

## Document information

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## Summary

This policy has been created to describe the CCGs commitment to openness and transparency as demonstrated by the implementation of procedures to support the requirements of the Freedom of Information Act 2000.

## Consultation

This policy was developed in consultation with the Senior Information Risk Officer, Caldicott Guardian, Lead Director for Information Governance and the Central Southern Commissioning Support Unit Information Governance Team.

## Appendices

The following appendices form part of this document:

- Appendix 1: Freedom of Information Process
- Appendix 2: Publication Scheme – Classes of Information
- Appendix 3: Freedom of Information Act Exemptions
- Appendix 4: Evaluation Standard

## Review Log

Version	Review Date	Reviewed By	Changes Required? (If yes, please summarise)	Changes Approved By	Approval Date
1.1	Oct'16	Senior IG Manager	Change reference to NHS Digital; Change CSU name; Update reference to Records Management Code of Practice for Health & Social Care 2016; Recognition of on-line training availability; Removal of annual audit; Cross-reference to Management of Persistent and Vexatious Applicants Policy.	IGG	Oct'16
2.1	Oct'17	CCG IG Lead	Removal of Director responsible for IG role; Update to training arrangements.	IGG	Dec'17
				AAC	Jan'18

## Acknowledgements

Standard Freedom of Information Policy written and provided by Central Southern Commissioning Support Unit in 2013.

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

## **1.0 INTRODUCTION AND PURPOSE**

This policy explains the principles which underpin the commitment of the Clinical Commissioning Group (CCG) to openness and transparency in the decisions which we make about the provision of health care to the local community.

It sets out our commitment to full implementation of the Freedom of Information Act 2000.

It acknowledges that the CCG at the same time, and in conjunction with this Policy, adopts and manages equivalent procedures for the provision of Environmental Information under the Environmental Information Regulations 2004.

The CCG recognises the general right of access to information. The Policy provides a framework within which the CCG will ensure compliance with the requirements of the Act.

The policy will be underpinned by an operational procedure to guide activities connected with the implementation of the legislation.

In accordance with the CCG Equality and Diversity Guidance, it is important for all members of staff to remember that applicants may be unable to write to the CCG as they may have disabilities which make it difficult for them to express their requests in writing. Members of CCG staff will offer assistance and support to all applicants who request it. Translation services will also be made available for correspondence written in languages other than English.

## **2.0 SCOPE AND DEFINITIONS**

Within the context of the Freedom of Information Act (FOIA) 2000, 'information' means every piece of information held by the CCG, whether paper or electronic. It includes all draft documents, agendas, minutes, emails and handwritten notes. There is an interface between FOIA and the Data Protection Act (DPA) 1998, with regard to information about living individuals.

The Act applies to information held by the CCG rather than owned by the CCG. This could include information created by other organisations, such as providers, contractors or individuals etc.

FOIA makes it an offence to alter, deface, block, erase, destroy or conceal any information held by the CCG with the intention of preventing disclosure to all or part of it. Penalties can be imposed on the CCG and separately on employees for non-compliance under FOIA.

The Policy is applicable to all the activities which the CCG conducts with other public, bodies including other NHS organisations, partner bodies as well as voluntary organisations and commercial suppliers of goods and services.

This policy applies to all staff employed by or working on behalf of the CCG. All staff are responsible to the Accountable Officer for their compliance with the policy. All individual employees responsible for responding to requests for information need to be aware of the responsibilities of the CCG under the Act and, in particular, the continuing duty to advise and assist any member of the public.

Freedom of Information should be adequately reflected in all relevant strategies, policies, procurement and committee papers.

### **3.0 PROCESS / REQUIREMENTS**

#### **3.1 GENERAL**

The CCG will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000.

The CCG will use appropriate systems and procedures to ensure that the organisation complies with its duty to confirm or deny and to provide requested information within 20 working days or within a reasonable period of time where a public interest test has to be considered. All employees will be required to comply with the requirements and failure to do so may result in disciplinary action. The flowchart at appendix 1 shows the process for handling an application.

