

Title:	Rotherham CCG – Freedom of Information and Environmental Information Policy
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Owner:	Operational Executive
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Ratified and Approved by:	Governing Body XXX 2017
Distribution:	All staff of the CCG
Compliance:	Mandatory for all permanent and temporary employees of Rotherham CCG
Equality & Diversity Statement:	In applying this policy, the Organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

Revision History

Date of this revision: January 2015

Revision date	Previous revision date	Summary of Changes
7 th March	16/12/2004	First Draft
16/12/2004	15/10/2004	Final Draft
07/03/2008		Minor changes
August 2010		Aligned with Rotherham Foundation Trust Policy. Added references to EIR/Public Sector Information Regs. Dissemination plan. Extra Training requirements Brief overview added. Additional compliance monitoring and reporting. Publication scheme compliance
January 2015	August 2010	Updated into organisational policy template and amended references to PCT
December 2016	January 2015	Updated reference to Re-Use of Public Sector Information Regulations 2015 Updated reference to new Records Management Code of Practice for Health and Social Care 2016 Removed references to Sub AQuA and replaced with IG Group

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1. Introduction

- 1.1 The Freedom of Information (FOI) Act 2000, UK Re-use of Public Sector Information Regulations 2015 (RPSI) and the Environmental Information Regulations 2004 (EIR) imposes a number of obligations on Public Authorities, which includes NHS Rotherham CCG, to disclose information about its activities and provide the public with wide rights to access to the CCG's records.
- 1.2 In essence, members of the public have a statutory right to obtain (either from the CCG's website or in some other form) all the information covered by the CCG's Publication Scheme, to request (with some minor limitations) any information held by the CCG, regardless of when it was created, by whom, or the form in which it is now recorded and to request to re-use information to which the CCG has copyright.
- 1.3 The Policy, and its associated Codes of Practice, set out how the CCG will meet its obligations under the FOI Act, RPSI and EIR. The Governing Body has overall responsibility for the Policy and for ensuring that it is complied with. The Governing Body has delegated to the IG Group responsibility for the policy and for ensuring that it is reviewed every two years or whenever major development impose change.
- 1.4 The FOI Act replaces the non-statutory "Codes of Practice on Openness in the NHS". The EIR replaces the "Environmental Information Regulations 1992".

2. Policy Statement

- 2.1 The CCG is committed to being open and honest in the conduct of its operations and to complying fully with the Freedom of Information Act 2000, the UK Re-use of Public Sector Information Regulations 2015, and the Environmental Information Regulations 2004. To this end the CCG will:
 - Be open with the general public and the media and will place in the public domain as much information about its activities as is practicable and, subject to the exemptions permitted under the Act, will make all other information available on request.
 - Establish records management organisations, structures and procedures which will be underpinned by the Records Management Code of Practice for Health and Social Care 2016 and which will meet the requirements of the Lord Chancellor's Code of Practice on the Management of Records which was issued under section 46 of the FOI Act 2000.
 - Deal with all requests for information in accordance with the Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions.
 - Deal with requests to re-use information in accordance with the Office of Public Sector Information guidance.
 - Deal with all requests for environmental information in accordance with the Secretary of State's Code of Practice on the Discharge of the Obligations of Public Authorities under the Environmental Information Regulations 2004.
- 2.2 There will be occasions when the CCG will not be able to supply all the information requested. Information will only be withheld in accordance with the exemptions laid down in the Act, and in particular those concerning:

- The CCG's duties under the Data Protection Act 1998 to keep confidential sensitive information about individual members of staff and patients;
- Other legal and contractual obligations; or
- Material detrimental to the safe and efficient conduct of the CCG's operations, or
- which is commercially sensitive.
- On such occasions the CCG will always state the reasons why information has been withheld.

3. Roles and Responsibilities

3.1 The **Chief Officer** is responsible for ensuring the CCG has appropriate policies and procedures in place for administering requests for information in compliance with the provisions of the Freedom of Information Act 2000, the UK Re-use of Public Sector Information Regulations 2015, and the Environmental Information Regulations 2004.

