

Report of the Head of Board Administration

Freedom of Information Monitoring Report for the period
1 April 2012 to 31 March 2013

Recommendation:

The NHS Board is asked to note the Monitoring Report on the operation of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 in NHS Greater Glasgow and Clyde for the period 1 April 2012 to 31 March 2013.

1 BACKGROUND

- 1.1 The Freedom of Information (Scotland) Act 2002 (FOISA) came into force on 1 January 2005. The Act provides a statutory right of access to recorded information held by Scottish public bodies including NHS Boards and incorporates the Environmental Information (Scotland) Regulations 2004 (the EIRs).
- 1.2 The Board maintains a Publication Scheme which describes information that the organisation routinely publishes and that can be obtained without the need for a formal request under the Act. Most of this information can be accessed through the Board's website (www.nhsggc.org.uk). Where information is not available through these sources, an applicant can, under the Act, make a request for information. The request must be in a permanently recorded form (eg in writing or by e-mail).
- 1.3 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. The Act specifies that requests for information must be responded to within 20 working days.
- 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 a number of exemptions within FOISA, or exceptions under the EIRs, many of which also require a public interest test to be applied.

2 REPORT

- 2.1 This report covers the 12-month period from 1 April 2012 to 31 March 2013. The report summarises the requests for information received by NHS Greater Glasgow and Clyde during this period and covers requests made under both FOISA and the EIRs.

There are small but important differences in the way in which we are required to respond to requests under FOISA and the EIRs.

3 OPERATION OF THE LEGISLATION WITHIN NHS GREATER GLASGOW AND CLYDE DURING 2012/13

- 3.1 Since the Act came into force on 1 January 2005, the organisation has always sought to ensure that robust arrangements for managing requests for information made to NHS Greater Glasgow and Clyde are in place. These have been adapted where necessary to respond to the changing needs of the organisation. The arrangements currently in place are now well-established and requests are managed in a number of ways depending on the source of the request, or the nature of the information being requested.
- 3.2 All requests from media sources (eg journalist, newspaper/magazine or broadcast media) are managed through the Corporate Communications Directorate. Requests for information on Board-wide functions and requests from MSPs are managed through the FOI Manager based within Board HQ. Requests for information on services or functions managed by the Acute Services Division are dealt with through its Corporate Administration Department and managed by the Head of Administration for the Acute Services Division.
- 3.3 Requests for CHP information are handled through local management structures and CHPs will also deal with FOI requests relating to services hosted by them. However where an applicant has submitted the same request for information to all CHP/CH(C)Ps simultaneously, a single response will be co-ordinated on an agreed basis.
- 3.4 The organisation has dedicated FOI email addresses to enable those who wish to make a request to route this to the appropriate area, although arrangements are in place to forward requests on to appropriate FOI colleagues. Advice is always available to all staff primarily from the FOI Manager or other appropriate FOI contacts.

4 NUMBER OF REQUESTS RECEIVED

- 4.1 Table 1 below shows the number of requests for information received each month from 1 April 2012 to 31 March 2013. Fig 1 shows the information represented in a chart format.

Table 1 – April 2012 to Mar 2013 – Number of Requests Received

	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
Number of Requests Received	44	64	35	58	39	64	46	57	25	53	69	56	610

