

Report of the Head of Board Administration

Freedom of Information Monitoring Report for the period
1 April 2010 to 31 March 2011

Recommendation:

The NHS Board is asked to note the Monitoring Report on the operation of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 in NHS Greater Glasgow and Clyde for the period 1 April 2010 to 31 March 2011.

1 BACKGROUND

- 1.1 The Freedom of Information (Scotland) Act 2002 (FOISA) 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 and incorporates the Environmental Information (Scotland) Regulations 2004 (the EIRs).
- 1.2 The Environmental Information (Scotland) Regulations 2004 (EIRs) also came into effect from 1 January 2005. They impose a separate but complementary requirement on public authorities to respond to requests for information held relating to information on the air, water, soil and land and about energy, noise, radiation, waste and other things that may affect the earth. This may include information about our policies, plans and activities likely to affect the state of human health and safety.
- 1.3 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 or by e-mail).
- 1.4 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.
- 1.5 While most information requested can be released, some information is exempt under the Act. The right of access to information is subject to a number of exemptions within FOISA, or exceptions under the EIRs, many of which also require a public interest test to be applied.
- 1.6 The Act specifies that requests for information and requests for reviews must be responded to within 20 working days.

2 REPORT

- 2.1 This report covers the 12-month period from 1 April 2010 to 31 March 2011. The report summarises the requests for information received by NHS Greater Glasgow and Clyde during this period. The report covers requests made under both FOISA and the EIRs. There are small but important differences in the way in which we are required to respond to requests under FOISA and the EIRs.

3 OPERATION OF THE LEGISLATION WITHIN NHS GREATER GLASGOW AND CLYDE DURING 2010/11

- 3.1 Since the Act came into force on 1 January 2005, the organisation has always sought to ensure that robust arrangements for managing requests for information made to NHS Greater Glasgow and Clyde are in place. These have been adapted where necessary to respond to the changing needs of the organisation during transitional periods such as the integration of the Clyde part of the former NHS Argyll and Clyde, the dissolution of the former Divisions, and the more recent restructuring of CHPs and CH(C)Ps. The arrangements currently in place are now well-established and requests are managed in a number of ways depending on the source of the request, or the nature of the information being requested.
- 3.2 All requests from a media source (eg journalist, newspaper/magazine, TV/radio organisation) are managed through the Corporate Communications Directorate. Requests for information on Board-wide functions and requests from MSPs are managed through the FOI Manager based within Board HQ. Requests for information on services or functions managed by the Acute Services Division are dealt with centrally through their Corporate Administration Department and managed by the Head of Administration for the Acute Services Division. Requests for information relating to services provided by the Mental Health Partnership have been managed by the Head of Administration for that Partnership. The organisation has dedicated 'FOI' email addresses to enable those wishing to make a request to route this to the appropriate area, although arrangements are in place to forward requests on to appropriate FOI colleagues.
- 3.3 Requests for CHP information are handled through local management structures. A significant amount of work has taken place during the year to roll out the use of the Datix reporting system to CH(C)Ps and to the newly-created Glasgow City CHP. This has required additional training both in general awareness and use of the legislation and in the use of the Datix system, to enable CHP/CH(C)Ps to more independently deal with requests made to them. However, in cases where an applicant has submitted the same request for information to all CHP/CH(C)Ps simultaneously, a single response will be co-ordinated and issued by the FOI Manager based at the Board. Support and advice is always available to staff in CHP/CH(C)Ps from the FOI Manager or other appropriate FOI contacts.
- 3.4 This year has also seen a greater focus on raising awareness of the EIRs and ensuring that requests for this type of information are correctly recognised and dealt with under the appropriate legislation.

