Freedom of Information Monitoring Report for the period 1 January 2006 to 31 March 2007

Recommendation:


1 BACKGROUND

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 Information is available through the Board’s Publication Scheme and the website (www.nhsggc.org.uk). Where information is not available through these sources, the applicant can, under the Act, make a request for information. The request must be in a permanently recorded form (eg in writing/e-mail).

1.3 Requests for access to information can be made by anyone, whether resident in the UK or not, and can be made for information held prior to enactment of the Act.

1.4 While most information requested can be released, some information is exempt under the Act. The right of access to information is subject to 17 exemptions, many of which also require a public interest test to be applied.

1.5 The Act specifies that requests for information and requests for reviews must be responded to within 20 working days.

2 REPORT

2.1 The first Annual Monitoring Report on Freedom of Information covered the period 1 January 2005 to 31 December 2005. The Report currently being presented covers the 15-month period from 1 January 2006 to 31 March 2007 and is intended to bring the reporting period into line with the financial year and other reporting mechanisms. The report summarises the requests for information received by NHS Greater Glasgow and Clyde during this 15-month period.
3 OPERATION OF THE ACT WITHIN NHS GREATER GLASGOW AND CLYDE

3.1 FOI requests within NHS GG&C are managed in a number of ways depending on the source of the request, or the information being requested.

3.2 All requests from a media source (eg journalist, newspaper/magazine, TV company, BBC) are managed through the Communications Directorate. Requests for Board-wide information are managed through the Freedom of Information Officer based within Board HQ. Requests within the Acute Services Division are managed centrally by a Freedom of Information Officer, and requests for CH(C)P/Mental Health Partnership are handled through normal management structures.

3.3 Joint arrangements exist within the Glasgow and East Renfrewshire Council CHCPs to handle Freedom of Information requests, acknowledging each organisation’s responsibilities.

4 FREEDOM OF INFORMATION REQUESTS

4.1 Detailed below is the number of Freedom of Information requests received by month from 1 January 2006 to 31 March 2007 and the number of requests responded to within the statutory timescale.

Table 1 – Jan 2006 to Mar 2007 – Number of Requests Received

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<tr>
<th></th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
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<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Total</th>
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<tbody>
<tr>
<td>Number of FOI Requests</td>
<td>25</td>
<td>19</td>
<td>16</td>
<td>25</td>
<td>23</td>
<td>19</td>
<td>17</td>
<td>9</td>
<td>13</td>
<td>14</td>
<td>18</td>
<td>12</td>
<td>16</td>
<td>16</td>
<td>17</td>
<td>259</td>
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<td>Received</td>
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<tr>
<td>Number of FOI Requests</td>
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<td>16</td>
<td>18</td>
<td>30</td>
<td>19</td>
<td>15</td>
<td>16</td>
<td>9</td>
<td>12</td>
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<td>16</td>
<td>18</td>
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<td>252</td>
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<td>Completed</td>
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<tr>
<td>Requests Completed</td>
<td>13</td>
<td>26</td>
<td>16</td>
<td>18</td>
<td>30</td>
<td>19</td>
<td>15</td>
<td>16</td>
<td>9</td>
<td>12</td>
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<td>16</td>
<td>18</td>
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<td>222</td>
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<td>within 20 Working Days</td>
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<td>Percentage completed</td>
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<td>100</td>
<td>93.8</td>
<td>88.9</td>
<td>90.0</td>
<td>94.7</td>
<td>86.7</td>
<td>81.3</td>
<td>66.7</td>
<td>83.3</td>
<td>87.5</td>
<td>81.3</td>
<td>83.3</td>
<td>94.1</td>
<td>70.0</td>
<td>88.1</td>
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<td>within 20 Working Days</td>
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<tr>
<td>Requests Completed</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>30</td>
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<td>Outwith 20 Working Days</td>
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</table>
4.2 Overall, 88.1% of Freedom of Information requests were responded to within the target of 20 working days. Of the requests completed outside the required timescale, just over 50% of these were only 1 day late. It is often the case that the target of 20 working days is missed due to the need to collect a range of detailed information across various parts of the organisation and the need to liaise with contractors in releasing contractual documentation. Monthly percentages for requests completed outwith the 20 working day timescale are shown in Table 1 above. However it should be noted that where the actual number of requests received is small, even 1 request completed outside the timescale can have a significant effect on the percentage.

Fig 2 below shows the number of requests completed both within and outside the 20 working day timescale, within the total number of requests received.

Fig 2 – Requests completed/not completed within 20 working day timescale
4.3 The figures show that the overall number of FOI requests received by NHS Greater Glasgow & Clyde has remained fairly constant, with a total of 204 requests received during 2005 compared to 206 requests received during the calendar year 2006. The integration of Clyde from 1 April 2006 has not shown a significant increase in the number of requests received. This is due to the fact that the vast majority of FOI requests received in the former NHS Argyll and Clyde would also have been sent to all Scottish NHS Boards, and therefore also received by NHS Greater Glasgow.