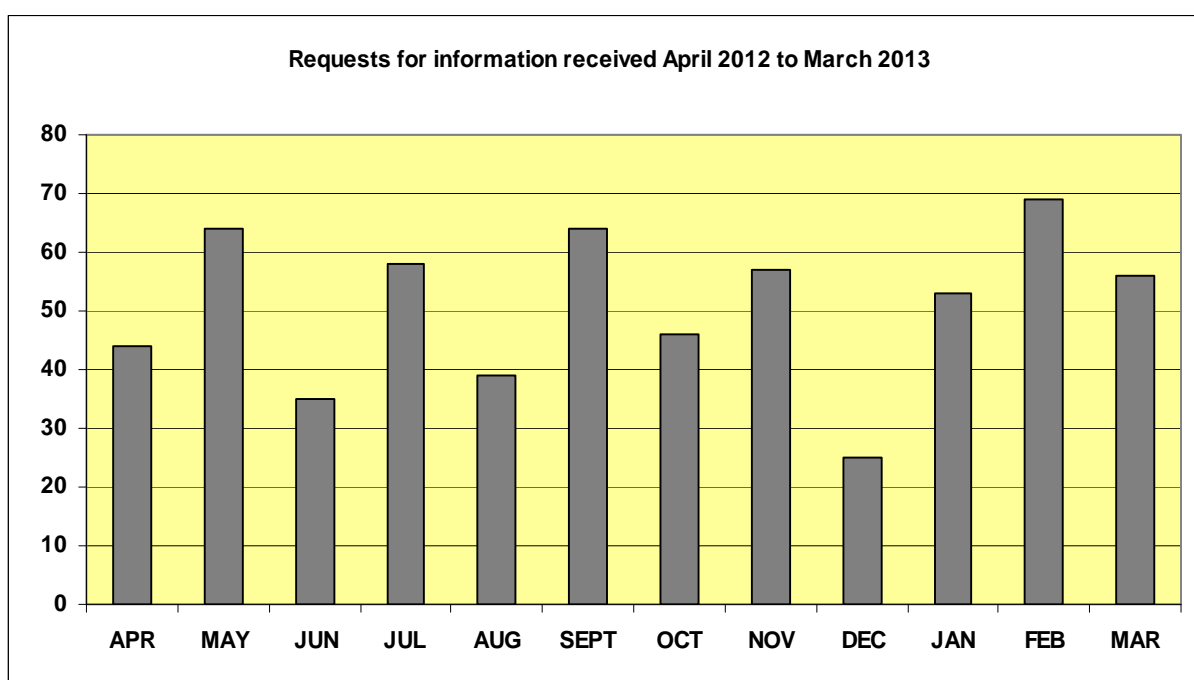
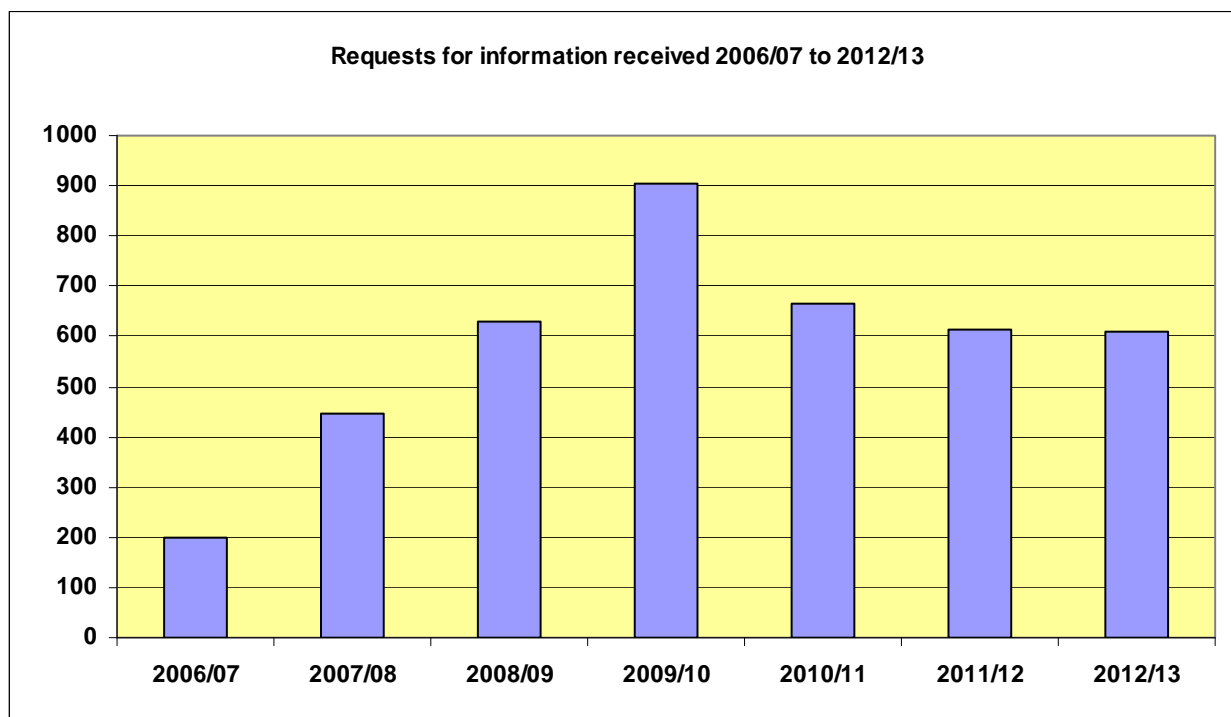


Fig 1 – Requests for information received April 2012 to March 2013

4.2 The overall number of FOI requests received by NHS Greater Glasgow & Clyde during 2012/13 was fairly constant compared with the previous year, with 610 requests being received in 2012/13 compared to 614 requests received in 2011/12. The distribution of FOIs received varied greatly from month to month - for example 64 requests were received in May 2012 followed by 35 requests in June, and in Dec 2012 only 25 requests were received while February 2013 saw 69 new requests.

