

Report of the Head of Board Administration

Freedom of Information Monitoring Report for the period
1 April 2011 to 31 March 2012

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 2011 to 31 March 2012.

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, an 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 2011 to 31 March 2012. 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 2011/12

- 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 or broadcast media) 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.
- 3.3 Requests for CHP information are handled through local management structures and CHPs will also deal with FOI requests on services hosted by them. However where an applicant has submitted the same request for information to all CHP/CH(C)Ps simultaneously, a single response will be co-ordinated on an agreed basis with Glasgow City CHP responding to mental health system-wide requests and others generally by the FOI Manager. Advice is always available to all staff primarily from the FOI Manager or other appropriate FOI contacts.
- 3.4 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.
- 3.5 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.

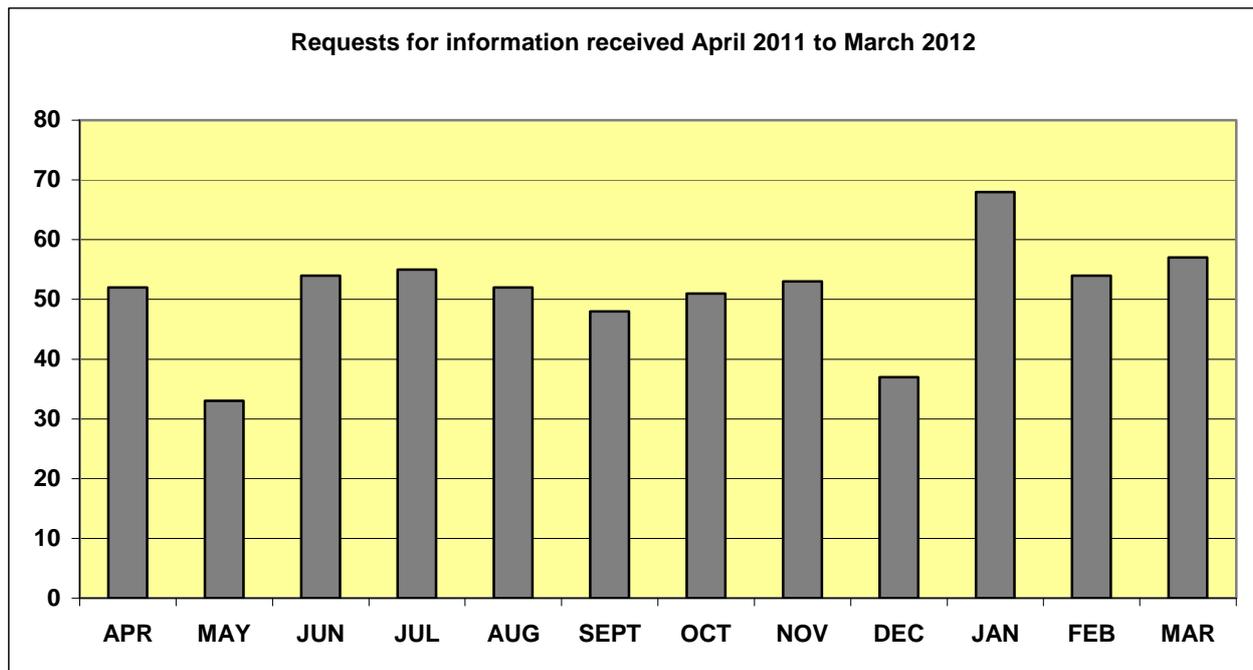
4 NUMBER OF REQUESTS RECEIVED

- 4.1 Table 1 below shows the number of requests for information received each month from 1 April 2011 to 31 March 2012. Fig 1 shows the information represented in a chart format.

