

East Lothian Integration Joint Board

Freedom of Information Policy

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Approved by	Corporate Management Team
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1. Introduction

General Obligation

The Freedom of Information (Scotland) Act 2002 (as amended) (“the Act”) imposes a number of obligations on Scottish public authorities, including the East Lothian IJB. Integration Joint Boards established under the Public Bodies (Joint Working) (Scotland) Act 2014 are separate responsible bodies under the Act from the date of their establishment¹. The Act gives a general right of access to recorded information held by public authorities, subject to certain exemptions. The Act also imposes additional responsibilities²:-

- a. to produce a Publication Scheme subject to approval by the Scottish Information Commissioner. Publication schemes are high level, strategic documents in which a public authority makes binding commitments to make information available to the general public. Such schemes:
 - provide clear evidence to the public that an authority is meeting its obligations under the Act to be accessible, open and transparent
 - enable the public to see what information is already published, and to access it without having to make a formal request for information
 - give employees clear guidance about the information that they can and should give out to the public so they can respond to information requests efficiently
 - help reinforce leadership messages about openness and accountability to staff at all levels in the organisation
 - are to be easily accessible and designed to be easy to understand and to use – by everyone (including those with no web access).
- b. to respond to requests (which must be in writing or some other permanent form) made by anyone for information held by the authority within set timescales (normally 20 working days) regardless of when it was created, by whom, or the format in which it is now recorded.
- c. to advise an applicant if information is not held.
- d. to specify within the terms of exemptions set out in the Act if the authority refuses to release the requested information.
- e. to charge for the provision of information only in accordance with regulations made under the Act and to decline to provide information if the cost of doing so exceeds a specified level.
- f. to make applicants aware of their right to seek a review of any decision on a request for information and of the right to pursue an appeal to the Scottish Information Commissioner if dissatisfied with the decision of the authority.

¹ The Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2014

- g. to provide advice and assistance to applicants seeking information.

Environmental Information

Under Section 62 of the 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 his 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 reproduced as an Annex 1 to 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 EIRs as compared with Freedom of Information Act. Most notable relate to:

- a. requests for information may be made orally – there is no requirement to put them in writing or other permanent form.
- b. the timescale for responding may, in certain circumstances, extend to 40 working days.
- c. the charging arrangements under EIRs allow for flexibility for the Board to recover the costs of providing information – but we cannot refuse to provide on the grounds of cost.

Data Protection Act 1998

Under the Data Protection Act 1998 the subject of personal data (that is, the person the information relates to) has a right to request access to that data. This may include health records. The rights under the Data Protection Act are not covered by this Policy. Reference should be made to relevant information security and related policies available via the Publication Scheme. Alternatively for a brief guide follow the link:

<http://library.nhsggc.org.uk/mediaAssets/library/Document/%203%20Confidentiality%20Flyer%20-%20Oct%2008%20.pdf>

2. Scope of Policy

This policy sets out the arrangements that the East Lothian IJB has made to ensure compliance with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

This Policy applies to all employees engaged on the work of the East Lothian H&SCP and to Board Members. Under the delegation arrangements entered into with the East Lothian Council and NHS Lanarkshire, staff are accountable to the Board for compliance with this Policy.

Contractors, proposed contractors and others communicating with the Board shall be informed of our obligations under *freedom of information legislation*² and that we may have to disclose information which is provided to us by them².

The Policy will provide a framework within which East Lothian IJB will ensure compliance with our obligations under the Act and ensure that internal procedures developed are the most effective means of complying with the Board's obligations.

The Policy will be supported by more detailed guidance on our obligations under *freedom of information legislation*.

3. Responsibilities

East Lothian IJB has 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 our 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 Chief Officer is ultimately responsible for the Board's compliance with relevant statutory provisions and shall provide strategic direction on operation of our Freedom of Information Policy, including on how this is fulfilled through Corporate Communications. **The Freedom of Information Officers at East Lothian Council and NHS Lothian** have responsibility for advising the Chief Officer on the application of *freedom of information legislation* and for ensuring that the Board meets its obligations under legislation. This includes responsibility for reviewing operation of the Board's compliance with *freedom of information legislation* and for ensuring that relevant Policy and operating procedures are in place. Performance of the Board will be reviewed annually by East Lothian Council and NHS Lothian Board.

Managers are responsible for ensuring staff under their direction and control are aware of the freedom of information policies, procedures and guidance agreed and for ensuring that those staff understand and apply appropriately those policies, procedures and guidance in carrying out their day to day work.

² *Freedom of Information legislation* is to be read as reference to **both** the FOIA and EIRs

All staff must have a general understanding of *freedom of information legislation* and know where to refer any issues on which they require guidance.