4.3 Fig 2 below shows the number of requests received from 2006/07 to 2012/13. This shows that since 2008/09 the number requests received has remained fairly constant, the exception being a significant peak in 2009/10 due to the high volume of requests received from staff regarding Agenda for Change issues.

Fig 2 - Requests for information received 2006/07 to 2012/13



5 PERFORMANCE MONITORING

5.1 Overall, 86% of Freedom of Information requests were responded to within the requirement of 20 working days (Table 3) compared to 87% in 2011/12.

5.2 Of the 85 requests that breached the 20 working day timescale, nearly 50% were responded to by the 25th working day.

5.3 Information on the organisation's performance in respect of the percentage of FOI requests responded to within the statutory 20 working day timescale has been provided to the Board's Quality and Performance Committee as part of the integrated score-card report.

5.4 Performance dropped to 80.1% and 80.3% for Quarter 1 (April to June) and Quarter 2 (July to September) of 2012/13 respectively, which required exception reports to be provided to the Quality and Performance Committee. The reasons for the drop in performance related mainly to a vacancy and a period of sick leave at the beginning of the year. The vacancy was subsequently filled and the period of sickness absence ended. Actions were taken to review late cases in order to identify trends and reasons for delays and to identify barriers to responding on time. A Core Brief was issued to remind staff of the importance of producing information required for FOISA/EIR requests. Closer monitoring of the progress of individual requests was undertaken which produced an improvement in Quarter 3 and an improved position has been maintained.

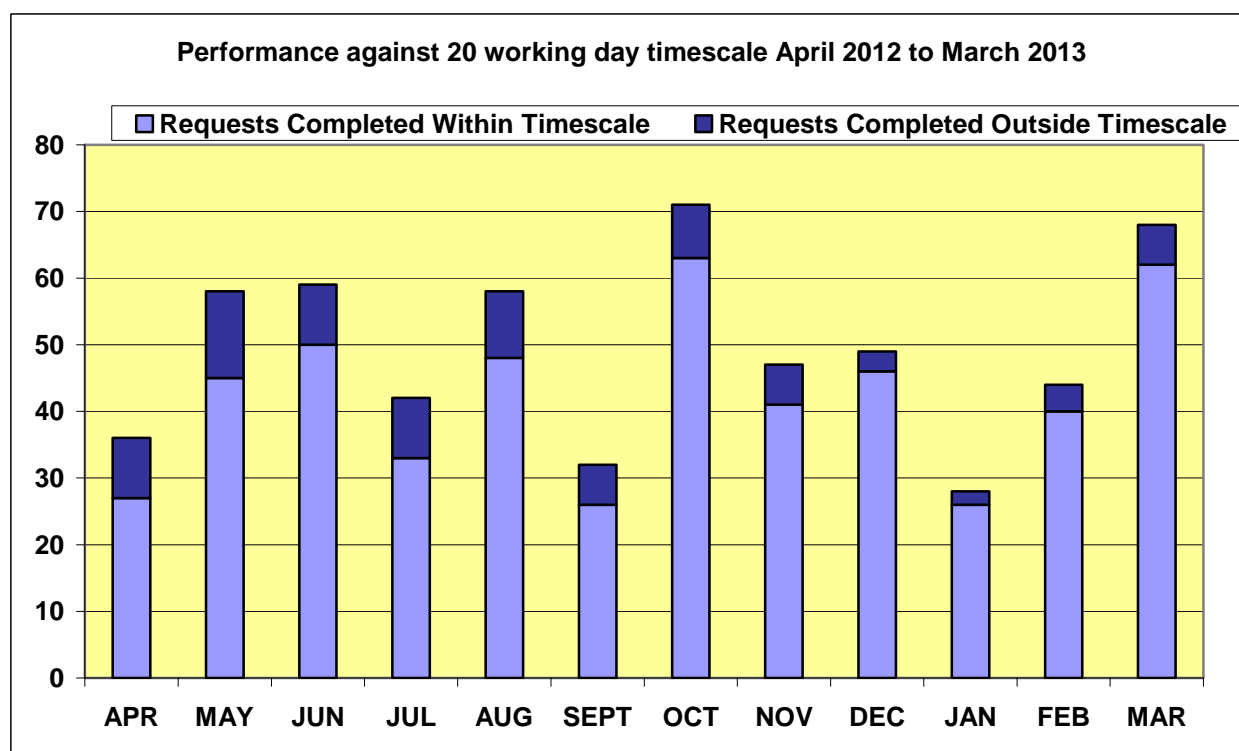
5.5 Of the 610 requests responded to during 2012/13, 11 were responded to under the EIRs compared to 12 requests in 2011/12. The Board continues to be aware of the need to recognise the type of information that is considered to be environmental information, and which needs to be handled under the EIRs rather than FOISA.

