

HEAD OF BOARD ADMINISTRATION

**FREEDOM OF INFORMATION:
PRACTICE ASSESSMENT 2011**

Recommendations:

The NHS Board is asked to note the outcome of the Practice Assessment undertaken by the Office of the Scottish Information Commissioner into the NHS Board's handling of information requests in relation to compliance with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and Associated Codes.

Background

- 1.1 The Freedom of Information (Scotland) Act 2002 (FOISA) provides a statutory right of access to information held by Scottish public bodies including NHS Boards. 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 (e.g. in writing or by e-mail). 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. 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. The Act specifies that requests for information and requests for Reviews (internal appeal process) must be responded to within 20 working days.
- 1.2 Under the Environmental Information (Scotland) Regulations 2004 (EIR) there is 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 environment. It may include information about our policies, plans and activities likely to affect the state of human health and safety and the cleanliness of our premises. The EIRs are based on Community Law and can be quite wide ranging in their application.
- 1.3 Under the Act and Regulations the Scottish Information Commissioner has a role in enforcing compliance with the legislation and in promoting best practice. As part of his Enforcement Strategy, the Commissioner is undertaking a programme of Practice Assessments in order to ensure that Scottish public authorities are following good practice in terms of FOISA and EIR.

- 1.4 The Commissioner's programme of Practice Assessments was launched in May 2008 and is now entering its third year. The purpose of the programme is to explore whether an authority's actual practice in dealing with information requests fully complies with its obligations under the legislation and the associated Codes of Practice. During 2010 the Commissioner established a Team to undertake Practice Assessments. The aim of this Team is to work closely with individual authorities where problems may have been identified and assist them to develop practical solutions so that any issues can be quickly resolved.
- 1.5 Following each Assessment, the Commissioner's Team produces a Report which is then passed to the authority for comment. The authority is also asked to produce an Action Plan based on the Report's recommendations. Following this, a final Report and Action Plan are issued to the authority and published on the Commissioner's web site. The authority is given timescales in which to implement any actions, with their subsequent progress being monitored and supported by the Commissioner's staff.

Practice Assessment of NHS GG&C

- 2.1 The Commissioner wrote to the Chief Executive in April 2010 advising that NHS GG&C FOISA practices were to be reviewed as part of his programme of work for 2010/11. In May 2010 it was confirmed that the Practice Assessment would take place over two days, covering 10th and 11th January 2011. The Commissioner identified a number of issues which were to be examined as part of the Assessment. These included:-
- Compliance with timescales laid down in the legislation;
 - Practices used by the Board in searching for information;
 - The responses the Board provided to applicants in responding to requests for information and whether these complied with the legislation;
 - The charging Policies adopted by the Board for the provision of information;
 - The systems in place for recording and tracking requests for information;
 - The Notices issued by the Board where it was claimed that information was not held;
 - The practices followed by the Board when carrying out internal reviews of decisions on the provision or withholding of information;
 - Training provided to staff on the obligations under the legislation;
 - Practices adopted when transferring requests to other organisations.
- 2.2 A Steering Group was set up to prepare for the Practice Assessment with the Freedom of Information Manager and the Head of Administration, Mental Health Partnership leading on the preparations for the visit.

- 2.3 In advance of the two-day visit the Commissioner's staff required a response to a detailed Questionnaire about requests for information received and copies NHSGG&C's Policies and Procedures. In addition 20 responses to requests and supporting documentation was requested and this was followed up with a request for a further 37 requests, this time randomly selected by the Commissioner's Team. A detailed programme of interviews was arranged for the two day Assessment with staff from the Board HQ, Acute Services, Partnerships and Information Governance. An Non-Executive member involved in the Requirement for Review process was also interviewed. The opening meeting on 10th January 2011 was attended by the Chief Executive to set the scene for Assessment. At this meeting the Commissioner's Team advised that the Commissioner had recognised that for an NHS Board covering such a large geographical area and population, and responsible for significant public expenditure only a small number of applications/appeals had been received by the Commissioner in relation to NHSGG&C's handling on FOI requests. The Commissioner was keen to understand if this could be in part attributed to any specific aspects of NHSGG&C's practice in dealing with requests for information.
- 2.4 A closing initial feed-back from the Assessment was provided at the end of day two.

Report on the Assessment

- 3.1 A draft Report on the Assessment was produced by the Assessors and NHSGG&C were given the opportunity to provide comments. In addition under the Commissioner's standard procedure an Action Plan was prepared on issues arising from the Assessment which were identified as requiring attention. The final Report was issued on 16th March 2011 and an updated copy of the Action Plan also published at the same time is attached to this Report. The Report and Action Plan was placed on the Commissioner's Web site on 21st March 2011.
- 3.2 An indication of the outcome of the Assessment can be gained from comments recently published on the Commissioner's web site:-

“The Commissioner recently undertook a Practice Assessment at NHS Greater Glasgow & Clyde (NHSGG&C). It demonstrated that NHSGG&C has embraced FOI and developed a culture of openness, supported by senior management. Several areas of good practice were identified.

For example, the StaffNet has been developed as a training and reference tool, and an interactive e-learning pack is being developed for staff induction and general use. NHSGG&C has a network of FOI specialists based in all of its main service areas. They are supported by corporate specialists, with groups of officers meeting regularly to discuss key issues. The assessors were impressed with the level of performance monitoring and review which was carried out on a regular basis.

NHSGGC strives continually to evaluate and improve its Policies, Procedures and practices, ensuring that it responds to requests for information in a positive and efficient manner. Given its size and complex structure, the Commissioner commends NHSGG&C for its attitude, commitment and practice in relation to FOI.”

Issues Arising

- 4.1 The Assessors did identify one area where it was considered that the Board was not fully compliant with the legislation (Summary and Recommendations - Page 3). That related to the Requirement for Review process. Whilst complementary of the robustness of the Review process and drawing attention to the value of the involvement of Non-Executive Members in that process it was suggested that NHSGG&C was placing a different interpretation than the Commissioner on

the requirement of Section 21 of FOISA. This related to having Policies in place to conduct a Review within 20 working days and notify the outcome to the applicant in that timeframe. The view expressed on behalf of the Commissioner was that additionally the Board had within this timeframe to issue any additional information which the Review determined should be provided. Following further advice and discussion on this point, NHSGG&C Procedures will be amended to comply with the views expressed by the Commissioner. A revised Procedure has now been put in place. This issue aside the Assessors were extremely impressed with the seriousness with which NHSGG&C approached its Review Policies and Procedures. They stated that these allow for a robust and independent Review of the initial response (Paragraph 76).

- 4.2 There were some further areas that were identified where the assessors considered that minor changes in procedure would be appropriate and these suggestions have also been accepted and implemented as listed in the Action Plan. The assessors note at Paragraph 15 that they were able to work constructively with NHSGG&C staff. From a practical view the opportunity to have a constructive review of Procedures was helpful.
- 4.3 It was acknowledged through the Assessment process that NHSGG&C had not placed the same degree of emphasis on the obligations under the EIR as on FOISA. As part of the actions from this Assessment additional information and guidance was produced on the application of EIRs. This information is now being made available to staff.
- 4.4 The Assessors note in the Report a number of areas of excellent practice adopted by the Board including:-
 - The very positive attitude towards FOI and the culture of openness supported by the Chief Executive and senior management (Paragraphs 9 and 11);
 - The level of Monitoring, Review and Reporting on FOI (Paragraph 35)
 - The existence of robust Policies and Procedures to deal with requests and the supporting documentation (Paragraph 92)
 - The emphasis placed on staff training of staff and staff awareness (Paragraph 100)
- 4.5 Alongside the review of the Practice Assessment NHSGG&C has been reviewing Procedures in relation to a new Section 60 Code of Practice issued by Scottish Ministers in December 2010 on the Discharge of Functions under FOI and EIR. Some further refinement of Procedures has arisen from this.
- 4.6 Following publication of the Report a meeting was called to which all Officers within Corporate, Acute Services and Partnerships who lead in their areas as FOI practitioners were invited to attend. There was a full discussion on the issues arising and identification of the changes in practice which will be implemented. Those changes are being rolled out during April 2011.
- 4.7 NHSGG&C will be required to provide the Commissioner's Office with an up-date by 16th September 2011 detailing the actions taken and completed in relation to the Action Plan. This is to include any evidence to demonstrate successful completion of the Action Plan points and a meeting can be arranged with the Commissioner's Office if necessary. As NHSGG&C drew up the Action Plan and provided a very tight timescale for all actions, this Report back will be submitted early and a copy provided to Members for information.