4. Policy Statement

East Lothian IJB is committed to being open and honest in the conduct of its operations and in complying fully with the Freedom of Information (Scotland) Act and the Environmental Information (Scotland) Regulations 2004. To this end it will ensure:

- Compliance with the relevant Scottish Ministers Codes of Practice on *Freedom of Information legislation* and to related guidance issued by the Scottish Information Commissioner
- a significant amount of routinely published information about the IJB is made available to the public as a matter of course through its Publication Scheme
- that the content of our Publication Scheme is reviewed quarterly and updated through the proactive identification of material for inclusion in the Scheme
- requests for information not included in the Publication Scheme will be processed in accordance with our statutory obligations
- we will publish via the web and elsewhere guidance on how to make a valid information request and the procedures adopted by the Board
- advice and assistance will be actively provided to applicants seeking information
- staff are aware of the need to be able to demonstrate the steps they have taken to identify if the Board holds information sought by any individual or if the request might more appropriately be directed to another organisation such as the Health Board or City Council. Where information cannot be located a record of searches undertaken for every request where information sought cannot be located must be completed.
- that charges for information requested are made only in accordance with the statutory requirements and a fee notice is issued prior to any charge being levied
- due consideration is given to whether or not information is covered by an exemption (or exception under EIRs) and should not be released
- if we claim an exemption (or exception under EIRs) the reasons for our decision will be fully explained to the applicant, unless to do so would itself result in the disclosure of exempt information
- that if we do not hold information requested, but it is known or suspect who does, we should as a matter of good practice confirm the availability of the information with another public body and provide appropriate advice and assistance to the applicant on where the information can be obtained
- appropriate training and information is provided to staff at all levels within the organisation of their obligations and how they can obtain assistance in ensuring they meet these
- staff are made aware that it is an offence under the Act to alter, deface, block, erase, destroy or conceal information with the intent of preventing disclosure.
- that the **Review** Procedure appended to this Policy will be made publicly available and will be followed in processing any Requests for Review under the Act (See Appendix 2).
- that a Records Management Plan under Public Records (Scotland) Act 2011 is developed which supports the ability of the organisation to effectively manage its

corporate and operational records and provides a framework for the Board's compliance with the Scottish Ministers Code of Practice on Records Management under Section 61 of the Act.

- That personal data as defined in the Data Protection Act 1998 is held securely and is not inappropriately disclosed in response to a request for information under **freedom of information legislation**.

5. Communication and Training

All staff will have a general awareness of the Board's and each individual's obligations under **freedom of information legislation**. Use will be made of an on-line training package to form part of the mandatory training for new entrants on freedom of information. Specific and focussed training will be provided on demand to specific categories of staff or staff groups.

- We will make web resources available which will support staff in fulfilling their obligations. Training will be provided at three levels:-
- **General Awareness** - This should be achieved through successful completion of the basic level Freedom of Information e-learning module on Learn-Pro.
- **Response Training** – This is for those who are involved in responding to requests and require a full understanding of FoI procedures. This should be achieved through successful completion of the second level Freedom of Information e-learning, to be re-validated every two years.
- **Practitioner Training** – This is for those who process a wide range of FoI requests, some of which may be complex and/or spend a significant proportion of their job on FoI on-line training should be supplemented by refresher training every 2 years through attendance on short courses, formalised training or other evidence of on-going awareness of application of the legislation.
- **Reviewer Training** – This is for those involved in responding to requests for review submitted.

6. Recording & Monitoring

All FoI requests must be recorded promptly.

Robust arrangements must exist to ensure that in an individual's absence a nominated deputy is available to respond to requests for information and/or record requests/responses. Monitoring of activity under **freedom of information legislation** will include the routine collection of data on:

- the number of requests received and whether they fall under FoI or EIR
- the number of requests for review received the proportion of requests answered within and outwith the statutory timescale
- the number of requests refused (or partially refused) and the reasons for this. the number of times a fee has been charged
- the outcomes of reviews
- the number of cases appealed to the Commissioner and the outcome.

This data will be published through the Publication Scheme along with statistical information produced for the Scottish Information Commissioner's Office.

Operation of the Board's policies and procedures under **freedom of information legislation** will be reviewed by the Chief Officer and senior management team (SMT) who will also

review decisions which are the subject of internal requests for review or external appeal to the Scottish Information Commissioner.

An annual report on the Board's compliance with legislation (including relevant statistical analysis) will be submitted to the SMT.

7. Social Media

With the increasing use of social media, for example, Facebook and Twitter, and blogging sites such as Blogger and Wordpress, it is recognised that more and more requests for information may be submitted using these channels rather than traditional e-mails. Messages received by these media which are directed to IJB social media accounts will be monitored by the Communications Officer, who will ensure that any such requests are passed to the appropriate service for a response to be prepared and sent. Requests would only be valid if there was provided the applicant's full name, a means of responding in writing and details of the information requested in writing.

