

# Freedom of Information Policy

<b>Lead Manager</b>	<b>Corporate Services Manager (Compliance)</b>
<b>Responsible Director</b>	<b>Director of Corporate Services and Governance</b>
<b>Approved by</b>	<b>Corporate Management Team</b>
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# 1. Introduction

## ***General Obligation***

The Freedom of Information (Scotland) Act 2002 (as amended) (“the Act”) imposes a number of obligations on Scottish public authorities, including NHS Greater Glasgow and Clyde (NHSGGC). Integration Joint Boards established under the Public Bodies (Joint Working) (Scotland) Act 2014 are separate responsible bodies under the Act from the date of their establishment<sup>1</sup>. The Act gives a general right of access to recorded information held by public authorities, subject to certain exemptions. The Act also imposes additional responsibilities:-

- (a) to produce a Publication Scheme subject to approval by the Scottish Information Commissioner. Publication schemes are high level, strategic documents in which a public authority makes binding commitments to make information available to the general public. Such schemes:
- provide clear evidence to the public that an authority is meeting its obligations under the Act to be accessible, open and transparent;
  - enable the public to see what information is already published, and to access it without having to make a formal request for information;
  - give employees clear guidance about the information that they can and should give out to the public so they can respond to information requests efficiently;
  - help reinforce leadership messages about openness and accountability to staff at all levels in the organisation;
  - are to be easily accessible and designed to be easy to understand and to use – by everyone (including those with no web access).
- (b) to respond to requests (which must be in writing or some other permanent form) made by anyone for information held by the authority within set timescales (normally 20 working days) regardless of when it was created, by whom, or the format in which it is now recorded.
- (c) to advise an applicant if information is not held.
- (d) to specify within the terms of exemptions set out in the Act if the authority refuses to release the requested information.
- (e) to charge for the provision of information only in accordance with regulations made under the Act and to decline to provide information if the cost of doing so exceeds a specified level.

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<sup>1</sup> The Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2014

- (f) to make applicants aware of their right to seek a review of any decision on a request for information and of the right to pursue an appeal to the Scottish Information Commissioner if dissatisfied with the decision of the authority.
- (g) to provide advice and assistance to applicants seeking information.
- (h) to ensure all requests are applicant blind to ensure absolute objectivity in response

### ***Environmental Information***

Under Section 62 of the Act, the Scottish Ministers have made the Environmental Information (Scotland) Regulations 2004 (EIRs). These make provision in Scottish law of the Aarhus Convention of June 1998 on “Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters”. They also implement the European Commission Directive 2003/4/EC. The Convention is based on the principle that every person has the right to live in an environment adequate to his health and wellbeing.

The definition of Environmental Information from the EIRs is reproduced as Appendix 1 to this Policy.

There are differences in the obligations on the Board under the EIRs as compared with FOISA. The most notable differences are:

- (a) requests for information under the EIRs may be made orally – there is no requirement to put them in writing or other permanent form.
- (b) the timescale for responding may, in certain circumstances, extend to 40 working days.
- (c) the charging arrangements under EIRs allow for flexibility for the Board to recover the costs of providing information – but we cannot refuse to provide information on the grounds of cost.

### ***Data Protection Act 2018 (DPA)***

Under the DPA, the data subject (i.e. the person the information relates to) has a right to request access to that data. This is known as a Subject Access Request. This may include health records or other personal data held by the Board. Rights under the DPA are not covered by this Policy. Reference should be made to relevant information governance security and other related policies available via the Publication Scheme.

## 2. Scope of Policy

This policy sets out the arrangements that NHSGGC has made to ensure compliance with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

This Policy applies to all NHSGGC employees and to Non-Executive Directors. Staff are accountable to the Board for compliance with this Policy. Under arrangements for joint working, that accountability may also extend to managers employed by local authorities.

Contractors, proposed contractors and others communicating with the Board shall be informed of our obligations under *Freedom of Information legislation*<sup>2</sup> and that we may have to disclose information which is provided to us by them.

The Policy will provide a framework within which NHSGGC will ensure compliance with our obligations under the Act and ensure that internal procedures developed are the most effective means of complying with the Board's obligations.

## 3. Responsibilities

**The Chief Executive** is ultimately responsible for the Board's compliance with relevant statutory provisions and shall provide strategic direction on the operation of our Freedom of Information Policy.

**The Director of Corporate Services and Governance** has responsibility for advising the Chief Executive on the application of Freedom of Information legislation and for ensuring that the Board meets its obligations under the legislation. They are assisted in this by a Corporate Services Manager (Compliance) and a Freedom of Information Manager.

