

# **GMSS Freedom of Information (FOI) Policy**

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Name	Role	Date	Version
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Finance Performance & Governance Committee	To recommend to go to SMT for approval	Feb 17	D0.4
SMT	Approved by SMT	Feb 17	V1.0
Mark Carroll	Head of Policy and Corporate Operations	Mar 19	D1.2
IG Team		Nov 19	D1.3
Governance Committee		Mar 20	1.3
SMT		Mar 20	1.3

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SMT		Mar 20	1.3

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### 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

## Contents

1. Introduction.....	5
2. Policy Statement.....	5
3. Scope .....	5
4. Duties & Accountability .....	6
5. Environmental Information Regulations 2004.....	8
6. The Freedom of Information Act 2000.....	8
7. Publication Scheme .....	9
8. Process.....	10
9. General Rights of Access .....	11
10. Conditions and Exemptions .....	11
11. The Public Interest Test.....	13
12. Charges and Fees .....	15
13. Time Limits for Compliance with Requests .....	15
14. Method of Providing Information .....	15
15. Refusal of Requests .....	16
16. Duty to Provide Advice and Assistance.....	17
17. Transferring Requests for Information.....	17
18. Consultation with Third Parties .....	17
19. Managing Contracts.....	18
20. Requests for internal review (complaints) .....	18
21. Records Management.....	20
22. Classification of Information.....	20
23. Monitoring Compliance .....	20
24. Equality Statement.....	20
25. Review.....	20
Appendices	
Appendix 1 - Definitions.....	22
Appendix 2 - Related Documents .....	23
Appendix 3 - References.. ..	24
Appendix 4 - Useful Contacts .....	25
Appendix 5 - FOI Process.....	26

## **1. Introduction**

This document sets out the Freedom of Information Policy for NHS Greater Manchester Shared Services (hereafter referred to as GMSS). It explains what GMSS will do to comply with its obligations under the Freedom of Information (FOI) Act 2000 (hereafter referred to as the Act).

This policy is guided by the Lord Chancellor's Code of Practice on the Discharge of Public Authorities Functions under Part 1 of the Freedom of Information Act 2000 issued under Section 45 of the Act.

This policy will be published on GMSS People Matters and GMSS website.

## **2. Policy Statement**

It is the duty of each NHS body to establish and keep in place arrangements for the purpose of monitoring and improving the quality of healthcare services. GMSS is committed to this duty and its implementation.

This policy applies to those members of staff that are employed by GMSS, both permanent and non-permanent, and for whom GMSS has legal responsibility, including contractors and those who undertake work on behalf of contractors.

GMSS supports the Government's commitment to greater openness in the public sector. The Act will further this aim of greater openness, by enabling members of the public to be able to access key documents and as such scrutinise and question the decisions of public authorities more closely and ensure that the services provided are properly delivered. GMSS wishes to create a climate of openness and dialogue with all of its stakeholders.

Improved access to information about GMSS will help to support this aim. GMSS will make such information available in a range of formats as required to meet the needs of the person requesting the information.

GMSS believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duty of confidence or the statutory provisions that prevent disclosure of personal identifiable information. This policy works to the current Data Protection Legislation.

GMSS believes that public authorities should be allowed to discharge their functions effectively. This means that we will use the exemptions contained in the Act where either:

- an absolute exemption applies, or;
- where a qualified exemption can reasonably be applied in terms of the public interest in disclosure.

## **3. Scope**

This policy will provide a framework within which GMSS will ensure compliance with the requirements of the Act and will underpin any operational procedures and activities connected with the implementation of the Act.

The aims of this policy are to:

- ensure all FOI requests are dealt with consistently and receive a high quality response
- ensure that GMSS complies with all relevant laws, regulations and guidance
- provide clear routes for members of the public to make contact with GMSS so that they can appropriately request documents and information
- ensure GMSS' publication scheme is up to date in order to provide access to information and to lessen the number of requests the public have to make
- ensure the necessary internal structures are in place for the Act to be complied with
- ensure staff at all levels are aware of their responsibilities with regards to the Act
- ensure timescales are met
- ensure GMSS's Senior Management Team is informed of the operation of the Act and the implications for the organisation

The Act applies to all recorded information held by GMSS.

Information can be held in any form including recording or notes of telephone calls, file notes, the web, and any other service GMSS may introduce in the future.

It is important that this policy is read carefully and understood. Any issues can be discussed with the Corporate Services / IG Team.

#### **4. Duties & Accountability**

##### **Organisational Responsibilities**

Ensure that there is always one person with the overall operational responsibility for FOI available within standard business hours.

- Publish and main a Publication Scheme.
- Provide relevant FOI training for all staff with FOI responsibilities.
- Provide clear lines of reporting and supervision for compliance with FOI.
- Develop and maintain clear procedures for recognising and responding to requests for information under FOI in a timely manner to meet the requirement to respond within the 20 working days.
- Support a comprehensive Records Management Strategy that compliments FOI.

##### **Corporate Responsibilities**

GMSS Senior Information Risk Officer (SIRO) has ultimate responsibility for the organisation's compliance with the Act.

