

Greater Glasgow and Clyde NHS Board

NHS Board Meeting

24 June 2008

Board paper No. 08/32

Report of the Head of Board Administration

Freedom of Information Monitoring Report for the period 1 April 2007 to 31 March 2008

Recommendation:

The NHS Board is asked to note the Monitoring Report on the operation of the Freedom of Information (Scotland) Act 2002 in NHS Greater Glasgow and Clyde for the period 1 April 2007 to 31 March 2008.

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 or by 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 This Report covers the 12-month period from 1 April 2007 to 31 March 2008. The report summarises the requests for information received by NHS Greater Glasgow and Clyde during this 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/radio company) 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 through the Corporate Administration Department, 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.

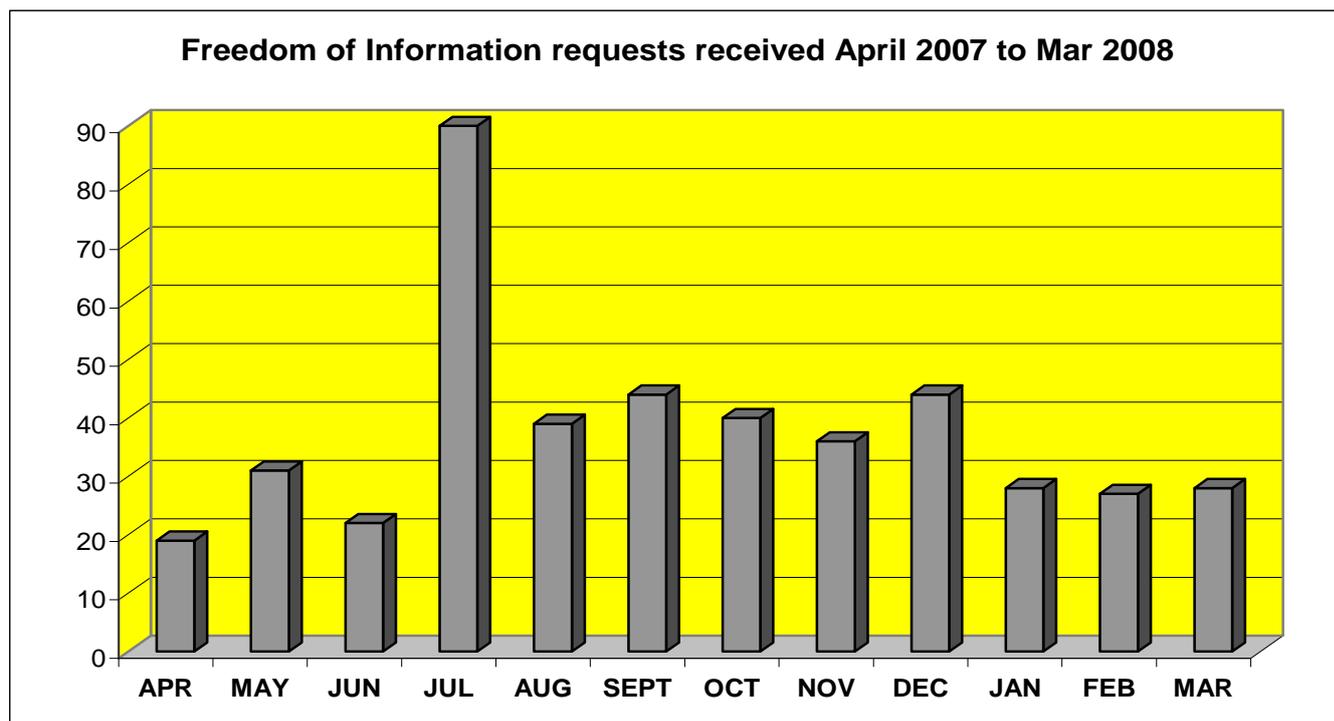
4 NUMBER OF REQUESTS RECEIVED AND SOURCE OF REQUESTS

- 4.1 Table 1 below shows the number of Freedom of Information requests received each month from 1 April 2007 to 31 March 2008. Fig 1 shows the same information represented in graphical form.

