

Greater Glasgow and Clyde NHS Board

NHS Board Meeting

23 June 2009

Board paper No. 09/35

Report of the Head of Board Administration

Freedom of Information Monitoring Report for the period 1 April 2008 to 31 March 2009

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 2008 to 31 March 2009.

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 2008 to 31 March 2009. 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 Greater Glasgow & Clyde 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 their Corporate Administration Department, and requests for CH(C)P and Mental Health Partnership information are handled through local management structures.
- 3.3 Joint arrangements exist within the Glasgow and East Renfrewshire Council CH(C)Ps to handle Freedom of Information requests, acknowledging each organisation's responsibilities.

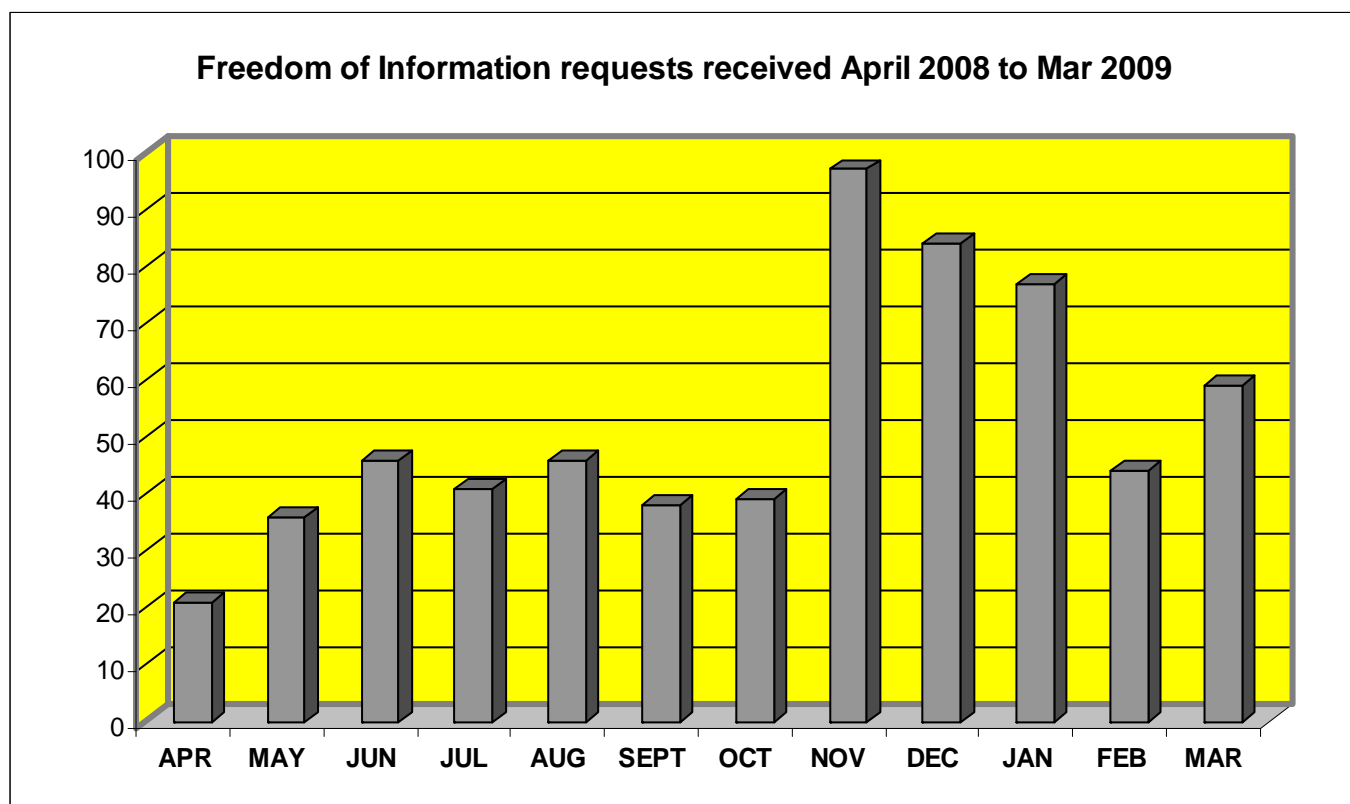
4 NUMBER OF REQUESTS RECEIVED

- 4.1 Table 1 below shows the number of Freedom of Information requests received each month from 1 April 2008 to 31 March 2009. Fig 1 shows this information represented in graphical form.

