

# Sharing information

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## Summary

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Information sharing is a legitimate and **vital** tool to ensure CQC's efficiency and effectiveness as a regulator, to protect the safety and welfare of people who use services, and to help other public bodies to carry out their own functions.

However, you should only share confidential information where you have considered the likely impact of making the disclosure, and where you judge that the public interest to be served by sharing the information justifies you doing so.

You **must** take particular care when sharing confidential personal information, because of the risk to privacy, but also because it is a criminal offence to disclose confidential personal information that CQC has obtained, except for defined purposes.

Therefore, confidential personal information must only be shared where the purpose of that disclosure provides a legal basis for doing so (see page 9).

You must record any decisions to share any confidential information, as we may need to explain and justify them.

Where it is **reasonably considered necessary** to share information to protect a person from significant harm, then there will be **no bar to that sharing** (unless that person has specifically asked for the information not to be shared, in full knowledge of the risk to themselves).

There is further guidance on how to handle common information-sharing scenarios at the end of this guidance, but if you need further advice or assistance, please contact: [information.access@cqc.org.uk](mailto:information.access@cqc.org.uk).

## Introduction

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In our work to make sure that health and social care services provide people with safe, effective, compassionate and high quality care, we regularly work alongside other public bodies that have their own roles in protecting and promoting people's welfare. Sharing information with other bodies helps both them and us to carry out our respective functions.

Sharing information lawfully and appropriately with those who commission and provide care, and with people who use services, and with their relatives, friends and carers, is also a valuable way of promoting the welfare of people who use services and of encouraging care services to improve.

Furthermore, CQC is committed to the principles of openness and accountability, and we will seek to share information with the public to achieve this.

However, it is vital that information is shared within a framework which ensures that the

sharing is lawful and proportionate, and that the decisions and actions of CQC are properly documented, consistent and robust.

## When we may want or need to share information

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There are a number of circumstances when CQC may need to make a decision about sharing information, such as:

- Where we receive a request for information (e.g. from a commissioning body).
- Where we want to proactively disclose information to help another person or organisation (e.g. where we become aware of a possible crime and wish to inform the police).
- Where we are working in partnership with another organisation, and mutual sharing of information will help that process (e.g. where we are conducting a joint inspection with Monitor), or
- Where we believe that another person or organisation has information that may help us carry out our functions, and we wish to obtain that information from them (e.g. where we want information on a safety inspection of a service, conducted by the local fire and rescue service).

## How to handle requests for information

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Most requests for information that CQC receives can be handled by the holder or responsible person for that information (e.g. an Inspector, for information about a care service within their portfolio). However, where you receive a written request for information you should ask yourself the following questions:

- Are you unsure, and unable to readily establish, whether CQC holds the requested information and/or where it may be held?
- Are we likely to want to refuse to provide the requested information for any reason?
- Are there any parts of requested document(s) that we may want to remove ('redact') before disclosure?
- Is a person making a request for a significant amount of confidential personal information about themselves (this is sometimes called a 'subject access request')?
- Does the requested information include confidential personal information about somebody other than the person making the request, in circumstances where you are unclear (having read this guidance) whether we can make the disclosure?
- Do you have any other concerns (having read this guidance) about disclosing the requested information?
- Does the requester specifically refer to the Freedom of Information Act 2000 (FOI/FOIA), the Data Protection Act 1998 (DPA), or the Environmental Information

Regulations 2004 (EIR)

If the answer to **any** of the above questions is ‘**yes**’ then:

If the request is from an organisation with whom we have a [Memoranda of Understanding, Joint Working Agreement and/or an Information Sharing Agreement](#) you **should** discuss the request with the CQC lead or key contact identified within that document.

Otherwise (or if the issue remains unresolved) you **must** forward the request **immediately** to the Information Access Team ([information.access@cqc.org.uk](mailto:information.access@cqc.org.uk)). They will coordinate a response and ensure that it is compliant with the legal requirements of FOIA, DPA and/or EIR.

## How to decide whether to disclose/share information

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The diagram on the next page shows the process to follow when considering any disclosure or sharing of information.

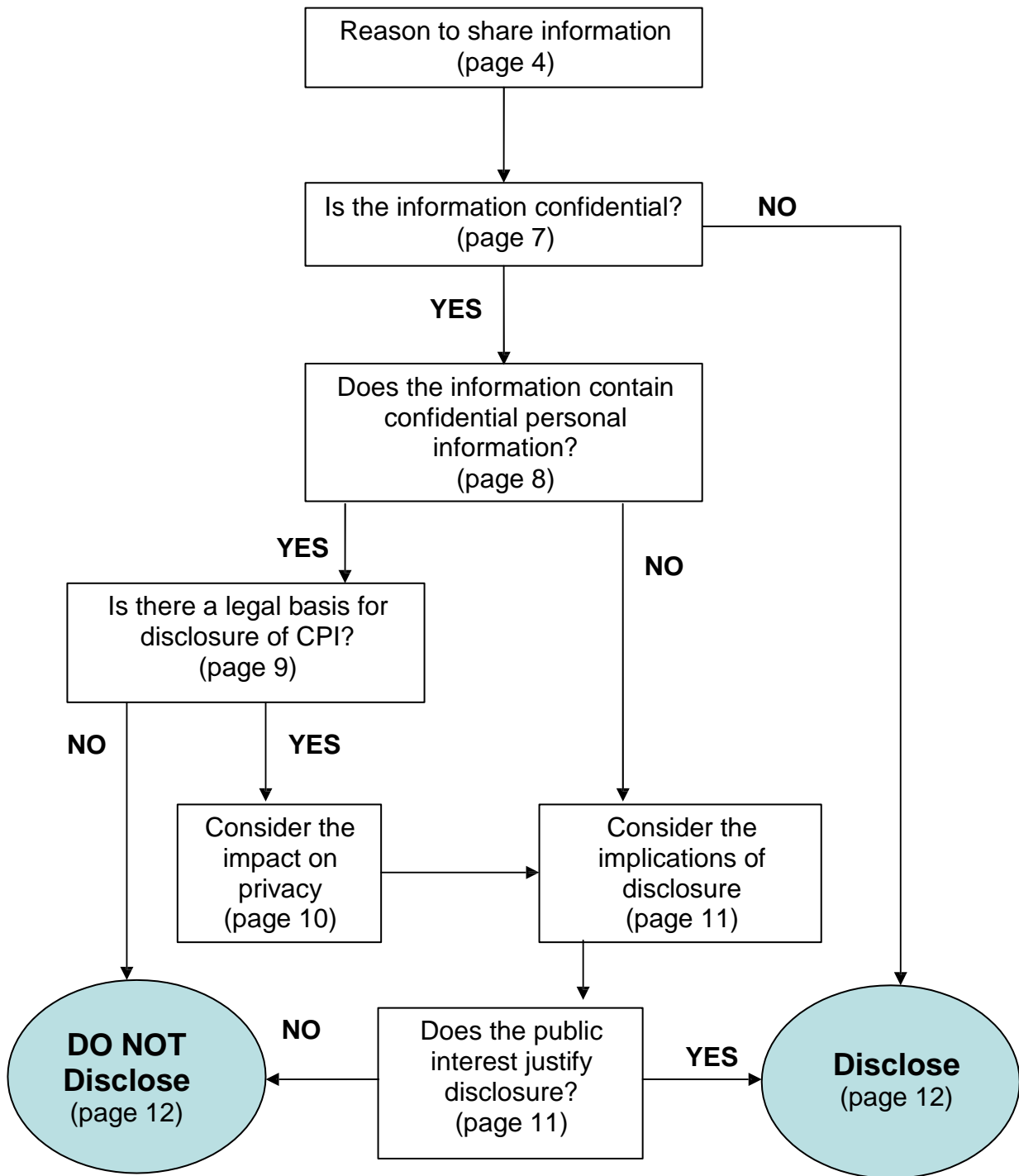
You should record all decisions to share or disclose confidential information – especially confidential personal information – or to refuse to provide requested information, so that we can explain and defend our decisions and actions, if required.

