

# FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS POLICY

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## **Equality Impact Assessment**

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. A single Equality Impact Assessment is used for all policies and procedures.

This document has been assessed to ensure consideration has been given to the actual or potential impacts on staff, certain communities or population groups.

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

## **1. INTRODUCTION**

This document sets out the policy requirements in terms of the Freedom of Information (FOI) Act and Environmental Information Regulations (EIR) for NHS Leeds Clinical Commissioning Group (CCG).

These two pieces of legislation place an obligation on public authorities (such as the CCG) to make available to anyone, anywhere in the world, information that is held by those public authorities. 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 CCG meets those obligations and details the key responsibilities and requirements of the CCG.

This policy reflects the CCG's support of the principle that openness should be the norm in public life, however, individuals have a right to privacy and confidentiality, so this policy does not overturn the Data Protection Legislation or other 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 and the Common Law Duty of Confidentiality). The CCG must still be able to carry out its duties effectively and to ensure that 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 DEFINITION OF TERMS**

The Act: refers to the Freedom of Information Act 2000

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

DPA: acronym for the Data Protection Act 2018, which received Royal Assent on 25th May 2018 and which has replaced the previous Data Protection Act 1998.

GDPR: refers to the General Data Protection Regulation (EU) 2016/679, which came into force on 25th May 2018 and which replaced the Data Directive 95/46/EC.

EIR: an acronym for Environmental Information Regulations 2004

ICO: is 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 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 or EIR.

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

### **3. KEY LEGISLATION**

#### **3.1 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 CCG) 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.

### **3.2 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 FOI but there is an even greater presumption of disclosure, exceptions (similar to FOI exemptions) are fewer and requests can be made verbally.

### **4. 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 CCG complies with all relevant regulations, laws and guidance.
- Ensure staff at all levels are aware of their responsibilities with regards to the FOI, the DPA, EIR and 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 Governing Body is fully informed on the operation of the FOI, the DPA, the EIR and GDPR.
- Ensure the CCG 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

### **5. SCOPE**

This policy must be followed by all staff who work for or on behalf of the CCG including those on temporary or honorary contracts, secondments, volunteers, pool staff, Governing Body members, students and any staff working on an individual contractor basis or who are employees for an organisation contracted to provide services to the CCG. 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 CCG, or on behalf of the CCG 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 CCG, 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 (from 25th May 2018), and may also fall within the scope of the FOI Act or the EIR.

## **6. ACCOUNTABILITY AND RESPONSIBILITIES**

### **6.1 Information Governance**

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

- Governing Body
- Quality and Performance Committee / Audit Committee
- Accountable Officer
- Senior Information Risk Owner
- Caldicott Guardian
- Data Protection Officer
- Information Asset Owner
- Information Asset Administrator
- Heads of Service
- 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 CCG 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 (See Section 17 of this policy (Help for Staff)).
- 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 CCG 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 CCG's Publication Scheme.

## **6.2. Provision of FOI and EIR services**

The responsibility for responding to requests within legal deadlines and for making information available through the Publication Scheme remains with the CCG.

## **7. KEY REQUIREMENTS**

This section sets out the key requirements in order for the CCG 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 CCG. Any person who makes a written request has the right to be informed in writing whether the CCG holds the information requested and; if the CCG 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 Article 6 (1) (c) of the GDPR, 'compliance with a legal obligation' underpinned by Section 8(c) of the DPA "the exercise of a function conferred on a person by an enactment or rule of law", the statutes in question being the FOIA and EIR .

As recommended in the Lord Chancellor's Code of Practice issued under Section 45 of the Act, the CCG will set out how requests for information will be handled, and this can be found in the accompanying FOI and EIR procedures which will be made available to the public.

### **7.2. Processing of FOI and EIR requests**

The procedures and timescales for processing of FOI and EIR requests and the key features of the FOI Act and EIR can be seen in the accompanying FOI and EIR procedures.

### **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 CCG does not hold the information concerned, but only where the other authority confirms that it holds that information. The CCG 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 CCG which the CCG 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 CCG 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 CCG does not charge applicants for providing them with information. However, there are a few instances where a public authority could charge fees - such as for photocopying and printing a large amount of information.

Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

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 CCG 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 CCG at 18 hours and the cost of staff time is a standard £25 per person, per hour. 'Redaction', cannot be included as part of the costs of extracting the requested information.

The appropriate limit can also apply where the CCG 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.

## **7.6. Public interest tests.**

The public interest test 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 test 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 CCG will consider the public interest test 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 test does not include protecting an authority or individual from embarrassment.

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

The FOI team are available to help teams should a Public Interest Test be needed to ensure arguments for and against releasing information is collated appropriately.

## **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 GDPR and Section 2 (1) (b) of the DPA. The CCG has a documented and approved Subject Access Request which applies to this kind of request.

The GDPR also grants applicants new rights to their own data, Articles 12-23. These rights are available under the Data Rights Policy for further information.

If a request for information is received and the information includes personal data about someone other than the applicant without their consent, there is an absolute exemption under FOI/EIR in line with the provisions of Article 5 (a) of the GDPR (or Articles 6 (a) and 9 (a) in the case of special category data).