3.2 The **Assistant Chief Officer** or their nominated representatives are responsible for administering all requests for the information made to the CCG and will provide a point of contact for all CCG staff who require advice on Freedom of Information Act matters. The Assistant Chief Officer will, where possible, provide advice directly to staff on FOI matters or otherwise refer to a competent person to obtain such advice.

Responsibility for the maintenance of the CCGs Publication Scheme, available on the CCG's Internet website at: www.rotherhamccg.nhs.uk also lies with the Assistant Chief Officer.

3.3 **Directors and Heads of Department** are responsible for ensuring that information held within their areas of responsibility fully complies with the policies and procedures agreed by the Governing Body, including information processed by contractors, partners or other bodies working under service level agreement.

3.4 **Managers** are responsible for ensuring that staff under their direction and control are aware of the policies, standards, procedures and guidance agreed by the Governing Body, and for checking that those staff understand and appropriately apply policies, procedures and guidance in carrying out their day to day work.

3.5 **All Staff** are responsible for processing information in accordance with the FOI Act, RPSI and EIR; the CCG's FOI Code of Practice and the policies, standards, procedures and guidance agreed by the Governing Body.

3.6 The IG Group is responsible for overseeing/monitoring all FOI Act, RPSI & EIR policy, procedures and guidance.

4. Training

4.1 All written communications (including those by electronic means) to Rotherham CCG will fall within the scope of the Act if they seek information, and must be dealt with in accordance with the provisions of the Act. It is essential that all CCG staff are familiar with the provisions of the Act, the associated Codes of Practice, and any relevant good practice guidance issued by the Information Commissioner.

- 4.2 The CCG will ensure that responsibilities of contractors, bodies working under service level agreement and partnership agreements are aware of their responsibilities and that they have in place sufficient means to ensure that they can competently carry out their responsibilities.
- 4.3 The national online Information Governance training has been adopted as the mandatory training tool for all staff.
- 4.4 Staff dealing with FOI requests must keep training up to date and complete refresher courses as necessary.

5. Publication Scheme

- 5.1 The Freedom of Information Act requires every public authority to have a publication scheme, approved by the Information Commissioner's Office (ICO), and to publish information covered by the scheme.

The CCG's Publication Scheme, is available on the Internet Website: www.rotherhamccg.nhs.uk or in printed form by application to NHS Rotherham CCG.

6. Monitoring and Review

- 6.1 The CCG will put in place procedures for systematically reviewing its arrangements for administering and managing requests for information. These procedures will include systems for auditing compliance with the Act by the CCG and those who hold data on our behalf.

Performance in dealing with FOI requests will be monitored by the Assistant Chief Officer and reported regularly to the AQUA via the IG Group.

- 6.2 The CCG will maintain a register of all complaints received about its Freedom of Information arrangements and will ensure that any learning points that arise from such complaints are used to improve related policies, standards, procedures and guidance.
- 6.3 This policy will be reviewed at least every 2 years to ensure that it remains up to date, effective and takes account of emerging good practice. Where new legal directions come into force, the policy will be reviewed in line with the commencement date of that legislation.
- 6.4 The CCG will commission Internal Audit to audit as necessary, the process, compliance and if the policy is embedded within every day organisational activity.

7. References

- Data Protection Act 1998
- Freedom of Information Act 2000
- Information Commissioner's Office website and guidance (ICO)
- UK Legislation (www.legislation.gov.uk)
- NHS Information Governance: Guide on Legal and Professional Obligations 2007
- Records Management
- Code of Practice for Health and Social Care 2016

8. Procedure for Handling Freedom of Information Requests

- 8.1 The following procedure will take place when a request for information arises. This is in accordance with the Freedom of Information Act 2000, The Data Protection Act 1998, the Environmental Information Regulations 2004 and also acknowledges the CCG's Freedom of Information Policy and Conditions of Contract.
- 8.2 The Freedom of Information Act 2000 makes it a requirement that all requests for information must be made in writing (letter, fax, twitter or e-mail). Request for information under FOI must be submitted in the form of a letter, fax, twitter or e-mail.
- 8.3 Applicants must be advised to put in their request in writing to the contact details provided below. Where requests have been received by staff, they must be forwarded to:

