

Dumfries and Galloway Integration Joint Board

Freedom of Information Policy

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1. Purpose and Scope

The Freedom of Information (Scotland) Act 2002 (FOISA) is a legal requirement for the disclosure of information held by Scottish Public Authorities or by third party providing services for them. The “applicant” who requests information from the public authority which holds that information is entitled to be given it by the authority.

2. Policy Aims

The Integration Joint Board (IJB) is committed to transparency in the way that it works. This commitment is supported by FOISA, and aims to increase accountability across the public sector and in government by ensuring that people have the right to access information. FOISA enables members of the public to examine the decisions of public authorities more closely and ensure that the services provided are efficiently and properly delivered.

2.1 Freedom of Information:

FOISA applies to almost all public bodies in Scotland, including local authority councils, the NHS, colleges and universities, the police, the Scottish Parliament and the Scottish Government, prisons, and any Scottish Government funded agencies. It can also apply to third party suppliers such as contractors who provide a service to any Scottish Public Authority.

FOISA states that Scottish Public Authorities have a legal obligation to respond to any question within 20 working days of receipt.

2.2 Environmental Information:

Under Section 62 of the FOI(s) 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 their 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 available in **Appendix 3** of this Policy. It is not an exclusive definition and may include information on the IJB’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 IJB under the EIRs as compared with the Freedom of Information Act. Most notably relating to:-

- Requests for information may be made orally – there is no requirement to put them in writing or other permanent form
- The timescale for responding may, in certain circumstances, extend to 40 working days

- The charging arrangements under EIRs allow for flexibility for the IJB to recover the costs of providing info.

2.3 Data Protection and the re-use of Public Service Information Regulations 2005

The Data Protection Act 2018 protects information that is held about individuals by public authorities. Individuals can ask for and receive a description of the personal data held about them, which is known as a Subject Access Request.

Information is exempt from the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) regulations 2004 if it is a request for information from an individual about personal information we hold about them.

Request for information about other living individuals should be dealt with under Freedom of Information (Scotland) Act 2002, but can be refused on the basis that they breach the principles of the Data Protection Act.

Applicants can request to use public sector information subject to certain conditions, exemptions and charges. Requests must be in writing, state the information required and intended use. The IJB has 20 working days to respond whether by accepting the request, refusing the request or requesting a change.

2.4 Definitions

Document Type	Definition
Freedom of Information Request	A non routine request for information that will enable the public to have a greater understanding of the role of the public body, the decisions they make and how they spend public money.
Environmental Information Request	A non routine request for information that will provide public access to environmental information held by the public body.
Data Protection Act Request	Legislation that controls how personal information can be used and your rights to ask for information about yourself.
Subject Access Request	A written, signed request from an individual to see information held on them. The Data Controller must provide all such information in a readable form within 1 calendar month upon receipt of this request and there is no longer a charge for this service.

3. Responsibilities and Organisational Arrangement

The Integration Joint Board has a statutory responsibility to make information available in accordance with Freedom of Information legislation, this is achieved via the Guide to Information available through the Model Publication Scheme.

It is important to note that the only requests which should be processed regarding the decisions made by the IJB are covered by this process. Requests for information regarding the Health and Social Care Partnership should be made to their parent

organisations, for health requests these should be addressed to; dg.feedback2@nhs.scot or to Freedom of Information Officer, Mountainhall Treatment Centre, Dumfries, DG1 4AP or by telephone to 01387272752, for Adult Social Work these should be addressed too: foi@dumgal.gov.uk or write to Information Governance Team, Council Headquarters, English Street, Dumfries, DG1 2DD.

Processing of IJB requests is hosted within the NHS Dumfries and Galloway Freedom of Information Office due to the relatively few numbers received and therefore requires to comply with the process in place. If this should change then this will be reviewed.

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 staff to achieve the requirements of the legislation. Any members of staff who are 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 What constitutes a Freedom of Information request?

Any request for information or data should be treated as a Freedom of Information request, unless applicable to Environment Information Regulations or Data Protection.

It is important to make a distinction between requests for information and routine correspondence. Requests for information that can be provided without any question: press releases, routine enquiries or leaflets should be treated as business as usual.

Similarly requests that are not for recorded information but which pose questions (e.g. please explain your policy on X or position on Y?) should be treated as routine correspondence.

A valid request must:

- Be in writing or in another permanent form i.e. email
- State the full name (or include a surname) of the applicant and provide an address for correspondence (this can be an email address)
- Describe the information requested

Requests for information do not need to mention the Act or to explain why information is being requested.