Table 1 – April 2011 to Mar 2012 – Number of Requests Received

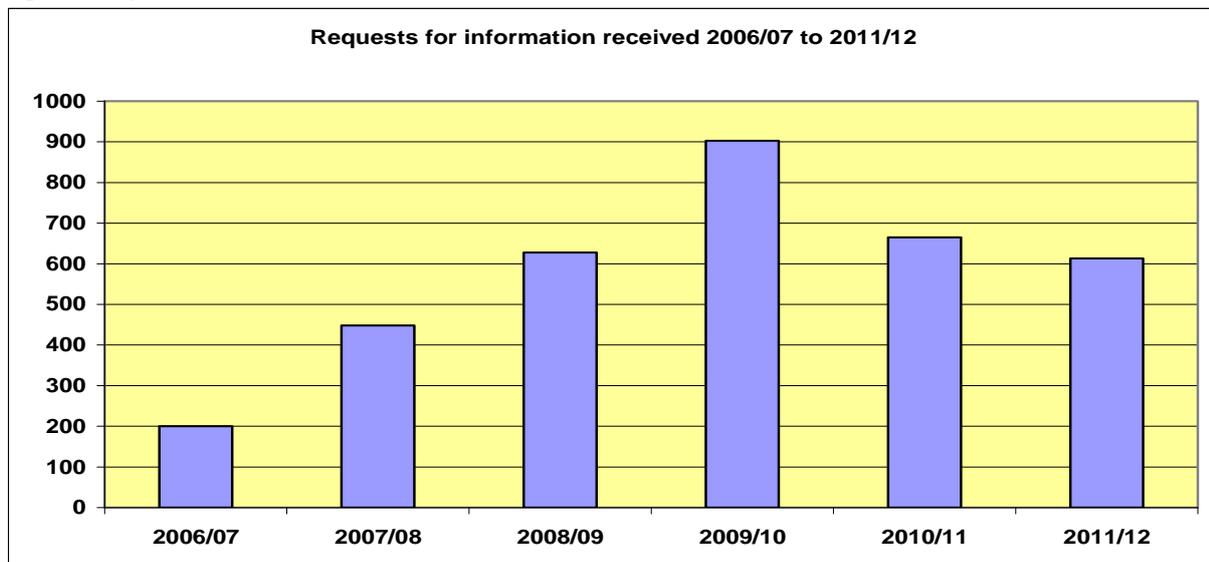
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
Number of FOI Requests Received	52	33	54	55	52	48	51	53	37	68	54	57	614

Fig 1 – Requests for information received April 2011 to March 2012



- 4.2 The overall number of FOI requests received by NHS Greater Glasgow & Clyde during 2011/12 has slightly decreased from the previous year, with 614 requests being received in 2011/12 compared to 665 requests received in 2010/11. This represents a decrease of approximately 8% from last year. The number of FOIs received from month to month generally shows a more even distribution than in previous years.
- 4.3 Of the 614 requests received during 2011/12, 12 were responded to under the EIRs compared to 7 requests in 2010/11. This reflects an increased awareness of the EIRs and a recognition of the type of information that is considered to be environmental information, and which needs to be handled under the EIRs rather than FOISA.
- 4.4 Fig 2 below shows a comparison between the number of requests received from 2006/07 to 2011/12. This shows a peak in 2009/10 due to the high volume of requests received regarding Agenda for Change issues.