4.4 Fig 3 below shows a comparison between the number of requests received in 2005 and the number received in 2006.

Fig 3 – FOI Requests Received in 2005 and 2006

4.4 Requests received in 2006 again show a wide range of subjects on which information has been requested through the Act. A number of requests relating to the awarding of contracts, and contract documentation, have been received. Some of the subjects covered are shown below:

- Purchase of NHS land
- Number of employees on sex offenders register
- Radiotherapy – complaints/untoward incidents
- Deep Vein Thrombosis management policy and statistics
- Car parking charges
- Agenda for Change
- Various policies – Smoking/Handwashing/Fertility treatment
- Cost of orthopaedic operations
- Taxi contracts and expenditure
- Young people and alcohol abuse
- Contract documentation and full business cases for PFI/PPP and other contracts
4.5 Exemptions were applied in 12 cases. The exemptions applied under the Act were:

- Section 25 – Information otherwise accessible
- Section 33 – Commercial Interests and the Economy
- Section 34 – Investigations by Scottish Public Authorities
- Section 36 – Confidentiality
- Section 38 – Personal Information

4.6 No fees have been charged for the information provided to applicants under the Freedom of Information (Scotland) Act 2002. However, there have been 8 occasions in 2006/07 where the estimated cost of providing the information requested would have exceeded the amount prescribed in the regulations (£600.00), and therefore under Section 12 of the Act, NHS Greater Glasgow and Clyde were not obliged to provide the information.

4.7 Applicants requesting information under the Act are not required to state the reason for their inquiry, and do not need to give their identity. However from the information available to the NHS Board, a profile of the estimated source of FOI requests is given below at Table 2 and Fig 4. On this basis, it is shown that the highest numbers of requests are from journalists and media organisations, with just under a quarter of requests from individuals.

Table 2 – Indicative Source of Request

<table>
<thead>
<tr>
<th>Indicative source of request</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campaign/voluntary organisations</td>
<td>7</td>
<td>2.7</td>
</tr>
<tr>
<td>Commercial organisations</td>
<td>13</td>
<td>5.1</td>
</tr>
<tr>
<td>Education/research</td>
<td>7</td>
<td>2.7</td>
</tr>
<tr>
<td>Legal</td>
<td>23</td>
<td>8.9</td>
</tr>
<tr>
<td>Media/Journalist</td>
<td>113</td>
<td>43.4</td>
</tr>
<tr>
<td>Individuals</td>
<td>64</td>
<td>24.8</td>
</tr>
<tr>
<td>MSP and MSP research staff</td>
<td>24</td>
<td>9.3</td>
</tr>
<tr>
<td>Trade Unions/Trade Union Officials</td>
<td>8</td>
<td>3.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>259</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
5 REQUESTS FOR REVIEW

5.1 Reviews are carried out by a Non-Executive Director of the Board, with the support of a Freedom of Information Officer. During 2006/07, 4 Non-Executive Directors participated in reviews.

5.2 6 requests for an internal review have been received and completed during 2006/07. Of these, the original decision in 3 cases was upheld in full. The outcome of the other 3 cases was as follows:

- Original decision partly upheld. One exemption had been incorrectly applied, and the review recommended use of a different exemption.
- Review found that the request should have been dealt with under Data Protection Act, not Freedom of Information Act.
- Review did not uphold the original decision and a different decision was reached.

6 APPEALS TO THE SCOTTISH INFORMATION COMMISSIONER AND ANNUAL REPORT

6.1 In the reporting period January 2006 to March 2007, the Scottish Information Commissioner issued 3 decisions covering a total of 4 cases referred to the Commissioner in relation to requests handled by NHS Greater Glasgow and Clyde. In all 3 cases, the Commissioner upheld the position of NHS Greater Glasgow and Clyde. Currently, 2 cases (one dating back to May 2005) still await a decision by the Commissioner.

6.2 The Scottish Information Commissioner recently issued his third Annual Report in March 2007, and a summary is given as an Appendix to this report.
7 SCOTTISH EXECUTIVE REVIEW OF OPERATION OF FREEDOM OF INFORMATION IN SCOTLAND

7.1 In 2006, Margaret Curran MSP initiated a review of the operation of the Act. This was not intended to judge requirements for substantive changes to the legislation, but would assess any requirement for fine-tuning for continued successful operation of the Act.

7.2 In the recent announcement on the review, the main conclusions are:

- No revision of Fee Regulations to be made at present. However, further work will be carried out to determine how the current Fee Regulations are working in practice.
- Work will be undertaken to determine organisations that are not Scottish public authorities that may be suitable for inclusion under the Act, and to consult with them.
- Removal of unnecessary existing prohibitions on disclosure of information currently contained in other older legislation.
- To update the Schedule 1 list of Scottish public authorities for the purposes of the Act, where Scottish public authorities have been created or ceased to exist.

8 MONITORING AND DEVELOPMENT

8.1 A database is currently being developed by the Board’s FOI Officer, using existing systems as a reference. It is intended that the database will replace the different methods of recording used at present and is intended to capture information on all FOI requests across NHS Greater Glasgow and Clyde. It is anticipated that initially the database will be used to collect information on FOI requests within the Board, Communications Directorate, Acute Services Division and Mental Health Partnership. It is hoped that the database will then be used within the CH(C)Ps to capture information on their health-related FOI requests. The database should enable year-on-year comparisons of FOI activity in the future and facilitate monitoring of FOIs by those responsible for the processing of requests.