Corporate Services / IG team will seek guidance and direction from the GMSS SIRO and Caldicott Guardian on issues relating to the application of statute.

Corporate Services / IG team is responsible for the handling, investigation and drafting responses to all FOI requests for GMSS.

GMSS needs to have secure and robust information governance processes in place to ensure it meets its statutory responsibilities. Information Governance encompasses all aspects of data handling and management, Freedom of Information being one of these.

Corporate Services / IG team will be involved in the decision making process and risk assessment in denying any request and claiming a qualified or absolute exemption. The SIRO will make the final decision with the support of the Corporate Services / IG Team.

Corporate Services Team / IG team supports GMSS and will ensure that the work required to comply with the Act is carried out. They also ensure that all processes and procedures put in place have been tested to ensure they meet the requirements of the Act.

The duties of the Corporate Services Team with the support of the IG team and where appropriate with the support of GMSS' SIRO and Caldicott Guardian, will include:

- providing advice and assistance to applicants requesting information under the Act; discussing the applicants particular requirements e.g. format in which the information is to be provided
- production and maintenance of the FOI policy and procedures and ensuring they are available in alternative formats as required
- promotion of FOI awareness across GMSS through training and the dissemination of the FOI procedures to all staff
- working with the Communications Team to ensure that all staff and the general public are provided with information about their rights and responsibilities under FOI, in an accessible format
- regularly updating the Publication Scheme
- maintaining appropriate records of requests for information.

All staff and contractors, and those who undertake work on behalf of contractors, are obliged to adhere to this policy. They should be familiar with the requirements of the Act and be aware of their personal responsibilities under the Act.

In certain circumstances, to support equality and diversity, line managers will need to consider individual requirements of staff to support good practice in complying with this policy.

### **Head of Service Responsibilities**

Checking the accuracy and content of a FOI response where deemed necessary.

- Advising the Corporate Services Team / IG Team of requests which may be subject to an exemption (or if they have reason to believe that the disclosure may be used in a contentious or malicious way) and ensuring that they nominate a senior person within the team or service to act as a single point of contact for the FOI request.
- Ensuring their service records and information is created, maintained, retained and disposed of in accordance with the GMSS Records Management Policies, policies and processes to enable easy identification and retrieval when required.
- Maintaining up to date information within the Publication Scheme.
- Acting appropriately to recommendations generated by the Corporate Services/IG Team.
- Ensuring information held within their service is provided to the Corporate Services/IG Team in line with timescales outlined by the Corporate Services Team / IG Team, including any opinion and supporting detail if there is a

concern that the information should not be disclosed.

- Ensuring written requests for information within their service that should be dealt with under the Act are referred immediately to the Corporate Services Team / IG Team.
- Providing assistance to the Corporate Services Team / IG Team with investigation into appeals and complaints.
- All Head of Services are responsible for ensuring that any records created and maintained by their respective service are registered on the organisations Information Asset Register, monitored by the IG Team and for the regular review and upkeep of that entry.

### **Staff Responsibilities**

All staff have a legal duty to preserve formal records. Staff must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices are not offences themselves, however they may lead to an inability to comply with requirements for the Freedom of Information Act.

Penalties can be imposed upon GMSS and staff breaching the FOI Act.

All staff will, through appropriate training and responsible management:

- Observe all forms of guidance, codes of practice and procedures about the storage closure retention and disposal of documents and records.
- Undertake any formal FOI training which GMSS deems to be relevant to that person's role
- Be aware that ultimately the general public may have access to any piece of information held within GMSS and must pay due regard to how they record information as part of their normal duties.
- On receipt of a FOI requests, which does not need to specify that it is a FOI request, immediately notify the Corporate Services Team / IG Team. This can be done by forwarding correspondence to [gmss.foi@nhs.net](mailto:gmss.foi@nhs.net)

### **5. Environmental Information Regulations 2004**

GMSS recognises that in addition to the Act, there is also an obligation on public authorities to respond to requests for environmental information under the Environmental Information Regulations (EIR) 2004.

GMSS will, as far as possible, respond to requests for environmental information using the same procedures as for responding to Freedom of Information (FOI) requests, while recognising that there are some differing regulations between EIR and FOI on the provision of information. These include rules governing what environmental information may be disclosed (exceptions under EIR) and the requirement to respond to requests for environmental information whether the request is in writing or verbal form.

### **6. The Freedom of Information Act 2000**

The main features of the Act are:

- a General Right of Access from 1 January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions.

- a duty on public authorities to: Inform the applicant whether they hold the information requested, and; Communicate the information to them, subject to certain conditions and exemptions
- a duty on every public authority to adopt and maintain a Publication Scheme. This duty has been applicable to the NHS since 1st January 2009
- the establishment of the office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice together with a First Tier Tribunal
- a duty on the Lord Chancellor to establish Codes of Practice for guidance on specific issues.

## 7. Publication Scheme

Section 19 of the Act makes it the duty of every public authority to adopt a Publication Scheme.