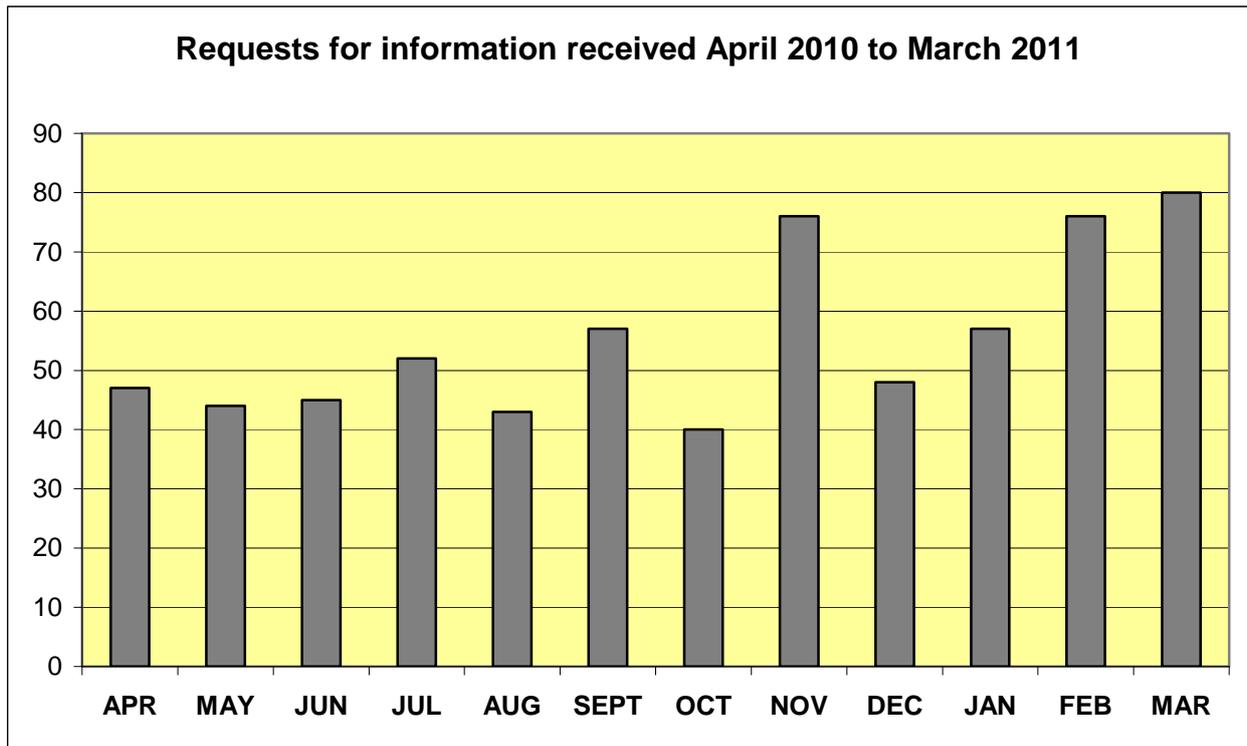
4 NUMBER OF REQUESTS RECEIVED

- 4.1 Table 1 below shows the number of requests for information received each month from 1 April 2010 to 31 March 2011. Fig 1 shows the information represented in a chart format.

