

Thinking Differently



Dudley
Clinical Commissioning Group

FREEDOM OF INFORMATION POLICY

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REVIEWERS

This document has been reviewed by:

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NB: The version of this policy posted on the intranet must be a PDF copy of the approved version.

DOCUMENT STATUS

This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of the document are not controlled.

RELATED LEGISLATION

Data Protection Act 2018
The General Data Protection Regulations
The Access to Health Records Act 1990
The Freedom of Information Act 2000

REFERENCE DOCUMENTS

Freedom of Information Act 2000
HSC 1999/053, For the Record: Managing Records in NHS Trusts and Health Authorities, Department of Health 1999.
Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under section 45 of the Act, November 2002.
Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000, November 2002.
Records Management Policy
S45 Code of Practice

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1.0 INTRODUCTION

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

2.0 PURPOSE

2.1 The purpose of this policy is to ensure that Dudley Clinical Commissioning Group (Dudley CCG) is compliant with the Freedom of Information Act 2000.

2.2 Dudley CCG will use all appropriate and necessary means to ensure that they comply with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the FOIA.

2.3 The Policy will provide a framework within which Dudley CCG will ensure compliance with the requirements of the Act.

2.4 The Policy will underpin any operational procedures and activities connected with the implementation of the FOIA.

2.5 Assurance of compliance with the policy will be via Audit Committees who will receive regular performance updates.

3.0 WHO THIS POLICY APPLIES TO

3.1 The Freedom of Information Act Policy will apply to all Dudley CCG employees. It is the responsibility of all Dudley CCG's staff and Lay Members to comply with the Freedom of Information Act Policy. A failure to adhere to this policy and its associated procedures may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy. Managers are also responsible for ensuring staff are updated in regard to any changes in this policy.

4.0 KEY PRINCIPLES

4.1 The main features of the FOIA are:

A general right of access to recorded information held by public authorities, subject to certain conditions and exemptions. This places on Dudley CCG a duty to;

- inform the applicant whether they hold the information requested, and
- communicate the information to him or her, except in certain circumstances. Those circumstances include where information is exempted from disclosure because an absolute exemption applies or the public interest in maintaining a non-absolute exemption in question outweighs the public interest in disclosure

A duty on every public authority to adopt and maintain a Publication Scheme;

An office of the Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;

- 4.2 A duty on the Lord Chancellor to publish Codes of Practice for guidance on specific issues **The Freedom of Information Act Policy is a statement of what the CCG intends to do, to ensure compliance with the Act.**
- 4.3 The Policy supports the principle that openness and not secrecy should be the norm in public life. Dudley CCG wants to create a climate of openness and dialogue with all stakeholders and improved access to information about Dudley CCG will facilitate the development of such an environment.
- 4.4 Dudley CCG believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the General Data Protection Regulations and Data Protection Act 2018 and the Access to Health Record Act 1990, and is dealt with in Dudley CCG separately from this policy.
- 4.5 Dudley CCG believes that public authorities should be allowed to discharge their functions effectively. This means that Dudley CCG will use the exemptions contained in the FOIA where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.
- 4.6 Dudley CCG believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the FOIA. The Policy sets out a framework to provide this knowledge.
- 4.7 Dudley CCG believes that common standards are required to ensure that Dudley CCG is compliant with the FOIA. The Policy outlines the areas in which common standards will be established through other Dudley CCG policies and procedures.

5.0 PUBLICATION SCHEME

- 5.1 Dudley CCG will adopt the model Publication Scheme as developed by the Information Commissioner's Office (ICO) and link to CCG and constituent organisations' website as appropriate. The Publication Scheme is being formally monitored by the ICO. This is permissible under section 20 of the FOIA and ensures compliance with section 19 of the legislation.
- 5.2 Dudley CCG's Publication Schemes will be constantly updated, detailing the information that Dudley CCG publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Schemes will be available in hard copy by contacting the Communications Team.
- 5.3 Access to documents contained within the Publication Scheme are directly available via the website, due to this, reference to staff members names, job titles and contact information may be made available within the documents displayed on the website. Any documents that are loaded onto the Publication Scheme for the public to access must be within a PDF format to ensure that these cannot be altered.
- 5.4 The Publication Scheme will be subject to regular review in terms of content and accessibility. Documents that are automatically added to the publication scheme include

policies, procedures and patient information documents. To ensure that the information within the publication scheme is up to date the Communications Team will require regular updates from the Web Content Team in relation to documents uploaded onto the staff Intranet/Extranet sites.