Table 1 – April 2007 to Mar 2008 – Number of Requests Received

| | April | May | June | July | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar | Total |
|---------------------------------|-------|-----|------|------|-----|------|-----|-----|-----|-----|-----|-----|------------|
| Number of FOI Requests Received | 19 | 31 | 22 | 90 | 39 | 44 | 40 | 36 | 44 | 28 | 27 | 28 | 448 |

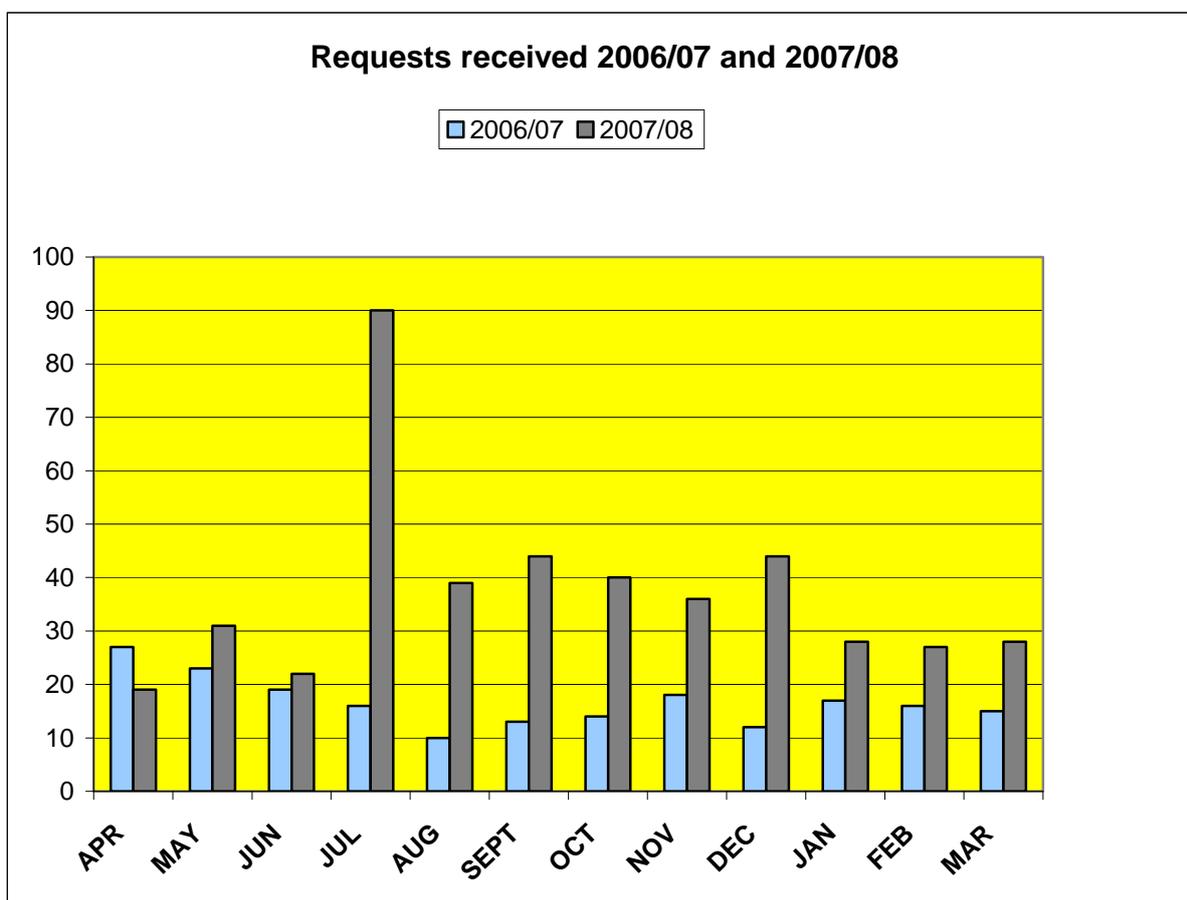
Fig 1 – April 2007 to Mar 2008 - Number of Requests Received



4.2 The overall number of FOI requests received by NHS Greater Glasgow & Clyde during 2007/08 has increased significantly, with 448 requests received in 2007/08 compared to 259 for the previous reporting period. Of particular note is the large number of requests received during July 2007, due to 61 requests being submitted by one legal firm in respect of equal pay claims. By far the biggest increase however is in the number of requests made by NHS Greater Glasgow & Clyde employees, rising from 1 in 2006/07 to 132 in 2007/08, many seeking information in relation to Agenda for Change arrangements. In addition there has been a slight increase in the number of requests made by individuals rising from 64 in 2006/07 to 72 in 2007/08, which may reflect an increasing awareness of Freedom of Information legislation among the general public.