Table 1 – April 2008 to Mar 2009 – Number of Requests Received

	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
Number of FOI Requests Received	21	36	46	41	46	38	39	97	84	77	44	59	628

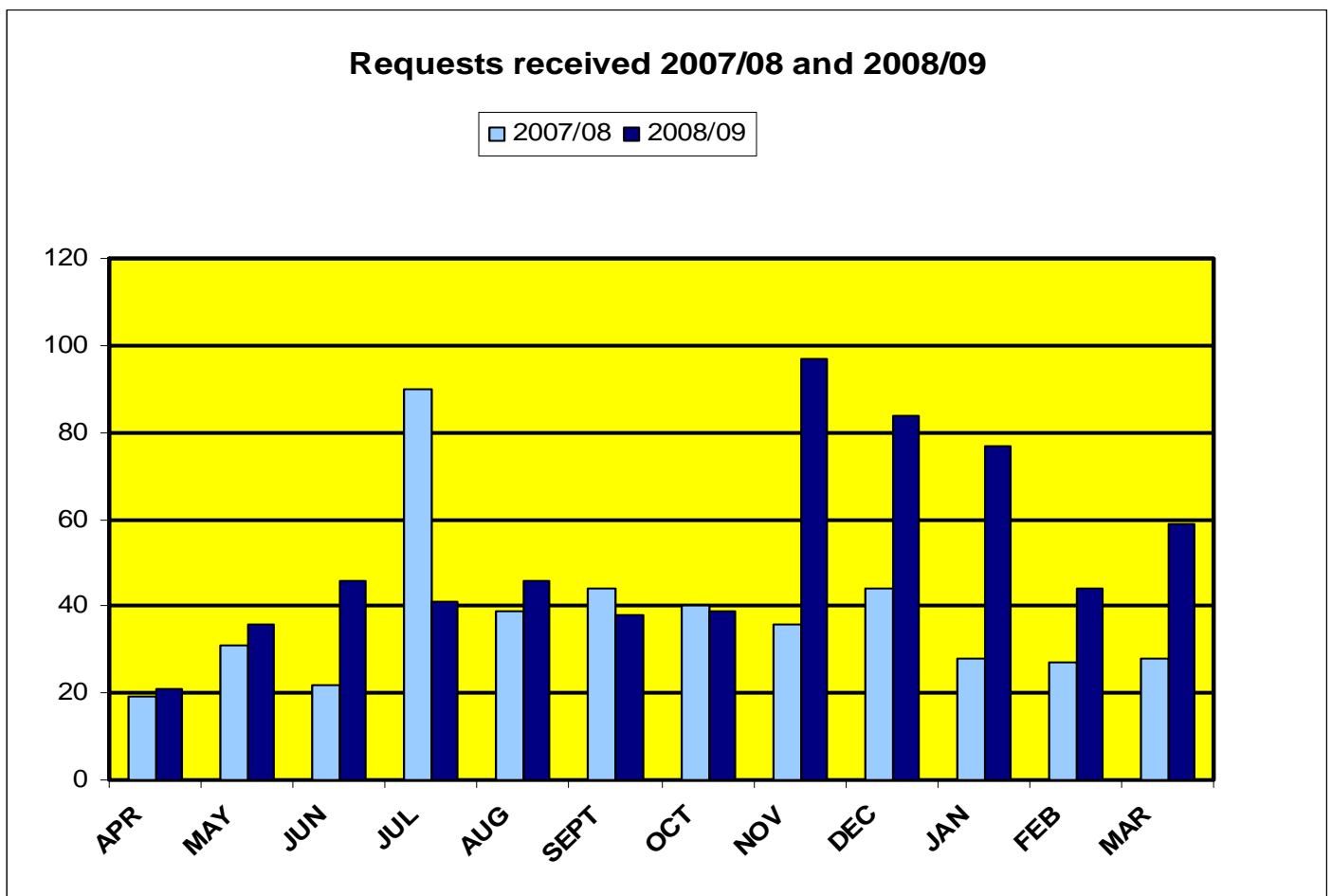
Fig 1 – April 2008 to Mar 2009 - Number of Requests Received