- 5.5 The publication scheme content is managed by the Governance Team and facilitated by the communications team. Once the Governance Team have been informed about the new or updated document, this is then checked against the exemptions set within the Freedom of Information Act 2000. If an exemption applies to part of the document this may be redacted and the document can then be loaded onto the Publication Schemes. Prior to loading onto the Publication Schemes the document will be formatted into a PDF document so that it can be viewed easily, so that the document is secure, and so that it cannot be altered and resaved onto the website.

5.6 Compliance Statistics

Public authorities with over 100 Full Time Equivalent (FTE) employees should, as a matter of best practice, publish details of their performance on handling requests for information under the Act.

The CCG provides via the Audit Committee on a quarterly basis publish the performance details for the handling of all FOI requests in the quarter will be submitted to the Audit Committee for ratification, and will be placed on the CCG Publication Scheme webpage .

- The number of requests received during the period;
- The number of the received requests that have not yet been processed (you may also wish to show many of these outstanding requests have extended deadlines or a stopped clock; eg because a fee notice has been issued);
- The number of received requests that were processed in full (including numbers for those that were met within the statutory deadline, those where the deadline was extended and those where the processing took longer than the statutory deadline);
- The number of requests where the information was granted in full;
- The number of requests where the information was refused in full (you may wish to separately identify those where this was because the information was not held);
- The number of requests where the information was granted in part and refused in part;
- The number of requests received that have been referred for internal review (this needs only reporting annually).

When public authorities publish their statistics, they should do so on a quarterly basis, in line with central government.

5.7 Senior Executive Pay and Benefits

Public authorities should also ensure publication schemes contain data to deliver sufficient transparency regarding the pay and benefits of senior executives and their equivalents.

Pay – senior staff who form a public authority's senior management team and/or equivalent should on a quarterly basis publish details of pay and include names and/or job titles.

Hospitality – This should include any gifts, hospitality and benefits that are received from third parties (though this does not need to include small and insignificant items of hospitality, such as refreshments). This should include the name of the person or organisation that offered

the gift or hospitality and the type of gift or hospitality received. When publishing the names and other details of individual staff, public authorities need to bear in mind the general principle that it is acceptable to name senior managers who expect to be held publicly acceptable, but that this does not extend to junior staff who do not have the same expectation. The Information Commissioner's Office generally upholds this distinction.

The CCG Governance Team will be responsible in maintaining such registers and for the publication of this information on a quarterly basis on the CCG Publication Scheme webpage.

6.0 DISCLOSURE LOG

- 6.1 The disclosure log provides information which has been released via requests made to Dudley CCG for information under the FOIA. The disclosure log forms part of the CCG website and can link to documents available on the scheme.
- 6.2 The disclosure log provides information that has been released under a Freedom of Information Request. The Communications Team must ensure that information from multiple requests regarding the same subject is available via the disclosure log. If there has been a request made for information which is currently part of a public debate, for example the subject is within the media, this information must be published within the disclosure log.
- 6.3 By having an up to date disclosure log this can reduce the amount of time spent answering FOI requests as the information can be made readily available on the log. The disclosure log also benefits public understanding of information released, for example, if information released via a FOI request was published within the Media, the public will be able to check the information available within the Media with the information provided by Dudley CCG.
- 6.4 The requests within the disclosure log must remain anonymous and so the requester's details must not be made available. The only information provided on the disclosure log is the questions asked and the answers to these questions. The reference numbers will also be provided to provide a reference if a member of the public contacts Dudley CCG regarding the information contained within the disclosure log.