3.2 Responsibility

The Chief Officer is ultimately responsible for the IJB's compliance with relevant statutory provisions and shall provide strategic direction on the operation of the Freedom of Information Policy

The FOI lead has responsibility for advising the Chief Officer on the application of FOI legislation and for the legislation to be read as reference to both FOISA and EIRs ensuring that the IJB complies under the legislation.

Managers of the partner organisations are responsible for ensuring staff are aware of the FOI policy, procedures and guidance for carrying out their day to day work.

All staff should have a general understanding of FOI legislation and know where to refer any issues on which they require guidance.

Compliance with the Policy is compulsory for all staff. A member of staff who fails to comply with this Policy may be subjected to disciplinary action under the partner organisations disciplinary policy.

3.3 Legal Compliance

IJB:

- Regards all identifiable personal information relating to patients as confidential; compliance with legal and regulatory framework will be achieved, monitored and maintained.
- Regards all identifiable personal information relating to staff as confidential except where national policy on accountability and openness (public interest) requires otherwise.
- Will monitor compliance with legal requirements and undertake independent assessments and audits from time to time.
- Will establish and maintain policies and procedures to ensure compliance with the Data Protection Act 2018, Human Rights Act 1998 and the common law of confidentiality.

3.4 Records Management

Managing records effectively is essential for making access to information possible. 'Records management' covers all aspects of a record's life, from creating it to maintaining it, and then its disposal (either by storing it in an archive or destroying it).

A record is information that is held as part of a system, on paper, in electronic format, or on video or audio tape. Good records should be:

- Factual, consistent and accurate
- Relevant and useful
- Clear and concise
- Up to date
- Complete

The IJB will ensure it has systems in place to manage its corporate records in both electronic and paper format in order to respond effectively to requests for information.

The IJB complies with the Scottish Government's policy on the Management, Retention and Disposal of Personal Health Records, under Section 61 of the Freedom of Information (Scotland) Act 2002. All staff must ensure that all records comply with the policy and follow the IJB's systems and procedures for record keeping.

It is a criminal offence for a public authority to alter, damage, erase, destroy or conceal and record they hold once someone has made a request for information. This offence can be committed by the authority or its employees. Such cases will be dealt with in the Sheriff Court and the offence carries a fine of up to £5000.

3.5 The Publication Scheme

The IJB's Publication Scheme details the information that the organisation makes routinely available to the general public without them having to make specific requests. It details the format in which the information is held and whether there is a charge for its provision. The publication scheme has been approved by the Scottish Information Commissioner and is available on the IJB website (www.dghscp.co.uk) and in hard copy on request from the IJB Office on 01387241346.

3.6 General rights of access

Section 1 of the Act gives a general right of access from January 1st 2005 to recorded information held by the IJB, subject to certain conditions and exemptions contained in the Act.

Simply, any person in the world making a request for information to the organisation is entitled:

- To be informed in writing whether the IJB holds the information of the description specified in the request.
- If the IJB holds the information, to have that information provided to them (or a clear response setting out why the information has been withheld).

For the purposes of general rights of access, a request is valid if made in writing, transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference such as fax or email.

3.7 Duty to provide advice and assistance

The IJB has a duty under Section 15 of the Act, to provide advice and assistance to persons who have made, or wish to make, requests for information. It is the responsibility of the IJB to ensure that systems and procedures are in place to meet this duty.

The systems and procedures will conform to the Code of Practice issues under Section 60 of the Act.

3.8 Timescales

The Act obliges IJB's to respond:

- Promptly, and
- In any event not later than 20 working days after the date on which the request was received.

Any member of staff receiving a request must notify the requester of the correct email address for handling Freedom of Information (dg.ijb-foi@nhs.scot)

The obligation is to reply promptly and not more than 20 working days following receipt. A response should not be delayed until the end of the 20 day period if there is no reason why the information cannot be provided earlier.

The Freedom of Information Officer will acknowledge receipt of FOI requests within 2 working days.

A flowchart specifying how the IJB will deal with FOI requests is detailed in **Appendix 1**

3.9 Handling a Request for Information

3.9.1 Clarification

Where the applicant has not been provided enough information to enable staff to identify and locate the information sought, or where the request is unclear, the Freedom of Information Officer will request further information/clarification to help the applicant describe more clearly and particularly what information they require. This should not be an attempt to determine the applicant's aims or motivation.