The CCG will ensure that its Publication Scheme is periodically reviewed and updated.

The CCG will not agree to hold information received from third parties in confidence which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

The CCG will ensure that exemptions/exceptions are applied appropriately, consistently and a refusal notice will be issued detailing why the exemption applies.

The CCG will advise and assist applicants, as set out within section 12 of the Act.

The CCG will not normally charge for information provided under the FOIA unless a specific media is requested.

The CCG will monitor the effectiveness of its compliance with the FOIA and its performance and implementation of this policy.

The CCG will manage requests under the Environmental Information Regulations in the same manner.

### 3.2 PUBLICATION SCHEME

Section 19 of the FOIA makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner.

The CCG uses the approved model first issued by the Information Commissioners Officer (ICO) in January 2009. The Outline for this scheme can be found in Appendix 2.

If a request is received for information that is covered by the publication scheme, the applicant will be directed to download the information from the CCG website.

### 3.3 REQUEST TO RE-USE INFORMATION PROVIDED

Information that the CCG publishes as part of its publication scheme and website will be the list of information available for re-use. Any published document can be re-used without charge, provided the CCG is credited as the source and retains copyright where appropriate.

In accordance with the Protection of Freedoms Act 2012, information released in response to Freedom of Information applications will be re-useable under licence.

### 3.4 MANAGING AND DEFINING REQUESTS

The CCG commissions the processing of FOI applications from the Commissioning Support Unit (CSU).

Any CCG member of staff receiving an FOI request must immediately forward it to the CSU, so that it can be logged and processed.

An application for information must meet the following criteria. It must:

- Be in writing – such as emails, letters, etc.
- Contain a name and address for correspondence – including email.
- Contain sufficient detail to enable the CCG to identify the information requested.
- Contain a request for information that is not already part of the CCG publication scheme.

When an application that fulfils the above criteria is received by the CSU, the CCG has a maximum of 20 working days (from the first working day after receipt) to respond. There is no provision for extending the 20 working day limit, unless consideration needs to be given to a Public Interest Test.

The CCG has a duty to 'advise and assist' under the Act and must take reasonable steps to help an applicant appropriately compile a request that meets the criteria. The timing for response does not begin until sufficient detail has been received.

Any communications to clarify a request will be undertaken without unnecessary delay.

All requests that have not expressly asked for the information to be re-used will have a clause in place, stating that permission must be sought before the information may be re-used.

Requests for re-use must be authorised by a Director of the CCG, taking advice from Communications and Information Governance professionals, as appropriate.

### 3.5 VEXATIOUS REQUESTS

Should an applicant make a vexatious request or repeated requests for identical or substantially similar information, the CCG will inform the applicant in writing, stating that they will not be fulfilling the request and outlining why they consider the request to be vexatious. They will also advise the applicant of how to proceed if they are not satisfied with the response. Refer to the CCG Management of Persistent and Vexatious Applicants Policy for further information.

Guidance is available on the Information Commissioner's website on how to decide whether an applicant's requests may be considered vexatious. Advice must be sought from the CSU Information Governance Team if a request is considered to be vexatious.

### 3.6 APPLYING AN EXEMPTION

While a response is being compiled, consideration should be given to whether any exemption may need to be applied. The Act details 23 legally complex exemptions. These are separated into 'absolute' and 'qualified'.

An absolute exemption applies in all cases and is not subject to a public interest test. If the exemption is 'absolute' then the information must be withheld and a response to this effect should be sent within the usual 20 working day limit. Consideration should be given as to whether it is appropriate, or in itself a breach, to confirm that the withheld information is held by the CCG.

A qualified exemption is subject to a public interest test, which determines whether the public interest is best served by applying an exemption or disclosing the information. When a Public Interest Test is being applied, the response time should be 'paused' and the applicant should be informed that a public interest test is being undertaken.

