.1.2 Appropriate assistance might include:

- advising the applicant that another person (including other Health Board staff) or agency (such as a Citizens Advice Bureau or other provider of information, advice or advocacy) may be able to assist them with the application, or make the application on their behalf;
- in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

10.1.3 This list is not exhaustive, and the IG co-ordinator or IG officer will discuss the options available with the potential applicant, offering advice and assistance most appropriate to the circumstances of the applicant.

### **10.2 *The applicant has provided insufficient information to fulfill their request***

10.2.1 Where the applicant has not clearly described the information sought, or the request is ambiguous, the IG administrator will contact them. They will provide assistance to the applicant to enable them to describe more clearly the information requested.

10.2.2 The purpose of this contact will be to clarify the nature of the information sought, not the aims or motivation of the applicant. The IG administrator must not give the applicant the impression that they are obliged to disclose the nature of their interest or that they will be treated differently if they do so.

10.2.3 It is important that the applicant is contacted as soon as possible, by any means, where clarification is necessary.

10.2.4 Under the Regulations there may be circumstances where it could be useful to know the applicant's interests or reasons for the request. Although this is permissible under Regulations, it is not permissible under the Act.

10.2.5 Appropriate assistance in this instance might include:

- providing an outline of the different kinds of information which might meet the terms of the request;
- providing access to detailed catalogues and indexes, where these are available, to ascertain the nature and extent of the information held by the organisation;
- providing, wherever possible, identifiers or a description of a particular record so that an applicant can decide if the information is appropriate for their needs;
- providing a general response to the request, setting out options for further information which could be provided on request.

10.2.6 This list is not exhaustive, and the IG co-ordinator will be flexible in offering advice and assistance most appropriate to the circumstances. The Health Board recognises that applicants cannot reasonably be expected to possess identifiers or a description of a particular record, unless this information is made available by the organisation for the use of the applicant.

10.2.7 The IG co-ordinator will disclose any information relating to the application, which has been successfully identified and found, and for which the Health Board does not wish to claim an exemption/exception. The IG co-ordinator will explain to the applicant why the Health Board cannot take the request any further, and provide details of the complaints procedure, and the applicant's rights under Section 50 of the Act and Regulation 18 of the Regulations, see section 14 below.

10.2.8 The twenty working day time limit is not activated until the applicant has provided sufficient clarification.

### **10.3 *The applicant is unprepared or unable to pay a charge or fee, or fees exceed the appropriate limit***

10.3.1 An applicant may indicate that they are not prepared to, or are unable to pay the fee or charge levied for the information requested, see section 13 below. In such cases the IG officer / IG co-ordinator will consider whether there is any information, that may be of interest to the applicant, available free of charge. They will contact the applicant to explore ways to reduce the fee or charge. For example by:

- providing information electronically instead of in hard copy; or
- inviting the applicant to view the information and take their own notes, or to select the information they feel to be most relevant to them.

10.3.2 Under Section 12 of the Act, the Health Board is not obliged to comply with a request for information if the cost of complying would exceed the 'appropriate limit' (i.e. cost threshold) see point 13.5 below. In such circumstances, the Health Board has three options:

- to refuse the request on the basis that it exceeds the cost threshold;
- to charge, under Section 13 of the Act, for the provision of the information;
- to seek a means to provide information within the cost threshold;

10.3.3 If a request exceeds the costs limit, the IG co-ordinator will, with the applicant, seek a way to provide the information within the appropriate limit. If this is not possible the IG co-ordinator will consider how to continue with the request, and may decide to activate the procedure for refusal of a request, see section 9 above.

## **10.4 *Vexatious or repeated requests***

- 10.4.1 Assistance will not be provided to applicants whose requests are vexatious or repeated, as defined by Section 14 of the Act.
- 10.4.2 In such circumstances, the Head of Information Governance or Lead Officer must demonstrate that the applicant's request is vexatious or repeated based upon the monitoring data that they have collected.

## **10.5 *Requests which appear to be part of an organised campaign***

- 10.5.1 The Health Board may receive a number of related requests that, under Section 12(1) and Section 12(4) of the Act, take the cumulative cost of compliance over the 'appropriate limit' as prescribed in the Fee Regulations.
- 10.5.2 In such circumstances, the IG co-ordinator will consider whether the information could be disclosed in another, more cost effective manner, for example, through the Health Board's Publication Scheme, with the applicants being notified of this, thus bringing the cost within the appropriate limit.
- 10.5.3 There are no special provisions for dealing with requests that appear to be part of an organised campaign. Such requests are to be expected and should be dealt with in the usual way.

