

**FREEDOM OF INFORMATION ACT AND
ENVIRONMENTAL INFORMATION
REGULATIONS POLICY**

Colton Mill and The Grange Medical
Centre

Review and Amendment Log / Control Sheet

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Equality Statement

This policy applies to all employees, Managing Partnership members and members of Colton Mill and The Grange Medical Centre irrespective of age, race, colour, religion, disability, nationality, ethnic origin, gender, sexual orientation or marital status, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.

A full Equality Impact Assessment is not considered to be necessary as this policy will not have a detrimental impact on a particular group.

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1. INTRODUCTION

This document sets out the policy requirements in terms of the Freedom of Information (FOI) Act and Environmental Information Regulations (EIR) for Colton Mill and The Grange Medical Centre (“the Practice”).

These two pieces of legislation place an obligation on public authorities to make available to anyone information that is held by those public authorities. Under the FOI regulation the “Public Authority” is the individual GP, however the Information Commissioners Office (ICO) have issued guidance to indicate that for practical purposes the GP as a whole can act as the “Public Authority”.

Access to information can be made by individuals or organisations requesting specific information or by accessing information made available by the public authority through the Publication Scheme, which is a specific part of the organisational website.

The policy sets out how the Practice meets those obligations and details the key responsibilities and requirements of the Practice.

This policy reflects the Practice’s support of the principle that openness should be the norm in public life. The organisation believes that individuals have a right to privacy and confidentiality, so this policy does not overturn the Common Law Duty of Confidentiality or statutory provisions that prevent disclosure of personal information. The release of such information in specific circumstances will be dealt with under the provisions of the FOI Act, the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR). The Practice must still be able to carry out its duties effectively and to ensure this; the exemptions and exceptions outlined in the FOI Act and EIR Regulations respectively will be applied appropriately.

Failure to adhere to this policy may result in disciplinary action and where necessary referred to the appropriate regulatory bodies where conditions of the FOI Act or EIR Regulations are not complied with.

2. AIMS

The aims of this policy are to:

- Ensure all requests for information are dealt with consistently and receive a high-quality response
- Ensure that the Practice complies with all relevant regulations, laws and guidance.

- Ensure staff at all levels are aware of their responsibilities with regards to the FOI Act, EIR, Data Protection Act 2018 and UK GDPR, be it in directing any queries to the appropriate person/department, or in ensuring they provide information requested promptly;
- Ensure legal timescales are met
- Ensure that the Senior Information Risk Owner (SIRO) under delegated authority from the Partners is fully informed on the operation of the FOI Act, EIR, Data Protection Act 2018 and UK GDPR.
- Ensure the Practice meets its legal obligations in terms of the FOI Act and Protection of Freedoms Act 2012 to develop and improve the organisation's publication scheme and website

3. SCOPE

This policy must be followed by all staff who work for or on behalf of the Practice including those on temporary or honorary contracts, secondments, volunteers, pool staff, students and any staff working on an individual contractor basis or who are employees for an organisation contracted to provide services to the Practice. The policy is applicable to all areas of the organisation and adherence should be included in all contracts for outsourced or shared services. There are no exclusions.

This policy covers:

All aspects of recorded information held by the Practice, or on behalf of the Practice including (but not limited to):

- Patient/Client/Service User information of a general, non-personal nature.
- Certain types of Personnel/Staff information, especially where this concerns senior executives and board members.
- Organisational and business sensitive information.
- Structured and unstructured record systems - electronic and paper respectively.
- Photographic images, digital, text or video/audio recordings including CCTV.
- All information systems purchased, developed and managed by/or on behalf of, the organisation.

- Information held on paper, floppy disc, CD, USB/Memory sticks, computers laptops, tablets, mobile phones and cameras.
- All information held by the Practice, including most documents and information that have been supplied by other organisations.
- All documents created in the course of staff duties (even personal e-mails and potentially including information held on private equipment) will fall within the scope of the Data Protection Act and the GDPR and may also fall within the scope of the FOI Act or the EIR.