Table 1 – April 2010 to Mar 2011 – Number of Requests Received

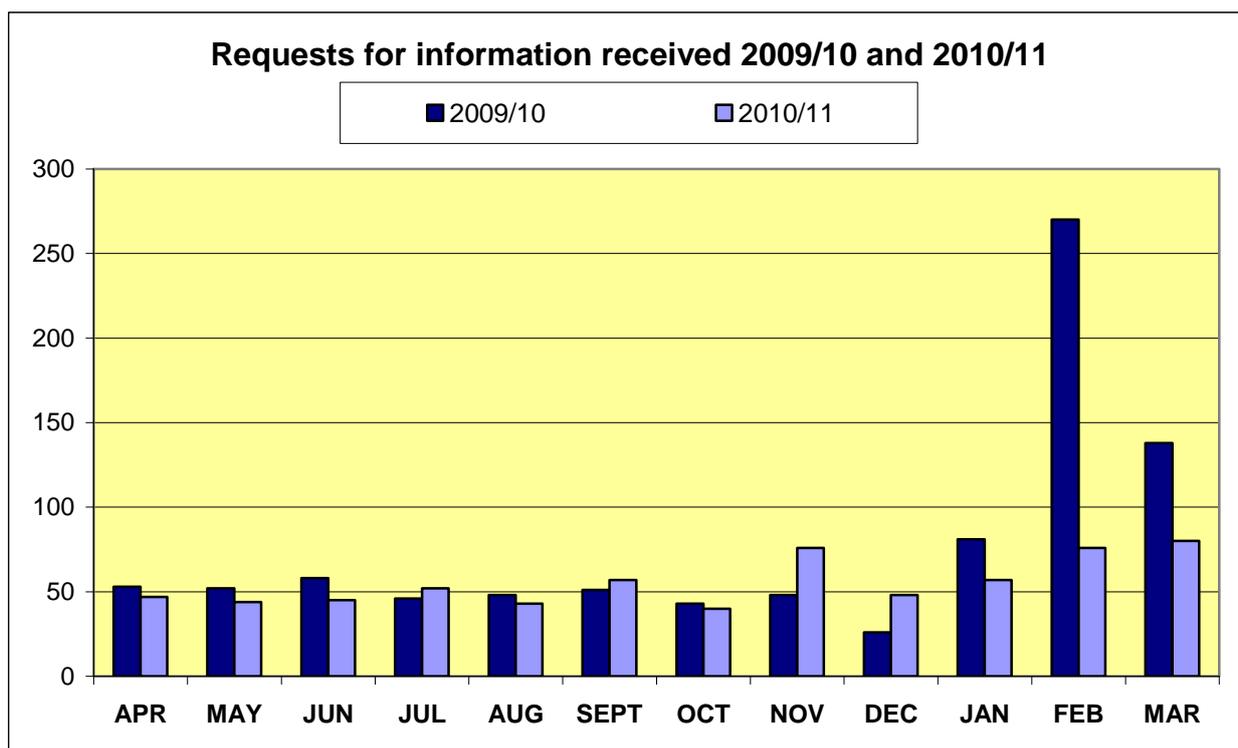
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
Number of FOI Requests Received	47	44	45	52	43	57	40	76	48	57	76	80	665

Fig 1 – Requests for information received April 2010 to March 2011



- 4.2 The overall number of FOI requests received by NHS Greater Glasgow & Clyde during 2010/11 has decreased from the previous year, with 665 requests being received in 2010/11 compared to 914 requests received in 2009/10. This represents a 27% decrease from last year but reflects broadly similar figures to 2008/09 when 628 requests were received.
- 4.3 Of the 665 requests received during 2010/11, 7 were responded to under the EIRs.
- 4.4 In 2009/10 a large number of requests for information were received in relation to Agenda for change etc, but these greatly decreased in number during 2010/11 due to completion of the Agenda for Change process for the vast majority of staff. This is reflected in the reduction in the number of requests received from NHS employees as will be seen in section 5, Table 2. However, a number of requests for information relating to the Agenda for Change process continue to be received and these requests accounted for the increase in numbers during February and March 2011.
- 4.5 The spike of requests seen in November was mainly due to an increase in the number of requests received from members of the public during that particular month, including 9 requests from one individual.
- 4.6 Fig 2 below shows a comparison between the number of requests received from April 2009 to March 2010, and the number received from April 2010 to March 2011.

Fig 2 Requests for information received 2009/10 and 2010/11



4.7 The increased number of requests shown in February and March of the 2009/10 reporting period was due to requests from NHSGGC employees for information on Agenda for Change. This is discussed further in 7.3.

