

Board Official

**NHS Greater Glasgow & Clyde**

**NHS Board Meeting**

**Head of Administration**

**15 August 2017**



**Paper No: 17/48**

**Insert Title of NHS Board Paper Here**

Freedom of Information Monitoring Report for the period 1 April 2016 to 31 March 2017

**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 2016 to 31 March 2017.

**Purpose of Paper:-**

To provide an overview of the work of the Freedom of Information department within NHSGGC, in relation to compliance with the relevant legislation during the reporting period.

**Key Issues to be considered:-**

- Number of requests responded to;
- Performance against statutory timescales;
- Cases appealed to the Scottish Information Commissioner.

**Any Patient Safety /Patient Experience Issues:-**

None

**Any Financial Implications from this Paper:-**

None

**Any Staffing Implications from this Paper:-**

None

**Any Equality Implications from this Paper:-**

None

**Any Health Inequalities Implications from this Paper:-**

None

**Has a Risk Assessment been carried out for this issue? If yes, please detail the outcome:-**

No

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**Date:** 8 August 2017

**Report of the Head of Administration**

**Freedom of Information Monitoring Report for the period**  
**1 April 2016 to 31 March 2017**

**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 2016 to 31 March 2017.

**Statistical Summary:**

	<b>2016/17</b>	2015/16
Requests for information received	<b>955</b>	801
Requests for information responded to	<b>902</b>	785
Percentage of requests responded to within 20 working days	<b>87%</b>	92%
Average response time (working days)	<b>18.4</b>	16.8
Number of Reviews carried out	<b>21</b>	13
Number of cases appealed to the Scottish Information Commissioner	<b>4</b>	6
Decisions issued by the Scottish Information Commissioner	<b>6</b>	0

**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](http://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 (for example 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 2016 to 31 March 2017. The report summarises the requests for information received by NHS Greater Glasgow and Clyde under both FOISA and the EIRs during this period, and those requests responded to.

2.2 Of the requests responded to, the report shows performance against statutory timescales, and demonstrates the level of information provided. The report also looks in further detail at those cases where we did not meet the expectations of the applicant and which proceeded to the first stage in the appeal process (known as Requirement for Review) and the cases that were subsequently appealed to the Scottish Information Commissioner.

**3 OPERATION OF THE LEGISLATION WITHIN NHS GREATER GLASGOW AND CLYDE DURING 2016/17**

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.

3.2 During 2016/17, the FOI function has operated from one small dedicated team dealing with the majority of FOI requests directed to NHSGGC. This team consists of 3 WTE staff – a Freedom of Information Manager and two Freedom of Information Officers. However requests from media sources (for example journalists, newspaper/magazine or broadcast media) continue to be managed by the Public Affairs Manager within the Corporate Communications Directorate.

3.3 With the creation of Integrated Joint Boards/Health & Social Care Partnerships, these new bodies are now each responsible for responding to freedom of information requests in the same way as the health Board and for other obligations under FOISA such as the requirement to adopt a model publication scheme. The guiding principle to be followed remains that it is the organisation which holds the information being requested, that is responsible for complying with the legislation.

**4 NUMBER OF REQUESTS RECEIVED**

4.1 NHSGGC received 955 requests during 2016/17, compared to 801 requests in 2015/16, representing an increase of almost 20% (19.2%)

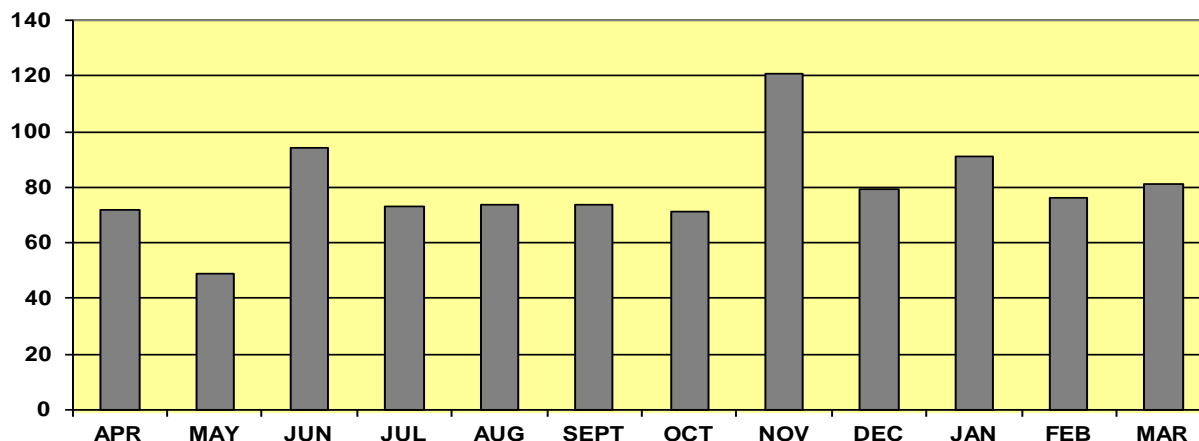
4.2 Table 1 below shows the number of requests for information received each month from 1 April 2016 to 31 March 2017. Fig1 shows the information represented in a chart format. This demonstrates the occasional variability and unpredictability of the flow of requests, and the requirement to be reactive to the peaks and troughs in workload.

**Table 1 – April 2016 to Mar 2017 – Number of Requests Received**

	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
<b>Number of Requests Received</b>	72	49	94	73	74	74	7	121	79	91	76	81	<b>955</b>

**Fig 1 – Requests for information received April 2016 to March 2017**

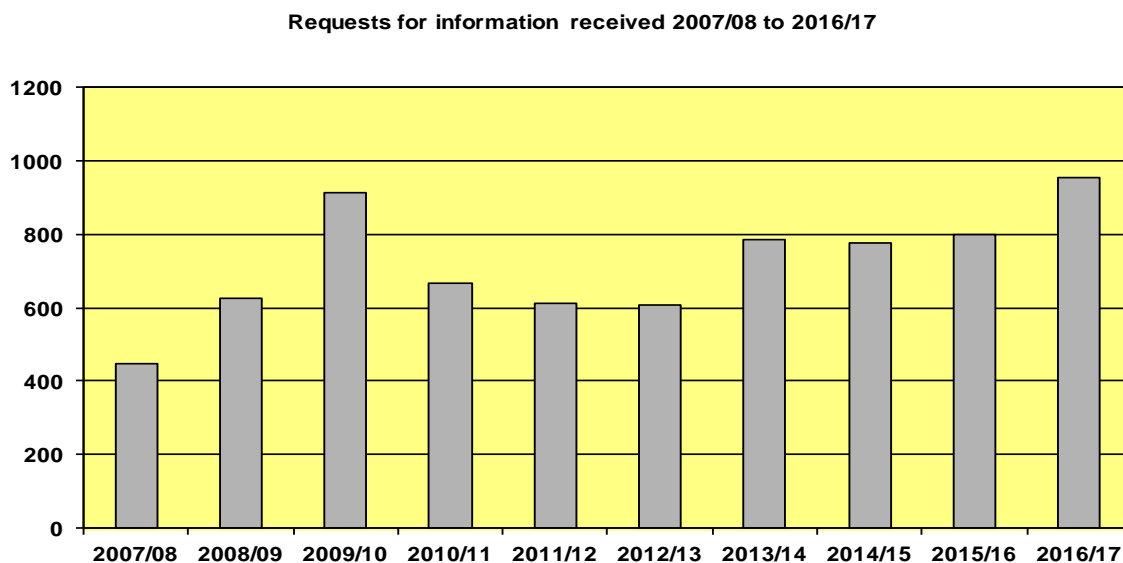
**Requests for information received April 2016 to March 2017**



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4.3 Fig 2 below shows a comparison of the overall number of requests received from 2007/08 to 2016/17. This shows that requests increased during the early years of the legislation coming into force and 2016/17 has seen a further significant increase.

**Fig 2 -Requests for information received 2007/08 to 2016/17**



## 5 PERFORMANCE MONITORING

5.1 902 requests were responded to during 2016/17. Of these, 788 requests (87.5%) were responded to within the requirement of 20 working days (Table 2) compared to 92% in 2015/16. While this is a fall in performance from 92% reported in 2015/16, the number of responses issued on time during 2016/17 (788) is greater than the total number of requests responded to during 2015/16 (785).

5.2 Table 2 and Fig 3 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 – 2016/17**

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
<b>Total Number of Requests Responded</b>	<b>49</b>	<b>72</b>	<b>51</b>	<b>75</b>	<b>81</b>	<b>77</b>	<b>61</b>	<b>83</b>	<b>110</b>	<b>72</b>	<b>101</b>	<b>70</b>	<b>902</b>
Number of Requests Completed within 20 Working Days	41	66	47	65	64	68	53	71	107	62	85	59	788
Number of Requests Completed outwith 20 Working Days	8	6	4	10	17	9	8	12	3	10	16	11	114
<b>Percentage completed within 20 Working Days</b>	<b>84%</b>	<b>92%</b>	<b>92%</b>	<b>87%</b>	<b>79%</b>	<b>88%</b>	<b>87%</b>	<b>86%</b>	<b>97%</b>	<b>86%</b>	<b>84%</b>	<b>84%</b>	<b>87%</b>



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- 5.5 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 NHS Board and the Acute Services Committee as part of the integrated performance report.
- 5.6 From 1 April 2013 the Scottish Information Commissioner introduced a requirement for Scottish public authorities to submit quarterly statistics to her office. Statistics continue to be submitted via an on-line portal providing 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 publicly available to view and download.

## 6 SOURCE OF REQUESTS

- 6.1 The total number of requests received has increased from 801 in 2015/16 to 955 in 2016/17.
- 6.2 There has been an increase in requests from all sources. The most significant increases were:
- commercial organisations (increased from 61 to 99);
  - trade unions/professional bodies (increased from 9 to 22);
  - members of the public (increased from 270 to 292);
  - MSPs and Scottish Parliament researchers (increased from 125 to 155);
  - Journalists and media organisations (increased from 227 to 241).

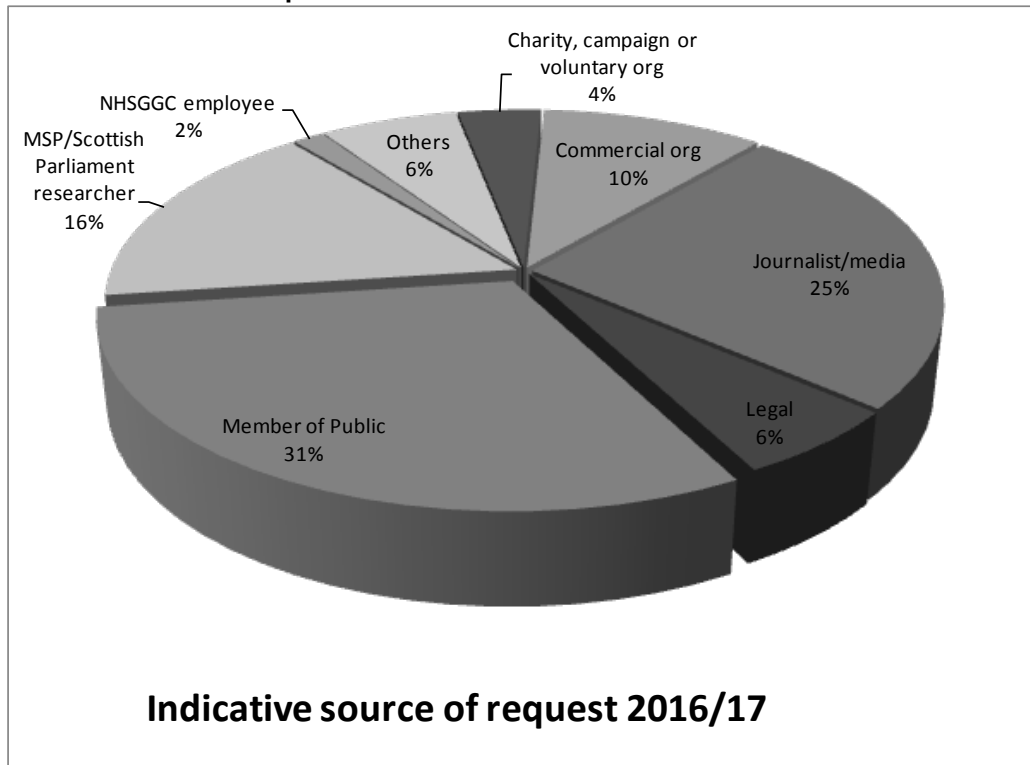
Although requests from journalists and members of the public increased in number, these actually represented a decrease in the percentage of requests received overall.

- 6.3 A breakdown of the source of requests is shown below in Table 3 and in Fig 5.

**Table 3 – Indicative Source of Request 2016/17 and 2015/16**

Indicative source of request	2016/17		2015/16	
	Number of requests	% of total requests received	Number of requests	% of total requests received
Charity/Campaign/Voluntary organisations	37	3.9	28	3.5
Commercial organisations	99	10.4	61	7.6
Journalist/Media organisation	241	25.2	227	28.4
Legal	56	5.8	50	6.2
Member of Public	292	30.6	270	33.7
MSP/Scottish Parliament/Other elected official	155	16.2	125	15.6
NHSGG&C Employee	14	1.5	12	1.5
Others:				
Trade Union/Professional Representative body	22	2.3	9	1.1
Other NHS	17	1.8	8	1.0
Other Public Body	1	0.1	0	0
Education/research	21	2.2	11	1.4
<b>Total</b>	955	100.0%	801	100.0%

**Fig 5 – Indicative Source of Request 2016/17**



## **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, property and the NHSGGC estate
- Corporate policies and reports
- Finance and expenditure
- Use of locum and agency staff
- Violence and aggression/health and safety issues
- Pharmacy and prescribing issues
- IT contracts, data loss and IT security
- Drug and alcohol use and treatment
- Clinical incidents, protocols and guidelines
- Child incidences of abuse of drugs/alcohol
- Workforce information, for example number of staff, vacancies
- Proposals to change services.

## **8 OUTCOME OF RESPONSES**

8.1 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 treated 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.

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8.2 During 2016/17 the following exemptions were used to withhold information requested under FOISA:

- Section 25 - Information otherwise accessible
- Section 30 - Prejudice to effective conduct of public affairs
- Section 33 - Commercial interests and the economy
- Section 38 - Personal Information

Only 57 responses required the use of an exemption. Most of these related to requests where the exempt information was personal information, either of the applicant, or of a third party.

8.3 In 2016/17, 31 requests for information were considered to fall under the definition of environmental information as compared to 2 requests in 2015/16, and were therefore handled under the Environmental Information Regulations (the EIRs). "Environmental Information" covers a broad range of topics, such as:

- the environment itself, including air, water, earth, and the habitats of animals and plants;
- other things that affect the environment, such as emissions, radiation, noise and other forms of pollution;
- policies, plans and laws on the environment.

8.4 In practice, requests that were handled under the EIRs included requests about:

- pest control
- land
- gritting in car parks
- disposal of waste
- safety of public buildings
- asbestos.

8.5 An analysis of the outcome of all responses is shown in Table 4 below:

**Table 4 – Outcome of responses**

Outcome of responses	2016/17	
	Number	%
<b>Full response:</b> The number of requests for which information was provided in full		
<b>Full response Total</b>	<b>570</b>	<b>63.2%</b>
<b>Partial response:</b> The number of requests for which part of the information requested was not provided *		
<b>Partial response Total</b>	<b>221</b>	<b>24.5%</b>
<b>Information not held:</b> The number of requests for which all of the information was not held by NHSGGC		
<b>Information not held Total</b>	<b>60</b>	<b>6.7%</b>
<b>Other Refusals:</b> The number of requests for which all of the information requested was not provided **		
<b>Refusals Total</b>	<b>51</b>	<b>5.6%</b>
<b>Total responses</b>	<b>902</b>	<b>100.0%</b>

\* Partial response – where part of the information is not provided for one or a combination of the following reasons:

- Excessive costs
- Information not held
- Exemption(s) applied.

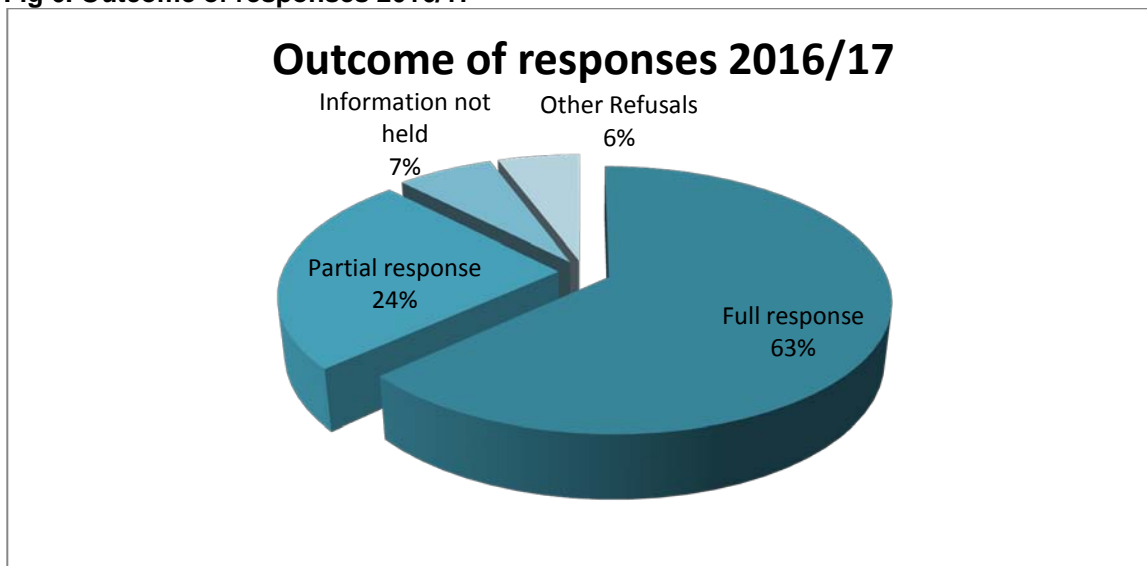
\*\* Refusals – where all the information is not provided for one or a combination of the following reasons:

- Excessive costs
- Vexatious or repeated requests
- Information not held
- Exemption(s) applied.



8.5 In a number of cases requests were responded to under Section 12 of 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). These cases were typically those where a large amount of information was requested that would take an excessive amount of time and resources to provide, for example cases where the information could 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.

**Fig 6. Outcome of responses 2016/17**



## 9 REQUESTS FOR REVIEW

9.1 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 or if they feel we have not complied with our obligations under the legislation. An applicant has up to 40 working days following receipt of a response in which to submit their request for a review.

9.2 21 requests for review were responded to in 2016/17, compared to 13 reviews in 2015/16. The number of reviews received represents only 2.3% of all requests responded to during 2016/17.

9.3 Reasons for dissatisfaction are varied, for example:

- Information is withheld which the applicant thinks should be released;
- Failure to respond to the request within statutory timescales;
- Expectations of the applicant in relation to the extent of information held by NHSGGC;
- Challenges when data produces 'small numbers' which may identify individuals;
- Failure to carry out appropriate or sufficient searches;
- Failure to provide appropriate advice and assistance;
- Failure to comply with technical aspects of the legislation.

9.4 In line with the procedures agreed by the NHS Board, Reviews are carried out by a Non-Executive Director of the Board with the support of an FOI practitioner. Two Non-Executive Directors participated in reviews during 2016/17.

9.5 The purpose of a review is to provide the applicant with a re-assessment of their request by an individual outside the FOI process. The review will consider aspects of the case such as:

- Whether the applicant received all the information they were entitled to receive under the legislation;
- Whether appropriate and advice and assistance was provided to the applicant;
- Whether due process was followed.

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- 9.6 In reaching a conclusion, the reviewer may decide that the original response was justified, or that further information or explanation should be provided to the applicant. The applicant is always provided with a full copy of the review report.
- 9.7 Of the 21 reviews carried out, 14 were responded to within the statutory time period of 20 working days. A summary of each case is given in Table 5 below:

**Table 5 – Reviews completed during 2016/17**

<u>Review No</u>	<u>Review Ref</u>	<u>Details of Review</u>	<u>Outcome</u>
1	12216	<p>The applicant requested information relating to car park management and charges within NHSGGC. A review was requested on the grounds that the response withheld information from a tender submission.</p> <p>The review found that the original response did not correctly identify the exemption being relied on to withhold information. The review also found that the tender document had been over-reacted and this was re-issued to the applicant with some information re-instated.</p>	<p>Applicant was provided with some information that had previously been withheld.</p> <p>Applicant remained dissatisfied and appealed to the SIC for a decision (see 048/2017)</p>
2	12217	<p>The applicant requested information relating to the move of a surgical service to a single-site location. A review was requested on the grounds that the response did not provide sufficient information.</p> <p>The review found that the original request was responded to appropriately, in that the recorded information available on the subject was provided to the applicant. Further enquiries did not result in any additional recorded information. However in order to provide reasonable advice and assistance, narrative was also provided to the applicant in order to try and answer the questions raised.</p>	Original decision upheld.
3	12067	<p>The applicant requested information on the number of people referred by NHSGGC through the 'Prevent' strategy. A review was requested on the grounds that information had been withheld using the 'neither confirm nor deny' exemption.</p> <p>The review found that the exemption had not been applied correctly as it did not correctly state, in the event that the information was held, which exemption would be used to withhold it. Information on the number of cases was provided to the applicant, although further information was withheld under Section 38(1)(b) (personal information).</p>	Additional information was provided to the applicant.
4	12653	<p>The applicant requested information regarding attendance of patients at a specific service location, including patient details. A review was requested on the grounds that information had been withheld.</p> <p>The original response withheld personal information (names and addresses of patients). The review found that the applicant was provided with all the information possible to release into the public domain without contravening data protection principles.</p>	Original decision upheld.
5	12551	<p>The applicant requested information regarding attendance of patients at a specific OOH service location, including patient details. A review was requested on the grounds that information had been withheld.</p>	Original decision upheld.

<u>Review No</u>	<u>Review Ref</u>	<u>Details of Review</u>	<u>Outcome</u>
		The original response withheld personal information (names and addresses of patients). The review found that the applicant was provided with all the information possible to release into the public domain without contravening data protection principles.	
6	12071	<p>The applicant requested information regarding the extent of outpatient DNA's, including multiple and subsequent DNA's. The applicant appealed to the SIC for a decision, on the grounds that a review request had not been responded to.</p> <p>The review criticised failures to recognise the applicant's request for review, acknowledge communications and to explain why the information was not held.</p>	Technical breach. The SIC issued Decision Notice 173/2016 regarding NHSGGC's failure to respond to the review.
7	12048	<p>The applicant requested information regarding allocation of trained health visitors to practices, and details of practices where patients attended physiotherapy from outwith the locality. A review was requested on the grounds that information was not provided in the format indicated, and that other information had not been provided.</p> <p>The review found that information provided in a tabular form within a Word document was incorrectly described as a spreadsheet. Section 17 should have been used to notify the applicant that specific information was not held.</p>	Additional information was provided. The applicant was also provided with an apology for the delay in responding to the review
8	11882	The applicant requested information regarding the content of tender bids in relation to a specific contract. A review was requested on the grounds that no response had been issued within the statutory timescale of 20 working days. A full response was subsequently provided.	Technical breach. The applicant was provided with an apology for the delay in responding.
9	12652	<p>The applicant requested information relating to the tender process for a specific service, including bids, scoring sheets, communications, correspondence. Information was originally withheld as the contract had not been awarded at the time of the request. A review was requested to reconsider the decision to withhold the information.</p> <p>The review found that the original response was correct in using Section 33(1)(b) (commercial interests) to withhold the information, as at that time the contract had not been awarded. However the contract had since been awarded and the information was reviewed. Information was provided to the applicant although a small amount of information was still withheld under Section 33(1)(b).</p>	Applicant was provided with some information that had previously been withheld.
10	12066	<p>The applicant requested information, in the form of a PDF copy, of the operation maintenance manual for the QEUH. A review was requested on the grounds that the information had been withheld.</p> <p>The review found that the exemption used to withhold the information had been properly applied and in addition that the public interest test had also been correctly applied.</p>	Original decision upheld.
11	12365	The applicant requested a written account of the proceedings at a public engagement event. A review was requested on the grounds that the information provided was not an	Original decision upheld.

<u>Review No</u>	<u>Review Ref</u>	<u>Details of Review</u>	<u>Outcome</u>
		<p>accurate written account of the proceedings.</p> <p>The review found that the original response was correct and that all the information held about the event had already been provided to the applicant.</p>	
12	11749	<p>The applicant requested information regarding the terms and conditions of a joint venture agreement between NHSGGC and a construction company. A review was carried out following notification from the SIC confirming the applicant had submitted an appeal with respect to the failure to respond by NHSGGC. A response was subsequently provided to the applicant.</p>	<p>Technical breach. The SIC issued Decision Notice 118/2016 regarding NHSGGC's failure to respond to the request and review.</p>
13	12072	<p>The applicant requested information regarding whether professional fees relating to sale of land were paid by a third party. A review was requested on the grounds that the information had not been provided.</p> <p>The review found that no recorded information was held that definitively answered the applicant's specific question, and Section 17 (information not held) should have been used in this respect. The review also found that a more helpful approach (in line with Section 15 duty to advise and assist) could have been provided to the applicant.</p>	<p>Original decision upheld. However, the applicant was provided with an apology that the original response did not fulfil the appropriate technical requirements under the Act.</p>
14	12461	<p>The applicant requested information regarding knee replacement operations at a specific hospital and waiting times of patients. A review was requested on the grounds that the actual number of patients waiting was not provided.</p> <p>Considerable thought and discussion was given to this case, balancing the right of the applicant to receive information with the risk of potential disclosure of the identity of individual patients, due to the specific data requested. The review found that modified information should be provided to the applicant which, although still not providing the exact number of patients, presented the information in a modified format.</p>	<p>The applicant was provided with an apology for the delay in responding to the review. Modified information was also provided.</p>
15	12543	<p>The applicant requested details of the number of complaints received by NHSGGC in respect of a named clinician. A review was requested on the grounds that not all information had been provided.</p> <p>The review found that the search conducted was not sufficiently robust and additional information was identified. The original response (that information was not held) was incorrect and the information located during the review was provided to the applicant, together with an apology that it had not been identified at the initial response stage.</p>	<p>Information and apology was provided to the applicant.</p>
16	11674	<p>The applicant requested information showing the management structure of a specific service. A review was requested on the grounds that insufficient information had been provided.</p> <p>The review found that, under Section 15 (duty to provide reasonable advice and assistance), additional documents could potentially have been provided, although the original response was technically correct.</p>	<p>Original decision upheld.</p>

<u>Review No</u>	<u>Review Ref</u>	<u>Details of Review</u>	<u>Outcome</u>
17	11793	<p>The applicant requested information regarding specific services. A review was requested on the grounds that only a partial response had been issued within the statutory deadline, with much of the information requested not provided.</p> <p>The review found that an apology was due to the applicant as both the request and review were issued outside the timescales. However the content of the original response was found to be technically correct, as much of the information requested was not held.</p>	<p>Information not provided in the original response was subsequently released, together with an apology for the delay. Applicant remained dissatisfied and appealed to the SIC for a decision.</p>
18	12068	<p>The applicant requested information on the extent of the use of prone restraint and rapid tranquilisation. A review was requested on the grounds that the applicant considered more information existed than had been provided in the original response.</p> <p>The review found that additional information did exist and should have been provided to the applicant with appropriate context. In addition, the original response was lacking in advice and assistance and did not give appropriate explanation on the use of the cost exemption.</p>	<p>Additional information was released to the applicant, together with an apology that this had not been provided with the initial response.</p>
19	12562	<p>The applicant requested information including media releases, leaflets and promotional materials, publicity campaign and marketing activity, to promote the use of a specific service. A review was requested on the grounds that the response had not been issued within the statutory timescale and not all information had been provided.</p> <p>The review found that appropriate NHSGGC staff were contacted to provide relevant information, and that all information had been provided with the exception of two leaflets which were the result of the additional search as part of the review investigation. These were provided to the applicant with a further apology for the failure to meet timescales.</p>	<p>Additional information released to the applicant, together with an apology for delay in responding.</p>
20	11883	<p>The applicant requested information regarding barriers installed across various parking areas on the QEUH campus, including details of discussions about their installation. A review was requested on the grounds that the applicant considered that additional information was held.</p> <p>The review found that the original response did not provide all the information available. The applicant was provided with the additional information, together with an apology that this was not initially identified.</p>	<p>Additional information released to the applicant, together with an apology that this was not provided with the original response.</p>
21	12069	<p>The applicant requested information relating to compliance with bed spacing regulations. A review was requested on the grounds that the applicant considered the response to be insufficient.</p> <p>The review found that the response could have been improved if due regard had been paid to Sections 15 and 17 of FOISA.</p>	<p>Technical breach. The applicant was also provided with an apology for the failure to respond within timescales.</p>

**10 CASES APPEALED TO THE SCOTTISH INFORMATION COMMISSIONER AND DECISION NOTICES ISSUED**

- 10.1 In the event that a public authority fails to respond to a request or the requester is not satisfied with 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.
- 10.2 Although no Decision Notices were issued in 2015/16, 6 cases for which reviews were undertaken in 2015/16 were appealed to the Scottish Information Commissioner (SIC) and subsequently investigated during 2016/17. In addition, 4 of the review cases identified in Table 5 above were also appealed to the SIC and investigated during 2016/17. Of the total of 10 cases appealed, 7 were from the same applicant.
- 10.3 A case appealed to the SIC is comparable to a case referred to the Scottish Public Service Ombudsman. Consequently the subsequent work and investigation by FOI staff is extremely complex and detailed in order to satisfy the appropriate level of scrutiny required by the SIC. Investigating appeals and responding to the detailed questions asked by the SIC often throws light on issues which act as barriers to the organisation's compliance with FOISA, such as records management, inadequate searches for information and lack of understanding of NHSGGC's obligations under FOISA.
- 10.4 In dealing with cases appealed to the SIC during 2016/17, we were required to make detailed submissions on areas such as:
- How searches for information were carried out, including the names and job roles of individual members of staff we contacted and copies of documents, emails and screen shots that demonstrated this;
  - Why we considered information to be personal information and the application of data protection principles, including consideration of whether an applicant had 'legitimate interests' in obtaining information;
  - Why we considered that the names/identities of staff making statements in relation to investigations should not be disclosed to the applicant;
  - Whether the release of information would cause substantial prejudice to commercial interests, which included identifying whose commercial interests would be prejudiced, how they would be prejudiced and the harm this would cause;
  - Consideration of the public interest test in relation to information we considered should be withheld. This meant that, even where we considered an exemption to apply, we were required to set out the competing arguments to demonstrate that the public interest lay in maintaining the exemption rather than disclosing the information.
- 10.5 During 2016/17 a total of 9 investigations were completed, resulting in 6 Decision Notices being issued. Although the total number of cases appealed was higher than the number of Decision Notices issued, some cases from the same applicant were brought together into one Decision Notice, since they related to the same or similar subject matter. One case has still to be concluded. All Decision Notices can be read in full on the SIC's website.

A summary of the Decision Notices issued is shown in Table 6 below:

**Table 6 – Decision Notices issued during 2016/17**

<b>Applicant / Decision Notice</b>	<b>Description</b>	<b>Outcome</b>
Decision Notice 118/2016	Sale of land at Lennox Castle	Failure to respond within statutory timescale
Decision Notice 173/2016	Number of out-patient DNAs	Failure to respond within statutory timescale
Decision Notice 183/2016	Information on the identity of the lead investigator for a specified Significant Clinical Incident	The Commissioner investigated and found that NHSGGC had addressed the applicant's request by way of advice and assistance, although it should have confirmed that it did not hold the information in question in recorded form.

Decision Notice 241/2016	Information relating to a specified Significant Clinical Incident investigation and report	The Commissioner found that NHSGGC failed to comply with timescales for responding, failed to identify all the relevant information it held and incorrectly withheld some information as personal data. She was satisfied that NHSGGC could withhold a limited amount of information.
Decision Notice 002/2017	Information relating to a grievance	The Commissioner found that NHSGGC had initially failed to identify all of the information falling within the scope of the request. It wrongly withheld some information which it initially considered to be personal data, but which was later disclosed. It also failed to comply with timescales for responding to the request and request for review. However, NHSGGC was entitled to withhold personal data.
Decision Notice 048/2017	Information relating to contract for parking services	The Commissioner found that NHSGGC disclosed most of the information requested but withheld some financial information on the grounds that it was commercially sensitive. The Commissioner found that some information had been correctly withheld but other information had been wrongly withheld. NHSGGC subsequently disclosed additional information to the applicant.

## 11. TRAINING

- 11.1 An E-learning training module for FOISA and the EIRs 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 in order to successfully complete the module.
- 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, improve the quality of responses and continue to develop the culture of FOI within the organisation.
- 11.3 During the reporting period of 1 April 2016 to 31 March 2017, a total of 2,371 staff successfully completed the module. A brief summary of the uptake by staff group is given in Table 7.

**Table 7 –Number of staff successfully completed FOISA/EIR E-Learning Module – 2012/13 to 2016/17**

Job Family	Number of staff completing module					Total
	2012/13*	2013/14	2014/15	2015/16	2016/17	
Admin Services / Senior Manager	253	479	518	352	262	1,864
Senior Manager Exec level	5	5	14	13	1	38
Allied Health Professions	372	493	430	433	444	2,172
Health Science Services	82	134	134	139	123	612
Medical & Dental Support	19	26	15	20	5	85
Medical & Dental	80	98	67	80	116	441
Nursing & Midwifery	1,747	1,926	1,666	1,728	1,298	8,365
Other not specified	59	118	118	86	60	441
Other Therapeutic	19	46	44	39	49	197
Support Services	47	56	55	41	22	221
<b>TOTAL</b>	2,683	3,381	3,061	2,931	2,380	14,436
Acute Division	1,824	2,119	1,911	1,819	1,635	9,308
Partnerships	783	1,109	1,015	952	609	4,468

## Board Official

Corporate Services	76	153	135	160	136	660
<b>TOTAL</b>	<b>2,683</b>	<b>3,381</b>	<b>3,061</b>	<b>2,931</b>	<b>2,380</b>	<b>14,436</b>

\*part year only, 26/06/12 to 31/03/13

- 11.4 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 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.

## 12. DEVELOPMENT

- 12.1 The FOI Steering Group chaired by the Head of Administration met quarterly during 2016/17 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 from HSCPs.
- 12.2 NHS Greater Glasgow and Clyde is also represented on the NHS Scotland FOI Leads Forum, and the FOI Manager currently chairs the quarterly meetings of the Forum.
- 12.3 Information rights legislation such as FOISA, the EIRs and DPA is constantly developing. The new European General Data Protection Regulation (GDPR) will come into force in May 2018 which, while similar to the existing UK Data Protection Act 1998, has some new and different requirements. Some aspects of this will affect FOISA. It should be noted that the UK's decision to leave the EU will not affect commencement of the GDPR.

## 13 CONCLUSION

- 13.1 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.
- 13.2 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 in respect of implementation of the Act within NHS Greater Glasgow and Clyde.

**Alison Flynn**  
**Freedom of Information Manager**  
**NHSGGC**  
**15 August 2017**