5.6 Table 2 and Fig 3 below show the number of requests completed both within and outside the 20 working day timescale.

Table 2 – Number and percentage of requests responded to within 20 working days – 2012/13

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Total Number of Requests Responded	36	58	59	42	58	32	71	47	49	28	44	68	592
Number of Requests Completed within 20 Working Days	27	45	50	33	48	26	63	41	46	26	40	62	507
Number of Requests Completed outwith 20 Working Days	9	13	9	9	10	6	8	6	3	2	4	6	85
Percentage completed within 20 Working Days	75	78	85	79	83	81	89	87	94	93	91	91	86%

Fig 3 – Performance against 20 working day timescale April 2012 to March 2013



6 SOURCE OF REQUESTS

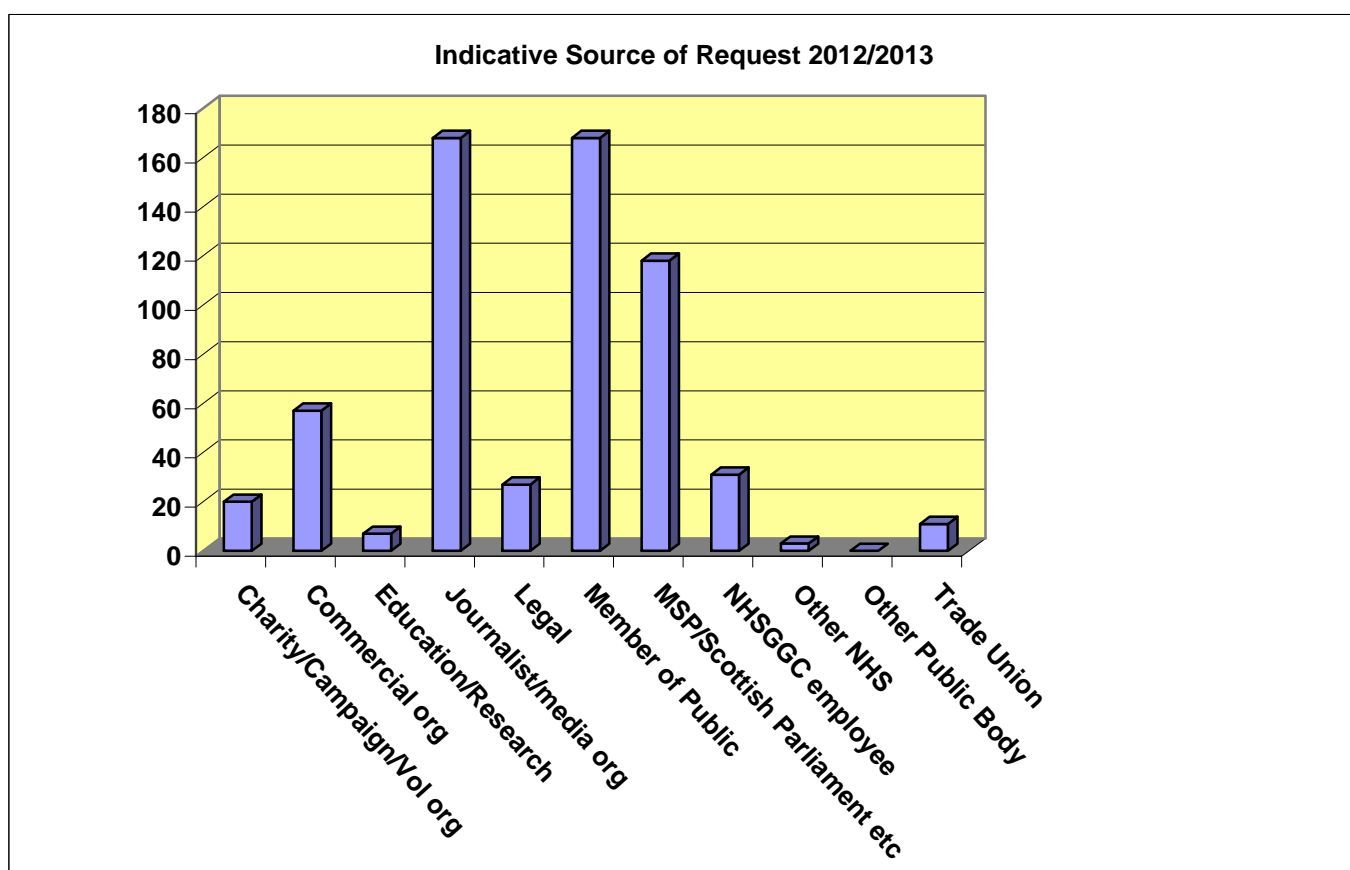
6.1 The overall number of requests received in 2012/13 has stayed more or less the same as 2011/12, and the source of requests has changed only slightly.