In many cases, the decision-making process will be very quick and your decision is likely to be clear-cut and uncontroversial. In these cases, you will probably only need to make the most basic recording of the decision.

However, if the information in question or the circumstances of the disclosure suggest that the decision may be challenged, high profile or controversial, then you should record the decision-making process more thoroughly. In particular, records must be kept of any decision to share information from an identifiable person’s medical or care records. For example, it may be appropriate to hold a management review meeting (MRM) to make and record the decision.

The person who makes the decision about disclosure is the person who may be challenged and held to account, and will be required to justify any decision, so it is **your responsibility** to satisfy yourself that you have applied your best judgement and have adequately recorded the matter.

# Flow chart - process for reaching decisions on disclosure of information



## Is the information confidential?

Much of the information we hold is not confidential, and can be disclosed freely. In fact, information such as inspection reports, extracts from the register, and annual reports and accounts **must** be provided on request. Our Publication Scheme on our website gives a guide to much of the information that is freely available ([www.cqc.org.uk/public/about-us/freedom-information](http://www.cqc.org.uk/public/about-us/freedom-information)).

However, we also hold some information that is confidential (for a variety of reasons), and you must think carefully before disclosing it.

CQC has a protective marking scheme for information: confidential documents should be marked 'OFFICIAL SENSITIVE'. You should consult with the owner or author of protectively-marked documents before making any disclosure.

The following are examples of information that should be considered as **confidential** – whether or not it is protectively marked. The list is not exhaustive, and you need to decide carefully:

- Draft documents, and any report, or other information, that is intended for publication **but is not yet published**.
- Any non-public information about identifiable (or potentially identifiable) people who use services, their relatives, friends and carers, care workers (other than registered persons), complainants, whistleblowers or other members of the public.
- Information about identifiable (or potentially identifiable) registered persons, CQC staff, or staff of other public bodies – other than information that is already, lawfully, in the public domain (e.g. on registers, published in reports etc).
- Information about registered services – especially information obtained using our powers or from other organisations – that is not already, lawfully, in the public domain.
- Information about CQC's regulatory actions, or planned actions, inspections, enforcement activity or prosecutions in relation to specific services, providers or people, other than information that is already, lawfully, in the public domain.
- Internal CQC communications or potentially sensitive communications between CQC and other organisations or people.
- Legal advice, requests for legal advice, or discussions of legal advice provided to CQC or any other person or body.\*
- Court records or legal documents.\*
- Information, such as reports and submissions, made to Parliament or Parliamentary committees, but not yet published by Parliament.\*
- Information where the proposed disclosure is prohibited, restricted or regulated by law (i.e. by statute – an Act of Parliament – regulations or a court order/injunction).\*
- Information where there is a significant possibility that disclosure may place the health, safety or welfare of any person at risk.\*
- Information that is subject to a confidentiality agreement between CQC and any

other organisation or person.\*

- Information, such as financial information, assessments and forecasts, gathered for the purpose of monitoring the financial viability of corporate providers under our market oversight functions\*
- Any other information where disclosure could potentially have an impact on the effectiveness, efficiency, resources or reputation of CQC, or cause similar harm to the interests of any other person or organisation.

**You must consult with the Information Access Team if you are considering disclosing any information mentioned above marked with\*.**

**Important:** defining information as confidential does NOT mean that it cannot be disclosed – simply that we must consider it carefully when deciding whether to disclose it.

## **Does the information contain confidential personal information (CPI)?**

‘Personal information’ is information that identifies an individual person (or very small group of people) either:

- On its own, or
- When combined with other information held by CQC, or
- When combined with information that **may** be available to the potential recipient(s) of the information.

‘Confidential personal information’ (CPI) is personal information that was obtained or created by CQC in circumstances where confidentiality of that information would reasonably be expected.

You should be careful of information that, on the face of it, does not seem to identify individuals but which may actually do so – for example, where the information contains initials, dates of birth, NHS or National Insurance numbers, handwriting, information that could only have been provided to CQC by a small number of people etc.

Disclosing and sharing confidential personal information carries a greater risk for CQC (and our staff) and can also have an adverse effect on personal privacy. If possible, and unless disclosure is strictly necessary, you should remove confidential personal information from documents before disclosing or sharing them, or you should carefully anonymise the information to make it impossible for potential recipients to identify individual people.

It is a legal requirement that only the **minimum necessary** confidential personal information should be collected, used and shared/disclosed by CQC.