7.0 GENERAL RIGHTS OF ACCESS

- 7.1 Section 1 of the FOIA gives a general right of access to recorded information held by Dudley CCG, subject to certain conditions and exemptions. Any person making a written request for information to Dudley CCG is entitled:
 - a) to be informed in writing whether Dudley CCG holds the information of the description specified in the request, and
 - b) if Dudley CCG holds the information, to have that information communicated to them. This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if Dudley CCG holds the information, it must provide it, subject to certain conditions and exemptions. Dudley CCG will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.
- 7.2 A request for information under the general rights of access (section 8) must be received in writing, stating the name of the applicant and an address for correspondence, and a description of the information requested. For the purposes of general rights of access, a

valid request is to be treated as made in writing if it is transmitted by e-mail or fax, is received in legible form and is capable of being used for subsequent reference. It would facilitate processing of the request if applicants could also provide a daytime contact telephone number when making their written application for information. However, this is not a requirement under the Act and applicants can refuse to give this information.

- 7.3 There may be circumstances where a person is unable to frame their request in writing, for example owing to a disability. In these instances the public authority should make sure that assistance is given to enable them to make a request for information. For example, advising the person that another person or agency (such as Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf. Public authorities may also consider, in exceptional circumstances, offering to take a note of the application over the phone and sending the note to the applicant for confirmation. Once verified by the applicant this would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received.
- 7.4 The Communications Team must monitor the provision of information arising from requests under the Act.

8.0 CONDITIONS AND EXEMPTIONS

- 8.1 The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where Dudley CCG:
- a) reasonably requires further information in order to identify and locate the information requested, and
 - b) has informed the applicant of that requirement. Dudley CCG will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.
- 8.2 Under section 2 Dudley CCG does not have to comply with the duty to confirm or deny if an absolute exemption is applied. Dudley CCG will consider the duty to confirm or deny in relation to non absolute exemptions through a public interest test. This test is crucial in maintaining the exclusion of the duty to confirm or deny,
- a) absolute exemptions do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
 - b) qualified exemptions or non-absolute exemptions, involve a test of establishing prejudice as to whether harm or prejudice would result from the disclosure of information and/or whether it is in the balance of public interest to not disclose information. A qualified exemption may be applied if, in all circumstances, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether Dudley CCG holds the information. The Part II exemptions are listed in Appendix A of this Policy. Dudley CCG will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.
- 8.3 The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

- 8.4 The duty to comply with a request for information does not arise if Dudley CCG estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. Dudley CCG will work with applicants to keep compliance costs to a minimum but reserves the right to either refuse or charge for the communication of information that exceeds this limit. If upon agreement between the applicant and Dudley CCG, it is agreed to process an application that has been estimated by Dudley CCG to exceed the national Fees Regulations limit, the portion of cost over and above this limit will be notified to the applicant in a fees notice. The costs will be required to be paid in advance of the search for the information taking place. Applicants will be required to pay the fees within a period of three months beginning on the day on which the fees notice is given to them to maintain the validity of the request for information.
- 8.5 Dudley CCG is not obliged to comply with a request for information if the request is vexatious. Where Dudley CCG has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or subsequently similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. Dudley CCG will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

9.0 CHARGES AND FEES

- 9.1 Dudley CCG will generally not charge for information that it has chosen to publish in its Publication Scheme once linked documents make information available direct to applicants over the Internet. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM.
- 9.2 Dudley CCG will follow the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.
- 9.3 The fee calculation should be completed with the prior knowledge of the Communications Team. The first £450 (18 hours) worth of information/staff time must be provided free. If the cost of providing information comes to more than £450 the FOI Lead must work with a representative from Finance to complete a fees calculation. In order to complete a fees calculation the FOI Lead must complete part of the request in order to establish the time required to complete. A calculation is then made from the time taken in relation to the amount of information required. The fees calculation is then made by the £25 per hour of staff's time.
- 9.4 In all cases where Dudley CCG chooses to charge for information published as a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

10.0 TIME LIMITS FOR COMPLIANCE WITH REQUESTS

- 10.1 Dudley CCG must ensure its compliance with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All staff and Lay Members will be required to comply with the

requirements of these procedures; failure to do so may result in disciplinary action.

