



**Freedom of Information Policy**

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**Printed copies must not be considered the definitive version**

<b>DOCUMENT CONTROL</b>		<b>POLICY NO.</b>	
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<b>Lead Executive:</b>	Chief Executive		
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<b>Approved by:</b>	Board Management Team	<b>Approval date:</b>	April 2024
<b>Equality Impact Assessed:</b>	Yes	<b>Equality Impact Assessment date:</b>	February 2024
<b>Data Protection Impact Assessed:</b>	No – Not required	<b>Data Protection Impact Assessment Date:</b>	Not applicable

# Policy on a page

Summary & Aim	Key Requirements
<p>This policy sets out the process for the delivery and management of the Freedom of Information requests that are received into the Board, which is aligned to the Freedom of Information (Scotland) Act 2002.</p>	<ul style="list-style-type: none"> <li>• All Freedom of Information requests received must be responded to within 20 working days.</li> <li>• All Review Requests received following the issue of the initial response must be responded to within 20 working days.</li> <li>• All information requested for Freedom of Information responses must be issued to the Freedom of Information Officer, if held, to allow the appropriate exemption to be applied, if required.</li> </ul>
Target Audience	Previous Names
<ul style="list-style-type: none"> <li>• Staff who are involved in the processing of the Freedom of Information requests in each of the Directorate Areas.</li> <li>• Managers designated with the responsibility of approving the information before it is submitted to the Freedom of Information Officer.</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>

Equality and Diversity Statement
<p>NHS Dumfries and Galloway recognise that some communities within society are more likely than others to experience discrimination, prejudice and inequalities. The Equality Act 2010 specifically recognises the protected characteristics of <b>age, disability, sex, race, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, and marriage and civil partnership</b>. The Fairer Scotland Duty, also requires NHS Dumfries and Galloway to actively consider how socio-economic disadvantage can be reduced when making strategic decisions.</p> <p>The New Armed Forces Covenant Statutory Duty places an expectation on NHS Dumfries and Galloway to consciously consider the Armed forces Covenant when developing, delivering and reviewing policies and decisions which may impact the Armed Forces community and help improve their access to public services.</p> <p>Consideration on all of the protected characteristics, the Fairer Scotland Duty and the Armed Forces Covenant are included within the Equality Impact Assessment process and documentation, which must be completed as part of the Policy Development Process.</p> <p>NHS Dumfries and Galloway is committed to promoting and advancing equality, removing and reducing discrimination and harassment and fostering good relations between people that hold a protected characteristic and those who do not. This applies both in the provision of services and as our role as a major employer. NHS Dumfries and Galloway believe that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discrimination practice.</p>

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### 1. PURPOSE AND RATIONALE

1.1 **Purpose** – This Policy sets out the roles, responsibilities and process for the development, review and management of Freedom of Information requests received by NHS Dumfries and Galloway.

1.2 **Rationale** - The Freedom of Information (Scotland) Act 2002 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

2.1 NHS Dumfries and Galloway is committed to transparency in the way that it works. This commitment is supported by Freedom of Information (Scotland) Act 2002, and aims to:

- increase accountability across the public sector and in government by ensuring that people have the right to access information.
- enable members of the public to review information held by the NHS Dumfries and Galloway, whilst maintaining compliance with Freedom of Information (Scotland) Act 2002.

### 3. POLICY SCOPE

The Freedom of Information (Scotland) Act 2002 allows for two types of information requests to be submitted to a public body. The first is the Freedom of Information requests, which is the most common type of request. The other is the Environmental Information requests. Definitions of the different types of requests are detailed below:

#### 3.1 Freedom of Information

The Freedom of Information (Scotland) Act 2002 applies to almost all public bodies in Scotland, including the Local Authority, the NHS, colleges and universities, Police Scotland, Scottish Parliament etc. It can also apply to third Party suppliers such as contractors who provide a service to any Scottish Public Authority.

Freedom of Information (Scotland) Act 2002 states that Scottish Public Authorities have a legal obligation to respond to any request for information held by the public body within 20 working days of receipt.

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Members of the public can ask for a variety of information through a Freedom of Information request, such as financial data, performance data, workforce information etc. The exception would be any environmental or building related information requests.