## Is there a legal basis for disclosing confidential personal information?

Confidential personal information held by CQC **must only** be disclosed or shared if **you can demonstrate that at least one of the following** applies:

- Doing so is **necessary** for CQC to carry out our functions.
- Doing so is **necessary** in connection with the investigation of a criminal offence, or for the purpose of criminal proceedings.
- The disclosure is made under, or pursuant to, specific regulations relating to complaints about health or social care services – made under sections 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003.
- The disclosure is required by law, or under a court order.
- The disclosure is **necessary** for the purposes of protecting the welfare of any individual person. (Note: If the information is about the person whose welfare is at risk, it should not be shared if that person has capacity and objects to its disclosure in the knowledge of that risk)
- The disclosure is **necessary** for the recipient to exercise statutory functions of an organisation other than CQC (e.g. other regulators, local authority safeguarding boards etc).
- The information has previously, and lawfully, been disclosed to the public, or
- The disclosure is not being made into the public domain, and it could not be reasonably expected that we would keep the information from the intended recipient (for example, if we have information that a care worker is not adequately qualified or competent, there could be no reasonable expectation that we would not advise the registered provider or manager of this).

An act is considered 'necessary', for a purpose where it is the only way of achieving that purpose – or where the only other way(s) of achieving that purpose would require significant and disproportionate time, effort or resources. This requires a measure of personal judgement. Simple inconvenience that may be caused by using other means does not, in itself, justify disclosing CPI. The greater the sensitivity of the information, the greater the level of effort that should reasonably be taken to achieve the purpose in another way.

If none of the above conditions apply, disclosure may only be made with the specific and explicit consent (agreement clearly indicated, in full knowledge and understanding) of the individual(s) to whom the information refers. **Please note:** consent must be positively indicated – failure to object or opt-out is NOT consent – and nobody can give consent on behalf of another adult, regardless of their mental capacity, unless they have a properly registered power of attorney or court order specifically empowering them to do so.

CQC will not usually seek consent for a disclosure that we consider necessary to enable us to carry out our own functions – as refusal of consent would, in effect, restrict our powers to perform those functions. However, if the disclosure is for other purposes and the public interest justification for the disclosure is not **very strong and clear**, you should consider seeking consent.

Even where one of the above conditions applies, or even where consent has been given, the disclosure must only be made when the public interest to be served justifies any likely impact upon personal privacy.

## Considering potential impact upon personal privacy

When considering any disclosure of CPI, you must have an understanding of the potential impact of that disclosure upon personal privacy – as we are required to balance this consideration against the public interest to be served by making the disclosure.

CQC will always try and inform and notify individuals about how we use their information, including sharing it internally and externally. For example, we may do this by sending posters and materials to a provider we are inspecting, when speaking to service users who contact us by phone or by a more detailed policy for our users of our website. This goes some way towards making sure our use of CPI is fair.

However, where it is reasonably possible and practicable to do so, you **must also** seek and record as appropriate the views of the individuals about how we may use their information at the point of collecting or obtaining CPI, including whether we may need to share it with others. This can be as simple as adding a line to a call record or making a note next to a summary of the conversation you had.

If you have doubts regarding a person's capacity to understand and give their views, you should follow our [guidance on the Mental Capacity Act](#).

Of course, and as detailed below, some factors will always have a higher potential to impact on privacy, but doing this will allow you or colleagues to better make a judgment about the potential impact on personal privacy when CPI is shared or disclosed.

It isn't possible (or desirable) to define and quantify the impact of any act on somebody's personal privacy within this guidance, as each set of circumstances are different and each person has their own levels of concern and sensitivity about their privacy. Therefore, you should consider the potential impact upon personal privacy on a case-by-case basis. However, the following factors would generally be considered as indicators of a high potential impact upon privacy:

- Disclosure of CPI relating to a group of people (any disclosure of CPI relating to more than 20 people should be checked with the Information Access Team).
- Disclosure made into the public domain, to multiple recipients, or where CQC will have limited control regarding the onward sharing/disclosure of that information.
- Disclosure that is likely to be high profile, particularly if it is likely to attract media attention.
- Information relating to people's health – in particular information relating to their mental or sexual health, intimate bodily functions, or in relation to terminal or potentially fatal illness or injury.
- Information where disclosure may increase the risk of discrimination against those individual(s), especially in relation to race/ethnicity, religion, sexuality or disability.
- Information about people's religious or political beliefs, or membership of religious, political or trade union organisations.

- Information about people's financial arrangements.
- Information about offences committed by, or alleged to have been committed by, a person, or court proceedings and/or sentences arising out of those allegations.
- Disclosures made against a person's wishes, or in circumstances where doing so may be a breach of a duty of confidentiality (note: CQC can make disclosures in breach of a duty of confidentiality where the public interest is strong enough to justify doing so), or disclosures which the person is likely to be surprised and/or upset by.
- Disclosures that have the potential to cause financial loss.

## Considering the potential implications of disclosure

When you are deciding whether to disclose information, it is vital that you have considered, and understood, the potential impact(s) of the disclosure.

Where a disclosure includes confidential personal information (CPI), you should already have considered the potential impact upon personal privacy (see previous page) and this will be a significant factor to include in the overall assessment of potential impact.

Any disclosure of confidential information is likely to have an impact – consequences arising from that disclosure that will affect CQC or another person or organisation in a way that is unwelcome to them.

If you are considering whether to disclose information obtained from another organisation or person – or where you think that a disclosure may impact upon another organisation or person – you should consider whether it is appropriate, possible and practicable to consult with them to fully understand that potential impact. In such circumstances, you should consult them unless there is a very good reason not to.

Potential impacts to consider include, but are not limited to:

- Impacts upon the care, welfare or safety of people who use services.
- Impacts upon the safety of others, including CQC staff.
- Prejudice to, or interference with, the exercise of CQC's regulatory functions.
- Prejudice to, or interference with, the investigation of crime, or the apprehension and prosecution of offenders.
- Prejudice to, or interference with, the exercise of the public functions of any other organisation.
- Commercial harm to registered providers, or any other person, (especially where that harm would be unwarranted or unfair).
- Unfavourable publicity, or other reputational harm, that will impact upon the standing of CQC, or on public trust in the organisation.

When considering potential impacts, you should consider not only whether they **could** happen, but also how **likely** they are to happen and how **severe** the potential impact would be.

## Does the public interest justify disclosure?

Once you understand the potential impact of a disclosure, you need to balance this against the public interest to be served, so that you can decide whether to disclose the information.

