



Freedom of Information Policy

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1.0 Introduction

The Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs) give a general right of access to recorded information held by NHS Ayrshire & Arran (NHSA&A) subject to certain exemptions or exceptions.

It is a criminal offence under section 65 of FOISA and regulation 19 of EIRs if an individual alters, defaces, blocks, erases, destroys or conceals information with the intention of preventing the disclosure. NHS Ayrshire & Arran has robust internal mechanisms in place to remedy these circumstances. However, there may be occasions whereby the Police will require to be notified. Please see appendix three for escalation policy.

Anyone can request information which must be made in permanent form, such as writing or email (or verbal in the case of EIRs*). Responses to requests for information must be provided promptly and within 20 working days of receiving the request. There is also a lawful duty on public authorities to provide advice and assistance to requesters requesting information.

*If a request is made verbally (EIRs only), staff should write down the request, date it, and then pass to the FOI Officer who will confirm with the requester whether it is an accurate record of their request. The date we receive the verbal request counts as the date of receipt.

For up to date information and any changes made to the legislation please check [FOI News](#) on AthenA.

2.0 Purpose

The purpose of this policy is

- To ensure that NHS Ayrshire & Arran complies with the law in relation to an individual's rights of access to information.
- To ensure all staff are aware of their responsibilities under the law.
- To outline NHS Ayrshire & Arran's procedure in responding to requests for information

This policy outlines the procedure for dealing with requests under FOISA and the EIRs. All requests will be handled by the Freedom of Information (FOI) Officer supported by the Information Governance team.

NHS Ayrshire & Arran FOI Officer's contact details:

Freedom of Information Officer
14 Lister Street
University Hospital Crosshouse
Kilmarnock, KA2 0BB
Telephone: 01563 826112
Email: foi@aapct.scot.nhs.uk

3.0 Scope

This policy applies to all staff and outlines the procedure in place for dealing with requests under both FOISA and EIRs. This excludes the personal data of the requester, which will continue to be dealt with under Data Protection Law.

The differences between FOISA and EIRs will be considered by the FOI Officer when processing the request.

This policy covers all requests for recorded information, regardless of format, held on any NHS Ayrshire & Arran account, including cloud-based platforms, for example:

- Information in all electronic formats, including removable media
- Information in paper format
- Emails
- Policies
- Minutes of Meetings
- Information held on personal drives (OneDrive)
- Information held in shared drives
- Information held in MS Teams
- Video

Please note: this list is not exhaustive.

4.0 Definition of Terms

Data Protection Law

Data Protection Law defines seven data protection principles and is the main legislation governing the protection of personal data in the UK.

Environmental Information Regulations (2004) (EIRs)

Statute which came into force in 2005 and gives the right of access to environmental information held by public authorities.

Exceptions Conditions which may be applied in circumstances in which requested data may be withheld from disclosure under EIRs.

Exemptions Conditions which may be applied in circumstances in which requested data may be withheld from disclosure under FOISA. There are two types of exemption: absolute and qualified.

- **Absolute exemptions:** exemptions that do not require a public interest test to be undertaken.
- **Qualified exemptions:** exemptions which require a public interest test to be completed before they are applied.

Freedom of Information (Scotland) Act 2002 (FOISA): An Act of the Scottish Parliament which came into force in 2005. The Act gives the public the “right to know” and allows them to request any information held by NHS Ayrshire & Arran.

Office of Scottish Information Commissioner (OSIC): An independent regulatory office reporting directly to the Scottish Parliament. The Scottish Information Commissioner is appointed by the Crown. The Scottish Information Commissioner's office promotes and enforces both the public's right to ask for the information held by Scottish public authorities, and good practice by authorities.

Public Interest Test: A public interest test must be applied when the use of a qualified exemption is proposed. The factors for and against the disclosure of requested information are considered. In order to apply the exemption, the factors against disclosure must be seen to outweigh the factors for disclosure.

Publication Scheme: A list of information OSIC expects public authorities to regularly publish. All public authorities are required to produce and maintain a Publication Scheme under section 23 of FOISA.

5.0 Roles & Responsibilities

The Chief Executive: has overall strategic responsibility for freedom of information in NHS Ayrshire & Arran. As accountable officer they are responsible for the management of the organisation and for ensuring compliance of the law.

Directors and Senior/Departmental Managers: The responsibility for compliance with FOI policy at directorate or departmental level is devolved to the relevant Directors, Directorate and Departmental Managers. Director/Senior/Departmental Managers have overall responsibility for ensuring information is provided in a timely manner and all activities comply with the NHS Ayrshire & Arran's Freedom of Information policy. All responses will be signed off by the relevant Director/ Senior Managers or their delegate.