Conclusion

- 5.1 The NHS Board is asked to note the outcome of the Practice Assessment undertaken by the office of the Information Commissioner into the NHS Board's handling of information requests in relation to compliance with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and Associated Codes.

11th April 2011

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Assessment report



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Scottish public authority:	Greater Glasgow Health Board
Dates of on-site assessment:	10 and 11 January 2011
Assessors from OSIC:	Alistair Rennie and Claire Stephen
Date of issue:	16 March 2011

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Executive summary and recommendations

This report sets out the findings of an assessment of Greater Glasgow Health Board, referred to as NHS Greater Glasgow and Clyde (NHSGGC), which was carried out by representatives of the Scottish Information Commissioner (the Commissioner) on 10 and 11 January 2011.

The assessment considered all aspects of NHSGGC's handling of information requests in relation to compliance with the Freedom of information (Scotland) Act 2002 (FOISA), the Environmental Information (Scotland) Regulations (the EIRs) and the associated Codes of Practice.

The Commissioner considered it appropriate when selecting NHSGGC, to carry out an assessment of a health board covering a large geographical area with a large population, and responsible for significant public expenditure, as part of his Assessment Programme for 2010/2011. The Commissioner also recognised that he had only had a small number of applications made to him in relation to NHSGGC and was keen to understand if this could in part be attributed to any specific aspects of NHSGGC's practice in dealing with requests for information.

In preparing for this assessment, the assessors were encouraged with the quality of NHSGGC's submissions in relation to the self assessment questionnaire, completed in advance of the assessors' on-site visit. The assessors noted during discussions that in preparing for the assessment NHSGGC had set up a specific "working group" to ensure that it was adequately prepared.

In conducting the on-site part of the assessment, the initial positive impressions formed by the assessors were confirmed. After an opening meeting which included NHSGGC's Chief Executive and other senior members of staff responsible for matters relating to Freedom of Information (FOI), it became clear to the assessors that NHSGGC has embraced FOI and developed a culture of openness that is evident throughout the organisation and which is supported and encouraged by the Chief Executive and senior management. This positive culture was demonstrated further during the assessors' interviews and meetings with various staff from within the organisation and during an interview with one of NHSGGC's Non Executive Directors, responsible for carrying out requirements for review.

The assessors identified a number of areas of good and excellent practice, which are identified in this report, and it was also evident to the assessors that NHSGGC as an organisation strives to continually evaluate and improve its policies, procedures and practices to ensure that it continues to respond to requests for information in a positive and efficient manner.

Given the size and complex structure of this organisation and the particular challenges that these present, the Commissioner considers that NHSGGC should be commended for its attitude, commitment and practices towards its FOI obligations.

There was one particular area within NHSGGC's otherwise very robust review process which requires to be amended to ensure that it complies with the relevant legislation and Codes of Practice, the details of which are contained in this report. Additionally, the assessors noted some areas of practice where there is scope for further improvement. These recommendations are set out in detail within the body of this report and are summarised in tabular form at the end of the report.



Scope and objectives of assessment

1. The purpose of the assessment was to establish whether NHSGGC was complying with good practice in dealing with requests for information in terms of the **Freedom of Information (Scotland) Act 2002 (FOISA)**, the **Environmental Information (Scotland) Regulations 2004 (the EIRs)** and the associated Codes of Practice¹, and to identify and make recommendations in relation to areas where procedure and practice were not in line with expected good practice, but also to highlight areas of good practice where identified.
2. The assessment considered all aspects of the way in which NHSGGC handled information requests. In preparing for the assessment the following areas were identified for consideration and discussion:
 - Compliance with timescales laid down in the legislation
 - The practices NHSGGC uses when carrying out searches for information requested
 - The content of notices provided to requestors when responding to information requests
 - Recognition of NHSGGC's obligations where it is seeking to make a charge for information, or refusing to provide it on grounds of excessive cost
 - The systems used by NHSGGC for handling, managing and tracking FOISA and EIR requests
 - The practices used by NHSGGC when carrying out a review of its decision whether to release information
 - Definition of an FOISA and EIR request as opposed to a request dealt with as "business as usual"
 - Training provided to staff involved in receiving and responding to information requests
 - The practices used by NHSGGC in relation to transferring requests for information.

Assessment process

3. NHSGGC was notified of the Commissioner's intention to carry out an assessment in a letter dated 7 April 2010. Alistair Rennie and Claire Stephen (the assessors) conducted the on-site part of the assessment on behalf of the Commissioner on the 10 and 11 January 2011. During these two days, they met the following members of NHSGGC staff and a Non Executive Director.
 - Chief Executive, NHSGGC
 - Head of Board Administration, Corporate HQ, NHSGGC
 - Head of Administration, Mental Health Partnership, NHSGGC
 - Head of Administration, Acute Services Division, NHSGGC
 - Head of Administration West Dunbartonshire Community Health & Care Partnership, NHSGGC
 - Associate Director of Communications, NHSGGC

¹ The relevant Codes of Practice are the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities Under the Freedom of Information (Scotland) Act 2002 (referred to in this report as "the section 60 Code of Practice") and the Code of Practice on the Environmental Information (Scotland) Regulations 2004 for Scottish Public Authorities (referred to in this report as the "section 62 Code of Practice"). It should be noted that the assessment did not assess compliance with the Freedom of Information (Scotland) Act Code of Practice on Records Management (commonly referred to as "the section 61 code").



- FOI Manager, NHSGGC
 - Information Governance Manager, NHSGGC
 - Corporate Administration Officer, Acute Services Division, NHSGGC
4. In conducting the assessment, the assessors worked through a list of questions which had been prepared in advance of the on-site assessment, based on the responses received to the pre-assessment questionnaire and the policies and procedures NHSGGC had provided in advance of the assessment.
 5. The assessors also made reference to the assessment checklist published within the Commissioner's Investigations and Enforcement Procedures² to ensure that each relevant area of practice had been considered and appropriate evidence gathered.
 6. The assessors did not review in detail NHSGGC's publication scheme, as this was only recently re-approved in 2010. The assessors noted however that NHSGGC's Head of Administration, Mental Health Partnership, had played a key role in the consultation and introduction of the Scottish health board's new model publication scheme which was developed in conjunction with the Commissioner's Office.
 7. At the end of the assessment, a concluding meeting was held with the Head of Board Administration, the Head of Administration, Mental Health Partnership, and the FOI Manager. This meeting provided an opportunity for the assessors to feedback on the key findings of the assessment. The feedback provided in that meeting is reflected and expanded upon in the points addressed below.

Overview: culture and practice

8. As one of 14 Health Boards operating across defined geographical areas in Scotland, NHSGGC is responsible for local health planning and improvement and for the delivery of hospital, community and primary care services in the Greater Glasgow and Clyde area. The main governing body of NHSGGC is the Board, which comprises a Chairman, 5 Executive Directors and 26 other members, who have overall responsibility for the strategic decisions and management of the organisation. As an integral part of how NHSGGC plans and delivers health services, there are also currently 3 Community Health Partnerships (CHPs) across Greater Glasgow and Clyde, and 3 Community Health and Care Partnerships (CHCPs). The latter are also responsible for delivering local social work services. Some services to NHSGGC residents are also provided by North and South Lanarkshire CHCPs (established by Lanarkshire Health Board). NHSGGC also has a Mental Health Partnership, which is collaboration between the Board, local authorities and the CHCPs. In delivering its services, NHSGGC employs over 40,000 staff and covers one of the most densely populated areas in Scotland.
9. As has previously been noted, the assessors were very impressed with NHSGGC's positive attitude towards FOI and the clear culture of openness that exists within the organisation. It was also apparent to the assessors that those involved in FOI take pride in the policies and

² Available online at http://www.itspublicknowledge.info/web/FILES/publication_scheme/Investigations_Enforcement_Proc_v8.pdf



procedures they have developed and that a strong culture of support has built up to ensure that in such a large organisation, each employee is aware of their obligations in relation to FOI and who to approach for assistance when it is required.