Fig 2 - Requests for information received 2006/07 to 2011/12



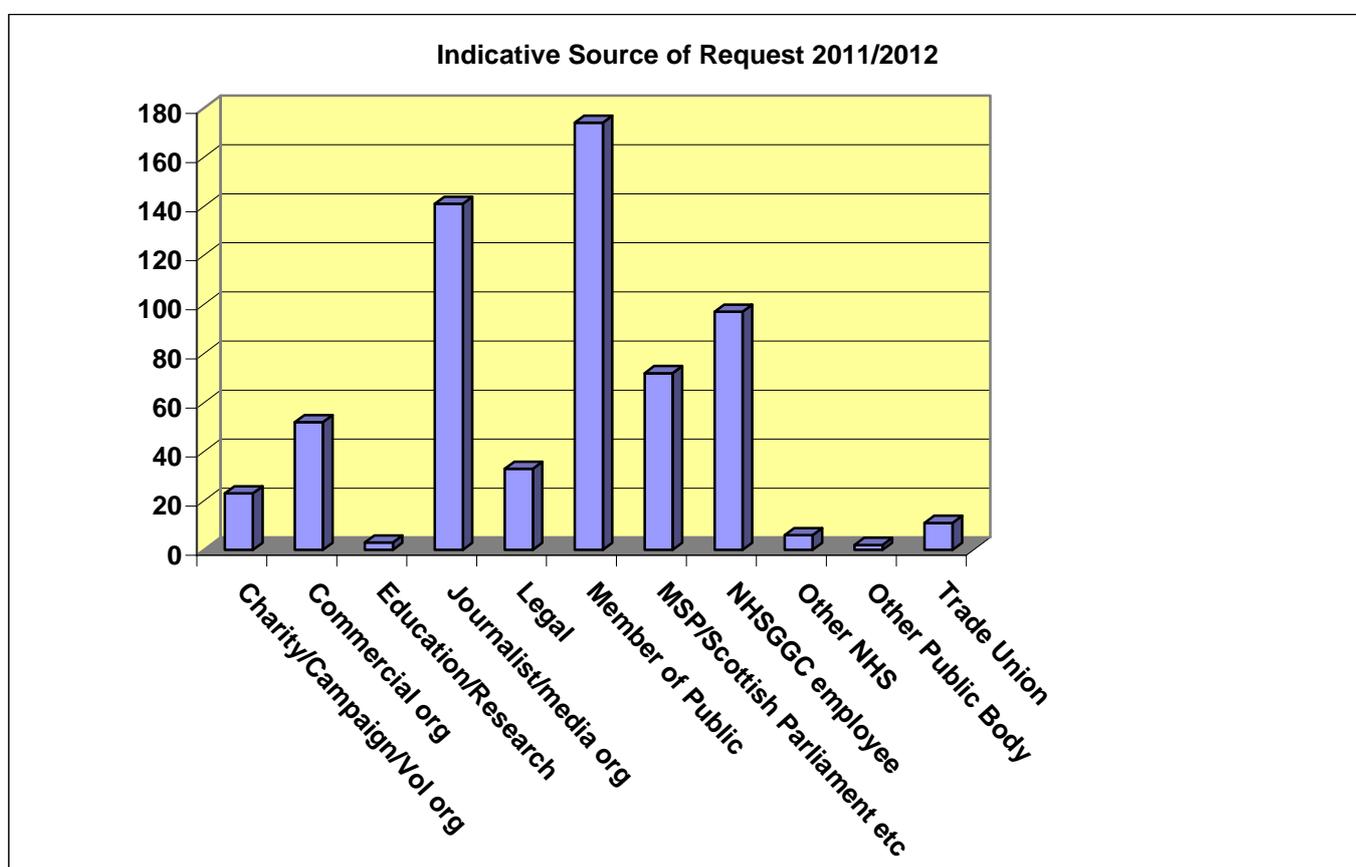
5 SOURCE OF REQUESTS

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 2011/12 and 2010/11

Indicative source of request	2011/12		2010/11	
	Number	% of total requests received	Number	% of total requests received
Charity/Campaign/Voluntary organisations	23	3.7	32	4.8
Commercial organisations	52	8.5	36	5.4
Education/research	3	0.5	6	0.9
Journalist/Media organisation	141	23.0	139	20.9
Legal	33	5.4	42	6.3
Individuals	174	28.3	198	29.8
MSP/Scottish Parliament/Other elected official	72	11.7	86	12.9
NHSGG&C Employee	97	15.8	101	15.2
Other NHS	6	1.0	8	1.2
Other Public Body	2	0.3	5	0.8
Trade Union/Professional Representative body	11	1.8	12	1.8
Total	614	100%	665	100%