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<sup>2</sup> *Freedom of Information legislation* is to be read as a reference to **both** FOISA and EIRs

**The Director of Communications and Public Engagement** has responsibility for ensuring that the Board responds consistently in connection with media enquiries and related FOIs in maintaining relationships with the media in line with the legislation.

**Corporate Directors** have a responsibility to review relevant FOIs to ensure consistency of information.

**The Freedom of Information Manager** has responsibility for reviewing operation of the Board's compliance with Freedom of Information legislation and for ensuring that this Policy and its operating procedures are in place.

**The Chief Executive, Chief Operating Officer (Acute Services), Directors and Heads of Service** (including professional leads) are responsible for ensuring that Freedom of Information requests submitted to their service receive appropriate and timely responses from their staff consistent with the legislation.

**Managers** are responsible for ensuring staff under their direction and control are aware of the Freedom of Information policy, procedures and guidance laid down by NHSGGC and for ensuring that all staff understand and comply with these in their day to day work.

**All staff** must have a general understanding of Freedom of Information legislation and know where to refer any issues on which they require guidance.

Compliance with this Policy is **compulsory** for all staff employed by NHSGGC. A member of staff who fails to comply with this Policy may be subject to disciplinary action under the NHS Scotland Workforce Conduct Policy.

#### 4. Policy Statement

NHSGGC is committed to being open and honest in the conduct of its operations and in complying fully with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. To this end NHSGGC will ensure:

- Compliance with the relevant Scottish Ministers Codes of Practice on Freedom of Information legislation and to related guidance issued by the Scottish Information Commissioner;
- A significant amount of routinely published information about NHSGGC is made available to the public as a matter of course through its Publication Scheme and Guide to Information;
- That the content of our Publication Scheme is reviewed and updated through the proactive identification of material for inclusion in the Scheme;
- Requests for information not included in the Publication Scheme will be processed in accordance with our statutory obligations;

- We will publish guidance on how to make a valid information request and the procedures adopted by the Board;
- Advice and assistance will be actively provided to applicants seeking information;
- That charges for information requested are made only in accordance with the statutory requirements and a fee notice is issued prior to any charge being levied;
- Due consideration is given to whether or not information is covered by an exemption (or exception under the EIRs);
- If we claim an exemption (or exception under the EIRs) the reasons for our decision will be fully explained to the applicant, unless to do so would itself result in the disclosure of exempt information;
- That if we do not hold information requested, but it is known who does, we will as a matter of good practice confirm the availability of the information with another public body and provide appropriate advice and assistance to the applicant on where the information can be obtained;
- Appropriate training and information is provided to staff at all levels within the organisation of their obligations and how they can obtain assistance in ensuring they meet these;
- Staff are made aware that it is an offence under the Act to alter, deface, block, erase, destroy or conceal information with the intent of preventing disclosure;
- That procedures are in place to ensure the appropriate handling of requests for any Requests for Review made under the Act;
- That a Records Management Plan under the Public Records (Scotland) Act 2011 is developed which supports the ability of the organisation to effectively manage its corporate and operational records and provides a framework for the Board's compliance with the Scottish Ministers Code of Practice on Records Management under Section 61 of the Act;
- That personal data as defined in the Data Protection Act 2018 is held securely and is not inappropriately disclosed in response to a request for information under Freedom of Information legislation.

## **5. Fees – Freedom of Information (Scotland) Act 2002**

NHSGGC will not charge for the projected costs of locating, retrieving, collating and providing information for an FOI request providing these do not exceed **£600**, based on staff costs capped at £15 per hour. Where the costs exceeds £600, NHSGGC does not need to comply with the request.

Any estimate of projected costs excludes the time taken to determine whether we hold the information requested, or whether an exemption may apply. Costs are estimated per question, not for an entire request.

Where a requester expresses a preference for information to be supplied in a particular format we must try and meet these preferences where it is practical to do so. Where we do this we are entitled to charge the requester to carry out this work but we will charge no more than it actually costs us to do so. We will always tell a requester what the cost is before providing the information.

Where we have duties to requesters under the Equality Act 2010, we may not charge for any costs incurred to do this work.

We may charge the actual cost of post and packing for the information.

## **6. Fees – Environmental Information (Scotland) Regulations 2004**

Under the Regulations, NHSGGC is entitled to charge for the projected costs of locating, retrieving, collating and providing information for a request under the EIRs.