10. The focus on training is also a strong point within NHSGGC, which is reflected in the development of its staff intranet site as a training and reference tool, along with the current development of an interactive E-Learning pack, which will be introduced into the staff induction programme and will be available to all staff on an ongoing basis.
11. Although overall strategic responsibility for FOI lies with the Chief Executive, the day-to-day management of the FOI function falls at a senior level to the Head of Board Administration. NHSGGC's structures and processes in relation to FOI to an extent reflect the size of the organisation: consequently, although all employees have responsibility for responding to requests for information, the organisation has a network of FOI specialists based in each of its main service areas. These individuals are primarily responsible for dealing with FOI requests into their particular areas and will utilise an additional network of staff from within the various departments in each of these areas to identify information relevant to a request.
12. Additionally, within Corporate HQ there is a small team of FOI specialists who deal with a wide range of specific and organisation-wide requests which come into NHSGGC. This team includes the Head of Board Administration, NHSGGC's FOI Manager and NHSGGC's Public Affairs Manager. The FOI Manager is the main point of contact for matters arising, both internally and externally, in relation to FOI and provides a vital support role to the other FOI specialists throughout the organisation.
13. For logging, tracking and monitoring FOI requests, NHSGGC utilises a case management system called "Datix", a commercially provided sub-set of a risk management system. Other mechanisms, both electronic and paper-based, are used to support the "Datix" system.
14. Core to its FOI function, NHSGGC has in place an FOI Steering Group which meets on a regular basis to discuss a wide range of issues relating to FOI. This group is made up from key staff with responsibilities relevant to FOI and includes specialists from areas such as data protection, records management and the media section.
15. Although the assessors noted a small number of areas where there is scope for improvement to ensure compliance with the statutory requirements of FOISA and the EIRs, in identifying these areas the assessors were able to work constructively with NHSGGC's staff and it was further evident to the assessors that there is a clear desire to take on board any recommendations arising from the assessment to ensure that NHSGGC's process remain robust going forward.

Detailed outcomes, findings and recommendations

16. The following sections provide details of the main areas of practice assessed and addressed in the assessors' findings and any associated recommendations. No comment is made in this report on areas where there is no evidence of practice. From the information reviewed NHSGGC has not:



- Been required to consider extending the timescales for complying with a request for environmental information under regulation 7 of the EIRs, or received a request for review under the EIRs (with the consequence that it has not had to comply with regulation 16)
 - Sought to withhold information under the EIRs, with the consequence it has not had to comply with the terms of regulation 13
 - Issued a refusal notice in terms of section 18 of FOISA (“Neither confirm nor deny”)
 - Issued a refusal notice in terms of section 13 of FOISA
 - Issued a fees notice in terms of section 9 of FOISA or regulation 8 of the EIRs
 - Transferred any requests for information to other Scottish public authorities or been in receipt of a transfer from another Scottish public authority.
17. From the evidence reviewed by the assessors, they were satisfied that NHSGGC complies fully with FOISA, the EIRs and the associated Codes of Practice in relation to the following matters, and as a consequence these are not covered further in this report:
- Requests treated as “business as usual”, as opposed to under FOISA and/or the EIRs (depending on the appropriate regime)
 - Handling requests from employees and other stakeholders under FOISA and/or the EIRs (depending on the appropriate regime)
 - Advice and assistance relating to equality issues
 - Standard text and clauses inserted into NHSGGC’s own contracts in relation to FOISA and/or the EIRs (depending on the appropriate regime)
 - NHSGGC’s publication scheme, which was re-approved using the new health board model publication scheme template, in 2010
 - Recognising a request for information under FOISA
 - Issuing a notice under section 25 of FOISA (information otherwise accessible)
 - Issuing a notice under section 27 of FOISA (information intended for future publication).

Receipt of requests and recording systems

18. Both from discussions with NHSGGC and analysis of the sample requests received, it was evident that the majority of information requests come into NHSGGC via email. These emails are received primarily into one of 4 mailbox addresses. FOI specific mailboxes have been established for Board Headquarters, Media, Acute Services Division and Mental Health Partnerships / Community Health Partnerships. Requests are also received by letter. Where requestors choose to write to NHSGGC, they are advised to write to Board Headquarters. NHSGGC acknowledged, however, that in practice, letters or emails requesting information could be received anywhere within the organisation. All relevant contact details are provided on NHSGGC’s website.
19. Although all staff within NHSGGC have responsibilities to identify and respond to requests for information under FOISA and the EIRs, in practice requests will generally be passed to one of the FOI specialists based in one of the main service areas (as detailed above) to deal with.
20. When a request for information has been received, the person dealing with the request will initially check to confirm if it is a request their area should be dealing with. If it is not, the request will be passed to the appropriate area or may be passed to the FOI Manager, based in



Board Administration, Corporate HQ, to deal with. If the request is for information which might be held by more than one area, i.e. multi-service requests, these will be passed to the FOI Manager to deal with centrally. The FOI Manager will then manage the collection of information from the various areas and, along with coordinating this activity, will be responsible for sending out the response to the requestor.

21. The request will then be logged onto NHSGGC's case management system, "Datix". This system is multifunctional and can be accessed throughout the organisation (with the exception currently of one CHP). It is not only used for dealing with requests under FOISA and the EIRs, but is also used to manage complaints, incident reporting, requests for information under the Data Protection Act 1998 (DPA) and parliamentary questions. NHSGGC has produced a "minimum data set" requirement for logging requests into the Datix system. Although "Datix" already contained certain mandatory fields, the decision to produce a "minimum data set" was taken with a view to improving consistency and to allow for enhanced FOI performance reporting. Training in relation to the new "minimum data set" requirements was conducted in 2010.
22. Logging a request into "Datix" produces a unique reference number. An additional local reference number can also be created if required. The unique reference number provides the primary basis for reporting and allows a means of monitoring and tracking requests at a local level. This was demonstrated during discussions with representatives from the Acute Services Division. A comprehensive range of information (which is now in line with the minimum data set) is then input by the individual dealing with the request. "Datix" has the capability to attach copies of the correspondence relating to the request onto the case file. The Board is moving to ensure that key documents such as the request, any clarification sought, and the response (including any attachments) are uploaded to each individual FOI record. The wording of the actual request is manually inputted into the system. "Datix" calculates the due response date applicable to a request. This date excludes Saturdays and Sundays and certain public holidays. Although accurate most of the time, this calculation is not fully compliant with the definition of working days in s.73 of the Act because of the use of the "Datix" system to record other processes e.g. the timescale for complaints response which use a different basis. Consequently a manual adjustment is sometimes required to ensure accuracy. The status of the request is also inputted along with the request details. "Datix" has the facility to generate reminders to ensure that requests are dealt with within 20 working days, although it was pointed out by the FOI Manager that currently the reminders are generated on the twentieth working day, which it was acknowledged is too late to be of practical benefit to the organisation. In practice, staff do not rely on this "reminder system" and instead use their "Outlook" calendars or other systems to manage timescales relating to requests. However, the FOI Manager confirmed that it would be possible to investigate whether "Datix" could be updated cost effectively to allow earlier warnings to be set up.
23. Working practices vary slightly from office to office, but typically where a request is to be dealt with by the FOI Manager, once it has been logged onto "Datix" an acknowledgment is sent to the requestor. The FOI Manager then uses "Outlook" to set up a case specific folder, where all information relating to the request is kept. If the request was made in hard copy, a scanned copy of the request is maintained in this electronic folder. Other service areas dealing with requests use electronic systems to monitor, track and hold information relating to requests. In all but two CHPs referred to above "Datix" is used for logging all requests, and it is intended that they will go live on the system soon



24. If the request has been logged by the FOI Manager, but is to be dealt with by another area(s), the FOI Manager will then email the appropriate area/person, copying in senior management of that department with details of the request and the unique reference number. Responsibility for dealing with the request then falls within that particular area.
25. Staff have access to standard template letters for responding to requests for information under FOISA/EIRs via NHSGGC's intranet-site, these letters can also be accessed in "Datix"
26. Requests for review received by NHSGGC are currently not input into the "Datix" system. The review process is discussed in more detail later in this report, but for the purposes of logging, tracking and monitoring requests for review the assessors noted that the process is managed by NHSGGC's Head of Board Administration. The review itself is conducted by a Non-Executive Director. From discussions with one of the Non-Executive Directors responsible for carrying out reviews, it became evident that these Directors use a paper-based process for managing this activity. It was pointed out to the assessors, however that NHSGGC will consider the merits of utilising the "Datix" system for logging and managing the review process, a proposal the assessors considered to have merit, considering the evolving importance that is being attached to "Datix" in managing initial requests and the benefits it presents with respect to producing performance reports.
27. Conclusion/recommendations: Although requests are monitored and tracked in different ways within the organisation, the evidence suggests that this approach is working effectively. "Datix", however, is used universally to log requests and the assessors were impressed with the manner in which all these processes combine to ensure that requests for information are processed efficiently and that NHSGGC is in a position to extract detailed reports to analyse performance and report to senior management and the Board. The assessors would, however, recommend that NHSGGC pursues the suggested use of "Datix" into its review process to ensure a consistent approach to the management of requests, whether these are initial requests or requests for review.

