

Greater Glasgow NHS Board

NHS Board Meeting

21 February, 2006

Board Paper No. 06/06

Head of Board Administration

Annual Monitoring Report - Freedom of Information

Recommendation:

The NHS Board is asked to note the first Annual Monitoring Report on the impact of the Freedom of Information (Scotland) Act 2002 for NHS Greater Glasgow.

1 INTRODUCTION

- 1.1 The Freedom of Information (Scotland) Act 2002 came into force on 1 January 2005. The Act provides a statutory right of access to information held by Scottish public bodies including NHS Boards.
- 1.2 Where information is not available through the NHS Board's Publication Scheme applicants can make a specific request for information. This request should be made in writing (including e:mail or in another form which because of it's permanency is capable of being used for subsequent reference and records).
- 1.3 The Act established 2 related rights.
 - The right to be told whether information exists
 - The right to receive information (subject to certain exemptions)
- 1.4 The opening section of the Act states at paragraph 1(1) - person who requests information from a Scottish public authority, which holds it, is entitled to be given it by the authority.
- 1.5 These rights can be exercised by anyone and requests can be made for information held before the enactment of the Act – 1st January 2005.
- 1.6 Anyone making a request for information that includes information exempt under the Act will only be given the information that can be made available without breaching the Act or any other legislation – i.e. Data Protection Act 1998.
- 1.7 The right of access to information is subject to seventeen exemptions, many of which also have a public interest test to be applied.
- 1.8 While the Act does not incorporate a mechanism for charging upfront access fees simply for making a request for information, two statutory instruments have been issued covering the fees structure where a Scottish public authority receives a request for information under the Act.
- 1.9 The Act sets time limits within which public authorities must respond to requests (20 working days) and to deal with requests for reviews (20 working days).

2 REPORT

- 2.1 This report outlines the action taken to prepare for the introduction of the Freedom of Information (Scotland) Act 2002 and summarises the requests for information received by NHS Greater Glasgow in the first year of operation.

3 BACKGROUND

- 3.1 The NHS Board's Publication Scheme was approved by the Information Commissioner for launch on 1 September 2004. The Scheme, which is posted on the Board's website, details a range of information, which is available and explains how that information can be accessed. The Publication Scheme covers :-

- a) The NHS – Who We Are
- b) Corporate Information/ Governance
- c) Financial Information
- d) The Policy Framework for NHS Greater Glasgow
- e) Improvement, Change and Innovation
- f) Reports of independent assessments
- g) Patient Focus/ Public Involvement
- h) Policies and Procedures
- i) Complaints Procedures
- j) Staff Governance
- k) Press Releases
- l) Public Health
- m) Environmental Information

Information within each class above is available via the website or as hard copy.

- 3.2 Prior to the introduction of the Act training was provided for all staff that were likely to have an involvement in dealing with requests for information – this included some NHS Board members attending a range of training sessions. To assist staff in dealing with FOI requests the NHS Boards Intranet had a section developed which contains a considerable amount of information on the arrangements relating to the administration of the provision of the Act and has available template letters and links to helpful websites including the Information Commissioners website – www.itspublicknowledge.com.
- 3.3 The NHS Greater Glasgow FOI Steering Group was formed representing the NHS Board, Divisions, Communications Team, IT and the Library and this initially monitored the establishment of the Publication Scheme; the organisation of the training and the development of Policies and Procedures and more recently to support the implementation of the FOI Act across NHS Greater Glasgow. From next month this Steering Group will be chaired by Phil Rakhra Head of Administration – Mental Health Partnership.

4 FREEDOM OF INFORMATION REQUESTS

- 4.1 Detailed below are the number of Freedom of Information requests received in each of the first 12 months of the Act's operation and the number of those requests dealt with within the statutory timescale.

EMBARGOED UNTIL DATE OF MEETING.

2005

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Number of FOI Requests Received	19	19	21	17	15	17	16	17	13	20	18	12	204
Completed Within 20 Working Days	16	19	18	16	13	16	13	13	10	17	15	10	176
	84%	100%	86%	94%	86%	94%	81%	76%	77%	85%	83%	83%	86.2%
Completed Outwith 20 Working Days	3	-	3	1	2	1	3	4	3	3	3	2	28

4.2 86.2% of Freedom of Information enquiries were responded to within the target of 20 working days.

4.3 The figures indicate a fairly consistent number of enquiries being received throughout 2005. While there was a reduction in December 2005 in the number of enquiries, it ought to be noted that 24 requests, for information under the Freedom of Information Act, were received in January 2006.