6.2 A breakdown of the source of requests is shown below in Table 3 and in Fig 4.

Table 3 – Indicative Source of Request 2012/13 and 2011/12

Indicative source of request	2012/13		2011/12	
	Number	% of total requests received	Number	% of total requests received
Charity/Campaign/Voluntary organisations	20	3.3	23	3.7
Commercial organisations	57	9.3	52	8.5
Education/research	7	1.1	3	0.5
Journalist/Media organisation	168	27.5	141	23.0
Legal	27	4.4	33	5.4
Individuals	168	27.5	174	28.3
MSP/Scottish Parliament/Other elected official	118	19.3	72	11.7
NHSGG&C Employee	31	5.1	97	15.8
Other NHS	3	0.5	6	1.0
Other Public Body	0	0	2	0.3
Trade Union/Professional Representative body	11	1.8	11	1.8
Total	610	100%	614	100%

Fig 4 – Indicative Source of Request 2012/13



- 6.3 Requests from journalists and media sources increased from 141 in 2011/12 to 168 in 2012/13, an increase of almost 20% from the previous year.
- 6.4 The main increase was in requests from MSPs/researchers and other elected officials, which increased from 72 in 2011/12 to 118 in 2012/13, an increase of 64% from the previous year and an increase in the overall number of requests received from 11.7% in 2011/12 to 19.3% in 2012/13.
- 6.5 The number of requests from NHSGGC staff has decreased with only 31 requests received in 2012/13 compared to 97 in 2011/12, although a small number of staff made repeated requests.
- 6.6 Requests from legal firms decreased again, from 33 requests in 2011/12 to 27 requests in 2012/13. Requests from members of the public decreased slightly from 174 in 2011/12 to 168 in 2012/13.
- 6.7 2012/13 saw the continued use of websites which provide assistance to facilitate the submission by members of the public of requests for information to public authorities.

7 TYPE OF INFORMATION REQUESTED

- 7.1 As in previous years a wide range of information was requested from NHS Greater Glasgow and Clyde, with some requests generated by issues of local interest. Requests for information often contained a significant number of separate elements, or a large number of requests submitted in a single email or letter. Many of the requests submitted were complex, and required careful consideration of the application of the relevant legislation before information was released.
- 7.2 Several recurring themes were identified in the subject matter of requests for information.
- Corporate policies and reports
 - Finance and expenditure
 - Salaries, staffing and workforce issues and conditions of service
 - Use of locum and agency staff
 - Violence and aggression/health and safety issues
 - Pharmacy and prescribing issues
 - Transport and car parking
 - IT contracts, data loss and IT security
 - Absconding patients
 - Drug and alcohol use and treatment
 - Translating and interpreting
 - Land, property and building maintenance
 - Clinical incidents, protocols and guidelines
 - IVF and infertility treatment
 - Waiting times
- 7.3 In 66% of requests responded to, all the information requested by applicants was provided to them.
- 7.4 In some cases, the information requested was considered by the Board to be exempt from disclosure under the Act. Where there is a valid reason for withholding information an appropriate exemption must be applied and the Board's response must clearly state the exemption within FOISA (or exception within the EIRs) that is being relied upon to withhold the information. The use of an exemption must be used with care and, in most cases, only after further consideration of whether it is in the public interest to withhold or disclose the information, with the presumption being in favour of disclosure.

- 7.5 During 2012/13 the following exemptions were used to withhold information requested under FOISA:
- Section 25 - Information otherwise accessible
 - Section 27 - Information intended for future publication
 - Section 30 - Prejudice to effective conduct of public affairs
 - Section 33 - Commercial interests and the economy
 - Section 34 - Investigations by Scottish public authorities
 - Section 38 - Personal Information

No exceptions were applied to information requested under the EIRs.