Adequacy of administrative arrangements

28. Requests received by NHSGGC are dealt with by one of four areas: Board Administration, Communications, Acute Services Division and Partnerships. There are efficient procedures in place to ensure that the request has been directed to and handled by the correct department, and to identify where it is anticipated that a co-ordinated response may be required. Where it is established by the department receiving the request (or the FOI Manager) that the request was for information which relates to more than one area, the FOI Manager will coordinate the response centrally and issue the response to the requestor. Where the FOI Manager is coordinating a response, senior staff from the department(s) the request has been sent to is copied into the correspondence. This is done with a view to utilising their knowledge and experience of the information they hold within their particular department(s), allowing the FOI Manager to quickly redirect the request should this be necessary to another department.
29. It was established that NHSGGC has suitable cover in place for periods of annual leave or other unplanned absence of those responsible for responding to requests. For example, in Board Administration, the FOI Manager is supported by the Head of Board Administration. NHSGGC has also allocated additional administrative resource to the FOI Manager with a



view to enhancing the cover already in place. Discussions with representatives from Acute Services Division and from one of the CH(C)Ps further demonstrated the importance the organisation places on ensuring that there is sufficient resilience in place to ensure that FOI responsibilities are not adversely affected by planned or unplanned absence.

30. The decision as to whether to release or withhold information lies with the individual member of staff dealing with the request through discussions with the departmental “owner” of the information in question. In practice, this will usually be one of the FOI specialists based in each of the four main areas within the organisation. However, should a non FOI specialist be required to issue a response, he or she can seek advice from their local FOI specialist or can make contact directly with the FOI Manager. All individuals also have access to the staff intranet site, which provides a comprehensive range of tools and information to assist the member of staff in preparing a response, including access to standard template letters and easy to follow process maps.
31. It was explained to the assessors that a considerable amount of information/documentation relating to each request is maintained in “Datix”, unless the volume of the data to be included was of high volume or in a format that could not be attached to the “Datix” record. . The reasons for this were discussed with the assessors and the assessors were satisfied that these were valid. It should be pointed out, however, that NHSGGC procedures require a full audit trail of all information/documentation for each case to be maintained, and consequently this is done utilizing the various electronic systems (such as “Outlook email” and shared drives) that staff use in processing requests. From conducting the request analysis, the assessors did identify a small number of cases where it was apparent that discussions between the requestor and NHSGGC had taken place, but that file notes had not been maintained on file to reflect these conversations. It was clear, however, from discussions with staff that it is understood that this is part of NHSGGC’s procedures and why it is important to do this.
32. In recognising its responsibilities under the new FOI legislation, NHSGGC set up its FOI Steering Group in 2003, initially to steer implementation of the legislation and develop the first Publication Scheme and subsequently to co-ordinate activity in this field. This group brings together key members of staff with FOI responsibilities on a quarterly basis to discuss matters relating to FOI. These meetings are also used as an opportunity to carry out training and to draw lessons from requests for review received by NHSGGC and applications made to the Commissioner relating to the authority. These meetings are seen as a mechanism for extending the collective knowledge of the operation of FOISA/EIRs within NHSGGC. An FOI Steering Group Update Paper is produced for discussion at each of these meetings which summarizes requests for reviews and recent decisions published in relation to NHSGGC and elsewhere. Steering Group members will disseminate information to staff within their areas accordingly.
33. NHSGGC has also recently established a Public Affairs Group, which meets on a weekly basis, bringing together representatives from the Board Corporate functions within the authority, primarily to discuss topical issues. This forum allows NHSGGC to keep abreast of the types of FOISA requests that are being received by the authority, along with parliamentary questions. This forum allows NHSGGC to highlight any common themes, topical/sensitive issues and similar or identical requests which are received throughout the organisation. This ensures consistency in responses and the effective use of resources. The assessors noted,



through discussions with staff, the enthusiasm for this forum and it was evident that that it is considered by staff to add considerable value, as a means of securing real-time knowledge of the topical issues facing the organisation.

34. NHSGGC conducts quarterly monitoring of the Board's compliance in completing requests for information within 20 working days. This is reviewed at the Performance Review Group, a Standing Committee of the NHS Board whose membership comprises solely Non-Executive Directors of the Board. An annual FOI Monitoring Report to the NHSGGC Board is also produced. This provides a comprehensive overview of the organisation's performance in relation to FOI for the financial year.
35. Conclusions/recommendations: The assessors were satisfied with the administrative arrangements NHSGGC has in place in dealing with requests for information under FOISA/EIRs. The assessors were particularly impressed with how NHSGGC utilises the FOI Steering Group and the Public Affairs Group in helping it to fulfill its obligations under FOI effectively and were further impressed with the level of monitoring and reporting it undertakes as an organisation. The assessors commend NHSGGC on its practices as outlined above. The assessors would recommend, however, that NHSGGC remind staff to ensure that they are fully aware of the importance of maintaining a full audit trail of all discussions with requestors.

Records management and searching

36. It is essential to successful request handling that an authority is able to identify and retrieve the information it holds on receipt of a request. NHSGGC holds a considerable amount of information which is held both electronically and in paper-based format. NHSGGC utilises the Scottish Government Records Management: NHS Code of Practice³ and has in place a retention schedule. The organisation has a Board Archivist, who is also a member of the FOI Steering Group. Electronic records management comes under the remit of the Information Governance Manager, who as with the Board Archivist is a member of the FOI Steering Group. It was noted by the assessors that as an organisation NHSGGC holds a significant amount of information about individuals in the form of medical records, consequently as an organisation it receives a significant amount of requests for those records, which are governed by the terms of the DPA.
37. It was evident from discussions with staff that there is considerable knowledge of what information is held within the organisation, although due to its size it was emphasised to the assessors that it is essential for the FOI Specialists to build up effective working relationships with a network of staff in all the different departments/areas within their Divisions, to effectively identify and collate information pertinent to requests received. NHSGGC recognises the importance of staff with local knowledge of their particular areas in enabling the FOI specialists to be confident that adequate searches have been conducted. The assessors noted that those putting responses together are expected to receive details of the searches carried out, especially where it has been established that the information requested is not held. Staff interviewed were confident in challenging the searches carried out, should this be thought necessary. They also acknowledged the importance of this should a request for review be received or an application be made to the Commissioner in due course.

³ <http://www.scotland.gov.uk/Resource/Doc/230203/0062364.pdf>



38. Conclusion/recommendation: The assessors were satisfied that NHSGGC has a robust records management policy in place, with excellent processes and expertise to ensure that proper searches are being carried out to identify information which would fall within the scope of the request, prior to making a response to the requestor.

Timescales for compliance

39. An authority in receipt of a request for information (including environmental information) must respond promptly and no later (with certain exceptions) than the 20th working day following receipt of the request.⁴
40. An authority receiving a requirement for review of its handling of an information request must conduct a review and notify the applicant of its decision promptly and no later (with certain specified exemptions) than the 20th working day following receipt of the requirement.⁵
41. Prior to the introduction of “Datix”, information relating to requests was held on a number of different systems, making the obligation to monitor and report on the organisations compliance with the legislation challenging. As previously noted, although methods of monitoring and tracking requests vary on a local basis, “Datix” is used universally to log and eventually close off all requests. Consequently, all reporting is now done through “Datix”. This has simplified the reporting process. The benefits of using “Datix” have also been recently enhanced with the introduction of the “minimum data set” requirements, which amongst other things allows for accurate and more comprehensive reports to be produced to help the organisation monitor its compliance with, for example, timescales.
42. Having reviewed the sample of 56 requests received by NHSGGC in 2009 and 2010, the assessors noted 6 cases from 2009 and 5 cases from 2010 which had been responded to outwith the required 20 working days. The assessors noted that from this sample, in 1 case from 2009 and in 2 cases from 2010, the responses had been made in two stages. The initial responses were within the statutory timescales in each case, but because they informed the requestor that additional information pertinent to the request would be forwarded in due course, the date for compliance purposes with section 10 of FOISA (and regulation 5 of the EIRs) must be based on the date the second response was issued. The assessors discussed this position with the FOI Manager and it was acknowledged that the full response must be provided to the requestor within the allowed 20 working day timeframe.
43. The assessors also examined 4 requests for review dealt with by NHSGGC in 2009 and 2010. At the time of the assessment, NHSGGC had received 6 requests for review for the financial year 2010/11. In the financial year 2009/10 it received 4 requests for review.
44. The assessors noted from the sample of 4 reviews examined that on 3 occasions, NHSGGC failed to complete the review and respond to the requestor within the required 20 working days timeframe. NHSGGC’s review process will be discussed at greater length further in this report, but at this point it is appropriate to confirm that the assessors considered the authority’s review procedures to be robust and an example of very good practice. Consequently, the apparent failure to respond to these requests for review within 20 working days was

⁴ Section 10 of FOISA and regulations 5 and 13 of the EIRs

⁵ Section 21 of FOISA and regulation 16 of the EIRs



disappointing to note and surprising given the importance NHSGGC attaches to the review process. The assessors discussed this situation in detail with the FOI Manager and the Head of Board Administration, who has overall responsibility for the review process within NHSGGC.