4.4 An enquiry when received may consist of a request for one piece of information or may ask a number of related questions and seek answers to those questions going back many years. In each case the enquiry is recorded as one request for information. The time and effort required to answer enquiries varies considerably between requests.

4.5 A broad range of subjects has been covered by the requests received so far:-

- Details of expenditure on IT budgets and IT training
- Access to Commercial Contracts
- Payments to GP for out-of-hours
- Number of patients treated in the private sector and costs
- Value of PR and marketing Contracts
- Access to Minutes of Corporate Management Team
- Access to all records associated with the death of a relative
- Access to all records on HIV/AIDS and haemophilia
- A&E statistics on Old Firm football matches
- Assaults in Hospitals
- Members and staff expenses
- Private health insurance
- Waiting Times information

4.6 Public authorities must comply with requests for information made under the Act unless a specific exemption provided for in the Act applies. Of the 204 cases, where a request for information was made to the NHS Board, an exemption was cited on 28 occasions where a request for information was refused. The most common exemptions applied under the Act were:

- Section 36: Confidentiality
- Section 38: Personal Information
- Section 33: Commercial Interest and the Economy

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4.7 A profile indicating the estimated source of enquiries is given below.

Information requests received by applicant type:	
Press/Media	35%
Elected Representatives	7%
Businesses	22%
Individuals	34%
Community Groups	Nil
Voluntary Organisations	2%

Note: An applicant need not give the reason for their enquiry, and they do not have to give their identity, so these figures in the above table are indicative only.

4.8 The NHS Board has never charged for the provision of information sought under the provisions of the Freedom of Information (Scotland) Act 2002 but there has been one occasion when an enquirer has been advised that to provide the information sought would cost £1855 and the request was discontinued. The Act does not oblige a Scottish public authority to comply with a request for information if it is estimated that the cost of complying would exceed the amount prescribed in the regulations (£600.00).

5 REQUESTS FOR REVIEW AND REFERRALS TO THE INFORMATION COMMISSIONER

5.1 There have been 5 requests for an internal review received and completed in the course of 2005. From these the original decision in 2 cases were upheld in full and in 3 cases the decision was upheld in part. The requirement for review procedure agreed by the NHS Board at its meeting in July 2005 is attached for information.

5.2 The Freedom of Information Commissioner has had a total of 4 cases referred to him from people dissatisfied with the response of NHS Greater Glasgow to their request for information. One case was withdrawn after discussion and the Commissioner did not report on the case (NHS Greater Glasgow liaised direct with the applicant and met the request to their satisfaction).

5.3 The other three cases are with the Commissioner who has yet to report on his findings.

6 ONE YEAR ON - A CONSULTATION ON THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

6.1 A Minister for Parliamentary Business – Margaret Curran has launched a consultation on the operation of the Act after one year. She states that it is clear that there are already some lessons that can be learned from the first year of practical operation of the Act. To ensure it's continuing effectiveness Scottish Ministers were undertaking an early review of the Act to allow them to consider any requirements for refinement/ fine-tuning. It is made clear that the review will not encompass a whole-scale look at the legislation: it's main focus will be on areas where any agreed changes or outcomes would be achievable through the use of subordinate legislation or amendments to the statutory Codes of Practice.

6.2 Attached to this paper is the Pack for Respondents which provides a full list of the questions raised in the consultation and there is encouragement that this be used as a template for responding to the consultation.

- 6.3 NHS Greater Glasgow FOI Steering Group will meet to review the operation of the Act within NHS Greater Glasgow and provide comment to the consultation by 31st March 2006.
- 6.4 If NHS Board Members would like to feed thoughts and comment into the consultation please submit any comments via the questions template or contact the Head of Board Administration with any points which could be included in the NHS Boards response.
- 6.5 A copy of the full NHS Board's response will be made available to members in April 2006.

7 CONCLUSION

- 7.1 Members are asked to note the first Annual Monitoring Report on the impact of the Freedom of Information (Scotland) Act 2002 within NHS Greater Glasgow and give any comments or view on the presentation reporting format of this Report or on any area with regard to the implementation of the Act within NHS Greater Glasgow.
- 7.2 The NHS Greater Glasgow FOI Steering Group will be looking at the new arrangements as the result of the restructuring of the NHS Board to ensure that FOI contacts continue to be available to staff when considering responses to requests received under the Freedom of Information Act.
- 7.3 Attached for members information is a copy of a helpful booklet prepared by the Scottish Consumer Council and Scottish Information Commissioner entitled "Your Right To Know – A Guide To Freedom of Information Law in Scotland"

John C Hamilton
Head of Board Administration

14th February 2006

Tel: 0141 201 4608

**FREEDOM OF INFORMATION
(SCOTLAND) ACT 2002**

**Requirement for Review/Complaints
Procedure**

Introduction

Public bodies subject to the Freedom of Information (Scotland) Act 2002 are required to set up specific procedures to allow an individual¹ who is dissatisfied in any way with a decision taken by the organisation on the provision of information to require internal review of decisions taken.