Freedom of Information Officer
Rotherham CCG
Oak House
Moorhead Way
Bramley
Rotherham
S66 1YY
FOI@rotherhamccg.nhs.uk

- 8.4 The CCG will maintain a register of all requests made for information under the Freedom of Information Act and the action taken on each application. The register will identify whether the same or similar information has previously been requested and provided, or refused and the reasons for refusal. This will ensure consistency in dealing with similar recurring requests for the same or similar information not already published and allow the CCG to consider whether such information should be routinely published on the Publication Scheme website or other medium.
- 8.5 Written requests may come in from any source for example Chief Executive's Office, Communications Department, and be directed to any member of staff. If the information is not classified as a complaint, solicitor's letter or request for access to personal records, it should be considered as a possible FOI enquiry and be forwarded to the FOI Officer.
- 8.6 All FOI requests must be recorded on the FOI log and all communication with applicants must be made by the FOI Officer or a nominated person in their absence.
- 8.7 The FOI Officer will be responsible for updating all of the fields associated with the FOI log prior to acknowledging receipt of the request. This must be completed within 2 working days of receiving the FOI request.
- 8.8 The FOI Officer will be responsible for evaluating requests for information and disseminating these to the relevant Lead/Heads of Departments or Services within the CCG. This also might include seeking advice from the Assistant Chief Officer.
- 8.9 The FOI Officer will be responsible for ensuring that draft responses to FOI requests are dealt with within 7 working days wherever possible and that these draft responses are then authorised by the Assistant Chief Officer before the response is dispatched to the originator.
- 8.10 If however the draft reply is in response to an FOI request from national/local media or an MP's request, then a Communications Manager will be asked to review the draft reply as well.

- 8.11 The FOI Officer will provide the information to the applicant in their preferred format (so far as this is reasonably practical). The CCG will notify the applicant of the reasons if it considers it is not practical to comply.
- 8.12 The FOI Officer will have timely meetings with the Assistance Chief Officer in reviewing and determining how FOIs should be handled and advice on any legal aspects. Attention must be given to FOIs where there is a possibility of non-compliance.
- 8.13 The timings of these meetings may vary between daily and weekly, depending on the amount or complexities of the FOI requests received. (Appendix 1 – Procedures Flowchart)

9. Twitter FOI Requests

The Information Commissioner has ruled that public sector organisations with Twitter accounts must accept Freedom of Information requests by Twitter. In order to facilitate this, guidance on how to submit Freedom of Information requests through Twitter will be included on the Rotherham Clinical Commissioning Group's website.

9.1 Monitoring Twitter requests

- 9.1.1 The official Twitter account operated by Rotherham Clinical Commissioning Group is @NHSRotherhamCCG
- 9.1.2 This account will be checked daily, from Monday to Friday, with the exception of public holidays, for FOI requests. The account will be checked by the Communications team. Any FOI requests received in this way will be captured as a screen shot and handed immediately to the FOI Officer to be investigated in the usual way.

9.2 Replying to Twitter requests

- 9.2.1 A request will be considered as a valid FOI request when it is addressed directly to the CCG's twitter account-@NHSRotherhamCCG - and contains a request for information.
- 9.2.2 FOI requests received via Twitter will be acknowledged on the working day on which they are received through the @NHSRotherhamCCG account and provided with a reference number supplied by the FOI Officer.
- 9.2.3 Requestors will be directed to the Rotherham CCG's website for information about how their request will be handled, through a short web link.
- 9.2.4 Should clarification be required, a fee or further information, requestors will be contacted via their Twitter account and asked to contact the FOI Officer. The request will be put on hold from the day on which the contact is requested and will be taken off hold once the necessary information has been received.
- 9.2.5 Requestors will be asked to supply an email address for their response through a 'direct message' (private communication via Twitter between the requestor and the @NHSRotherhamCCG account). This email address will then be forwarded on to the FOI Officer for their use and records.
- 9.2.6 If there is any uncertainty as to whether an enquiry is an FOI request or not, this will be checked with the potential requestor.