## **11. TRANSFERRING REQUESTS FOR INFORMATION**

- 11.1 If the IG co-ordinator believes that some or all of the information requested is held by another public authority, they will consider what would be the most helpful way of assisting the applicant with the request using either Standard Letter template 7 or Standard Letter template 8. This is likely to involve;
- contacting the applicant, informing them that some or all of the information requested may be held by another authority;
  - suggesting that the applicant re-applies to the other authority which the Health Board believes to hold the information;
  - providing the applicant with contact details (if available) for the authority.
- 11.2 In some cases the IG co-ordinator may consider it appropriate to transfer the request to another body in respect of information which the Health Board does not hold. In such cases, the IG co-ordinator will consult the other body to ascertain whether it does hold the information and, if so, consider whether they should transfer the request to it. A request (or part of a request) should not be transferred to another body without confirmation that it holds the information. If this course of action is pursued, the applicant will be informed of this and updated on progress by the IG co-ordinator. The applicant will also be informed that they reserve the right to make an application to the other body themselves, as described in 11.1 above.
- 11.3 Before transferring a request for information to another body, the IG co-ordinator will consider:

- whether a transfer is appropriate; and if so
- whether the applicant is likely to have any grounds to object to the transfer.

If the IG co-ordinator considers that the applicant is likely to have grounds to object to the request being transferred, they must seek the applicant's consent first, and if the applicant refuses consent, the IG co-ordinator will suggest that the applicant makes a new request to the other body themselves.

- 11.4 Where a request, or part of a request, is transferred from one public body to another, the receiving body must comply with its obligations under the Act and Regulations the same as it would for a request received directly from an applicant. The time for complying with such a request is measured from the day the receiving body receives the request.
- 11.5 All request transfers should take place as soon as possible, and the applicant informed, once this has taken place. The target time for such transfers by the Health Board to another public body will be twenty working days.
- 11.6 Where the IG co-ordinator is unable to advise the applicant which public body may hold the requested information, or facilitate transfer of the request to another body, they should consider what advice, if any, they can provide to the applicant to enable them to pursue their request. This may include referral to not-for-profit sector information and advice providers, such as the Citizens Advice Bureau, or to the Information Commissioner.
- 11.7 A record will be kept on DATIX of all activity associated with the transfer of requests for information to other public authorities.

## **12. CONSULTATION WITH THIRD PARTIES**

### **12.1 *Where a request affects legal rights of a third party***

- 12.1.1 In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party. This may arise where information is subject to the common law duty of confidence or where it constitutes "personal data" as defined within data protection legislation. Unless an exemption provided for in the Act applies in relation to any particular information, the Health Board is obliged to disclose that information in response to a request.
- 12.1.2 In some cases disclosure of information cannot be made without the consent of a third party. For example, where information has been obtained from a third party, and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence, such that the exemption under Section 41 of the Act, or exception under Regulation 12 of the Regulations, would apply. In such cases, where practicable, the IG co-ordinator will seek consent to disclose from the third party.
- 12.1.3 Where information constitutes "personal data" under data protection legislation, the IG co-ordinator will consider Section 40 of the Act and Regulation 13 of the Regulations.

## **12.2 Consultation in non-legal circumstances**

12.2.1 Where the interests of the third party that may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate. The IG co-ordinator will undertake consultation where:

- the views of the third party may assist the Health Board to determine whether an exemption under the Act, or exception under the Regulations, applies to the information requested; or
- the views of the third party may assist the Health Board to determine where the public interest lies under Part II of the Act or Part 3 of the Regulations.

12.2.2 The IG co-ordinator may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, they will consider the most reasonable course of action to take, in light of the requirements of the Act, Regulations and the individual circumstances of the request.

12.2.3 Consultation will be unnecessary where:

- the public body does not intend to disclose the information, relying on some other legitimate ground under the terms of the Act or Regulations;
- the views of the third party can have no effect on the decision of the body, for example, where there is other legislation preventing or requiring the disclosure of this information;
- no exemption under the Act or exception under the Regulations provisions apply, therefore information must be provided.