Public Interest Tests must be conducted objectively and it is not sufficient to merely state that the public interest is best served by an exemption. Should the applicant challenge the exemption, the CCG would be required to demonstrate that both sides of the argument had been sufficiently explored and that those with relevant experience, skills and knowledge had been involved with the Public Interest Test. Therefore, the discussions around disclosure/non-disclosure and where the interests of the public are best served should be documented.

The response will usually detail which exemption is being used and why the CCG believes that the exemption applies.

The CSU Information Governance Team will provide technical assistance in determining whether an exemption applies. A full list of exemptions for the FOIA is attached in Appendix 3.

The Environmental Information Regulations has a list of exceptions that should be considered in the same manner.

### 3.7 REQUESTS FROM THE MEDIA

Requests under the Freedom of Information Act are considered to be both purpose and applicant blind. Reporting arrangements are in place to provide a notification route between the CSU and the CCG Communications Team for any new FOIA applications. This does not alter the applicant's rights under the Act but enables the Communications Team to assist with the CCG response and monitor any trends.

### 3.8 REQUESTS FOR INTERNAL REVIEW AND COMPLAINTS PROCESS

The FOIA response to the applicant will detail what steps the applicant can take if they are unhappy with the response received from the CCG. The steps to resolve a complaint are:

1. Request for an internal review by the CCG;
2. Complaint to the Information Commissioner.

Both routes will be identified in responses.

If the applicant asks for an internal review, then the following aspects will be considered:

- How the request was handled – including meeting timescales;
- Whether the response addressed key aspects of the Act – including advising the applicant whether the information was held;
- Whether any exemption applied has been applied appropriately.

The composition of the review team will usually include:

- A senior member of CCG management, ideally a Director;
- A subject matter expert well versed in the information requested, ideally not the person originally responsible for responding, although this may be unavoidable;
- The CCG FoI lead;
- A member of the CSU FOI Team.

The outcome of the review will be prepared within 40 days of the original request for review.

If the outcome of the review is to release previously withheld information, then ideally this should be sent with the review outcome, or no longer than 20 days after the completion of the review.

Should the CCG receive details of a complaint from the Information Commissioner, the CCG will provide all requested information and commentary by the response date stipulated and in the form requested. Immediate action will be taken to comply with any subsequent notices served by the Information Commissioner unless the CCG feels the need to appeal to the Information Tribunal.

### 3.9 INFORMATION PROVIDED BY OTHER ORGANISATIONS

The Freedom of Information Act covers information **held** rather than owned by the CCG. The CCG would generally have to disclose the information requested, however, it may be appropriate to advise the originator of the information that it will be released.

If the information is known to be available more readily from another source, i.e. a website, it may be appropriate to advise the applicant of this. It is not CCG policy to transfer an application to another organisation for response.

Guidance should be sought from the CSU Information Governance Team if the CCG believe that the release of information may impact on the other party.

### 3.10 CONTRACTS WITH OTHER ORGANISATIONS

All CCG operational contracts will have a clause detailing that information may be disclosed under the terms of FOIA.

The CCG will give consideration to FOIA during procurement processes and ensure that those who wish to tender understand that information may be disclosed under the Act.

### 3.11 ENVIRONMENTAL REGULATIONS

Many similarities exist between the FOIA and the Environmental Information Regulations (EIR). The EIR relates to any information that the CCG holds regarding the CCG impact on the environment including air and water. This includes planning policies and plans that may impact on the environment and on humans.

The main difference between FOIA and EIR is that requests for EIR do not have to be in writing and may be made verbally.

The CCG will handle EIR requests within the FOIA process.

Should the CCG receive an EIR request then specialist advice will be sought from the CSU Information Governance Team.

## 4.0 ROLES AND RESPONSIBILITIES

### **Governing Body**

It is the role of the Governing Body to define the CCG policy in respect of Freedom of Information, taking into account legal and NHS requirements. The Governing Body is also responsible for ensuring that sufficient resources are provided to support the requirements of the policy.

### **Accountable Officer**

The Interim Chief Officer, as Accountable Officer of the CCG, has overall accountability and responsibility for Freedom of Information within the CCG and setting a culture of openness, transparency and compliance with the Act.