8. Voice Mail

Generally answer phone recordings of telephone messages are not regarded as sufficient to be a valid FoI request, but may be for the purpose of EIR. Where there is a system in place which allows a voice mail request to be stored permanently, for example, recordings to out of hours services where permanent recordings of all calls are made, this may be regarded as a valid FoI request if the information stored includes the individual's name and address for correspondence.

9. Procurement

In addition to the responsibilities under *freedom of information legislation* there are obligations under the Public Contracts (Scotland) Regulations 2012 and the Procurement Reform (Scotland) Act 2014 to give tenderers involved in some tendering exercises the right to ask for information e.g. right to ask why a tender was not successful. The authority has the right to withhold information in some cases, subject to conditions within the Act. In exercising any decision to withhold information cognisance should be taken of the Board's responsibilities under *freedom of information legislation*.

10. Impact Assessment

The legislation requires that we respond to requests from anyone without questioning their motivation. It also requires us in responding to a request to comply so far as is practical with the provision of information in the format requested. There is also a requirement to comply with the Board's duties under the Equality Act 2010, specifically in relation to discrimination in relation to disability.

As the requirements to provide information apply universally to all applicants it is not envisaged that the Policy will require any significant adjustment.

11. Review

The Policy will be reviewed every two years or more frequently in the event of significant change in the legislative framework.

Annex 1

Definition of Environmental Information

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) cost 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)

Explanatory Note

The use of the word 'any' qualifying the word 'information' indicates a legislative intention that environmental information should be interpreted widely. Environmental information can be found in:

- documents, leaflets, reports, books, post-it notes, notes, data sets, memos, meeting notes, maps, diagrams, sketches, graphs, illustrations - basically, anything written down;
- digital and/or analogue records, such as tape recordings, answer phone recordings, recorded presentations, Dictaphone tapes, DVDs, memory sticks, compact discs or any other electronic or optical storage format;
- any type of electronic file, word-processor file, database (including GIS and related data), spreadsheet, computer models (including 3D models) and files, specially written bespoke programs, calendars, emails, archived web pages/sites, temporary or cached files and computer generated images;

- any other material form – that is, other forms not widely available, or not yet developed or invented at the time the EIRs came into force.

Public authorities are not required to acquire or create new information but may be required to compile or otherwise manipulate existing information which they hold to meet the terms of a request.

Annex 2

East Lothian Integration Joint Board

1. **Freedom of Information Requirement for Review** We have procedures in place to allow an individual³ who is dissatisfied in any way with decision taken by us on the provision of information under the Freedom of Information (Scotland) Act 2002 to require us to review decisions taken.
2. This note sets out the procedures we follow where someone is dissatisfied.
3. Under the Freedom of Information (Scotland) Act 2002, this procedure is known as a "Requirement for Review". Under the Environment Information (Scotland) Regulations 2004 this is known as a "Representation" For our procedure under the Environmental Information (Scotland) Regulations 2004 see our separate guidance.⁴ A requirement for review/representation can arise in circumstances where the applicant believes we have not complied with our obligations under the legislation, including (but not limited to):
 - a. where we indicate that we do not hold information, but the individual believes we do; or where the individual feels that we have not provided the advice and assistance we should have done; or
 - b. where we have refused to provide information; or
 - c. where we have failed to reply to a request for information; or
 - d. where we have failed to respond to a request for information within the prescribed timescale; or
 - e. where the individual feels the charge for providing information is higher than it should be.
4. If the applicant is dissatisfied in anyway he/she can require us to review the way the request was handled or the decision reached.
5. Whenever we reply to a request for information a copy of this Requirement for Review/Representation Procedure must accompany the response. The response must also explain to the applicant their right to seek a review of any decision taken and the subsequent right of appeal to the Scottish Information Commissioner and the Courts (see paragraphs 14 to 16 below).

Commented [n1]: I'm not sure this level of detail needs to be included? The EIRs still refer to "review" but explain that applicants may make further representations as part of this process.
<http://www.legislation.gov.uk/ssi/2004/520/regulation/16/made>
Entirely up to you though!

Commented [n2]: As above

Commented [n3]: As above

Timescale

³ Reference to an individual is to any person or organisation that makes a request for information.

⁴ For our procedure under the Environmental Information (Scotland) Regulations 2004 see our separate guidance.

6. A requirement for review should be submitted in writing (or other permanent form) within 40 working days of either:
 - the day the individual actually received a response from us; or
 - the end of the period within which we should have replied to a request.
7. We have the discretion to consider requests for review received beyond this timescale. It would normally be our intention to accept requirements for review outwith the 40 working days, unless there are practical difficulties in doing so, for example, relevant documentation was due for destruction and has been destroyed. It is always in the applicant's interests to submit a review request within the 40 working day period specified.