12.2.4 A record will be kept of all contacts with third parties in regard to consultations and decision making on the disclosure of information.

## **12.3 Consultation with a number of third parties**

12.3.1 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the IG co-ordinator will consider consultation with that organisation using Standard Letter template 15.

## **12.4 Where there is no response or a refusal to consent by the third party**

12.4.1 The fact that a third party has not responded to consultation does not relieve the Health Board of its duty to disclose information under the Act or Regulations, or its duty to reply within the time specified in the Act or Regulations.

12.4.2 In all cases, it is for the Health Board, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act or Regulations. A refusal to consent to disclosure by a third party does not, in itself, mean that information should be withheld.

## **13. CHARGES AND FEES**

### **13.1 Fees, charges and timescales**

- 13.1.1 All charges for information requests must comply with the Health Board's Information Requests Charging Regime <http://www.wales.nhs.uk/sitesplus/861/page/41203>.
- 13.1.2 If it is identified that a charge should be applied for the requested information the IG co-ordinator will issue a Fees Notice to the applicant, explaining the reasons why the charge applies using Standard Letter template 4.
- 13.1.3 Once a Fees Notice is issued to an applicant the 'clock stops' in regards to compliance with the twenty working day timescale.
- 13.1.4 Applicants will have 60 working days to pay the fee, beginning with the day on which the Fees Notice was issued. If no fee is received within the time frame the Health Board is not obliged to comply with the request, therefore the request will be closed. This action will be recorded onto DATIX.
- 13.1.5 If the applicant agrees to pay the requested fee, the 'clock' will start again on the day the fee is received by the Health Board, from the point within the twenty working days that it 'stopped'. The applicant will then be provided with the requested information. This action will be recorded onto DATIX.

## **13.2 Publication Scheme**

- 13.2.1 The Act requires the Health Board to make clear any charges which apply to information they routinely make available. The scheme allows for fees to be charged where it can be justified and requires these charges to be published.
- 13.2.2 The Act allows the Health Board to use their discretion in determining the level of charges it applies to routinely available information.
- 13.2.3 The Information Commissioner's Office (ICO) provides general guidance on the levels which can be applied to such information.
- 13.2.4 The Fees Regulations do not apply to information that is routinely made available, unlike information that is disclosed for a specific request.

## **13.3 General rights of access under FOIA**

- 13.3.1 The Health Board may apply a fee in accordance with the Fees Regulations made under the Act, in respect of requests made under general rights of access. There is no obligation to charge a fee for requested information.
- 13.3.2 The Fees Regulations do not apply:
- to material made available under a Publication Scheme under Section 19 of the Act, see point 7.2 above;
  - to information which is reasonably accessible to the applicant by other means within the meaning of the exemption provided for at Section 21 of the Act;

- where provision is made by or under any enactment as to the fees that may be charged by the public body for disclosure of the information as provided in Sections 9(5) and 13(3) of the Act; or
- to environmental information, see point 13.4 below.

13.3.3 In cases where the appropriate limit has not been exceeded, the maximum fee that could be charged is based on the Health Board's estimate of costs that it would, reasonably be expected to incur. For example;

- putting the information in the applicants preferred format;
- photocopying or printing the requested information;
- postage and other forms of communicating the information.

#### **13.4 General rights of access under EIR**

13.4.1 Regulation 8(1) of the Regulations does not require charges to be made. However, it does allow the Health Board discretion to make a reasonable charge for providing environmental information. For example:

- putting the information in the applicants preferred format;
- photocopying or printing the requested information;
- postage and other forms of communicating the information.

13.4.2 Regulation 8(2) sets out two circumstances in which no charges can be made:

- Access to public registers or lists of environmental information;
- Inspection of environmental information on the Health Board's premises.

13.4.3 The Regulations do not allow the Health Board to charge for staff time incurred when dealing with requests. For example, when:

- determining whether the Health Board holds the information requested;
- locating the information or documents containing the information;
- retrieving such information or documents; and
- extracting the information from a document, including editing or redacting

13.4.4 Under EIR there is no 'cost limit' for dealing with requests. However, requests that cost a disproportionate amount can be refused on the basis that they are manifestly unreasonable, and even then would be subject to a public interest test.