Fig 3 – Indicative Source of Request 2011/12



- 5.2 There are no dramatic changes in the distribution of FOIs received when analysed by source of request when compared to 2010/11. Requests from journalist/media organisations and Trade Union/Professional Representative bodies remained fairly static compared with 2010/11.
- 5.3 The number of requests from NHSGGC staff has also remained steady with 97 requests received in 2011/12 compared to 101 in 2010/11. This is perhaps surprising given that the Agenda for Change process is now complete. However it would appear that staff have continued to use FOI legislation to obtain information about the Agenda for Change process relating to their posts.
- 5.4 Requests from Charity/Campaign/Voluntary organisations decreased from 32 in 2010/11 to 23 in 2011/12. This is despite work carried out by the Office of the Scottish Information Commissioner including specialist events and workshops, to raise awareness among these groups about the use of FOI. However in 2010/11, 1 requester accounted for 53% of the requests, and we have not seen the same level of interest from that requester in 2011/12.
- 5.5 When compared to the number of requests received in 2010/11, the following changes are also highlighted:
- Requests from commercial organisations increased from 36 in 2010/11 to 52 in 2011/12.
 - Requests from legal firms again decreased, from 42 requests in 2010/11 to 33 requests in 2011/12.
 - Requests from members of the public decreased slightly from 198 in 2010/11 to 174 in 2011/12.
 - Requests from MSPs/researchers and other elected officials showed a slight decrease from 86 in 2010/11 to 72 in 2011/12.
- 5.6 2011/12 has seen a general increase in the number of requests made through websites which provide assistance to members of the public to facilitate the submission of requests for information to public authorities.

6 TYPE OF INFORMATION REQUESTED

- 6.1 As in previous years a wide range of information has been requested from NHS Greater Glasgow and Clyde, with some requests generated by issues of local interest. Requests for information often contained a significant number of separate elements, or a large number of requests submitted in a single email or letter. Many of the requests submitted were complex, and required careful consideration of the application of the relevant legislation before information was released.
- 6.2 A number of recurring themes were identified in the subject matter of requests for information.
- Corporate policies and reports
 - Finance and expenditure
 - Agenda for Change issues
 - Salaries, staffing and workforce issues and conditions of service
 - Use of locum and agency staff
 - Violence and aggression/health and safety issues
 - Pharmacy and prescribing issues
 - Transport and car parking
 - IT contracts, data loss and IT security
 - Absconding patients
 - Drug and alcohol use and treatment
 - Translating and interpreting
 - Asbestos
 - Land, property and building maintenance
 - New South Glasgow Hospital
 - Bed spacing

- Clinical activity, protocols and guidelines
- Control of infection
- Childrens services
- IVF and infertility treatment
- Waiting times

