



DEPARTMENT OF HEALTH
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Your reference
Our reference

To: **Regional General Managers
District General Managers
General Managers of Special Health
Authorities for the London
Postgraduate Teaching Hospitals
Administrators of Family Practitioner
Committees
Secretaries of Community Health
Councils**

} for information

February 1989

Dear General Manager

**COMMUNITY HEALTH COUNCILS
(ACCESS TO INFORMATION) ACT 1988**

This letter but not the guidelines it encloses will be cancelled and deleted from the current communications index on 28 February 1990.

1. The Community Health Councils (Access to Information) Act 1988 ("the Act") comes into force on 1 April 1989. The Act applies to CHCs the provisions of the Local Government Act 1972 which were inserted by the Local Government (Access to Information) Act 1985, modified so as to take account of the differences between CHCs and local authorities.
2. The enclosed guidelines outline the requirements of the Act and suggest what steps might be considered by CHCs to meet them. CHCs should prepare to implement the provisions of the Act on 1 April 1989.
3. Provisions in the Act on opening up committee meetings to the public may mean that some CHCs could face difficulties over using existing premises for public meetings. The RHA as establishing authority has a duty under regulation 15 of the Community Health Councils Regulations 1985 to provide such accommodation as a CHC needs to perform its functions.

Regional General Managers should be aware that present accommodation may no longer be adequate for some CHCs.

4. Resource implications arising from the legislation are not expected to be widespread and no additional resources will be available to RHAs from central funding. Individual cases for additional resources should be considered locally on their merits.

Yours sincerely

M A Harris
Assistant Secretary

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Further copies of this letter may be obtained from DHSS Store, Health Publications Unit, No 2 Site, Manchester Road, Heywood, Lancs OL10 2PZ quoting code and serial number appearing at top right-hand corner.

GUIDELINES TO THE COMMUNITY HEALTH COUNCILS (ACCESS TO INFORMATION) ACT 1988

1. The Community Health Councils (Access to Information) Act 1988 ("the Act") applies to Community Health Councils the provisions of the Local Government Act 1972 which were inserted by the Local Government (Access to Information) Act 1985, modified so as to take account of the differences between Community Health Councils and local authorities.

2. The principle underlying the Act is that meetings of Community Health Councils, joint committees, and committees should, in general, be open to the public, including the press. Broadly, the Act places all meetings of CHCs on a common footing with Local Authorities by providing for public and press access to Community Health Council meetings and for access to agendas, reports, background papers and minutes of all meetings. The duties imposed on Community Health Councils by virtue of the Public Bodies (Admission to Meetings) Act 1960 cease to apply with effect from 31 March 1989. From 1 April 1989 the date on which the Act comes into force, access to information held by CHCs will be governed by the Act (see Annex A).

3. The Act opens to public inspection certain background papers which relate to the subject matter of reports to CHCs, their committee or joint committee meetings. Background papers are those which, in the opinion of the CHC Secretary (or the proper officer if that is not the Secretary) disclose any facts which have been relied on in preparing a report and on which an important part of the report has been based. They should be listed and the list also made available.

4. A committee is legally defined as an individual or body to which others have committed or delegated a particular duty in the expectation of their act being confirmed by the body they profess to represent or act for. Thus working parties, interest groups and discussion forums are not committees unless they have power to act and the action is subject to confirmation by the council. A joint committee is one appointed by more than one council.

5. In order to comply with the provisions of the Act CHCs should consider taking action as in the following paragraphs.

6. Access to meetings

CHCs must ensure that their meetings (including committees and joint committees) are open to the public and press. CHCs may resolve that the public and press may be excluded from a meeting of a CHC if confidential or personnel matters are likely to be discussed. It is important, that where such a resolution is made, the reasons for it are publicly conveyed either at, or prior to, the meeting itself.

7. Notice of meetings

A CHC is required to post a notice of meeting at the offices of the CHC (and, if possible, wherever the meeting will be held if not the offices) giving three clear days between the time of posting the notice and the date of the meeting. Where, exceptionally, the meeting is to be held within less than 3 days, notice of the meeting should be posted at the time it is convened, but it would be good practice and in keeping with the spirit of the Act if as much notice as possible were given. Three clear days means for example that if a notice of meeting is posted on a Friday the meeting cannot be held before the next Tuesday.

8. Access to agenda and connected reports

In general, the public and the media should be given access to all papers, which are likely to be discussed at a meeting of the CHC, its committee, or joint committee. The CHC may exempt from access those papers which in the opinion of the CHC are likely to be regarded as exempt from disclosure by virtue of their confidential nature. (see Annex B). Access to papers should be made available at least three clear days before the meeting itself. Where copies of such papers are sought, a CHC is enabled to charge a reasonable fee. The Act requires that photocopies of documents should be made available within three days of the request being made the day of request counting as day one.

9. Inspection of minutes and other documents after meetings

The same principles apply to these papers as those mentioned in para 6. CHCs should note that minutes and other documents retained after meetings should be kept for a period of at least three years. Background papers associated with CHC discussion need be kept for a minimum period of two years.

10. Access to information relating to members of CHCs

A CHC should keep a register for public inspection which contains the name and address of every member of the Council and of every CHC committee or joint committee. Such a register should include the name and address of the body which nominated the appointment and whether or not the nominee is a member of that body. In the case of a member of a CHC being appointed by a voluntary organisation the register should indicate the person has been so appointed, and specify the voluntary organisation concerned.