### **Senior Information Risk Owner**

The Senior Information Risk Owner (SIRO) is an Executive Director of the CCG Governing Body. The SIRO provides guidance when a Freedom of Information Act request raises issues of information risk.

### **Caldicott Guardian**

The Caldicott Guardian will guide the CCG on matters of confidentiality relating to patient and staff information and acts as a 'conscience' on its use. The Caldicott Guardian provides guidance when a Freedom of Information Act request raises the issue of confidentiality.

### **The Information Governance Group**

The Information Governance Group is responsible for monitoring the management of the Freedom of Information Act process, developing and maintaining this policy and any standards, procedures and guidance to promote compliance with Freedom of Information Act best practice across the CCG.

### **CCG IG Lead**

The CCG IG Lead will support the Director in management of the FOI process and the CSU support contract. The CCG IG Lead will monitor performance and facilitate reporting to the Information Governance Group.

### **FOIA Support**

Support is also available from the Information Governance and FOI Team at the CSU.

### **All Managers**

All Managers within the CCG are responsible for ensuring the requirements of this policy are recognised and local processes ensure compliance. All managers are expected to use the Evaluation Tool at Appendix 3 to assess local compliance and take necessary remedial steps.

Managers are responsible for ensuring all staff undertake mandatory Information Governance on-line training and attend any awareness training. Managers shall promote a culture that supports transparency and openness as set out within the Freedom of Information Act. Managers will undertake to consider the regular publishing of information from within their departments as part of the CCG Publication Scheme. Consideration must also be given to how local systems support the identification and retrieval of information in response to requests.

### **All Staff**

All staff, whether permanent, temporary or contracted, are responsible for ensuring that they are aware of the requirements incumbent on them and for ensuring they comply with these on a day to day basis.

All staff are responsible for:

- Creating and maintaining records, which are accurate, appropriate and retrievable.
- Ensuring that requests for information and possible re-use are passed in a timely manner to the FOI Team within the CSU for processing.
- Ensuring that disclosures to formal FOIA requests are not made outside the defined processes, so that inappropriate disclosures are avoided.
- Ensuring that documents relevant to or required by the CCGs publication scheme are provided for publication.
- Alerting their line manager, should they feel they need additional training or guidance.

**Failure to comply with this policy may result in disciplinary action and, with regard to the destruction of information under request, a personal fine.**

## **5.0 TRAINING**

The CCG will ensure that all staff are offered appropriate and relevant training such that they are able to identify a Freedom of Information application and be able to support any request that the organisation may receive. Mandatory training will be provided via the on-line training tool, available through ConsultOD.

The CCG IG Lead will liaise with the CSU Senior IG Manager and the CSU FOI Lead to ensure that any additional training and awareness raising material in relation to the Act is available to all staff.

Successful completion of training will be monitored in accordance with the Learning and Development Policy.

## **6.0 EQUALITY, DIVERSITY AND MENTAL CAPACITY**

An Equality Impact Assessment (EIA) has been completed for this policy and no adverse effect has been identified. The EIA will be available on request. This policy has been assessed and meets the requirements of the Mental Capacity Act 2005.

## **7.0 SUCCESS CRITERIA / MONITORING EFFECTIVENESS**

The SIRO will, on an annual basis commission Internal Audit to critically review the CCG assessment against the Information Governance Toolkit or review IG arrangements. Findings of this audit will be reported to the Audit & Assurance Committee. Implementation of any actions identified as necessary or recommended during the audit will be monitored, as a minimum, at the next annual assessment.

In addition, Appendix 4 within this policy provides an Evaluation Standard which should be used corporately by the CCG IG Lead and by Department Managers to assess compliance with this policy. Results from any corporate assessment will be presented to the Information Governance Group.

Any non-compliance with this policy should immediately be reported using the Non-compliance Form contained within the Policy on Management of Procedural Documents.

## **8.0 REVIEW**

This document may be reviewed at any time at the request of either staff side or management, but will be reviewed where there is any major change in legislation or NHS guidance and after one year.