The Information Commissioner's Office (ICO) defines seven classes of information that a public authority should be making available via their publication scheme. These are:

- **Who we are and what we do:** Organisational information, locations and contacts, constitutional and legal governance
- **What we spend and how we spend it:** Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts
- **What our priorities are and how we are doing:** Strategy and performance information, plans, assessments, inspections and reviews
- **How we make decisions:** Policy proposals and decisions; Decision making processes, internal criteria and procedures, consultations
- **Our policies and procedures:** Current written protocols for delivering our functions and responsibilities
- **Lists and registers:** Information held in registers required by law and other lists and registers relating to the functions of the Authority
- **The services we offer:** Advice and guidance, booklets and leaflets, transactions and media releases; A description of the services offered.

GMSS' Publication Scheme details the information that it has published and intends to publish in the future. It details the format in which the information is available and whether or not a charge will be made for the provision of that information.

The ICO guidance is clear that an organisation should not create information purely for the purposes of completing the model publications scheme.

Below, we set out the information we envisage proactively publishing. By continually challenging ourselves to release as much information about our work as possible, in as timely and accessible way as possible, we can ensure that the body of information in the public domain grows in line with our growth as an organisation.

GMSS will publish and make available the following information:

- The minutes and papers of Senior Management Team meetings
- Information about the Senior Management Team
- Corporate communications
- A disclosure log of any information GMSS releases in response to specific FOI enquiries

- In response to specific FOI enquiries:
  - Monthly FOI statistics through the Key Stats Dashboard
  - Internal policies
  - Equalities analysis
  - The GMSS business plan
  - Annual reports

The Publication Scheme is available on the public website of GMSS and is available in all other formats on request.

The contents of the Publications Scheme will be regularly reviewed and updated.

Applications for information listed in the Publication Scheme may be received verbally or in writing.

## **8. Process**

All requests for information under the Act should be made in writing, in the form of a letter or email to GMSS' Corporate Services Team / IG Team. Contact details are outlined in Appendix 4.

The enquirer should clearly identify the documents or information that they require, and supply a return address for the delivery of the information. There will be two potential exceptions to the need for a request to be put in writing (outlined below).

The Act only covers requests for recorded information and does not cover instances where explanations, opinions, comment, interpretations or unrecorded discussions are requested.

Where a request does not give sufficient detail to enable GMSS to process the request, the Corporate Services Team / IG Team will contact the applicant and advise them of the information that is required to make their application and offer help with their request.

GMSS will accept verbal requests in circumstances where the enquirer would have great difficulty in putting a request in writing. On these occasions, the Corporate Services/IG Team will note as many details as possible, which must include contact information.

Requests for information specifically under the EIR can be accepted verbally. It is recommended that enquirers are still advised to put their request in writing, as this will ensure there is no ambiguity about their request. Where they still wish to make a verbal request the member of staff taking the call will note as many details as possible, which must include contact information.

The Corporate Services / IG Team will acknowledge receipt of the request within the first three full working days, and provide the documents/information, or an explanation about why the information has not been disclosed within 20 full working days.

All responses will be provided in the most appropriate format for the individual and will be approved and signed off by GMSS' Managing Director or within a delegated authority to the Head of Policy & Corporate Operation or the IG Manager.

A working day is defined by the Information Commissioner's Office (ICO) as one day within the working week (Monday to Friday).

It might sometimes be necessary to extend this timeframe, for example to assess the public interest in releasing information. In these circumstances, the Corporate Services Team / IG Team will respond within 40 working days and notify the requester.

Under the FOI Act, information may be withheld if it is covered by an exemption. There are two categories of exemptions: qualified and absolute. Information covered by a qualified exemption can only be withheld if the public interest in withholding the information is greater than the public interest in releasing it. Information covered by an absolute exemption is not subject to this public interest test and can be withheld.

See appendix 5 for the FOI process map.

## **9. General Rights of Access**

Section 1 of the Act gives a general right of access from 1 January 2005 to recorded information held by GMSS, subject to certain conditions and exemptions.

Any person making a request for information to GMSS is entitled to:

- be informed in writing, or any other appropriate format on request, whether GMSS holds the information described in the request; and
- have that information communicated to them if it is held by GMSS and is an appropriate format on request.

This is referred to as the “duty to confirm or deny”. These provisions are fully retrospective, meaning, that if GMSS holds the information when the request is received, it must be provided, subject to certain conditions and exemptions.

The Act states that requests for information under the General Rights of Access must be received in writing and to include the name of the applicant, an address for correspondence, and a description of the information requested. As long as the request has a valid email address for acknowledgment and response this is acceptable. The Corporate Services / IG Team will be able to provide assistance if necessary.

Requests transmitted by electronic means will be treated as written requests if they are received in legible form and contain sufficient information to process the request.

## **10. Conditions and Exemptions**

The “duty to confirm or deny” and to provide information is subject to certain conditions and exemptions.

The duty to confirm or deny does not arise where GMSS requires further information in order to identify and locate the information requested and had informed the applicant of that requirement. GMSS is required to contact the applicant for additional information should it be needed to respond to the request.