- 10.2 If the information requested by the applicant incurs a charge or a fee and the applicant has paid this within three months of receiving the fees notice, the working days in the period from when Dudley CCG issued the fees notice to when the fee is received by Dudley CCG will be disregarded for the purposes of calculating the twentieth working day following receipt. In essence, once the applicant has been requested to pay a fee the twenty working day clock is paused until the fee is paid.
- 10.3 Where a public authority asks for further information or clarification to enable the requester to meet the requirements of section 8, the 20 working day response period will not start until a satisfactory reply constituting a valid request is received. Letters should make clear that if no response is received, the request will be considered closed by the public authority. Two months would be an appropriate length of time to wait to receive clarification before closing a request. The CCG will at that time issue a letter to the requester, advising them that their request is now closed.
- 10.4 If Dudley CCG chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision (refusals will be in accordance with section 12.0).
- 10.5 Once a FOI request has been received and processed by the Communications Team the request will be forwarded to the relevant FOI Lead or Deputy who will be given a time scale to respond by.
- 10.6 Final sign off will be by the CCG Chief Operating and Finance Officer.

11.0 MEANS BY WHICH INFORMATION WILL BE CONVEYED

- 11.1 When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:
- a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant
 - b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information
 - c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant
- 11.2 Dudley CCG shall so far as reasonably practicable give effect to that preference in accordance with section 11 of the Act.
- 11.3 In determining whether it is reasonably practicable to communicate information by a particular means, Dudley CCG will consider all the circumstances, including the cost of doing so. If Dudley CCG determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, Dudley CCG will notify the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.

12.0 REFUSAL OF REQUESTS

- 12.1 As indicated previously, the provision of information does not arise if Dudley CCG:
- a) applies an absolute exemption under Part II of the Act, as illustrated in Appendix A, with the exclusion of section 21, or in all exemption circumstances of the case, if the public interest in maintaining the exclusion to provide the information, outweighs the public interest in disclosing the information and in disclosing whether Dudley CCG holds the information.
 - b) has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant,
 - c) under section 12 of the Act, estimates that the cost of compliance with the request or information exceeds the appropriate limit,
 - d) can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.
- 12.2 If Dudley CCG chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days by issue of a refusal notice. The applicant will also be informed of the procedures for making a complaint about the discharge of the duties of Dudley CCG under the Act.
- 12.3 If Dudley CCG decides that an exemption applies, a refusal notice will be issued within twenty working days. The notice will:
- a) state that fact,
 - b) specify the exemption in question, and
 - c) state (if that would not otherwise be apparent) why the exemption applies;
 - d) include a copy of the complaints process.
- 12.4 Where it is not possible to confirm that an exemption applies, Dudley CCG will inform the applicant that the issue remains under consideration and will estimate the date at which a firm judgement will be made. This will be notified to the applicant by issue of an exemption pending notice.
- 12.5 If Dudley CCG finds, while considering the public interest, that the estimate is proving unrealistic, Dudley CCG will endeavour to keep the applicant informed.
- 12.6 If Dudley CCG claims that the request is vexatious or repeated, and a refusal notice has already been issued to the applicant stating this fact, a further notice is not required.
- 12.7 The Communications Team will keep a record of all notices issued to refuse requests for information and any information regarding the Public Interest Test process.

13.0 PUBLIC INTEREST TEST

- 13.1 The Public Interest Test (PIT) is a meeting which is held to discuss whether or not a qualified exemption applies to the information. The PIT panel should be made up of the following:
- The Accountable Officer (or Chief Finance Officer if not appropriate)– to agree the final decision.
 - A member of the Communications Team– to provide the information about the request and the exemption.

