**Freedom of Information Policy**

|  |  |
| --- | --- |
| Responsible Officer | Director of Finance, Strategy & Transformation |
| Author | Corporate Office |
| Date effective from | January 2005 |
| Date last amended | January 2022 |
| Review date | January 2025 |

# Introduction

1. The Freedom of Information (FoI) Act 2000 provides public access to information held by public authorities.
2. Under the Act, anyone can make a request in writing for recorded information held by or on behalf of NICE. NICE must confirm whether the requested information is held, and the information must be communicated to the requester within 20 working days if this is the case, unless one of the exemptions within the Act applies. In limited circumstances, the duty to either confirm or deny whether the requested information is held is removed entirely through the application of specific legal exemptions.

# Scope

1. This policy relates to all recorded information held by the organisation and applies to all staff in NICE and the Non-Executive Directors.
2. It applies to all information both held and created when carrying out business for NICE, including information held electronically and hard copy.
3. In line with guidance from the Information Commissioner’s Office (ICO), information held in non-corporate communication channels is considered to be held on behalf of NICE when it relates to the official business of the public authority, and therefore falls within the scope of the Act. This applies where Non-Executive Directors, or exceptionally staff, might use non-NICE email accounts or other personal communication channels to conduct official business. Information held by third parties on behalf of NICE, text messages and other forms of communications such as instant messaging platforms are also in scope if the content relates to NICE’s official business.
4. This policy sets out how NICE will:
   * Respond and comply with FoI requests
   * Publish information about NICE activities (publication scheme)
   * Answer complaints about our management of FoI requests through the internal review process.
5. The policy does not apply to requests for individuals’ own personal data under the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR), or requests for the re-use of NICE content under the Re-use of Public Sector Information Regulations, which are covered in separate documents.

# Responsibilities

1. The enquiry handling team is responsible for managing and responding to FoI requests. They liaise with teams across NICE to ensure that requests are dealt with and information is disclosed or withheld in accordance with the Act. They carry out the public interest and prejudice tests, where applicable, to engage qualified exemptions to withhold the requested information. They also determine whether it is appropriate to confirm or deny whether the information is held and whether this requirement is removed entirely in exceptional circumstances.
2. The information governance and records management (IG&RM) team is responsible for providing support and assistance to the enquiry handling team administering FoI requests. The IG&RM team maintains strategic oversight of NICE’s disclosure activities through the delivery of the information access function, detecting trends and common themes in requests which informs the strategy for maintaining the publication scheme.
3. The Head of Information Governance and Records Management, who is also the Data Protection Officer (DPO), is the responsible person for reviewing complaints about NICE’s response to requests under the Act, maintaining the publication scheme, liaising with the ICO, and developing policies.
4. The Associate Director, Corporate Office is responsible for responding to complaints about requests under the Act.
5. The commercial team is responsible for ensuring that all contracts with third parties include relevant clauses in relation to the supplier’s responsibilities under the Act, and a data protection addendum authorised by the DPO.
6. Information Asset Owners are responsible for ensuring information and records are managed effectively and appropriately. The management of records is dealt with by the retention and disposal schedule which should be referred to for guidance in the management of information.
7. All managers are responsible for ensuring staff have read and understood their responsibilities under the policy.
8. All staff are responsible for ensuring requests for information that fall under the scope of the Act are sent to the enquiry handling team ([nice@nice.org.uk](mailto:nice@nice.org.uk)) as soon as they receive them and information and records are managed in line with relevant policies and procedures, including the retention and disposal schedule.

# Publication scheme

1. NICE maintains a publication scheme listing categories of information we are obliged to publish. The scheme is available on the NICE website and maintained in accordance with the Act.