4. ACCOUNTABILITY AND RESPONSIBILITIES

4.1 Information Governance

There are a number of key information governance roles and bodies that the Practice needs to have in place as part of its Information Governance Framework, these are:

- Data Protection Officer (DPO)
- Managing Partnership
- Governance, Performance and Risk Leads
- Caldicott Guardian
- Information Asset Owner (IAO)
- Information Asset Administrator (IAA)
- All employees

Accountability and responsibility are set out in more detail in the Information Governance Strategy and the Information Governance Policy and Management Framework which must be read in conjunction with this policy.

In respect of compliance with the FOI Act and EIR and, in particular with the processing of requests and holding of information, all employees have the following specific responsibilities:

- Be aware of the Practice procedure for dealing with FOI and EIR requests.
- Be aware what constitutes an FOI or EIR request.
- Be aware of the key elements of the FOI Act and EIR such as the 20 working day deadline for responding to requests
- That where an employee is in receipt of what constitutes a FOI or EIR

request that employee passes it on to the FOI / EIR processing team as soon as possible.

- That where an employee is in any doubt whether a request is a request under FOI or EIR that employee must seek guidance as soon as possible
- That where an employee is asked for information from the FOI/EIR processing team or IG service provider, that employee must either: provide information (in line with the agreed procedure for doing so), inform the FOI / EIR processing team that he/she does not hold the information, refer the FOI / EIR processing team to the member of staff that may hold the information, liaise with the relevant West Yorkshire Integrated Care Board contact about providing the information.
- That where an employee holds information which has been asked for by FOI / EIR processing team and the employee has concerns as to the release of the information the employee raises those concerns with the FOI / EIR processing team or line manager.
- To be aware that information held in your personal or departmental information filing systems could be requested under the FOI Act or EIR.
- To organise records in a way that means information is easily accessible and referenced in a clear and concise manner (see Section 11 of this policy on Records Management).
- To provide relevant information as required for inclusion within the Practice's Publication Scheme.

4.1.1 Provision of FOI and EIR Services

Processing services and advice relating to FOI and EIR requests and the guidance relating to a Publication Scheme, may be supplied by a service provider on behalf of the Practice. However, the responsibility for responding to requests within legal deadlines and for making information available through the Publication Scheme remains with the Practice.

5 DEFINITION OF TERMS

The Act: refers to the Freedom of Information Act 2000

FOI and FOI Act: acronyms for the Freedom of Information Act 2000

DPA: acronym for the Data Protection Act 2018

UK GDPR refers to the General Data Protection Regulation

EIR: an acronym for Environmental Information Regulations 2004

ICO: an acronym for the Information Commissioner's Office. This is the supervisory authority for Freedom of Information, Environmental Information Regulations, the DPA and the GDPR.

'Exemption' refers to provisions within FOI Act that define particular types of information that public authorities may be obliged or may choose not to disclose. These may be absolute or qualified exemptions.

'Exception' refers to provisions within EIR that define particular types of information that public authorities may be obliged or may choose not to disclose.

'Public Interest Test' is required for qualified exemptions and exceptions to determine whether the public interest is best served by disclosing or withholding the information in question. A similar test may also be applied under the DPA and the GDPR to consider the public interest factors in disclosing or withholding the information of third parties which has been requested under FOI Act or EIR.

'Publication Scheme' concerns the Practices' legal requirement to compile and make available information it has in its possession and that they will routinely and proactively provide to the public.

6 KEY LEGISLATION

6.1 The Freedom of Information Act (2000)

The Freedom of Information Act (2000) is part of the Government's commitment to greater openness in the public sector. It enables members of the public to scrutinise the decisions of public authorities more closely and ensure that services are delivered properly and efficiently. The FOI Act replaces the non-statutory Code of Practice on Openness in the NHS.