Where more information is needed to clarify the request, it is important that the applicant is contacted as soon as possible.

In such situations the clock for the 20 working day timescale for a reply stops ticking. The clock restarts from zero once the IJB has received the required clarification or information, in effect making it a new request.

However, the 20 day clock does not stop if only part of the request is being queried.

Requesting clarification/rewording of the request must never be used as a delaying tactic.

Appropriate help should include:

- Providing an outline of different kinds of information which might meet the terms of the request;
- Providing a general response to the request setting out options for further information which could be provided on request;
- An indication of what information could be provided within the cost ceiling, in instances where a request would be refused on cost grounds.

This list is not exhaustive. IJB will be flexible in offering advice and assistance taking in to account the circumstances of each individual request.

If reasonable assistance has been given and the applicant is still unable to describe the information in a way which enables the IJB to identify and

locate it, then the IJB will not ask for further clarification and the request will be withdrawn.

3.9.2 Charging

The information described in our Guide to Information available through the Model Publication Scheme is available from the IJB free of charge where it can be downloaded from our website or where it can be sent electronically by email unless a specific charge is stated in the Scheme.

IJB took the decision not to impose charges for providing information in paper copy. However, information that falls under the Freedom of Information (Scotland) Act is chargeable.

In the event that a charge is to be made, IJB will specify the charge and how it has been calculated. Information will not be provided until payment has been received.

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.

For example:

- Minimum charge is £8 per hour for staff time which would equate to working on the request for more than 75 hours or 8 days
- Maximum charge of £15 per hour for staff time which would equate to working on the request for more than 40 hours or 5 ½ days.

The IJB is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. However, the IJB is not entitled to charge for any costs incurred in determining whether it actually holds the information.

In line with the Section 60 Code, charges for a person's time should not be rounded up to the hour, but expressed as a fraction of the hour if only a fraction is expected to be worked.

IJB is not entitled to recoup costs in full. The Fees Regulations limit the chargeable amount to a proportion of the actual cost incurred. Where the cost to the IJB of responding to the information request:

- Is less than £100 then no charge can be made
- Is above £100, then the IJB is allowed to make a charge of 10% of those costs up to £600, less than the first £100, £50 is the maximum charge
- Exceeds £600, the IJB does not have to provide the information

3.9.3 Transferring Requests

Where the IJB receives a request for information, which it does not hold, we will inform the applicant promptly that under Section 17 of the Act we do not hold the information requested.

Where the IJB does not hold the requested information but is aware that it is held by another public authority, consideration should be given as to the most helpful way of assisting the applicant. This may include:

- Supplying the applicant with contact details of the authority holding the information and to suggest that the applicant reapplies to that authority.
- Seeking the applicant's permission to transfer their request to the other Public Authority.

Applicants should only be redirected after the IJB has confirmed that another authority hold the relevant information and having advised the applicant in writing of the transfer, the revised contact details and that the statutory period for dealing with the request will run from receipt of the transferred request.

Where a request is partly for information which the IJB does hold, and for that which it does not hold, the transfer will only be made with respect of the part the IJB does not hold.

3.9.4 Consultation with Third Parties

The IJB will undertake consultation with third parties where their views will assist the IJB in assessing exemptions and the public interest.

The IJB will make reasonable efforts to contact third parties where necessary, but may consider that consulting the third party is not appropriate if there is a cost of consulting and this may be disproportionate.

In all cases, it is for the IJB (not the third party) to determine whether information should be disclosed under the Act. Non response or refusal to consent to disclose by a third party does not in itself provide sufficient reason for information to be withheld.

3.9.5 Public Sector Contracts

When entering into contracts, the IJB uses the NHS Standard Terms and Conditions of Contract. These terms and conditions have been drawn up to take account of the Act.

Unless an exemption under the Act is applicable in relation to any particular information request, the IJB will be obliged to disclose that information in response to a request.

The IJB will not agree to hold information 'in confidence' that is not, in fact, confidential in nature. Advice from the Scottish Information Commissioner indicated that the exemption provided in the Act only applies if information has been obtained by a public authority from another person or third party, and the disclosure of the information to the public,

otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.

If it becomes necessary for the IJB to question whether information provided 'in confidence' by a contractor may be disclosed in response to an information request, the IJB will consult with the contractor in answering the question.

3.9.6 Exempt information and refusal of requests

The IJB does not have to comply with information requests where the information requested is exempt under the provisions made in Part II of the Act, Sections 25 to 41. Most exemptions are not designed to be applied on a blanket basis.