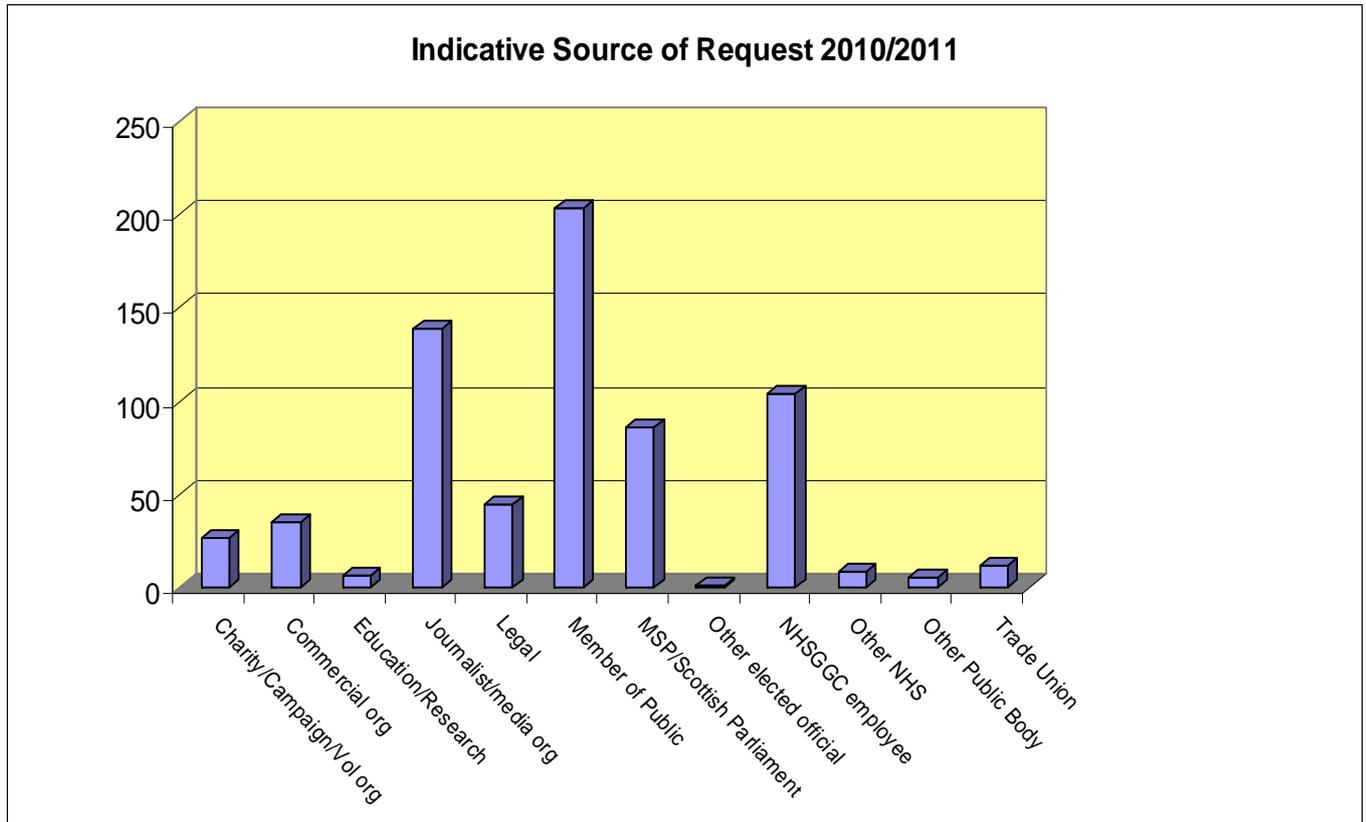
5 SOURCE OF REQUESTS

5.1 A breakdown of the source of requests for information is shown below in Table 2 and in Fig 3.

Table 2 – Indicative Source of Request 2010/11

Indicative source of request	2009/10		2010/11	
	Number	% of total requests	Number	% of total requests
Charity/Campaign/Voluntary organisations	17	1.9	32	4.8
Commercial organisations	35	3.8	36	5.4
Education/research	5	0.6	6	0.9
Journalist/Media organisation	147	16.1	139	20.9
Legal	71	7.8	42	6.3
Individuals	107	11.7	198	29.8
MSP/Scottish Parliament/Other elected official	62	6.8	86	12.9
NHSGG&C Employee	454	49.7	101	15.2
Other NHS	9	1.0	8	1.2
Other Public Body	6	0.7	5	0.8
Trade Union/Professional Representative body	1	0.1	12	1.8
Total	914	100%	665	100%

Fig 3 – Indicative Source of Request 2010/11



5.2 Due to the near conclusion of the Agenda for Change (AfC) process, this year has shown a reversal in the trend of increased numbers of requests received from NHS/GGC employees which had been noted since 2007/08. 2010/2011 has shown a significant reduction in the number of requests of this type with only 101 requests compared to 454 in 2009/10. Requests for information relating to AfC continue to be received although in much smaller numbers.