4.2 The overall number of FOI requests received by NHS Greater Glasgow & Clyde during 2008/09 has again increased significantly, with 628 requests received in 2008/09, compared to 448 requests received in 2007/08. This represents a 38% increase from last year. A greatly increased number of requests were submitted in the latter part of the reporting period, due to FOI requests submitted by NHS Greater Glasgow & Clyde employees seeking information on the Agenda for Change process in relation to their posts. While FOI requests from staff seeking information on the Agenda for Change process were received from different categories of staff across the organisation, Pharmacy staff in particular accounted for a large number of the requests in November, December and January.

4.3 Fig 2 below shows a comparison between the number of requests received from April 2007 to March 2008, and the number received from April 2008 to March 2009.

Fig 2 FOI Requests received – 2007/08 and 2008/09



5 SOURCE OF REQUESTS AND SUBJECT MATTER

5.1 A profile of the estimated source of FOI requests is given below at Fig 4 and Table 2. 3 distinct sources – NHS Greater Glasgow & Clyde employees, journalists/media organisations and members of the public – account for approximately 75% of the total number of requests received, with all other categories accounting for the remaining 25% of requests received.

Fig 4 – Indicative Source of Request 2008/09

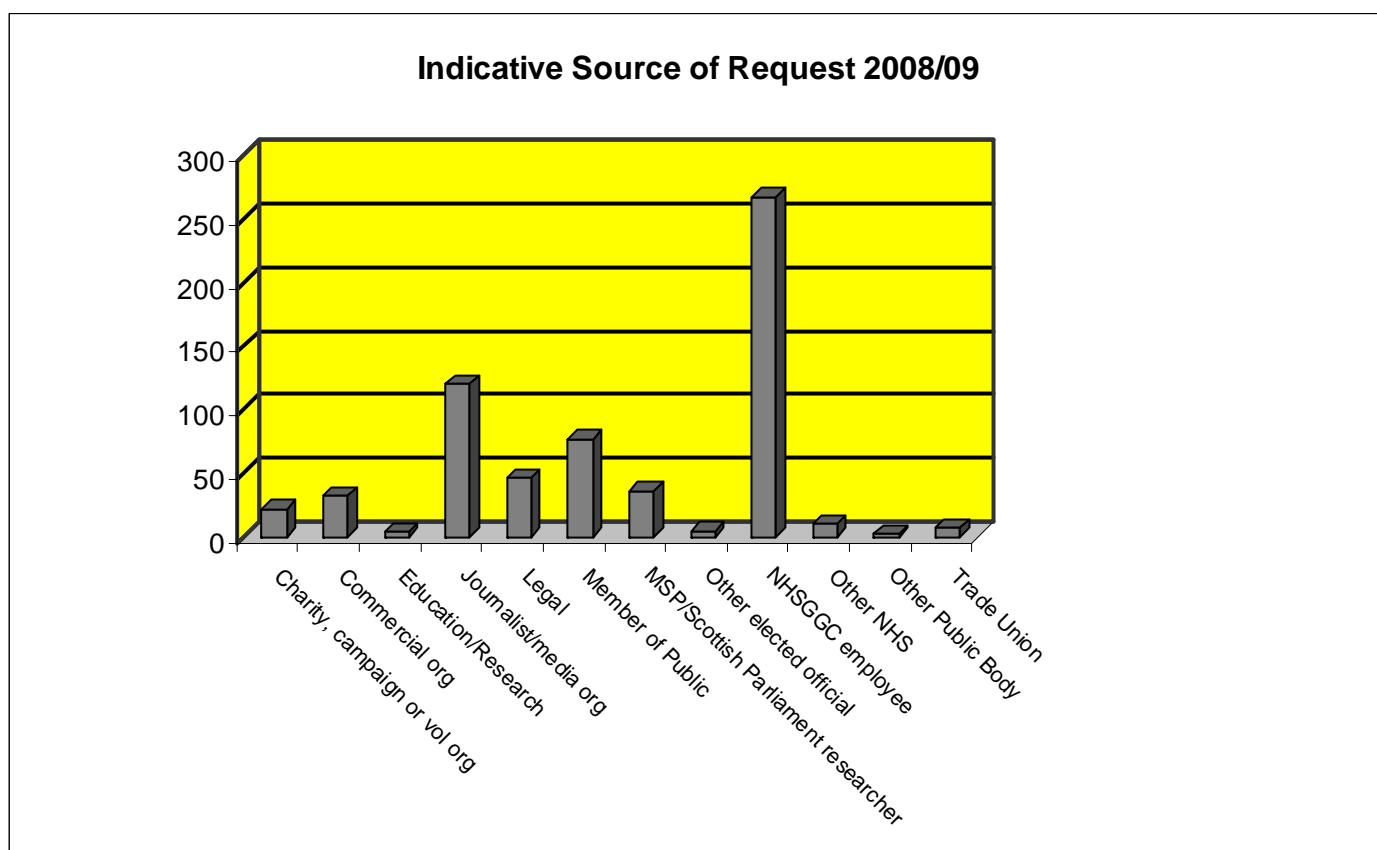


Table 2 – Indicative Source of Request 2008/09

Indicative source of request	2008/09		2007/08	
	Number	%	Number	%
Charity/Campaign/Voluntary organisations	22	3.5	20	4.5
Commercial organisations	32	5.1	13	2.9
Education/research	4	0.6	8	1.8
Journalist/Media organisation	120	19.1	81	18.2
Legal	46	7.3	111	24.9
Individuals	77	12.3	72	16.1
MSP/Scottish Parliament/Other elected official	41	6.5	6	1.3
NHSGG&C Employee	267	42.6	132	29.6
Other NHS	10	1.6	2	0.4
Other Public Body	2	0.3	1	0.2
Trade Unions/Trade Union Officials	7	1.1	2	0.4
Total	628	100%	448	100%

5.2 The figures show a fluctuation in the distribution of requests across the categories from the previous reporting period of 2007/08, as follows:

- As in 2007/08, the most significant increase has been in requests from employees of NHS Greater Glasgow & Clyde, and requests have doubled from 132 in 2007/08 to 267 in 2008/09. In percentage terms, the total number of requests from this group has increased from 29.6% to 42.6%. As indicated in paragraph 4.2 earlier, many of these requests were submitted from employees within a specific job group.

- Requests from legal firms have significantly decreased from 111 in 2007/08 to 46 in 2008/09. Requests from legal firms are generally linked to claims or potential claims. It is thought that the previous higher number of requests from this group was due to inappropriate use of FOI in order to obtain personal information in relation to potential claims.
- The number of requests from journalists/media organisations has increased from 81 in 2007/08 to 120 in 2008/09.
- The number of requests from individuals has only marginally increased from 72 in 2007/08 to 77 in 2008/09.
- The number of requests from charities, campaign or voluntary organisations has increased slightly from 20 in 2007/08 to 22 in 2008/09. The Scottish Information Commissioner has commissioned a 3-year study by Strathclyde University, which aims to explore the extent to which campaign groups and voluntary organisations in Scotland and the UK make use of FOI legislation. The launch of the research follows evidence which suggests that the FOI right to information may not be being used to its full potential by Scotland's voluntary and campaign organisations.
- The number of requests from MSPs, elected officials such as local authority councillors, or Scottish Parliament researchers, has risen significantly from 6 in 2007/08 to 41 in 2008/09. Requests have been received on a wide range of subjects.
- Requests from commercial organisations have also increased from 13 in 2007/08 to 32 in 2008/09. This represents an increased use of the Act to obtain information such as contact details of Directors and Senior Managers within NHS Greater Glasgow & Clyde by commercial companies.