- 7.6 In 29 of the requests responded to, the Board did not provide the information being requested as it estimated that the cost of complying with each request would exceed the cost threshold set by Scottish Ministers – currently £600 – as made by Regulations under Section 12 of FOISA. This is an increase from 11 cases in 2011/12. These cases were typically those where a large amount of complex information was requested that would take an excessive amount of time and resources to provide. The Board was required to demonstrate to the applicant how the estimated costs had been arrived at, and was also obliged to provide reasonable advice and assistance to the applicant either to modify the request or suggest what information could be provided in order to bring the estimated costs under the cost threshold.
- 7.7 During 2013/14 the Board will continue to monitor its performance against the 20 working day timescale, with the aim of increasing the percentage of requests completed within 20 working days.

8 REQUESTS FOR REVIEW

- 8.1 Following a request for information, an applicant has the right to request a review of the Board's handling of a request, if they are dissatisfied with the response received. An applicant has up to 40 working days following receipt of a response in which to submit their request for a review. Reviews are carried out by a Non-Executive Director of the Board with the support of an FOI expert or adviser. 3 Non-Executive Directors participated in reviews during 2012/13.
- 8.2 8 requests for review were responded to in 2012/2013. 6 of the 8 reviews were responded to within the statutory time period of 20 working days. A summary is given in Table 5 below:

Table 5 – Reviews completed during 2012/13

Review No.	Outcome	Details of Review
1	Original decision upheld.	The applicant requested a review on the grounds that not all the information requested had been provided. The original response declined to provide the information on the grounds of commercial sensitivity, citing Section 33(1)(b) of FOISA as the exemption being relied on. The review found that commercial interests existed in relation to the cost structure (tariff) of a specialist unit, that disclosure would cause harm to the commercial interests of the Board and it would therefore not be in the interests of the Board to release this information. The review upheld the original decision to withhold the information under Section 33(1)(b) of FOISA (commercial interests and the economy).
2	Additional information provided.	The applicant requested a review on the grounds that not all the information requested had been provided, that the format of the information provided was not as expected by the applicant and that information relating to specific members of staff had been omitted.

		<p>The review found that the applicant had been provided with the information requested. Information relating to specific staff had been removed during previous IT work carried out on the system which held the information. The applicant had been provided with all the information requested, but due to the missing staff, the format of the information was not as expected by the applicant. During the course of the review it was established that paper copies of the information were also held which contained additional information and this was subsequently provided to the applicant.</p>
3	Additional information provided.	<p>The applicant requested a review on the grounds that not all the information requested had been provided.</p> <p>The review found that the initial response was inadequate in that it did not provide the correct response to the request. The applicant had asked for information relating to the sale price of land. As the sale of the land was not concluded, a price for the land had not been agreed and the applicant should have been advised that this information was not held. The information was subsequently provided to the applicant at a later date, following conclusion of the transaction.</p>
4	Original decision upheld.	<p>The applicant requested a review due to dissatisfaction with the time taken to respond to the request for information; that the explanation given as to the unavailability of the information was flawed and that additional information should have been provided.</p> <p>The Review upheld the original response that NHSGGC did not hold the information being requested but acknowledged that the response was issued outwith the timescales set out in the legislation. The applicant was given an apology for the delay in the provision of the initial response.</p>
5	Additional information provided.	<p>The applicant requested a review as not all the information had been provided. The Board's original response had indicated that the exact information requested was not held by NHSGGC.</p> <p>The Review upheld the original response that the exact information requested was not held by NHSGGC. However the Review found that similar information was held by NHSGGC and that, under the duty to provide reasonable advice and assistance, this information could have been provided to the applicant. The information was subsequently provided to the applicant.</p>
6	Original decision upheld.	<p>The applicant requested a review on the grounds that not all the information requested had been provided. The Board's original response had withheld some information on the grounds that this was personal information. The Review upheld the original response and in addition considered that the information was further exempt on the grounds of commercial sensitivity.</p>
7	Original decision upheld.	<p>The Board's original response indicated that only information over a limited time period could be provided and that the remainder of the information was not held. The applicant requested a review on the grounds that the explanation of why the information was not held was inadequate.</p> <p>The Board's original response had provided the applicant with information for the current financial year. However information was not available for previous years. The Review found that the way in which the information was recorded and held did not allow for a historical view of the information and that the recording method only provided a snap-shot of current information. A more detailed explanation of this was provided to the applicant, with an indication that changes were being implemented which would allow this information to be provided in the future.</p>