Freedom of Information (FOI) Officer: has responsibility to provide advice and support to all service or functional areas throughout NHS Ayrshire & Arran, on all matters relating to FOISA and EIRs. As well as to ensure measures are in place to support full compliance with the law.

The FOI Officer is also responsible for responding to all requests, supported by the Information Governance team. The FOI Officer will act as NHS Ayrshire & Arran's point of contact with the Office of the Scottish Information Commissioner, the independent watchdog, to seek advice or to respond to requests for audit or other information. Notification of issues of interest to other health boards and the Scottish Government will be the responsibility of the FOI Officer. The FOI Officer will hold a central record of all FOI requests, logs and replies.

FOI Champions: are designated in each directorate/locality to oversee the collation of the requested information and to ensure the information is provided to the FOI Officer within the stipulated timescale. FOI champions are able to offer staff advice and troubleshoot any issues that may arise. They can also escalate any issue to the FOI Officer for more specialist advice, if required.

All Staff: All NHS staff, whether clinical or administrative, are responsible for processing information in accordance with the legislation, and the policies, procedures and guidance as laid down by NHS Ayrshire & Arran.

Compliance with this policy is compulsory for all staff employed by NHS Ayrshire & Arran. A member of staff who fails to comply with this policy may be subject to disciplinary action under NHS Ayrshire & Arran's policy for the Management of Employee Conduct.

Guidance for staff is available on AthenA on the 'Information Governance' site. The FOI Officer is also available to offer advice or guidance on all aspects of the legislation and developments in information rights.

6.0 Procedure and processes

6.1 If you receive a request directly

Requests are viewed as being received as soon as they enter the organisation either by post or email therefore if you receive a request for information you must pass it to the FOI Office as soon as possible. It is important to act promptly as we only have a maximum of 20 working days to respond. Failure to comply with this 20 working day deadline, or to not provide the information requested (unless exempt), is a breach of the legislation.

6.2 Requests for information sent to you by the FOI Officer/Champion

- You will be sent the FOI Form containing the request. All parts of this form should be completed as required
- You will be given between five to ten working days to provide all the requested information or a **full** explanation of why it cannot be provided
- If there are any problems meeting this date then please contact the FOI Officer to discuss the issuing of a revised deadline as soon as possible
- Please advise the FOI Officer immediately if information (either wholly or partially) is held by another Directorate to allow redirection and adequate time for them to respond. Do not redirect the request yourself.
- If you do not understand what the requester is asking you should contact the FOI Champion/Officer immediately. Clarification may need to be sought from the requester. Requesting clarification, however, must be done promptly (within a couple of days of receipt of the request).
- All the requested information should be provided to the FOI Officer. If it is felt the requested information should not be provided to the requester, you must provide a reason/explanation but the information **must** be provided in full to the FOI Officer in the first instance.

It is the FOI Officer's decision (in consultation with the relevant Director/Chief Executive) if information is to be withheld and an exemption/exclusion or exception be applied

Do not withhold the information as this could be conceived as an offence under section 65 or regulation 19 (see appendix three for escalation policy).

- **It is the responsibility of the service to highlight any reasons why information should be withheld.** It is the FOI Officer's responsibility to decide what the relevant exemption or exception would be in each case, if any.
- It is the responsibility of the service providing the information to ensure it is accurate before forwarding to the FOI Champion/FOI Officer
- Further information may be requested, or explanations required, if it is felt necessary to provide context around the response, to help a requester understand what is being provided, or if the answer returned could create media/political interest. Please use plain English and explain all acronyms etc.
- 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 and, if appropriate, advice on who would hold the information

Appendix one sets out the FOI process and checking procedure.

6.3 Reviews/appeals process

If the requester is dissatisfied with a response, or does not receive a response on time, they have a right to seek a review of any decision.

Reviews are carried out by the Head of Information Governance. Their remit is to reconsider the original request and subsequent response.

The aim of a review is to allow us to take a fresh look at the response, to confirm the decision (with or without modifications) or, if appropriate, to substitute a different decision. The review procedure must therefore be fair and impartial and allow decision makers to look at the request afresh. It should also enable different decisions to be taken. See appendix two for review procedures.

If still dissatisfied, the requester can make an appeal to the Scottish Information Commissioner who has the power to investigate and enforce a decision.