- Absolute exemptions: If an absolute exemption applies, the IJB will not release the information. Some absolute exemptions apply to areas such as national security or confidential material. Other absolute exemptions apply to information which is available via another route, for example if information is contained in the IJB's Publication Scheme.
- Non-absolute exemptions: If a non-absolute exemption applies then the IJB will have to apply a 'public interest' test to determine whether the public interest in disclosing the information outweighs the public interest in maintaining its confidentiality.

There are 17 categories of exempt information covering areas such as government interests and relations, public sector administration, national security and defence, law enforcement and commercial interests.

IJB:

- Will favour disclosure wherever possible and this is where the balance will lie. If an exemption applies, the IJB will provide the applicant with a written refusal notice which explains why the request is being refused. The notice will also inform the applicant of their right to apply for a review of the decision.
- Will not comply with a request for information when a fees notice has been issued to an applicant and the fee has not been paid within three months.
- Will not comply with a request for information if it estimates that the cost of compliance with the request would exceed the appropriate time limit established in statutory Fees Regulations.
- Will work with applicants to keep compliance costs to a minimum but reserves the right to either
 - Refuse to disclose the information

- Charge whatever costs of disclosure are above the appropriate limit. Where charges are raised, the applicant will be issued with a fees notice.

The IJB is not obliged to comply with a request for information if the request is deemed vexatious or repeated as defined by the Act. A log of all requests for information is held for monitoring purposes, so it is possible to identify repeated or vexatious requests.

The Scottish Information Commissioner's general approach is that a request (which may be the latest in a series of requests) is vexatious where it would impose a 'significant burden' on the public authority and:

- It does not have a serious purpose or value; and/or
- It is designed to cause disruption or annoyance to the public authority; and/or
- It has the effect of harassing the public authority; and/or
- It would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

Further details on vexatious requests are defined by the Scottish Information Commissioner.

Where a request is refused, the IJB will notify the applicant, within 20 working days of receiving the request, explaining why the request is being refused and stating what exemption is being applied. Similarly, where the public interest test has been applied and the request is still being refused, the IJB will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.

Any notice issued by the IJB to the effect that it is refusing to comply with a request for information will inform the applicant of their right to review by the IJB and of their right to apply to the Scottish Information Commissioner.

The IJB will keep a record of all applications where some or all of the requested information is withheld.

3.9.7 Informing Stakeholders of FOISA requirements

A standard disclaimer will be added to external emails that correspondence between the IJB and other stakeholders may be disclosed under the Freedom of Information (Scotland) Act 2002.

3.10 Review

Where an applicant is unhappy with the manner in which the IJB handled its request the applicant has 40 working days in which to seek a 'review' of their request. The review procedure is outlined in Appendix 2.

3.11 Training

All staff, whether permanent, temporary or contracted will be made aware of how the Act applies to them during their corporate inductions with either NHS Dumfries and Galloway or Dumfries and Galloway Council. Updates on the Act will be made available via the IJB's website www.dghscp.co.uk. This will include their own personal responsibilities for the records they create including emails, minutes of meetings and how they adhere to the legal, policy and procedural guidance.

4. Monitoring

The Chief Officer has ultimate responsibility for compliance with the Freedom of Information (Scotland) Act 2002 for the IJB.

The IJB is responsible for approving its Freedom of Information Policy.

The FOI Officer has day to day responsibility for implementing and monitoring compliance with the Freedom of Information (Scotland) Act 2002.

The Corporate Governance Officer of the IJB will ensure that all policies and procedures concerning compliance with the Act are produced, approved, implemented and monitored.

4.1 Monitoring Compliance and Reporting

The FOI Officer will maintain a log of all requests made for information under the Act, and details relating to response times.

Updated will be presented to the IJB's Audit and Risk Committee, concerning numbers, types of request received and any non-compliance issues on an annual basis.

The IJB will receive an annual report on the number of information requests received under the Act and the timeliness on responses to these.

5. Equality and Diversity

The IJB is committed to having due regard to the aims of the Public Sector Equality Duty which are to:

- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

The Freedom of Information (Scotland) Act 2002 is a mechanism of accountability, and to inform the public on a number of issues, of which equality and diversity may be one. Being open and accountable and providing access to information is

fundamental to the concepts and aims of the Equality Act 2010. To demand fair and equitable services, the public need to know the standards they can expect and have the evidence to demonstrate the extent to which they are being met.