8	Additional information provided.	The applicant requested a review on the grounds that not all the information requested had been provided. Further information was located during the course of the Review and provided to the applicant with an apology that it had not been provided in the original response. The Review confirmed that other information was not held, but that the reason for this had not been fully explained in the response.
---	----------------------------------	--

9 DECISIONS ISSUED BY THE SCOTTISH INFORMATION COMMISSIONER

- 9.1 In the event that a public body fails to respond to a request or the requester is not satisfied with the response, following the outcome of a Review there is a further right for an applicant to appeal to the Scottish Information Commissioner for a decision on the case, if an applicant remains dissatisfied with the outcome. An applicant has up to 6 months following the outcome of the Review in which to apply to the Commissioner. Following a Decision by the Commissioner, an applicant who is still dissatisfied has a further right of review to the Court of Session, but on a point of law only.
- 9.2 Of the Reviews carried out by NHS Greater Glasgow and Clyde during 2012/13, none of the applicants appealed to the Scottish Information Commissioner for a Decision on their case. However, the Commissioner issued Decisions on two cases which had been appealed during 2011/12. These are summarised below:

Table 6 – Summary of Decisions Issued in 2012/13

Subject	Outcome
Compliance with required timescales Decision Notice 159/2012 Issued 25 September 2012	The Commissioner found that NHSGGC failed to comply with Part 1 of FOISA by failing to respond to a request and a Requirement for Review within the timescales laid down in FOISA. Given that NHSGGC had responded and had taken steps to ensure the breaches would not be repeated, the Commissioner did not require NHSGGC to take any further action.
Information relating to investigation into excessive working hours Decision Notice 035/2013 Issued 7 March 2013	The Commissioner found that NHSGGC partially complied with Part 1 of FOISA in responding to the applicant's request, but failed to comply with Part 1 by failing to identify, locate and provide certain information falling within the scope of the request. Additional information was subsequently provided to the applicant. However the Commissioner upheld NHSGGC's use of section 38(1)(b) of FOISA in withholding personal information.

- 9.3 As stated above Decision Notice 159/2012, issued in September 2012, found that NHSGGC failed to respond to a Requirement for Review within statutory timescales. During the subsequent period to the end of March 2013, 3 Reviews were received and responded to and all were completed within the required 20 working day time limit.

10 DEVELOPMENTS IN FOISA AND OTHER RELEVANT LEGISLATION

- 10.1 Rosemary Agnew was appointed as the new Scottish Information Commissioner and took up post on 1 May 2012, following the completion of 2 terms of office by Kevin Dunion. She issued her first Annual Report as Commissioner in September 2012, a full copy of which is available on the Commissioner's website at:
<http://www.itspublicknowledge.info/home/SICReports/SICAnnualReport201112.aspx> .
- 10.2 The Freedom of Information (Amendment) (Scotland) Act 2013 received Royal Assent on 19 February 2013 and came into force on 31 May 2013. The Amendment Bill was introduced in order to address perceived weaknesses in relation to the lifespan of some

exemptions and in pursuing prosecutions under section 65 of FOISA (the offence of concealing or destroying information to prevent disclosures) due to the small “window” within which a prosecution could be brought. The Bill’s progression through Parliament led to a number of further proposals being adopted.

The Amendment Act makes the following key amendments to FOISA:

- The path is cleared for the lifespan of certain exemptions to be shortened (section 59)
- The window for section 65 prosecutions is extended
- Authorities will be able to “neither confirm nor deny” whether they hold personal data (section 18)
- Section 25(3) is amended to clarify that information available under an authority’s publication scheme is exempt
- There is a new requirement for Ministers to report to Parliament on their use, or otherwise, of the power to designate additional bodies (section 7A)
- There is a new requirement for Ministers to consult more widely in relation to designation orders (section 5(5))

10.3 On 24 February 2012 the Public Records (Scotland) Act 2011 was enacted. This designated certain organisations (including the NHS) as public bodies for the purposes of the Act, and requires them to have in place a records management plan. Good record management is vital in ensuring compliance with the requirements of FOI legislation. The Director of Health Information and Technology for NHS Greater Glasgow and Clyde is the Chair of a group which will take forward implementation of this Act within the organisation.

10.4 In January 2013, the Scottish Information Commissioner announced her intention to collect quarterly statistics from public authorities on their handling of requests under FOISA and the EIRs, commencing with the quarter April to June 2013. Many of the data items being collected by the Commissioner are already collected by NHSGGC, as set out in the Scottish Ministers’ section 60 Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. Currently there is no requirement for public authorities to submit monitoring information outside their own organisation. It is hoped that the collection of nationwide statistics will enable a better understanding of information requests across Scotland and of the workload of public authorities.