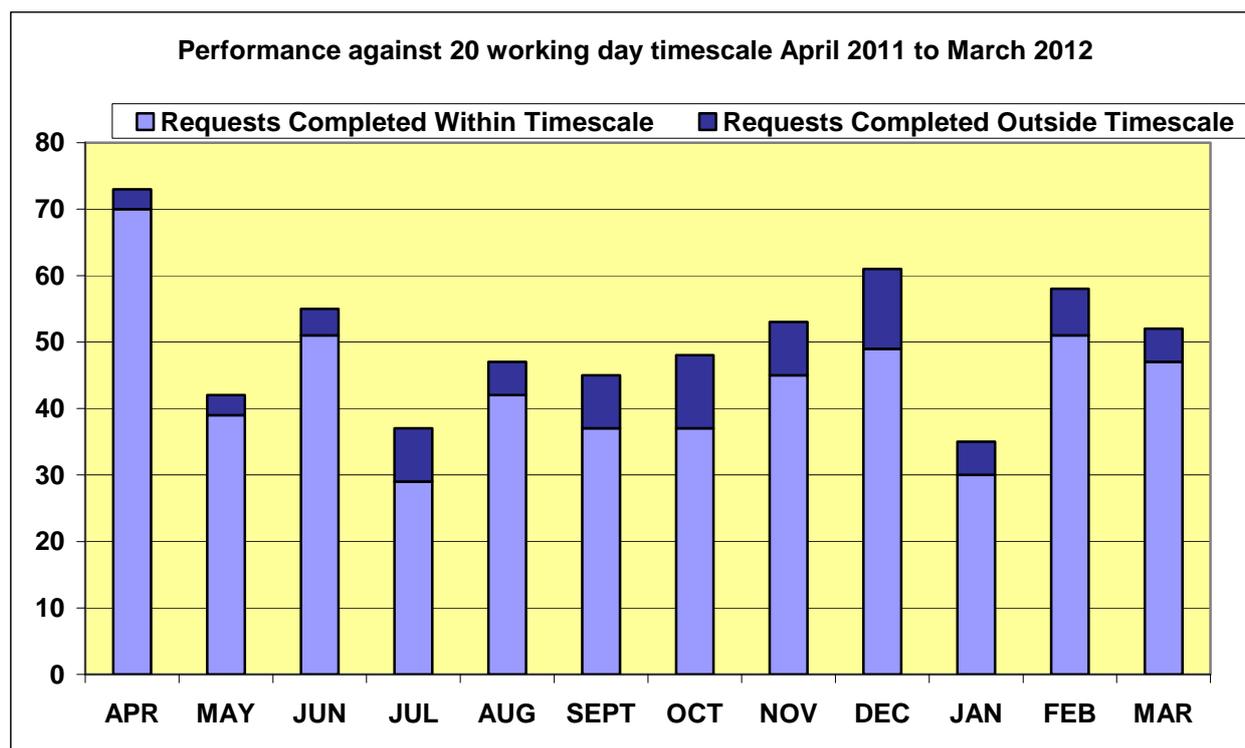
7 PERFORMANCE MONITORING

- 7.1 Overall, 87% of Freedom of Information requests were responded to within the requirement of 20 working days (Table 3). This shows an improved performance from previous years (79% in 2010/11 and 83% in 2009).
- 7.2 Generally a marginal number of requests were completed outwith the 20 working day timescale. Of the 79 requests that breached the 20 working day timescale, 50% were responded to by the 25th working day.
- 7.3 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 to the Board's Quality and Performance Committee as part of the integrated score-card report.
- 7.4 Table 3 and Fig 4 below show the number of requests completed both within and outside the 20 working day timescale.

Table 3 – Number and percentage of requests responded to within 20 working days – 2011/12

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Total Number of FOI Requests Responded	73	42	55	37	47	45	48	53	61	35	58	52	606
Number of Requests Completed within 20 Working Days	70	39	51	29	42	37	37	45	49	30	51	47	527
Number of Requests Completed outwith 20 Working Days	3	3	4	8	5	8	11	8	12	5	7	5	79
Percentage completed within 20 Working Days	96%	93%	93%	78%	89%	82%	77%	85%	80%	86%	88%	90%	87%

Fig 4 – Performance against 20 working day timescale April 2011 to March 2012



7.5 In nearly 60% of requests responded to, all the information requested by applicants was provided to them.

7.6 In some cases, the information requested is considered by the Board to be exempt from disclosure under the Act. Where there is a valid reason for withholding information an appropriate exemption must be applied and the Board's response must clearly state the exemption within FOISA (or exception within the EIRs) that is being relied upon to withhold the information. The use of an exemption must be used 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.

7.7 During 2011/12 the following exemptions were used to withhold information requested under FOISA:

- Section 25 – Information otherwise accessible
- Section 27 – Information intended for future publication
- Section 30 – Prejudice to effective conduct of public affairs
- Section 33 – Commercial interests and the economy
- Section 38 – Personal Information

No exceptions were applied to information requested under the EIRs.

7.8 In 11 of the requests responded to, the Board did not provide the information being requested as it estimated that the cost of complying with each request would exceed the cost threshold set by Scottish Ministers – currently £600 – as provided for under Section 12 of FOISA. These cases were typically those where a large amount of complex information was requested that would take an excessive amount of time and resources to provide. Under these circumstances the Board was required to demonstrate to the applicant how the estimated costs had been arrived at, and was also obliged to provide reasonable advice and assistance to the applicant either to modify the request or suggest what information could be provided in order to bring the estimated costs under the cost threshold.