However, NHSGCC will only issue a fee notification based upon the cost of staff time and other resources should these exceed **£600**. Where this threshold is reached and a fee becomes applicable, information will not be provided until payment of the fee has been received.

As with FOI requests, any estimate of projected costs excludes the time taken to determine whether we hold the information requested, or whether an exemption may apply. Costs are estimated per question, not for an entire request.

We are not permitted to charge a fee for allowing requesters to access any public registers or lists of environmental information held by us or to inspect the information requested at a place which NHSGGC makes available for that purpose.

Any costs charged must not be such that requesters are dissuaded from seeking to obtain environmental information or that the right to access is restricted

Where we have duties to requesters under the Equality Act 2010, we may not charge for any costs incurred to do this work.

We may charge the actual cost of post and packing for the information.

## **7. Release of Employee Details**

NHSGGC recognises the public interest in the holders of senior roles within the organisation and will provide the names of members of staff on Agenda for Change Grade 8B and above (leadership roles) if requested under Freedom of Information legislation.

NHSGGC is of the view that release of personal details of staff below this level is exempt from release under section 38(1)(b) of the Act. Disclosing personal information about members of staff below Grade 8B would breach the Data Protection Principles contained within Article 5(1) of the General Data Protection Regulation. These require NHSGGC to process personal information in a lawful, fair and transparent manner. The members of staff concerned would not expect their personal details to be released in response to an FOI request, and as such it is our opinion that it would be unfair to the individuals concerned for such information to be released into the public domain.

## **8. Communication and Training**

All staff will have a general awareness of both the Board's and the individual's obligations under Freedom of Information legislation. Resources will be made available which will support staff in fulfilling their obligations.

The Freedom of Information Manager will hold a recognised Practitioner Certificate in Freedom of Information (Scotland).

## **9. Recording and Monitoring**

The NHSGGC FOI Team will ensure that all requests are recorded promptly on the information management system.

Robust arrangements must exist within services to ensure that in an individual's absence, a nominated deputy is available to respond to requests for information and/or record requests/responses. Details of all cover arrangements should be notified to the Freedom of Information Manager.

Monitoring of activity under Freedom of Information legislation will include the routine collection of data on:-

- the number of requests received and whether they fall under FOI or EIR;
- the proportion of requests answered within and outside the statutory timescale;
- the number of requests refused (or partially refused) and the reasons for this;
- the number of times a fee has been charged;
- the number of requests for review received;
- the outcomes of reviews;
- the number of cases appealed to the Scottish Information Commissioner and the outcome.

These data will be provided to the NHSGGC Audit and Risk Committee and the Scottish Information Commissioner as required.

## **10. Social Media**

With the increasing use of social media, it is recognised that an increasing number of requests for information may be submitted using these channels. Messages received by these media which are directed to NHSGGC social media accounts will be monitored by the Corporate Communications function which will ensure that any such requests are passed to the FOI Team for processing.

Care must be taken to ensure that such requests meet the appropriate requirements in order to be valid.

## **11. Voice Mail**

In general, recordings of telephone messages on voicemail or answering machines are not regarded as sufficient to be a valid FOI request, but may be valid under the EIRs. Where there is a system in place which allows a voice mail request to be stored permanently, for example, recordings to out of hours (OOH) services where permanent recordings of all calls are made, this may be regarded as a valid FOI request, providing that the information stored includes the individual's name and address for correspondence.

## **12. Procurement**

In addition to the responsibilities under Freedom of Information legislation there are obligations under the Public Contracts (Scotland) Regulations 2012, and the Procurement Reform (Scotland) Act 2014 to give parties involved in some tendering exercises the right to ask for information, for example, the right to ask why a tender was not successful. The authority has the right to withhold information in some cases, subject to conditions within FOISA.

## **13. Impact Assessment**

The legislation requires that we respond to requests from anyone without questioning their motivation. It also requires us in responding to a request to comply so far as is practical with the provision of information in the format requested. There is also a requirement to comply with the Board's duties under the Equality Act 2010, specifically in relation to discrimination in relation to disability.

This Policy has been subject to Equality Impact Assessment which is published on the NHSGGC website.

## **14. Review**

Operation of the Board's policies and procedures under Freedom of Information legislation will be reviewed every three years by NHSGGC Corporate Services or

as required following guidance and directives issued by the Scottish Government or the Scottish Information Commissioner.

## Appendix 1: Definition of Environmental Information

Any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c).