- 9.2.7 If no alternative address/means of contact is provided, either through the initial tweet or a subsequent direct message, the requestor's Twitter account will automatically become the default means of contact.

9.3 Twitter Review

These guidelines will be reviewed annually by the Head of Communications and the Assistant Chief Officer.

10 Timescales

- 10.1 The FOIA requires that requests are responded to by the twentieth working day following date of receipt. (See Appendix 1 Procedures Flowchart).
- 10.2 If the CCG applies a condition or exemption to withhold information, the applicant must be informed within 20 working days. (See Appendix 3a Exemptions)
- 10.3 The 20 working days timescale may be extended only if the CCG:
- Requests further clarification relating to the enquiry from the applicant, in which case the 20 working days is suspended until a reply is received.
 - Advises the applicant it is unable to complete the enquiry within the 20 working days and a revised timescale is agreed between the enquirer and the CCG.
 - A fees notice is issued, in which case the 20 working days is suspended until payment is received by the CCG.

11 Duty to advise and assist applicants

- 11.1 The CCG is obliged by the Act with a duty to provide advice and assistance to applicants. If the request is unclear, or will be too time consuming to meet, the FOI Officer will:
- contact the applicant to explain why the FOI cannot be met and ask the applicant to clarify what information is needed and/or suggest suitable alternatives if appropriate or
 - ask the applicant, if they would like an estimate of costs of retrieving information which would take more than 18 working hours to collate.

12 Complaints

- 12.1 The CCG will deal with complaints or requests for internal reviews to ensure that the requirements of the FOIA are met.
- 12.2 Internal reviews will be undertaken in the first instance by the Assistant Chief Officer. If however the nominated lead officer has been closely involved in the handling of the original request, the review will be conducted by the Chief Officer or a Lay member of the Governing Body.
- 12.3 The applicant will have the right to complain to the Information Commissioner, if they are not satisfied by the way the internal review was conducted.
- 12.4 The CCG will inform the applicant of these rights as part of the standard acknowledgement correspondence.
- 12.5 The CCG will ensure that a record is kept of internal reviews, complaints and any subsequent outcomes.

13 Vexatious and repetitive requests

- 13.1 Under Section 14 (1) of the Act, the CCG does not have to comply with vexatious requests. These are requests that may be so patently unreasonable or objectionable that it will obviously be vexatious. In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
- 13.2 Under Section 14 (2) of the Act, the CCG does not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. The CCG may only apply Section 14 (2) where it has either:
- Previously provided the same requester with the information in response to an earlier FOIA request; or
 - Previously confirmed the information is not held in response to an earlier FOIA request from the same requester.
 - The CCG maintains an FOI log and maintains a response audit trail which can be used as the evidence log.

14 FOI appeals procedure

- 14.1 Any written reply by the applicant (including by electronic means) that indicates dissatisfaction with the CCG's response to a valid request for information should be treated as a request for an internal review and passed immediately to the FOI lead in accordance with Section 17 (7) of the Freedom of Information Act, all responses to FOI requests made to the CCG include standard wording in relation to the applicant's right of appeal if they are dissatisfied with the response given for any reason, as follows:

If you are dissatisfied with this response or wish to appeal, please write to:

*Our Governance & Complaints Officer at the address below or by email at :
complaints@rotherhamccg.nhs.uk*

*Governance & Complaints Officer
Oak House
Moorhead Way
Bramley
Rotherham
S66 1YY*