- 7.9 During 2012/2013 the Board will continue to monitor its performance against the 20 working day timescale, with the aim of increasing the percentage of requests completed within 20 working days.

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 an FOI expert or adviser. 3 Non-Executive Directors participated in reviews during 2011/12.
- 8.2 7 requests for review were received in 2011/2012. A brief summary of these is given below:

Review No.	Outcome	Details of Review
1	Withdrawn	5 members of staff each submitted an identical request for review regarding information provided to them. The staff had all requested and been provided with the same information under individual FOI requests. With the agreement of the staff concerned the reviews were handled jointly as one review. A representative from Human Resources met with the staff to provide additional explanation and clarification of the information provided to the staff. Following the meeting the staff considered their needs to have been met, and withdrew the request for review.
2	Withdrawn	The applicant requested a review on the grounds that they had not received all the information requested. An amended response had been issued to the applicant and they were asked, in the light of having been provided with the missing information, whether they still wished to proceed with the review. No response was received from the applicant and following 2 further communications to the applicant when no further response was received, the Board considered the applicant to have withdrawn their request for review.
3	Partial information provided	The original response stated that the information being requested was only recorded within personal files of individual employees. To provide the information would be in excess of the £600 cost threshold, which removed the Board's obligation to provide the information being requested. The applicant disputed this and on further discussion with the relevant Directorate it was found that some departments did hold information locally and this was provided to the applicant. It was stressed to the applicant that as the information was not recorded by all departments, this did not represent a full picture across the organisation on the particular subject. The applicant was satisfied with the outcome.
4	Original decision upheld	The applicant requested a review on the grounds that not all the information had been provided. The original response withheld information on the grounds that it was personal information of living individuals who could be identified from that information. The review upheld the Board's original decision to withhold the information.

Review No.	Outcome	Details of Review
5	Original decision upheld	The applicant requested a review on the grounds that the information had not been provided. The original response withheld the information on the grounds of commercial sensitivity. The review upheld the Board's original decision to withhold the information.
6	Additional information provided	The applicant requested a review on the grounds that not all the information had been provided, and that other information which had been provided was inadequate. The original response provided some of the information requested by the applicant, but also advised that other information requested was not held by the Board. During the review some additional information was located and this was provided to the applicant. However the review upheld the original view that part of the information was not held by the Board.
7	Amended information provided	The applicant requested a review on the grounds that the information provided in the response was inaccurate. The review confirmed the applicant's view that inaccurate information had been provided, and offered a full apology to the applicant for this error. The applicant had subsequently been provided with the correct information when the error was brought to light. The applicant applied to the Scottish Information Commissioner for a Decision on the case and this is currently being validated by the Commissioner's office.

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 Of the Reviews carried out by NHS Greater Glasgow and Clyde during 2011/12, two applicants appealed to the Commissioner for a Decision on their case. Both cases are currently being investigated by the Commissioner's office and no Decisions have been issued by the Scottish Information Commissioner in relation to NHS Greater Glasgow and Clyde during 2011/12 .
- 9.3 The Scottish Information Commissioner issued his Annual Report in March 2012, together with an interactive on-line version of the report, a full copy of which is available on the Commissioner's website at <http://www.itspublicknowledge.info/ask/>. In January 2012 the Commissioner also placed a special report before the Scottish Parliament to mark his departure from office.
- 9.4 In February 2012 the out-going Commissioner issued a Decision in relation to an FOI request made to NHS Ayrshire and Arran. In the Decision he expressed "significant concerns" about NHS Ayrshire and Arran's handling of the case and their records management practices. The publication of the Decision attracted significant media interest and the Cabinet Secretary instructed NHS Ayrshire & Arran to carry out a review of their FOI procedures. NHS Greater Glasgow and Clyde were approached by them to assist in this process, and the Board's FOI Manager acted as a "critical friend" in their review of their FOI procedures, providing advice and recommendations on aspects of FOI practice within NHS Ayrshire and Arran.