45. Reviews are conducted by a Non-Executive Director. Evidence gained confirms that this is a comprehensive review: once it has been completed, the report produced by the Non-Executive Director is passed to the Head of Board Administration to respond to the requestor. It was noted, however, that the review may recommend that certain actions be taken and it has been NHSGGC's interpretation thus far that notification of the decision on the review has been communicated satisfies the requirements of section 21(4) of FOISA. Consequently, it has taken the view that actions arising from that review do not require to be carried out within the 20 working day period following receipt of the request for review. It was clear to the assessors that this approach has not been taken to be in any way obstructive, rather it appears that this has simply been the Board's interpretation of section 21 of FOISA.
46. The assessors noted that in 2 of the 3 reviews examined where the response was outwith the allowed 20 working days, the actual review had been completed by the Non-Executive Director and passed to the Head of Board Administration within 20 working days, but the decision to the requestor was issued beyond this timeframe. It was noted that in 1 case the Non-Executive Director's review was not completed within 20 working days. An understanding appears to have been formed that FOISA allows an additional period to provide any additional information arising from the review decision to the requestor once the review has been conducted, although the Head of Board Administration emphasised that the goal has been to issue a response where possible the day after the review report has been completed by the Non-Executive Director.
47. This position explains why from the sample of reviews examined, NHSGGC has a disproportionately high number of review cases that are not responded to fully within 20 working days. Following detailed discussions relating to the interpretation and application of section 21 of FOISA, the assessors and NHSGGC agreed that they would each seek advice on this aspect before deciding on a course of action. It was emphasised by NHSGGC, however, that as an authority they would be happy to accept the guidance and clarification provided by the Commissioner on the interpretation of this section, but felt that the Commissioner's interpretation of s.21 of FOISA in this context may adversely impact on the quality of the review process.
48. It is the Commissioner's position that it is the intention of section 21(4) of FOISA that an authority's review process should allow it to conduct the review **and** carry out any actions arising from that review within the 20 working day statutory time frame. Having investigated this issue further with NHSGGC, the assessors are satisfied that the approach taken by NHSGGC to date was not in any way an attempt to be obstructive, however, but rather a genuine misunderstanding of the intention behind section 21(4) of FOISA.
49. Conclusion/recommendations: Overall the assessors were satisfied that NHSGGC has suitable processes in place to track its performance in relation to responding to requests for information within the statutory timescales. Performance is reviewed regularly and actions are taken to address issues where they are identified. The assessors would recommend, however, to ensure compliance with statutory timescales, that NHSGGC ensures requestors are provided with a full response wherever possible. In relation to its review process,



NHSGGC should ensure that a full response to the request for review can be issued to the requestor within 20 working days of receiving notification of that request for review.

Content of refusal notices

50. When information is being withheld in response to an information request, the requestor should be given a refusal notice which:
 - Discloses that the authority holds the information requested
 - States that the information is exempt information
 - Specifies which exemption has been judged to apply: and
 - States (if not otherwise apparent) why the exemption applies.⁶
51. Where the exemption claimed is subject to the public interest test, the notice must also state why, in all the circumstances of the case, the authority has judged that the public interest in maintaining the exemption outweighs that in disclosure of the information.⁷
52. Any such refusal notice must also provide details of the authority's procedure for dealing with complaints about its handling of requests for information and the applicant's right of review and application to the Commissioner.⁸
53. Broadly the same requirements are set-out in the EIRs.⁹
54. From the sample of requests examined, the assessors were satisfied that NHSGGC provides sufficiently detailed explanations to support the application of any exemptions that it wishes to cite when withholding information. The assessors were further satisfied that where applicable, NHSGGC gave consideration to the public interest test before deciding on its course of action.
55. To illustrate this, the assessors noted that in case reference number 2904 from 2010, the requestor was looking for information relating to a contract. In putting together its response, NHSGGC approached the 3rd party involved in the contract seeking their views on the disclosure of the information. The 3rd party initially responded by citing commercial sensitivity to a large part of the information contained in the contract. After reviewing the comments received by the 3rd party, and on forming its own view, NHSGGC were not persuaded by the 3rd party's application of section 33(1)(b) to all the information the 3rd party had identified as being commercially sensitive. Discussions between the 3rd party and NHSGGC resulted in the release of more information than the 3rd party had originally agreed to, although mutual agreement was reached with the 3rd party as to the information provided in the response. The assessors were impressed with NHSGGC's determination to question the arguments provided to it from the 3rd party.
56. It was clear to the assessors from looking at the sample requests and from discussions with staff that the ethos within NHSGGC is to provide as much information as possible in response to requests it receives. This was particularly evident in discussions with the Corporate

⁶ Section 16 of FOISA

⁷ Section 16(2) FOISA

⁸ Section 47(1) of FOISA

⁹ Regulation 13 of the EIRs



Communications section, where the default position is to disclose the information and discussions focus on how to present the information and the provision of context rather than consideration of whether the information should be withheld.

57. The assessors noted, however, some minor areas where NHSGGC is currently not fully compliant with the statutory requirements under FOISA/EIRs and Codes of Practice and these are detailed in the following paragraphs.
58. The assessors noted in 1 case (case reference 2127 from 2010) from the sample of requests analysed, that NHSGGC had applied an exemption when in the same response it stated that the information was not held. The assessors noted from the self-assessment questionnaire that NHSGGC had acknowledged there is no requirement to go onto to explain what exemption might apply, should the information have been held, where it does not in fact hold the information. The assessors were satisfied that NHSGGC has picked up on this point and that for the future it will refrain from providing such arguments in relation to information not held.
59. In responding to requests for information, NHSGGC has a suite of standard template letters: although their use is not mandatory, all staff responding to requests have access to them either via the “Datix” system or via the staff intranet site. These letters are colour coded to indicate the fields which are mandatory, text which offers guidance and text that should be inserted depending on the circumstances of the case. In general, these standard letters contain all the required information to ensure compliance with the legislation. However, despite their existence the assessors noted a number of responses where the requestor appeared to not be provided with full details of their rights in relation to their request for information. In discussion, the Board officers were clear that the full right of review and subsequent appeal to the Scottish Information Commissioner must be included in all responses.
60. Alongside its suite of template letters, within its procedures NHSGGC also requires the member of staff responding to the request to include a copy of its Requirement for Review Procedure. It is also recommended in the procedures that the Request for Review pro-forma be enclosed for the requestor to return should a request for review be required. The assessors considered the inclusion of each of these forms to be further evidence of good practice demonstrated by NHSGGC. However it was evident from looking at the sample requests and from discussions with staff that the standard letters are not always utilised and it was at times unclear whether all the required attachments were included in the authority’s response. It was also noted that an abbreviated version of the Request for Review pro-forma is also being used by some staff, which (rather than being a separate attachment) is included in the main body of the response letter.
61. From the sample of review cases examined by the assessors, it was noted that the requestor’s right to apply to the Commissioner, should they be dissatisfied with the outcome of their request for review, was provided in each case. However, in 2 of these cases the requestor was not informed that they had 6 months from receipt of the response to the request for review in which to do this. The assessors also noted that that none of these responses provided



requestors with details of their right to apply to the Court of Session on a point of law should they be dissatisfied with the Commissioner's Decision¹⁰

62. Conclusion/recommendations: Overall the assessors were satisfied that NHSGGC is meeting its requirements when issuing refusal notices and were in general impressed with level of detail contained within its refusal notices, with the exemption of the provision of details of the requestor's rights. It was noted by the assessors that NHSGGC has all the tools in place to enable it to fulfil its obligations, but the assessors recommend that refresher training should be provided to those responsible for issuing responses to requests for information received, to ensure that standard text (which is already available) is used in all responses to ensure that the requestor is provided with all their appropriate rights. The full Request for Review pro-forma should also be utilised in every response, and the assessors recommend that NHSGGC continues with its practice of enclosing a copy of its Requirement for Review procedure in all its responses. The assessors also recommend that NHSGGC ensures that it provides requestors with full details of their rights (as set out above) when issuing a response to a request for review, and with a view to doing this should revise its standard text to be used in every response to mention the right of appeal from decision of the Commissioner to the Court of Session on a point of law.