- The relevant Manager, Head of or Director of the department which holds the information – to agree the final decision and provide any reasons for or against disclosure.
- 13.2 The PIT panel should consider the following when debating whether an exemption applies:
- The current public debate.
 - Health and safety.
 - How the information may affect third parties.
 - What information is already available to the public?
 - Media interests.
 - Does it show any decision making processes?
 - Does the information give a greater understanding of services provided by Dudley CCG?
 - Is the information confidential?
- 13.3 If the arguments against disclosure outweigh the arguments for disclosure then the exemption in question can be applied. If the argument against and for disclosure is equal the CCG must favour disclosure.

14.0 DUTY TO PROVIDE ADVICE AND ASSISTANCE

- 14.1 Dudley CCG will ensure that systems and procedures are in place to meet the duty of a public authority to provide reasonable advice and assistance to persons who make requests for information.
- 14.2 Dudley CCG must ensure that the systems and procedures employed conform to the Code of Practice issued under section 45 of the Act.
- 14.3 Should applicants or potential applicants need information about Freedom of Information, or need assistance to produce a written request for information, they must be given the contact details of the Freedom of Information Officer. Freedom of Information must be regularly updated in line with the FOIA and changes within contact details or Dudley CCG policy. The leaflets must be made available in all Dudley CCG buildings. The information must also be available on Dudley CCG's website.

15.0 TRANSFERRING REQUESTS FOR INFORMATION

- 15.1 A request can only be transferred where Dudley CCG receives a request for information that it does not hold but which is held by another public authority. If Dudley CCG is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). Dudley CCG recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person).
- 15.2 Upon receiving the initial request for information, Dudley CCG will process it in accordance with the Act in respect of information it holds. Dudley CCG will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, Dudley CCG must be certain as to the extent of the information relating to the request which it holds itself.

- 15.3 If Dudley CCG believes that some or all of the information requested is held by another public authority, Dudley CCG will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:
- a) contacting the applicant and informing him or her that the information requested may be held by another public authority;
 - b) suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
 - c) providing him or her with contact details for that authority.
- 15.4 If Dudley CCG considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, Dudley CCG will consider:
- a) whether a transfer is appropriate; and if so
 - b) whether the applicant is likely to have any grounds to object to the transfer;
- 15.5 If Dudley CCG reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so by issues of a transfer notice.
- 15.6 Where there are reasonable grounds to believe an applicant is likely to object, Dudley CCG must only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.
- 15.7 All transfers of requests will take place as soon as is practicable, and the applicant must be informed as soon as possible once this has been done. Where Dudley CCG is unable to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.
- 15.8 Where a request or part of a request is transferred from another public authority to Dudley CCG, Dudley CCG will comply with its obligations under Part I of the Act in the same way as it would for a request that is received direct from an applicant. The time for complying with such a request will be measured from the day that the receiving Dudley CCG receives the request.

16.0 CONSULTATION WITH THIRD PARTIES

- 16.1 Dudley CCG recognises that in some cases the disclosure of information may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the definition of the Data Protection Act (DPA)/General Data Protection Regulations (GDPR). Unless an exemption provided for in the Act applies in relation to any particular information, Dudley CCG will be obliged to disclose that information in response to a request.

- 16.2 Where a 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 an exemption would apply), Dudley CCG must consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party who may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.
- 16.3 If information constitutes "personal data" within the definition of the DPA/GDPR, Dudley CCG must comply with section 40 of the FOI Act that makes detailed provision for cases in which a request relates to such information and the interplay between the DPA and GDPR.
- 16.4 Dudley CCG will undertake consultation where:
- a) the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
 - b) the views of the third party may assist Dudley CCG to determine where the public interest lies.
- 16.5 Dudley CCG may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, Dudley CCG will consider what is the most reasonable course of action for it to take in light of the requirements of the Act, and the individual circumstances of the request. Consultation will be unnecessary where:
- a) Dudley CCG does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
 - b) the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
 - c) no exemption applies and so under the Act's provisions, the information must be provided.
- 16.6 Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation that can express views on behalf of those parties, Dudley CCG will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, Dudley CCG may consider that it would be sufficient to consult a representative sample of the third parties in question.
- 16.7 The fact that the third party has not responded to consultation does not relieve Dudley CCG of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for Dudley CCG, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. If a request for the disclosure of information to which the third party has previously objected is received, under the Act, Dudley CCG must review the decision to accept the objection and must provide the information unless it is satisfied that the objection was in fact a valid one.