5.3 When compared to the number of requests received in 2009/10, the following changes are also highlighted:

- The number of requests from journalists/media organisations decreased slightly from 147 in 2009/10 to 139 in 2010/11.
- Requests from legal firms decreased from 71 in 2009/10 to 42 in 2010/11, a decrease of 41%.
- The number of requests from commercial organisations, education/research and from other NHS and public bodies remained fairly static.
- Requests from members of the public increased significantly from 107 in 2009/10 to 198 in 2010/11, representing an increase of 85%;
- During 2010/11 there has been an increased use by members of the public of websites which provide assistance and facilitate the submission of requests for information to public authorities.
- Requests from MSPs/researchers showed an increase from 62 in 2009/10 to 87 in 2010/11, representing an increase of 40%. The increase appeared to be fairly evenly spread over the year.
- The number of requests from trade union/professional representative bodies increased from 1 request in 2009/10 to 12 requests in 2010/11.

- Requests from charity, campaign and voluntary organisations increased from 17 requests in 2009/10 to 32 requests in 2010/11, representing an increase of 88%. However, 1 requestor accounted for 53% of the requests, so the increase may be due to a particular topic of interest from this one source, rather than a general increase in the use of freedom of information legislation by these groups.

6 TYPE OF INFORMATION REQUESTED

6.1 The subject matter of requests for information varied widely, some of which were generated by issues of local interest such as hospice provision and care of the elderly. Requests for information have increasingly contained a significant number of separate elements, or a large number of requests submitted in a single email or letter. Many requests which were submitted were complex, and required careful consideration of the application of FOISA before information was released.

6.2 The Datix recording system does not enable specific recording of the type of information being requested. However the following subjects generated a number of requests for information.

- Pharmacy and prescribing issues including non-formulary prescribing
- Policies and procedures
- Car parking
- Waiting times
- Salaries and expenses of employees and Board members
- St Margaret's Hospice
- Blawarthill Hospital
- Violence and aggression/health and safety issues
- Disposal of Board-owned property
- Finance and expenditure
- IT contracts, data loss and IT security
- Control of infection

6.3 In some cases, information requested is considered by the Board to be exempt from disclosure under the Act. Where it is considered there is a valid reason for withholding information, an appropriate exemption must be applied. The use of an exemption to withhold information must be exercised with care, and in most cases only after further consideration of whether it is in the public interest to withhold or disclose the information, with the presumption being in favour of disclosure. Examples of exemptions that have been applied are:

- Section 27 – Information intended for future publication
- Section 30 – Prejudice to effective conduct of public affairs
- Section 33 – Commercial interests and the economy
- Section 34 – Investigations by Scottish public authorities and proceedings arising out of such investigations
- Section 36 – Confidentiality
- Section 38 – Personal Information