The main features of the FOI Act are:

- A duty on every public authority to adopt and maintain a publication scheme.
- A general right of access to all recorded information held by public authorities (such as the Practice) subject to exemptions and conditions set out in the FOI Act.

- That the Information Commissioner's Office will oversee the implementation and compliance with the FOI Act and associated legislation and regulations.
- A 20 working day deadline to respond to a request for information
- There are 24 exemptions (Absolute and Qualified) within the FOI Act which could mean (if any are applicable) that certain information is not released (in response to a request) or is not published.
- Arrangements in respect of costs and fees.
- Arrangements for enforcement and appeal.
- A duty to provide advice and assistance to people who wish to make or have made requests for information.

6.2 Environmental Information Regulations (2004)

Certain categories of public information are covered by the Environmental Information Regulations (2004). The EIR Regulations cover information related to the environment such as emissions, land use, pollution, waste disposal etc. The regulations are similar to the FOI Act but there is an even greater presumption of disclosure, exceptions (similar to FOI exemptions) are fewer and requests can be made verbally.

7 KEY REQUIREMENTS

This section sets out the key requirements in order for the Practice to meet its legal obligations relating to the FOI Act and EIR.

7.1 General Right of Access

FOI and EIR give a general right of access to recorded information held by the Practice. Any person who makes a request has the right to be informed in writing whether the Practice holds the information requested and; if the Practice holds that information, have it communicated to them unless a valid exemption (or exception) or other condition applies.

Personal data processed as a condition of this General Right of Access has a lawful basis under Section 8 (c) of the DPA, which for the Practice as data controller is 'compliance with a legal obligation' according to Article 6 (1) (c) of the UK GDPR.

As recommended in the Lord Chancellor's Code of Practice issued under Section 45 of the Act, the Practice will set out how requests for information will be handled.

7.2 Processing of FOI and EIR requests

Services for the processing of (and advice relating to) FOI and EIR requests and for development of the publication scheme may be provided by a service provider organisation acting on behalf of the Practice.

7.3 Transferring a request

Under the FOI Act, all or part of a request can be transferred to another public authority if it becomes apparent that the Practice does not hold the information concerned, but only where the other authority confirms that it holds that information. The Practice does not avail itself of this option, preferring instead to redirect the applicant to the appropriate authority. Similarly a transfer can also take place from another authority into the Practice which the Practice would be obliged to accept if the information is held.

7.4 Consulting with third parties

Where information which has been requested contains information about third parties, the Practice will liaise with the third parties about their views on any information they do not wish released. The public authority should record their consideration of these requests but is under no legal obligation to comply.

7.5 FOI and EIR fees

The Practice does not generally charge applicants for providing them with information. There are a few instances where a public authority could charge fees - such as for photocopying and printing a large amount of information.

Where a request would exceed the appropriate limit as defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, the Practice can charge a fee in respect of the time it would take to:

- determine whether the information is held,
- to locate that information,
- to retrieve the information and
- to edit or extract the information from documents in which it is contained

The above-mentioned Fees Regulations sets the appropriate limit for the Practice at 18 hours and the cost of staff time is a standard £25 per hour. “Redaction” cannot be included as part of the costs of extracting the requested information.

The appropriate limit can also apply where the Practice receives two or more similar or the same basic requests from the same applicant (or a group of applicants which appears to be acting in concert) within a period of 60 working days from the date of the first request. In such cases the time taken to perform all the above tasks can be aggregated from across those requests.

There is no ability to make an appropriate limit charge under EIR, although the appropriate limit estimate can support the exception available under Regulation 12 (4) (b) of the EIR where the request is deemed to be manifestly unreasonable.

Matters relating to fees are explained in more detail in the Practice’s Schedule of Fees.

7.6 Public interest tests

The public interest must be considered in every case where a qualified exemption applies. The Information Commissioner states that “In effect something in the public interest is 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 public interest will vary with each request and the exemption being considered. Factors to consider often include ensuring honesty, accountability, transparent decision making and the absence of bias. The Practice will consider the public interest on a case by case basis. It will seek advice from relevant professionals as necessary (this may include colleagues and legal advice). The public interest does not include protecting an authority or individual from embarrassment.

