

Report of the Head of Board Administration

**Freedom of Information Monitoring Report for the period
1 April 2013 to 31 March 2014**

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 2013 to 31 March 2014.

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 2013 to 31 March 2014. The report summarises the requests for information received by NHS Greater Glasgow and Clyde under both FOISA and the EIRs during this period.

3 OPERATION OF THE LEGISLATION WITHIN NHS GREATER GLASGOW AND CLYDE DURING 2013/14

- 3.1 Since the Act came into force on 1 January 2005, the organisation has 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. It is anticipated that implementation of the Public Bodies (Joint Working) (Scotland) Act 2014 may have some impact on arrangements for handling FOI and EIR requests, for example it is not yet known whether integrated Boards will be designated as public authorities for the purposes of FOISA. Any impact is however expected to be minimal and existing arrangements will remain in place until new organisational structures are confirmed.
- 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 managed by 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 specific FOI email addresses so that requests can be made direct to the appropriate area, although arrangements are always in place to forward requests on to relevant FOI colleagues. Advice is always available to all staff primarily from the FOI Manager or other appropriate FOI contacts within NHSGGC.

4 NUMBER OF REQUESTS RECEIVED

4.1 Table 1 below shows the number of requests for information received each month from 1 April 2013 to 31 March 2014. Fig 1 shows the information represented in a chart format.

Table 1 – April 2013 to Mar 2014 – Number of Requests Received

	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
Number of Requests Received	95	72	77	70	54	54	49	72	38	76	67	62	786