### 3.2 Environmental Information

Under Section 62 of the Freedom of Information (Scotland) Act 2002 the Scottish Ministers have made the Environmental Information (Scotland) Regulations 2004. This makes 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 of Environmental Information Requests is available in Appendix 3 of this Policy. It is not an exclusive definition and may include information on the Board’s policies, plans and activities likely to affect the state of human health and safety – for example, the cleanliness of our premises and control of infection.

There are differences in the obligations on the Board under the Environmental Information (Scotland) Regulations 2004 as compared with Freedom of Information Act. The most notable difference are:-

- requests for information under the Environmental Information (Scotland) Regulations 2004, may be made orally – there is no requirement to put them in writing or other permanent form.
- the timescale for responding to an environmental Information request may, in certain circumstances, extend to 40 working days.
- the charging arrangements under environmental information requests allow for flexibility of the Board to recover the costs of providing info.

### 3.3 General Data Protection Regulations and the Re-use of Public Sector Information Regulations 2015

The General Data Protection Regulations 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.

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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 data we hold about them.

Requests 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 General Data Protection Regulations.

Applicants can request to re-use public sector information subject to certain conditions, exemptions and charges. Requests must be in writing, state the information required and intended use. The Health Board has 20 working days to respond whether by accepting the request, refusing the request or notifying of a charge for the information.

#### 4. DEFINITIONS

Document Type	Definition
<b>Freedom of Information Request</b>	A non-routine request for information already held by the public body 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.
<b>Environmental Information Request</b>	A non-routine request for information that will provide public access to environmental information already held by the public body.
<b>General Data Protection Regulations (GDPR)</b>	Legislation that controls how personal information can be used and your rights to ask for information about yourself.
<b>Subject Access Request</b>	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 30 days of receipt of the request.

#### 5. DUTIES / RESPONSIBILITIES

**Scottish Information Commissioner** is an independent public official responsible for promoting and enforcing Scotland's Freedom of Information law. The Commissioner's Office undertakes a variety of roles, including:

- Investigating Freedom of Information appeals

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- Promoting the public's right to know
- Promoting good Freedom of Information practice to public authorities
- Intervening when public authority practice is not compliant with the Freedom of Information law

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

**The Freedom of Information Lead** has responsibility for advising the Chief Executive on the application of the Freedom of Information (Scotland) Act 2002 and for the legislation to be read as reference to both Freedom of Information and Environmental Information requests, ensuring that the Board complies under the legislation.

He / she is assisted in this by a Freedom of Information Officer. The Freedom of Information Lead has overall responsibility to respond to the Scottish Information Commissioner on any applications received where the requester did not agree with the response provided to them by the Board.

**Freedom of Information Officer** manages all requests received into the Board, liaises with the Directorates to obtain the information being requested or advice on why it cannot be provided, before issuing a response within the 20 working days timeline. The Officer also liaises with the Freedom of Information Lead and the Chief Executive to ensure all Review requests received are recorded and responded to within the 20 working days with sign off from the Chief Executive, as the Accountable Officer.

**Directorate Freedom of Information Lead:** is responsible for approving all of the raw data and other information collated for a Freedom of Information or Environmental Information request, prior to submission to the Freedom of Information Officer for the formal response. The Lead would be expected to highlight to the Freedom of Information Officer any concerns they have around the release of all or part of the data submitted to allow to appropriate exemption to be applied, if applicable. It is essential that all of the information being requested is provided to the Freedom of Information Officer, even if an exemption is being applied as the Scottish Information Commissioner requires sight of the information should the applicant submit a request for further review in relation to the Board's handling of their request. The Directorate Lead is also responsible for ensuring awareness of this policy, procedures and guidance to ensure compliance with the legislation when the department is handling Freedom of Information requests.

This role should be allocated to a senior manager within the Directorate, such as a Director, Deputy Director, General Manager or Deputy General Manager.

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**Directorate Freedom of Information Administrator:** is the key contact for the Directorate with the Freedom of Information Officer. The Administrator reviews the information request received from the Officer and forwards it to the most appropriate person(s) in their Directorate to pull the required information together. The Administrator will chase their Directorate colleagues to ensure the information is available for collation and approval by the Directorate Lead within the agreed timeframe before submitting to the Freedom of Information Officer for the response.

### 6. PROCESS / PROCEDURES

NHS Dumfries and Galloway have a statutory responsibility to make information available in accordance with Freedom of Information legislation.

