

Reference: FOI 2021174

Subject: EIA and Trans Toolkit legal advice - notes from meeting women's organisations

*I can confirm that the CCG **does hold the information requested**; please see responses below:*

QUESTION	RESPONSE
<p>Please could you provide a copy of the meeting notes from the meeting with representatives from a number of women's organisations.</p> <p>Provided individual personal data is redacted, I don't know of any exemption to the Freedom of Information Act that would prevent the release of these notes. However, should there be an exemption I would argue that it is in the public interest to release the notes. The Trans Toolkit, like many trans issues, is an area of intense public interest. Feedback from the meeting has fed into the process of making public policy that aims to balance the rights of trans people against other people. Transparency in policy making demands making these notes public.</p>	<p>The CCG consulted with members of the public regarding the development of an Equality Impact Assessment (EIA) for the "Supporting Trans People Toolkit". A number of writers from several organisations developed this toolkit and the work was coordinated by Stand Against Racism and Inequality (SARI) as guidance for clinicians which outlines the experiences of transgender people when accessing healthcare. The toolkit was designed to help clinicians have compassionate and empathic discussions with transgender people and is not designed to be a decision making tool or policy for use by the CCG.</p> <p>SARI attended the public Governing Body meeting in November 2019 to request that the CCG endorse the toolkit. Following this meeting, the CCG received a number of comments regarding the content of the toolkit and in response developed the EIA in order to assess the impact of the toolkit against the 9 protected characteristics and to outline a set of recommendations for the writing team based on this equality analysis.</p> <p>As the CCG is one of a number of funders who have supported</p>

	<p>this project, it is unable to dictate the outcome. It is therefore SARI's decision whether the suggested edits are included in the toolkit.</p> <p>The CCG undertook a consultation meeting with a number of women's groups to discuss the EIA.</p> <p>Notes were taken at the meeting by the member of staff undertaking the Equality Impact Assessment of the toolkit and these are below:</p> <ul style="list-style-type: none"> • Comment on sex and gender conflation, protected characteristic is not clear • Clarify statistics, % are based on sub-set of whole sample. Could look at statistics around women who experience violence. Stats are dated >10years. • Trans men not really addressed, trans men experience sexual violence. Consider talking to male representative organisations, usually conspicuously absent from conversations • >85% of trans women do not undergo surgery • NHS guidance not in line with Equality Act • Toolkit not clear about people who identify as non-binary • Need to place emphasis on staff to understand risk assessment/needs of other women <p>The above points were included within the EIA, which has been discussed at public Governing Body on a regular basis.</p>
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Another member of staff took notes of the meeting for personal use. These notes were not shared with other meeting members and were not used to develop the EIA. The CCG deems these notes exempt for release through section 36 and section 40 of the Freedom of Information Act. The reasoning has been set out below.

The CCG considers that release of these notes to the public via the Freedom of Information Act would prejudice any future public consultations if members of the public felt unable to hold a free and frank exchange of views with the CCG and if their opinions were disclosed. The CCG has therefore applied a section 36 (Prejudice to the effective conduct of public affairs) exemption to the notes.

The CCG needs to consider the public interest test when applying a section 36 exemption, and the possible prejudice that may arise if the information was released.

This exemption has been considered for this specific set of notes due to the possibility that people would not engage with the CCG again should the commitment to engagement confidentiality not be upheld. When considering any future commissioning or decision making in this area, it is reasonable to assume that the CCG would need the input of the groups and people who have been consulted as part of the EIA development. The CCG has strong reason to believe these groups would be less likely to engage with the CCG if their comments had previously been released to the public.

This could also extend to other groups and individuals who may not wish to engage with the CCG if their opinions would be disclosed against their wishes. It would not be in the public interest for the CCG to be unable to consult with interested groups during consultations that affected services or policy as the CCG may not have the local expert knowledge to commission the best possible service for the population.

The CCG therefore believes that the section 36 exemption should also be applied as it has a duty to consult and public consultation is therefore important in fulfilling the duties of the organisation. It is in the public interest for the CCG to obtain the local knowledge needed for any future consultations.

The section 36 exemption has been agreed with the CCG's Qualified Person.

Additionally, the CCG commits to confidentiality as part of any consultation and engagement process (subject to the FOI Act 2000); this is outlined as part of the CCG's [privacy policy](#). The CCG considers the names and comments made by members of this meeting to be personal information and therefore has also applied a section 40 (Personal Information) exemption to this information.

The CCG needs to consider the public interest test when applying section 40 to a response. The most significant consideration is recognition that the CCG is committed to

	<p>confidentiality during consultation and engagement and as part of this meeting the meeting members requested that their participation and comments remained confidential. The CCG must balance this against the public interest in the notes from this meeting.</p> <p>The CCG acknowledges that there are a number of groups and individuals who are interested in the content of the Trans Toolkit and therefore the EIA the CCG has developed. There has also been recent significant media interest in transgender issues due to the Kiera Bell court case, which has raised the profile of transgender matters. However, the CCG recognises that this is a contentious issue that elicits high emotion on all sides of the debate. The CCG therefore considers this an area where confidentiality of opinion is vitally important.</p> <p>The CCG has considered the possibility of redacting the personal information including the opinions of the meeting members and the redaction of this information would lead to the notes becoming meaningless as the redactions would be undertaken on the majority of the notes.</p>
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The information provided in this response is accurate as of 1 March 2020 and has been approved for release by Deborah El-Sayed, Director of Transformation for NHS Bristol, North Somerset and South Gloucestershire CCG.