

FREEDOM OF INFORMATION PROTOCOL

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Endorsing Body:	Information Governance Committee
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Freedom of Information Protocol

CONTENTS

	<u>Page</u>
i) Consultation and Distribution Record	3
ii) Change Record	3
1. Background	4
2. Information Requests	4
2.1 Information requested	
2.2 Routes requests are received	
2.3 What is a request	
3. Your Responsibility	6
4. Clarification	7
5. Handling requests	7
6. Reviews/Appeals Process 8	
7. Reporting/Monitoring Arrangement	8
8. Maintaining and Destroying Records	8
9. Procedure for dealing with FOI requests	8
10. Communications Plan	10
11. Monitoring and Review	10
12. Equality and Diversity Impact	10

Freedom of Information Protocol

i) Consultation and Distribution Record

Contributing Author / Authors	<ul style="list-style-type: none"> Communications Department
Consultation Process / Approval:	<ul style="list-style-type: none"> Information Governance Committee
Distribution:	<ul style="list-style-type: none"> NHS Lanarkshire Intranet: Firstport NHS Lanarkshire website

ii) CHANGE RECORD

Date	Author	Change	Version No.
01/05/13	Linda Brownlie	Reviewer altered and depute reviewer added	3
02/02/15	Linda Brownlie	Reviewer name altered	4
	Linda Brownlie	1.3 and 3.6 Re-use regulations added 3.3 Invalid request wording added 4.3 and 4.4 Clarification wording added 5.3 Escalation wording added	5
13/04/17	Linda Brownlie	Reviewer and depute reviewer name altered	6
02/02/18	Linda Brownlie	Responsible lead director amended 6.2 Depute reviewer name amended 7.1 and 7.3 monitoring arrangements amended	7
03/04/18	Linda Brownlie	6.2 Reviewer and depute reviewer names altered	8
01/06/18	Linda Brownlie	2.1 Data protection act wording amended 6.2 depute reviewer designation amended	9
19/06/18	Linda Brownlie	7.1 designation amended	10
01/05/19	Linda Brownlie	Lead executive post title changed Update of wording throughout the policy to align with current practice / guidance	11
May 2022	Linda Brownlie	Update of wording throughout the policy to reflect changes in contact details, post names and small process updates	12

Freedom of Information Protocol

1. Background

- 1.1 The Freedom of Information (Scotland) Act 2002 (FOISA) gives people rights to access recorded information held by public authorities, subject to certain conditions and exemptions contained in FOISA. The purpose of the Act is to drive forward openness in Scottish public authorities.
- 1.2 Alongside FOISA, the Environmental Information (Scotland) Regulations 2004 (the EIRs) provide a separate right of access to the environmental information that we hold. Environmental information includes, for example, information on the air, water, soil and land and about energy, noise, radiation, waste and other things that may affect the earth and the state of human health and safety.
- 1.3 The Re-use of Public Sector Information Regulations 2015 became mandatory in July 2015. These regulations enable individuals to ask to re-use information.
- 1.4 Any individuals or organisations can request information or ask to re-use information. The details must be provided promptly and within **20 working days** of receiving the request. Requests require to be made in writing (or verbal in the case of EIRs) or other permanent form such as email. FOISA also places a duty on public authorities to provide advice and assistance to applicants requesting information at all stages in the process.
- 1.5 This paper outlines the procedure for dealing with requests under FOISA, the EIRs and the re-use regulations. All requests will be handled by the Lead Freedom of Information (FOI) Officer and officers within the Communications Department. I will refer to them as FOI officers throughout this document.
- 1.6 The NHS Lanarkshire FOI Officer's contact details are as follows:

Linda Brownlie
Kirklands
Fallside Road
Bothwell G71 8BB

Tel: 01698 752364
Email: Linda.Brownlie@lanarkshire.scot.nhs.uk

2. Information Requests

2.1 Information requested

The majority of information we hold must be made available whether it is in paper or electronic form – including emails. It does not matter how long ago the information was created.

Freedom of Information Protocol

Our publication scheme sets out the type of information that we make routinely available. If information is requested that is available under that scheme it can be released without implementing FOISA or the EIRs. If there is, however, any doubt about releasing all the information – or not all the information requested is available – the request should be forwarded to the FOI officer for advice.

NHS Lanarkshire does not have to comply with information requests where the information requested is exempt under the provisions of FOISA or the subject of an exception under the EIRs. There are certain categories of exempt information. This includes information that is due for publication or where the cost of compliance with the request would exceed the limit established in the Fees Regulations.