Submission of Requirement for Review

8. Where a response is made to a request for information, the response must advise that any request for review is submitted to:

East Lothian Council FOI Team	NHS Lothian FOI Team
Email: foi@eastlothian.gov.uk	Email: richard.mutch@nhslothian.scot.nhs.uk
Phone: 01620 827623	Phone: 0131 465 5687

9. Should the person making the request submit their requirement for review to another person within our organisation, the recipient must pass it immediately to the Head of Business Administration.
10. The person seeking a request for review/representation must state their name and an address for correspondence. A statement explaining why the individual feels aggrieved at the decision taken (or the lack of response) by the organisation should accompany any request for review. It is always helpful if the person seeking a review makes their dissatisfaction explicit in what they say to us and clearly sets out the grounds for requesting a review. Where the applicant is seeking further information relating to his/her original request this will normally be treated as a new request.

Review Procedure

11. The review procedure is designed to be accessible, prompt, fair and impartial. It may result in a decision being made where no decision was made previously, confirmation of the original decision, or the making of a different decision to that originally taken being made. The decision will be binding on the organisation.
12. Requests for review have to be processed swiftly within a maximum timescale of 20 working days. During this timeframe we will review our previous decision and provide any further information required if the review outcome requires this.

Our Timescale Event	Action	Day
(a) On receipt of a request.	Send acknowledgement within two working days of receipt.	2
(b) Identify person who was handling request.	Collate relevant information about request and response (including search log).	2
(c) Notify person who was handling request that a review request has been received and provide a copy of statement in support from applicant and seek comments on rationale for decision.	Receive comments from request handler.	2-3
(d) Selection of Review Person.	Chief Officer to identify a senior member of staff with experience in Freedom of Information to conduct review of the decision previously made.	4
(e) Supply all available information to Reviewer.	Check all information is to hand then issue to Reviewer.	5
(f) Undertake Review	Reviewer considers request and response together with terms of review request and prepares a report on findings.	10
(g) Complete and submit review report	Provide final report to Chief Officer who notifies outcome of the review and right of further appeal. Any additional information to be provided is required to be sent by 20th working day	20

13. If it is concluded that the applicant has been unfairly treated, an apology should be offered on behalf of the organisation.

Right of Further Appeal

14. The applicant is to be advised of his/her right to raise the matter further with the Scottish Information Commissioner if he/she remains dissatisfied with the decision of the organisation. The right of appeal is to be exercised in writing (or some other permanent form) by the applicant who must provide an address for correspondence, specify the request for information to which the requirement for review relates and the reason for dissatisfaction. An appeal to the Commissioner⁵ must be made within a period of 6 months from
15. the date of any notice on the review request made to us or within 6 months from when a decision should have been notified by us.

In advising of this right, the applicant should be given details of the contact address and e-mail address of the Commissioner at:-

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
ST ANDREWS
Fife KY16 9DS
Tel: 01334 464610
E-Mail: enquiries@itspublicknowledge.info

16. The applicant should also be advised of their right to make an appeal against any decision by the Scottish Information Commissioner ⁶on a point of law to the Court of Session.

Assistance to Applicants

17. Under the spirit of the Freedom of Information (Scotland) Act 2002, the recipient of a request for review should provide assistance, if required, to any applicant who seeks it. He should also ensure that the needs of persons with a disability within the terms of the Equality Act are not unfairly disadvantaged as a consequence of the procedure described above and shall make appropriate adjustments to the procedure where appropriate under the terms of that Act.

Review of Requirements for Review and Decisions of the Scottish Information Commissioner

18. Our internal procedures will provide for decisions on requirements for review and decisions by the Scottish Information Commissioner are reviewed to ensure that Board processes follow best practice in dealing with requests for information under the legislation.

⁶ Under Section 65 of the Act

A copy of this form is to be sent with all responses to requests for information under the Freedom of Information (Scotland) Act 2002 or the Environmental (Information) Regulations 2004

Section 1 – Information on Request To be completed by person responding to initial request	
Request from	Date received
Subject Matter of request (brief summary)	Reference No.
Person replying	Date of reply
Additional information sought	Additional Information received on
Fee Notice issued on	Payment received on
Section 2 - Requirement for Review⁷/Representation⁸ To be completed by person seeking review/wishing to make a representation	
<p>I wish East Lothian Integration Joint Board to review the decision on this request for the following reasons:- If typing, box will expand to accommodate text. If writing continue on reverse if required</p>	

⁷ Under the Freedom of Information (Scotland) Act 2002

⁸ Under the Environmental Information (Scotland) Regulations 2004