CQC should only be considering sharing information where there is a public interest to be served by doing so – for example, to help us carry out our regulatory functions, or those of another public body. You should also consider any other public benefits that will result from the disclosure, such as reducing the burden of regulation, improving transparency, or preventing crime or prosecuting offenders.

Convenience or personal benefit to CQC staff should not be considered as public interest factors, but you can consider the efficient use of CQC resources as a factor.

Overall, your judgement on whether the proposed disclosure is justified and proportionate should be based on whether the potential for harm is outweighed by the potential benefits of the disclosure.

Where this decision seems particularly finely balanced, you should think about getting advice from others, in particular you may wish to consult with your line manager and/or the Information Access Team.

## Decisions not to disclose

Where you decide that it is not appropriate to make a disclosure of **any or all** information that has been requested in writing, you **must** ask the Information Access Team for help as CQC will be required to issue a refusal notice under the Freedom of Information Act 2000 (FOIA). This applies even where the request does not make reference to FOIA and includes where we refuse requests for information from other public bodies or providers. CQC can only refuse to comply with requests for information where an exemption under FOIA applies.

Where the request for information was made in writing, the refusal notice must be issued within 20 working days from the day following receipt of the request.

If you decide not to disclose information, you should consider whether it would be possible to provide some of the information – for example, in the form of summaries or edited documents.

## Decisions to disclose

Where you are making a disclosure in response to a written request for information – even when that request comes from another public body or a registered provider – you must provide that information within 20 working days from the day following receipt of the request, in order to comply with FOIA (although we can take some extra time where we are considering particularly difficult issues of public interest).

You should record the decision and transfer the information appropriately and securely,

in accordance with our [guidance on handling confidential information](#) .

If the disclosure is likely to result in media interest or attention, you should alert our Media Team ([media\\_team@cqc.org.uk](mailto:media_team@cqc.org.uk)) (before disclosure if possible).

## Sharing 'soft' information

'Soft' information is an unverified and subjective assessment of information. It may often be an assessment at the level of personal opinion, feeling or instinct, such as a 'feeling that something is wrong' with a service, as opposed to 'hard' information which is more objective and verifiable, such as the mortality rates of the service over a defined period.

The use and sharing of soft information can sometimes be essential in order to identify issues of serious concern. Sometimes CQC may hold 'one piece of the jigsaw' that can only be turned into a clear picture when soft information is shared with partners so as to test and cross-reference it.

However, due to the nature of soft information, some special considerations should be made.

Soft information carries the same risk as other sensitive information of harming the reputation, and causing damage to, care services, providers, managers and staff. The sharing of soft information also carries the risk of impacting upon the privacy of a range of people.

As with any type of disclosure of information, you should consider the potential impact of disclosure and satisfy yourself that sharing the information is a justifiable and proportionate act. You can reduce the potential impact of sharing soft information, and therefore 'tip' the balance of this consideration, in a number of ways:

- Discuss any concerns you have with a CQC colleague first – your line manager or another member of your team, for example. Use this as a way to test your concerns internally, before sharing. But do trust your gut instinct.
- Carefully consider who you need to share the soft information with, and do so in such a way as to limit any unnecessary dissemination of the information – for example, by privately discussing concerns about a service with a trusted contact, rather than in an open forum.
- Be absolutely clear when sharing the soft information that it is unverified. If it is nothing more a 'gut feeling' that something is wrong, be clear about this when discussing your concerns.

When sharing confidential personal information (CPI) which is soft information - for example, unverified concerns about an individual care worker - you should consider privacy issues in the normal way (see page 10), but you should be aware that public

interest considerations may be harder to justify for soft information and may attract a significant risk of detriment to individuals or CQC if they are later discovered to be unfounded.

Of course, you should always avoid sharing CPI when it is not necessary to do so, but due to the above this is particularly true of soft information. Fortunately, the nature of soft information will often lend itself to sharing without identifying an individual. For example, you could start by discussing with a key contact whether they have any worries about anyone at a named care service, rather than identifying the individual staff member at the initial stage. But remember, you still can share CPI if you're satisfied it is necessary to do so.

There may also be a tendency to share soft information in a more informal way, but it is still important to keep appropriate records of our actions. You should make and securely store a short file note about what information you have shared and why. In most cases, this file note shouldn't contain CPI unless you get back information that seems to verify your concerns and justify further action.

## Obtaining information from other organisations

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Under sections 62 and 64 of the Health and Social Care Act 2008, section 120 of the Mental Health Act 1983, and section 20 of the Health and Safety at Work Act 1974 (in relation to IRMER) CQC has powers to obtain any information from registered organisations and persons if we consider it necessary or beneficial for our regulatory functions.

These powers also allow us to obtain information that we require from English NHS bodies and local authorities.

Where we ask another organisation or person to disclose information (or in other circumstances where our powers are not engaged), any such disclosure will be voluntary. As such, those organisations will have their own concerns about confidentiality to consider, and it will help the process if we provide them with any information they are likely to need in order to make decisions on disclosure.

You should check on our [intranet](#) whether there is a Memorandum of Understanding, Information Sharing Agreement, or Joint Working Agreement with the organisation. If there is, then you should follow any instructions and guidance in that document.

If there isn't an agreement, you should start with informal contact – preferably face-to-face or by phone – to alert the organisation that you intend to seek information and to identify the best person to direct the request to.

The actual request should be made in writing (by post, email, web-form or fax) unless it is a matter of extreme urgency, in which case you should phone.

In the request, you should include the following information:

- Any (brief) explanation of CQC's role and functions that you feel may be helpful for the recipient.
- An explanation of why you need the requested information in this particular case (i.e. what you are trying to achieve, and how this information will help).
- As clear and detailed a description as possible of what information you need.
- A description of what you intend to do with the information – including whether we are likely to share it with anyone else.
- If you are asking for confidential personal information about any person (service users, providers, staff etc), you should explain why you consider that this disclosure will be lawful (see below).
- A statement to the effect that CQC will keep the information securely, and will consult with the other organisation if we receive a request for disclosure of the information under the Freedom of Information Act 2000.
- Your contact details.

Where another organisation is considering sharing personal information with CQC, it is **their** responsibility to satisfy themselves as to whether the disclosure will be lawful.