13.4.5 The Health Board will consider the costs for complying with environmental information requests on a case by case basis.

#### **13.5 The appropriate limit**

13.5.1 The appropriate limit for the purposes of Section 12 and 13 of the Act is £450.00. The hourly rate when estimating staff-time costs is set at £25.00 per person, per hour.

13.5.2 The system of determining whether the appropriate limit would be exceeded should be simple to calculate in the majority of cases. It will often be immediately obvious

that the cost will not exceed the appropriate limit. Therefore, the Health Board will not need to estimate the costs of such requests for the purpose of charging.

13.5.3 If requests cost more than the appropriate limit to answer, the Health Board is not obliged to answer the request under Section 1 of the Act. However, the Health Board should follow the systems for the Provision of Advice and Assistance to Applicants, see point 10 above.

13.5.4 The Fees Regulations state that the Health Board may take the following into account when estimating whether the appropriate limit has been exceeded:

- determining whether the Health Board 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.

13.5.5 The Health Board may not take into account any costs other than those set out in the Fees Regulations. For example:

- the Health Board cannot charge for the time taken to determine whether an exemption under the Act applies to the requested information;
- for legal costs incurred to decide if an exemption applies;
- for contacting third parties.

13.5.6 If after providing advice and assistance as required under Section 16, the request is still over the appropriate limit, the IG Co-ordinator will inform the applicant that it is estimated that the appropriate limit has been exceeded. This applicant should be notified as soon as possible, certainly before the 20 day time limit has elapsed.

13.5.7 The Health Board will then:

- decide not to provide the information;
- answer and charge the permitted fee; or
- answer without charging.

13.5.8 Unlike the Act there is no appropriate 'cost limit' under the Regulations, therefore all requests must be dealt with regardless of costs unless an exception applies or the request is considered manifestly unreasonable. Such requests would only be refused subject to a public interest test.

## 13.6 ***Aggregated requests***

13.6.1 In certain situations, the costs of answering more than one information request can be added together or aggregated for the purpose of estimating whether the appropriate limit would be exceeded in relation to any one of those requests. The Fees Regulations state that requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to the Health Board;
- the request must be either from the same person, or from different persons who appear to the Health Board to be acting together or as part of a campaign;

- the requests must relate to the same or similar information; and
- they must have been received by the Health Board within a space of 60 consecutive working days.

For example, if the Health Board had previously answered a request which cost £350 to comply, and subsequently receives a second related request costing £400 to comply, the aggregated cost of £750 is more than the appropriate limit. The IG co-ordinator, with assistance from a member of the IG team, will consider whether or not to comply with the second request. If the Health Board complies with the request, the maximum that could be charged in reliance with Section 13 of the Act is £350 plus the cost of communicating the second response. The IG co-ordinator will be required to explain to the applicant that the aggregated costs exceed the appropriate limit which allows a fee to be charged or refused in accordance with Section 12 exemption.

13.6.2 If the Health Board regularly receives requests for the same or similar information, therefore consideration should be given to publishing it via the Publication Scheme.

### **13.7 Mixed requests**

13.7.1 A mixed request is when part of the information requested is regulated by various access to information regimes. The most likely regimes to be encountered are:

- Freedom of Information Act 2000;
- Environmental Information Regulations 2004;
- Data Protection Act 2018, 'Subject Access' requests.

13.7.2 Under general rights of access, requests for personal information would not usually be provided. However, if an applicant is requesting their own personal information, then these requests should be considered instead as 'Subject Access' requests under Section 7 of the Data Protection Act 2018. The IG administrator should issue a notification to the applicant by using Standard Letter template 3.

13.7.3 When dealing with mixed information requests, see the Health Board's Information Requests Charging Regime, for further information see:

<http://www.wales.nhs.uk/sitesplus/861/page/41203>

## **14. COMPLAINTS AND FEEDBACK**

14.1 All complaints will be dealt with in accordance with the Freedom of Information Internal Review Process. Complaints should be forwarded to the Information Governance office, Wrexham Maelor Hospital.

14.2 A letter of acknowledgement will be issued stating that the complaint will be internally reviewed within 30 working days, using Standard Letter template 12.

14.3 The internal review will involve a review of the request handling process. This will be carried out by an IG manager who has not been involved with the collating and drafting of the initial request, but who has a well-developed understanding of the legislation, including the exemptions and public interest test.