In certain circumstances there may be a public interest in releasing personal data which would normally be subject to an absolute exemption. An example of this would be the remuneration and expenses of Partners.

7.7 Personal information

When a request is received and the person requesting the information is the subject of the information, the request needs to be dealt with under the Right of Access provisions of Article 15 of the UK GDPR and Section 2 (1) (b) of the DPA. The Practice has a documented and approved Subject Access

Request and Access to Health Records Procedure which applies to this kind of request.

The UK GDPR also grants applicants new rights to their own data, such as the right to object to processing under Articles 19 and 21 of the UK GDPR, the right to restriction of processing under Article 18 and the right to obtain rectification under Article 16.

If a request for information is received and the information includes personal data about someone other than the applicant, there is an absolute exemption under FOI/EIR in line with the provisions of Article 5 (a) of the UK GDPR (or Articles 6 (a) and 9 (a) in the case of special category data).

However in certain circumstances the Practice must still consider whether disclosure would be in the public interest. In such circumstances the Practice will undertake to ensure that all requests for personal information contained with an FOI/EIR request are handled in consultation with the subject concerned and advice from the SIRO and Caldicott Guardians will be obtained as appropriate. The Practice will endeavour to balance an individual's right to privacy with the accountability which goes with working in the public sector and which underlies the FOI Act and EIR.

7.8 Re-use regulations

The Re-use of Public Sector Information Regulations 2015 give the public the right to re-use all information produced, held or disseminated as part of that authority's public task, unless the information itself is exempted/excepted or unless Copyright for the information belongs to a third party such as another authority or the Crown. The Regulations also encourage authorities to provide an open, non-restrictive licence for this re-use see Open Government Licence (nationalarchives.gov.uk). These regulations will apply mainly whenever an applicant wishes to re-use the information requested in a FOI request.

8 ADVICE AND ASSISTANCE TO APPLICANTS

FOI and EIR require the Practice to provide advice and assistance to applicants and would-be applicants. This includes providing guidance on how to find information from within the Publication Scheme and redirecting applicants to other public authorities. It also includes ensuring applicants are aware of the Practice's internal review process as well as the right to complain to the ICO. The Practice will undertake this alongside other statutory duties including, but not limited to, the Disability Discrimination Act 1995 and the Equality Act 2010.

9 PUBLICATION SCHEME

9.1 Legal basis

The Practice is required to publish a range of information it holds by setting up, maintaining and expanding a Publication Scheme. This Publication Scheme sets out categories of information that the Practices undertake to publish, based on the ICO's Model Publication Scheme and in compliance with provisions contained in the Protection of Freedoms Act 2012.

9.2 Classes of Information

Classes of information should not be added or removed without the approval of the Information Commissioner.

The current classes of information are:

- Who we are and what we do
- What we spend and how we spend it
- What are our priorities and how are we doing
- How we make decisions
- Our policies and procedures
- Lists and registers
- The services we offer

Brief outlines of these classes are contained in the Scheme.

9.3 Maintenance of the Publication Scheme

The Scheme covers a wide range of information from all areas of the organisation. It is the responsibility of each Head of Service to ensure that up to date information is provided so that the Scheme can be kept up to date. This is especially important with documents such as policies and procedures and information leaflets. It will be assumed that the appropriate managers are satisfied with current documents unless they state otherwise.

Responsibility for the Practice's Publication Scheme falls under Corporate Governance duties. The Practice's Publication Scheme can be found on the Practice's website and can be made available in hard copy.

9.4 Approval of Documents for Inclusion in the Publication Scheme

The documents available through the scheme will be the final approved versions only. The Publication Scheme will be an evolving and updated

series of web pages and, as a result, members of staff are encouraged to recommend information for inclusion.