# How requests are handled

1. The enquiry handling team manages FoI requests in accordance with the Code of Practice issued under section 45 of the Act.
2. The dedicated routes for information requests are:

* Email: [nice@nice.org.uk](mailto:nice@nice.org.uk)
* Post:

The enquiry handling team

National Institute for Health and Care Excellence

Level 1A

City Tower

Piccadilly Plaza

Manchester

M1 4BT

1. Requests for information must:

* be in writing.
* include the real name of the requester.
* include a valid address for correspondence (an email address is valid)
* describe the information requested.
* be received in a legible form

1. FoI requests do not have to make any direct reference to the Act or be the sole or main theme of the requester’s correspondence. Neither do they need to justify the reason for making the request. For this reason, it is important that all staff read and understand the FoI policy and procedure and know how to recognise a potential request.
2. The enquiry handling team will usually acknowledge receipt of requests within two working days.
3. NICE will usually respond to requests for information within 20 working days starting from the day following receipt of the request and the enquiry handling team will advise the requester if this deadline will not be met.
4. In line with the ICO’s code of practice, NICE may apply an extension to the 20 working day deadline when the information requested falls within the scope of a qualified exemption and more time is required to apply the public interest test, where, for example, the request is particularly complex or voluminous. The enquiry handling team will advise the requester when an extension for the public interest test has been applied and will usually respond to the request within 40 working days of the date the original request was made.
5. If NICE is unclear on any point in the request, the enquiry handling team will contact the requester to ask for clarification. If clarification is not provided within 20 working days, NICE will assume that the information is no longer required, and the request will be closed.
6. If NICE does not hold the information requested but believes another public body may hold the information. The applicant will be advised to contact the other public authority directly.
7. If NICE believes information within scope of the request may be held in a non-NICE (private) email account or other private messaging platform we will ask an individual/s to search those email accounts for information which might fall within the scope of an FoI request. Before requesting the information from an individual/s, NICE will consider:

* the focus of the request, indicated by the words used by the requester.
* the subject matter of the information which falls within the scope of the request;
* how the issues to which the request relates have been handled within the public authority;
* by whom and to whom was the information sent and in what capacity (e.g. public servant or political party member); and
* whether a private communication channel was used because no official channel was available at the time.

# Approach to disclosing information about staff

1. NICE sometimes receives requests under the Act for the disclosure of information about our employees.
2. The Act says that personal information is exempt from disclosure if that disclosure would lead to a breach of the data protection principles, for example, if the disclosure would be unfair to an employee. This exemption is intended to ensure that greater public openness does not compromise personal privacy. NICE is also bound by human rights principles. This means that we must consider our employees’ right to respect for their private and family life in deciding whether to disclose information about them.
3. The Information Commissioner has issued guidance to public authorities on the subject of access to information about public authorities’ employees which is available on the ICO website.
4. As a result of this guidance, NICE’s position is that the following information will usually be released (when in the scope of an FoI request) about NICE staff of associate director level (or equivalent) or above:

* Name
* Job title
* Work email address
* Work phone number

1. Common examples would be:
   1. An FoI request asks for the name and contact details of the NICE employee who is responsible for a specific business area. Our default response would be to release this information as long as the employee is an associate director or above.
   2. An FoI request asks for documents such as emails or papers that contain the names and work contact details of NICE employees. Our default response would be to leave in this information about employees at associate director level or above but redact it for less senior staff.
   3. Other information relating to NICE employees that is already published by NICE or other organisations (and therefore is in the public domain) may also be released under the Act.

# Exemptions

1. The Act contains exemptions that allow NICE to withhold information from a requester in certain cases, for example where the information is for confidential material or when disclosure may conflict with data protection legislation. This also applies to the exemption to neither confirm nor deny whether the information is held in a limited number of circumstances.
2. Some exemptions require consideration of whether the disclosure is in the public interest. The public interest test means NICE must consider whether the public interest in withholding information outweighs the public interest in disclosing the information.
3. When information is withheld the requester will be told which exemptions have been applied and why.

### Consultation with third parties

1. If disclosure of the requested information is likely to affect the interests of third parties, NICE will, where possible, contact those individuals before determining whether an exemption applies. In such circumstances NICE retains the final decision on the response.
2. Where information that has been requested is not held directly by NICE but is held indirectly by third parties such as suppliers or delivery partners, NICE will contact the third parties as soon as practicable after having received the request and the third parties should supply the information as soon as possible. The timeframe in which third parties are required to supply the information in response to an FoI request will be set out in their contracts, as outlined in paragraph 12.