It is essential that all staff are aware of, and take seriously their responsibilities under the legislation. As an organisation we are committed to meeting statutory timescales under Freedom of Information legislation and in supporting staff to achieve the requirements of the legislation. Any member of staff who is unable to respond effectively to the principles set out in this Policy should advise their line manager or more senior member of staff.

The process set out in **Appendix 1** should be followed when handling Freedom of Information or Environmental Information requests.

#### **What constitutes a Freedom of Information request?**

Any request for information or data that appears complex (not a routine enquiry) should be treated as Freedom of Information. Unless applicable to Environment Information Regulations or Data Protection / Subject access.

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

A valid request must:

- Be in writing or in another permanent form (letter, email, voicemail message), with the exception of Environmental Information Request, which can be provided orally.
- 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.



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

Any information requests received into the Board, which fall within the above criteria should be forwarded to the Freedom of Information Officer as a matter of urgency via [dq.feedback2@nhs.scot](mailto:dq.feedback2@nhs.scot) as the 20 working days timeline starts from the moment the request is received by the Board.

### Legal Compliance

NHS Dumfries and Galloway:

- 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 General Data Protection Regulations, Human Rights Act 1998, the common law duty of confidentiality.

To ensure the organisation can effectively comply with its obligations, staff will be provided with appropriate Information Governance training commensurate with their role.

### 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 an 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

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NHS Dumfries and Galloway 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.

NHS Dumfries and Galloway 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 NHS Dumfries and Galloway's systems and procedures for record keeping.

It is a criminal offence for a public authority to alter, damage, erase, destroy or conceal any 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.

### **The Publication Scheme**

NHS Dumfries and Galloway's Guide to Information Available through the Model 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 NHS Dumfries and Galloway website and in hard copy on request by emailing [dg.feedback2@nhs.scot](mailto:dg.feedback2@nhs.scot) or telephoning 01387 272752.

### **General rights of access**

Section 1 of the Act gives a general right of access from 1 January 2005 to recorded information held by NHS Dumfries and Galloway, 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 NHS Dumfries and Galloway holds the information specified in the request; and
- if NHS Dumfries and Galloway holds the information, to have that information provided to them (or a clear response setting out why the information has been withheld).

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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 letter or e-mail.

The only exception to this would be an Environmental Information request, which can also be submitted orally.

### **Duty to provide advice and assistance**

NHS Dumfries and Galloway has a duty under Section 15 of the Freedom of Information (Scotland) Act 2002, to provide advice and assistance to persons who have made, or wish to make, requests for information. It is the responsibility of NHS Dumfries and Galloway to ensure that systems and procedures are in place to meet this duty.

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

If an individual would like to request information, but is unable to submit the request in written form, support can be provided through the Citizen's Advice Service or the Scottish Independent Advocacy Service, who will be able to submit the request on behalf of the individual and explain the response and information that has been provided by the Board.

### **Timescales**

The Act obliges NHS Dumfries and Galloway to respond:

- **Promptly**; and
- in any event **not later than 20 working days** after the date on which the request was received. The request is considered as being received by NHS Dumfries and Galloway when it is delivered. If submitted over the weekend, the delivery date would be on the first working day after it was sent.

Any member of staff receiving a request must pass on the request immediately to the Freedom of Information Officer in the Chief Executive's Office to ensure that the time limit can be complied with. The deadline for the reply is calculated from the time the request was received in any part of NHS Dumfries and Galloway.

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.

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NHS Dumfries and Galloway will acknowledge receipt of Freedom of Information requests within two working days.

A flowchart specifying how NHS Dumfries and Galloway will deal with Freedom of Information requests is detailed in Appendix 1.

### **Handling a Request for Information - Clarification**

Where the applicant has not provided enough information to enable staff to identify and locate the information sought, or where the request is unclear, NHS Dumfries and Galloway will request further information / clarification from the applicant, asking them to describe more clearly and to be specific on the 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 re-starts from the point it is stopped at once NHS Dumfries and Galloway has received the required clarification or information, for example if the clarification is sought on day 5, the clock stops, once the clarification is received the clock restarts at day 5.

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

Appropriate help could 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; or
- 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. NHS Dumfries and Galloway 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 being requested in a way which enables NHS Dumfries and Galloway to identify and locate it, then NHS Dumfries and Galloway will provide a response based on the initial

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request and the information able to be sourced. This approach will likely result in exemptions or refusal notices being applied.