Personal information protected under the current data protection legislation is also an example of exempt information.

2.2 Routes requests are received

Requests received under FOISA or the EIRs will be referred to as freedom of information requests as the dealing of the requests is broadly similar and the majority of the requests received will be dealt with under FOISA. If, however, a request is being dealt with under the EIRs advice should be sought from the Lead Freedom of Information Officer or Deputy Director of Communications throughout the processing of the request as there are differences in the two pieces of legislation which could affect the way we deal with the request.

Freedom of Information requests could be received by anyone in the organisation. Requests are made by:

- The media
- MSPs/MPs
- Companies
- Individuals
- Solicitors
- Voluntary organisations/charities

2.3 What is a request?

- Anything in writing (or verbal for EIRs) that asks for information
- The applicant does not have to give a reason for wanting the information
- They do not have to mention laws
- They can be received by anybody in the organisation
- We have a duty to advise and assist applicants

2.4 Request to Re-use Information

- Applicant can request re-use in writing
- Must state purpose for which information is to be re-used

Freedom of Information Protocol

3. Your responsibility

- 3.1 Each FOI request requires to be logged on the day of receipt. Responses must be issued within a maximum of 20 working days. If you receive a request for information you must pass this on to the FOI Officer. It is important to act promptly.
- 3.2 Failure to comply with this 20 working day deadline, or to provide the information requested (unless exempt), is a breach of the law under FOISA.
- 3.3 A request may be invalid under the legislation if, for example, solicitors ask for information but do not say who their client is or applicants do not provide their full name. In this case the FOI officer will either write to the applicant or discuss the situation with them by telephone. While that process is being carried out the information should be sought to enable a response within the 20-day period. Once the request is made valid the normal process is then followed.
- 3.3 It is imperative that all requests are dealt with consistently and timeously. Several departments can be involved in gathering information to respond to one request, therefore, early responses to the FOI Officer ensure a co-ordinated approach, allowing for the final response to be scrutinised for accuracy.
- 3.4 When you are sent the request you will be given the final date of response. You are required to send back requested information to the FOI Officer promptly and at least ten working days prior to the response requiring to be issued to allow a response to be drafted, any questions clarified or context added and approval to be sought from the relevant service director.
- 3.5 It is the responsibility of the relevant senior manager/head of department to ensure compliance with the request. This includes ensuring information is gathered and returned to the FOI Officer ten working days prior to the deadline for response. This may mean ensuring that appropriate measures are in place to cover when an FOI contact or responsible person is on annual or sickness leave. This would include the checking of emails through the use of the authorised delegates of the corporate management team, heads of corporate functions, general managers and any other relevant person to ensure that freedom of information documentation is not left unattended until the individual returns to work.
- 3.6 Where a request to re-use information has been received the service/executive director will be asked to comment. If you have concerns about re-use contact the FOI Officer to discuss.
- 3.7 All responses will be signed off and approved by an executive director (or nominee).
- 3.8 Notification of issues of interest to other health boards and the Scottish Government will be the responsibility of the Lead FOI Officer.

Freedom of Information Protocol

4. Clarification

- 4.1 Where the applicant has provided insufficient information to enable the identification and location of the information sought, it is important that clarification is requested from the applicant as soon as possible. Appropriate help should also be given to the applicant to advise and assist them in making the request. This may be by giving examples of the type of information we hold or explaining terminology used by NHS Lanarkshire.
- 4.2 If you do not understand what the applicant is asking or, you should contact the FOI Officer immediately and the need for clarification can be discussed. Requesting clarification, however, must be done within five days of receipt of request.
- 4.3 Where an applicant has not responded to the request for clarification within 20 working days from date of receipt of the request submission, a reminder is sent to them asking for the clarification again and explaining that we cannot process the request until that is received.
- 4.4 Where an applicant does not respond to the request for information within 40 working days of the request submission (review period) a further letter is sent to them closing the request and advising that if they want any information they will require to submit a fresh request.

5. Handling Requests

- 5.1 All relevant information should be provided. If there are any concerns, including searching, locating or retrieving the information, discuss with the FOI Officer immediately. Do not withhold the information.
- 5.2 Information should be checked by the service for accuracy before being returned to the FOI Officer.

Where information has not been received from a service within 10 working days a reminder will be sent or contact made by telephone where appropriate.