However, it may speed up information sharing if we provide them with our own view on why we consider that the disclosure will be lawful. You need to reference the Data Protection Act 1998 (DPA), but the exact wording of that reference will depend on the reason why CQC wants the information:

- Where we need the disclosure to help us in **assessing whether a criminal act has been committed, to prevent a criminal act being committed, to undertake a criminal prosecution, or to assist in the assessment and collection of CQC fees** we should advise that we consider that the exemption from the non-disclosure provisions under section 29 of the DPA apply.
- Where we think the disclosure is necessary to otherwise help us to carry out our **regulatory function**, we should advise that we consider that the conditions under paragraph 5(b) of schedule 2, and paragraph 7(1)(b) of schedule 3, of the DPA apply.

## The Information Access Team

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The Information Access Team provides advice and assistance on all matters relating to sharing information and is led by the Information Rights Manager.

You can contact the team by emailing [information.access@cqc.org.uk](mailto:information.access@cqc.org.uk) or writing to Legal Services and Information Rights, 7th Floor, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA.

These contact details can also be used by any person or organisation wishing to request information from CQC.

## Guidance on common information-sharing scenarios

1.	<p><b>I have serious concerns about the quality or safety of a service. Who can I share this information with?</b></p>	<p>Our first responsibility is for the safety and welfare of people who use registered services, and you should follow our <a href="#">safeguarding guidance</a> where you are concerned about this.</p> <p>If you are seriously concerned about issues that have a potential impact on the quality of care, or the safety or welfare of people who use a service, you should consider which other agencies have a role to play in addressing those issues. This may include other regulators (including professional regulators), commissioners of services, local or central government agencies, or the police, depending on the nature of your concerns.</p> <p>You should consider whether it is necessary to share <b>confidential personal information (CPI)</b> to fulfil this purpose.</p> <p style="padding-left: 40px;"><b>Where it is necessary to share CPI</b> you should notify, consult and listen to the views of those people, if it is possible and safe to do so without prejudicing regulatory functions, safeguarding processes, or police investigations. This will allow you to understand their concerns and objections when assessing whether disclosure is justified.</p> <p style="padding-left: 40px;">You must ensure that there is a legal basis to share CPI (see page 9 of this guidance) and you must satisfy yourself that any disclosure of CPI is the minimum necessary and is justified and a proportionate action. Consult with your manager and/or the Information Access Team where you are unsure. Keep a record of decisions and of what information has been shared with whom.</p> <p>Any disclosure of information must be made in consideration of the likely impact of doing so – for example, impact upon the commercial interests of the care service – and with consideration of whether the sharing is necessary and proportionate.</p>
2.	<p><b>What information can I share with people who use a care</b></p>	<p>Generally speaking, people can use our inspection reports to see our judgments about a service’s quality, safety and compliance with regulations.</p> <p>However, if you have information that you think is</p>



	<p><b>service, or the relatives, friends and carers of people who use services?</b></p>	<p>necessary to share in order to protect the welfare of any person using a service, then you may do so. For example, if you are concerned that a service has been failing to effectively manage a person’s medication – and that this failure may be affecting that person’s health – you would be entirely justified in informing that person (or their representatives) of those concerns so that they can take any necessary action.</p> <p>Also, if you are asking people for information in order to investigate or gather evidence about particular concerns, it is reasonable to advise them of those concerns so that they will understand our reasons for asking the questions and potentially gathering information about them.</p> <p>For example, you may say “I’m worried that your provider may not be keeping accurate records of your medication, to help me look into that, could you tell me....”</p> <p>You shouldn’t disclose confidential personal information about other people to people who use services, their relatives, carers and friends. For example, it wouldn’t be appropriate to reveal that we were exploring concerns that a registered manager’s health problems may be affecting the quality of their service.</p> <p>Nor should you pass personal information about a person using a service to other service users, relatives, friends or carers, without that person’s consent (other than in the most exceptional circumstances where you believe that that person’s safety is at serious risk).</p>
<p>3.</p>	<p><b>What information can I share with other regulators and professional bodies?</b></p>	<p>CQC has Memoranda of Understanding, Joint Working Agreements and/or Information Sharing Agreements with most other regulators and relevant professional bodies. You should follow the processes set out in these documents.</p> <p>If you have concerns about ‘fitness to practice’ we also have specific guidance on how to refer these to professional regulators.</p> <p>A list of the current <a href="#">Memoranda of Understanding, Joint Working Agreements and/or Information Sharing Agreements</a> can be found on the intranet.</p> <p>If there is no appropriate agreement, or if the agreement or this guidance document does not provide the advice you need, please contact the <a href="#">Information Access Team</a>.</p> <p>As with any disclosure, we should ensure that we act in a</p>

		<p>way that is justified and proportionate. Particular care should be taken to ensure that confidential personal information (CPI) is only shared where necessary and where there is a legal basis to do so (see page 9 of this document).</p>
4.	<p><b>What information can I share with commissioners of services (CCGs, NHS England, councils etc)?</b></p>	<p>We are required by law to inform certain bodies when we take some types of enforcement action. If you are unsure whether you need to inform commissioners about enforcement action that you are taking, discuss the matter with a CQC legal adviser.</p> <p>If you are considering taking action that will have a significant effect on people placed in a service by commissioning bodies – e.g. an urgent cancellation – or if you have concerns about the welfare of those people or the quality of their care, and consider that commissioning bodies may be able to help in addressing those concerns, then you should liaise with those bodies and can share the necessary information to allow them to take any required action.</p> <p>As with any disclosure, we should ensure that we act in a way that is justified and proportionate. Particular care should be taken to ensure that confidential personal information (CPI) is only shared where necessary and where there is a legal basis to do so (see page 9 of this document).</p> <p>In other circumstances, you should not routinely share draft reports with commissioners of services because doing so before completing factual accuracy checking may unfairly damage the commercial interests of providers.</p> <p>Commissioning bodies should make any request for confidential information in writing and send it to the Information Access Team to handle <a href="mailto:information.access@cqc.org.uk">information.access@cqc.org.uk</a>.</p>
5.	<p><b>What information can I share in risk summits?</b></p>	<p>Where CQC is involved in a risk summit, it is appropriate for us to share information that we hold regarding significant concerns or risks that we have identified in relation to particular services.</p> <p>This may include disclosing information from draft reports or general information about planned activity or ongoing enforcement action – under agreement of confidentiality – but should not include confidential personal information about people who use services.</p> <p>We may hold confidential personal information which suggests that a registered person or a member of care</p>

