|  |  |
| --- | --- |
|  Author | Human Resources |
| Date revised | March 2018 |
| Date: SMT Meeting | 22.05.18 |
| Date: CE Approval | 22.05.18 |
| Date: Board Meeting | 23.05.18 |
| Next review date | March 2019 |
| Target Audience | All Staff & for Public Information |

**WARNING:** Always ensure that you are using the most up to date policy or procedure document. If you are unsure, you can check that it is the most up to date version by checking with the HR Officer.

**To be completed when reviewing an existing policy.**

If the policy has been reviewed without change this information will still need to be recorded although the version number will remain the same.

|  |  |  |
| --- | --- | --- |
| **Version** | **Date** | **Brief Summary of Change** |
| 3.0 | Mar 18 | Reviewed and updated in line with GDPR |
| 2.0 | Dec 14 | Reviewed – No changes |
| 2.0 | Feb 14 | Revised in line with new branding. No changes to text.  |

**Introduction**

NICCY has a commitment to openness and transparency and has always been concerned to make relevant information available wherever possible to individuals who may request it, subject to safeguarding the privacy of individuals and to legitimate considerations of national security, law enforcement and commercial interests where relevant.

The Freedom of Information Act (FOIA) came into force in 2005 and gives everyone a statutory right of access to information held by bodies such as NICCY.

1. **Scope of the Policy**
	1. The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 are adhered to and in particular that:
* a significant amount of routinely published information about NICCY is made available to the public as a matter of course through the Publication Scheme;
* other information not included in the Publication Scheme is readily available on request and such a request is dealt with in a timely manner; and
* in cases where information is covered by an exemption, consideration is given as to whether or not the information should be released in line with the public interest test (see Section 9).
1. **Responsibilities**
	1. NICCY recognises its corporate responsibility under the FOI Act to provide a general right of access to information held and the HR Officer will have responsibility for implementing this policy.
	2. The HR Officer will be responsible for drawing up guidance on FOI, promoting compliance with this policy and responding to all requests.
	3. All NICCY staff will be required to assist with the appropriate and timely retrieval of information required to answer the FOI request during the 20 day deadline.
2. **Available Guidance**
	1. Guidance on how to handle an FOI request is available in Appendix 1.
3. **NICCY’s Publication Scheme**
	1. NICCY’s Publication Scheme is available both on our [website](http://www.niccy.org/CorporateServices/HumanResources) and specifies:
* what information NICCY will make routinely available to the public as a matter of course;
* how it will do so; and
* whether the information will be made available free of charge or on payment of a fee.
1. **Specific Requests for Information**
	1. Information not already made available in NICCY’s Publication Scheme, could be accessible through a specific request for information. In this regard the Freedom of Information Act establishes two related rights:
	* the right to be told whether information exists; and
	* the right to receive the information (subject to exemptions – see Annex 2).
	1. These rights can be exercised by anyone. These specific requests for information not listed in the publication scheme will be dealt with by the HR Officer.
	2. Any request must be made in a permanent form (for example in writing or by email) and a charge may be made for dealing with any request.
	3. Those persons making the request will not be entitled to information to which exemptions apply. However, only those specific pieces of information to which exemptions apply will be withheld, and information covered by an exemption will be subject to review by the HR Officer.
	4. NICCY must respond to any request within **20 working days** although further reasonable details can be requested in order to identify and locate the information. If a fee is required, the period of 20 working days is extended by up to 3 months until the fee is paid.
2. **Charges for providing information under FOIA**
	1. There is no ‘flat rate’ fee to receive information and in many cases NICCY will provide the information to you free of charge. However, you should note that if the information you are seeking is not readily available in the form in which you are seeking it, NICCY may charge you a fee based on the costs associated with providing the information, for example staff costs, photocopying and postage (known as “disbursements”).
	2. The FOIA does permit NICCY to refuse requests if we estimate that it will cost us in excess of the appropriate cost limit (currently £450) to fulfil a request.
	3. If someone needs to pay a fee for disbursements or because the costs exceed the appropriate limit, we will write to them advising of the fee required within 20 working days of receipt of your request. This is known as a “Fees Notice”. When a Fees Notice is issued, the 20 working day limit for responding stops, and will start again when we receive payment. If we do not receive the fee within three months (90 days) we are not obliged to comply with the request.
3. **Complaints**
	1. The HR Officer will co-ordinate any complaints received in respect of this policy. The complaint should be addressed to the HR Officer in the first instance and it will be acknowledged immediately. However, should the HR Officer be absent due to leave, sickness, etc, you should direct your complaint to the Chief Executive. Every reasonable effort will be made to offer a more comprehensive reply within 21 days.
	2. If the applicant is not satisfied with the reply then they should inform the HR Officer within 21 days.  The complaint will then be forwarded to the Chief Executive and it will be dealt with in accordance with NICCY’s general Complaints Procedure or NICCY’s Grievance Procedure as appropriate.
	3. If applicants are still dissatisfied with the outcome of the Complaints Procedure they may seek an independent review from the Information Commissioner. Requests for review by the Information Commissioner should be made in writing to:

	The Information Commissioner’s Office – Northern Ireland
	51 Adelaide Street, Belfast, BT2 8FE
	Telephone: 028 9026 9380
	Fax: 028 9026 9388
	Email: ni@ico.gsi.gov.uk
4. **Exemptions under the Act**
	1. There are 23 exemptions under the Act, some exemptions where the public interest test applies, and others which are absolute exemptions.
	2. NICCY may decide that some information it holds could be regarded as exempt information under the FOI Act. Where a request is made for information which includes exemptions, NICCY will consider the prejudice test and the public interest test, and may in some circumstances withhold the requested information.
	3. The Chief Executive has overall responsibility for implementing and monitoring this policy, which will take effect immediately and will be reviewed on a regular basis following its implementation and additionally whenever there are relevant changes in legislation or to NICCY working practices.

**9. The Public Interest Test?**

* 1. The public interest test favours disclosure where a qualified exemption (or an exception) applies. In such cases, the information may be withheld only if the public authority considers that the public interest in withholding the information is greater than the public interest in disclosing it.
	2. For more information on the public interest test, please refer to the Information Commissioners guidance which can be found [here](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_3_public_interest_test.pdf). This explains how and when to apply the public interest test.

**APPENDIX 1 – Guidance Procedures**

**i. All requests for information should be passed immediately to the HR officer who will respond to the requested in line with the FOI Policy**

* + 1. All staff should be aware that requests for information must be considered without reference to the identity of the requester or the reasons behind the request.
		2. Any person making a request for information is entitled to a response. An application does require a statement of the name of the applicant and an address for correspondence, but does not limit the class of persons who can submit requests.
		3. A request therefore has to be considered on the basis that it could have been made by any person; the identity of that person is not a material consideration when deciding whether or not to release information.
		4. Before requests are responded to, they will be checked by the Head of Communications to ensure that they do not pose a wider organisational risk.
		5. Requests under obvious pseudonyms should normally be considered, unless the HR Officer feels there is reason to think that one of the following needs to be considered;
1. is the request request is vexatious or repeated. The identity of the applicant will need to be known to decide whether a request is repeated; knowledge of the applicant’s identity and of their previous conduct may be a relevant factor in considering whether a request is vexatious;
2. the applicant requests information that amounts to their own personal data, which is exempt under section 40(1); and
3. the purposes of the aggregation of costs under the Fees Regulations

**APPENDIX 2 – Exemptions**

1. Although decisions on disclosure should be made on a presumption of openness, the FOI Act recognises the need to preserve confidentiality and protect sensitive material in some circumstances.
2. You cannot withhold information in response to a valid request UNLESS one of the following applies:-
* an exemption to disclosure, or
* the information sought is not held, or
* the request is considered vexatious or repeated or
* the cost of compliance exceeds the threshold (see Appendix 4)

**The duty to confirm or deny**

1. A person applying for information has the right to be told if the information requested is held by NICCY, and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known as NICCY’s “duty to confirm or deny” that it holds the information. However, NICCY does not have to confirm or deny if:-
* the exemption is an absolute exemption (see paragraph 6), or
* in the case of qualified exemptions (see paragraph 8), confirming or denying would itself disclose exempted information

**Exemptions**

1. A series of exemptions are set out in the Act which allow the withholding of information in relation to an enquiry. Some are extremely specialised in their application (such as national security) and would not usually be relevant to NICCY. There are more than 20 exemptions but NICCY is likely to use only a few of them.

1. There are two general categories of exemptions:-

**Absolute**: where there is no requirement to confirm or deny that the information is held, disclose the information or consider the public interest; and

**Qualified**: where, even if an exemption applies, there is a duty to consider the public interest in disclosing information

**What are the Absolute Exemptions?**

1. There are 8 absolute exemptions listed in the Act. Even where an absolute exemption applies:-
* it does not mean that NICCY can’t disclose in all cases; it means that disclosure is not required by the Act. A decision could be taken to ignore the exemption and release the information taking into account all the facts of the case
* there is still a legal obligation to provide reasonable advice and assistance to the enquirer
1. The absolute exemptions in the Act are set out below. **Those which might be relevant to NICCY are marked with an \*:**

* 1. **Information accessible to the enquirer by other means\*** (Section 21)

If information is reasonably accessible to the applicant by another route than the Act, it is exempt information. This is the case even if the enquirer would have to pay for the information under that alternative route. This exemption includes cases where NICCY is required to give information under other legislation, or where the information is available via the Publication Scheme.