17.0 PUBLIC SECTOR CONTRACTS

- 17.1 When entering into contracts Dudley CCG must refuse to include contractual terms that attempt to restrict the disclosure of information held by Dudley CCG and relating to the contract beyond the restrictions permitted by the Act. With the inclusion of existing contracts, unless an exemption provided for under the Act is applicable in relation to any particular information, Dudley CCG may be obliged to disclose that information in response to a request, regardless of the terms of any contract.
- 17.2 When entering into contracts with non-public authority contractors, Dudley CCG may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, Dudley CCG will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, Dudley CCG will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. Dudley CCG will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.
- 17.3 Dudley CCG will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided, only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public (otherwise than under the Act) would constitute a breach of confidence actionable by that, or any other person.
- 17.4 It is for Dudley CCG to disclose information as required by the Act, and not the non-public authority contractor. Dudley CCG will take steps to protect from disclosure by the contractor information that Dudley CCG has provided to the contractor that would clearly be exempt from disclosure under the Act, by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, Dudley CCG will not impose terms of secrecy on contractors.
- 17.5 When entering into contracts with non-public authority contractors, Dudley CCG will include information that the Act empowers the Lord Chancellor to designate as public authorities for the purposes of the Act, persons (or bodies) who provide under a contract made with Dudley CCG, any service whose provision is a function of that Organisation. Thus, some non-public authority contractors will be regarded as public authorities within the meaning of the Act, although only in respect of the services provided under the contract. As such, and to that extent, the contractor will be required to comply with the Act like any other public authority.

18.0 ACCEPTING INFORMATION IN CONFIDENCE FROM THIRD PARTIES

- 18.1 Dudley CCG will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of Dudley CCG's functions and it would not otherwise be provided.

- 18.2 Dudley CCG must not agree to hold information received from third parties "in confidence" which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Office of the Information Commissioner.

19.0 PROCESS FOR DISASATISFIED REQUESTERS

- 19.1 Dudley CCG operates an internal review process, details of which are included in all correspondence and the CCG internal Handbook. Under the S45 - Code of Practice, it is usual practice to accept a request for an internal view made within 40 working days from the date a public authority has issued an initial response to a request. Public authorities are not obliged to accept internal reviews after this date and should only accept requests made in writing. The CCG will acknowledge the internal review request and advise the requester of the target date for response. This should normally be within 20 working days of receipt. implement a procedure for dealing with complaints about the discharge of the duties of Dudley CCG under the Act, including the handling of requests for information.
- 19.2 The procedure will refer applicants to the right (under section 50 of the Act) to apply to the Information Commissioner if they remain dissatisfied with the conduct of Dudley CCG following attempts at local resolution of their complaint.

20.0 RECORDS MANAGEMENT

- 20.1 Dudley CCG has a separate Records Management Policy that will promote development of local procedures that will ensure compliance with Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000.
- 20.2 Information in the CCG is held for a specific length of time depending on the type of information it is. The length of time we retain information for is defined by the NHS retention schedule which can be viewed online here: [Records Management Code of Practice for Health and Social Care 2016](#).
- 20.3 Once information has been reviewed and is no longer required to be kept by a retention period the information will be securely destroyed. Information is securely destroyed via an approved confidential paper and shredding recycling contractor.
- 20.4 The policy and associated procedures will address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon Dudley CCG.

21.0 CORPORATE OVERSIGHT

- 21.1 The Director of Communications will oversee the implementation of this Policy, they have delegated responsibility for the Freedom of Information Act 2000 from the Accountable Officer. Final sign off on the letters will be from the Chief Operating and Finance Officer. Individual Senior Managers will ensure that the policy is implemented fully within their areas of responsibility.

22.0 TRAINING

- 22.1 The Director of Communications will ensure that regular training sessions on the FOIA are available for persons who require it in conjunction with our IG Team.

22.2 A FOI handbook has been developed and will be updated for key staff to be aware of a more detailed description of the exemptions and other legislation.