An impact assessment was carried out on the original FOI Policy to which no fundamental changes have been made.

6. Key Contacts

Freedom of Information Officer:

FOI Officer
NHS Dumfries and Galloway
Mountainhall Treatment Centre
Bankend Road
DUMFRIES
DG1 4AP
Tel: 01387272752
Email: dq.ijb-foi@nhs.scot

Freedom of Information Lead:

Laura Geddes
NHS Corporate Business Manager
Mountainhall Treatment Centre
Bankend Road
DUMFRIES
DG1 4AP
Tel: 04132727202
Email: laurageddes2@nhs.scot

Corporate Governance Officer for the IJB:

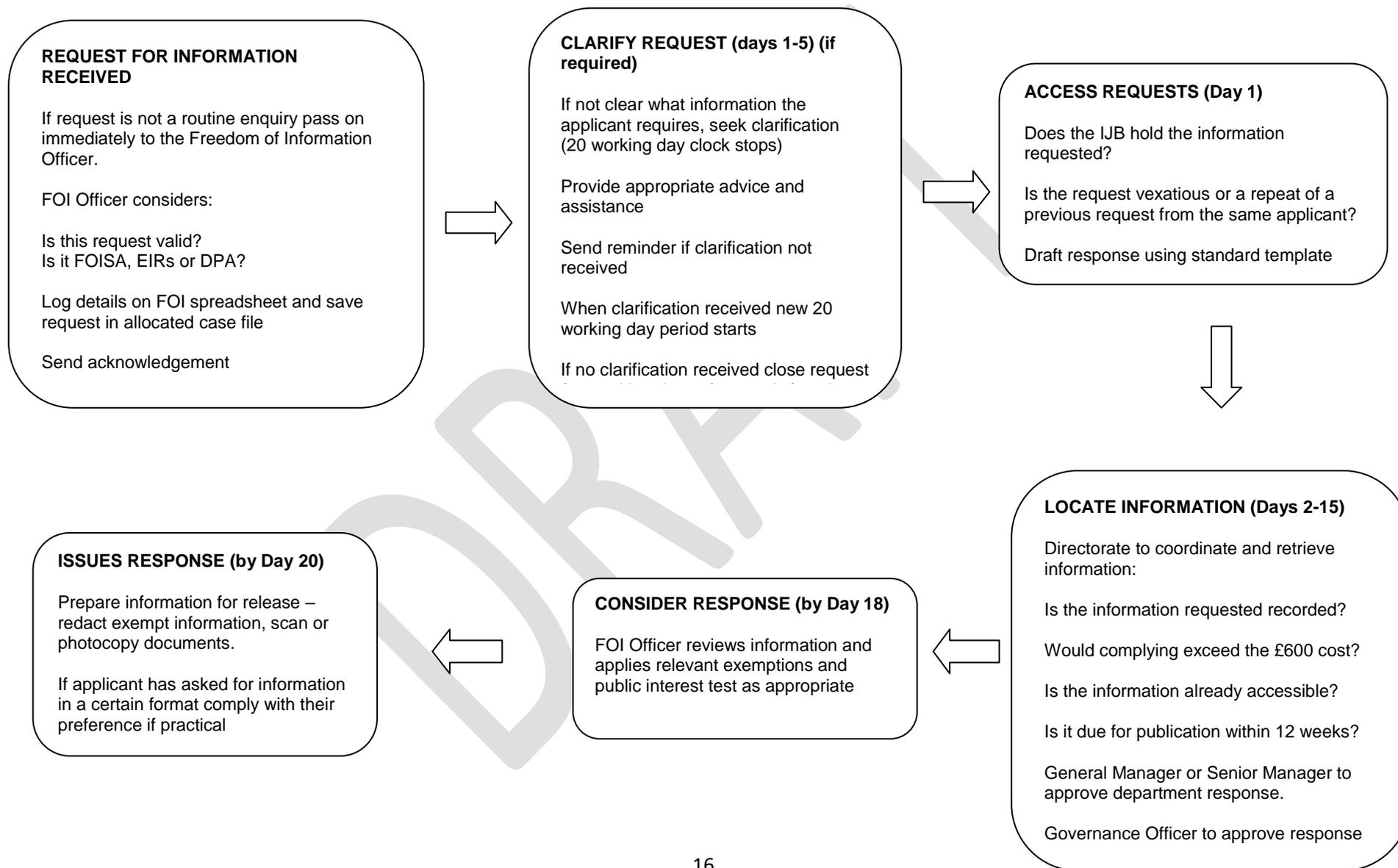
Dumfries and Galloway Health and Social Care Partnership
c/o Dumfries and Galloway Royal Infirmary
Cargenbridge
DUMFRIES
DG2 8RX
Tel: 01387246246 Ext 31463
Email: alison.warrick@nhs.scot