### Charges and refusals of requests

1. NICE does not charge for complying with FoI requests. However, in line with the Act, NICE is not obliged to comply with a request if it is estimated that the cost of compliance would exceed £450 - or 18 hours (the ‘appropriate limit’) to determine information is held, locate, retrieve, and extract the information requested. Time taken to redact exempt information cannot be included.
2. Where a request is estimated to exceed the ‘appropriate limit’, the enquiry handling team will give the requester reasonable advice and assistance to change or narrow the request if this is possible.
3. There is a provision within the Act which allows public authorities to refuse a request where it is deemed vexatious or repeated. The enquiry handling team will determine whether a request is repeated or vexatious in nature. Refusing a request on vexatious or repeated grounds is only used in rare instances and must be fully defendable to the ICO.

### Complaints procedure

1. If a requester is unhappy with the handling of a response to an FoI request, they can contact the enquiry handling team to see if the matter can be resolved informally. If a requester does not wish to do this or, if following the informal discussion, a requester remains dissatisfied with the response, a formal complaint can be made (known as an ‘internal review'). An internal review is a formal mechanism within the Act which allows the requester to ask the public authority to reconsider its original handling of the request.
2. Internal reviews must be made in writing and should set out clearly the reasons for the review and why the requester feels their request has not been handled correctly under the Act.
3. An internal review in relation to an FoI request must be made within 40 days of the original response. Where a review is requested after 40 days NICE is not obliged to comply with the request. Requests for internal reviews must be sent to:

* Email: complaints@nice.org.uk
* Post:

Associate Director, Corporate Office

National Institute for Health and Care Excellence

2 Redmond Place

Stratford

London

E20 1JQ

1. NICE will usually acknowledge requests for internal reviews within five working days.
2. Internal reviews will be carried out by the Corporate Office and/or two non-Executive Directors at the discretion of NICE depending on the nature of the complaint. A response will usually be sent by the Associate Director, Corporate Office within 20 working days. If the review is likely to take longer than 20 working days, for instance where there is a need to consider the public interest or due to the complexity of the case, NICE will write to the requester with a revised timescale at the earliest opportunity.
3. In all cases if the requester is not satisfied with the outcome of the internal review, they can appeal to the ICO at the following address:

The Information Commissioner’s Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

# Review

1. This policy will be reviewed every three years.

### Related policies

* Information Governance and Records Management Framework policy
* Individual Rights procedure
* Records management policy
* Retention and Disposal Schedule
* General complaints policy and procedure
* Re-use of public sector information policy and complaints procedure
* Policy on managing unreasonable or persistent enquirer contact.
* Email and internet policy

**Version control table**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Version** | **Date** | **Author** | **Replaces** | **Comment** |
| 2.0 | Oct 2013 | Corporate office & enquiry handling team | Freedom of Information Policy 2005 and Freedom of Information Complaints policy |  |
| 3.0 | Aug 2017 | Corporate Office | Freedom of Information Policy and Complaints Procedure  Version 2.0 | Policy reformatted; duplicated content removed. Section relating to offences removed – this is to form part of an internal procedure document for NICE staff. |
| 3.1 | Aug 2019 | Corporate Office | Freedom of Information Policy and Complaints Procedure  Version 3.0 | Accessibility tested.  Update to job title p.7 |
| 3.1 | Dec 2020 | Data Protection and Information Governance Manager | Freedom of Information Policy and Complaints Procedure  Version 3.1 |  |
| 3.2 | Jan 2021 | Information Governance Manager and Deputy DPO | Freedom of Information Policy and Complaints Procedure  Version 3.1 | Minor changes to the policy, adding in more responsibilities and further data protection information. |
| 3.3 | Nov 2022 | Information Governance Manager / Deputy DPO and Head of IG&RM / DPO | Freedom of Information Policy and Complaints Procedure  Version 3.2 | Changes to the policy, adding in the approach to releasing information about staff, clarification on application of the public interest test and use of non-corporate communication channels, and updated terminology for the internal review process including timescales. |