* 1. **Information dealing with security matters\*** (Section 23) (see also qualified exemption under Section 24 on national security)

This applies to information directly or indirectly supplied by, or relating to, bodies dealing with security matters.

* 1. **Court records\*** (Section 32) – (see also the qualified exemption under Section 30 concerning investigations and proceedings conducted by public authorities)

This applies to information related to proceedings in a court or tribunal or served on a public authority for the purposes of proceedings.

* 1. **Parliamentary Privilege** (Section 34)

This exempts information if it is required for the purpose of avoiding an infringement of Parliamentary privilege. Parliamentary privilege is an immunity whereby MPs cannot be prosecuted for sedition or sued for libel or slander over anything said during proceedings in the House.

* 1. **Prejudice to the effective conduct of public affairs** (Section 36) - see also the qualified exemption part of Section 36

This relates to the maintenance of the collective responsibility of Ministers.

* 1. **Personal information\*** (Section 40)- see also the qualified exemption part of Section 40. Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act.
	2. **Information provided in confidence**\* (Section 41)

This relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person.

* 1. **Prohibitions on disclosure\*** (Section 44)

Information is exempt where its disclosure is prohibited under any other legislation by order of a court or where it would constitute a contempt of court or where it is incompatible with any EC obligation.

**What are the Qualified Exemptions?**

1. With qualified exemptions, even if it is decided that an exemption applies, there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing information. The qualified exemptions in the Act are set out below. **Those which might be relevant to NICCY are marked with an \*:**
	1. **Information intended for future publication\*** (Section 22)

 If at the time the request was made, information is held with a view to publication, then it is exempt from disclosure if it is reasonable that it should not be disclosed until the intended date of publication. This could apply for instance to statistics published at set intervals, for example annually or where information is incomplete and it would be inappropriate to publish prematurely. Remember, you still have a legal duty to provide reasonable advice and assistance.

* 1. **National security** (Section 24**)** (see also absolute exemption 23)

Information is exempt for the purposes of safeguarding national security.

* 1. **Defence** (Section 26)

Information is exempt if its disclosure would prejudice the defence of the UK.

* 1. **International relations** (Section 27)

Information is exempt if its disclosure would or would be likely to, prejudice relations between the UK and any other state, international organisation or court, or the interests of the UK abroad.

* 1. **Relations within UK** (Section 28**)**

Information is exempt if its disclosure would or would be likely to, prejudice relations between any administration in the UK i.e. the Government, Scottish Administration, Northern Ireland Assembly, or National Assembly of Wales.

* 1. **The economy** (Section 29)

Information is exempt if its disclosure would, or would be likely to prejudice the economic or financial interests of the UK

* 1. **Investigations and proceedings conducted by public authorities\*** (Section 30)

Information is exempt if it has at any time been held by NICCY for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.

* 1. **Law enforcement\*** (Section 31)

Information which is not exempt under Section 30 Investigations and Proceedings, may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others:-

* the prevention or detection of crime
* the apprehension or prosecution of offenders
* the administration of justice
* the exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, whether circumstances justify regulatory action, ascertaining a person’s fitness or competence in relation to their profession, ascertaining the cause of an accident or protecting or recovering charities or its properties
* any civil proceedings brought by or on behalf of NICCY which arise out of an investigation carried out for any of the purposes mentioned above.

The duty to confirm or deny does not arise where prejudice would result to any of these matters.

* 1. **Audit Functions** (Section 33)

Information is exempt if its disclosure would, or would be likely to, prejudice the exercise of an authority’s functions in relation to the audit of the accounts of other public authorities. It does not apply to internal audit reports.

* 1. **Formulation of government policy** (Section 35)

Information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (e.g. Attorney General) and the operation of any Ministerial private office

* 1. **Prejudice to the conduct of public affairs** (Section 36) (excluding matters covered by the absolute exemption part of Section 36)

Information likely to prejudice the maintenance of the convention of the collective responsibility of Ministers or likely to inhibit the free and frank provision of advice or exchange of views

* 1. **Communications with the Queen** (Section 37)

Information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

* 1. **Health and Safety\*** (Section 38)

Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

* 1. **Environmental information** (Section 39)

Information is exempt under FOI where it is covered by the Environmental Information Regulations. Environmental information can cover information relating to: air, water, land, natural sites, built environment, flora and fauna, and health. It also covers all information relating to decisions or activities affecting any of these.