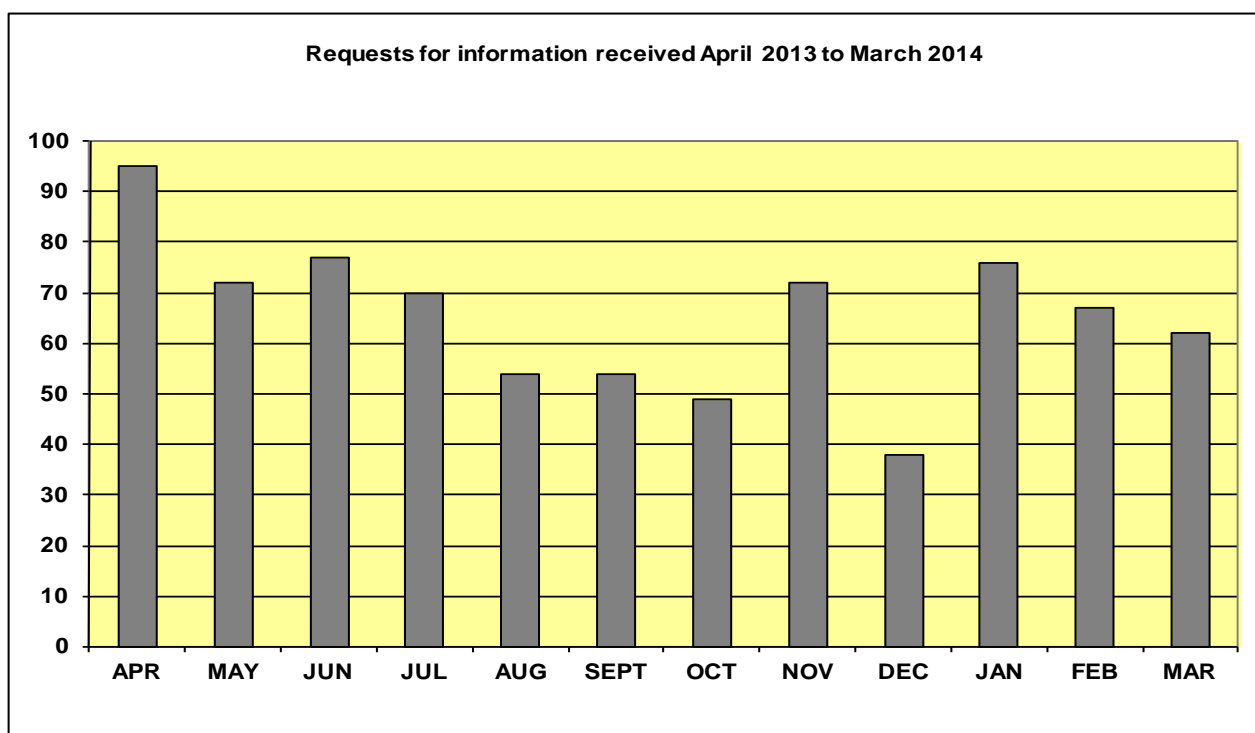
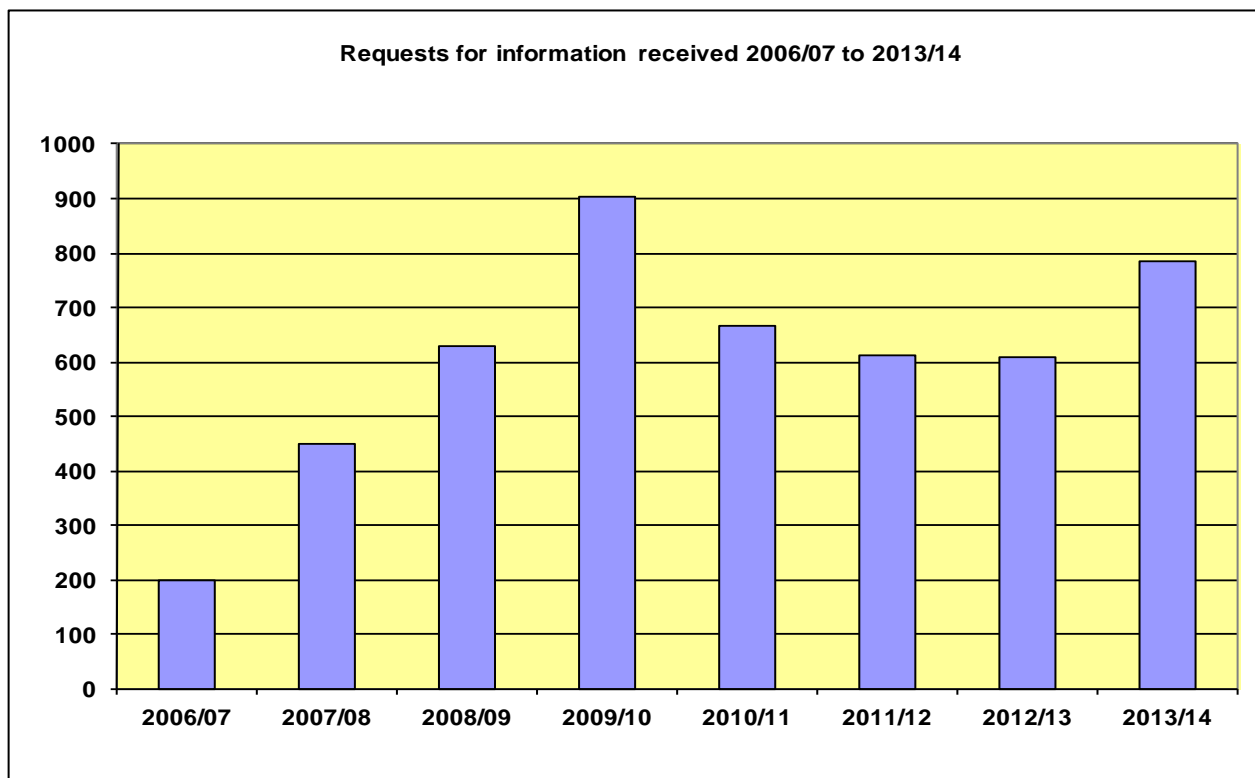


Fig 1 – Requests for information received April 2013 to March 2014

- 4.2 The overall number of FOI requests received by NHS Greater Glasgow & Clyde during 2013/14 showed an increase of approximately 29%, with 786 requests being received in 2013/14 compared to 610 requests received in 2012/13. The distribution of FOIs continued to vary greatly from month to month - for example 95 requests were received in April 2013 compared to 38 requests in December 2013 with an average of 65 requests per month.
- 4.3 Fig 2 below shows a comparison of the overall number of requests received from 2006/07 to 2013/14. This shows that since 2008/09 the number requests received has remained fairly constant, with the exception of a significant peak in 2009/10 due to the high volume of requests received from staff regarding Agenda for Change issues. The increase in 2013/14 can be attributed in part to an increased number of requests from staff.

