

THE STATE HOSPITALS BOARD FOR SCOTLAND

FREEDOM OF INFORMATION POLICY

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The date for review detailed on the front of all State Hospital policies/procedures/guidance does not mean that the document becomes invalid from this date. The review date is advisory and the organisation reserves the right to review a policy/procedure/guidance at any time due to organisational or legal changes.

Staff are advised to always check that they are using the correct version of any policy, procedure or guidance rather than referring to locally held copies.

The most up to date version of all State Hospital policies, procedures and guidance can be found on the Hospital's Intranet policies page.

REVIEW SUMMARY SHEET

Changes required to policy (evidence base checked)

Yes ☒

No ☐

Summary of changes within policy for the 2024 review:

Minor formatting changes only to improve accessibility and compliance with documents standards.

- Section 13 – Updated to reflect changes in legislation.
- Appendix A – reworded to improve legibility.
- Appendix C – Scottish Information Commissioner’s Office contact email address updated.
- Appendix D – Scottish Information Commissioner’s Office contact email address updated.
- Appendix E – Staff name removed.
- Appendix F – Search form removed from policy.

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1 INTRODUCTION / PURPOSE

1.1 Freedom of Information (FOI)

The Freedom of Information (Scotland) Act 2002 (as amended) (“the Act”) imposes a number of obligations on Scottish public authorities, including The State Hospital (TSH). The Act gives a general right of access to recorded information held by public authorities, subject to certain exemptions. The Act also imposes additional responsibilities:

- a) To produce a Publication Scheme subject to approval by the Scottish Information Commissioner. Publication schemes are high level, strategic documents in which a public authority makes binding commitments to make information available to the general public. Such schemes:
 - Provide clear evidence to the public that an authority is meeting its obligations under the Act to be accessible, open and transparent.
 - Enable the public to see what information is already published, and to access it without having to make a formal request for information.
 - Give employees clear guidance about the information that they can and should give out to the public so they can respond to information requests efficiently.
 - Help reinforce leadership messages about openness and accountability to staff at all levels in the organisation.
 - Are to be easily accessible and designed to be easy to understand and to use – by everyone (including those with no web access).
- b) To respond to requests (which must be in writing or some other permanent form) made by anyone for information held by the authority within set timescales (normally 20 working days) regardless of when it was created, by whom, or the format in which it is now recorded.
- c) To advise an applicant if information is not held.
- d) To specify within the terms of exemptions set out in the Act if the authority refuses to release the requested information.
- e) To charge for the provision of information only in accordance with regulations made under the Act and to decline to provide information if the cost of doing so exceeds a specified level.
- f) To make applicants aware of their right to seek a review of any decision on a request for information and of the right to pursue an appeal to the Scottish Information Commissioner if dissatisfied with the decision of the authority.
- g) To provide advice and assistance to applicants seeking information.

1.2 Environmental Information

Under Section 62 of the Act the Scottish Ministers have made the Environmental Information (Scotland) Regulations 2004 (EIRs). These make provision in Scottish law of the Aarhus Convention of June 1998 on “Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters”. They also implement the European Commission Directive 2003/4/EC. The Convention is based on the principle *that every person has the right to live in an environment adequate to his health and wellbeing*.

Through the Environmental Information Regulations there is a provision similar, but not identical to, Freedom of Information legislation which conveys a “right to access environmental information”. Environmental information has a wide definition. The definition from the EIRs is reproduced as an Appendix A to this Policy. It is not an exclusive definition and may include information on the Board’s policies, plans and activities likely to affect the state of human health and safety – for example, the cleanliness of our premises and control of infection.

There are differences in the obligations on the Board under the EIRs as compared with FOI. Most notable relate to:

- (a) Requests for information may be made orally – there is no requirement to put them in writing or other permanent form.
- (b) The timescale for responding may, in certain circumstances, extend to 40 working days.
- (c) The charging arrangements under EIRs allow for flexibility for the Board to recover the costs of providing information – but we cannot refuse to provide on the grounds of cost.

1.3 Data Protection Act 2018 & General Data Protection Regulation

Under the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR), the subject of personal data (i.e. the person the information relates to) has a right to request access to that data. This may include health records. The rights under the DPA and GDPR are not covered by this policy.

2 SCOPE

This policy applies to all staff, contractors and volunteers at TSH.

This policy sets out the arrangements that TSH has made to ensure compliance with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

Contractors, proposed contractors and others communicating with the Board shall be informed of our obligations under freedom of information legislation and that we may have to disclose information which is provided to us by them.

The policy will provide a framework within which TSH will ensure compliance with our obligations under the Act and ensure that internal procedures developed are the most effective means of complying with the Board’s obligations.

3 MANAGEMENT AND RESPONSIBILITIES

The State Hospital has a statutory responsibility to make information available in accordance with freedom of information legislation. It is essential that all staff are aware of and take seriously their responsibilities under the legislation. As an organisation we are committed to meeting statutory timescales under freedom of Information legislation and in supporting our staff to achieve the requirements of the legislation. Any member of staff who is unable to respond effectively to the principles set out in this policy should advise their line manager or more senior member of staff.

3.1 The Chief Executive

The Chief Executive has overall responsibility for Freedom of Information within TSH.

The Director of Nursing and Allied Health Professions deputises in the absence of the Chief Executive.

3.2 The Freedom of Information Officer

The Freedom of Information Officer (FOI Officer) is responsible for coordinating the development, implementation and maintenance of freedom of information policies, procedures and standards for TSH.

It is their role to:

- Oversee the development and implementation strategy of this policy.
- Take ownership of the freedom of information process including authorising FOI disclosures.
- Ensure that TSH's approach to FOI is effective in terms of resource, commitment and execution and that this is communicated to all staff.
- Provide a focal point for the resolution and/or discussion of FOI issues.
- Ensure executive management is adequately briefed on FOI issues.

The Director of Finance and eHealth is designated as TSH's Freedom of Information Officer.

The Chief Executive or a person nominated by the Chief Executive deputises in the absence of the Director of Finance and eHealth.

3.3 Freedom of Information Administrators

The Freedom of Information administrators (FOI Administrator) are responsible for the day to day management of FOI requests as delegated by the FOI officer.

Their role is to:

- Providing TSH, its employees, contractors and volunteers with advice and guidance regarding their obligations under FOI legislation.
- Manage FOI requests in accordance with this policy on behalf of the FOI Officer.
- Present completed FOI request to the FOI Officer for approval prior to release.
- Act as a contact point for FOI matters.

The Information Governance and Data Security Officer is designated as TSH's FOI Administrator. The Health Records Manager deputises in the absence of the Information Governance and Data Security Officer.

3.4 The Caldicott Guardian

The Caldicott Guardian has responsibility for advising Hospital staff and ensuring adequate arrangements be put in place to protect patient identifiable information.

The Associate Medical Director is designated as TSH's Caldicott Guardian.

The Medical Director deputises in the absence of the Associate Medical Director.

3.5 The Information Governance Group (IGG)

The members of the Information Governance Group are responsible for overseeing the development of this policy and its implementation. The IGG has a standing sub-group for FOI which assists with the management of FOI.

3.6 The FOI Committee

The members of the FOI committee are responsible for overseeing the development of this policy, its implementation and monitoring on behalf of the IGG. The Committee advises the IGG on FOI matters and reviews FOI responses for inclusion in TSH's FOI disclosure log.

3.7 The Head of Communications

The Head of Communications is responsible for ensuring a communications strategy for FOI/EIR responses which may have an impact to the Board.

3.8 The Corporate Services Team

The Corporate Services Team are responsible for ensuring that the Scottish Government are advised of FOI/EIR requests that may have a wider impact than to the Board alone.

3.9 Managers

Managers are responsible for ensuring staff under their direction and control are aware of the freedom of information policies, procedures and guidance laid down by TSH and for ensuring that those staff understand and apply appropriately those policies, procedures and guidance in carrying out their day to day work.

3.10 All Staff, Volunteers and Contractors

Everyone must have a general understanding of freedom of information legislation and know where to refer any issues on which they require guidance.

Compliance with the policy is compulsory for all staff, volunteers and contractors at TSH. A member of staff who fails to comply with this policy may be subject to disciplinary action under the TSH's disciplinary policy.

4 POLICY STATEMENT

The State Hospital is committed to being open and honest in the conduct of its operations and in complying fully with the Freedom of Information (Scotland) Act and the Environmental Information (Scotland) Regulations 2004. To this end TSH will ensure:

- Compliance with the relevant Scottish Ministers Codes of Practice on Freedom of Information legislation and to related guidance issued by the Scottish Information Commissioner.
- A significant amount of routinely published information about TSH is made available to the public as a matter of course through its Publication Scheme.
- That the content of our Publication Scheme is reviewed annually and updated through the proactive identification of material for inclusion in the Scheme.
- Requests for information not included in the Publication Scheme will be processed in accordance with our statutory obligations.
- We will publish via the web, guidance on how to make a valid information request and the procedures adopted by TSH.
- Advice and assistance will be actively provided to applicants seeking information.

- Staff are aware of the need to be able to demonstrate the steps they have taken to identify if TSH holds information sought by any individual and have completed a record of searches undertaken for every request.
- That unless otherwise specified in the Publication Scheme, information made available through the Publication Scheme will be free of charge.
- That when charges for information requested are made a fee notice is issued prior to any charge being levied (see section 5).
- Due consideration is given to whether or not information is covered by an exemption (or exception under EIRs) and should not be released.
- If we claim an exemption (or exception under EIRs) the reasons for our decision will be explained to the applicant, unless to do so would itself result in the disclosure of exempt information.
- That if we do not hold information requested, but it is known or suspect who does, we should as a matter of good practice provide appropriate advice and assistance to the applicant on where the information can be obtained.
- Appropriate training and information is provided to staff at all levels within the organisation of their obligations and how they can obtain assistance in ensuring they meet these.
- Staff are made aware that it is an offence under the Act to alter, deface, block, erase, destroy or conceal information with the intent of preventing disclosure.
- That the Complaints Procedure – *Requirement for Review* - will be made publicly available and will be followed in processing any Requests for Review under the Act (See Appendix C and D).
- That a Records Management Plan under Public Records (Scotland) Act 2011 is developed which supports the ability of the organisation to effectively manage its corporate and operational records and provides a framework for the Board's compliance with the Scottish Ministers Code of Practice on Records Management under Section 61 of the Act.
- That personal data as defined in the Data Protection Act 2018 and General Data Protection Regulation is held securely and is not inappropriately disclosed in response to a request for information under freedom of information legislation.

5 FEES – FREEDOM OF INFORMATION

The State Hospital may charge for the projected costs of locating, retrieving, collating and providing information for an FOI request. Any estimate of projected costs does not take into account the determination of whether we hold the information requested, or whether an exemption may apply. Where TSH does not hold information or we apply exemptions to withhold information, we cannot charge for searching for it.

Fees notices and charges are applied per question, not for an entire request.

Staff costs are capped at £15 per hour, however there is an expectation to utilise the least costly staffing arrangements (no overtime payments) to fulfil the request.

Where a requester expresses a preference for information to be supplied in a particular format we must try and meet these preferences where it is practical to do so. Where we do this we are entitled to charge the requester to carry out this work.

Where we have duties to requesters under the Equality Act 2010, we may not charge for any costs incurred to do this work.

We may charge the actual cost of post and packing the information.

Chargeable amounts

The first £100 of valid projected costs must be waived.

Where the cost exceeds £600 TSH does not need to comply with the request.

Where the cost is above £100 TSH may charge 10% of the costs up to £600

The State Hospital make no charge to view information on our website or at our premises except where there is a statutory fee, for example, for access to registers.

We may charge for providing information e.g. photocopying and postage, but we will charge no more than it actually costs us to do so. We will always tell a requester what the cost is before providing the information.

Photocopied information will be charged at a standard rate of 10p per A4 copy (black and white) and 20p per A4 copy (colour). Electronic media will be charged at the rate of £1.00 per computer disc / DVD.

Postage costs will be recharged at the rate we pay to send the information to you.

When providing copies of pre-printed publications, we will charge no more than the cost per copy of the total print run.

We do not pass any other costs on in relation to our published information.

6 FEES – ENVIRONMENTAL INFORMATION REGULATIONS

The State Hospital may charge for the projected costs of locating, retrieving, collating and providing information for an EIR request. Any estimate of projected costs does not take into account the determination of whether we hold the information requested, or whether an exception may apply. Where TSH does not hold information or applies exceptions to withhold information, we cannot charge for it.

Fees notices and charges are applied per question, not for an entire request.

We are not permitted to charge a fee for allowing requesters to access any public registers or lists of environmental information held by us or to inspect the information requested at a place which TSH makes available for that purpose.

Any costs charged must not be such that requesters are dissuaded from seeking to obtain environmental information or that the right to access is restricted

Where we have duties to requesters under the Equality Act 2010, we may not charge for any costs incurred to do this work.

In line with the Freedom of Information, TSH will process the first £100 free of charge. Above the £100 threshold, fees may be charged based upon the actual cost in terms of staff time and other resources. Where a fee is applicable, information will not be provided until payment of the fee has been received.

Photocopied information will be charged at a standard rate of 10p per A4 copy (black and white) and 20p per A4 copy (colour). Electronic media will be charged at the rate of £1.00 per computer disc / DVD.

Postage costs will be recharged at the rate we pay to send the information to you.

When providing copies of pre-printed publications, we will charge no more than the cost per copy of the total print run.

7 COMMUNICATION AND TRAINING

All staff will have a general awareness of the Board's and each individual's obligations under *freedom of information legislation*. Use will be made of an on-line training package to form part of the mandatory training for new entrants on freedom of information. Specific and focussed training will be provided on demand to specific categories of staff or staff groups.

Through Learn Pro we will make resources available which will support staff in fulfilling their obligations. Training will be provided as follows:

General Awareness - This should be achieved through successful completion of the TSH: Information Governance Series and annual completion of NHS TSH: Information Governance Essentials e-learning module on Learn-Pro.

Response Training – This is for those who are involved in responding to requests and require a full understanding of FOI procedures. Learn Pro training should be supplemented by attendance on short courses or formalised training to be re-validated every three years.

Practitioner Training – This is for those who process a wide range of FOI requests, some of which may be complex and/or spend a significant proportion of their job on FOI. Learn Pro training should be supplemented by refresher training every three years through attendance on short courses, formalised training or other evidence of on-going awareness of application of the legislation.

Reviewer Training – This is for FOI Reviewers involved in responding to requests for reviews or representations submitted. Learn Pro training should be supplemented by refresher training every three years through attendance on short courses, formalised training or other evidence of on-going awareness of application of the legislation.

8 RECORDING AND MONITORING

All services must ensure that all FOI requests are responded to promptly by a nominated person or persons within each area.

Robust arrangements must exist to ensure that in an individual's absence a nominated deputy is available to respond to requests for information and/or record requests/responses. Details of all cover arrangements should be notified to the FOI Administrator.

Monitoring of activity under *freedom of information legislation* will include the routine collection of data on:

- The number of requests received and whether they fall under FOI or EIR.
- The number of requests for review received.
- The proportion of requests answered within and out with the statutory timescale.
- The number of requests refused (or partially refused) and the reasons for this.
- The number of times a fee has been charged.

- The outcomes of reviews.
- The number of cases appealed to the Commissioner and the outcome.

This data will be published through the Publication Scheme along with statistical information produced for the Scottish Information Commissioner's Office.

Operation of the Board's policies and procedures under freedom of information legislation will be reviewed on a regular basis via the Freedom of Information Committee who will also review decisions which are the subject of internal requests for review or external appeal to the Scottish Information Commissioner. The Group will keep under review guidance and directives issued by the Scottish Government and the Scottish Information Commissioner.

An annual report on the Board's compliance with legislation (including relevant statistical analysis) will be submitted to the NHS Board.

9 NOTIFICATION OF REQUESTS

In addition to the FOI officer, all FOI and EIR requests will be notified to the following roles by the FOI Administrator as soon as practical:

- A second FOI Administrator.
- The Head of Communications.
- The Corporate Services Team.

These notifications should not disclose information that can identify the FOI/EIR applicant.

10 DISCLOSURE LOG

It is TSH policy that where information has been released in response to a FOI/EIRs request, it should be made more widely available through the TSH website, unless the information is unlikely to be of interest to anyone other than the applicant. This is because under the terms of FOISA and the EIRs 'release to one is release to all'. If anyone else asked for the information we would not be able to refuse to provide it.

11 SOCIAL MEDIA

With the increasing use of social media it is recognised that more and more requests for information may be submitted using these channels rather than traditional e-mails. Messages received by these media which are directed to the Health Board's social media accounts will be monitored by Corporate Communications who will ensure that any such requests are passed to the FOI Administrator for a response to be prepared and sent. Requests would only be valid if there was provided the applicant's full name, a means of responding in writing and details of the information requested in writing.

12 VOICEMAIL

Generally, answer phone recordings of telephone messages are not regarded as sufficient to be a valid FOI request, but may be for the purpose of EIR. Where there is a system in place which allows a voice mail request to be stored permanently e.g. recordings to out of hours services where permanent recordings of all calls are made, this may be regarded as a valid FOI request if the information stored includes the individual's name and address for correspondence.

13 PROCUREMENT

In addition to the responsibilities under *freedom of information legislation* there are obligations under the Public Contracts (Scotland) Regulations 2015 and the Procurement Reform (Scotland) Act 2014 which allows tenderers involved in regulated tendering exercises the right to ask for information e.g. right to ask why a tender was not successful. The authority has the right to withhold information in some cases, subject to conditions within section 34 of the Act. In exercising any decision to withhold information cognisance should be taken of the Board's responsibilities under *freedom of information legislation*.

14 EQUALITY AND DIVERSITY

The State Hospitals Board (the Board) is committed to valuing and supporting equality and diversity, ensuring patients, carers, volunteers and staff are treated with dignity and respect. Policy development incorporates consideration of the needs of all Protected Characteristic groups in relation to inclusivity, accessibility, equity of impact and attention to practice which may unintentionally cause prejudice and / or discrimination.

The Board recognises the need to ensure all stakeholders are supported to understand information about how services are delivered. Based on what is proportionate and reasonable, we can provide information/documents in alternative formats and are happy to discuss individual needs in this respect. If information is required in an alternative format, please contact the Person-Centred Improvement Lead on 01555 842072.

Line Managers are responsible for ensuring that staff can undertake their role, adhering to policies and procedures. Specialist advice is available to managers to ensure that reasonable adjustments are in place to enable staff to understand and comply with policies and procedures.

The EQIA considers the Protected Characteristic groups and highlights any potential inequalities in relation to the content of this policy.

The volunteer recruitment and induction process supports volunteers to highlight any barriers to communication, physical disability or anything else which would prevent them from contributing meaningfully to patient care and / or engage in other aspects of the work of the Hospital relevant to their role. The EQIA considers the Protected Characteristic groups and highlights any potential inequalities in relation to the content of this policy.

15 STAKEHOLDER ENGAGEMENT

Consultation was undertaken at the time of policy development. Following review of the policy there have been no changes to current practice. Therefore engagement with the Key Stakeholders noted below has not been necessary for the 2024 review.

Key Stakeholders	Consulted (Y/N)
Patients	N/A
Staff	N/A
Carers	N/A
Volunteers	N/A

16 COMMUNICATION, IMPLEMENTATION, MONITORING AND POLICY REVIEW

This policy will be communicated to all stakeholders within the State Hospital via email, the hospital's intranet and through the staff bulletin. The Information Governance Group will be responsible for the implementation and monitoring of this policy.

Any deviation from policy should be notified directly to the policy Lead Author. The Lead Author will be responsible for notifying the Advisory Group of the occurrence.

This policy will be reviewed every three years, and when appropriate to take into account changes to legislation that may occur, and/or guidance from the Government and/or the Scottish Information Commissioner.

APPENDIX A: DEFINITION OF ENVIRONMENTAL INFORMATION

The definition of environmental information means any information in written, visual, aural, electronic or any other material form on:

- (a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.
- (b) Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a).
- (c) Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements.
- (d) Reports on the implementation of environmental legislation.
- (e) Costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);.

Explanatory Note

The use of the word 'any' qualifying the word 'information' indicates a legislative intention that environmental information should be interpreted widely.

Public authorities are not required to acquire or create new information but may be required to compile or otherwise manipulate existing information which they hold to meet the terms of a request.

APPENDIX B: FREEDOM OF INFORMATION/ENVIRONMENTAL INFORMATION REGULATIONS PROCEDURE

Introduction

1. We have procedures in place to respond to an individual's¹ request information under the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations Act 2004.
2. FOI Administrators and the FOI Officer are expected to apply the requirements of the acts, such as determining FOI or EIR status and using the pertinent legislation and language depending on the specifics of a request.
3. FOI/EIR requests for information should be handled promptly. The timescales shown are a maximum time, where possible actions should be taken as soon as practical.
4. This note sets out the procedures we follow where someone makes such a request.

Our Timescale

Event	Action by	Action	Complete by working day
On receipt of an information request	Recipient of request for information	Forward the request to the FOI Administrator (TSH.FOI-Mailbox@nhs.scot)	1
On receipt of a request for information	The FOI Administrator	Send acknowledgement within two working days of receipt.	2
On receipt of a request for information	The FOI Administrator	Documents the request, opens a new case record and updates the tracker.	2
On receipt of a request for information	The FOI Administrator	Consult Information Governance, FOI and Business Classification scheme records to identify the departments that may hold the information.	2
On receipt of a request for information	The FOI Administrator	Notifies the FOI Officer of the request.	2
On receipt of a request for information	The FOI Administrator	Email the identified departments' contacts with the request for information.	2
Initial Discovery	The Departmental Contact	Reviews the request and conducts sufficient investigations to assert: (a) If they hold the information. (b) The records needing searched. (c) The estimated time to search and retrieve the information. (d) Any clarifications needed to be able to respond.	7

¹ Reference to an individual is to any person or organisation that makes a request for information.

Event	Action by	Action	Complete by working day
Initial Discovery	The Departmental Contact	Notifies the FOI Administrator of the above.	7
Request for Clarification (Optional)	The FOI Administrator	Contacts the requestor and requests clarification regarding the request.	8 ²
Search and Retrieval	The Departmental Contact	Arranges the retrieval of the information and formats it to meet any requestor requirements.	15
Search and Retrieval	The Departmental Contact	Completes a search form.	15
Search and Retrieval	The Departmental Contact	Passes the search form and requested information to the FOI Administrator. Highlighting any information that should not be released and a justification of why.	15
Response Preparation	The FOI Administrator	Review all material relating to the request. Apply any exemptions as required.	17
Response Preparation	The FOI Administrator	Prepare a draft response, including any pertinent advice and guidance.	17
Response Preparation	The FOI Administrator	Forwards the draft response to the FOI Officer and copies all contacts that took part in the request for approval.	17
Response Approval	The Department Contact	Comment on the draft response to FOI Officer and FOI Administrator.	19
Response Approval	The FOI Officer (Optional)	Notifies any changes required to the response.	19
Response Approval	The FOI Administrator (Optional)	Updates the draft response and re-circulates it for approval.	19
Response Approval	The FOI Officer	Approves the response	19
Release of information	The FOI Administrator	Finalises the response and issues it to the requestor.	20
Information Request Closure	The FOI Administrator	Updates the documentation for the request and closes the case file.	20

² The time to complete the request pauses until clarification is received.

APPENDIX C: REQUIREMENT FOR REVIEW (FREEDOM OF INFORMATION)

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

Requirement for Review

Introduction

1. We have procedures in place to allow an individual³ who is dissatisfied in any way with a decision taken by us on the provision of information under the Freedom of Information (Scotland) Act 2002 to require us to review decisions taken.
2. This note sets out the procedures we follow where someone is dissatisfied.
3. Under the Freedom of Information (Scotland) Act 2002, this procedure is known as a "Requirement for Review". Under the Environment Information (Scotland) Regulations 2004 this is known as a "Representation"⁴. A requirement for review/representation can arise in circumstances where the applicant believes we have not complied with our obligations under the legislation, including (but not limited to):
 - (a) Where we indicate that we do not hold information, but the individual believes we do, or
 - (b) Where the individual feels that we have not provided the advice and assistance we should have done, or
 - (c) Where we have refused to provide information, or
 - (d) Where we have failed to reply to a request for information, or
 - (e) Where we have failed to respond to a request for information within the prescribed timescale, or
 - (f) Where the individual feels the charge for providing information is higher than it should be.
4. If the applicant is dissatisfied in any way, he/she can require us to review the way the request was handled or the decision reached.
5. Whenever we reply to a request for information a copy of this Requirement for Review Procedure must accompany the response. The response must also explain to the applicant their right to seek a review of any decision taken and the subsequent right of appeal to the Scottish Information Commissioner and the Courts (see paragraphs 13 to 15 below).

Timescale

6. A requirement for review should be submitted in writing (or other permanent form) within 40 working days of either:
 - (a) The day the individual actually received a response from us, or
 - (b) The end of the period within which we should have replied to a request.
7. We have the discretion to consider requests for review received beyond this timescale. It would normally be our intention to accept requirements for review out with the 40 working days, unless there are practical difficulties in doing so e.g. relevant documentation was due for

³ Reference to an individual is to any person or organisation that makes a request for information.

⁴ For our procedure under the Environmental Information (Scotland) Regulations 2004 see our separate guidance.

destruction and has been destroyed. It is always in the applicant's interests to submit a review request within the 40 working day period specified.

Submission of Requirement for Review

8. Where a response is made to a request for information, the response must advise that any request for review is submitted to:

The Complaints Manager
The State Hospital
Carstairs
Lanark
ML11 8RP

Email: tsh.complaintsfeedback@nhs.scot

9. Should the person making the request submit their requirement for review to another person within our organisation, the recipient must pass it immediately to the FOI Mailbox or The Complaints Manager
10. The person seeking a request for review must state their name and an address for correspondence. A statement explaining why the individual feels aggrieved at the decision taken (or the lack of response) by the organisation should accompany any request for review. It is always helpful if the person seeking a review makes their dissatisfaction explicit in what they say to us and clearly sets out the grounds for requesting a review. Where the applicant is seeking further information relating to his/her original request this will normally be treated as a new request.

Review Procedure

11. The review procedure is designed to be accessible, prompt, fair and impartial. It may result in a decision being made where no decision was made previously, confirmation of the original decision, or the making of a different decision to that originally taken being made. The decision will be binding on the organisation.
12. Requests for review have to be processed swiftly within a maximum timescale of 20 working days. During this timeframe we will review our previous decision and provide any further information required if the review outcome requires this.

Our Timescale

Event	Action by	Action	Complete by working day
On receipt of a review request	Recipient of request for review	Forward the request to The Complaints Officer.	1
On receipt of a review request	The Complaints Manager	Send acknowledgement within two working days of receipt.	2
	The Complaints Manager / FOI Administrator / FOI Officer	Consult Information Governance and FOI records to identify the FOI Administrator(s) involved in the request.	2
	The Complaints Manager / FOI Officer	Notify FOI Administrator(s) that worked on the request that a review has been requested and provide a copy of statement in support from applicant.	2

Event	Action by	Action	Complete by working day
Selection of Reviewer	The Complaints Manager / FOI Officer	A member of the FOI review team or an FOI Administrator, who was not involved in the original decision, is invited to support The Complaints Officer in the investigation.	4
Supply of all available information	The Complaints Manager / FOI Administrator / FOI Officer	Full disclosure of all material relating to the FOI request is passed to the Reviewer.	5
Undertake Review	The Complaints Manager / FOI Reviewer	Review all material relating to the FOI request and the review request.	10
	The Complaints Manager / FOI Reviewer/	From the original FOI administrator, seek comments on rationale for decision.	10
Write up decision and sign off by FOI Reviewer	The Complaints Manager / FOI Reviewer/	Provide a final report to the FOI Officer / Chief Executive	15
Notification of decision	FOI Officer / Chief Executive	Notify the outcome of the review and the right of further appeal to the applicant. If the review concludes that an applicant has been unfairly treated, an apology should be offered on behalf of the organisation.	20
Where appropriate, provide any additional material.	FOI Officer / FOI Administrator	FOI Officer to provide any additional material identified by the review to the applicant.	20

Right of Further Appeal

13. The applicant is to be advised of their right to raise the matter further with the Scottish Information Commissioner if they remain dissatisfied with the decision of the organisation. The right of appeal is to be exercised in writing (or some other permanent form) by the applicant who must provide an address for correspondence, specify the request for information to which the requirement for review relates and the reason for dissatisfaction. An appeal to the Commissioner must be made within a period of six months from the date of any notice issued by us on the review request, or within six months from when a decision should have been notified by us.
14. In advising of this right, the applicant should be given details of the contact address and e-mail address of the Commissioner at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
ST ANDREWS
Fife KY16 9DS

Tel: 01334 464610
E-Mail: enquiries@foi.scot

15. The applicant should also be advised of their right to make an appeal against any decision by the Scottish Information Commissioner⁵ on a point of law to the Court of Session.

Assistance to Applicants

16. In the spirit of the Freedom of Information (Scotland) Act 2002, the recipient of a request for review should provide assistance, if required, to any applicant who seeks it. They should also ensure that the needs of persons with a disability within the terms of the Equality Act 2010 are not unfairly disadvantaged as a consequence of the procedure described above and shall make appropriate adjustments to the procedure where appropriate under the terms of that Act.

Review of Requirements for Review and Decisions of the Scottish Information Commissioner

17. Our internal procedures will provide for decisions on requirements for review and decisions by the Scottish Information Commissioner to be reviewed to ensure that processes follow best practice in dealing with requests for information under the legislation.

⁵ Under Section 56 of the Act.

APPENDIX D: REQUIREMENT FOR REPRESENTATION (ENVIRONMENTAL INFORMATION)

ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

Representation

Introduction

1. We have procedures in place to allow an individual⁶ who is dissatisfied in any way with a decision taken by us on the provision of environmental information to require us to review the decision taken.
2. This note sets out the procedures we follow where someone is dissatisfied.
3. Under the Freedom of Information (Scotland) Act 2002, this procedure is known as a “Requirement for Review”⁷. Under the Environment Information (Scotland) Regulations 2004 this is known as a “Representation”. A requirement for review/representation can arise in circumstances where the applicant believes we have not complied with our obligations under the legislation, including (but not limited to):
 - (a) Where we indicate that we do not hold information, but the individual believes we do, or
 - (b) Where the individual feels that we have not provided the advice and assistance we should have done, or
 - (c) Where we have refused to provide information, or
 - (d) Where we have failed to reply to a request for information, or
 - (e) Where we have failed to respond to a request for information within the prescribed timescale, or
 - (f) Where the individual feels the charge for providing information is higher than it should be.
4. If the applicant is dissatisfied in any way they can require us to review the way, the request was handled or the decision reached.
5. Whenever we reply to a request for information a copy of this Procedure must accompany the response. The response must also explain to the applicant their right to seek a review of any decision taken and the subsequent right of appeal to the Scottish Information Commissioner and the Courts (see paragraphs 13 to 15 below).

Timescale

6. A representation should be submitted in writing (or other permanent form) within 40 working days of either:
 - (a) The day the individual actually received a response from us or,
 - (b) The end of the period within which we should have replied to a request or,
 - (c) The date by which any other action should have been taken by us.
7. We have no discretion to consider representations received beyond this timescale. Applicants must ensure therefore that any representations are made within 40 working days of the event described in paragraph six.

⁶ Reference to an individual is to any person or organisation that makes a request for information

⁷ For our procedure under the Freedom of Information (Scotland) Act 2002 see our separate guidance.

Submission of Representation

8. Where a response is made to a request for environmental information, the response must advise that any representation is submitted to:

The Complaints Manager
The State Hospital
Carstairs
Lanark
ML11 8RP

Email: tsh.complaintsfeedback@nhs.scot

9. Should the person making the request submit their representation to another person within our organisation, the recipient must pass it immediately to the FOI mailbox or The Complaints Manager.
10. The person making a representation should provide their name and an address for correspondence. A statement explaining why the individual feels aggrieved at the decision taken (or the lack of response) by the organisation should accompany any representation. It is always helpful if the person making a representation is explicit as to their dissatisfaction in what they say to us and clearly sets out the grounds for making a representation. Where the applicant is seeking further information relating to his/her original request this will normally be treated as a new request.

Representation Procedure

11. The representation procedure is designed to be accessible, prompt, fair and impartial. It may result in a decision being made where no decision was made previously, confirmation of the original decision, or the making of a different decision to that originally taken being made. The decision will be binding on the organisation.
12. Consideration of representations has to be processed as soon as possible and within a maximum of 20 working days. During this period, we will review our previous decision and provide any further information required if the representation outcome requires this.

Our Timescale

Event	Action by	Action	Complete by working day
On receipt of a representation.	Recipient of request for representation	Forward the request to The Complaints Officer.	1
On receipt of a representation.	The Complaints Manager	Send acknowledgement within two working days of receipt.	2
On receipt of a representation.	The Complaints Manager / FOI Administrator / FOI Officer	Consult Information Governance and FOI/EIR records to identify the FOI Administrator(s) involved in the request.	2
On receipt of a representation.	The Complaints Manager / FOI Officer	Notify FOI Administrator(s) that worked on the request that a review has been requested and provide a copy of statement in support from applicant.	2

Event	Action by	Action	Complete by working day
Selection of Reviewer	The Complaints Manager / FOI Officer	A member of the FOI review team or an FOI Administrator, who was not involved in the original decision, is invited to support The Complaints Officer in the investigation.	4
Supply of all available information	The Complaints Manager / FOI Administrator / FOI Officer	Full disclosure of all material relating to the EIR request is passed to the Reviewer.	5
Undertake Review	The Complaints Manager / FOI Reviewer	Review all material relating to the EIR request and the review request.	10
Undertake Review	The Complaints Manager / FOI Reviewer/	From the original FOI administrator, seek comments on rationale for decision.	10
Write up decision and sign off by FOI Reviewer	The Complaints Manager / FOI Reviewer/	Provide a final report to the FOI Officer / Chief Executive	15
Notification of decision	FOI Officer / Chief Executive	Notify the outcome of the representation and the right of further appeal to the applicant. If the review concludes that an applicant has been unfairly treated, an apology should be offered on behalf of the organisation.	20
Where appropriate, provide any additional material.	FOI Officer / FOI Administrator	FOI Officer to provide any additional material identified by the review to the applicant.	20

Right of Further Appeal

13. The applicant is to be advised of their right to raise the matter further with the Scottish Information Commissioner if they remain dissatisfied with the decision of the organisation. The right of appeal is to be exercised in writing (or some other permanent form) by the applicant who must provide an address for correspondence, specify the request for information to which the requirement for review relates and the reason for dissatisfaction. An appeal to the Commissioner must be made within a period of 6 months from the date of any notice issued by us on the review request, or within 6 months from when a decision should have been notified by us.
14. In advising of this right, the applicant should be given details of the contact address and e-mail address of the Commissioner at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
ST ANDREWS
Fife KY16 9DS

Tel: 01334 464610
E-Mail: enquiries@foi.scot

15. The applicant should also be advised of their right to make an appeal against any decision by the Scottish Information Commissioner⁸ on a point of law to the Court of Session.

Assistance to Applicants

16. Under the Environmental (Scotland) Regulations 2004⁹, the recipient of a request for representation should provide assistance, if required, to any applicant who seeks it. They should also ensure that the needs of persons with a disability within the terms of the Equality Act 2010 are not unfairly disadvantaged as a consequence of the procedure described above and shall make appropriate adjustments to the procedure where appropriate under the terms of that Act.

Review of Requirements for Review and Decisions of the Scottish Information Commissioner

17. Our internal procedures will provide for decisions on representations, and decisions by the Scottish Information Commissioner to be reviewed to ensure that processes follow best practice in dealing with requests for information under the legislation.

⁸ Under Section 56 of the Act.

⁹ Regulation 9

APPENDIX E: FOI/EIR SEARCH FORM GUIDANCE

Introduction

Requests for information received by The State Hospital can be received on a wide range of subjects asking for a variety of information. Information may be requested from any part of the organisation so all staff should be aware of the requirements for providing information. This guidance note has been drawn up to assist staff who are asked to provide information to respond to a request made under FOI or the EIRs.

Key Points to Note

- **All information** relating to the request should be provided to the FOI Administrator.
- Any information which you believe should not be released should be highlighted to the FOI Administrator **but you should still provide this**.
- A response has to be sent to the applicant within 20 working days so you should make sure you return all information to the FOI Administrator **by the date requested** (or sooner if possible).
- You should **record the searches** you have made for the information.

Recording searches for information

The majority of information that is requested from TSH can normally be found in our organisational systems, databases or in other structured files that can be easily searched. Some information however is not so easily accessible and may only be located within individual physical or electronic files, including e-mails. It is therefore important that records of searches for information are kept to ensure that no area is overlooked and that an applicant is provided with all the information that they are entitled to receive.

Records of searches for information are also important if we advise an applicant that we do not hold the information being asked for. If an applicant challenges our response, or makes an appeal to the Scottish Information Commissioner, TSH will be required to identify all the systems or locations that have been searched and to provide evidence that such searches have been carried out.

When carrying out searches for information you should keep a record of details such as:

Electronic files

- Any Network drives searched including folders and sub-folders.
- Local drives on your desktop PC or laptop including folders and sub-folders.
- Any databases searched – this includes databases which may be used or accessed by one person as well as large multi-user systems.
- Details of any 'key word' searches.

Physical/paper files

- The name of the files and their location.
- The name of the person who normally maintains or keeps the files (if this is not you).

Emails (NHS accounts)

- Inbox.
- Subfolders or Personal folders within your email Inbox.
- Sent Items folder.
- Archive folders.

- If several members of staff are asked to check emails for information, each individual mailbox search should be recorded.

For further advice on any aspect of Freedom of Information, please contact
Information Governance and Data Security Officer TSH.FOI-Mailbox@NHS.scot