* 1. **Personal information**\* (Section 40) – see also the absolute exemption part of Section 40 Where an individual seeks information about themselves Data Protection Act and the General Data protection Regulation (GDPR) provisions apply. Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act and the General Data Protection Regulation, or the data protection/GDPR principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data Protection Act and GDPR. The duty to confirm or deny does not arise in relation to this information if doing so would be incompatible with any of the above.
	2. **Legal professional privilege\*** (Section 42)

This exemption covers all information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information. If NICCY wishes to disclose the information it should seek consent from the provider of the advice.

* 1. **Commercial interests\*** (Section 43)

Information is exempt if it constitutes a trade secret or would be likely to prejudice the commercial interests of any person or body (including NICCY). The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret.

**Protective Markings and Applying Exemptions**

1. When considering if an exemption to disclosure should apply, bear in mind that the presence of a protective marking (Restricted, Confidential or Secret, with or without descriptors such as Staff, Management, Commercial etc) does not constitute an exemption and is not in itself sufficient grounds on which to prevent disclosure. Each case must be considered on its merits.

**Timing**

1. Where information has previously been withheld, it must not be assumed that any subsequent requests for the same information will also be refused. Sensitivity of information decreases with age and the impact of any disclosure will be different depending on when the request is received. Therefore, for each request, it will be necessary to consider the harm that could result at the time of the request and, while taking into account any previous exemption applications, each case should be considered separately.

**Next steps**

1. In all cases, before writing to the enquirer, NICCY’s FOI Officer should ensure that the case has been properly considered, and that the reasons for refusal, or public interest test refusal, are sound.

**Appendix 3 – The Public Interest Test**

**Background**

* 1. Having established that a qualified exemption(s) definitely applies to a particular case, a public interest test will be conducted to identify if the public interest in applying the exemption outweighs the public interest in disclosing it. Therefore, unless it is in the public interest to withhold the information, it has to be released. Although precedent and a developed case law will play a part, individual circumstances will vary and each case will need to be considered on its own merits.

**Carrying out the test**

* 1. It is worth noting that what is in the public interest is not necessarily the same as that which may be of interest to the public. It may be irrelevant that a matter may be the subject of public curiosity.

In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one. Applying such a test depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in NICCY and possibly wider.

* 1. Factors that might be taken into account when weighing the public interest include:-

|  |  |
| --- | --- |
| **For Disclosure** | **Against Disclosure** |
| Is disclosure likely to increase access to information held by NICCY? | Is disclosure likely to distort public reporting or be misleading because it is incomplete? |
| Is disclosure likely to give the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions? | Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving? |
| Is disclosure likely to improve the accountability and transparency of NICCY in the use of public funds and help to show that it obtains value for money? | Is disclosure likely to cause unnecessary public alarm or confusion? |
| Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy? | Is disclosure likely to seriously jeopardise NICCY legal or contractual position? |
| Is disclosure likely to increase public participation in decision-making? | Is disclosure likely to infringe other legislation e.g. Data Protection Act & GDPR? |
| Is disclosure likely to increase public participation in political processes in general? | Is disclosure likely to create a controversial precedent on the release of information or impair your ability to obtain information in the future? |
| Is disclosure likely to bring to light information affecting public safety? | Is disclosure likely to adversely affect NICCY’s proper functioning and discourage openness in expressing opinions? |
| Is disclosure likely to reduce further enquiries on the topic? | If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose? |

* 1. Note also that:
* potential or actual embarrassment to, or loss of confidence in, NICCY or its staff is NOT a valid factor
* the fact that the information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information
* the potential harm of releasing information will reduce over time and should be considered at the time the request is made rather than by reference to when the relevant decision was originally taken
* the balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but on certain higher order considerations such as the need to preserve confidentiality of internal discussions
* a decision not to release information may be perverse i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party?
	1. The answers to these questions and the reasons for those answers will be recorded by the FOI Officer. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. The importance of each factor in the circumstances will be assessed before an overall assessment is made.

**For Disclosure**

* 1. Where the balance of the public interest lies in disclosure, the enquiry should be dealt with and the information requested should be made available. Where the factors are equally-balanced, the decision should usually favour disclosure.

**Against Disclosure**

* 1. After carrying out the public interest test if it is decided that the exemption should still apply, the request should be replied to accordingly.

There will be occasions when it has been decided that a qualified exemption applies but consideration of the public interest test may take longer. In such a case, the enquirer must be contacted within 20 working days and informed that a particular exemption applies and also giving an estimate of the date by which a decision on the public interest test will be made.

This should be within a “reasonable” time – in practice, it is recommended this decision is made and communicated within the 20 days but where not possible it is suggested that no more than 10 working days beyond the 20 days should be allowed.