		<p>staff may represent a risk to people who use services. If you think disclosing that information will help to protect vulnerable people or help another body to carry out its functions, then you can make a decision on disclosure in accordance with the <i>necessity test</i> detailed in this guidance.</p>
6.	<p><b>What information can I share with safeguarding boards, safeguarding groups, and serious case reviews (SCRs)?</b></p>	<p>You should follow our <a href="#">safeguarding protocol and procedures</a>.</p> <p>Where CQC receives a <b>safeguarding alert</b> (i.e. where it is likely that we are the first agency to receive safeguarding information) it is important that this information is quickly passed to the relevant local authority using agreed contact routes.</p> <p>Generally speaking, there is a very strong public interest in CQC sharing information with safeguarding groups if we consider it to be both relevant and useful to the work of those groups.</p> <p>Where we consider it necessary to disclose confidential information – including personal information – to assist a safeguarding group in its role of protecting vulnerable people and acting on allegations of abuse, and where we consider the disclosure to be proportionate and justified by the general public interest, then that disclosure can be made.</p> <p>You should consider whether the information needs to be disclosed to all members of the group, to the chair, or to individual agencies, and you should keep a record of the information that has been disclosed, and the reason for that disclosure.</p>
7.	<p><b>What information can I share with the police?</b></p>	<p>If you witness a crime during an inspection, or have reason to suspect that a crime has been, or is going to be, committed, you need to decide whether or not to inform the police. However, there is no legal requirement to do so (other than in relation to some terrorism offences).</p> <p>In making this judgement, your main consideration should be the welfare of vulnerable people. If the criminal act is also an abuse (or potential abuse) of a vulnerable person – for example, an assault – then you should follow our <a href="#">safeguarding procedures</a>.</p> <p>You may disclose confidential personal information to help the police in their duties. You must ensure that you disclose the minimum necessary personal information and that the</p>

		<p>disclosure is proportionate (i.e. any impact on personal privacy is reasonably justified by the seriousness of the alleged crime). If possible, you should consult with the people whose information you intend to share and take their views into account when deciding whether to make the disclosure. You should <b>NOT</b> consult them if it is reasonable to believe that doing so may prejudice or interfere with any police investigation.</p> <p>If the police are conducting an investigation, and wish to obtain confidential information from CQC to assist with that investigation, they should usually make a written request to our Information Access Team by emailing <a href="mailto:information.access@cqc.org.uk">information.access@cqc.org.uk</a> or by writing to the team at 7<sup>th</sup> Floor, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA. Most police forces have a standard form to make such requests.</p> <p>If the police make an urgent request for confidential information, and if you can't get advice from the Information Access Team, then the decision on disclosure should be made by the most senior member of CQC staff available at the time. You should take care to confirm the identity of the police officer (e.g. if the urgent request is made by phone, call them back through the police station switchboard) and you must keep a record of the disclosure.</p>
8.	<p><b>What powers do the police have to require disclosure of information or documents from CQC?</b></p>	<p>In most circumstances, the police will seek voluntary disclosures of information from CQC, and the request will be handled following the procedure described above.</p> <p>If the police obtain a court order requiring CQC to disclose information, then the Information Access Team must be notified immediately and they will coordinate a response.</p> <p>It is possible – but extremely unlikely – that police may obtain a warrant allowing them to enter CQC premises and seize documents and/or property. CQC must comply with the requirements of a warrant.</p> <p>Theoretically, under section 19 of the Police and Criminal Evidence Act 1984, a police officer may seize any item (including documents) that are on premises which they have lawfully entered if:</p> <ul style="list-style-type: none"> <li>• They believe it is evidence relating to a criminal offence,</li> </ul> <p>And</p>

		<ul style="list-style-type: none"> <li>• They believe that it is necessary to seize that item in order to prevent it being concealed, lost, altered or destroyed.</li> </ul> <p>Although CQC may hold information that is evidence of an offence, it is extremely unlikely that we would tamper with, conceal or destroy it. As such, it is extremely unlikely that these police powers will ever be engaged in relation to information that we hold.</p> <p>If a police officer does seek to use these powers, then you should not resist or refuse, however you should advise the officer that you will undertake to hold the information securely for long enough for him to apply for a court order for it – and that his seizure may, therefore, be unlawful. If the officer does seize any document, then you need to ask for a receipt and a copy of the document (in accordance with section 21 of the 1984 Act).</p>
9.	<p><b>What information can I share with local Healthwatch organisations?</b></p>	<p>You should follow our <a href="#">guidance on working with the Healthwatch network</a>.</p> <p><b>Confidential personal information</b> should <u>not</u> be shared with Healthwatch organisations without the consent of the person(s) to whom that information refers (as there is no other legal basis to make such a disclosure).</p>
10.	<p><b>What information can I share with overview and scrutiny committees?</b></p>	<p>You should follow our guidance on working with <a href="#">overview and scrutiny committees</a>.</p> <p>Overview and scrutiny committees for health and social care have statutory responsibilities to scrutinise care services in order to recommend improvements to care.</p> <p>When dealing with these committees the principles of this information sharing guidance should be followed as normal, but it is important to remember that the committee meetings take place in public and there are legal requirements to publish documents and the procedures within meetings.</p> <p><b>Confidential personal information</b> should <u>not</u> be shared with these committees without the consent of the person(s) to whom that information refers (as there is no other legal basis to make such a disclosure).</p> <p>However there may be times when we want to share <b>other kinds of confidential information</b> which is not yet in the</p>

		<p>public domain - for example soft intelligence prior to an inspection to see whether relevant information is known to members of the committee that could inform our regulatory action.</p> <p>You should check with the scrutiny chair and lead officer whether they are happy to discuss concerns not yet in the public domain. It will not be appropriate to do this during a committee meeting, as these are held in public and the press often attends.</p> <p>If you do discuss concerns with the chair and lead officer in confidence, they should be aware of our expectation to treat any information about CQC activity in confidence, and to recognise the importance of our unannounced programme of reviews.</p>
11.	<p><b>What information can I share with Patient Participation Groups (PPG) and Patient Reference Groups (PRG)?</b></p>	<p>When we give notice of an inspection to a GP practice, we will check whether they have a PPG or PRG. These groups represent patient and community views at individual practice level so we should explain the purpose of the inspection to the groups.</p> <p>As we will be asking the groups for information in order to investigate or gather evidence, it may be reasonable to advise them of the general nature of concerns or intelligence we may already have, so that they will understand our reasons for asking the questions,</p> <p>Care should be taken not to disclose very specific concerns if they would allow individuals to be identified. Nor should we share confidential personal information with PPGs or PRGs.</p> <p>We should also be careful to consider the likely impact and fairness of sharing any information with PPGs or PRGs. For example, disclosing unsubstantiated allegations of serious issues of concern about a practice to a PPG or PRG may be disproportionate and unfair to that practice.</p> <p>These groups will not receive a draft inspection report, and requests for information from their members should be dealt with as with any normal request from a member of the public (referring the request to the Information Access team if necessary – see page 4 of this guidance).</p>
12.	<p><b>What</b></p>	<p>If you become aware of concerns about safety issues within</p>