### Charging

The information described in our Publication Scheme is available from NHS Dumfries and Galloway free of charge where it can be downloaded from our website or where it can be sent electronically by e-mail unless a specific charge is stated in the Scheme.

NHS Dumfries and Galloway reserve the right to impose charges for providing information in paper copy. Charges will reflect the actual costs of production and postage to us, as set out in the Publication Scheme.

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

NHS Dumfries and Galloway may charge an appropriate fee for dealing with a specific request for information not listed in the Publication Scheme. This charge will be calculated according to the statutory “fees regulations.”

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 more information on charging, please click on this [What might it cost? | Scottish Information Commissioner \(itspublicknowledge.info\)](#) to the Scottish Information Commissioner’s website.

For example:

- Staff time to gather the information, up to a maximum of £15 per hour;
- Reasonable costs for photocopying or providing it in another format if you want a copy of the information

NHS Dumfries and Galloway is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. However, NHS Dumfries and Galloway 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.

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NHS Dumfries and Galloway 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 NHS Dumfries and Galloway of responding to the information request

- is less than £100 then no charge can be made
- is above £100, then NHS Dumfries and Galloway is allowed to make a charge of 10% of those costs up to £600, with £50 the maximum charge.
- exceeds £600, NHS Dumfries and Galloway does not have to provide the information.

### **Transferring Requests**

Where NHS Dumfries and Galloway 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 NHS Dumfries and Galloway does not hold the requested information but is aware that it is held by another public authority, consideration should be given to supplying the applicant with contact details of the authority that may hold the information and suggest that the applicant re-applies to that authority, if appropriate.

### **Consultation with Third Parties**

NHS Dumfries and Galloway will undertake consultation with third parties where their views will assist NHS Dumfries and Galloway in assessing exemptions and the public interest.

NHS Dumfries and Galloway will make reasonable efforts to contact third parties where necessary, but may consider that consulting the third party is not appropriate if there are cost implications in doing so.

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

### **Public Sector Contracts**

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

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

NHS Dumfries and Galloway will not agree to hold information 'in confidence' that is not confidential in nature.

The Scottish Information Commissioner indicates 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 would constitute a breach of confidence actionable by that, or any other person.

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

### **Exempt information and refusal of requests**

NHS Dumfries and Galloway 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, NHS Dumfries and Galloway 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 Board's Publication Scheme.
- **Non-absolute exemptions:** If a non-absolute exemption applies then NHS Dumfries and Galloway 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.

NHS Dumfries and Galloway:

- will favour disclosure wherever possible and this is where the balance will lie. If an exemption applies, NHS Dumfries and Galloway will provide the applicant with a written refusal notice which explains why the request is being refused.

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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 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 or charge for disclosure in line with the Fees Regulation. Where charges are raised, the applicant will be issued with a fees notice.

NHS Dumfries and Galloway 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 and reporting 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 as it:

- does not have a serious purpose or value;
- is designed to cause disruption or annoyance to the public authority;
- 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 on their website [Briefings and guidance | Scottish Information Commissioner \(itspublicknowledge.info\)](https://www.scot.nhs.uk/itspublicknowledge/info)

Where a request is refused, NHS Dumfries and Galloway 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.



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Similarly, where the public interest test has been applied and the request is still being refused, NHS Dumfries and Galloway will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.

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

NHS Dumfries and Galloway will keep a record of all applications where some or all of the requested information is withheld.

### **Informing Stakeholders of Freedom of Information (Scotland) Act 2002 requirements**

Staff are encouraged to include a standard disclaimer at the bottom of all external e-mails indicating that correspondence between NHS Dumfries and Galloway and other stakeholders may be disclosed under the Freedom of Information (Scotland) Act 2002.

### **Review**

Where an applicant is unhappy with the manner in which NHS Dumfries and Galloway 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.

If, upon receipt of the Board response to the Review Request, the applicant is still unhappy with the information or response provided they have the right to request a further review from the Scottish Information Commissioner on the way the Board handled the information request. Applicants have 6 months from the date of the review response letter to submit their application into the Scottish Information Commissioner for a decision.