Scottish Information Commissioner:

Kinburn Castle
ST ANDREWS
Fife
KY16 9DS
Tel: 01334464610
Email: enquiries@itspublicknowledge.info

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Appendix 1 – Procedure for dealing with FOI requests



Appendix 2 - Internal Review Procedure

This is the procedure to be undertaken following receipt of an application to review the IJB's decision not to supply information.

The aim of this procedure is to ensure that, where the IJB has refused an applicant information under FOI(S)A legislation, and the applicant has requested that the organisation reviews its decision not to supply the requested information, that a fair and thorough means of reviewing the decisions taken by the IJB pursuant to the Act, is carried out. This includes decisions taken about where the public interest lies in respect of exempt information, in accordance with the provisions of the Scottish Ministers Code of Practice issued under Section 60 of the Act.

Any applicant who is dissatisfied with the way that the IJB has dealt with a request for information is entitled to ask the IJB to review its decision.

A request for a review must be made no later than 40 working days following:

- The expiry of the period for responding to a request for information. Authorities may comply with a request for review after this time period if it considers it appropriate to do so or;
- From the date on which the authority complied with the request, sent a fees or refusal notice or;
- A notice that the information is not held.

Log the request for review and open a file

The Freedom of Information Officer will immediately log the review request and notify the FOI Lead and the IJB Governance Officer.

Acknowledge the request

The FOI lead will acknowledge the request for a review in writing to the applicant. This will indicate that a comprehensive reply will be sent to them within 20 working days of the date of receipt of the request.

Conducting the Review

Following receipt of the request for a review, the FOI Lead will establish a panel to include the IJB's Governance Officer.

Part III, paragraph 66 of the Scottish Ministers Code of Practice provides 'Where the complaint concerns a request for information under the general right of access, the review should be handled by staff who were not involved in the original decision, where this is reasonably practicable'.

All reasonably practicable steps shall accordingly be taken to arrange for all reviews to involve a senior office who was not a party to the original decision, but has an understanding and awareness of the information being requested.

It is important that the review procedure enables the matter to be considered afresh, taking into consideration all the factors relevant to the issue and taking into account the matters raised by the review.

It is possible to reverse or amend any decision, which has already been taken prior to this procedure being engaged. In the event of decisions being reversed or amended, all necessary steps must be taken promptly to implement the reversed or amended decision within the 20 working day period permitted for the review.

Notification of Review Decision

Following the review, the FOI Lead will write to the applicant detailing the IJB's decision. The notice must include the following:

- If the decision is to grant the request – the form or manner of access and any fees payable;
- If the access is refused, the reasons for refusal, quoting the relevant section of the Act;
- Details of the rights of appeal and contact details for the Scottish Information Commissioner

Where the outcome of the review is that information shall be disclosed which was previously withheld, the information should either be sent with the decision or the applicant must be notified in the decision letter or email how soon it will be disclosed.

If the outcome is that the IJB's procedures have not been properly followed in either the handling of the original request or in compliance with the IJB's Publication Scheme, the decision shall contain an apology on behalf of the IJB and an undertaking given that the IJB will take appropriate steps to prevent similar errors occurring in the future.

Monitoring

The FOI lead will keep a log of all actions taken throughout the review. They will ensure that a record is kept of the review and the outcome made and whether or not the review was determined within the 20 working days, as set out in the Scottish Ministers Code of Practice.

The IJB's Governance Officer will be responsible for reporting quarterly to the Health and Social Care Senior Management Team, which will include any requests for a review under the Freedom of Information (Scotland) Act 2002, with a view to them being monitored and, if necessary, recommendations being made for amending the IJB's procedures for dealing with requests for information where such action is indicated by more than occasional reversals of initial decisions.

Appendix 3 – Definition of Environment Information Regulations (Scotland) 2004

'Environmental information' has the same meaning as in Article 2 (1) of the Directive, namely 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 wetland, 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 in to 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 arrangements, 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 these elements;
- d) Reports on the implementation of environmental legislation;
- e) Costs benefit and other economic analysis 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 in as much 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) or (c).