23.0 MONITORING COMPLIANCE

23.1 Staff are expected to comply with the requirements set out within the Freedom of Information Policy and related Policies. Compliance will be monitored via Manager and Information Governance reports, spot checks, completion of staff questionnaires, incidents reported, electronic audit trails and submission of Information Governance Toolkit.

23.2 No adherence to the Freedom of Information Policy and related Policies will result in local Disciplinary Policies being implemented.

23.3 For assurance a quarterly Freedom of Information Report will be presented by the Director of Communications to the Audit Committee. Individual Reports to the Audit Committee will continue to be provided quarterly.

Appendix A - Exempt Information Under Part II Of The Freedom Of Information Act 2000

There are two types of class exemption:

(a) **absolute**, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.

(b) **non absolute** exemption qualified by the public interest test, which require Dudley CCG to decide whether it is in the balance of public interest to not disclose information.

With the exception 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:

Section 21, Information accessible to applicant by other means

Section 23, Information supplied by, or relating to, bodies dealing with security matters.

Section 32, Court Records

Section 34, Parliamentary Privilege

Section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)

Section 40, Personal Information (where the applicant is the data subject)

Section 41, Information provided in confidence

Section 44, Prohibitions on disclosure

The exemptions that are **non absolute** exemptions qualified by the public interest test are:

Section 22, Information intended for future publication

Section 24, National Security

Section 26, Defence

Section 27, International Relations

Section 28, Relations within the United Kingdom

Section 29, The Economy

Section 30, Investigations and proceedings conducted by public authorities

Section 31, Law Enforcement

Section 33, Audit Functions

Section 35, Formulation of Government Policy

Section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)

Section 37 Communications with Her Majesty, etc. and honours

Section 38, Health and Safety

Section 39, Environmental Information

Section 40, Personal Information (where the applicant is not the data subject)

Section 42, Legal Professional Privilege

Section 43, Commercial Interests

A full copy of the Act including further information on the exemptions can be found on the HMSO website at

<http://www.legislation.hmso.gov.uk/acts/acts2000/20000036.htm>

Appendix B - Glossary of terms

Absolute exemption – applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of nondisclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.

Applicant - the individual(s), group or organisation requesting access to information under the Act.

Duty to confirm or deny - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority holds the information specified in the request or not.

Exemption Pending Notice – a written notification issued to an applicant stating it is not possible to confirm that an exemption applies and the issues remains under consideration within the Organisation. An estimated date at which a firm judgement will be made will be stated.

Fees Notice – a written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before the request lapses.

Fees Regulations – national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.

General right of access - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.

Information Commissioner - The Information Commissioner enforces and oversees the Data Protection Act, General Data Protection Regulations and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK, the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

Lord Chancellor's Department - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts.
- The appointment of judges, magistrates and other judicial office holders.
- The administration of legal aid.

- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

Public authority - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities include the principal authorities in national and local government, together with the principal authorities relating to the armed forces, National Health Service, education, the police and other public bodies and offices.

Publication Scheme - a scheme specifying the classes of information which a public authority publishes or intends to publish, the manner of publication and whether the information is available to the public free of charge or on payment.

Qualified exemption - Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.

Refusal Notice – a written notification issued to an applicant stating reasons for the decision to refuse the information requested including specification of any exemption that applies and providing information why the exemption applies if this is not already clear by statement of the exemption applied. It will include information about procedures for making a complaint and how to contact the Information Commissioner’s Office (ICO) if the applicant remains dissatisfied with the outcome of the Organisation’s investigation of the complaint.

Transfer Notice – a written notification issued to an applicant to inform of one/some of the following:

- advising the applicant that it does not hold part of the requested information, or all of it, whichever applies
- informing the applicant that the information requested may be held by another public authority suggesting that the applicant re-applies to the authority which the original authority believes to hold the information and where reasonable providing him or her with contact details for that authority requesting for consent to transfer of a request for information to another authority
- the date a transfer has been made of a request for information to another authority

Appendix C: Flow Chart for processing a FOI Request