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.

The duty to comply with a request for information does not arise if GMSS estimates that the cost of compliance with the request would exceed the appropriate limit in

national fees regulations. GMSS will work with applicants to keep compliance costs to a minimum but reserves the right to either refuse to comply with the request or to charge for the communication of information that exceeds this limit.

GMSS is not obliged to comply with a request for information if the request is considered vexatious. Where GMSS 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 similar request from that person unless a reasonable interval has elapsed between the two requests. Corporate Services Team / IG Team will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

Under Section 2 of the Act, GMSS does not have to comply with the duty to confirm or deny if the information is exempt under the provisions of Part II of the Act, Sections 21 and 44. These provisions either confer an absolute exemption or a qualified exemption.

Qualified exemptions:

- information intended for future publication
- national security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise)
- defence
- international relations
- relations within the United Kingdom
- the economy
- investigations and proceedings conducted by public authorities
- law enforcement
- audit functions
- formulation of government policy
- prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
- communications with Her Majesty and honours
- health and safety
- environmental information (as this can be accessed through the Environmental Information Regulations)
- personal information (as this is covered by the General Data Protection Regulation); legal professional privilege
- commercial interests

Absolute exemptions:

- information accessible to the applicant by other means
- information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals process against such certificates)
- court records
- Parliamentary privilege (a certificate signed by the Speaker of the House for the House of Commons, or by the Clerk of the Parliaments for the House of Lords is conclusive proof that the exemption is justified)

- prejudice to effective conduct of public affairs (only applies to information held by House of Commons or House of Lords)
- personal information (as this is covered by the General Data Protection Regulation); information provided in confidence
- prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court

If GMSS intends to withhold the information, there is a duty to explain the decision. This should be done within 20 working days, however if GMSS needs to consider the public interest test it is entitled to a reasonable extended period. In this case, within the 20 working day period GMSS should provide an estimate of when it expects to reach a decision and stick to this unless it has a good reason not to. If, while trying to reach a decision, it is realized that the original estimate is unrealistic the applicant must be informed.

GMSS should keep a record of any instances where it fails to meet estimates.

The FOI Act itself should be consulted for more detailed information on each exemption. If there is any doubt over whether an exemption applies the decision will be escalated within GMSS and / or legal advice gained where necessary.

By applying an absolute exemption GMSS may refuse to confirm or deny whether it holds the information requested.

A qualified exemption also allows GMSS the same right to neither confirm nor deny but subject to a “public interest test”. This means that GMSS must demonstrate, in all circumstances of the case, that the public interest in refusing to confirm or deny outweighs the public interest in favour of disclosure.

## **11. The Public Interest Test**

The public interest will be considered in every case where a qualified exemption may apply.

Defining the public interest will vary according to the information being requested. It may often involve issues around accountability, transparent decision making and good management. When considering the public interest to reach a decision on a qualified exemption, GMSS will seek appropriate professional advice (this may include legal advice).

GMSS will aim to use the qualified exemptions sparingly and will, in accordance with Section 17 of the FOI Act, justify their use.

Most public bodies which govern access to information held by Government are based on the same building blocks:

- A general right of access to information held by public authorities
- The right of access is subject to a range of exemptions covering issues like security, international relations, formulation of government policy and commercial confidentiality
- Some of the exemptions are subject to a public interest test which requires the decision-maker to take public interest considerations into account when deciding whether to release information even where an exemption applies

This mechanism is referred to as a “public interest override” or “public interest test” because the public interest considerations “override” the exemption.

It is often suggested that the fact that the term “the public interest” is not defined in the FOI Act leads to difficulty. This should not be the case. From time to time weighing competing interests may be difficult. However, this does not mean that the nature of the task facing a public authority when applying the public interest test is unclear. In effect, something “in the public interest” is simply something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information.

The question of where the public interest lies has often been considered by the courts in media cases, particularly where an individual or organisation attempts to prevent publication of a story. The courts have often distinguished between things which are in the public interest from things which merely interest the public. It will be helpful to bear the distinction in mind. It is also important to bear in mind that the competing interests to be considered are the public interests favouring disclosure against the public (rather than private) interest favouring the withholding of information.

There will often be a private interest in withholding information which would reveal incompetence on the part of or corruption within the public authority or which would simply cause embarrassment to the authority. However, the public interest will favour accountability and good administration and it is this interest that must be weighed against the public interest in not disclosing the information. Of course, there will be many occasions when public and private interests coincide.

There is a presumption running through the Act that openness is, in itself, to be regarded as something which is in the public interest. Setting out the considerations for a public authority when adopting or reviewing its publication scheme, the Freedom Of Information Act 2000 requires that “... a public authority shall have regard to the public interest –

- (a) in allowing public access to information held by the authority, and
- (b) in the publication of reasons for decision held by the authority.”