- 14.4 The outcome of the internal review will be notified to the complainant in writing within 30 working days, giving reasons for any decisions taken. Where the timescale cannot be met, a holding letter will be issued to the complainant with an estimated response time.
- 14.5 All complainants will also be informed of their right to complain directly to the Information Commissioner if they are dissatisfied with the outcome of the internal review, and will be given the Information Commissioner's contact details.

## **15. ACCESSING AND MAINTAINING THE PUBLICATION SCHEME**

- 15.1 The Communications team, have produced a guide to the specific information that the Health Board holds, which is contained within the Scheme's seven classes of information. The Communications team will ensure that any new information which is uploaded to the internet site, is reviewed first to ensure that it is easily identifiable and accessible to the general public.
- 15.2 All directors and senior managers must ensure that the Publication Scheme is considered when preparing any information for the public to be placed on the internet site.
- 15.3 The IG and Communications teams will review the Publication Scheme in terms of content on a regular basis.

## **16. MANAGEMENT AND RETENTION OF REQUEST DOCUMENTATION**

- 16.1 All documentation relating to individual Act and Regulations requests will be recorded within individual 'request records' by the IG administrator and IG co-ordinator. Each request record; electronic or manual, will reflect the unique request identifier as allocated by the DATIX system.

### **16.2 *Electronic request records***

- 16.2.1 Where possible, request records will be stored and managed electronically on DATIX.
- 16.2.2 Manual documentation will be scanned and stored within the electronic request record, together with the electronic documents.
- 16.2.3 Once the request is closed all manual documents will be destroyed.

### **16.3 *Manual request records***

- 16.3.1 Where it is not practical to store all documentation electronically i.e. volume of manual documents too large to scan, the information should then be maintained in a manual case record. This manual record should include copies of any electronic documentation to ensure that a complete record is maintained.
- 16.3.2 The manual request record will be stored and managed centrally by the IG administrator.

- 16.4 The life cycle of the request will be recorded onto the DATIX system, whereas the request record will contain the documentation relating to the decision making process. This will ensure that the Health Board maintains a complete and accessible record of the request. The request record is likely to be made up of:
- the original request for information;
  - records created during the administrative handling of the request;
  - records created whilst considering whether any exemptions or exceptions apply, including consultation with third parties;
  - records of any financial transactions;
  - any redacted versions of documents as evidence of what was released.
- 16.5 The Health Board will retain case records and DATIX records for Act and Regulations requests, in accordance with the Health Board's 'Records Management Policy' and will follow the guidelines set out in the Department of Health, Code of Practice for Records Management.
- 16.6 Requests will be retained for 3 years following disclosure. If the information of interest was redacted or the information requested was not disclosed, it will be retained for 10 years following disclosure.
- 16.7 The requests should be destroyed under confidential conditions.

## **17. LEGAL ADVICE**

- 17.1 The Lead Officer / Head of Information Governance together with the IG team, will be the source through which advice on the Act and the Regulations will be sought and provided.
- 17.2 If it is apparent that further advice is required on any given matter, the Lead Officer may determine that legal advice is required i.e. from the Health Board's contracted advisors or any Welsh Government appointed service.
- 17.3 The IG co-ordinator will maintain an electronic record of the advice sought, and any subsequent advice received.

## **18. RESOURCES**

- 18.1 The Information Governance team should have sufficient resource in order to assist staff in ensuring that the Health Board remains compliant against its legislative requirements.
- 18.2 Divisions / Corporate departments should ensure that the appointed staff dealing with FOI and EIR requests have sufficient time and resource in order to execute their responsibilities in complying with requests for information.

## **19. TRAINING**

- 19.1 All staff within BCUHB are mandated to undertake Information Governance training every 2 years, which covers all information necessary to ensure compliance.

19.2 The IG team will provide training and awareness for FOI leads throughout the organisation, on the implications of the FOIA and EIR, and on compliance with this operational procedure.

**20. IMPLEMENTATION**

This procedure will be published in line with the corporate policy on policies, and awareness raised via communication channels such as the corporate bulletin, IG bulletin, staff alerts and IG training.