10 DEVELOPMENTS IN FOISA AND OTHER RELEVANT LEGISLATION

- 10.1 New Scottish Information Commissioner
Rosemary Agnew was appointed as the new Scottish Information Commissioner and took up post on 1 May 2012, following the completion of 2 terms of office by Kevin Dunion.
- 10.2 Practice Assessment – Follow-up
During September 2011 the Office of the Scottish Information Commissioner undertook a follow-up of the practice assessment carried out in January 2011 and the resultant Action Plan agreed with NHS Greater Glasgow and Clyde. The Commissioner's office confirmed that all the relatively minor procedural changes identified in the Action Plan had been completed and that no further action was required by the Board in respect of this.
- 10.3 Consultation on FOISA Amendment Bill
The Scottish Government recently consulted on amendments to FOISA which proposed changes to amend the definition of 'historical record' and reduce the period of time for which particular exemptions could be applied. The consultation also proposed to increase the period of time in which the Commissioner can seek prosecution under Section 65 (offence of altering records with intent to prevent disclosure). Comments were submitted on behalf of the Board in response to the Consultation.
- 10.4 Public Records (Scotland) Act 2011
On 24 February 2012 the Public Records (Scotland) Act 2011 was enacted. This designates certain organisations (such as the NHS) as public bodies for the purposes of the Act, and will require them to have in place a records management plan. Good record management is vital in ensuring compliance with the requirements of FOI legislation. Details of how the Keeper of Records in Scotland will implement the legislation was the subject of consultation which closed in mid-June. We await issue of agreed guidance on the implementation of the Act from January 2013. The Head of Administration for Glasgow City CHP has been a member of the Records Management Forum looking at this guidance on the Act and will report further to the Corporate Management Team on this in July 2012.

11 MONITORING AND DEVELOPMENT

- 11.1 An E-learning training module for FOISA and the EIRs was developed by the FOI Manager following the Practice Assessment and is now available to all staff in NHS Greater Glasgow and Clyde through the LearnPro E-learning platform. The E-learning module provides staff with general awareness training on FOI legislation and includes information on the basic principles of FOISA and the EIRs, including how to recognise and respond to requests, circumstances where information might not be disclosed and the differences between FOISA and the EIRs. Staff using the module also undertake an assessment of their learning and those who successfully complete the module obtain a certificate of achievement.
- 11.2 The aim of the module is to increase the knowledge and understanding of FOI within the organisation, so that we can improve performance against legislative timescales and continue to develop the culture of FOI within the organisation.
- 11.3 The module is a new addition to the courses available on LearnPro. The effectiveness of the module will be monitored and any changes to the content will be assessed and updated as necessary. More information on the launch of the module will be communicated to staff internally through various methods such as Team/Core Brief and Staff News and the induction portal.
- 11.4 The Datix Request For Information (RFI) module continues to be used as the method of recording, monitoring and reporting of all requests for information under FOISA and the EIRs within NHS Greater Glasgow and Clyde.

- 11.5 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.
- 11.6 The FOI Steering Group chaired by the Head of Administration for Glasgow CHP met quarterly during 2011/12 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 other related issues such as records management and data protection 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. Membership of the Group has been augmented during 2011/12 with the inclusion of all of the Heads of Administration for the CHPs.
- 11.7 NHS Greater Glasgow and Clyde is also represented on the NHS Scotland FOI Leads Forum, and members of the FOI Steering Group attend quarterly meetings of the Forum.
- 11.8 Monitoring information on the organisation's performance in respect of the percentage of requests responded to within the statutory 20 working day timescale has been provided regularly to the Board's Performance Quality and Performance Group.

12 CONCLUSION

- 12.1 The FOI Steering Group will continue to meet on a regular basis, and FOI practitioners within NHS Greater Glasgow and Clyde will continue to refine and improve compliance with the Act, including the processing and handling of requests, data capture, and content and accessibility of information. Work will also continue on training and development for those staff involved in the day-to-day management of requests for information, and improved accessibility of information.
- 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 and Clyde.

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