

Greater Glasgow and Clyde NHS Board



NHS Board Meeting

Report of the Head of
Corporate Governance
and Administration

Tuesday 16 October 2018 Paper No. 18/56

**Freedom of Information Monitoring Report for the period
1 April 2017 to 31 March 2018**

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 2017 to 31 March 2018.

Statistical Summary:

	2017/18	2016/17
Requests for information received	1071	955
Requests for information responded to	1036	902
Percentage of requests responded to within 20 working days	90%	87%
Average response time (working days)	18.0	18.4
Number of Reviews carried out	15	21
Number of cases appealed to the Scottish Information Commissioner	2	4
Decisions issued by the Scottish Information Commissioner	1	6

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 has adopted the Model Publication Scheme set out by the Scottish Information Commissioner, and maintains a Guide to Information 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 (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 2017 to 31 March 2018. 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 2017/18

- 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 Since 1 April 2016, 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, these bodies are 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.

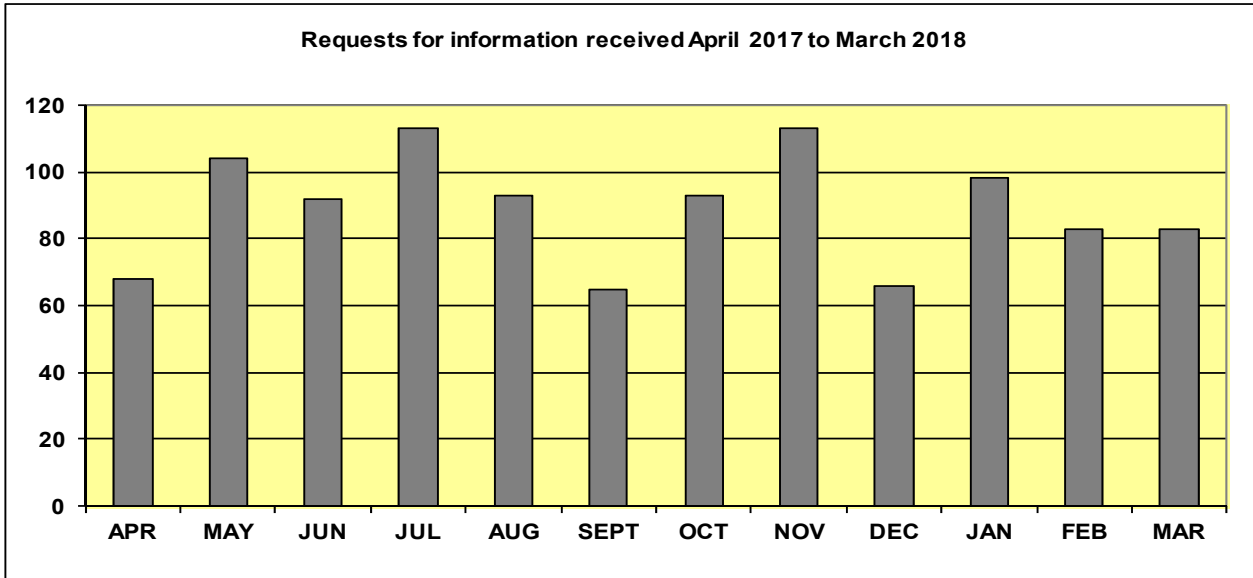
4 NUMBER OF REQUESTS RECEIVED

- 4.1 NHSGGC received 1,071 requests during 2017/18, compared to 955 requests in 2016/17, representing an increase of approximately 12%.
- 4.2 Table 1 below shows the number of requests for information received each month from 1 April 2017 to 31 March 2018. Fig1 shows the information represented in a chart format. This demonstrates the variability and unpredictable flow of requests, and the requirement to be reactive to peaks and troughs in workload.

Table 1 – April 2017 to Mar 2018 – Number of Requests Received

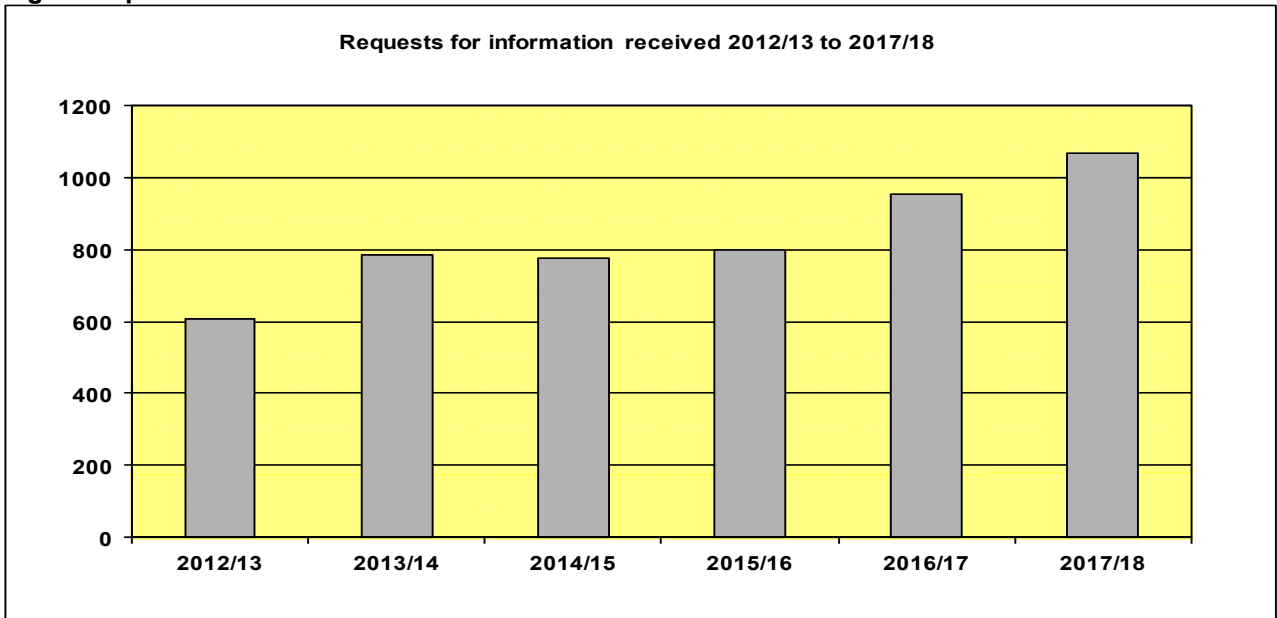
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Total
Number of Requests Received	68	104	92	113	93	65	93	113	66	98	83	83	1071

Fig 1 – Requests for information received April 2017 to March 2018



4.3 Fig 2 below shows a comparison of the overall number of requests received from 2012/13 to 2017/18. This shows a steady increase in the number of requests over the last six years.

Fig 2 -Requests for information received 2012/13 to 2017/18



5 PERFORMANCE MONITORING

5.1 In total, 1,036 requests were responded to during 2017/18 compared to 902 in 2016/17. Of these, 932 requests (90%) were responded to within the requirement of 20 working days (Table 2). This represents an improvement in performance from the position of 87% reported in 2016/17.

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

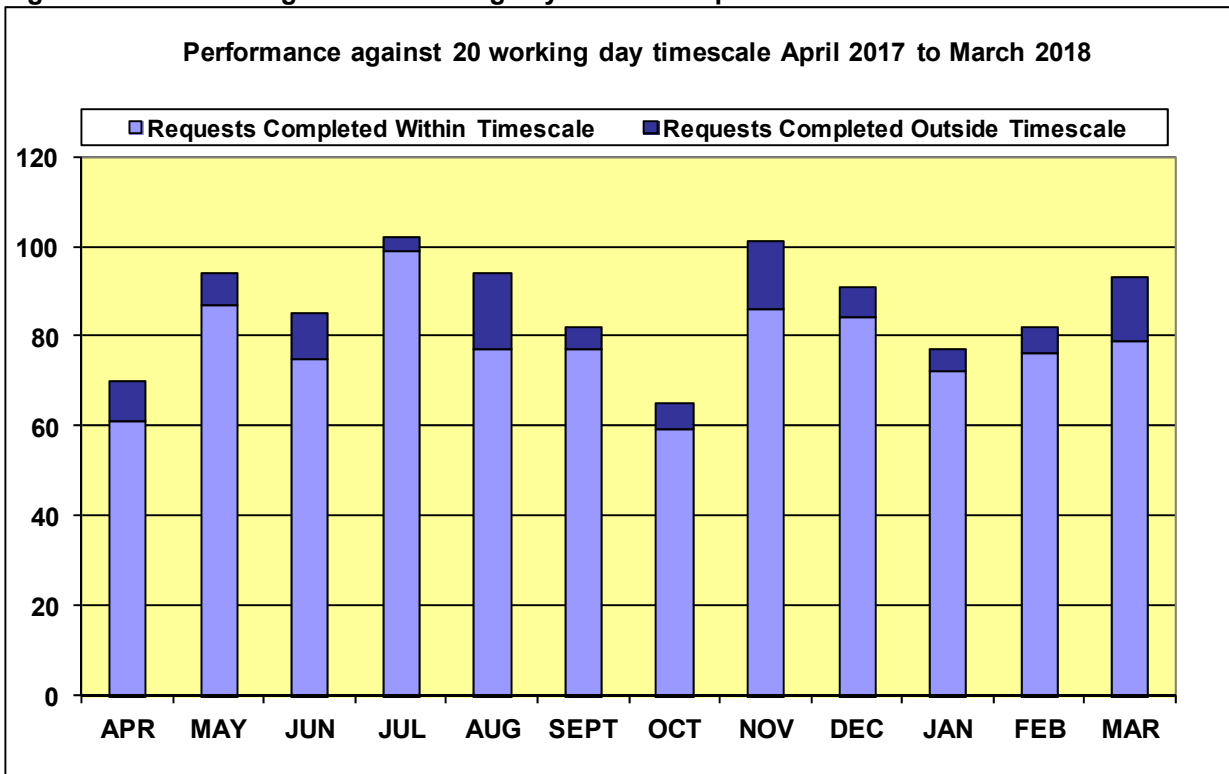
Table 2 – Number and percentage of requests responded to within 20 working days – 2017/18

	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Total Number of Requests Responded	70	94	85	102	94	82	65	101	91	77	82	93	1036

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Number of Requests Completed within 20 Working Days	61	87	75	99	77	77	59	86	84	72	76	79	932
Number of Requests Completed outwith 20 Working Days	9	7	10	3	17	5	6	15	7	5	6	14	104
Percentage completed within 20 Working Days	87	93	88	97	82	94	91	85	92	94	93	85	90

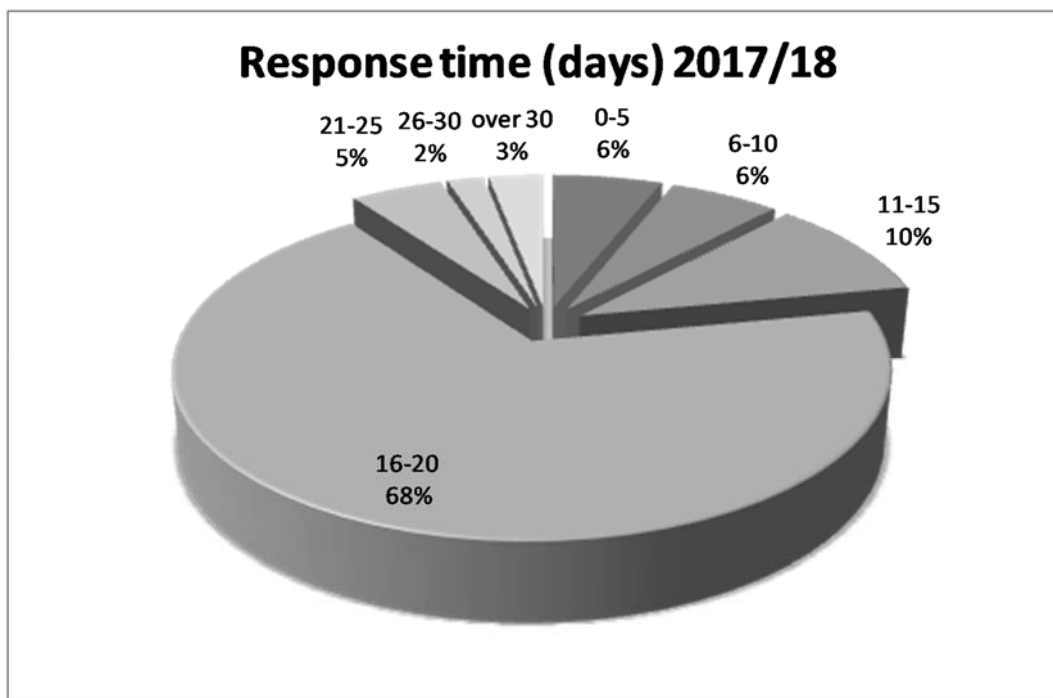
Fig 3 – Performance against 20 working day timescale April 2017 to March 2018



5.3 We seek to respond to all requests within 20 working days, but unfortunately we are not able to achieve 100% performance. In 2017/18, 10% of requests exceeded the statutory timescale. The 20 working day turnaround presents challenges where there are complex cases. Other issues may contribute to difficulties in meeting the timescale, such as delays in processing requests, achieving 'sign-off', or where the initial request was not sent to the correct part of the organisation.

5.4 Fig 4 below shows the breakdown of request response time in days. On average, all requests for information were responded to within 18 working days. Where a response can be issued quickly, this is done so wherever possible. The average turnaround time for responses issued within the 20 working day timescale was 16.5 days.

Fig 4 Response time (days)



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. 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 955 in 2016/17 to 1,071 in 2017/18.

6.2 Although the legislation is intended to be 'applicant blind', information on the source of requests is collected where this is available, to try and establish whether there are any specific trends or increases from particular types of requester.

6.3 In 2017/18 the most significant changes were:

- members of the public (increased from 292 to 413);
- MSPs and Scottish Parliament researchers (increased from 155 to 180);
- requests from journalists and media organisations decreased from 241 to 224.

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

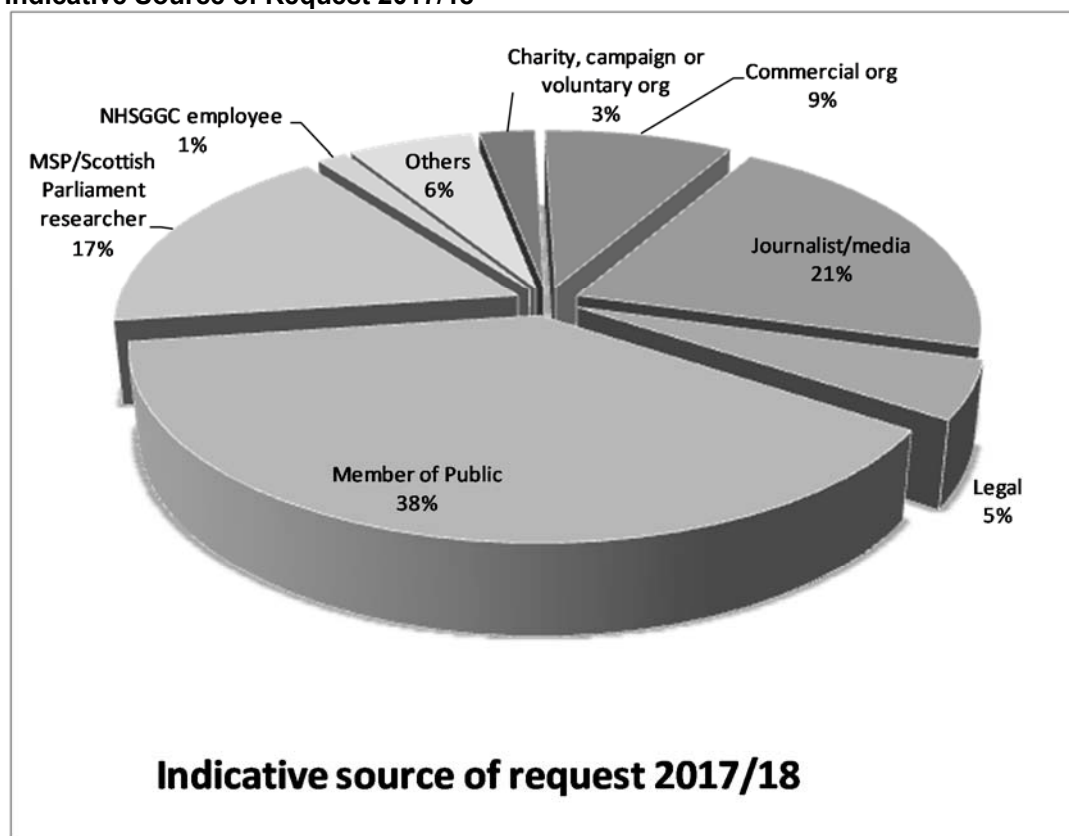
Table 3 – Indicative Source of Request 2017/18 and 2016/17

Indicative source of request	2017/18		2016/17	
	Number of requests	% of total requests received	Number of requests	% of total requests received
Charity/Campaign/Voluntary organisations	28	3	37	3.9
Commercial organisations	95	9	99	10.4
Journalist/Media organisation	224	21	241	25.2

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Legal	53	5	56	5.8
Member of Public	413	39	292	30.6
MSP/Scottish Parliament/Other elected official	180	17	155	16.2
NHSGG&C Employee	15	1	14	1.5
Others:				
Trade Union/Professional Representative body	22	2	22	2.3
Other NHS	12	1	17	1.8
Other Public Body	1	0	1	0.1
Education/research	25	2	21	2.2
Total	1071	100%	955	100.0%

Fig 5 – Indicative Source of Request 2017/18



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.

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- 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
 - Service changes.
- 7.3 In 2017/18, 25 requests for information were considered to fall under the definition of environmental information, 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.
- 7.4 In practice, requests that were handled under the EIRs included requests about:
- pest control
 - infection outbreaks
 - disposal of land
 - gritting in car parks
 - disposal of waste
 - maintenance of hospital estates
 - safety of public buildings
 - fire safety
 - asbestos.

8 OUTCOME OF RESPONSES

- 8.1 In some cases the information requested was considered 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.
- 8.2 During 2017/18 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

Most of these related to requests where the exempt information was personal information, either of the applicant, or of a third party.

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

Table 4 – Outcome of responses

Outcome of responses	2017/18	
	Number	%
Full response: The number of requests for which information was provided in full		
Full response Total	546	53%
Partial response: The number of requests for which part of the information requested was not provided *		
Partial response Total	316	30%

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Information not held: The number of requests for which all of the information was not held by NHSGGC		
Information not held Total	100	10%
Other Refusals: The number of requests for which all of the information requested was not provided **		
Refusals Total	74	7%
Total responses	1036	100.0%

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

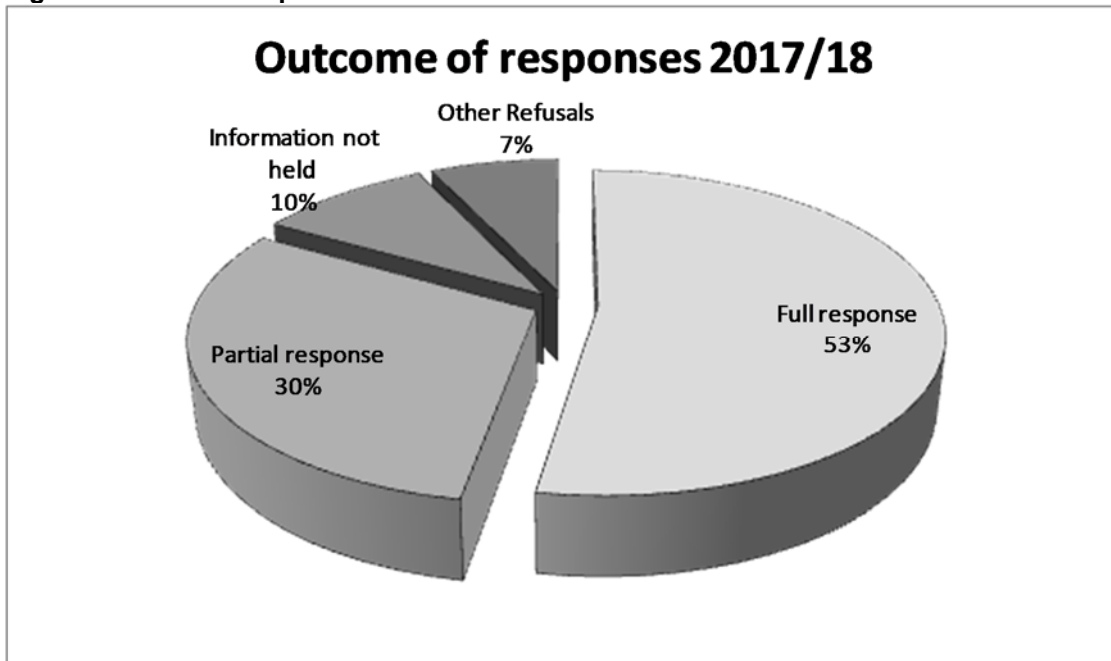
- Excessive costs
- Information not held
- Exemption(s) applied.

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

- Excessive costs (19 cases)
- Repeated requests (21 cases)
- Exemption(s) applied (28 cases)
- More than one reason (6 cases).

8.5 In some cases 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 are referred to as ‘Excessive costs’ above. 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 2017/18



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

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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 15 requests for review were responded to in 2017/18, compared to 21 reviews in 2016/17. The number of reviews received represents only 1.5% of all requests responded to during 2017/18.
- 9.3 Reasons for dissatisfaction are varied, for example:
- Information is withheld which the applicant thinks should be released;
 - 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 respond to the request within statutory timescales;
 - 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 2017/18.
- 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.
- 9.6 In reaching a conclusion, the reviewer may decide that the original response was correct, 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 15 reviews carried out, 9 were responded to within the statutory time period of 20 working days. A brief summary of each case is given in Table 5 below:

Table 5 – Reviews completed during 2017/18

<u>Review No</u>	<u>Review Ref</u>	<u>Summary</u>	<u>Outcome of Review</u>
1	12630	Applicant requested information regarding books, publications, papers held by all NHSGGC libraries. Requested information in paper copy format. Request was refused due to excessive costs.	Original decision upheld.
2	12761	Applicant requested information regarding attendance of patients at a specified service location, including some patient-related information. Personal information of patients was withheld so as not to contravene data protection principles.	Original decision upheld.
3	12793	Applicant requested information on work-related injuries regarding a specific hospital site. Some information was provided but the applicant considered that further information was held.	Original decision upheld.
4	12856	Applicant requested information regarding refurbishment of a unit at a specific hospital site. Some information was provided but the applicant considered that further information was held.	Original decision upheld.
5	13022	Applicant requested information regarding signing and dating of a form. The request was considered a repeat request.	NHSGGC not obliged to undertake a review under Section 21(8) of FOISA
6	13055	Applicant requested information on risk assessments, guidelines and protocols relevant to transfer of a patient between mental health facilities. Some information was provided.	Upheld for applicant. Additional information was located and provided to applicant.

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<u>Review No</u>	<u>Review Ref</u>	<u>Summary</u>	<u>Outcome of Review</u>
7	13164	Applicant requested information on retail premises in NHSGGC hospitals. Some information was provided.	Applicant was provided with some information that had previously been withheld.
8	13233	Applicant requested information on funded research projects. Some information was provided	Additional information was found to exist however this was not provided due to excessive costs.
9	13266	Applicant requested information regarding referrals of young people to a specialist clinic. No information provided due to excessive costs.	Original decision upheld. Applicant remained dissatisfied and appealed to the SIC for a decision (subsequently withdrawn by applicant).
10	13335	Applicant requested information relating to a clinical trial. No information was provided (exemption applied).	Partially upheld. Some information was provided to the applicant
11	13374	Applicant requested information relating to a personal injury. Response was issued outside 20 working day timescale.	Upheld for applicant. Apology provided to applicant for delay in response.
12	13375	Applicant requested information relating to investigative material.	Original decision upheld.
13	13419	Applicant requested information on redesign of a specific service. Some information was provided to the applicant. Applicant considered other information may be held.	All information had originally been provided to applicant, but had not been appropriately presented or indexed. An apology was provided to the applicant.
14	13466	Applicant requested information relating to meetings with Police Scotland. Some information was provided.	Partially upheld. Additional information was located and provided to the applicant.
15	13484	Applicant requested information regarding leave of absence of a member of staff. Some information was provided.	Partially upheld. Additional information was located and provided to the applicant.

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 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.
- 10.3 Two cases were appealed to the Scottish Information Commissioner (SIC) in 2017/18 which resulted in one Decision Notice being issued. All Decision Notices can be read in full on the SIC's website.

A summary of the cases appealed to the SIC is shown in Table 6 below:

Table 6 – Decision Notices issued during 2017/18

	Description	Outcome
Appeal #1	GP Out of Hours information	Decision Notice 190/2017 NHSGGC disclosed some information, but stated that it did not hold some of the information that had been asked for; that some of the information was personal data and exempt from disclosure; and that it would exceed the £600 cost limit to provide other information. The Commissioner found that NHSGGC failed to comply with the timescales in FOISA for responding to the request and requirement for review and, initially, failed to identify all the relevant information it held. However, he also found that NHSGGC correctly withheld some personal data and it was not obliged to respond to part of the request because it would cost more than £600 to do so.
Appeal #2	Information relating to a specialist service for young people	No decision was issued as the SIC found that there was no case for him to answer. The applicant subsequently withdrew the appeal and submitted a new FOI request.

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 2017 to 31 March 2018, a total of 4,774 staff successfully completed the module. The increase in 2017/18 is due to a requirement to re-take the course every 3 years, which was introduced during 2017/18. 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				
	2013/14	2014/15	2015/16	2016/17	2017/18
Admin Services / Senior Manager	479	518	352	262	753
Senior Manager Exec level	5	14	13	1	9
Allied Health Professions	493	430	433	444	641
Health Science Services	134	134	139	123	260
Medical & Dental Support	26	15	20	5	34
Medical & Dental	98	67	80	116	124
Nursing & Midwifery	1,926	1,666	1,728	1,298	2,689
Other not specified	118	118	86	60	90
Other Therapeutic	46	44	39	49	78
Support Services	56	55	41	22	96
TOTAL	3,381	3,061	2,931	2,380	4,774
Acute Division	2,119	1,911	1,819	1,635	3,127
Partnerships	1,109	1,015	952	609	1,383
Corporate Services	153	135	160	136	264
TOTAL	3,381	3,061	2,931	2,380	4,774

12. DEVELOPMENT

- 12.1 The FOI Steering Group chaired by the Head of Administration met quarterly during 2017/18 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 HSCPs.
- 12.2 NHS Greater Glasgow and Clyde is also represented on the NHS Scotland FOI Leads Forum, which draws membership from all the NHS Boards in Scotland and meets quarterly. The NHSGGC FOI Manager has chaired this Forum since May 2017.
- 12.3 Information rights legislation such as FOISA, the EIRs and Data Protection is constantly developing. The new European General Data Protection Regulation (GDPR) and the UK Data Protection Act came into force in May 2018. While similar to the previous UK Data Protection Act 1998, the new legislation has some additional and different requirements. Some aspects of this will affect FOISA and the Scottish Information Commissioner will issue appropriate guidance on this in the near future.

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
6 August 2018