It may be helpful to think about why openness should be regarded as being for the public good. In the Introduction to the Freedom of Information Act 2000, the Commissioner lists the following public interest factors that would encourage the disclosure of information:

- Furthering the understanding of and participation in the public debate of issues of the day. This factor would come into play if disclosure would allow a more informed debate of issues under consideration by the Government or a local authority. Promoting accountability and transparency by public authorities for decisions taken by them. Placing an obligation on authorities and officials to provide reasoned explanations for decisions made will improve the quality of decisions and administration
- Promoting accountability and transparency in the spending of public money. The public interest is likely to be served, for instance in the context of private sector delivery of public services, if the disclosure of information ensures greater competition and better value for money that is public. Disclosure of information as to gifts and expenses may also assure the public of the personal probity of elected leaders and officials

- Allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions
- Bringing to light information affecting public health and public safety

The Corporate Services Team / IG Team will work with GMSS' SIRO and Caldicott Guardian to decide whether to apply the Public Interest test.

GMSS' SIRO will have the final decision on whether the Public Interest test is applied.

If a decision is taken to exempt the information, then the SIRO will be required to provide justification with the appropriate exemption as to why the information should not be disclosed.

## **12. Charges and Fees**

The FOI Act and the associated Fees Regulations stipulate that GMSS cannot levy a fee for information unless there is a statutory basis for doing so or the amount of time taken to locate the information exceeds 18 hours.

However, GMSS is allowed to charge for disbursements related to the provision of information and any reformatting requested by the applicant provided it ensures that applicants are aware of any charges which may be made.

Where charges are applicable, a fees notice will be issued to the applicant, as required under 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.

## **13. Time Limits for Compliance with Requests**

GMSS is required to establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within 20 working days of a request, in accordance with Section 10 of the Act.

When a charge or a fee has been incurred and the applicant has paid this in accordance with Section 9(2) of the Act, the working days in the period between the applicant's receipt of the fees notice and GMSS's receipt of their payment will not be included when calculating the 20 working days for responding to a request.

If GMSS chooses to apply an exemption of 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 20 working days informing the applicant of this decision.

If GMSS is unable to reach a decision within the 20 working day period on whether or not an exemption is to be applied the applicant must be informed.

## **14. Method of Providing Information**

In accordance with Section 11 of the Act and where it is reasonably practicable, GMSS will convey information by any one or more of the following means, subject to any preference expressed by the applicant:

- the provision to the applicant of a copy of the information in permanent form or

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

If GMSS decides that it is not reasonably practicable to comply with any preference expressed by the applicant, it will inform the applicant of the reasons for its decision and will discuss if it is possible to provide the information by another means.

GMSS will establish systems and procedures to monitor the provision of information arising from requests under the Act.

## **15. Refusal of Requests**

As indicated above, the duty to confirm or deny the existence of information or provide the information to the applicant does not arise if GMSS:

- applies an exemption under Part II of the Act
- has issued a fees notice to the applicant under Section 9 of the Act and the fee has remained unpaid after a three month period
- estimates that the cost of compliance with the request for information exceeds the appropriate limit. If the cost exceeds the appropriate limit, information may still be provided up to £450
- can demonstrate that the request for information is vexatious or repeated

If GMSS intends to refuse a request for information, the applicant will be informed of the reasons for this decision within 20 working days. The applicant will also be informed of their rights, conferred by Section 50 of the Act, to appeal to the Information Commissioner against the decision if the applicant is not satisfied with the outcome of the internal complaints procedure.

If GMSS decides to refuse to confirm or deny whether it holds the information requested and / or to refuse to provide that information, an exemption notice will be issued to the applicant within 20 working days which will:

- state the fact
- specify the exemption in question; and
- explain why the exemption applies (if it is not already apparent)

If GMSS is unable to reach a decision on the application of an exemption within the 20 working day period then the applicant will be given notice that no decision has been reached and an estimate of the date by which it expects that the decision will have been reached.

As indicated by the Lord Chancellor's Code of Practice, issued under Section 45 of the Act, GMSS will endeavour to make such estimates realistic and reasonable. If an estimate is exceeded, the applicant will be given a reason for the delay and offered an apology. If GMSS finds, whilst considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. GMSS will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify any problems and rectify them.

If applying a qualified exemption under Section 2 of the Act using the "public interest

test”, GMSS will, in its notice to the applicant, state the reasons for claiming:

- that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the information is held; or
- that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The notice should not involve the disclosure of information which would itself be exempt information.

If GMSS refuses a request because it can be demonstrated that it is vexatious or repeated and a notice has already been issued to the applicant stating this fact, a further notice is not required.

GMSS will keep a record of all notices issued to refuse requests for information.

## **16. Duty to Provide Advice and Assistance**

GMSS will ensure that systems and procedures are in place to provide advice and assistance to members of the public who propose to make, or have made requests for information. This is a duty under Section 16 of the Act.

GMSS will ensure that the systems and procedures to provide advice and assistance also conform to the Lord Chancellor’s Code of Practice issued under Section 45 of the Act.

## **17. Transferring Requests for Information**

When responding to requests for information, GMSS can only provide information that it holds.