4.3 Fig 2 below shows a comparison between the number of requests received during April 2006 to March 2007, and the number received during April 2007 to March 2008.

Fig 2 FOI Requests received – 2006/07 and 2007/08



5 SOURCE OF REQUESTS AND SUBJECT MATTER

5.1 A profile of the estimated source of FOI requests is given below at Table 2 and Fig 3. On this basis, it is shown that the highest numbers of requests are from four main areas - legal firms, NHSGG&C employees, members of the public, and journalists/media organisations. These four groups account for approximately 88% of

the total number of requests received, with all other categories accounting for the remaining 12% of requests received.

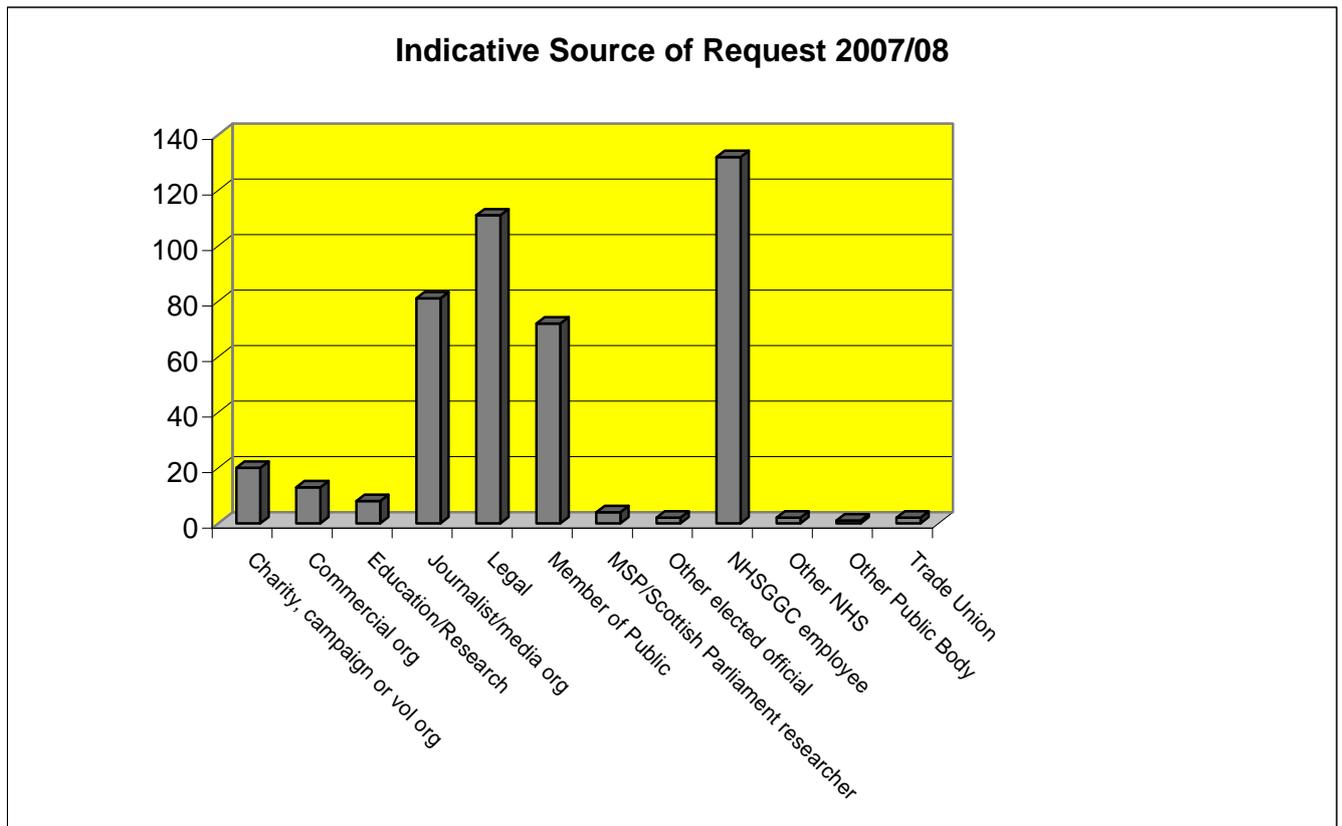
5.2 As members know, the Act commenced on 1 January 2005 and our reporting thus far has been on a calendar year. In order to be consistent with the other reporting regimes following the financial year we have moved in this report to reporting from 1 April 2007 to 31 March 2008. Therefore the reporting period for the previous year's report covered the 15-month period from January 2006 to March 2007, so it is not possible to make a direct comparison within the source of requests. However, indicative figures show that the distribution of requests across the groups represents a change from 2006/07 as follows:

- Journalists/media organisations now account for 18.2% of requests, compared to approximately 44% in 2006/07.
- The percentage of requests from individuals has decreased from 24.8% in the previous reporting period, to 16% in 2007/08, although actual numbers of requests are slightly increased.
- The percentage of requests from legal firms has also increased from approximately 9% to 24.9%, and the type of requests cover a wide range of subjects.
- The most significant increase has been in requests from employees of NHS Greater Glasgow & Clyde, rising from 1 request in 2006/07 to 132 in 2007/08. The majority of these requests are from staff who have utilised FOISA in seeking information relating to the Agenda for Change process.

Table 2 – Indicative Source of Request 2007/08

| Indicative source of request | 01/04/2007 to 31/03/2008 | |
|--|--------------------------|-------------|
| | Number | % |
| Charity/Campaign/Voluntary organisations | 20 | 4.5 |
| Commercial organisations | 13 | 2.9 |
| Education/research | 8 | 1.8 |
| Journalist/Media organisation | 81 | 18.2 |
| Legal | 111 | 24.9 |
| Individuals | 72 | 16.1 |
| MSP/Scottish Parliament/Other elected official | 6 | 1.3 |
| NHSGG&C Employee/other NHS | 132 | 29.6 |
| Other NHS | 2 | 0.4 |
| Other Public Body | 1 | 0.2 |
| Trade Unions/Trade Union Officials | 2 | 0.4 |
| Total | 448 | 100% |

Fig 3 – Indicative Source of Request 2007/08



5.3 In respect of the subject matter of requests received by the Board, as stated earlier Agenda for Change has featured heavily in the type of information requested. A total of 132 requests were received from current and former NHS/GGC employees, 107 of which sought information following assimilation under Agenda for Change.

5.4 Significant work has also been undertaken in the provision of information in relation to contract documentation and full business cases for PPP/PFI contracts entered into by the Board, and the organisation continues to receive requests of this nature. While the actual number of requests for information on PPP/PFI contracts is relatively small, the work involved in providing the information and considering any appropriate exemptions has been considerable.

5.5 Other areas which have attracted FOI requests are:

- Alcohol and drug use in young people
- Car Parking policy and charges
- Prescribing
- Elderly care services
- Sale of Board land and disposal of surplus property
- Accident reports
- Infection control
- Clinical services
- Waiting times
- Fertility services
- Expenses and staff mileage claims
- Taxi costs and reasons for use
- Policies and minutes of meetings

5.6 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 30 Prejudice to effective conduct of public affairs – used to withhold names of panel members on Agenda for Change job matching panels;
- Section 33 Commercial interests and the economy – used to withhold some elements of contract documentation;
- Section 36 Confidentiality – used to withhold cost of operations in private sector hospitals;
- Section 38 Personal information – requests for personal information are not dealt with under FOISA but are covered by the Data Protection Act.