**21. EQUALITY INCLUDING WELSH LANGUAGE**

The Information Governance team have responded to, and applied the requirements set out within the Welsh Language standards. This procedure does not have an adverse effect on the Welsh Language as it provides access to information regardless of the language used to request it.

**22. WELL-BEING OF FUTURE GENERATIONS**

This procedure has been developed in accordance with the Health Board’s well-being objectives and five ways of working under the Well-being of Future Generations Act 2015.

| Health Board Well-being Objectives:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>To improve physical, emotional and mental health and well-being for all;<br/>         To target our resources to those with the greatest needs and reduce inequalities;<br/>         To support children to have the best start in life;<br/>         To work in partnership to support people – individuals, families, carers, communities - to achieve their own well-being;<br/>         To improve the safety and quality of all services;<br/>         To respect people and their dignity;<br/>         To listen to people and learn from their experiences</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Five Ways of Working                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Evidence                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>Long Term, Prevention, Integration, Collaboration, Involvement</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>The purpose of this procedure is to ensure compliance with the Freedom of Information (FOI) Act 2000 and Environmental Impact Regulations (EIR) 2004 thus promoting a culture of openness and transparency for staff and patients.</p> <p>It is also aimed at providing assurance that an efficient and robust service / system is in place to comprehensively manage the handling of business information within the Health Board.</p> |

**23. ENVIRONMENTAL IMPACT**

There is no environmental impact identified for the implementation of this procedure.

**24. AUDIT**

- 24.1 Every attempt is made to ensure that new policies and procedures, revised policies and procedures are disseminated widely throughout BCUHB. However, all staff must also take responsibility for familiarising themselves with the above on a regular basis. All documents and guidance will be available on the BCUHB intranet site and disseminated via noticeboard announcements, bulletins etc.
- 24.2 Compliance with this procedure will be subject to periodic review. Any recommendations will normally be implemented after review by the Information Governance Group.
- 24.3 Regular audits to review compliance with the mandated Information Governance training will be carried out to ensure compliance with this procedure.
- 24.4 Audits will also be carried out by the Health Board's internal audit team.

## **25. REVIEW**

This policy adheres to legislative and statutory requirements and will be reviewed at least every 3 years or sooner if there is a change to legislation.

## **26. REFERENCE DOCUMENTS**

The legislation and guidance supporting this policy include but are not limited to:

- Freedom of Information Act 2000;
- The Environmental Information Regulations 2004;
- Data Protection Act 2018;
- Disability Discrimination Act 1995;
- Race Relations (Amendment) Act 2000;
- Equality Act 2006;
- Public Records Act 1958;
- FOI (Appropriate Limit and Fees) Regulations 2004;
- Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under Section 45 and 46 of the Act;
- Code of Practice on the Discharge of the Obligations of Public Authorities' Functions under Regulation 16 of the Regulations;
- Code of Openness in the NHS (1995);
- Welsh Health Circular (2000)71 For the Record – Managing Records in the NHS Trusts and Health Authorities;
- NHSx Records Management Code of Practice 2021

Appendix 1

**ENVIRONMENTAL INFORMATION REGULATIONS (EIR)  
RECORD OF VERBAL APPLICATION**

|                                      |                          |
|--------------------------------------|--------------------------|
| <b>Applicant Name:</b>               | <b>Date Received:</b>    |
| <b>Contact Details of Applicant:</b> |                          |
| <b>Address:</b>                      |                          |
| <b>Tel. No.:</b>                     |                          |
| <b>E-mail :</b>                      |                          |
| <b>Description of Request:</b>       |                          |
| <b>Request Received by:</b>          |                          |
| <b>Name:</b> _____                   | <b>Date:</b> _____       |
| <b>Title:</b> _____                  | <b>Department:</b> _____ |

## Appendix 2

### STANDARD LETTER (SL) TEMPLATES

|         |                                                         |
|---------|---------------------------------------------------------|
| Leaflet | Freedom of Information Act and EI Regulations Leaflet   |
| SL1     | Acknowledgement                                         |
| SL2     | Email to FOI Leads                                      |
| SL3     | Request for personal information                        |
| SL4     | Request for fee                                         |
| SL5     | Extra time required for PI (FOI) volume (EIR)           |
| SL6     | Costs limit (FOI) unreasonable-too general (EIR)        |
| SL7     | Information not held                                    |
| SL8     | Partial information held                                |
| SL9     | Provision of information - response                     |
| SL10    | Information withheld – exemption/exception used         |
| SL11    | Partial information withheld – exemption/exception used |
| SL12    | Complaint (internal review) acknowledgement             |
| SL13    | Complaint (internal review) response                    |
| SL14    | Holding Letter – delayed response anticipated           |
| SL15    | Consultation with third parties                         |
| SL16    | Closure letter – no response to clarification request   |