This note sets out the procedure followed by NHS Greater Glasgow where someone is dissatisfied.

Under the Freedom of Information (Scotland) Act 2002, this procedure is known as a "requirement for review". A requirement for review can arise in a number of circumstances including (but not limited to):-

- (a) where we indicate that we do not hold information, but the individual believes we do; or
- (b) where the individual feels that we have not provided the advice and assistance we should have done; or
- (c) where we have refused to provide information; or
- (d) where we have failed to reply to a request for information; or
- (e) where the individual feels the charge for providing information is higher than it should be.

If the applicant is dissatisfied in anyway he can require us to review the way the request was handled or the decision reached.

Timescale

A requirement for review should be submitted in writing (or other permanent form) within 40 working days of either:-

- the day the individual actually received a response from the authority; or
- the end of the period within which the authority should have replied to a request.

We have the discretion to consider requests for review received beyond this timescale.

¹ Reference to an individual is to any person or organisation that makes a request for information.

Submission of Requirement for Review

Where a response is made to an individual requesting information the response must state the name, designation and contact address and e-mail address of the individual within the organisation to whom any request for review is to be submitted. If no person is named then the request for review may be submitted to:-

John C Hamilton
Head of Board Administration
Greater Glasgow NHS Board
Dalian House
350 St Vincent Street
GLASGOW
G3 8YZ

Tel: 0141 201 4608
Fax: 0141 201 4601
E-mail: john.hamilton@gghb.scot.nhs.uk

A brief statement explaining why the individual feels aggrieved at the decision taken by the organisation should accompany any request for review.

Review Procedure

The review procedure is to be accessible, prompt, fair and impartial. It may result in a different decision to that originally taken being made and will be binding on the organisation.

Requests for review have to be processed swiftly within a maximum timescale of 20 working days.

1. The **recipient** of a requirement for review request will:-
 - (a) acknowledge its receipt within 2 working days and confirm that a reply will be sent within 20 working days;
 - (b) on the same day as acknowledging receipt, notify the person who made the original decision that a requirement for review has been received, supply to that individual a copy of any statement in support received from the aggrieved applicant and invite that individual to comment on the decision reached within 3 working days.
2. The **recipient** shall send within 5 working days of his/her acknowledgement:-
 - (a) the request, together with
 - (b) any response received by the individual who made the original decision to a designated **Non-executive Member of the Board**.
3. The **Non-executive** shall be asked to review the documentation received and (in consultation with such persons as he feels appropriate who were not involved in the original decision) consider the request for review and reach a decision on that request within 5 working days of his receipt of that request.

4. The **Non-executive** shall notify the **recipient** of his/her decision and the reason for that decision in writing within those 5 working days. Assistance in framing the response will be provided, if required, by the FOI contacts set out in paragraph 13 of the Publication Scheme.
5. The **recipient** of the request shall then ensure that:-
 - (a) the decision is conveyed in writing to the applicant within 3 working days;
 - (b) if the applicant has been unfairly treated, an apology is offered on behalf of the organisation:
 - (c) any remedial action (e.g. provision of information requested where appropriate) is sent to the applicant without delay so as to be received within the 20-day timescale for reviewing the request;
 - (d) the applicant is advised of his right to raise the matter further with the Scottish Information Commissioner if he remains dissatisfied with the decision of the organisation. In advising of this right, the applicant should be given details of the contact address and e-mail address of the Commissioner at:-

Kevin Dunion OBE
Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
ST ANDREWS
Fife KY16 9DS

Tel: 01334 464610
E-Mail: enquiries@itspublicknowledge.info

- (e) procedures are reviewed in consultation with the person with overall responsibility for Freedom of Information within the Board or Division concerned so that the organisation learns from the decisions reached on review.

Assistance to Applicants

Under the spirit of the Freedom of Information (Scotland) Act 2002 the recipient of a request for review should provide assistance, if required, to any applicant who seeks it. He/she should also ensure that the needs of persons with a disability within the terms of the Disability Discrimination Act 1995 are not unfairly disadvantaged as a consequence of the procedure described above and shall make appropriate adjustments to the procedure where appropriate under the terms of this Act.