6 PERFORMANCE MONITORING

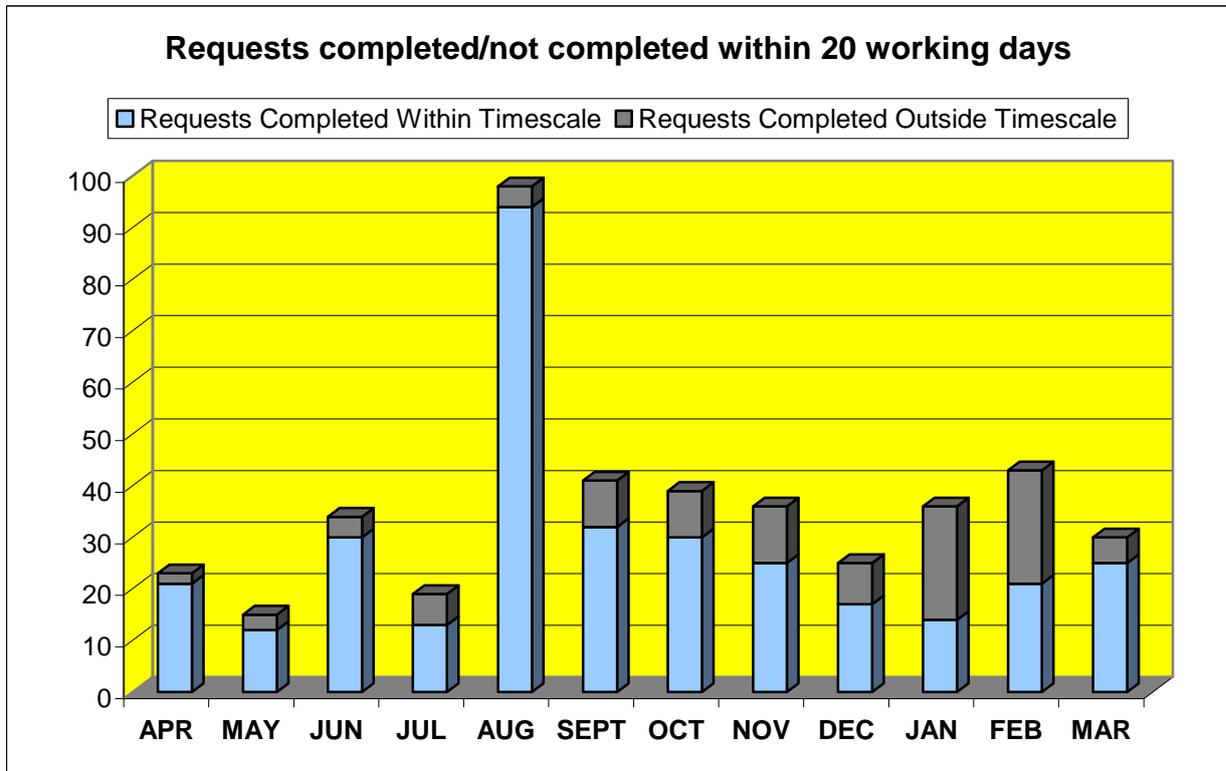
6.1 Overall, 76% of Freedom of Information requests were responded to within the requirement of 20 working days (Table 3). This shows a drop in the overall number of requests completed within 20 working days, from 88% shown in the previous year's report.

Table 3 – Number and percentage of requests responded to within 20 working days - 2007/08

| | APR | MAY | JUN | JUL | AUG | SEPT | OCT | NOV | DEC | JAN | FEB | MAR | TOTAL |
|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| Total Number of FOI Requests Responded | 23 | 15 | 34 | 19 | 98 | 41 | 39 | 36 | 25 | 36 | 43 | 30 | 439 |
| | | | | | | | | | | | | | |
| Number of Requests Completed within 20 Working Days | 21 | 12 | 30 | 13 | 94 | 32 | 30 | 25 | 17 | 14 | 21 | 25 | 334 |
| Number of Requests Completed Outwith 20 Working Days | 2 | 3 | 4 | 6 | 4 | 9 | 9 | 11 | 8 | 22 | 22 | 5 | 105 |
| | | | | | | | | | | | | | |
| Percentage completed within 20 Working Days | 91% | 80% | 88% | 68% | 96% | 78% | 77% | 69% | 68% | 39% | 49% | 83% | 76% |

6.2 Fig 4 below shows the number of requests completed both within and outside the 20 working day timescale.

Fig 4 – Requests completed/not completed within 20 working day timescale



6.3 The drop in performance against the 20 working day timescale is attributable to various factors including the large number of requests pertaining to Agenda for Change information, where there was a failure by staff to recognise the 20 working day timescale. In addition, the increase in requests completed outside the 20 working day timescale may also reflect the increasing complexity of FOI requests being submitted, and the difficulties involved in collating information from several different parts of a large and complex organisation.