- 5.3 Experience has shown that FOI requests have been received on a wide range of subjects which can be influenced by topical or high profile issues which have generated national, local and media interest, eg outbreaks of infection.
- 5.4 As stated earlier, Agenda for Change has featured heavily in the type of information requested. Employees generally submit requests for information in order to assist them in evidencing a review of their banding outcome under Agenda for Change.
- 5.5 Pharmacy and prescribing issues have attracted a number of requests, including information on applications for inclusion to the pharmaceutical list, and requests for information on 'non-formulary' prescribing, for example high cost cancer drugs.
- 5.6 Other subject areas which have also attracted a number of FOI requests are:
- Infection Control
 - Alcohol and drug use in young people
 - Car Parking policy and charges
 - Health and safety issues and accident reports
 - Clinical services
 - Waiting times
 - Expenses and staff mileage claims
 - Taxi costs and reasons for use
 - Policies and minutes of meetings

5.7 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 information which was the subject of an ongoing investigation; 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 34 (Investigations by Scottish public authorities and proceedings arising out of such investigations) – used to withhold information in relation to ongoing investigations;
- 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

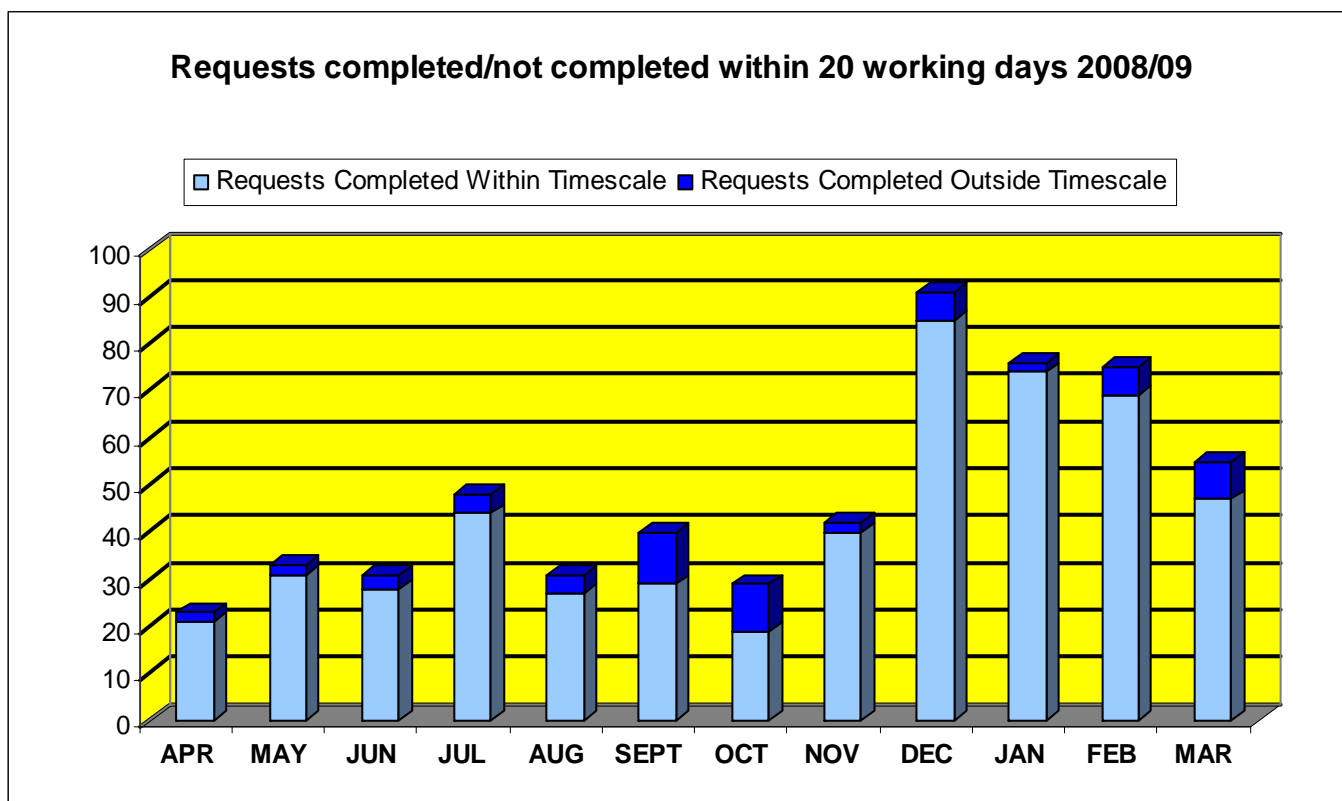
6.1 Overall, 90% of Freedom of Information requests were responded to within the requirement of 20 working days (Table 3). This shows an improvement in the overall number of requests completed within 20 working days, from 76% in 2007/08.