If GMSS receives a request for information which it does not hold (or holds only in part) but which is held by another public authority, then it will consider what would be the most helpful way of assisting the applicant with their request. This is likely to involve:

- informing the applicant that the information requested may be held by another public authority
- suggesting that the applicant re-applies to that authority
- providing the applicant with contact details for that authority
- transferring a request to that authority where they hold information relating to part of a request made to GMSS, and vice versa, due to the closer working arrangements of these two bodies. Any transfer of a request must be with the consent of the applicant

## **18. Consultation with Third Parties**

There will be instances where information requested under the Act will include information relating to third parties (i.e. references to organisations or individuals other than GMSS). Such information will normally be disclosed unless:

- It is “personal data”, as defined by the General Data Protection Regulation and in guidance issued by the Information Commissioner

- Where disclosure without consent would constitute an actionable breach of confidence as described in Section 41 of the Act
- Where common law duty of confidence is owed (e.g. information concerning a deceased patient)

Where none of the conditions described above apply and where there are no other exemptions, GMSS will normally be obliged to disclose the information requested.

GMSS 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 their functions and it would not be otherwise provided.

GMSS will 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 and capable of being justified to the Information Commissioner.

## **19. Managing Contracts**

When entering into contracts, GMSS will refuse to include contractual terms which seek to restrict the disclosure of information relating to the contract, beyond the restrictions permitted by the Act or the General Data Protection Regulation. Unless an exemption provided for under the Act is applicable in relation to any particular information, GMSS will be obliged to disclose that information in response to a request, regardless of the terms of the contract.

When entering into contracts with non-public authority contractors, GMSS may be asked to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance are exempt from disclosure. Such clauses will be rejected wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, GMSS will investigate the option of agreeing with the contractor a schedule of the contract which clearly identifies information which should not be disclosed. When drawing up any such schedule GMSS will be mindful that any restrictions on disclosure could potentially be overridden by obligations under the Act and that such confidentiality provisions must be for good reasons and be capable of being justified to the Information Commissioner.

In order to avoid unnecessary secrecy, any such constraints on disclosure will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, GMSS will not impose terms of secrecy on contractors.

GMSS will not agree to hold information “in confidence” where it is not in fact confidential in nature, that is, where the information has been obtained by GMSS from another organisation or individual and the disclosure of the information to the public, otherwise than under the Act, would constitute an actionable breach of confidence.

## **20. Requests for internal review (complaints)**

Although a public body is not legally required to have an internal review procedure, the Section 45 Code of Practice makes it clear that it is good practice to have a review procedure in place.

The internal review procedure will ensure applicants are able to ask GMSS for an internal review if they are dissatisfied with the response to a request or the handling of a request.

The review will consider:

- whether the complainant was given adequate advice and guidance about their request for information
- whether the procedures for responding to requests for information were followed correctly in this instance
- whether, if an exemption was applied, the reasons were explained adequately to the complainant

Internal reviews should be conducted by a person who was not party to the original decision on whether to release the information requested.

An internal review must be a fair and impartial review of the decisions made during the original decision of whether to release the information.

The person conducting the review must consider the information released against the information requested and make a full review of the papers associated with the original application.

It is best practice that the internal reviewer discusses the decisions made with the staff member, or members, who dealt with the original application in order to build a full picture as to how decisions were made.

The circumstances relating to the original decision may have changed between the time GMSS made its decision about a request and the time it undertakes an internal review. The ICO guidance states that public bodies should reconsider the exemption and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least within the agreed time frames.

The FOI Act does not stipulate a time limit for completion of an internal review but the Section 45 Code states that they should be dealt with in a reasonable time and the ICO recommends that:

- reviews should be completed within 20 working days of receiving the complaint
- for complex complaints, or where it is necessary to reconsider the public interest test – reviews should be completed within 40 working days of receipt; and
- if it appears that the deadline will not be met then the applicant must be advised as soon as possible, and a second deadline set by which a response will be sent

The internal review can have two outcomes:

- the original decision is reversed or
- the original decision is upheld

Where the original decision is reversed the applicant must be told and made aware of when they can expect the information originally requested to be provided to them.

Where the original decision is upheld the applicant must be told and made aware of their further rights of appeal to the ICO.

The outcome of the internal review must be recorded.

Complaints to the Information Commissioner should be addressed to:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **21. Records Management**

GMSS has systems and processes in place for managing its corporate records in both electronic and paper format in order to respond effectively to requests for information. The Records Management Policy and supporting procedures will be compliant with the Department of Health guidance "Records Management: NHS Code of Practice" as well as the "Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000".

## **22. Classification of Information**

GMSS shall implement appropriate information classifications controls, based upon the data security legislation.

Further details of the classifications controls can be found in the Information Classification Policy and the Records Management Policy.

## **23. Monitoring Compliance**

GMSS will regularly review its Freedom of Information arrangements to ensure compliance with this policy.

The Corporate Services Team / IG Team will maintain records of all FOI requests for monitoring purposes in accordance with the Lord Chancellor's Code (see Appendix 3).

The Corporate Services Team / IG Team will produce monthly reports to the Governance Committee to assess GMSS' performance in meeting the statutory timeframes and applicant satisfaction with the process.