	<p><b>information can I share with local fire services and environmental health services?</b></p>	<p>a service, and you consider that these issues are relevant to the work of local fire services or environmental health you should share that information with the relevant body.</p> <p>If you need to identify individuals - for example by raising concerns about an address where only one person is receiving care and is at risk - particular care should be taken to ensure that confidential personal information (CPI) is only shared where necessary and where there is a legal basis to do so (see page 9 of this document).</p>
<p>13.</p>	<p><b>What information about complainants (people sharing information of concern about care services) and whistleblowers can I share with a provider?</b></p>	<p>You should follow our guidance on <a href="#">whistleblowing</a> in relation to information of concern about care services received from employees or agents of those care providers.</p> <p>We have a statutory function to investigate complaints relating to the detention of people under the Mental Health Act. These complaints should be handled in accordance with the relevant procedures. We do not have functions or powers to investigate and seek resolution to other individual complaints about care.</p> <p>However, we do consider and use information of concern about care services. If allegations or concerns about a service have been raised with CQC, then the provider will generally have a right to know the nature of those issues. If we tell providers about problems, then they have an opportunity to put them right.</p> <p>In doing so, you should protect the confidentiality of complainants and whistleblowers, as far as it is possible to do so.</p> <p>We can share information about complaints and concerns with providers in the following ways:</p> <ol style="list-style-type: none"> <li>1) We can share the information in a way that <b>does not identify the individual</b>. Be careful though - removing someone's name is not always sufficient to hide their identity from the provider, especially when the complaint relates to very specific or unique circumstances, and we must ask ourselves whether there is a reasonable possibility that the provider will be able to identify the person from any information we provide.</li> <li>2) We can disclose information where we have considered and decided that there is very <b>serious risk to the welfare of individuals</b> if we do not share it. If possible, we should inform the person in</li> </ol>

advance that we intend to share their information with the provider. If that person is the only person at risk – and if they are capable of consent – we would need their consent to share the information with the provider.

3) We can disclose information where we have considered and decided that the disclosure is *necessary and proportionate* for the purpose of **exercising our functions**. We should follow the ‘necessity test’ (i.e. we should satisfy ourselves that it is a necessary step towards the exercise of our functions, and that disclosure of the information is a fair and proportionate action for CQC to take) when making this decision, and we should inform the person in advance and consider any objections they have, if it is possible to do so.

4) In any other case, (where we want to pass a complaint onto the provider to handle and respond to, and where doing so will identify the complainant or whistleblower, but where we do not consider that doing so is a necessary step in us performing our regulatory functions, or to prevent serious harm) the only lawful basis for disclosure to the provider is to obtain the **consent** of the person who provided that information. If it is not clear whether the person consents to disclosure, we must contact them to seek that consent.

You can get consent by contacting the complainant or whistleblower in the most appropriate way. In most cases, this will be the same way in which they have contacted CQC (email, telephone etc.) or using whatever contact details they have provided to us as part of their communications with us.

When seeking consent, you must advise the person of what you want to do and why, for example, "I'd like to pass your complaint on to your service provider, as it is their responsibility to handle and respond to it, but I don't believe that I can do this without the provider becoming aware of who gave us this information".

Written proof of consent (such as a signed consent form) isn't required, but you should keep some record - for example a file note showing how and when the person was contacted and what they consented to. If the person refuses consent, you should also keep a record of this.



		<p>Where consent is required, take extra care where the complaint comes from a third party (for example, a relative, friend or carer) and contains sensitive information about the service user that the provider is unlikely to already know (for example, if a carer tells us that a service user is particularly distressed by the behaviour of their current provider due to previously being a victim of abuse at a different service). In most cases, we can pass on the complaint without including detail of this type, but where it is not possible to do so, then we should also seek consent from the service user (or make a 'best interests' consideration under the MCA if they are incapable of giving consent).</p> <p>CQC cannot, and <b>must not</b>, give a promise of confidentiality to complainants and whistleblowers, as our primary concern is to take appropriate steps to ensure the safety and welfare of people who use services and this may sometimes require us to breach confidentiality.</p>
14.	<p><b>I've received anonymous allegations about a care worker. Can I disclose those allegations to the provider?</b></p>	<p>You should consider two questions:</p> <ul style="list-style-type: none"> <li>a) Do the allegations sound plausible (which is not asking you to judge whether or not they are true, just whether it seems reasonably possible that they might be), and</li> <li>b) If the allegations were true, do they suggest a reasonable possibility that the perpetrator may be a serious risk to people using the service?</li> </ul> <p>If the answer to <b>both</b> questions is 'yes', then you should pass the information on to the provider (and consider further action under our safeguarding policy). But be very careful to make clear that they are unsubstantiated allegations from an anonymous source, and that we are simply passing them on.</p> <p>In effect, this is no different to what would have happened if the alleged victim or witness had chosen to contact the provider directly (which they may possibly have done anyway).</p> <p>You should keep a record of your decision and any correspondence.</p> <p>We may wish to follow up with the provider to check that</p>