- 5.3 If a reply has still not been received from the service a further reminder will be sent and the matter escalated to the relevant executive director.
- 5.4 Further information may be requested or explanations required if it is felt necessary to provide context around the response, to help an applicant understand what is being provided.
- 5.5 Even if the information requested is not held, we have a duty to provide advice and assistance and as a minimum an explanation of why we don't have the information. If appropriate, advice on who holds the information would be given.

Freedom of Information Protocol

6. Reviews/Appeals Process

- 6.1 If someone is dissatisfied with a response – or does not receive a response on time – the person has a right to seek a review of any decision and if still dissatisfied an appeal.
- 6.2 Reviews are carried out by the board secretary who will re-consider the response against the original request. If he is unable to carry out a particular review, the director of information and digital technology will undertake that review.
- 6.3 The reviewer may confirm the decision, substitute a different decision or reach a decision where no decision has been reached.
- 6.4 If someone is dissatisfied with the response to the review, the person has a right to make an appeal. Appeals are heard by the Scottish Information Commissioner who has powers to enforce individual's rights under the Act. Decisions of the Commissioner are published on his website.

7. Reporting/Monitoring Arrangements

- 7.1 Weekly reports are sent to the director of communications.
- 7.2 Monthly statistics are also submitted to the Corporate Management Team.
- 7.3 Quarterly reports are submitted to the Information Governance Committee, the Health and Social Care Partnerships and the Acute Divisional Management Team.
- 7.4 Annual reports are submitted to the Information Governance Committee.

8. Maintaining and Destroying Records

- 8.1 It is illegal to destroy information that has been requested. It is essential that all staff adhere to the NHS Lanarkshire Records Management Policy, which provides guidance on good record keeping and retention and destruction procedures.

9. Procedure for dealing with FOI requests

- 9.1 The procedure for dealing with FOI requests received by NHS Lanarkshire is detailed below.

Freedom of Information Protocol

FOI /EIR Request

Request for information received in writing or other permanent form such as email (or verbal in the case of EIRs)

Introduction	Requests received from: <ul style="list-style-type: none"> ➤ MSPs/MPs ➤ Media ➤ Individuals ➤ Companies ➤ Solicitors ➤ All others
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Stage 1	Day 1 request received: <ul style="list-style-type: none"> • Pass to FOI Officer in Communications Department for logging on to master database and acknowledging receipt of the request. • Request sent from the Communications Department to relevant service copying in senior/general manager. • Deadline for return of information provided by the Communications Department
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Stage 2	Days 2-5 <ul style="list-style-type: none"> • Senior/general manager responsible for ensuring information is gathered. • The request should then be passed to person(s) responsible for gathering information. The following information should be fed back to the FOI officer as soon as possible: <p style="margin-left: 20px;">If the request is not clear or if there are any concerns about locating the information requested</p> • The FOI officer will then be able to either seek clarification from the requestor or advise if any exemption is applicable to the request • Communication at this stage is important as it helps to prevent any potential problems when the deadline for response is imminent.
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Freedom of Information Protocol



Stage 3	<p>Days 5-10</p> <ul style="list-style-type: none"> The information should be collated and sent to the FOI officer as soon as possible together with any context to the response. Any queries or concerns should be discussed with the FOI officer who will provide advice and support.
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Stage 4	<ul style="list-style-type: none"> Min 10 working days to issue of final response Senior/general manager to return information to the FOI officer to check and draft response
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Stage 5	<p>Min 2 working days to issue of final response</p> <ul style="list-style-type: none"> Final draft of response sent to executive director for approval prior to release. Signed off by Executive Director FOI Officer will then issue response
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Timescale	It is a legal requirement to complete the above stages within a maximum of 20 working days.
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10. Communication Plan

10.1 The protocol will be posted on the NHS Lanarkshire Intranet – Firstport.

10.2 The protocol will be posted on the NHS Lanarkshire website.

11. Monitoring and Review

11.1 The document will be reviewed at regular intervals in line with the NHS Lanarkshire policy governing review of policies, procedures and guidelines.

11.2 Review may also be required to ensure the protocol is in line with legislation and guidance issued by the Scottish Information Commissioner.

Freedom of Information Protocol

12. Equality and Diversity Impact

12.1 This policy meets NHS Lanarkshire's EDIA



This policy and procedure applies equally to all employees within NHS Lanarkshire irrespective of gender, age, race, sexual orientation, marital status, transgender status, ethnic origin, disability, religious belief and position in the organisation.