## **24. Equality Statement**

GMSS aims to design and implement services, policies and measures that are fair and equitable. As part of its development, this policy and its impact on staff, patients and the public have been reviewed in line with the GMSS legal equality duties. The purpose of the assessment is to improve service delivery by minimising and if possible removing any disproportionate adverse impact on employees, patients and the public on the grounds of race, socially excluded groups, gender, disability, age, sexual orientation or religion/belief.

The Equality Analysis has been completed and any associated policies and procedures will be analysed accordingly.

## **25. Review**

The policy will be reviewed every 2 years or as and when significant changes make earlier review necessary

## **Appendices:**

### **Appendix 1 - Definitions**

Publication Scheme	A Publication Scheme contains all published corporate information held by a public authority. It is both a public commitment to make certain information available and a guide to how that information can be obtained. GMSS has adopted a model publication scheme and will be reviewed annually by the Corporate Services Team / IG Team in partnership with the SIRO and Caldicott Guardian to ensure they are accurate and up to date.
Vexatious request	The dictionary definitions refer to “causing annoyance or worry”. S14 (1) of the Act states that public authorities do not have to comply with vexatious requests. There is no public interest test. To decide whether a request is vexatious, its context and history need to be looked at. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. Guidance and support is available from the Corporate Services Team / IG Team.
“Recorded Information Held”	Recorded information held is that which has been captured and can be reproduced in a readable form. The Act does not oblige GMSS to provide analysis of any “raw data” which it may hold, e.g. entries to a database, unless such analysis already exists.

## **Appendix 2 - Related Documents**

Other GMSS policies linked to this policy are:

- Data Security & Protection Framework
- Data Security & Protection Policy
- Records Management Policy
- Acceptable Use Policy
- Secure Transfer of Data Policy
- Information Risk Policy
- Information Security Policy

### **Appendix 3 - References**

**Freedom of Information Act 2000**

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

**General Data Protection Regulation**

<https://gdpr-info.eu/>

**Information Commissioners Office – Freedom of Information Act webpage**

<http://ico.org.uk/>

**Code of Practice on the discharge of public authorities' functions under Section 45 of the Freedom of Information Act**

<http://www.justice.gov.uk/downloads/information-access-rights/foi/code-of-practice-datasets.pdf>

**Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000**

<https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf>

#### **Appendix 4 – Useful contacts**

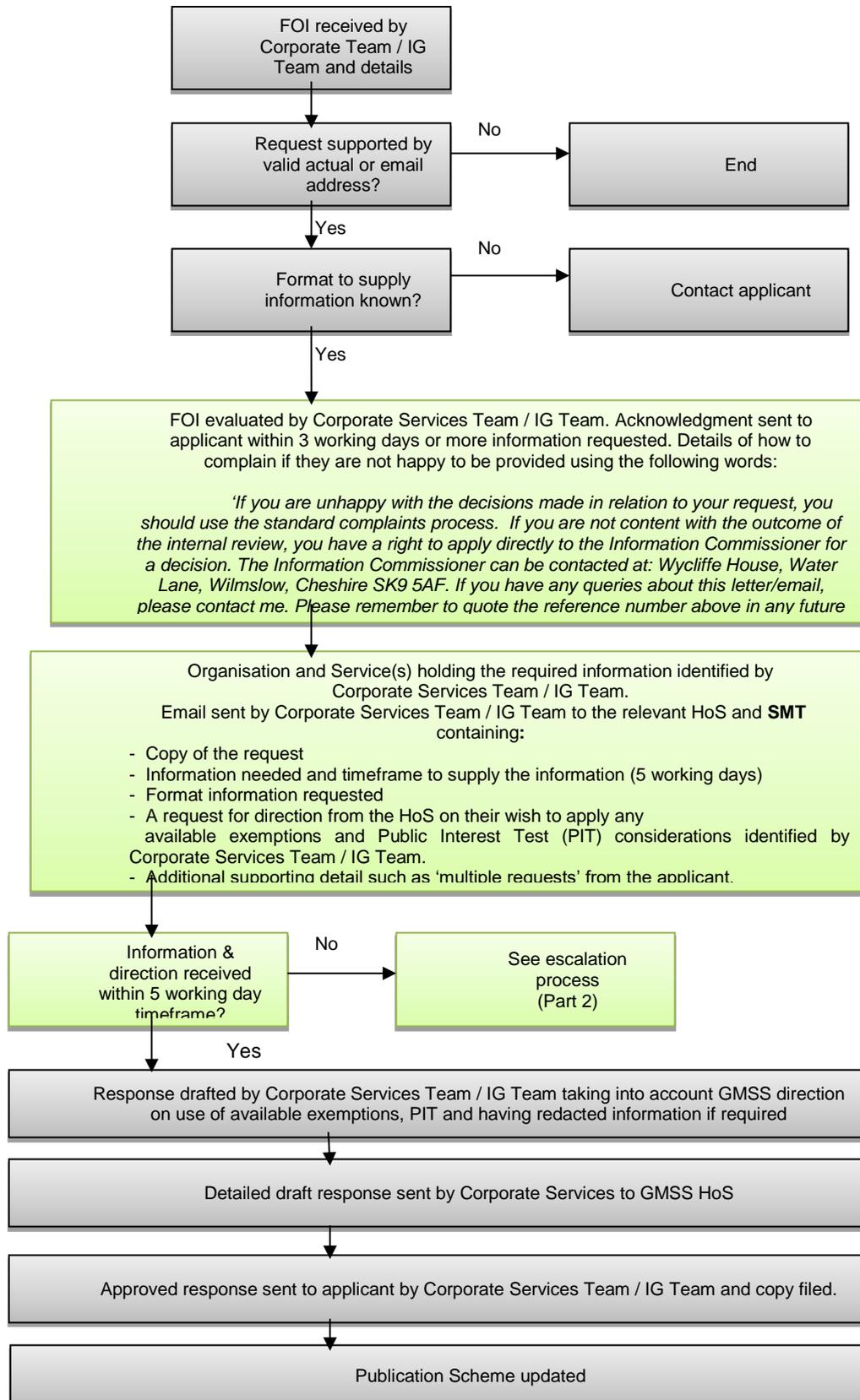
Caldicott Guardian  
Greater Manchester Shared Services  
Ellen House  
Waddington Street  
Oldham OL9 6EE  
Email: [gmss.ig@nhs.net](mailto:gmss.ig@nhs.net)