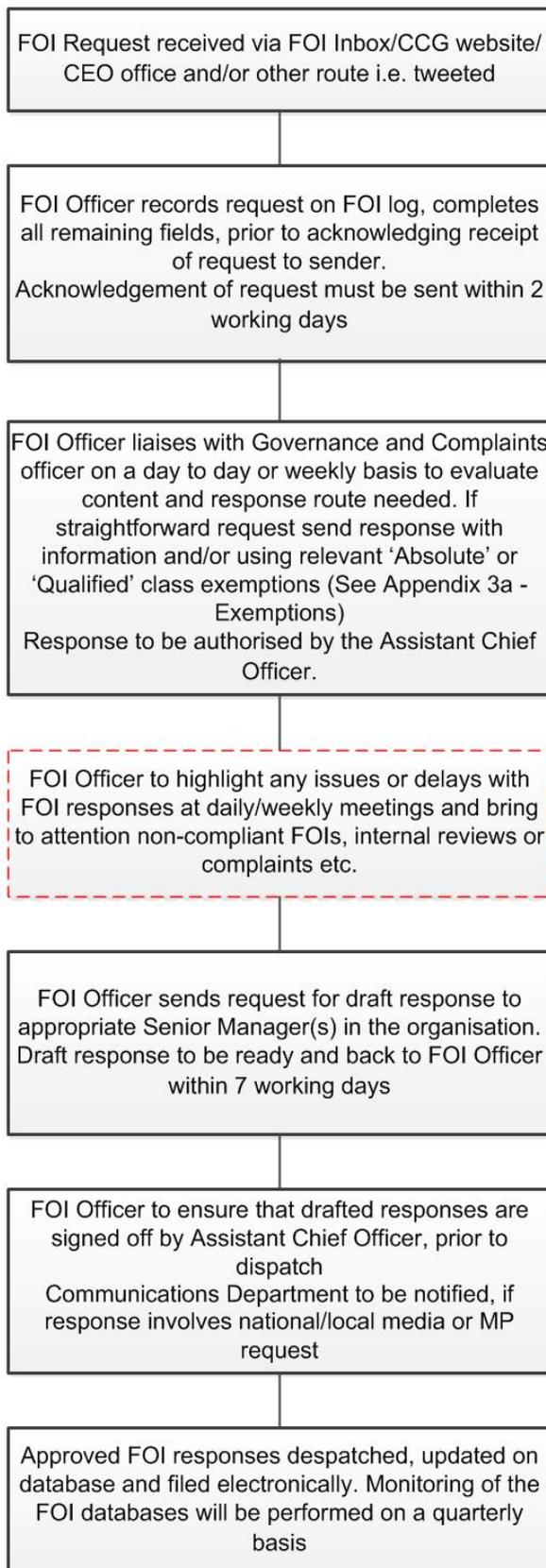
If you still remain dissatisfied with our response, you may appeal to the Information Commissioner whose contact details are available at <http://www.ico.gov.uk>, together with further information about the Freedom of Information process.

- 14.2 A consultation will take place with appropriate senior management and a range of decisions will be considered including:
- release information that has previously been withheld
 - uphold the CCG's decision not to release information
 - consider whether apologies for any failures in internal processes are necessary. If so review these, proposing improvements if necessary to prevent recurrence, for implementation by the Assistant Chief Officer.

- 14.3 A response will be prepared by the appropriate staff and signed off centrally prior to being sent to the applicant, including details of how to appeal to the Information Commissioner, as above, if dissatisfaction remains.
- 14.4 A review of all Appeals received will be completed every 3 months to ensure all necessary actions appertaining to the appeal have been actioned and satisfactorily concluded.

Appendix 1 : Procedures Flow Chart

Maximum 20 Working Days



There are two types of class exemptions:

- Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure

- Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest not to disclose information.

With the exception of section 21 (information available by other means) absolute exemptions apply not only to the communication of the 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 FOIA are:

Section 21 Information accessible to applicant by other means – it may be reasonably accessible even if the applicant has to pay for it.

Section 23 Information supplied by, or relating to, bodies with security matters – this is aimed at the Security Services, Government Communications Headquarters and the National Criminal Intelligence Service.

Section 32 Court records- covers documents in the custody of a court, created by a court served on or by a public authority for court proceedings.

Section 34 Parliamentary privilege - to avoid infringing privileges of the House of Parliament.

Section 40 Personal Information – where the applicant is the subject of the information the request must be dealt with in accordance with the Subject Access rights provided in the Data Protection Act 1998. Where the applicant is not the subject of the information, then it is exempt if disclosure of it would breach the Data Protection Act.

Section 41 Information provided in confidence – if the disclosure of the information would constitute a breach of confidence that could lead to action against the CCG.