The scheme covers a wide range of information from all areas of the organisation. It is the responsibility of Heads of Service to ensure that up to date information is provided so that the scheme can be kept up to date. This is especially important with documents such as policies and procedures and information leaflets.

The Publication Scheme needs to be updated and maintained to ensure that information posted online continues to be accurate and the most recent versions of documents are posted.

For any information that is (or is intended to be) made available in the public domain (on the Practice website or otherwise), the information must not be subject to any FOI Act exemption or EIR exception or condition which restricts the release of information.

10 FOI AND EIR COMPLAINTS

Where complaints about the handling of a request for information or operation of the publication scheme are received by the Practice, these will be processed by the FOI and EIR service provider acting in conjunction with managers from the Practice as nominated by the Practice's service lead. They will follow the Internal Review process for complaints about requests, in line with those conditions set out in the Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the FOI Act, issued under Section 45 of the FOI Act (November 2002).

11 RECORDS MANAGEMENT

Good records management is a key component in complying with requests for information. Staff need to organise records in such a way that information can be accessed quickly and easily. The Practice has a Records Management Policy and supporting guidelines which provide comprehensive guidance for the management of all records and are consistent with:

- The Records Management Code of Practice 2021
- The Lord Chancellor's Code of Practice on the Management of Records, issued under Section 46 of the FOI Act (November 2002)

Records and information should be held in line with the retention schedule contained within the Records Management Code of Practice 2021. Where a

request is received and the requested information is still held by the Practice, it would be an offence to destroy that information.

12 CONTRACTUAL CLAUSES

When entering into contracts the Practice will limit the contractual terms which are intended to restrict the disclosure of information held by the Practice. The Practice will still need to meet its obligations under the FOI Act and EIR for information that it holds, regardless of whether the information was produced by another agency. Therefore, contracts made between the Practice and other organisations need to include relevant clauses in which it is made clear that the Practice needs to meet its legal obligations for the information that it holds and would only consider not releasing information where an exemption or condition of the legislation restricts release of the information.

13 TRAINING

The Practice will take all reasonable steps to ensure that staff are aware of policies, protocols, procedures and legal obligations relating to FOI and EIR. This will be delivered through training and through internal staff communication mechanisms.

Information governance including all rights of access such as FOI and EIR, is a part of induction training and is mandatory for all staff. The Practice will identify the Data Security Awareness Training Level 1 needs of key staff groups taking into account their role, responsibility and accountability levels and will review this regularly through the Personal Development Review process.

It is the line managers' responsibility to ensure that all staff are made aware of their record keeping responsibilities through generic and specific staff training and guidance so that they understand:

- What they are recording and how it should be recorded.
- Why they are recording it.
- How to validate information with the patient or carers or against other records – to ensure that members of staff are recording the correct data.
- How to identify and correct errors – so that staff know how to correct errors and how to report errors if they find them.
- The use of information – so staff understand what the records are used for (and therefore why timeliness, accuracy and completeness of

recording is so important) and what the information must not be used for.

- How to update information and add in information from other sources.
- The rights of access available to the public and how to respond to any such requests however received
- The right to correct inaccurate information under Sections 2 (1) (b) and 186 (2) (a) of the DPA and Article 16 of the UK GDPR.
- The new UK GDPR rights incorporated into the DPA under Section 186 (2) (a) of that Act which refer to the right to object to processing under Articles 19 and 21 of the UK GDPR, the right to restrict processing under Article 18, and the right to rectification under Article 16. The rights to erasure (to be forgotten) under Article 17 of the UK GDPR and to data portability under Section 20 do not apply to personal data processed for FOI Act purposes

All practice staff will be made aware of their responsibilities for access to records, record-keeping and record management through generic and specific training programmes.

14 IMPLEMENTATION AND DISSEMINATION

Following ratification by the Practice this policy will be disseminated to staff via an appropriate method e.g. the Practice intranet and communication through in-house staff briefings.