## Appendix 3

### DEFINITION OF ENVIRONMENTAL INFORMATION

Any information in written, visual, aural, electronic or any other material form on;

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to above;
- (c) measures (including administration measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analysis and assumption used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

## Appendix 4

### EXEMPT INFORMATION UNDER PART II OF THE FREEDOM OF INFORMATION ACT 2000

There are two types of class exemption:

- a) **Absolute**, which does not require a test of prejudice or the balance of public interest to be in favour of non-disclosure;
- b) **Qualified** by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclosure information.

With the exemption of Section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The **Absolute** exemptions under the Act are:

| <b>Section<br/>(of the Act)</b> | <b>Exemption</b>                                                               |
|---------------------------------|--------------------------------------------------------------------------------|
| 21                              | Information accessible to applicant by other means                             |
| 23                              | Information supplied by, or relating to, bodies dealing with security matters. |
| 32                              | Court Records                                                                  |
| 34                              | Parliamentary Privilege                                                        |
| 36                              | Prejudice to effective conduct of public affairs                               |
| 40                              | Personal Information                                                           |
| 41                              | Information provided in confidence                                             |
| 44                              | Prohibitions on disclosure                                                     |

The **Qualified** exemptions (which require the public interest test) are:

| <b>Section<br/>(of the Act)</b> | <b>Exemption</b>                                               |
|---------------------------------|----------------------------------------------------------------|
| 22                              | Information intended for future publication                    |
| 24                              | National Security                                              |
| 26                              | Defence                                                        |
| 27                              | International Relations                                        |
| 28                              | Relations within the United Kingdom                            |
| 29                              | The Economy                                                    |
| 30                              | Investigations and proceedings conducted by public authorities |
| 31                              | Law enforcement                                                |
| 33                              | Audit Functions                                                |
| 35                              | Formation of Government Policy                                 |
| 36                              | Prejudice to effective conduct of public affairs               |
| 37                              | Communications with Her Majesty, etc. and honours              |
| 38                              | Health and Safety                                              |
| 39                              | Environmental Information                                      |
| 42                              | Legal Professional Privilege                                   |
| 43                              | Commercial Interests                                           |

## Appendix 5

### EXEMPT INFORMATION UNDER THE ENVIRONMENTAL INFORMATION ACT 2004

All EIR requests are subject to the Public Interest test

| <b>Section<br/>(of the<br/>Regulations)</b> | <b>Exception</b>                                                                                                                  |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 12 (4) (a)                                  | Does not hold that information when an applicant's request is received                                                            |
| 12 (4) (b)                                  | Is manifestly unreasonable                                                                                                        |
| 12 (4) (c)                                  | Is formulated in too general a manner (provided assistance has been given to the applicant with a view to re-framing the request) |
| 12 (4) (d)                                  | Relates to unfinished documents or incomplete data                                                                                |
| 12 (4) (e)                                  | Would involve disclosure of internal communications                                                                               |

And if disclosure would adversely affect:

|            |                                                                                                                      |
|------------|----------------------------------------------------------------------------------------------------------------------|
| 12 (5) (a) | International relations, defence, national security or public safety                                                 |
| 12 (5) (b) | The course of justice, fair trial, conduct of a criminal or disciplinary inquiry                                     |
| 12 (5) (c) | Intellectual property rights                                                                                         |
| 12 (5) (d) | Confidentiality of public authority proceedings when covered by law                                                  |
| 12 (5) (e) | Confidentiality of commercial or industrial information, when protected by law to cover legitimate economic interest |
| 12 (5) (f) | Interests of the person who provided the information                                                                 |
| 12 (5) (g) | Protection of the environment                                                                                        |

**NB:** if the information requested is information on emissions, exceptions 12(5)(d) to (g) cannot be used

|    |               |
|----|---------------|
| 13 | Personal data |
|----|---------------|