Corporate Services Team  
Greater Manchester Shared Services  
Ellen House  
Waddington Street  
Oldham OL9 6EE  
Email: [gmss.foi@nhs.net](mailto:gmss.foi@nhs.net)

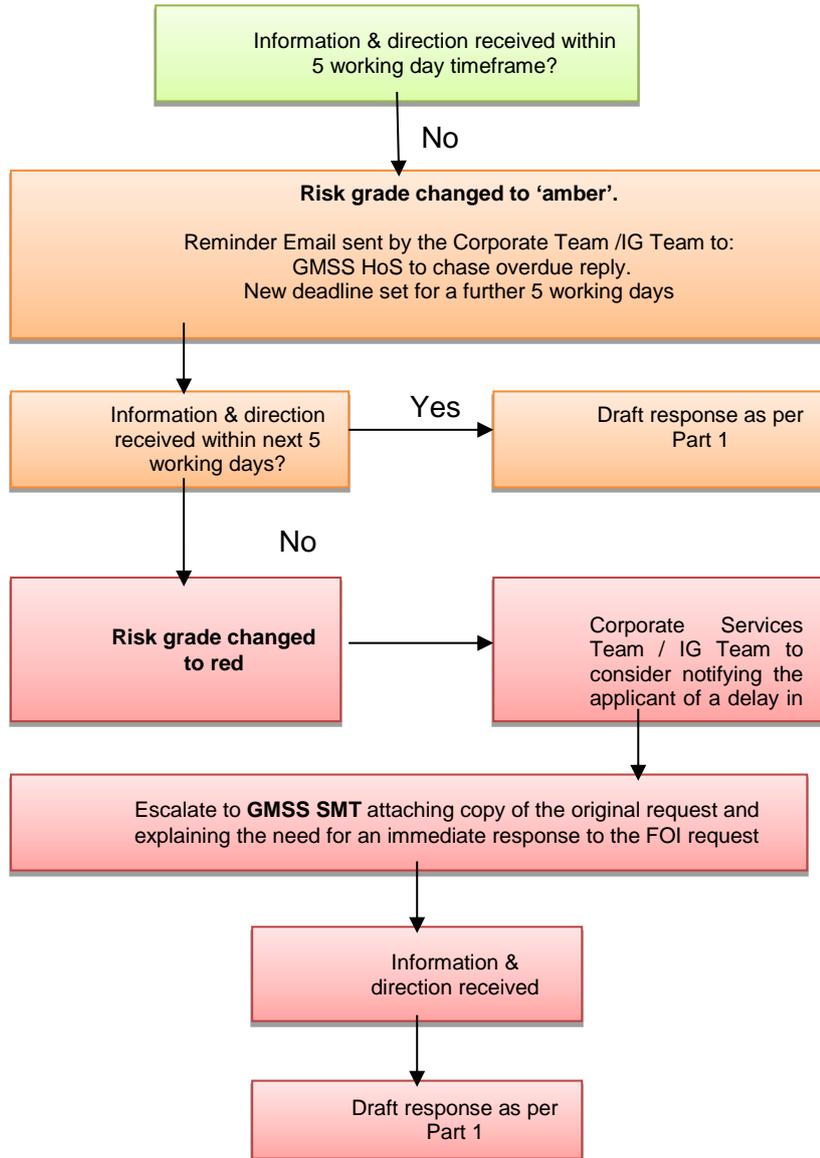
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate number)  
Fax: 01625 524 510  
Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

## Appendix 5 – FOI process

### Part 1: Dealing with Requests - Process Outline



## Part 2: Escalation Process - Process Outline



### Part 3: '20-Working-Day' Appeals Process - Outline