11. Summary of public and media rights

CHCs should also have available publicly a written summary of the rights of the public and press to attend meetings of the CHC and to their rights to inspect, and copy, or to be furnished with documents relating to CHC meetings or joint committees. A statement which CHCs might wish to consider using is at Annex C. The CHC is empowered to charge a reasonable fee for the photocopying of any such document as may be requested under the Act.

12. Resources

As most of these duties are already undertaken by CHCs and the take up is likely to be small, no additional resources will be made available centrally to Regional Health Authorities as a consequence of the Act.

COMMUNITY HEALTH COUNCILS (ACCESS TO INFORMATION) ACT 1988
RELEVANT SECTIONS

The greater part of the Act applies to CHCs relevant parts which were added to the Local Government Act 1972 by the Local Government (Access to Information) Act 1985 as follows:

A new Part VA was added to the Local Government Act 1972 consisting of sections 100A to 100K.

Section 100A provides for admission of the public to meetings of principal councils. It requires the council to exclude the public where confidential information is likely to be disclosed; and enables them to do so where exempt information, is likely to be disclosed. The section also provides for public notice to be given of meetings of principal councils. The section refers to meetings of principal councils.

Section 100B requires copies of agenda and reports for meetings to be open to inspection by the public (excluding any reports or parts of reports for items of business during which the meeting is likely not to be open to the public). Copies of the agenda and any reports are to be available to members of the public attending the meetings and to representatives of newspapers, who may request that these documents be sent to them by post.

Section 100C provides for minutes, agenda and reports to be available for inspection for six years after the meeting.

Section 100D provides for inspection of background papers. A list of the background papers and a copy of each of the background papers listed have to be available for inspection by the public for 4 years.

Section 1(1) of the Act modifies the provisions of sections 100A to 100D of the Local Government Act 1972 to apply to the premises and officers of Community Health Councils (CHCs). It also changes the periods referred to in sections 100C(1) and 100D(2) of the same Act to 3 and 2 years respectively.

Section 1(2) adapts the requirements of sections 100A to 100D to apply to premises owned or under the control of CHCs and includes a CHC officer as the "proper officer" for the purposes of sections 100B, C and D.

Section 100E applies the provisions of sections 100A to D concerning principal councils to their committees and sub-committees.

Section 100E therefore applies to CHCs under the Act.

Section 100H makes supplementary provisions as to availability of documents open to inspection and punishment of persons obstructing anyone entitled to inspect a document. It also provides that the publication of defamatory matter in any accessible documents for a meeting (as defined in subsection (6) of Section 100H) should have qualified privilege. That means that it is privileged for the purposes of an action for defamation unless publication can be proved to have been made with malice.

Section 1(4) of the Act applies to CHCs the provisions of section 100H on the opening of documents for inspection and the defence of qualified privilege in the event of action for defamation. It also provides that a copy of a document requested shall be supplied within three days of the request.

Schedule 12A inserted into the Local Government Act 1972 sets out categories of exempt information in respect of which local authorities have discretion to close meetings.

Section 1(5) of the Act empowers the Secretary of State to amend schedule 12A of the Local Government Act (list of exempt information) in relation to CHCs.

Section 1(6) applies Part I and some of Part II of Schedule 12A to the 1972 Local Government Act and exempts certain additional categories of information relevant to the CHC context (see Annex C).

The Act also makes the following provisions:

Section 1(3) of the Act brings committees and joint committees set up by CHCs within the provisions of the Act.

Section 1(7) removes CHCs from the bodies covered by the Public Bodies (Admission to Meetings) Act 1960.

Section 2 provides that a CHC shall maintain a register of CHC members and members of CHC committees with information on their appointment and a written summary of the main provisions of the Act. Both the register and the summary shall be available for inspection free of charge and a copy shall be made available for a reasonable fee within three days of the request.

Annex B

INFORMATION EXEMPT FROM THE REQUIREMENT TO BE DISCUSSED IN PUBLIC SESSION

1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the council or any RHA or DHA within whose territory the council exercises function.

2. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the council.

3. Information relating to the physical or mental health of any particular person .

4. Information relating to any particular person who is or was included in a list of persons undertaking to provide general medical, dental, ophthalmic or pharmaceutical services under the NHS Act, any person applying to be included on such a list, or any employee of such persons.

5. Information relating to the financial or business affairs of any particular person (other than the council).

6. The amount of any expenditure proposed to be incurred by the council under any particular contract for the acquisition of property or the supply of goods or services.

7. Any terms proposed or to be proposed by or to the council in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.

8. The identity of the council (as well as of any other person, by virtue of paragraph 5 above) as the person offering any particular tender for a contract for the supply of goods or services.

9. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the council or a Minister of the Crown and employees of, or office holders under, the council.

10. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:-

- (a) any legal proceedings by or against the council, or
- (b) the determination of any matter affecting the council.

(whether, in either case, proceedings have been commenced or are in contemplation).

COMMUNITY HEALTH COUNCILS (ACCESS TO INFORMATION) ACT 1988

RIGHTS OF PUBLIC AND MEDIA

- * CHC meetings must be open to public and media. This includes committees and joint committees. They can be closed only for discussion of confidential or personnel matters.
- * Three clear days notice of meeting must be given to public and media. Where this is impossible notice must be posted before the meeting begins.
- * Public and media should have access to all papers to be discussed at open meetings at least 3 days before the meeting.
- * Public and media can have copies of such papers for which a reasonable fee can be charged.
Public and media can have access to and copies of minutes and other papers arising from the meetings. CHCs should keep minutes and papers arising for 3 years.
- * Public and media should have access to a register of all CHC members and committee and joint committee members - with names and addresses. Register should include name and address of body which appointed the member.