## **7 CONSULTATION**

Consultation on the Freedom of Information Policy was led by the Lead Author and included:

- (a) Directorate Freedom of Information Leads and Administrators
- (b) Board Management Team;
- (c) Area Partnership Forum
- (d) Health and Social Care Leadership Group

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### 8 TRAINING AND SUPPORT

A training module has been developed nationally in relation to the implementation of the Freedom of Information (Scotland) Act 2002. The module can be accessed through Learnpro, under the Information Governance category within the eLearning section. All staff are encouraged to undertake the training to raise awareness of the act and the requirement that is placed on all staff around information requested received into the Board.

In addition to the Learnpro training, one-to-one training can also be provided to Directorate Leads and Administrators on their roles within the Freedom of Information processes. This training will be provided by the Freedom of Information Officer and Freedom of Information Lead.

### 9 MONITORING

The monitoring arrangements for this Policy are set out in the table below.

Element to be monitored	Monitoring Methodology	Reporting		
		Presented by	Committee	Frequency
% of information requests responded to within 20 working days	Review of the Freedom of Information and Environmental Information requests register	Freedom of Information Lead / Corporate Business Manager	Information Assurance Committee	Annually
			NHS Board (Public)	Annually
% of review requests responded to within 20 working days	Review of the Freedom of Information and Environmental Information requests register	Freedom of Information Lead / Corporate Business Manager	Information Assurance Committee	Annually
			NHS Board (Public)	Annually
% of information requests that are submitted to the Scottish Information Commissioner for review	Review of the Freedom of Information and Environmental Information requests register	Freedom of Information Lead / Corporate Business Manager	Information Assurance Committee	Annually
			NHS Board (Public)	Annually

9.2 Where the above monitoring identifies deficiencies, the following will be put in place:

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- Action plan developed to improve performance
- Quarterly reporting to Information Assurance Committee
- Consideration of risks included in the appropriate risk registers

### 10 EQUALITY IMPACT ASSESSMENT

As part of the process for reviewing and developing this policy an Equality Impact Assessment was undertaken, which did not highlight any issues or actions that had to be progressed.

All Equality Impact Assessments are published on our external website, which can be accessed by clicking [here](#).

### 11 DATA PROTECTION AND CONFIDENTIALITY IMPACT ASSESSMENT

A Data Protection Impact Assessment was not undertaken when reviewing this policy as the document did not review or handle confidential or personal information.

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### 12. DOCUMENT CONTROL SHEET

#### 12.1 Document Amendment History

Version	Section(s)	Reason for update
2.0	New	New policy produced for implementation
3.0	Full Review	Policy transferred onto the new Board approved Policy Template.

#### 12.2 Distribution

Name	Responsibility	Version number
FOI Lead	Place on policy register	3.0
Communications Team	Place on intranet and in 'latest news'	3.0
Management Team	Dissemination to all staff through line management	3.0