Scottish Information Commissioner
Kinburn Castle, Doubledykes Road,
St Andrews, Fife
KY16 9DS

Telephone: 01334 464610

Email: enquiries@foi.scot

Website: [Homepage | Scottish Information Commissioner](#)

6.4. Equality issues

Equality issues have an impact on the provision of information as set out by section 20 of the Equality Act 2010. We should also bear in mind our duties – statutory or otherwise – to groups with particular needs. In most circumstances, a written response will be appropriate. We need to be flexible in our approach, interpreting broadly the provisions of the Equality Act. We should also ensure that, as a matter of practice, requesters with disabilities are provided with information in the format or means they prefer, except in exceptional and extreme circumstances. The cost of responding to any FOI request in an alternative format should not, however, be passed on to the requester.

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

6.5 Business as usual (BAU) requests

Although any written request for recorded information is technically a request under FOISA or the EIRs we operate a BAU approach to ensure that requests are dealt with promptly, without recourse to unnecessary administrative processes.

A BAU request is a request for information that a service area would expect to receive in its normal day-to-day operation. For example where it is accepted or common practice that information will be routinely released in response to a request. BAU requests will continue to be provided in the manner they have always been, using established processes and procedures.

To be treated as BAU, a request for information must fit the ‘key criteria’ in that:

- it must **not** indicate that it is an FOISA/EIR request*;
- all the information will be provided; and
- the information will be provided within 20 working days.

*BAU does not remove any rights a person has to request this information under the Freedom of Information (Scotland) Act 2002. If you received a request which you think should be treated as a BAU request but the requester has made reference to the legislation, it should be forwarded to the FOI Office in the first instance. Thereafter, it will be established if this information could be provided under the BAU arrangement or if the requester would still prefer to use their rights under FOISA/EIRs.

6.6 Publication Scheme

Section 23 of FOISA also requires us to maintain a Publication Scheme. A Publication Scheme sets out the types of information that a public authority routinely makes available and is subject to approval by the Scottish Information Commissioner, who is responsible for enforcing FOISA. We are obliged to review this Scheme from time-to-time.

The aim of the Publication Scheme is to provide access to information that we routinely publish and demonstrate our openness and transparency in the decisions we take. This scheme sets out the classes of information that we publish, the manner in which it is published and details of any charges for accessing this information.

It is important that the NHS Ayrshire & Arran public website is updated on a routine basis so that it contains all relevant information we need to meet our commitments to this scheme. Ensuring we are publishing information routinely is the responsibility of each Directorate/area/locality. The FOI Champion will be required to review what information is expected to be routinely published and to ensure it is kept up to date.

The publication scheme also complies with the EIRs.

6.7 Charging for requests

NHS Ayrshire & Arran reserves the right to charge for access to information.

7.0 Related Documents

Local

- Data Protection, Confidentiality and Privacy Policy
- Corporate Records Management policy
- Email Policy and Best Practice Guidelines

National

- Data Protection Legislation
- EU General Data Protection Regulations (GDPR)
- The Freedom of Information (Scotland) Act 2002
- The Freedom of Information (Scotland) Act 2002 (Commencement No. 1) Order 2002
- The Freedom of Information (Scotland) Act 2002 (Commencement No. 2) Order 2003
- The Freedom of Information (Scotland) Act 2002 (Commencement No. 3) Order 2004
- The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004
- The Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004
- The Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2008
- The Freedom of Information (Relaxation of Statutory Prohibitions on Disclosure of Information) (Scotland) Order 2008
- The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Devolved Public Bodies and Stipulated Time Limit) and the Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2011
- Human Rights Act 1998.

8.0 Legal Context

The policy complies with the following acts, regulations and best practice standards:

- Data Protection Legislation
- [UK General Data Protection Regulations \(UK GDPR\)](#)
- [Environmental Information \(Scotland\) Regulations, 2004.](#)
- [Freedom of Information \(Scotland\) Act, 2002](#)
- [Human Rights Act, 1998](#)
- [Public Records \(Scotland\) Act 2011](#)