Review process

63. Neither FOISA nor the EIRs are prescriptive about the form of review that should be undertaken following a request for review. Under FOISA¹¹, the review may confirm the original decision, with or without modifications, substitute a different decision for it, or reach a decision where none has previously been taken. For environmental information,¹² the authority must review the matter to decide whether it has complied with the EIRs and, where it finds a breach, immediately take steps to remedy this.
64. Section 60 and 62 Codes of Practice provide guidance on the conduct of reviews, which includes that:
- Authorities should have in place procedures for handling reviews, which should be fair and impartial and enable different decisions to be taken if appropriate
 - The procedures should be straightforward and capable of producing a decision promptly and in line with statutory timescales
 - A review should be handled by a person who was not involved in the original decision.
65. On conclusion of a review,¹³ the authority must inform the applicant of what it has done and state its reasons for doing so. This notice must also explain the right of application to the Commissioner and subsequent right to make an appeal against the Commissioner's decision to the Court of Session.¹⁴ The EIRs similarly require the authority to notify an applicant of the outcome of the review. Although there is no equivalent statutory provision requiring

¹⁰ Section 21(10) of FOISA read with Sections 47(1) and 56 of FOISA

¹¹ Section 21(4) of FOISA

¹² Regulation 16(3) and (5) of the EIRs

¹³ Section 21(5) of FOISA

¹⁴ Section 21(10) of FOISA



notification of the rights of appeal, the section 62 Code of Practice indicates that it is good practice to do so.

66. NHSGGC received 4 requests for review during the financial year 2009/10 and in 2010/11, had received 6 requests for review up to the point of the assessment.
67. At corporate level, the review process comes under the responsibility of the Head of Board Administration. This individual is responsible for facilitating the conduct of the review, which is always carried out by one of NHSGGC's Non-Executive Directors.
68. The NHSGGC explained that the decision to select a Non-Executive Director to undertake reviews, demonstrated the importance it attached to what it considered to be a fully independent review process. It became clear to the assessors that because the review itself is escalated to Non Executive Director level, staff appreciate the importance that NHSGGC places on this process and so the focus is on ensuring that the initial response is sufficiently robust with a view to reducing the likelihood of a request for review being made by a requestor.
69. To assist the Non-Executive Director an FOI specialist, who was not involved in the initial response, is selected. There is a panel of 4 Non-Executive Directors that the Head of Board Administration can choose from. Criteria for selecting which Non-Executive Director is primarily based on workload, although a Director might be selected on the basis of the specific experience or knowledge he or she might bring to the review of a particular case.
70. Currently, requests for review are not input into the "Datix" system, rather the Head of Board Administration manages the process through a combination of paper-based and electronic systems. Through discussions it was explained to the assessors that this has worked due to the relatively small number of reviews NHSGGC receives as an organisation, but it was acknowledged that there would be benefits from considering if "Datix" could be used to record reviews.
71. Once the Non-Executive Director has been allocated a review to conduct, the Head of Board Administration will take a step back from the process. The Non-Executive Director will be provided with all the necessary paperwork related to the request and will often meet with those involved in the original processing of the response. They will also expect to see detailed notes on file to explain what searches have been undertaken, especially if the conclusion initially was that information was not held, and would also expect to see on file details of calculations where the organisation has decided to refuse to deal with the request on the basis that the cost of doing so would exceed the prescribed limit as set out in the Fees Regulations¹⁵.
72. The Non-Executive Director has at their disposal a template to use when conducting the review. This template ensures that all areas applicable to a review are considered. A full copy of the review report compiled by the Non-Executive Director is issued with the response letter to the requestor. The assessors noted this as another area of good practice and were of the view that this is another example of the organisation's willingness to be open and transparent in its handling of requests for information.

¹⁵ Section 12 FOISA



73. The assessors also noted the existence of the Information pack for Non-Executive Directors. This pack is provided to all Non-Executive Directors responsible for carrying out reviews and forms part of the Non-Executive Directors' induction training. This is a comprehensive pack of information to assist them in arriving at their review decisions. From discussions with one of the organisation's Non Executive Directors, this is a valued tool (especially when first carrying out reviews) in fulfilling their responsibilities.
74. During discussions with the Head of Board Administration and with one of the Non-Executive Directors, it became evident to the assessors that great emphasis is placed on the quality of the outcome of the review process. That the process is as independent from the initial process is commendable and it was clear from reviewing a sample of reviews that the requests are considered afresh. This was demonstrated by the provision of additional information to the requestor in 50% of the cases examined.
75. It is clear from the discussions from those responsible for issuing initial responses that the review process is one to which great weight is attached, largely due to the involvement of a Non-Executive Director, who is prepared to challenge and question the initial responses and the manner in which the request has been handled. It is clear that the benefits of having reviews carried out at this level are two-fold, in ensuring both a robust initial response and a fully independent review. However, going forward, the challenge for NHSGGC will be to amend its review process with a view to striking a suitable balance between maintaining the quality of the process with the requirement to ensure that it conducts the review and carries out any actions arising from that review, within 20 working days.
76. Conclusion/recommendations: The issue identified in relation to NHSGGC's interpretation of section 21 of FOISA has been discussed earlier in this report. Apart from this issue, the assessors were extremely impressed with the seriousness with which the authority approaches its review policies and procedures. These procedures allow for a robust and independent review of the initial response. The assessors were satisfied with the level of training and support that is provided to the Non-Executive Directors in conducting their reviews which allows them to investigate every aspect of the requests handling afresh.

Other aspects of request handling

Recognising an EIR request

77. From the completed pre-assessment questionnaire, the assessors noted that NHSGGC had not received any requests which it considered to be for environmental information in 2007/08 or 2008/09. Consequently, NHSGGC had not responded to any requests for information in terms of the EIRs.
78. This position was confirmed by the assessors after reviewing the sample of requests, provided during the assessment, where the assessors saw no examples of requests which had been dealt with by NHSGGC under the EIRs. However, although the majority of requests were correctly dealt with under FOISA, the assessors noted 2 requests from this sample which they concluded were clearly requests for environmental information under the EIRs:
- Ref 380 – the information requested related to visits made by pest controllers to hospitals



- Ref 3512 – the information requested related to non hazardous offensive and hazardous infectious bagged waste.
79. The assessors discussed these cases with the FOI Manager, but it had been acknowledged in hindsight by NHSGGC that the above cases were requests for environmental information and should have been handled under the EIRs (it should be noted, however, that the information was provided in full in both instances). It was clear to the assessors that NHSGGC had started, prior to the assessment, to increase its awareness of the EIRs. As evidence of this, an EIRs training session was carried out at the last FOI Steering Group meeting held in October 2010 and the assessors welcomed NHSGGC's intention to continue with this focus going forward. The assessors also noted the FOI Update that was issued to all staff via Staff Net where there was a section dedicated to the differences between FOISA and the EIRs (with some additional information including a short case study).
80. Conclusion/recommendation: The assessors welcome the focus NHSGGC is now placing on the application of the EIRs, but would recommend that NHSGGC continues to carry out organisation-wide awareness training to staff to ensure, for example, that they remain aware that requests for environmental information can be made verbally under the EIRs (unlike FOISA, where requests must be in writing). Additional training should be provided to those responsible for responding to requests, to ensure relevant staff are fully aware of the differences between FOISA and the EIRs. Those staff should also be in a position to apply any relevant "exceptions" under the terms of the EIRs, should this be necessary. This training should also be provided to the Non-Executive Directors responsible for carrying out reviews.