7 PERFORMANCE MONITORING

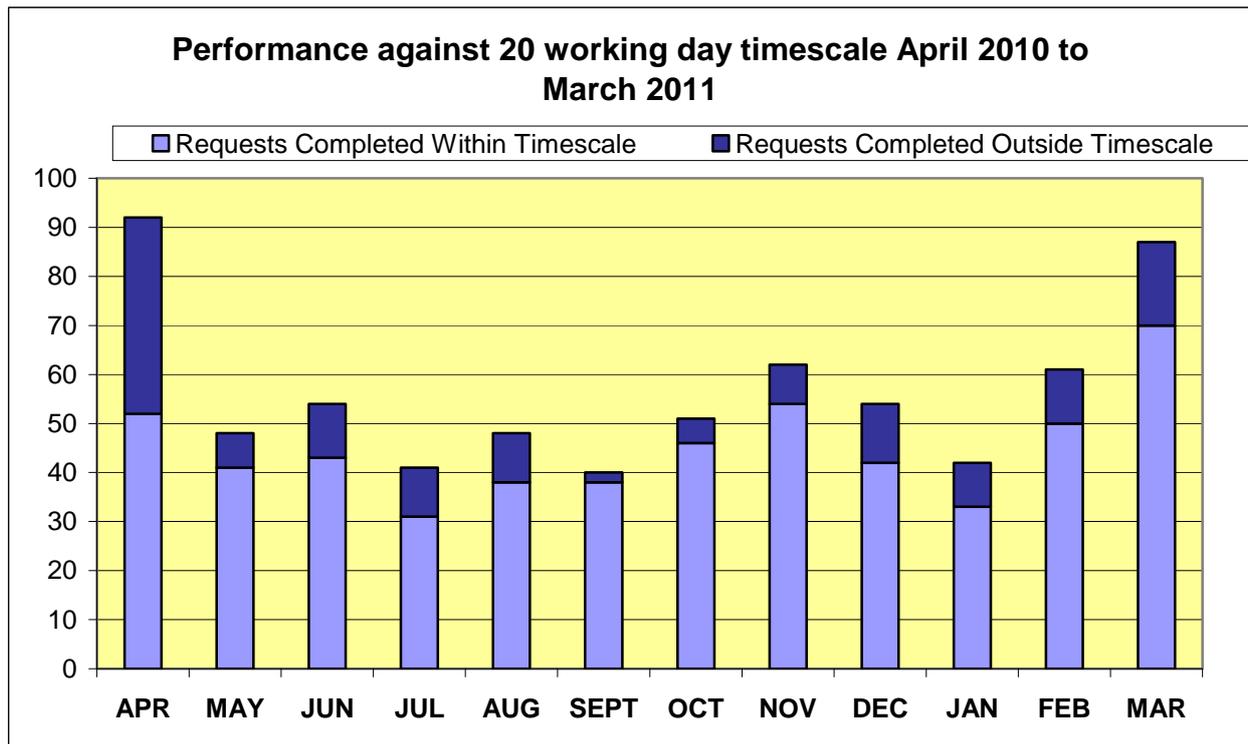
7.1 Overall, 79% of Freedom of Information requests were responded to within the requirement of 20 working days (Table 3). This shows a slightly reduced performance compared against the previous year when 83% of all requests were completed within 20 working days.

Table 3 – Number and percentage of requests responded to within 20 working days – 20010/11

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Total Number of FOI Requests Responded	93	48	54	41	48	40	51	62	54	43	61	86	681
Number of Requests Completed within 20 Working Days	52	41	43	31	38	38	46	54	42	34	50	69	538
Number of Requests Completed Outwith 20 Working Days	40	7	11	10	10	2	5	8	12	9	11	17	142
Percentage completed within 20 Working Days	57	85	80	76	79	95	90	87	78	77	82	81	79

7.2 Fig 4 below shows a graphical representation of the number of requests completed both within and outside the 20 working day timescale.

Fig 4 – Performance against 20 working day timescale April 2010 to March 2011



7.3 Generally a marginal number of requests were completed within the 20 working day timescale with the exception of April 2010. During this month work was still being carried out to respond to the large number of requests from NHSGGC employees for information on their AfC process (270 in February 2010 and 138 in March 2010). The number of requests responded to during April was considerably higher than other months and the reduction in performance during April can be attributed to the large volume of requests which were being handled at that time.

- 7.4 During 2010/2011 of the 142 requests that breached the 20 working day timescale, 42% were responded to by the 25th working day.
- 7.5 Information on the organisation's performance in respect of the percentage of FOI requests responded to within the statutory 20 working day timescale has been provided as part of the Performance Reporting to the Performance Review Group.
- 7.6 The challenge for the organisation during 2010/2011 will be to improve its performance against the 20 working day timescale, whilst maintaining and developing the culture of FOI/EIR within NHSGGC and continuing to carry out necessary training.

8 REQUESTS FOR REVIEW

- 8.1 Following a request for information, an applicant has a right to request a review of the Board's handling of a request, if they are dissatisfied with the response received. An applicant has up to 40 working days following receipt of a response, in which to submit their request for a review. Reviews are carried out by a Non-Executive Director of the Board, with the support of senior staff involved in the FOI process. 3 Non-Executive Directors participated in reviews during 2010/11. Further training is planned for Non-Executive Directors new to the review process to replace those whose term of office has expired.
- 8.2 8 requests for review were received in 2010/2011. The outcomes of these were:
- 1 request was withdrawn by the applicant following discussion, as the applicant had misunderstood the information provided and the nature of the review process;
 - 2 reviews upheld the original decision of the Board;
 - In 4 cases, additional information was located which was provided to the applicant;
 - In 1 case, additional information was located and provided to the applicant, and the review substituted the use of an exemption for one which was technically correct.