9.0 Appendices

Appendix one - Protocol for processing FOI requests and checking procedure

Appendix two - Process for internal reviews

Appendix three - Escalation policy

Appendix one - Protocol for processing FOI requests and checking procedure

- If you receive a FOI/EIR request directly then please forward immediately to the FOI Officer. The 20-day deadline starts when NHS Ayrshire & Arran receives the request, **not** when it is processed by the Freedom of Information Officer.
- A 'FOI/EIR' form has been devised to be populated with the request, the subsequent response, any comments and sign off. Holding all the information on one form adheres to the principles of good records management.
- Information is deemed to be held in our possession if it has been produced or received by NHS Ayrshire & Arran or it is held by another person/organisation on NHS Ayrshire & Arran's behalf.
- The FOI Officer will send the FOI/EIR form to the appropriate FOI Champion. The FOI Champion will forward the form to the most appropriate person to respond and ensure the stipulated timescales are met.
- Advise the FOI Officer immediately if information (either wholly or partially) is held by another Directorate to allow redirection and adequate time for them to respond. Do not redirect the request yourself.
- The service providing the information is responsible for highlighting any information they may feel is sensitive, commercial or contentious for advice from the FOI Officer to clarify if an exemption/exception would be appropriate to apply in the circumstances.
- A full explanation of why the information is considered to be exempt will be provided to the FOI Officer. This will ensure the most appropriate exemption/s, exclusion/s or exception/s are applied.
- Irrespective of whether an exemption/exclusion or exception is being considered – all the requested information must be sent to FOI Officer to allow an informed decision to be made.
- If the information is not held then the 'record of search' form must be completed in all cases, listing all searches. The relevant form is available on AthenA on the Information Governance page.
Note, this is not necessary when it is obvious this is information we would not hold – for example, not an NHS function. If in doubt, please contact the FOI Officer for guidance.
- If the amount of work to pull the information together is considered to be out with the cost of compliance (rule of thumb – over a week's work). You must complete the 'Fee calculation sheet' form. You must provide costings in line with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. The relevant form is available on AthenA on the Information Governance page and is linked to from the FOI form. Note, this is not

necessary when it is obvious that to collate the information would be excessive – for example, if we had to manually trawl hundreds of patient records. If in doubt, please contact the FOI Officer for guidance.

- Once the FOI Champion has received the completed FOI/EIR form and any subsequent form (search or cost forms), these will be signed off as accurate by the relevant Director then passed to FOI Officer. Due to the time constraints, all Directors should appoint a delegate to sign off requests when they are unavailable.
- The FOI Officer will then issue the response and if appropriate apply any exemption/exclusion/exception. If it is not appropriate or lawful to withhold information the FOI Officer will then consult directly with the relevant Director (via the FOI champion) to consider an alternative response.
- On occasion final sign off may be required by the Chief Executive.

Appendix two - Process for internal reviews

- Reviews will be carried out by the Head of Information Governance.
- The Head of Information Governance has access to all documents related to the request and will meet (if considered necessary) with those involved in the original processing of the response.
- All information requested by the reviewer will be provided. **Do not withhold the information as this could be conceived as an offence under section 65 or regulation 19** (see appendix three for escalation policy).
- The reviewer may require further specialist knowledge from the relevant directorate and/or to be provided with further information.
- The FOI Officer will assist the reviewer with any legal advice in respect of the legislation but will not be involved in the decision-making process of the review.

All information emanating from the review and any subsequent decision and response will be recorded by the reviewer.

Appendix three - Escalation policy

Introduction

Occasionally situations arise when a colleague feels that the actions, inactions or decisions of another colleague do not adequately fulfil our legal obligation under the relevant legislation. This may relate to:

- the quality of the information provided
- refusing to provide information
- not providing the requested information within the stipulated timeframe
- the tasks that would lie within the roles and responsibilities of particular colleagues, or
- the appropriate sharing of information.

All staff have a legal duty to fulfil the statutory requirements of FOISA/EIRs. Failure to do so may be deemed to be a criminal offence. NHS Ayrshire & Arran would fail in their duty to abide by this legislation if they did not act when a member of staff is in breach of the law.

At every stage of the process all conversations and decisions must be recorded in writing and shared with relevant personnel.

If this process discloses gaps or weaknesses in the policies and procedures adopted by NHS Ayrshire & Arran to carry out its functions under FOISA/EIRs, this must be brought to the attention of the FOI Officer formally, in writing.

Stage one - escalation to individual line manager

The FOI Officer/FOI Champion/Reviewer will notify the staff members direct line manager/ supervisor who will discuss the issues with the staff member with a view to ensuring the legal obligations are met. Every effort should be made to resolve the disagreement at this level.

Stage two - escalation to Director

If the problem is not resolved at stage one, it will be escalated to the relevant Director:

Stage three - escalation to Chief Executive

If the problem is not resolved at stage two it will be escalated to the Chief Executive. At this stage consideration should be given to invoking the Management of Employee Conduct. Organisational and Human Resources Development will be asked for guidance.

There may be occasions whereby the police will be notified if an offence has been committed under section 65 of FOISA or section 19 of EIRs.