Section 44 Prohibitions on disclosure – information is exempt if its release is prohibited under any enactment; it is incompatible with Community obligations or would constitute contempt in court.

The exemptions that are qualified by the public interest test are:

Section 22 Information intended for future publication – covers information held with a view to publication by the public authority or another person at some future date.

Section 24 National security – information can be exempt if it is required to safeguard national security.

Section 26 Defence – information can be exempt if its release would affect the defence of the British Isles, any British colony or the capability and effectiveness of the armed forces.

Section 27 International relations – information is exempt if its release would prejudice relations with another state, international organisation, international court or the interests of the UK abroad.

Section 28 Relations within the UK – covers information that would prejudice the economic interests of the UK or of any administration in the UK.

Section 29 The economy – covers information that would prejudice the economic interest of the UK or of any administration in the UK.

Section 30 Investigations and proceedings conducted by public authorities – covers information held for an investigation that the authority has a duty to conduct to decide if a person should be charged with or found guilty of an offence, relates to criminal proceedings that the authority has power to conduct or relates to civil proceedings brought by or on behalf of the authority.

Section 31 Law enforcement – information is exempt if its release would prejudice law enforcement. This includes the prevention and detection of crime, apprehension and prosecution of offenders, administration of justice, the operation of immigration controls and the security prisons.

Section 33 Audit functions – this applies to authorities that have functions in relation to the audit of other authorities' accounts and the examination of efficiency and effectiveness of the use of their resources. This does not cover internal auditing functions of authorities.

Section 36 Prejudice to effective conduct of public affairs – information is exempt if, in the opinion of a qualified person, it would be prejudice how the CCG conducts its public affairs.

Section 37 Communications with Her Majesty, with other members of the Royal Household and the conferring by the Crown of any honour or dignity.

Section 38 Health and Safety – information is exempt if its disclosure would endanger the physical health, mental health or safety of any individual.

Section 39 Environmental information – covers information that can be accessed via the Environmental Information Regulations.

Section 42 Legal professional privilege - information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Section 43 Commercial interests – information is exempt if it constitutes a trade secret or would prejudice or be likely to prejudice the commercial interests of any person or organisation.

Equality Impact Assessment form 2013

Title of policy or service	Freedom of Information Policy	
Name and role of officers completing the assessment	Andrew Clayton – Head of Health Informatics	
Date assessment started/completed	25.01.17	

1. Outline	
<p>Give a brief summary of your policy or service</p> <ul style="list-style-type: none"> • Aims • Objectives • Links to other policies, including partners, national or regional 	<p>The Freedom of Information (FOI) Act 2000, UK Re-use of Public Sector Information Regulations 2015 (RPSI) and the Environmental Information Regulations 2004 (EIR) imposes a number of obligations on Public Authorities, which includes NHS Rotherham CCG, to disclose information about its activities and provide the public with wide rights to access to the CCG's records.</p> <p>The Freedom of Information Policy, and its associated Codes of Practice, set out how the CCG will meet its obligations under the FOI Act, RPSI and EIR.</p>

2. Gathering of Information

This is the core of the analysis; what information do you have that indicates the policy or service might *impact on protected groups, with consideration of the General Equality Duty.*

	What key impact have you identified?			What actions do you need to take to address these issues?	What difference will this make?
	Positive Impact	Neutral impact	Negative impact		
Human rights		✓			
Age		✓			
Carers		✓			
Disability		✓			
Sex		✓			
Race		✓			
Religion or belief		✓			
Sexual orientation		✓			
Gender reassignment		✓			
Pregnancy and maternity		✓			
Marriage and civil partnership (only eliminating discrimination)		✓			
Other relevant group		✓			

Please provide details on the actions you need to take below.

3. Action plan				
Issues identified	Actions required	How will you measure impact/progress	Timescale	Officer responsible

4. Monitoring, Review and Publication			
When will the proposal be reviewed and by whom?	IG Group March 2019		
Lead Officer	Andrew Clayton	Review date:	March 2019

Once complete please forward to your Equality lead Elaine Barnes via email elaine.barnes3@nhs.net