9 SCOTTISH INFORMATION COMMISSIONER DECISIONS AND ANNUAL REPORT

- 9.1 Following the outcome of a Review, there is a further right for an applicant to appeal to the Scottish Information Commissioner for a decision on the case, if an applicant remains dissatisfied with the outcome. An applicant has up to 6 months following the outcome of the Review in which to apply to the Commissioner. Following a Decision by the Commissioner, an applicant who is still dissatisfied has a further right of review to the Court of Session, but on a point of law only.
- 9.2 No Decisions were issued by the Scottish Information Commissioner in relation to reviews carried out during 2010/11.
- 9.3 2 Decisions were issued by the Commissioner which were related to reviews carried out during the previous reporting period of 2009/2010. A summary of these Decisions is given in Table 4 below. All Decisions issued by the Commissioner are published on his website at www.itpublicknowledge.info.

Table 4 – Summary of Decisions Issued in 2010/11

Decision	Summary
Decision Notice 102/2010 Issued 18 June 2010 Mr K – Times and lengths of phone calls	<p>The Commissioner found that NHSGGC complied with Part of FOISA in advising that the information in relation to telephone calls was not held by NHSGGC. The Commissioner therefore did not consider whether this information would have been exempt from disclosure under section 38(1)(b) of FOISA or whether, if it had been held by NHSGGC, it should have been provided to Mr K.</p> <p>The Commissioner accepted that NHSGGC had taken all reasonable steps to establish whether it held any recorded information about relevant telephone calls and that none had been found. The Commissioner therefore found that NHSGGC was correct to give notice under section 17 of FOISA that it did not hold the information he had asked for.</p>
Decision Notice 136/2010 Issued 5 August 2010 Mr X – Start and end times of a patient’s appointment	<p>The Commissioner found that NHSGGC did not hold the information requested by Mr X, and that NHSGGC had failed to comply with the Act by failing to notify Mr X of this in line with section 17 of FOISA. As Mr X was informed of this position during the course of the investigations, the Commissioner did not require any further action to be taken by NHSGGC.</p>

- 9.5 The Scottish Information Commissioner issued his Annual Report in March 2011, together with an interactive on-line version of the report. A full copy of the Commissioner’s report can be obtained from Alison Flynn FOI Manager, or through the Commissioner’s website at <http://www.itspublicknowledge.info/ask/>

10 DEVELOPMENTS IN FOISA

10.1 **Revised Code of Practice for public authorities on the discharge of their function under FOISA (Section 60 Code of Practice)**

Following consultation, the Scottish Government published a revised Code of Practice which provides guidance for public authorities in discharging their functions in respect of FOISA and the Environment Information Regulations (EIRs). This came into force in December 2010. Through the FOI Steering Group, NHSGGC reviewed the requirements of the revised Code of Practice, and identified and put in place any changes to practice and documentation which were required to ensure the organisation’s continuing compliance with FOISA and the EIRs.

10.2 **Practice Assessment by the Office of the Scottish Information Commissioner**

As previously reported to the NHS Board in April 2011 [Board Paper 11/20 refers] during 2010 NHS Greater Glasgow and Clyde was notified that the Scottish Information Commissioner would undertake a Practice Assessment into the organisation’s handling of information requests in relation to compliance with FOISA and the EIRs. In preparation for the assessment the Commissioner’s staff required a response to a detailed questionnaire about requests for information received and copies of NHSGGC’s policies, procedures and training materials. In addition a total of 57 responses to requests and supporting documentation was requested by the Commissioner’s assessment team. A small Steering Group was set up to prepare for the assessment which was held over two days in early January 2011.