## **9.0 REFERENCES AND LINKS TO OTHER DOCUMENTS**

This policy should be read in conjunction with the NHS Code of Confidentiality and the following CCG policies:

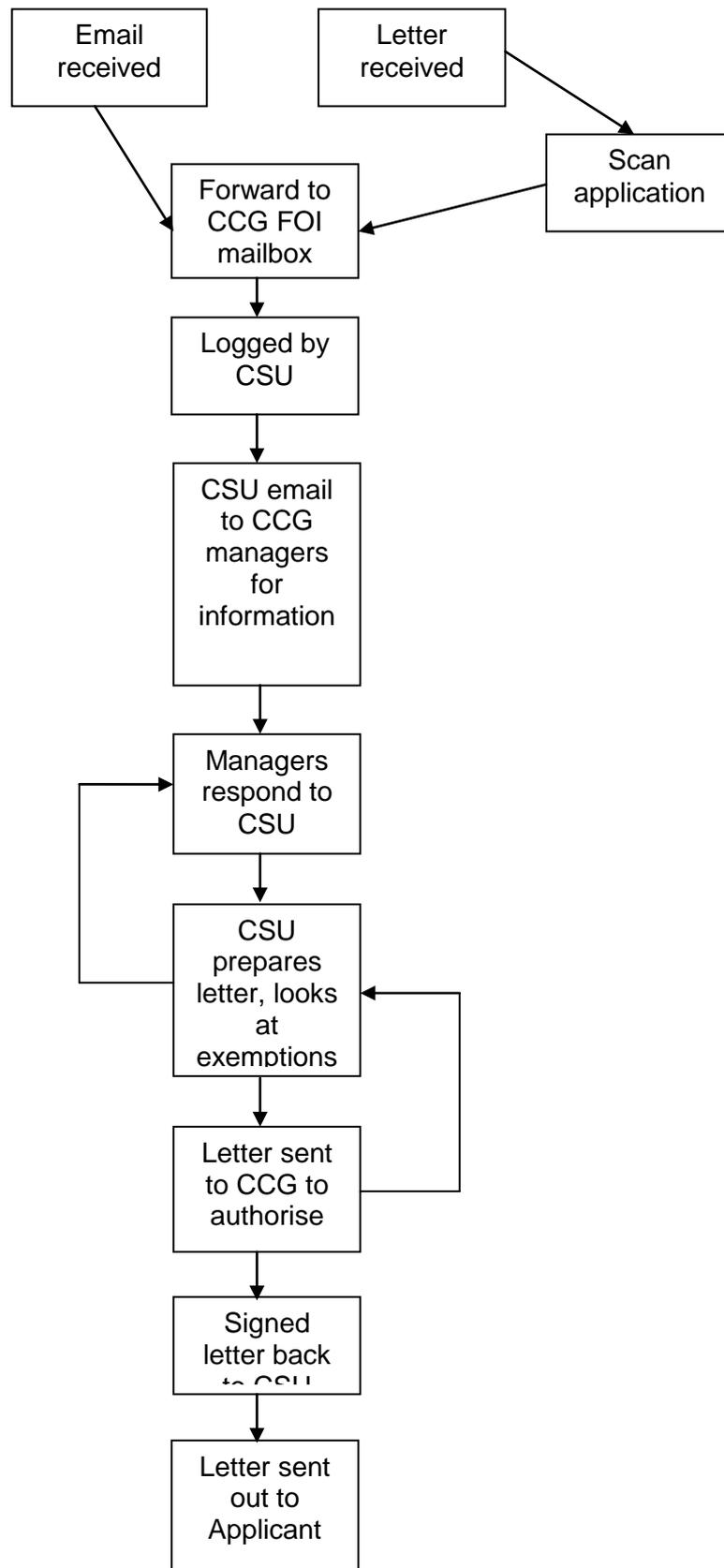
- Information Governance Framework
- Information Governance Policy
- Information Security Policy
- Data Protection Act Policy
- Records Management Policy
- Management of Persistent and Vexatious Applicants Policy
- Learning & Development Policy
- Policy on Management of Procedural Documents

Other policies and procedures may become available during the lifespan of this policy.