11 MONITORING AND DEVELOPMENT

11.1 An E-learning training module for FOISA and the EIRs was developed by the FOI Manager and has been available to all staff in NHS Greater Glasgow and Clyde through the LearnPro E-learning platform since June 2012. The E-learning module provides staff with general awareness training on FOI legislation and includes information on the basic principles of FOISA and the EIRs, including how to recognise and respond to requests, circumstances where information might not be disclosed and the differences between FOISA and the EIRs. Staff who use the module also undertake an assessment of their learning and those who successfully complete the module obtain a certificate of achievement.

11.2 The aim of the module is to increase the knowledge and understanding of FOI within the organisation, so that we can improve performance against legislative timescales and continue to develop the culture of FOI within the organisation. The launch of the module was communicated to staff through Team/Core Brief and Staff News.

11.3 From the commencement of the module on 26 June 2012 to the end of March 2013, a total of 2,696 staff successfully completed the module. A brief summary of the uptake by staff group is given in Table 7 below.

Table 7 – June 2012 to March 2013 – Staff successfully completed FOISA/EIR E-Learning Module

Job Family	No of Staff
Admin Services	253
Allied Health Professions	372
Health Science Services	82
Medical & Dental Support	19
Medical & Dental	80
Nursing & Midwifery	1,747
Other not specified	59
Other Therapeutic	19
Senior Manager (non AfC)	5
Student	13
Support Services	47
TOTAL	2,696
Acute Division	1,837
Partnerships	783
Corporate Services	76
TOTAL	2,696

- 11.4 The FOISA/EIR E-Learning will be re-publicised from time to time, to ensure that all staff are aware of the need to complete the module and that there is appropriate uptake in key staff groups such as admin services staff, who may be likely to receive requests, and managerial staff, who are likely to be required to provide information to respond to requests.
- 11.5 The Datix Request For Information (RFI) module continues to be used as the method of recording, monitoring and reporting of all requests for information under FOISA and the EIRs within NHS Greater Glasgow and Clyde. It is the Datix system which allows for the collation of the bulk of information which comprises this report.
- 11.6 Resources available to staff via StaffNet include a Guide to Freedom of Information which contains standard text for responses and guidance through the process of handling requests made under FOISA and the EIRs. The resources on StaffNet also contain guidance to staff who are asked to provide information in response to an FOI or EIR request, and template letters for use in responding to requests. Although these resources are available on StaffNet, staff who receive requests for information are advised to make early contact with an FOI officer for appropriate advice and assistance.
- 11.7 The FOI Steering Group chaired by the Head of Administration for Glasgow CHP met quarterly during 2012/13 to review the operation and management of the Act. The Steering Group acts as a forum for the discussion of FOI-related issues such as reviewing the Board's Publication Scheme, accessibility of information on the website, training and awareness, requests for reviews, and learning lessons from Decisions issued by the Commissioner. The Steering Group also considers new guidance issued by the Commissioner and other related issues such as records management and data protection and ensures its dissemination and implementation as necessary. Membership of the group includes staff directly involved in the day-to-day handling of requests and those with a wider management responsibility for the operation of the Act including all Heads of Administration.
- 11.8 NHS Greater Glasgow and Clyde is also represented on the NHS Scotland FOI Leads Forum, and members of the FOI Steering Group attend quarterly meetings of the Forum.
- 11.9 Monitoring information on the organisation's performance in respect of the percentage of requests responded to within the statutory 20 working day timescale has been provided regularly to the Board's Performance Quality and Performance Group.

12 CONCLUSION

- 12.1 The FOI Steering Group will continue to meet on a regular basis, and FOI practitioners within NHS Greater Glasgow and Clyde will continue to refine and improve compliance with the Act, including the processing and handling of requests, data capture, and content and accessibility of information. Work will also continue on training and development for those staff involved in the day-to-day management of requests for information, and improved accessibility of information.
- 12.2 Members are asked to note this Annual Monitoring Report on the operation of the Freedom of Information (Scotland) Act 2002 within NHS Greater Glasgow & Clyde, and give any comments or view on the presentation or format of the Report, or on any area with regard to implementation of the Act within NHS Greater Glasgow and Clyde.

John C Hamilton
Head of Board Administration
0141 201 4608

Alison Flynn
Freedom of Information Manager
0141 201 4461

John Dearden
Head of Administration
Glasgow City CHP
0141 314 6212

June 2013