- 10.3 In the report published by the Commissioner, several areas of good practice were identified, and the assessment demonstrated that NHSGGC had embraced FOI and developed a culture of openness, supported by senior management. Given its size and complex structure, the Commissioner commended NHSGGC for its attitude, commitment and practice in relation to FOI. Following the assessment an action plan was prepared, for which all actions have now been completed.
- 10.4 **Consultation on Single Model Publication Scheme**
Under FOISA, each Scottish public authority is obliged to have in place a publication scheme which provides details of the information that it makes publicly available. Currently different model publication schemes are in existence for distinct groups such as NHS Boards, local authorities, fire services, the police and further/higher education institutions. In September 2010 the Scottish Information Commissioner issued a formal consultation on a proposal to revise his approach to publication schemes and to introduce a single model scheme which could be adopted by all public authorities. The Commissioner is now piloting the proposed approach for those authorities which are due to submit schemes in 2011. This pilot will inform the publication of the Commissioner's final guidance later in 2011. In future public authorities will be expected to adopt the new single model publication scheme.
- 10.5 **Consultant on the Extension of Coverage of FOISA**
In July 2010 the Scottish Government published a consultation on extending the coverage of FOISA under section 5 of the Act, to include bodies that carry out functions of a public nature, specifically certain private contractors, leisure trusts, the Glasgow Housing Association and the Association of Chief Police Officers in Scotland. Contractors who build and maintain hospitals were among those proposed to be included in the extension of coverage. The impact of this was considered by NHSGGC and a corporate response to the consultation was submitted. Following completion of the consultation process the Scottish Government announced in January 2011 that it would not lay a section 5 order to formally extend coverage to the bodies identified in the consultation paper, and noted that alternative approaches were possible and would be pursued in further strengthening the open and transparent public service environment.

11 MONITORING AND DEVELOPMENT

- 11.1 Since 1 April 2009 the Datix Request For Information (RFI) module has been used as the method for recording, monitoring and reporting of requests for information within NHSGGC. During the reporting period FOI/EIR awareness training and training in the use of the Datix RFI module was provided to key staff within West Dunbartonshire, East Dunbartonshire, Renfrewshire, East Renfrewshire and Inverclyde CH(C)Ps. Following the creation of the unified Glasgow City CHP training was also provided to key staff during the early part of 2011.
- 11.2 In addition two half-day awareness training sessions on the operation of FOISA within NHSGGC were delivered to staff within Renfrewshire CHP. These sessions were held at the Renfrew Health and Social Care Centre and were conducted jointly by the FOI Manager and the Sector Records Manager based at Dykebar Hospital, and covered FOISA, data protection and data security issues.
- 11.3 Considerable work has been undertaken to increase and update FOI and EIR resources available to staff via StaffNet including a revised Guide to Freedom of Information which contains standard text for responses and guidance through the process of handling requests made under FOISA and the EIRs. The resources on StaffNet also contain guidance to staff who are asked to provide information in response to an FOI or EIR request, and template letters for use in responding to requests. Although increased resources are available on StaffNet, staff receiving requests for information are advised to make early contact with an FOI officer for appropriate advice and assistance.

- 11.4 The FOI Steering Group continues to meet quarterly 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 reviewing the Board's Publication Scheme, accessibility of information on the website, training and awareness, requests for reviews, and learning lessons from the decisions issued by the Commissioner. The Steering Group also considers new guidance issued by the Commissioner and ensures its dissemination and implementation as necessary. 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.
- 11.5 Quarterly monitoring information on the organisation's performance in respect of the percentage of FOI requests responded to within the statutory 20 working day timescale is also submitted to the FOI Steering Group.

12 CONCLUSION

- 12.1 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. Work will also continue on awareness training for staff, training and development for those staff involved in the day-to-day management of requests for information, and improved accessibility of information.
- 12.2 Work will continue within the FOI structure to monitor and improve performance against the 20 working day timescale for compliance.
- 12.2 Members are asked to note this Annual Monitoring Report on the operation of the Freedom of Information (Scotland) Act 2002 within NHS Greater Glasgow & Clyde, and give any comments or view on the presentation or format of the Report, or on any area with regard to implementation of the Act within NHS Greater Glasgow & Clyde.

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