This policy will be reviewed every two years or in line with changes to relevant legislation or national guidance.

15 MONITORING COMPLIANCE AND EFFECTIVENESS OF THE POLICY

To be assured that this policy is being implemented, key elements will be Performance indicators will include:

- The percentage of FOI requests completed within the statutory 20 working day timeframe
- The performance against the indicators will be reported to the Practice through the Information Governance Committee.

Incidents are reported and all serious FOI and EIR issues must be reported by the SIRO at Partner level and in the Annual Reports.

Any suspicion of fraud or bribery should be reported at the earliest available

opportunity by contacting the Practice Counter Fraud Specialist at the following link: <https://cfa.nhs.uk/reportfraud>

16 ADVICE AND GUIDANCE

Advice and guidance on any matters stemming from the Policy can be obtained by contacting the West Yorkshire Information Governance Team: wyicb-leeds.dpo@nhs.net

17 ASSOCIATED DOCUMENTS (Policies, protocols and procedures)

This policy should be read in conjunction with:

- Information Governance Strategy
- Information Governance Policy and Management Framework
- Records Management and Information Lifecycle Policy
- Freedom of Information Act and Environmental Information Regulations Policy
- Information Security Policy
- Network Security Policy
- Mobile Working Policy
- Risk Management Policy
- Incident Reporting Policy
- Business Continuity Plan
- Disciplinary Policy
- Anti-Fraud Policy
- Anti-Bribery Policy
- Whistle Blowing Policy
- Internet and Social Media Policy
- Email Policy

And their associated procedures (including but not limited to):

- Subject Access Request (Access to Health Records) Procedure
- Information Sharing Protocol
- Freedom of Information Procedures
- Privacy Impact Assessment Procedure and supporting documents
- Safe Transfer Guidelines and Procedure

This policy should also be read in conjunction with the Information Governance Handbook which provides guidance for staff on information governance compliance.

18 OTHER LEGISLATION AND GUIDANCE

All NHS records are classed as Public Records under the Public Records Act 1958. This provides statutory obligations upon the Practice. The organisation will take actions as necessary to comply with all its legal and professional obligations. The key legislation is listed below but is not limited to this list.

- The Abortion (Amendment) Regulations 2022
- Access to Health Records Act 1990 Health and Social Care Act 2012
- Audit and Internal Control Act 1987
- Bribery Act 2010
- Caldicott Guidance as updated 2013
- Common Law Duty of Confidentiality
- Computer Misuse Act 1990
- Coroners and Justice Act 2009
- Crime and Disorder Act 1998
- Electronic Communications Act 2000
- Enterprise and Regulatory Reform Act 2013
- Environmental Information Regulations 2004
- Equality Act 2010
- Freedom of Information Act 2000
- UK General Data Protection Regulation and Data Protection Act 2018
- Health and Social Care Act 2012
- Health and Social Care (Quality and Safety) Act 2015
- Health Service (Control of Patient Information) Regulations 2002
- Human Rights Act 1998
- Information Commissioner's Guidance Documents
- ISO/IEC 27001:2005 Specification for an Information Security Management system
- ISO/IEC27002:2005 Code of Practice for Information Security Management
- National Data Guardian's Ten Data Security Standards
- NHS Act 2006
- NHS Information Security Management Code of Practice 2007
- Prevention of Terrorism (Temporary Provisions) Act 1989 and Terrorism Act 2000
- Professional Codes of Conduct and Guidance
- Protection of Freedoms Act 2012
- Public Records Act 1958
- Public Interest Disclosure Act 1998

- Regulation of Investigatory Powers Act 2000 (Lawful Business Practice Regulations 2000)
- Regulations under Health and Safety at Work Act 1974
- Road Traffic Act 1988
- The Children Act 1989 and 2004
- Copyright, Designs and Patents Act 1988 (as amended by the Copyright (Computer Programs) Regulations 1992)

This is not an exhaustive list and further guidance can be obtained from the Information Governance Team.