Fig 2 - Requests for information received 2006/07 to 2013/14



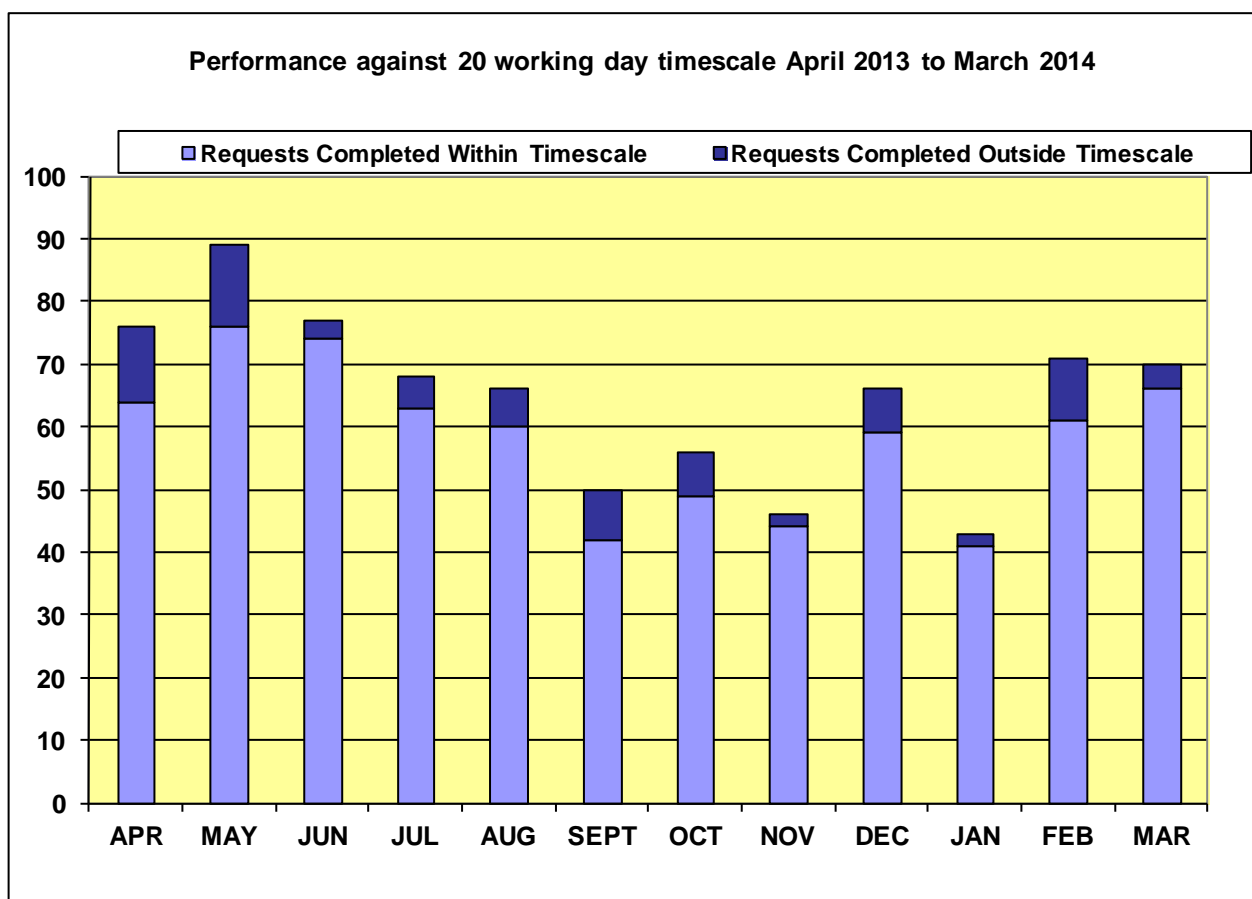
5 PERFORMANCE MONITORING

- 5.1 778 requests were responded to during 2013/14. Of these 699 requests (90%) were responded to within the requirement of 20 working days (Table 3) compared to 86% in 2012/13.
- 5.2 Of the 79 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 was provided quarterly to the Board's Quality and Performance Committee as part of the integrated score-card report. Performance was within agreed targets with no exception reports required during 2013/14.
- 5.4 From 1 April 2013 the Scottish Information Commissioner imposed a new requirement for Scottish public authorities to submit quarterly statistics to her office. The statistics were submitted via an on-line portal and provided details such as performance against the 20 working day target, number and type of exemptions applied and number of reviews carried out. The information within the on-line portal is available to all Scottish public authorities to view and download.
- 5.5 Of the 778 requests responded to during 2013/14, 17 were responded to under the EIRs compared to 11 requests in 2012/13. The Board continues to be aware of the need to recognise the type of information that is considered to be environmental information and which should be handled under the EIRs rather than FOISA.
- 5.6 Table 2 and Fig 3 overleaf 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 – 2013/14

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Total Number of Requests Responded	76	89	77	68	66	50	56	46	66	43	71	70	778
Number of Requests Completed within 20 Working Days	64	76	74	63	60	42	49	44	59	41	61	66	699
Number of Requests Completed outwith 20 Working Days	12	13	3	5	6	8	7	2	7	2	10	4	79
Percentage completed within 20 Working Days	84%	85%	96%	93%	91%	84%	88%	96%	89%	95%	86%	94%	90%

Fig 3 – Performance against 20 working day timescale April 2013 to March 2014



6 SOURCE OF REQUESTS

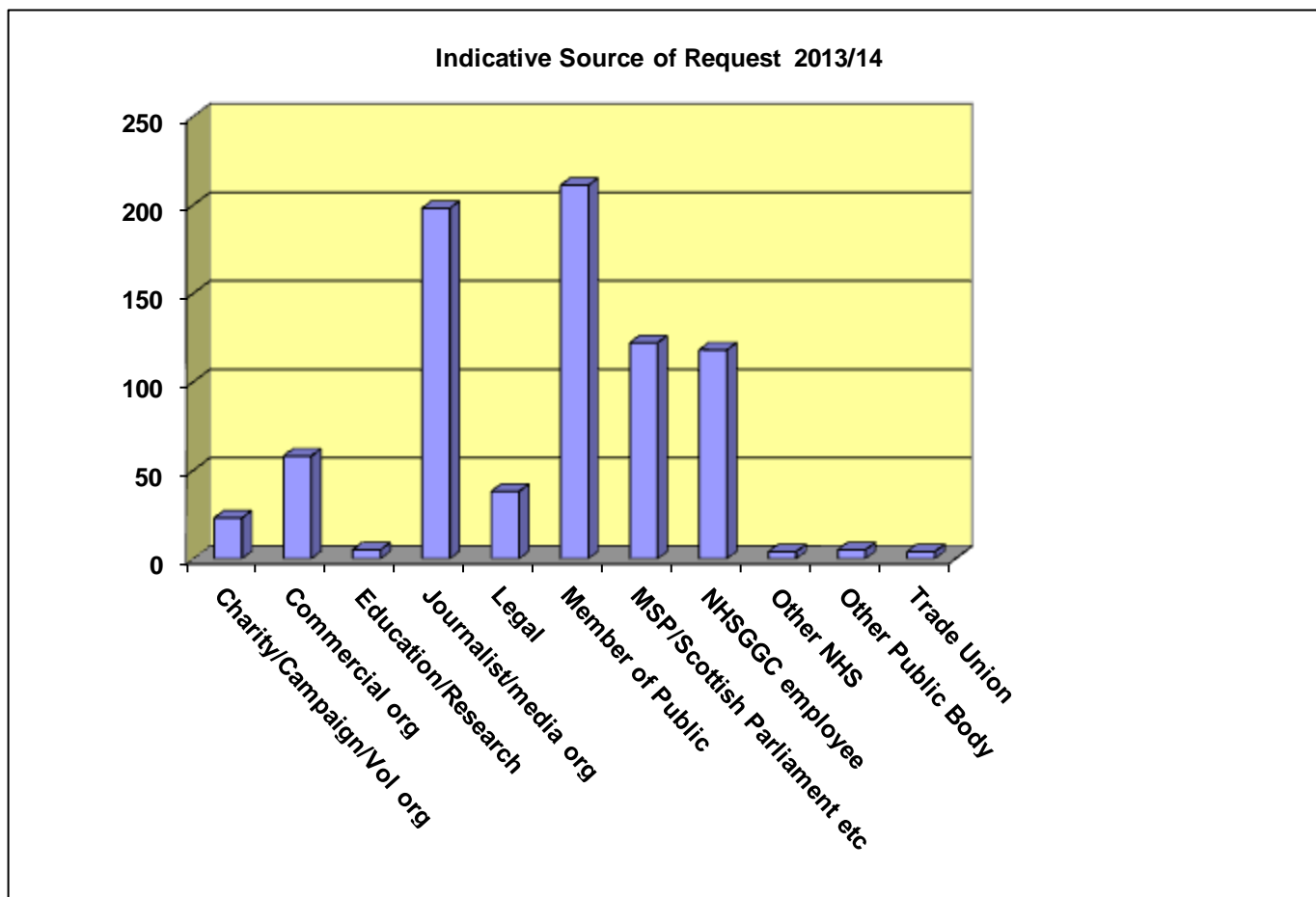
6.1 The overall number of requests received in 2013/14 (786) shows an increase of 176 requests from 2012/13 (610).

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 2013/14 and 2012/13

Indicative source of request	2013/14		2012/13	
	Number	% of total requests received	Number	% of total requests received
Charity/Campaign/Voluntary organisations	23	2.9	20	3.3
Commercial organisations	58	7.4	57	9.3
Education/research	5	0.6	7	1.1
Journalist/Media organisation	198	25.2	168	27.5
Legal	38	4.8	27	4.4
Individuals	211	26.8	168	27.5
MSP/Scottish Parliament/Other elected official	122	15.5	118	19.3
NHSGG&C Employee	118	15.0	31	5.1
Other NHS	4	0.5	3	0.5
Other Public Body	5	0.6	0	0
Trade Union/Professional Representative body	4	0.5	11	1.8
Total	786	100%	610	100%

Fig 4 – Indicative Source of Request 2013/14



6.3 Requests from journalists and media sources showed a further increase in 2013/14. 141 requests were reported in 2011/12, rising to 168 in 2012/13 and to 198 in 2013/14.

6.4 The main increase in 2013/14 was in requests from NHSGGC staff. One particular staff group received outcomes through the STAC process and this prompted 63 requests over a 4-month period.

- 6.5 The number of requests from MSPs/researchers and other elected officials increased only slightly, from 118 in 2012/13 to 122 in 2013/14. This represents a reduction in the actual proportion requests, from 19.3% in 2012/13 to 15.5% in 2013/14.
- 6.6 The number of requests from individuals increased, from 168 in 2012/13 to 211 in 2013/14, but this increase is in proportion to the increase in the overall number of requests.
- 6.7 2013/14 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.

- Land and property
- 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
- Drug and alcohol use and treatment
- Clinical incidents, protocols and guidelines
- IVF and infertility treatment
- Bariatric Surgery
- Child incidences of abuse of drugs/alcohol
- Accident and Emergency
- Homoeopathic
- Cosmetic Surgery
- New Southern General Hospital
- Asbestos.

7.3 Several requests were made in relation to the disposal of land at the site of the former Lennox Castle Hospital. The information requests covered a range of questions regarding this issue and in response a large amount of information was made publicly available on the Board's website.

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 2013/14 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

In addition the following exceptions were applied under the EIRs:

- Regulation 10.4A – Information not held;
- Regulation 10.4D – Material still in the course of completion (broadly equivalent to Section 27 of FOISA);
- Regulation 11 – Personal data (broadly equivalent to Section 38 of FOISA).

7.6 54 requests were responded to under Section 12 FOISA, where the Board did not provide all or part of the information being requested as it estimated that the cost of complying with the request would exceed the cost threshold set by Scottish Ministers (currently £600). This shows an increased position from 29 cases in 2012/13. 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, for example cases where the information can only be provided by analysing a significant number of individual records. 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 2014/15 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 practitioner. 3 Non-Executive Directors participated in reviews during 2013/14.

8.2 14 requests for review from 8 different applicants were responded to in 2013/2014. 5 of the reviews were responded to within the statutory time period of 20 working days. A summary is given in Table 5 below:

Table 4 – Reviews completed during 2013/14

	<u>Review No</u>	<u>Details of Review</u>	<u>Outcome</u>
Applicant #1	1	The applicant requested information on unused buildings and their estimated worth. The original response declined to provide information on the grounds of commercial interests (S.33). The Review found that the specific information was not held by NHSGGC. Information was held on the estimated value of a total site including any buildings, but not information on the estimated value of the buildings separately. Information on the Net Book Value of properties surplus to requirements was provided.	Partially upheld. Some information provided.
Applicant #2	2	The applicant's request was for information on equipment purchased for bariatric patients. The Board's original response notified the applicant under S.17 that the information was not held. The Review found that it would be possible to extract some information from NHSGGC systems, but to do so would be above the cost threshold of £600. Use of S.17 was incorrect and use of S.12 would have been appropriate. FOI Officers were reminded of the need to consider the use of S.12 (rather than S.17) where appropriate.	Original decision upheld, but use S.12 instead of S.17.
	3	The Board's original response notified the applicant under S.17 that the information was not held.	Original decision upheld

	<u>Review No</u>	<u>Details of Review</u>	<u>Outcome</u>
		Investigation found that the specific information requested was not recorded centrally by NHSGGC, so use of S.17 was correct, although a more detailed explanation could have been provided to the applicant. However, information on total expenditure on taxi costs is recorded by NHSGGC. Whilst this would not answer the applicant's specific request it would provide some level of information, and could have been provided in the response.	
Applicant #3	4	<p>The applicant's request was for a copy of a specific critical incident report. At the time the Review was requested, the applicant had not been provided with a response.</p> <p>The Review found that a response had not been provided to the applicant, and an apology was provided for this error. However the Review also found that the information requested was held for the purposes of a FAI and should be withheld under S.34.</p>	Partially upheld, as applicant did not receive a reply to original request.
	5	<p>The applicant's request was for a copy of the protocol or guidelines in place in June 2004 advising staff of the circumstances when an incident (or incidents) should be recognised as a potential 'Critical Incident', resulting in the production of a 'Critical Incident Report' and the relevant time limits advised or instructed.</p> <p>The Board's original response declined to provide the information quoting exemption 34(2)(a). The Review upheld this exemption, as the information was being held for the purposes of an FAI.</p>	Original decision upheld
	6	<p>The applicant submitted a request for a substantial list of documentation. The request was made to the CLO which passed it to NHSGGC to respond to. NHSGGC did not appear to provide a formal response to the request, although in acknowledging the request did indicate that the information was likely to be withheld.</p> <p>The Review found that NHSGGC would have been entitled to reject the CLO's request to respond to the applicant under FOISA, on the grounds that it was not a valid request to NHSGGC. It was not established whether any of the information requested by the applicant was held by NHSGGC or whether any appropriate exemptions applied. The Review recommended that the information requested be reviewed to confirm if it was held and if any information could be provided to the applicant.</p>	For applicant. Further information provided.
	7	<p>The applicant request information on the number of patients treated in A&E and number of trainee doctors on duty on a specific date. The original response declined to provide the information on the grounds that it was held for the purposes of a FAI (S.34). The Review found that it had not been demonstrated that the information requested was actually held by NHSGGC, but to do so would be in excess of the cost threshold. Part of the information was available and should have been provided to the applicant in the original response.</p>	Partially upheld. Some information provided to applicant.

	<u>Review No</u>	<u>Details of Review</u>	<u>Outcome</u>
Applicant #4	8	<p>The applicant requested information on the number of patients who attended a particular service and who lived outwith the boundaries of a CHCP. The applicant also requested copies of correspondence between the service and the CHCP. The Board's original response provided the applicant with the number of patients who attended the service who lived outwith the geographical boundaries of the CHCP. The response also provided copies of relevant correspondence requested by the applicant</p> <p>The review found that the response to the applicant's request was appropriate and that there was no evidence that any information had been withheld.</p>	Original decision upheld.
Applicant #5	9	<p>The applicant requested information relating to a specific report, and information and documentation relating to an investigation process, including staff statements. The applicant was provided with all information apart from a staff statement which was withheld.</p> <p>The Review upheld the decision to withhold the staff statement, but substituted an alternative exemption from the one used in the original response.</p>	Original decision upheld, but use S30 instead of S34.
Applicant #6	10	<p>The applicant requested information regarding Health & Safety compliance in relation to refurbishment works. The Board's original response indicated that information had already been provided and that no other information was available.</p> <p>The Review found that there was scope for further investigation as to whether additional information was held, including requests to specific members of staff. Staff should not rely on the fact that related information had previously been provided and should ensure that appropriate searches are carried out, including confirming whether or not information was held.</p>	For applicant. Further information provided.
	11	<p>The applicant requested documentary evidence of whether third parties were informed of correction of information, or documentary evidence confirming how they were informed.</p> <p>The Board's original response did not comply with FOISA as it did not provide information, confirm that the information was not held, or provide an appropriate exemption for why information was not provided. The Review found that a response should be provided to the applicant and NHSGGC should ensure that legislative requirements are complied with when responding under FOI/EIRs. Searches for information should be recorded on a consistent basis.</p>	For applicant. Information provided.
	12	<p>The applicant requested a list of all refurbishments in a specific unit to include details of the work undertaken and period over which the work was completed. The Board's original response referred to a response to a previous request for information made by the applicant, stating that no further information was available other than that already provided.</p>	Original decision upheld.

	<u>Review No</u>	<u>Details of Review</u>	<u>Outcome</u>
		The Review found that based on evidence of previous searches, no further information was available. However, the applicant was offered the opportunity to search the archives.	
Applicant #7	13	The applicant's request was for information on levels of staffing for a specific period of time. The Board's original response stated that the information could not be extracted from organisational systems as suggested by the applicant and declined to provide the information on grounds of excessive cost. On review, it was found that some information could in fact be provided from organisational systems. The applicant was provided with the available information together with an apology that it had not been provided in response to the original request. The remaining information could not be provided within cost limits and a cost calculation sheet was provided the applicant to demonstrate this.	For applicant. Information provided.
Applicant #8	14	The applicant requested information on recruitment and retention of nursing staff in 4 different requests. The Board's original response stated that the information was not held (S.17) as it was not able to identify the specific staff that fell under the scope of the request. The Review found that the original decision was correct to use S.17 as no information was held which would have enabled identification of the staff that would fall under the scope of the request. In the event that the staff could have been identified, further consideration would have been given to whether the information could be provided within the cost limits, and whether any further exemptions such as personal information would have applied.	Original decision upheld.

9 DECISIONS ISSUED BY THE SCOTTISH INFORMATION COMMISSIONER

- 9.1 In the event that a public authority 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 2013/14, none of the applicants appealed to the Scottish Information Commissioner for a Decision on their case. However, the Commissioner issued a technical Decision in one case where an applicant did not receive a response to a request for Review. A Review was subsequently carried out and the outcome notified to the applicant.

10 SCOTTISH INFORMATION COMMISSIONER

10.1 Model Publication Scheme

During 2013/14, the FOI Manager represented NHS Greater Glasgow and Clyde, together with three other territorial Boards and one Special Health Board, in a sub-group of the NHS Scotland FOI Leads Forum. The aim of the group was to develop a template for a Guide to Information for use by all NHS Boards as part of the requirement under the Act to have in place a Publication Scheme. The template was submitted to the Commissioner for approval and subsequent adoption by NHS Boards in Scotland. NHS Greater Glasgow and Clyde's current publication scheme and guide to information was approved by the Commissioner in May 2014 and can be found on our website at <http://www.nhsggc.org.uk/content/default.asp?page=s85>

10.2 Self-Assessment Tools

Earlier this year the Scottish Information Commissioner began the process of developing a suite of self-assessment tools for use by public authorities. The Board's Freedom of Information Manager is part of a small group of FOI practitioners from a cross-section of Scottish public authorities who are working with the Commissioner's office to contribute to the content, undertake testing and provide feedback on the self-assessment tools.

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 During the reporting period of 1 April 2013 to 31 March 2014, a total of 3,396 staff successfully completed the module. A brief summary of the uptake by staff group is given in Table 5 below.

Table 5 – April 2013 to March 2014 – Number of staff successfully completed FOISA/EIR E-Learning Module

Job Family	No of Staff
Admin/Senior Manager	484
Allied Health Professions	493
Health Science Services	134
Medical & Dental Support	26
Medical & Dental	98
Nursing & Midwifery	1,926
Other not specified	118
Other Therapeutic	46
Student	15
Support Services	56
TOTAL	3,396
Acute Division	2,134
Partnerships	1,109
Corporate Services	153
TOTAL	3,396

- 11.4 Increased knowledge and awareness by staff contributes to an improved quality of responses and increased efficiency in turnaround time for requests. Greater awareness of this legislation and its importance will be reinforced by re-publicising the E-Learning module through team brief and other internal communications and the encouragement that all staff are aware of the need to complete the module and that senior management support that principle.
- 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 this 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 City CHP met quarterly during 2013/14 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.

12 CONCLUSION

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

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