However in certain circumstances the CCG must still consider whether disclosure would be in the public interest. In such circumstances the CCG 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, DPO and Caldicott Guardians will be obtained as appropriate. The CCG 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. 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 CCG 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 CCG's internal review process as well as the right to complain to the ICO. The CCG 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 CCG 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 CCGs 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 and with the assistance of the Communications Team 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 CCG's Publication Scheme falls under Corporate Governance duties. The CCG's Publication Scheme can be found on the CCG'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 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 CCG 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. To obtain guidance on the application of exemptions see contact details in Section 17 of this policy (Help for Staff).

### **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 CCG, these will be processed by the FOI and EIR service provider acting in conjunction with managers from the CCG as nominated by the CCG'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 FOIA, issued under Section 45 of the FOIA (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 CCG 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 - Department of Health 2006
- The Lord Chancellor's Code of Practice on the Management of Records, issued under Section 46 of the FOIA (November 2002)

Records and information should be held in line with the retention schedule contained within the Information Governance Alliance (IGA) Records Management Code of Practice for Health and Social Care 2016. Where a request is received

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

## **12. CONTRACTUAL CLAUSES**

When entering into contracts the CCG will limit the contractual terms which are intended to restrict the disclosure of information held by the CCG. The CCG 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 CCG and other organisations need to include relevant clauses in which it is made clear that the CCG 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. COPYRIGHT**

Any information supplied under FOI/EIR continues to be protected by the Copyright, Designs and Patents Act 1988. A statement to this effect must be included whenever information is released under FOI/EIR.

## **14. TRAINING**

The CCG 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 CCG 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 GDPR.

- The new 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 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 GDPR and to data portability under Section 20 do not apply to personal data processed for FOIA purposes

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

## **15. IMPLEMENTATION AND DISSEMINATION**

Following ratification by the CCG this policy will be disseminated to staff via the CCG's website and communication through in-house newsletters.

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

## **16. MONITORING COMPLIANCE WITH AND THE EFFECTIVENESS OF THE POLICY**

Performance indicators will include:

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

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

Any suspicion of fraud or bribery should be reported at the earliest available opportunity by contacting the CCG Counter Fraud Specialist at the following link: [Counter fraud](#)

## **17. HELP FOR STAFF**

Advice and guidance on any matters stemming from the Policy can be obtained by contacting: [Leedsccg.foi@nhs.net](mailto:Leedsccg.foi@nhs.net)

## **18. INCIDENT REPORTING**

Incidents relating to FOI and EIR including the processing of FOI and EIR requests and maintenance of the Publication Scheme need to be reported as set out in the Incident Reporting Policy. Potential Serious Incidents Requiring Investigation (SIRIs) need to be entered on the Incident reporting Module of the Data Security and Protection Toolkit.

## **19. ASSOCIATED DOCUMENTS (Policies, protocols and procedures)**

The CCG will produce appropriate policies, procedures and guidance relating to records management as required. This will include an Information Governance

Handbook which will be updated annually and which will be given to all staff.

This policy should be read in conjunction with;

- Information Governance Strategy
- Information Governance Policy and Management Framework
- Records Management and Information Lifecycle 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 and EIR Procedures and associated Schedule of Charges
- Privacy Impact Assessment Procedure and supporting documents
- Safe Transfer Guidelines and Procedure

## **20. KEY LEGISLATION AND GUIDANCE**

### **20.1. Legal References**

All NHS records are classed as Public Records under the Public Records Act 1958. This provides statutory obligations upon the CCG. 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. To obtain additional guidance – please see contact details in Section 17 of this policy (Help for Staff).

- Data Protection Act 2018
- The General Data Protection Regulation (EU) 2016/679
- Access to Health Records Act 1990
- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Re-use of Public Sector Information Regulations 2015
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
- Human Rights Act 1998
- Protection of Freedoms Act 2012
- Public Records Act 1958

- Copyright, Designs and Patents Act 1988 (as amended by the Copyright (Computer Programs) Regulations 1992)
- Health and Social Care Act 2012
- Coroners and Justice Act 2009
- Computer Misuse Act 1990
- Common Law Duty of Confidentiality
- Crime and Disorder Act 1998
- The Children Act 1989 and 2004
- Electronic Communications Act 2000
- Regulation of Investigatory Powers Act 2000
- Lawful Business Practice Regulations 2000
- Public Interest Disclosure Act 1998
- Audit & Internal Control Act 1987
- NHS Sexually Transmitted Disease Regulations 2000
- Human Fertilisation and Embryology Act 1990
- Abortion Regulations 1991
- Road Traffic Act 1988
- Prevention of Terrorism (Temporary Provisions) Act 1989 and Terrorism Act 2000
- Regulations under Health and Safety at Work Act 1974
- Disability Discrimination Act 1995
- Equality Act 2010
- Enterprise and Regulatory Reform Act 2013
- Fraud Act 2006
- Bribery Act 2010

## **20.2. Guidance and other References**

- Lord Chancellor's Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000, issued under Section 45 of the Act (November 2002)
- Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the Freedom of Information Act 2000 (November 2002)
- Caldicott Review updated 2013
- Health and Social Care Information Centre Guidance 2013
- Professional Codes of Conduct and Guidance
- Information Commissioners Guidance Documents
- ISO Guidance on Records Management
- NHS Records Management Code of Practice for Health and Social Care 2016
- Care Records Guarantee
- Office for National Statistics Confidentiality Guidance 2006 (Review of the Dissemination of Health Statistics: Confidentiality Guidance.)