8.2 The Board’s Publication Scheme, which is posted on the Board’s website, is also currently being reviewed to improve the content and accessibility of information, and to reflect corporate changes. Revision of the FOI micro-site on the Intranet pages and the training pack will also be undertaken.

8.3 The NHS Greater Glasgow and Clyde FOI Steering Group continue to meet to review the operation and management of the Act. The Steering Group acts as a forum for the discussion of FOI-related issues such as the Board’s Publication Scheme, accessibility of information on the website, training and awareness, requests for reviews, and learning lessons from the decisions and appeals of the Commissioner. Membership of the group includes staff directly involved in the day-to-day handling of requests and those with a wider management responsibility for the operation of the Act.

8.4 Further training for staff is being planned throughout NHS Greater Glasgow and Clyde during 2007, with the aim of raising awareness of the Act, and responsibilities in relation to it.
9 CONCLUSION

9.1 The FOI Steering Group will continue to meet on a regular basis, and work will continue on refining the processing and handling of requests, data capture, and content and accessibility of information.

9.2 Members are asked to note the second Annual Monitoring Report on the operation of the Freedom of Information (Scotland) Act 2002 within NHS Greater Glasgow and Clyde, and give any comments or view on the presentation or the format of the Report, or on any area with regard to implementation of the Act within NHS Greater Glasgow and Clyde.

John C Hamilton  Alison Flynn
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4 April 2007
APPENDIX

Scottish Information Commissioner – Freedom of Information Annual Report 2006 - Summary

The Scottish Information Commissioner’s third Annual Report was issued in early March 2007 reflecting upon the second full year of operation of the Freedom of Information legislation in Scotland.

The Commissioner advised that 465 applications for decision were received in 2006 and the NHS accounted for 5% of all applications.

236 decisions were issued in 2006 and 8 of these referred to the NHS – 13% wholly in favour of the applicant and 75% in favour of the public authority. NHSGG&C received 3 Decision Notices (for 4 cases) and all found in favour of the NHS Board’s position.

In considering improved ways of working following concerns expressed at the impact on public resources in responding to requests and appeals, the Commissioner is now encouraging applicants to mention that they are making their request under Freedom of Information laws and to be as precise as they can about the nature of the information they want. It is hoped that this will assist public authorities to more quickly locate and recover the information and also avoid the prospect of the public authorities charging fees or withholding information on grounds of cost.

The Scottish Information Commissioner’s website www.itspublicknowledge.info carries all appeals and decisions and case law is now being formed around critical parts of this new legislation. The Commissioner will be updating guidance on the use of exemptions in light of the decisions taken thus far and points to three specific decisions which provide a benchmark for the public interest test arguments.

The Commissioner believes the legislation is working well, that most public authorities have risen well to the challenge and that the public has increasing confidence in its new rights. There is a desire to build on this positive start and the Commissioner will be working with the University of St Andrew’s to look beyond the response to individual requests for information to find out whether authorities are changing how they record, retain and publish information.

The Commissioner believes that the Scottish Freedom of Information legislation is one of the strongest in the world in terms of its provisions and examples have been seen of public authorities releasing information into the public domain that previously would not have been available.

Applications

The Commissioner reports that 23% of applications are as a result of public authorities failing to deal with requests and this remains a worryingly high figure. The Commissioner goes on to indicate that there was a general view that journalists were the main users of the legislation. However, in terms of appeals to the Commissioner only 8% of these appeals had come from the media. As can be seen from the NHSGG&C Monitoring Report the majority of FOI requests received in 2006 had been from media sources.

Most authorities had been helpful during the Information Commissioner’s investigation although 102 formal information notices requiring authority to respond have been issued (and this has affected only one NHS Board thus far).

Encouragingly, not all investigations end in a decision, as the Commissioner has power to effect a settlement and 73 valid applications were informally resolved either whether the public authority agreed to release some or all of the information or the applicant was content with the outcome. In some situations the applicant may be invited to withdraw their application when it is clear that the Commissioner is unlikely to find in their favour.
Public Awareness

The Commissioner’s annual public awareness research published in November showed that the public agreed that more information was now available as the result of the Freedom of Information legislation and there was also a sharp fall in those who believed that public authorities would find ways not to adhere to the legislation. 76% of those who had made a request since 1st January 2005 had received some or all of the information they had requested. 68% of respondents to the survey agreed that more public information is available now than before.

Caseload Management

The Information Commissioner highlights that the volume of applications has outstripped the resources of the Information Commissioner’s organisation and that there are more than 160 cases open than would have been desirable. The average response time for Decision Notices to be issued was 9 months (NHSGG&C has one case going back to May 2005). The total number of applications for a decision is significantly more than the upper limit of projections before the Act came into effect and twice as many applications have been received in Scotland as have been received by the Information Commissioner south of the border (pro rata to respective populations).

Members who wish to access a copy of the full report should either contact John Hamilton, or access it via www.itstpublcknowledge.info.