Table 3 – Number and percentage of requests responded to within 20 working days - 2008/09

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Total Number of FOI Requests Responded	23	33	31	48	30	40	29	41	91	76	75	54	571
Number of Requests Completed within 20 Working Days	21	31	28	44	27	29	19	40	85	74	69	47	514
Number of Requests Completed Outwith 20 Working Days	2	2	3	4	4	11	10	2	6	2	6	8	60
Percentage completed within 20 Working Days	91%	94%	90%	92%	90%	73%	66%	98%	93%	97%	92%	87%	90%

6.2 Fig 5 below shows the number of requests completed both within and outside the 20 working day timescale.

Fig 5 – Requests completed/not completed within 20 working day timescale



6.3 The figures show an improvement in performance against the 20 working day timescale from 2007/08, against a background of a significantly increased number of requests. Where requests are not completed within the 20 working day timescale, this continues to be due to reasons such as 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. 4 Non-Executive Directors are trained to participate in Reviews.

7.2 6 Requests for Review were carried out in 2008/09, compared to 12 completed in 2007/08. In 4 of the cases, the outcome of the review fully supported the original position taken by the Board. However in one of the cases, the information previously withheld was subsequently disclosed following completion of an investigation which had precluded the earlier release of the information.

Of the remaining 2 Reviews, one case found that the Board did not adequately respond to part of the applicant’s request for information. The Review recommended that the Board reassess the information using wider parameters, and provide any additional information to the applicant. In the remaining case, the Review found that the Board did not fully address the specifics of the applicant’s request or state clearly if information was not held. The Review recommended that the Board reassess the

information provided to ascertain whether any further information was held and provide additional explanation to the applicant where appropriate.

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 2008/09, none of the applicants who requested a Review have yet applied to the Commissioner for a decision.
- 8.2 1 Decision was issued by the Commissioner in 2008/09 in relation to NHS Greater Glasgow & Clyde and this is summarised in Table 4 below. At the end of the previous reporting period, 2 appeals were still under consideration by the Commissioner. One of these was subsequently withdrawn by the applicant following the release of further information by NHS Greater Glasgow & Clyde. A formal decision is still awaited on the other outstanding appeal submitted to the Commissioner during 2007/08.
- 8.3 A further appeal was submitted to the Commissioner during the reporting period, but was subsequently withdrawn following the release of information to the applicant. However, this appeal had arisen following the submission of a request for information which unfortunately was not recognised as a request under the Act and was not dealt with appropriately. This highlighted a training need which has been addressed locally.
- 8.4 A total of 7 appeals have resulted in 6 Decisions issued by the Scottish Information Commissioner since the Act came into operation on 1 January 2005. Two appeals from the same applicant were dealt with under one Decision as they involved separate but overlapping requests. Of the 7 appeals, 4 Decisions supported the decisions of the Board, with 3 partially upheld. None of the Decisions found in favour of the applicant.

Table 4 – Summary of Decisions Issued in 2008/09

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.

- 8.5 The Scottish Information Commissioner issued his fifth Annual Report in March 2009 and this is summarised in Appendix 1.

9 MONITORING AND DEVELOPMENT

- 9.1 From 1 April 2009 a single computer system (Datix) has been utilised by FOI Officers for the recording, monitoring and reporting of Freedom of Information requests within NHS Greater Glasgow & Clyde. This streamlined the recording of FOI requests with other areas such as Claims, Complaints, Incidents, for which the Datix system is also

utilised providing a uniform approach to recording and reporting of FOI requests across the organisation. Use of the Datix Request for Information (RFI) module is still in the early stages of operation, and minor system refinements are in the process of being highlighted and rectified where appropriate.