		they have responded appropriately to these allegations.
15	<b>Can I inform a provider of my own concerns relating to a member of their staff?</b>	<p>If you have concerns about the actions, performance or competency of a member of care staff, then it is entirely appropriate for you to share those concerns with the registered provider and/or manager.</p> <p>In other circumstances, decisions on disclosure may be more complicated. For example, you may be aware of previous allegations against a care worker that their current employer may not be aware of. In such circumstances, you should get advice from Legal Services and Information Rights.</p>
16.	<b>A provider has asked for my notes and evidence from a recent inspection. Can I disclose these?</b>	<p>Providers may consider that they need to receive this information from CQC in order to be able to effectively challenge the factual accuracy of our reports, or so that they can decide whether to challenge CQC's actions and judgments.</p> <p>In the interests of fairness and transparency, we should disclose this information to providers unless there is a good reason not to.</p> <p>Examples of circumstances in which information <b>should not</b> be shared with providers include:</p> <ul style="list-style-type: none"> <li>• Disclosure of information that would identify whistleblowers, or other people who have shared information with CQC in confidence</li> <li>• Disclosure of legal advice and other information that is protected by legal privilege</li> <li>• Disclosure that is likely to prejudice our regulatory work – for example, by revealing plans for an unannounced follow-up inspection</li> <li>• Where complying with the request would place a disproportionate resource burden upon CQC.</li> </ul> <p>Providers should not be asked to make a Freedom of Information request for information about the inspection of their own services (FOI disclosures are made 'into the public domain' so will not permit confidential disclosures to the provider of information about their own service). However, if you think that we should refuse a request for information from a provider, this should be discussed with the Information Access Team.</p>
17.	<b>Where a care service goes into</b>	The appointed administrators take over the running of the organisation from the board of directors. As such, we can deal with them, and share information in the same way as

	<p><b>administration, what information can I share with the administrators?</b></p>	<p>we would normally do with directors of the service.</p> <p>Unless we are informed otherwise, the nominated individual and manager for the service will not change when the service goes into administration.</p>
18.	<p><b>Can I use CQC's powers to obtain information on behalf of another organisation?</b></p>	<p>No. While CQC will often work closely with other organisations with similar functions, other organisations will have their own specific powers under their enacting legislation for obtaining information.</p> <p>CQC should not be used as a proxy for their purposes, and in any event CQC's powers only allow us to obtain information that is necessary or expedient to carry out <b>our own</b> functions.</p> <p>However, if you collect information that is of use to other bodies while carrying out our functions, then we encourage the sharing of that information in line with this guidance or any joint working agreements – but we would be acting in excess of our powers (and therefore unlawfully) if we specifically set out to collect information for the sole purpose of sharing it with another organisation.</p> <p>We also <b>cannot</b> use our powers to grant access to registered premises to a third party unless they are there to help us carry out our own functions.</p>
19.	<p><b>Can I share draft copies of inspection reports?</b></p>	<p>Generally speaking, we consider a draft inspection report to be confidential until the factual accuracy and representations process is complete. This is because disclosing any inaccurate information may be harmful to the commercial interests and reputation of the provider, and to the reputation of CQC, and may also be misleading.</p> <p>However, these issues may be outweighed by other public interest issues that favour disclosure. For example, where sharing a draft report would assist in a safeguarding investigation, or alert other monitoring bodies to issues where they may need to act quickly. In such cases, you should still share only what is necessary. This could include the whole report if a context is necessary.</p> <p>Decisions to share draft reports must be made on a case-by- case basis. The draft report should only be shared where you consider that the public interest in doing so outweighs the public interest to be served by keeping the report confidential.</p>

		<p>If you share a draft report, you should clearly mark it as 'draft'. The recipients must be warned that the reports are subject to factual accuracy checking – so may be amended – and that they should not be shared with others without CQC's permission.</p>
20.	<p><b>Can I share information that is covered by legal professional privilege?</b></p>	<p>Legal privilege applies to communications between a client (in CQC's case, the person, team or department who are seeking advice) and their legal representatives or advisors (such as any colleagues in Legal Services or external Counsel), in which advice on legal matters is sought, provided or discussed. It may also apply to other documents that contain or refer to that advice. This means that a wider range of documents and information may be subject to this privilege than first anticipated.</p> <p>This is important as CQC will not usually share its own legal advice with other bodies. You should consult our Legal Services team before doing so, as disclosure may waive legal privilege and make it easier for other people to access that information in future (for example, it may result in the advice becoming publicly available under FOIA).</p> <p>Where we hold legally privileged information that we have obtained from a provider or another body, we will not normally share that information with a third party.</p> <p>If somebody has requested disclosure of this information or if you are considering whether to disclose it, you must get advice from Legal Services and Information Rights.</p>
21.	<p><b>Can I set up memoranda of understanding and information sharing agreements with local organisations?</b></p>	<p>Memoranda of Understanding (MOUs) or Joint Working Protocols (JWPs) are high level documents that provide a strategic framework, explain the responsibilities of two or more organisations, and set out how and why those organisations will work together. CQC only usually enters into MOUs and JWPs with other <b>national</b> bodies.</p> <p>Information Sharing Agreements (ISAs) or Information Sharing Protocols (ISPs) are more detailed documents that set out what information will be shared by organisations. They usually include details of how this information will be shared, who will be responsible for decisions on sharing information, what security arrangements will be in place, and how information that is shared can be used.</p> <p>CQC should be careful about entering into ISAs and ISPs as they can be time consuming to set up, and we risk developing a patchwork of different agreements across the</p>

	<p>country, resulting in inconsistency and confusion.</p> <p>Where local bodies ask for such agreements as a pre-condition for sharing information, CQC can provide statements on our information security, information handling and information access arrangements that should answer any concerns those bodies have about sharing information.</p> <p>However, where there is a need to set up or enter into a local ISA or ISP, the Information Rights Manager can advise. ISAs and ISPs with national bodies are negotiated and managed by the Data Management Team in the Intelligence Directorate, and are listed on our <a href="#">Strategic partnership intranet page</a>.</p> <p>It is important to remember that these documents are not legally binding, nor do they permit any sharing that would otherwise be unlawful.</p>
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## Tools for the job

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[Code of Practice on Confidential Personal Information](#)

[Guidance on handling confidential information](#)

[Guidance about whistleblowing](#)

[Guidance on working with oversight and scrutiny committees](#)

[Safeguarding Protocol and procedures](#)

[Memoranda of Understanding, Joint Working Agreements and/or Information Sharing Agreements](#)

[Information and Records management policy and guidance A - Z](#)

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The Information Access Team can provide advice and assistance on all matters relating to sharing information, and is led by the Information Rights Manager.

You can contact the team by emailing [information.access@cqc.org.uk](mailto:information.access@cqc.org.uk) or writing to Legal Services and Information Rights, 7th Floor, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA.