

# Western Isles Health Board



## Policy Document

Title: Freedom of Information

Version 5.2

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# 1 Introduction and Scope

The Freedom of Information (Scotland) Act 2002 (FOISA) is a legal requirement for the disclosure of information held at the time of request, by Scottish Public Authorities, or any third party providing services on their behalf. The applicant requesting information from a public authority is entitled to the information, unless an exemption applies under the Data protection Act.

NHS Western Isles is committed to openness and transparency in the way that we work, supported by FOISA, aiming to increase public sector accountability across the public sector. FOISA enables members of the public to examine public sector decisions more closely to ensure services are being delivered efficiently and appropriately.

FOISA states all public authorities have a legal obligation to respond to all requests within 20 working days of their receipt.

NHS Western Isles has established policies, and procedures are in place to ensure compliance with the Freedom of Information (Scotland) Act 2002, Environmental Information (Scotland) Regulations 2004 (EIR) and the Data Protection Act 2018 for all subject access requests.

Under S62 of the FOI(S) Act provision has been made for the Environmental Information (Scotland) Regulation 2004 (EIRs). The convention is based on the principle that every person has a right to live in an environment adequate to their health and well being, and any information relating to environmental matters, is subject to EIR.

The IG framework recognises the need to share information with other health organisations and partners in health and social care in a controlled manner consistent with the needs and preferences of the patient and in some instances, the public.

## 2 Freedom of Information Policy

### 2.1 Freedom of Information request

The Freedom of Information (Scotland) Act 2002 (FOISA) provides an obligation of openness and accountability, providing a right of public access to a wide range of information held by public authorities, including the NHS.

For a request to be dealt with under Freedom of Information it does not explicitly require the legislation to be quoted, however it must:

- Be in writing or in another permanent form (letter, fax, email)
- State the name of the applicant and provide an address for correspondence (this can be an email address)
- Describe the information requested
- When requesting information please include the following details:
  - Your name and address
  - Daytime telephone (optional)
  - Email address if you would like information sent to you in this way
  - The information or documents you would like to access
- Be directed to the Information Governance Department

An FOISA/EIR should be requested in writing to:

Information Governance Manager  
NHS Western Isles  
Health Board Offices  
37 South Beach  
Stornoway  
Isle of Lewis  
HS1 2BB

Or via email to [wi.foi-requests@nhs.scot](mailto:wi.foi-requests@nhs.scot)

NHS Western Isles has a duty under the FOISA, S15, to provide advice and assistance to all persons who have made, or wish to make, requests for information.

#### Publication Scheme:

The Freedom of Information (Scotland) Act 2002 (FOISA) requires Scottish public authorities to adopt and maintain a publication scheme. Authorities are under a legal obligation to:

- publish the classes of information that they make routinely available
- tell the public how to access the information they publish and whether information is available free of charge or on payment.

NHS Western Isles has adopted the model publication scheme which has been produced and approved by the Scottish Information Commissioner. Adopting this scheme commits us to producing a guide to information. The guide includes information about how we deliver our functions and services, how we make decisions, what we spend and how we spend it and how we are performing.

The Data Protection Act 2018 (“the DPA”) still applies to Subject Access Requests for access to health records, and other person-identifiable information.

## **2.2 Environmental Information Request**

Access to environmental information is governed by the Environmental Information (Scotland) Regulations 2004. Although these Regulations are slightly different from the FOISA, they are applied in much the same way with the main difference being that the EIR request does not have to be made in writing.

Requests for information regarding topics such as environmental elements (air, water, land and noise, etc), together with other activities affecting the environment, and some aspects of health and safety, may be treated under the Environmental Information Regulations (EIR).

## **3 Responsibilities**

The Board Chief Executive has overall responsibility for compliance with the Act.

The Director of Public Health (DPH) (as the executive lead for information governance) is also the responsible executive to bring any FOI issues requiring Board consideration to their attention.

The Information Governance Manager has responsibility for the overall management of FOI policy and procedure in line with FOISA.

The Information Governance Manager is responsible for the day to day routine management of FOI requests, procedures and maintenance of the Board publication scheme. The Information Governance Manager will maintain appropriate performance statistics on FOI activity and submit regular reports to CMT and IGSG.

All staff have a responsibility to recognise and respond to requests for information, and to forward information to the Information Governance Manager when asked. All Board staff are required to comply with the Act and to assist the Board’s Information Governance Manager if asked for information. Staff who do not respond promptly will have the request escalated to Chief Executive, and reported in the monthly reporting cycle to the CMT.

Failure to assist may result in the Board failing to comply with the Act, which may lead to complaints and ultimately an investigation by the Information Commissioner.

Non-compliance with a Board Policy, Procedure, Protocol or Patient Information Standard may result in disciplinary action.

## **4 Responding to a request under FOI/EIR:**

Under the Act, the Board has a duty “to confirm or deny”. In the vast majority of cases, the Board must either confirm or deny whether the information requested is held. Failure to do so may result in an investigation by the Scottish Information Commissioner.

The Board may not have to comply with a request if it falls under an exemption allowed for in the Act. See Appendix A.

Section 14 allows a request to be exempt by classing it as “vexatious” or “repeated”. The history of the request will be examined in order to establish whether a request is vexatious or repeated. Vexatious requests are typically obsessive and cause unjustified distress and disruption. It is the request, not the requestor that is deemed vexatious or repeated, so future requests will not be automatically refused. A requestor asking for information that has already been supplied to them will be treated as repeated.

## **5 Release of Board Employee Names and Details**

As a public authority, there can be recognised justification for the disclosure of employee names and contact details, depending on the request details. It is therefore reasonable that the Board may release names of consultants, medical staff, and other staff members whose name is published on the Board’s public website, without gaining additional consent.

The Board may release the names, salaries (in 5k bands), and expenses of executive directors, department heads, managers, and other senior staff both clinical and non-clinical, unless the information is exempt from disclosure under Section 38 of FOISA. For other staff, consent will normally be sought if the release of names is appropriate. In some cases, the public interest in disclosure of personal details may be judged to outweigh an individual’s preference to restrict such disclosure. The final decision on release of information remains with the persons responsible for FOISA compliance within the Board i.e., the Information Governance Manager, the DPH and the CE.

Those staff with public facing roles or those already in the public domain are more likely to have their names released. Personal contact details (i.e., home address, home telephone number, personal email address) will never be released in response to a request under the Act.

Requests for salary information for staff (out with those identified above) will be answered by providing Agenda for Change pay bands. Where a person falls outside of Agenda for Change pay bands, their salary will be given in £5,000 bands. Requestors will be referred to the Annual Report if requesting information regarding executive director salaries.

The Board recognises, that in some cases the disclosure of information may affect the legal rights of a third party, for example where information is subject to the common law of duty of confidence or where it constitutes “personal data” within the meaning of the DPA. Unless an exemption provided for in the Act applies about any particular information involving third parties, the Board will be obliged to disclose that information in response to a request. The Board will always try to gain the consent of employees.

## **6 Records Management**

Managing records effectively is essential to making records accessible, and covers all aspects of records management from creation, storage and disposal. Good records should be factual, relevant and up to date, clear and concise, and complete. The right information should be available in the right place at the right time. NHS Western Isles will continue to improve its records management systems to better manage its corporate and clinical records in order to effectively respond to requests for information.

## 7 Request Process

The Freedom of Information (Scotland) Act 2002 (“the Act”) gives anyone the right to make a written request (including an e-mail request) to see information held by the Board. If the information is held by the Board, it must be disclosed. Any information can be requested, including information contained within emails, no matter how old it may be. Requests need not mention or specify the Act, nor do they have to state why the applicant requires the information, and the Board is not permitted to enquire.

Requests are “applicant blind”, meaning the NHS Western Isles cannot take the identity of the applicant into consideration when releasing the information. An exception to this may be made if the applicant proves vexatious.

Any employee of NHS Western Isles may be contacted by an applicant wishing to make an FOI request. They should be redirected to the Information Governance Officer at [wi.foi-requests@nhs.scot](mailto:wi.foi-requests@nhs.scot). If someone requests information that you have readily to hand and would normally release (e.g. information leaflet, routine letter, etc), you should continue to do so. These requests do not need to be logged as an FOI.

A request for a publically available Board document (e.g. a policy document) can be referred to the publication scheme on our website ([Updated-Publication-Scheme-2020.pdf \(scot.nhs.uk\)](#)). The scheme has links to many standard documents that can be read online or downloaded. It also tells people how to request hard copies of documents from the Board, the Information Governance Manager or request documents that are not available online.

If the requestor is unable to use the website, or the information they want is not there, they must make a written request. You should give them the following correspondence addresses to the Information Governance Manager:

NHS Western Isles  
Health Board Offices  
37 South Beach  
Stornoway  
Isle of Lewis  
HS1 2BB

## 8 Request Timescales

The date of receipt is the date the request is received in the Board, not the date it is passed to the appropriate person (i.e., the Information Governance Officer), so you must act quickly.

The Board must respond to Freedom of Information requests within 20 working days. If we do not, the Board may be liable for penalties. We must provide advice and assistance to everyone who makes a request but have no right to know why they want the information.

As per flowchart in Appendix B, when an FOI is received or passed to the Information Governance Officer, they will consider:

- Is the request valid?
- Does it fall under FOISA, EIR or DPA?
- If DPA, advise accordingly or signpost to SAR process
- If FOI/EIR, request details are logged on DATIX RFI and electronic folder created



- Acknowledgement sent to applicant.

NHS Western Isles needs to consider possible exemptions (Appendix A), and signposting to other agencies if data is not held by NHS Western Isles.

By day 3 of receipt of a request, the appropriate member(s) of staff to respond has been identified and details of the request forwarded to staff for action (applicant blind).

If it is unclear what information the applicant wants, then seek clarification (20 working day clock stops):

- Provide appropriate advice and assistance
- Send reminder if clarification not received
- When clarification received, new 20 working day period starts
- If no clarification received close request (60 working days after receipt) and notify applicant.

NHS Western Isles staff are given 10 working days to provide response. If no response is received by 5pm on day 10 then an email is sent from Information Governance Officer, advising deadline has been exceeded and that they have a further 2 days in which to respond or the matter will be escalated to the CEO.

If no response is received by 5pm of day 12, it will be escalated to the CEO via email.

Once all information is received, it is collated and passed to the IGM for review and then to the CEO for final sign off. In some instances the IGM/CEO may ask for further information/clarification on the information given. Final response issued to applicant by day 20. See Appendix B for details.

## 9 Request Fees

Information in the Board's Publication Scheme is available to view online (<https://www.wihb.scot.nhs.uk/wp-content/uploads/2020/12/Updated-Publication-Scheme-2020.pdf>) or download free of charge.

Where charges for hard copies of requested information, multiple copies, or copying onto media such as a USB are levied, they will adhere to the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

The Freedom of Information (Scotland) Act 2002 (FOISA) allows Scottish public authorities to charge for responding to information requests in certain circumstances. There are strict rules on what can and cannot be charged for, how much an authority can charge and an upper limit (currently £600) beyond which an authority does not have to comply with a request. These rules are set out in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).

Where it is intended to apply this exemption, the person responding to the request must give a detailed breakdown of the work involved in complying with the request to the Information Governance Manager. This must state how the £600 limit would be reached, and by how far it would exceed the limit. The applicant may wish to pay and the request to go ahead.

## 10 Appeals/Refusals of Requests

Refusal of requests - The Board will be obliged to disclose any information in response to a request unless an exemption provided for in the Act applies to that particular information. If the Board chooses to refuse a request for information under any of the reasons outlined in Appendix A, the applicant will be informed of the reasons for this decision within 20 working days.

When a request is refused, the applicant will be informed of the procedure for requesting an internal review of the Board's handling of the request, and of how to make a complaint to The Scottish Information Commissioner if they remain dissatisfied.

Where a request is made for information that is subject to a current piece of work and premature disclosure is not deemed in the public interest, the Board may choose to withhold the information temporarily. Every effort will be made to indicate a date when a future request would be honoured.

If the applicant wishes to appeal, they may write to the Information Governance Manager, 37 South Beach, Stornoway Isle of Lewis HS1 2BB or [wi.foi-requests@nhs.scot](mailto:wi.foi-requests@nhs.scot)

Upon receipt of a request for a review, the Information Governance Manager will prepare a summary of the Board's handling of the request for consideration by the Senior Information Risk Owner (SIRO).

If, after the requestor has appealed to the Board, they are still not satisfied with the Board's response they have the right to make an application for a decision by the Scottish Information Commissioner under section 47(1) of the Freedom of Information (Scotland) Act 2002. The Commissioner can be contacted at Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS or by telephone on 01334 464610.

## 11 Monitoring

The Information Governance Officer will report monthly to the Director of Public Health, who is responsible for reporting monthly to the Corporate Management Team and on a quarterly basis to the NHS Board, a summary of all requests and all requests for review under the Freedom of Information (Scotland) Act 2002, with a view to them being monitored and, if necessary, recommendations being made for amending NHS Western Isles procedures for dealing with requests for information where such action is indicated by more than occasional reversals of initial decisions.

## Appendix A - Exemptions provided under the Act

**Absolute** – No Public Interest Test required

**Qualified** – Public Interest Test required. This test requires the Board to assess the public interest in disclosing and exempting the requested information. The Board is required to consider the arguments for and against disclosure. The Director of Public Health and the Information Governance Manager will initially agree the position and submit to the CE for the final position. This discussion will be recorded and submitted in the Boards Quarterly returns to the Scottish Information Commissioner.

| Section | Exemption  | Absolute or Qualified |
|---------|--|-----------------------|
| 25      | Information reasonably accessible by other means   | Absolute              |
| 26      | Prohibitions on disclosure   | Absolute              |
| 27      | Information intended for future publication  | Qualified             |
| 28      | Relations within the UK  | Qualified             |
| 29      | Formulation of Scottish Administration policy etc  | Qualified             |
| 30      | Prejudice to effective conduct of public affairs   | Qualified             |
| 31      | National security and defense  | Qualified             |
| 32      | International relations  | Absolute              |
| 33      | Commercial interests and the economy   | Qualified             |
| 34      | Investigations by Scottish public authorities and proceedings arising out of such investigations | Absolute              |
| 35      | Law Enforcement  | Qualified             |
| 36      | Confidentiality  | Qualified             |
| 37      | Court records, etc   | Qualified             |
| 38      | Personal information   | Qualified             |
| 39      | Health Safety & The Environment  | Treat under EIR       |
| 40      | Audit Functions  | Qualified             |
| 41      | Communications with Her Majesty, etc. and honours  | Qualified             |

## Appendix B

# NHS Western Isles FOI Request Process and Timescales