7 REQUESTS FOR REVIEW

7.1 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. During 2007/08, 4 Non-Executive Directors participated in reviews.

7.2 12 requests for an internal review have been received and completed during 2007/08, compared to 6 completed in 2006/07. In 10 of the 12 reviews carried out, the outcome of reviews supported the original position taken by the Board. In one case where the original decision had stated that information was not recorded, the review identified that some level of information was available, and this was subsequently provided to the applicant. In one further case, the review found that incorrect information had been supplied, and the applicant was subsequently provided with the correct information. In 3 cases there were technical failures by the Board in respect of

timescales for completion of requests and an apology was provided to the applicant in each case.

8 SCOTTISH INFORMATION COMMISSIONER DECISIONS AND ANNUAL REPORT

8.1 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. During 2007/08, 3 of the 12 applicants who requested a review subsequently applied to the Commissioner for a decision. Of these, 1 decision has been issued (Decision 057/2008) and 2 are still awaited.

8.2 2 other decisions in relation to NHS Greater Glasgow and Clyde were issued by the Commissioner during the reporting period (Decision 144/2007, and Decision 068/2007) and these relate to requests for information originally submitted in 2005 and 2006. This brings to 6 the total number of Decisions issued since the Act came into force, and all are summarised below.

| Summary | Outcome |
|---|---|
| Personal Injury correspondence | Decision Notice 057/2008 issued May 2008 Commissioner found that the Board correctly applied the exemption in Section 38 (Personal Information) in withholding information. Technical failure by the Board in failing to respond to the request within 20 working days. However, no further action required by the Board in this case. |
| Medical information about relative. | Decision Notice 144/2007 issued August 2007 Commissioner found that the Board correctly applied the exemption under Section 36(1) (confidentiality of communications in legal proceedings) in withholding information. One document was considered by the Commissioner not to be exempt under Section 36(1), but was found to be exempt under Section 25(1) (Information otherwise accessible). No action required by the Board. |
| Deceased person's health records. | Decision Notice 068/2007 issued May 2007 Commissioner found that the information requested was not held by the Board for the purposes of FOISA. A notice under Section 17(1) should have been issued, informing the applicant that the requested information was not held. The Commissioner made no recommendation on this case and agreed the Board had made strenuous efforts to locate the missing records. |
| Audit data gathered by West of Scotland MCN | Decision Notice 202/2006 Issued November 2006 Commissioner found that the Board was correct to withhold audit data under Section 36(2) and 30 (c) and that the public interest in maintaining exemption 30 (c) outweighed that of disclosure. |
| Evidence provided at the Dunblane Inquiry. | Decision Notice 198/2006 Issued November 2006 Commissioner found in favour of NHS GG&C, ie Section 17 of FOISA correctly applied, as information not held by NHSGG&C for the purposes of FOISA. |
| Cost of orthopaedic operations in private sector hospitals. | Decision Notice 181/2006 Issued October 2006 Commissioner found that NHSGG&C complied with FOISA in the application of exemption Section 36(2) Confidentiality. |

- 8.3 The Scottish Information Commissioner issued his fourth Annual Report in March 2007 and this is summarised in the Appendix.