#### 12.3 Associated documents

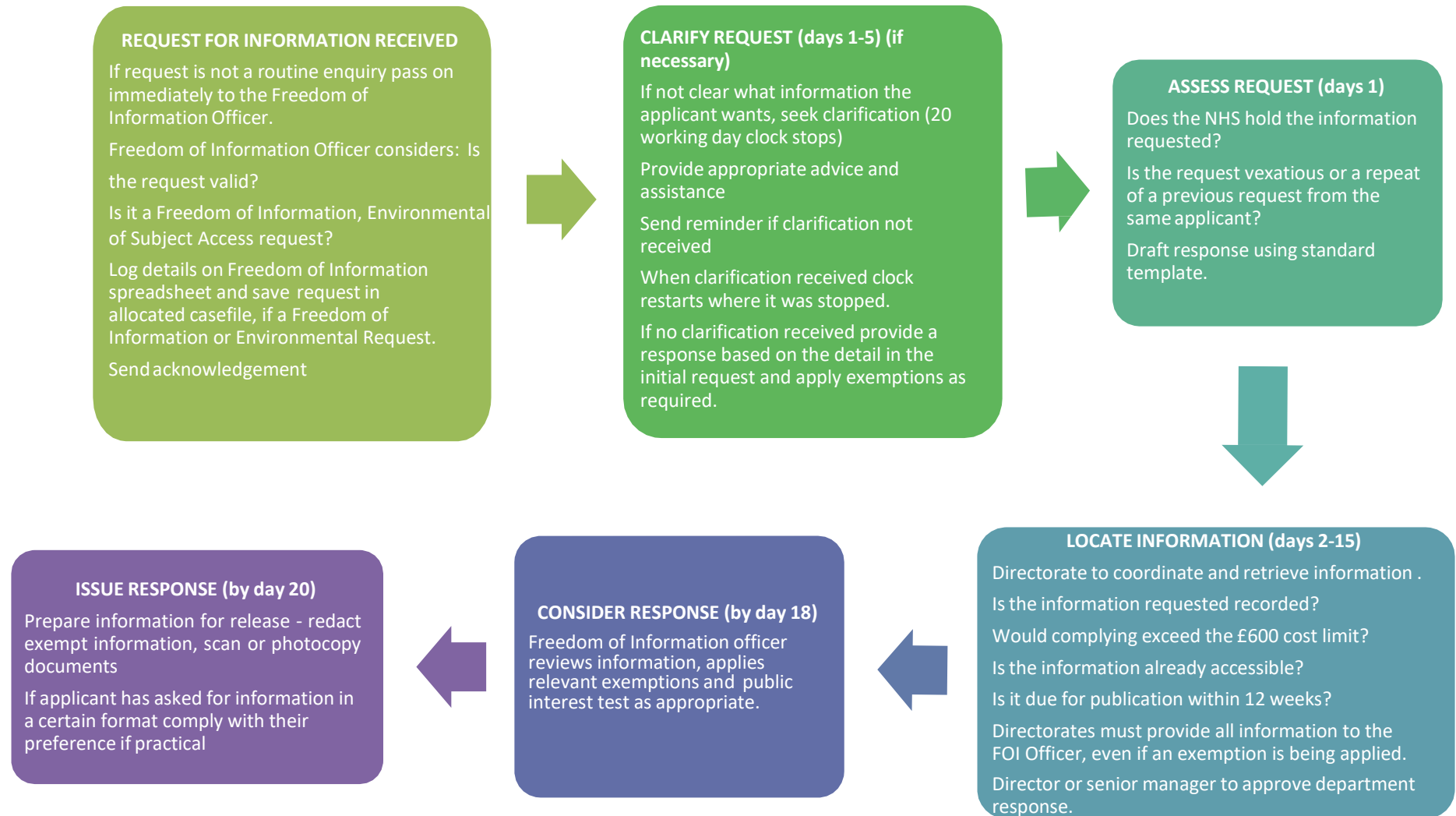
- Equality and Diversity Impact Assessment Policy.

#### 12.4 Action Plan for Implementation

Action	Lead Officer	Timeframe
Dissemination to staff through Directors.	Management Team	March 2024
Raise awareness and inform staff	All line managers	March 2024

## BOARD PUBLIC

### APPENDIX 1 - Procedure for dealing with Freedom of Information requests



### APPENDIX 2 – INTERNAL REVIEW PROCEDURE

The aim of this procedure is to ensure that, where NHS Dumfries and Galloway has refused an applicant information under the Freedom of Information (Scotland) Act 2002, 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 NHS Dumfries and Galloway is carried out. This includes decisions taken in relation to 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 NHS Dumfries and Galloway has dealt with a request for information is entitled to require NHS Dumfries and Galloway to review its decision.

This procedure must be followed upon receipt of an application to review NHS Dumfries and Galloway's decision not to supply information.

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 Freedom of Information Lead, if she / he did not receive the request initially.

#### **Acknowledge the request**

The Freedom of Information Officer will acknowledge the request for a review in writing to the applicant, confirming it has been passed over to the Freedom of Information Lead and Chief Executive to respond. 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 Freedom of Information Lead will liaise with the Freedom of Information Officer to determine why exemptions were applied and the facts around the reason for the review request.

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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 officer 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 Freedom of Information Lead will prepare a response and discuss the findings with the Chief Executive, seeking approval of the response to be issued to the applicant detailing NHS Dumfries and Galloway's decision. The notice must include the following:

- if decision is to uphold the detail in the initial response - form or manner of access and any fees payable;
- if access is refused, the reasons for refusal, quoting the relevant section of the Act;
- details of 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 NHS Dumfries and Galloway's procedures have not been properly followed either in the handling of the original request or in compliance with NHS Dumfries and Galloway's Publication Scheme, the decision shall contain an apology on behalf of NHS Dumfries and Galloway and an undertaking given that NHS Dumfries and Galloway will take appropriate steps to prevent similar errors occurring in the future.

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