Issuing a notice under section 12 of FOISA

81. An authority is not obliged to respond to a request for information if the cost of doing so would exceed the prescribed limit of £600¹⁶ as set out (and calculated in line with) the Fees Regulations¹⁷. Where this provision is invoked, the applicant must be notified that this is the case. Where it is found to apply, the authority should consider its obligations under section 15 of FOISA to advise and assist the applicant, and it may be appropriate to provide advice on how their request might be refined and brought within the prescribed limit.
82. There is no provision in the EIRs directly equivalent to section 12 of FOISA, but a request can be refused if it is manifestly unreasonable¹⁸. Excessive cost is one of the reasons why a request might be judged to be manifestly unreasonable. The applicant should be notified of such a decision in a refusal notice. There is also an equivalent duty to provide advice and assistance within regulation 9 of the EIRs.
83. From examination of the sample requests provided to the assessors, it was noted that NHSGGC had directly relied on section 12 in relation to 2 of the responses it issued. In case reference number 3 from 2009, the assessors noted that NHSGGC provided an explanation as to why responding to the request would go beyond the prescribed cost limit, but did not specifically cite section 12 or detail that the cost would be beyond £600. NHSGGC did however invite the requestor to contact them with a view to refining the scope of the request

¹⁶ Section 12 of FOISA

¹⁷ The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

¹⁸ Regulation 10(4)(b) of the EIRs



and at the same time provided a range of information falling within the overall scope of the request. The assessors also noted that there were no details on file to show how the cost of compliance was arrived at in that case. In case reference number 3340 from 2010, NHSGGC specifically cited section 12 of FOISA and the requestor was provided with sufficient explanation as to why the cost of compliance would exceed the prescribed cost limit. The requestor was also given the opportunity to refine their request. Additionally, NHSGGC provided the requestor with information falling within the scope of their request. The assessors were satisfied from analysis of the requests and through discussions with staff during the assessment that NHSGGC has suitable practices in place to deal with requests where it has sought to rely on section 12 of FOISA on the grounds of cost, however the assessors pointed out that reference to the prescribed cost limit of £600 should, as a minimum be cited in any response, and that it is good practice (as was demonstrated in case reference 3340) to specifically cite section 12 in such cases.

84. The assessors also noted 2 cases (case reference numbers 192 and 2906), where NHSGGC had confirmed that the information sought by the requestor was not held in the format in which he/she wished to obtain it. On examination of these requests, the assessors were of the view that the application of section 12 of FOISA may have been more appropriate than section 17 in the circumstances, as it appeared that the information may have been held by the organisation but that the cost of compliance would potentially exceed £600.
85. The assessors discussed the importance of an organisation firstly establishing whether the information requested is held, even if it is held in a different format than has been requested. The authority should then go onto consider whether it can be provided within the prescribed cost limit.
86. It was also noted by the assessors that NHSGGC has in place a Fees/Cost of Compliance pro-forma, which can be used by staff to record the costs involved in calculating the cost of compliance when this is considered necessary. This pro-forma can be accessed via the staff intranet. It was noted by the assessors, however, that this pro-forma appeared not to be on file with respect to cases identified above.
87. Conclusion/recommendation: In general, the assessors were satisfied with the processes NHSGGC has in place to deal with requests where it considers compliance will exceed the prescribed cost limit. The assessors also viewed the setting-up of a pro-forma to record details of how the cost of compliance was arrived at as an example of good practice. It was further evident that NHSGGC fulfils its obligations under section 15 of FOISA to provide requestors with advice and assistance in relation to refining their requests. However, the use of the Fees & Cost of Compliance pro-forma is sporadic in practice and the assessors would recommend that this become a mandatory pro-forma to be used where section 12 of FOISA is to be relied on. The assessors also recommend that it ensures that any responses to requestors on the basis of section 12 makes (as a minimum) reference to the prescribed cost limit of £600, but as a matter of good practice always specifically cites section 12 of FOISA. Finally, NHSGGC should ensure that it does not apply section 17 of FOISA to requests that would be more appropriately dealt with under section 12 of FOISA. With a view to dealing with these recommendations, the assessors would recommend that refresher training be provided to staff with responsibility for responding to requests.



Policies, procedures and other documentation

88. In preparation of the assessment, NHSGGC provided the assessors with a range of documents associated with its FOI procedures. These included a Freedom of Information Policy (which had recently been updated), a FOI Quick Reference Guide (which includes process flowcharts for dealing with requests under FOISA and the EIRs) and copies of standard template letters.
89. The assessors were impressed with the comprehensive level of guidance and information to be found in both the FOI Policy document and the FOI Quick Reference Guide and noted as an example of good practice its policy to review its procedures every 2 years, or more often if circumstances require. Responsibility for updating NHSGGC's FOI policies and procedures lies with the Head of Administration, Mental Health Partnership, and the FOI Manager.
90. However in light of the change that is required in relation to NHSGGC's interpretation of section 21 of FOISA and regulation 16 of the EIRs, these documents will require to be updated to reflect the clarified position.
91. In relation to the FOI Quick Reference Guide, the assessors noted the following amendments to be made to the document:
- The FOI process Flowchart should be updated to take into account receipt of requests for environmental information, which can be taken verbally unlike under FOISA.
 - Sample text (Text B) relating to requests for information that is available via NHSGGC's Publication Scheme, should be updated with text advising the member of staff to cite section 25 of FOISA (Information otherwise accessible) in response to the request. From examining requests and through discussions with staff, it was clear to the assessors that although section 25 is not specifically cited in such situations the requestor would be provided with a link to the information. However, as section 25 is an exemption, it must be cited specifically to ensure compliance with the terms of the legislation.
 - The assessors would also recommend that all letters are updated to include standard text providing the requestor with confirmation that they have 40 working days in which to request a review of NHSGGC's initial response to their request. Because NHSGGC procedures require a copy of the "Requirement for Review" procedure to be enclosed with every response it has not been considered necessary to do this as all information regarding a requestor's rights is contained in that document. However, the assessors would point out that if for any reason the "Requirement for Review" form was not enclosed with the response, the standard text currently used in the majority of cases would not provide the requestor with this important piece of information. Simply updating the standard text will address this potential issue.
92. Conclusion/recommendation: It has been noted in this report that the assessors were impressed with the policies and processes NHSGGC has in place to deal with requests for information. As an organisation it has also taken practical steps (such as the introduction of the Fees/Cost of Compliance pro-forma and Request for Review pro-forma) to assist staff responding to requests and provides access to standard text to ensure consistency of approach to issuing responses. Consequently, the assessors only have a small number of recommendations in this context as identified in paragraph 91 above.



Training and awareness arrangements

93. As part of the pre-assessment questionnaire, NHSGGC was asked to provide the assessors with copies of its training materials and details of its awareness arrangements. In response NHSGGC provided copies of a training pack for General Awareness Training, a FOISA/EIRs Training Presentation, a FOISA General Awareness leaflet, a Short Guide for Staff – Corporate and Partnerships and another version aimed at Acute Services Division.
94. During the on-site visit the assessors were provided with a copy of a new Staff Guidelines document, which was specifically designed to provide guidance to those staff responsible for carrying out searches for information on receipt of a request. These guidelines make reference to both FOISA and the EIRs and were issued to staff in 2010. The assessors also viewed the “Datix” RFI Module – Minimum Data Set guidance booklet, which is not only a reference document for those inputting requests onto “Datix”, but was also used as the basis for the recent training conducted by the Head of Administration, Mental Health Partnership and FOI Manager on “Datix”. The assessors were also provided with copies of an FOI Update from November 2010, which focused on the EIRs and the differences between these regulations and FOISA, and a Team Brief which was issued in January 2011. This Team Brief informed staff that NHSGGC was to be subject to an assessment by the Commissioner’s Office and reminded them of their obligations under FOI.
95. Through the staff intranet, the assessors noted the considerable amount of information that is available to assist staff in keeping their knowledge levels up-to-date in relation to FOI and to assist them practically in responding to requests for information. The assessors also noted the FOI awareness training sessions that NHSGGC carried out for groups of staff during 2010 and they further welcome plans to carry out additional sessions in 2011.
96. The assessors were also made aware of an online E-learning package NHSGGC is currently developing. This package will cover both FOISA and the EIRs and will be incorporated into the organisation’s induction training programme for new staff. This package will be available to all staff, accessed via the staff intranet system or remotely via NHSGGC’s website-Learning portal. Staff will be able to access this training package by registering and logging on for the module. The training consists of a number of sections accompanied by multiple choice questions that require to be attempted –a pass in each section must be acquired before the member of staff can move on to completion. Although the E-learning package is still at development stage, the assessors were impressed with not only the content of the package but also with NHSGGC’s plans for utilising it as a means of maintaining FOI knowledge amongst its new and existing staff.
97. It has already been noted in this report that the assessors were impressed with the Non-Executive Directors’ Information Pack, which provides assistance to Non-Executive Directors conducting reviews.
98. On reviewing the self assessment questionnaire and importantly through discussions with staff, it became evident to the assessors that NHSGGC places a significant amount of emphasis on training. Staff interviews demonstrated a welcome level of knowledge and experience in matters relating to FOI, with staff attending conferences/seminars when possible and encouraged to develop their knowledge. Central to this focus, however, is the FOI Steering Group, which allows FOI specialists to not only monitor the organisation’s compliance



with FOISA/EIRs, but also provides a form for training and the development of training packages. Members of the FOI Steering Group are then in an excellent position to disseminate knowledge and best practice throughout the organisation.