9 MONITORING AND DEVELOPMENT

- 9.1 A single computer system for the recording, monitoring and reporting of Freedom of Information requests within NHS Greater Glasgow & Clyde is being implemented across all departments, and it is anticipated that use of this system will commence in September 2008, following training of all those who are involved in the day-to-day handling of the FOI process within the organisation.
- 9.2 The Board's Publication Scheme, which is posted on the Board's website, has been subject to an extensive review during the last year, and will continue to be regularly reviewed and updated where necessary, to improve the content and accessibility of information and to reflect corporate changes. In addition, the Commissioner has announced that approval of the Board's current Publication Scheme has been extended to June 2010, with all Health Boards required to submit their Publication Scheme for re-approval by the end of February 2010.
- 9.3 The NHS Greater Glasgow and Clyde 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 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.
- 9.4 Further training for staff is being planned throughout NHS Greater Glasgow and Clyde during 2008, with the aim of raising awareness of the Act and responsibilities in relation to it. Work is ongoing to provide information for staff on the organisation-wide intranet on the Act and its operation within NHS Greater Glasgow and Clyde.

10 CONCLUSION

- 10.1 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.
- 10.2 Members are asked to note this Annual Monitoring Report on the operation of the Freedom of Information (Scotland) Act 2002 within NHS Greater Glasgow 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.

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APPENDIX

SCOTTISH INFORMATION COMMISSIONER – FREEDOM OF INFORMATION ANNUAL REPORT 2007 – KEY FACTS

The Scottish Information Commissioner's fourth Annual Report was issued in March 2008, with a theme of 'Past, Present, Future' and reflecting on the three years since FOISA fully came into force.

PAST: BRINGING THE ACT INTO EFFECT

- The Freedom of Information (Scotland) Act 2002 came into effect on 1 January 2005. In the first 3 years of operation, the Commissioner received 1,574 applications and issued 594 decisions.
- Over 75% of applications to the Commissioner come from ordinary members of the public.
- Public awareness of FOISA has risen from 44% in 2004 to 74% in 2007.
- The most popular subject of applications in the first three years were; the administration and finance of public bodies; safety and crime; and commercial contracts.
- Some of the information released as a result of the Commissioner's decisions has been high profile on sensitive matters, eg surgical mortality rates for Scotland, sex offenders statistics, and an entire PPP/PFI hospital contract.
- Of the 594 decisions issued by the Commissioner from 2005 to 2007, 25% have been wholly in the applicant's favour, 41% for the public authority, and the remaining 24% partially upheld.
- In a recent survey, 89% of public authorities believe they have become more open since FOISA came into effect.

PRESENT: A REPORT CARD FOR 2007

- In 2005, applications far exceeded expectation, creating a backlog in the Commissioner's Office. By 2007, this was greatly reduced and the target is to close all backlog cases by April 2008. As backlog cases are resolved, the age profile of cases under investigation has greatly reduced.
- This was achieved through additional staff resources and organisation restructuring.
- The Court of Session found in the Commissioner's favour, that there is no overall 'blanket' exemption for ministerial advice in FOISA, and that each case must be looked at on its merit.
- In a public opinion survey in 2007, nearly 1 in 10 respondents had made an FOI request – and 86% of these had received all or some of the information they asked for.

THE NEXT FOUR YEARS

- The report sets out the Commissioner's views on the scale of the remaining challenges to bringing about the desired cultural change towards a more open Scottish society:
 - Research shows that awareness and confidence of FOI rights is lowest amongst young adults, people with disabilities and other vulnerable groups such as refugees and the homeless. FOISA will not have succeeded until all sectors of society are aware of their rights
 - Scottish public authorities must build on their early success in meeting the challenges of complying with FOISA, eg by sharing best practice and making more information proactively available.
 - The Commissioner will focus attention on those public authorities in need of particular advice, through the issue of recommendations for improving practice, aimed at encouraging positive change.
 - The transfer of functions from public authorities to private organisations may be unintentionally removing FOI rights from service users. It may be time to examine whether some of these organisations should come within the scope of FOISA in future.

- The Commissioner will set new targets to progressively reduce the time from receiving an application to issuing a decision – to help get information into the hands of the public as swiftly as possible.
- Experience world-wide suggests that, as legislation matures, ore cases are settled through mediation – the Commissioner will look at what lessons Scotland can learn from elsewhere. However, settlement will not be used to diminish the rights of the public, but to secure an acceptable (and usually speedier) outcome for all parties.

A full copy of the report can be obtained from Alison Flynn, FOI Officer, Dalian House, or through the Commissioner's website at www.itspublicknowledge.info