### **Related Guidance:**

- Records Management Code of Practice for Health & Social Care 2016
- The NHS Code of Confidentiality

Wiltshire CCG Freedom of information Process



## Publication Scheme - Classes of Information

### **1 - Who we are and what we do.**

In this section we describe the composition of the organisation, what the purpose of a CCG is, how to get more information about CCGs and how to make contact with the CCG.

### **2 - What we spend and how we spend it.**

In this section we will add information on how to access financial information about the CCG.

### **3 - What our priorities are and how we are doing.**

This section details how we set priorities and what they are will signposting to additional detail.

### **4 - How we make decisions.**

Details about membership of the CCG Governing Body can be found within this section with a link to the Governing Body internet pages for further information. This section also describes how often the Governing Body meets and provides a link to the internet page with meeting dates and papers.

### **5 - Our policies and procedures.**

In this section we describe how to access current written protocols for delivering our functions and responsibilities.

### **6 - Lists and Registers.**

In this section we describe how to access information held in registers required by law and other lists and registers relating to the functions of the authority.

### **7 - The Services we Offer.**

In this section we describe how to access information about the NHS services available in the CCG area.

### **Written Requests**

Information held by a public authority that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act. Details of how to make such a request are described.

## Freedom of Information Act Exemptions

There are two types of class exemption:

- (a) Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure;
- (b) Qualified by the public interest test, which require the public body to decide whether any public interest in disclosure is outweighed by the public interest in non-disclosure.

With the exception of S21 (information available by other means) qualified exemptions require organisations to consider whether it is in the public interest not to disclose information.

The absolute exemptions under the Act are:

- Section 21, Information accessible to applicant by other means
- Section 23, Information supplied by, or relating to, bodies dealing with security matters
- Section 32, Court Records
- Section 34, Parliamentary Privilege
- Section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- Section 41, Information provided in confidence
- Section 44, prohibitions on disclosure

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

- Section 22, Information intended for future publication
- Section 24, National Security
- Section 26, Defence
- Section 27, International Relations
- Section 28, Relations within the United Kingdom
- Section 29, The Economy
- Section 30, Investigators and proceedings conducted by public authorities
- Section 31, Law Enforcement
- Section 33, Audit Functions
- Section 35, Formulation of Government Policy
- Section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37, Communications with Her Majesty, etc and honours
- Section 38, Health and Safety
- Section 39, Environmental Information
- Section 42, Legal Professional Privilege
- Section 43, Commercial Interests.

## EVALUATION STANDARD

Policy Name: Freedom of Information Act and Environmental Information Regulations Policy  
Policy Reference: TBC

### Standard statement

The CCG will ensure that all requests for information are identified and managed in line with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 to create a climate of openness and dialogue with all stakeholders and improve access to information about the activities of the CCG.

### Criteria - Corporate

1. All applicants are sent an acknowledgement of their request(s).
2. All requests are responded to within the statutory timeframe of 20 working days.

### Criteria - Departmental

3. All paper FOIA applications are stamped with the date of receipt, scanned and emailed to the [WCCG.foi@nhs.net](mailto:WCCG.foi@nhs.net) within one working day to be processed by the CSU.
4. All emailed FOIA applications are immediately forwarded to the [WCCG.foi@nhs.net](mailto:WCCG.foi@nhs.net) inbox to be processed by the CSU.
5. All document search requests received from the CSU by Team members are responded to within the stipulated time frame.
6. All staff have received appropriate training in line with the Training Needs Analysis (TNA).
7. All contracts will contain a clause stating that contractual information will be released if requested under the FOIA.

Conclusion

Please explain any discrepancies below:

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Please detail remedial action to prevent re-occurrence, giving details of monitoring arrangements to assess improvement:

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Date of assessment:	
Assessed by:	