99. The assessors did note, however, that NHSGGC has only fairly recently started to carry out training in relation to the EIRs and recommendations in relation to this are detailed earlier in this report.
100. Conclusion/recommendation: The assessors commend NHSGGC’s training and awareness arrangements and its ability to maintain a minimum level of knowledge throughout such a large and diverse organisation. However the assessors would refer to the recommendations detailed above under: **Other areas of request handling – Recognising an EIR request**.

Conclusions and summary of recommendations

Having concluded their assessment of NHSGGC’s practices, the assessors noted a number of areas of excellent practice in its approach to FOI. In particular the assessors noted NHSGGC’s very positive attitude towards FOI, and its practices demonstrate a culture of openness which is supported by the Chief Executive and senior management. There is clear evidence to demonstrate that NHSGGC’s default position is to disclose information. It was also clear to the assessors that NHSGGC has developed robust procedures to deal with requests for information under FOISA and the EIRs, and takes training and staff awareness very seriously to ensure that as an organisation it can meet its obligations under the legislation.

The assessors were also impressed with NHSGGC’s review procedures. It was evident from discussions with staff and through examination of this procedure that NHSGGC appreciates the importance of conducting a robust and independent review and the assessors would hope that any amendments required to this process will not affect the quality of the end result.

The assessors did identify a small number of areas where NHSGGC’s practice was either not compliant with statutory arrangements or good practice as set out in the Codes of Practice, or would benefit from some further development to make it more robust.

More comprehensive details regarding the areas of good practice identified by the assessors is to be found in the body of this report. Where recommendations have been made by the assessors (these are summarised in the table below), it is recommended that NHSGGC develops an action plan to addresses these areas.

In particular the assessors recommend:

Priority 1	Immediate action required
Recommendation Number	
1	That NHSGGC reconsiders its review procedures to ensure that full responses are issued to requestors within 20 working days of receiving notification of the request for review. NHSGGC’s FOI Policy and Procedures documents should be updated accordingly



2	That NHSGGC updates its standard text templates to include reference to “40 working days” in relation to the timeframe requestors have in which to request a review and of the right following appeal to the Scottish Information Commissioner to make application to the Court of Session on a point of law.
3	That NHSGGC updates its standard text in template -Text B to ensure that section 25 of FOISA is specifically cited

Priority 2	Medium term action to be completed within 3 months
Recommendation Number	
4	That NHSGGC pursue consideration of the use of “Datix” in the management of its review process
5	That NHSGGC when applying section 12 of FOISA to a request should ensure that it makes specific reference to the prescribed cost limit, and it would be good practice to specifically cite section 12. Refresher training should be provided to staff responsible for responding to requests.
6	That NHSGGC provides training to ensure that staff responsible for responding to requests do not cite section 17 of FOISA (Notice that information is not held) where it would be more appropriate to issue a refusal notice under section 12 of FOISA ((Excessive cost of compliance).
7	That NHSGGC ensure that staff responsible for responding to requests, (i) are fully aware of the importance of maintaining a full audit of all conversations with requestors on file in every case, (ii) there is consistent use of text from the standard template letters, (iii) that the full “Request for Review” and “Fees/Cost of Compliance” pro-formas are used in every applicable response.

Priority 3	Action to be completed within 6 months
Recommendation Number	
8	That NHSGGC continues with its organization-wide awareness training in relation to the EIRs, but also that it conducts additional training to those responsible for responding to requests for information to ensure that such staff are fully aware of the differences between FOISA and the EIRs and that they have sufficient knowledge to be in a position to respond to a request in terms of the EIRs.
9	That NHSGGC updates its FOI process Flowchart to take into account receipt of requests for environmental information.

The assessors consider that all steps which require to be taken in relation to these recommendations can reasonably be completed within a period of six months, and they are aware that NHSGGC has already taken steps to address some of the recommendations.

A copy of the action plan prepared by NHSGGC, setting out the actions it has taken and intends to take to satisfy the recommendations in this report is attached at appendix 1.

At the end of the six month period (from date of publication of this assessment) the Commissioner will ask NHSGGC to submit a report to him explaining the measures put in place to address the issues identified in the assessment and the outcomes of the action plan. Following receipt of this report, the



Commissioner may seek a follow-up meeting with NHSGGC to discuss progress and any outstanding issues.

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Alistair Rennie
Freedom of Information Officer

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Claire Stephen
Freedom of Information Officer

Report approved by:

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Kevin Dunion
Scottish Information Commissioner

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- Head of Board Administration, Corporate HQ - NHSGGC
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Assessment report



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Scottish public authority: Greater Glasgow Health Board
Dates of on-site assessment: 10 and 11 January 2011
Assessors from OSIC: Alistair Rennie and Claire Stephen
Date of issue: 16 March 2011

Appendix 1: Action plan for Greater Glasgow Health Board

Recommendation	Action	Status	Due	Owner
1. That NHSGGC reconsiders its review procedures to ensure that full responses are issued to requestors within 20 working days of receiving notification of the request for review. NHSGGC's FOI Policy and Procedures documents should be updated accordingly	Requirement for Review Procedure to be revised to set out procedure which has decision on review and any additional information issued within 20 working days of receipt of review request	Pending	21/03/2011	JD
2. That NHSGGC updates its standard text templates to include reference to "40 working days" in relation to the timeframe requestors have in which to request a review and of the right following appeal to the Scottish Information Commissioner to make application to the Court of Session on a point of law.	Standard template letters to be amended and re-issued. Attention to requirement to be drawn via supplementary guidance note and via future training	Pending	21/03/2011	JD
3. That NHSGGC updates its standard text in template - Text B to ensure that section 25 of FOISA is specifically cited	Standard template letters to be amended and re-issued. Attention to requirement to be drawn via supplementary guidance note and via future training	Pending	21/03/2011	JD



Recommendation	Action	Status	Due	Owner
<p>4. That NHSGGC pursue consideration of the use of "Datix" in the management of its review process</p>	<p>Possibility of recoding/managing review requests via recording on DATIX to be considered</p>	<p>Pending</p>	<p>21/03/2011</p>	<p>JCH/AF</p>
<p>5 That NHSGGC when applying section 12 of FOISA to a request should ensure that it makes specific reference to the prescribed cost limit, and it would be good practice to specifically cite section 12. Refresher training should be provided to staff responsible for responding to requests.</p>	<p>Standard template letters to be amended and re-issued. Attention to requirement to be drawn via supplementary guidance note and via future training</p>	<p>Pending</p>	<p>21/03/2011</p>	<p>JD</p>
<p>6. That NHSGGC provides training to ensure that staff responsible for responding to requests do not cite section 17 of FOISA (Notice that information is not held) where it would be more appropriate to issue a refusal notice under section 12 of FOISA ((Excessive cost of compliance).</p>	<p>Attention to requirement to be drawn via supplementary guidance note and via future training.</p> <p>Specific FOI Steering Group Workshop to be held to cover learning points from Practice Assessment</p>	<p>Pending</p>	<p>21/03/2011</p>	<p>JD/AF</p>
<p>7. That NHSGGC ensure that staff responsible for responding to requests, (i) are fully aware of the importance of maintaining a full audit of all conversations with requestors on file in every case, (ii) there is consistent use of text from the standard template letters, (iii) that the full "Request for Review" and "Fees/Cost of Compliance" pro-formas are used in every applicable response.</p>	<p>Further publicity to be given to guidance on recording searches, need to provide full standardised wording on responses of applicants rights and of recording calculation of fees and dealing with excessive cost of compliance.</p> <p>To be covered in FOI Steering Group Workshop as above.</p>	<p>Pending</p>	<p>21/03/2011</p>	<p>JD</p>



Recommendation	Action	Status	Due	Owner
8. That NHSGGC continues with its organization-wide awareness training in relation to the EIRs, but also that it conducts additional training to those responsible for responding to requests for information to ensure that such staff are fully aware of the differences between FOISA and the EIRs and that they have sufficient knowledge to be in a position to respond to a request in terms of the EIRs.	To be covered in FOI Steering Group Workshop as above. Also to consider preparing a specific EIR e-learning module.	Pending Pending	21/03/2011 30/.03/2011	JD AF
9. That NHSGGC updates its FOI process Flowchart to take into account receipt of requests for environmental information.	To be addressed as part of review of guidance and Short Guide documentation	Pending	21/03/2011	JD