- 9.2 Work is due to commence on the development of a new Model Publication Scheme for NHS Boards in Scotland. The Commissioner extended approval of NHS Boards' current schemes until June 2010, with all NHS Boards required to submit their Publication Scheme for re-approval by the end of February 2010. It is anticipated the NHS Greater Glasgow & Clyde will lead work on developing a new model scheme, in conjunction with other NHS Boards in Scotland.
- 9.3 Work has also commenced on the development of an in-house E-learning package which will form part of induction training of new employees, and provide awareness/refresher training for existing staff.
- 9.4 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 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.
- 9.5 In November 2008, the Scottish Government issued a discussion paper on proposals to extend the coverage of the Freedom of Information (Scotland) Act 2002 to contractors who provide services which are a function of a public authority; registered social landlords; and local authority trusts or bodies set up by local authorities. The discussion paper was issued due to concerns about the public having lost rights to access information under the Act from these bodies as a result of changes in how public services are delivered.

No formal report following the discussion paper has as yet been issued. However, the Commissioner's response to the discussion paper was in favour of extending coverage of the Act.

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. Work will also continue on the development of the new Model Publication Scheme, E-learning and awareness training for staff, 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 & 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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APPENDIX 1

SCOTTISH INFORMATION COMMISSIONER – FREEDOM OF INFORMATION ANNUAL REPORT 2009 – KEY FACTS

The Scottish Information Commissioner published his fifth Annual report in March 2009, reviewing the work of the Scottish Information Commissioner's Office in 2008 and setting out his strategic direction for the remainder of his second and final term in Office which ends in 2012.

Applications Overview

- 43% of appeals to the Commissioner in 2008 were in relation to local authorities; 22% related to Ministers and the Scottish Parliament; 8% related to the police and only 6% related to the NHS.
- 73% of applications in 2008 were from members of the public with only 7% from the media. The number of enquiries and applications from the voluntary sector continues to be low.
- The percentage of applicants looking for information on administration and finance matters has shown a marked increase from 17% in 2007 to 24% in 2008. The second most common subject of appeals is safety and crime.
- New applications received fell from 482 in 2007 to 267 in 2008.
- In 2008 the Commissioner closed 174 cases with decision. 127 cases were closed without investigations and 121 were withdrawn or settled.
- By the end of 2008, the Commissioner had issued a total of 768 decisions since the Act came into force.

Performance

- The average age of cases closed during the year came down from 10 months at the end of 2007, to 6.7 month sat the end of 2008.
- By the end of 2008 only 10% of cases had been under investigation for more than 12 months, compared to 29% at the end of 2006.
- A greater number of cases under investigation are being settled or withdrawn (33% during 2008 compared to 32% in 2007) as staff increasingly work with applicants and authorities to broker mutually satisfactory outcomes without the need for formal decision.
- Public awareness of the right to information under the Act increased to 78%.

Highlights of 2008

- The Commissioner launched a new enforcement strategy, with the aim of promoting compliance within public authorities.
- More detailed investigations performance statistics were developed, updated and published every month on the Commissioner's website.
- A Best Value Review was initiated in 2008, to ensure best practice in governance and management. The review will assess the economy, efficiency and effectiveness of the Commissioner's office and will report in early 2009.
- New strategic partnerships were announced, including a three year ESRC-funded research project with University of Strathclyde on use of the FOI Act by voluntary organisations, and the new Centre for FOI in Scotland at the University of Dundee.

Vision and Strategy

- The Commissioner's strategic plan for 2008-2012 – 'A really open Scotland' is available on his website. The strategy has six key themes:
 - Case Closure** - delivering better value for money by continuing to reduce the time taken to close cases and achieving progress towards his strategic objective of completing a greater number of investigations within six months.
 - Compliance** – promoting good practice in the public sector, by identifying authorities which are failing to comply with their obligations under the Act and taken steps, with the authority, to rectify these.
 - Development** – engaging in dialogue about changes to legislation and policy, including further dialogue with the Scottish Government on the expansion of the Act to preserve public rights to information.

Practice – working with partners to advance research and knowledge of FOI, including developing the new partnership with University of Dundee through the work of the Centre for FOI in Scotland.

Awareness – widen awareness, especially amongst specific demographic groups such as the elderly and young people, and improving the public’s understanding of their rights with respect to environmental information.

Reference – capturing and sharing experience with the Commissioner leaves office.

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