



# Freedom of Information Policy

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### 1. Changes since last approval

<b>Change</b>	<b>Version</b>	<b>Date</b>
FOI Officer - Original document	1.0	11/2014
FOI Officer - Changes to address	2.0	12/2018
FOI Officer – Changes to address	3.0	06/2019
FOI Officer - Changes handling procedures and approval process	4.0	09/2019
FOI Officer - Various updates throughout, including removal or excessive appendices and inclusion of Reuse of Public Sector Information Regulations 2015.	5.0	01/2022
FOI Officer – Minor formatting changes and responsibility changes	5.1	02/2024
Corporate records manager – addition of links to records management policy and procedures	5.2	02/2024
FOI Officer – Formatting changes, in line with new template	5.3	07/2024

## **2. Introduction**

The Freedom of Information (Scotland) Act 2002 (“the Act”) promotes openness and accountability across the public sector by ensuring that people have the right to access information held by Scottish public authorities, including NHS Orkney.

The Act places a statutory obligation on public authorities to publish details of recorded information and allow the general public to access this information on request, subject to certain exemptions.

The Act allows anyone to request information from NHS Orkney. If this information is held by NHS Orkney it shall be released, providing an exemption does not apply. Freedom of Information requests must be made in writing, or by another form which has some permanency, containing valid contact information. On receiving such a request, a public authority must acknowledge receipt and then communicate a response to the applicant, promptly, but not later than 20 working days after receipt of the request.

The Act is overseen by the Scottish Information Commissioner, who has the power to issue enforcement notices and, if needs be, initiate court proceedings to ensure compliance.

### **2.1 Freedom of Information Requests**

The Act imposes additional responsibilities on NHS Orkney:

- i) To produce a Publication Scheme which provides high level information. The publication Scheme enables the public to see what information is already published and allow access without the need to request. Publication schemes must be easy to access and understand by everyone including staff members. NHS Orkney’s publication scheme can be viewed on NHS Orkney’s website and paper format if requested.
- ii) To respond to requests (which must be in writing or another permanent format) within a set timeframe of 20 working days.
- iii) Provide advice and assistance to requesters. If further advice or clarification is required, the FOI Officer shall approach the applicant for clarification as soon as possible. The 20 working days deadline will start once adequate clarification has been received.
- iv) Advise an applicant if information is not held.
- v) Provide details of any relevant exemptions restricting the release of information.
- vi) To charge for the provision of information – in accordance with strict regulations made within the Act.
- vii) Make applicants aware of their rights to review any responses given by NHS Orkney and further pursue an appeal to the Scottish Information Commissioner if dissatisfied.

Full details of the procedure completed when a Freedom of Information (FOI) request is received are provided in the NHS Orkney Freedom of Information Request Procedure.

## **2. 2 Environmental Information Regulations**

Under section 62 of the Act Scottish Ministers have made the Environmental Information (Scotland) Regulations 2004 (EIRs). The EIRs give individuals similar but not identical rights to access specifically environmental information.

Environmental information has a very wide definition including the environment itself (air, water, earth), other things affecting the environment (such as emissions, noise and radiation), in addition to relevant policies and plans.

The notable difference between FOI and EIRs are:-

- i) Requests for information can be made orally
- ii) The timescale for response under EIRs can be extended to 40 working days.
- iii) Charging arrangements under EIRs allows for flexibility for recovering costs, but cannot refuse to comply on the grounds of cost
- iv) Exceptions rather than exemptions restrict release

Full details of the procedure completed when a EIRs is received are provided in NHS Orkney Freedom of Information Request Procedure.

## **2.3 Re-use of Public Sector Information**

The Re-use of Public Sector Information Regulations (2015) (RPSI) sets out guidance for how public sector information can be re-used. In Scotland these regulations apply in conjunction with the Act, EIRs and UK GDPR.

RPSI allows a person to under certain circumstances use information held by a public sector for a purpose other than the original purpose for which it was produced.

## **2.4 Requests for personal information**

A request to access personal information is known as a Subject Access Request (SAR), requests for personal information are exempt through the Act.

Relevant provision is made for these requests under the **UK General Data Protection Regulation (GDPR)** and **Data Protection Act 2018 (DPA)**.

The medical notes of a deceased person can be requested in specific circumstances through the **Access to Health Records Act 1990**.

All requests for personal information are covered by NHS Orkney's Subject Access Request Policy.

## **3. Purpose and scope**

NHS Orkney is committed to being open and transparent in the conduct of its operations and in complying fully with the Act and Scottish Ministers Codes of Practice.

This Policy is relevant to all members of staff and members of the public who may wish to understand how NHS Orkney

NHS Orkney will:

- Ensure that records are created systematically, that they can be retrieved efficiently and can be provided promptly to any person making a request for information. This policy links to NHS Orkney's Records Management Policy;
- Make all employees aware of their obligations under the Act, guidance will be provided depending upon the extent to which various categories of staff will be involved in managing requests for information;
- Monitor compliance with legal requirements of the Act and undertake audits from time to time;
- Routinely publish a wide range of information through the publication scheme;
- Information will only be withheld in accordance with the exemptions laid down in the Act, and in particular those concerning:
  - NHS Orkney's duties under the Data Protection Act 2018 to prevent the release of confidential information relating to patients or members of staff;
  - Material to the safe and efficient conduct of NHS Orkney's operations

#### **4. Responsibilities**

NHS Orkney has a statutory responsibility to make its information available in accordance with The Act.

The **Chief Executive or their deputy** who holds responsibility to act as Senior Information Risk Officer (SIRO) oversees compliance with the Act.

The **Information Governance Manager** has responsibility for advising the Senior Information Risk Officer on the application of the Act.

The **Freedom of Information Officer** will ensure that all policies and procedures concerning compliance with the Act are produced, approved, implemented and monitored. They will also ensure adequate training is provided to the relevant personnel and promote awareness throughout the organisation.

**Executive directors and managers** at all levels are responsible for ensuring that the staff for whom they are responsible are aware of and adhere to this policy.

**All members of staff**, whether or not they create, receive or maintain information have responsibilities under the Act. They must ensure that any request for information made is dealt with as per the FOI procedure and is forwarded to the FOI officer immediately. Members of staff must provide information promptly to the FOI officer if required.

#### 4.1 Integrated Joint Board

NHS Orkney and Orkney Islands Council established a partnership arrangement in 2010 called Orkney Health and Care (OHAC). Following the Public Bodies (Joint Working) (Scotland) Act 2014, which came into force on April 1, 2016 the Integration Joint Board (known as OHAC) was formed.

For the purposes of the Act the Integration Joint Board is a Scottish Public Authority. Although the Integration Joint Board has delegated responsibilities for the delivery of a wide range of services, most FOI requests will be most appropriately dealt with through either NHS Orkney or Orkney Islands Council's FOI policies.

Specific requests concerning information held by the Integration Joint Board should be made following the process provided in the Orkney Integration Joint Board Freedom of Information Policy

([http://www.orkney.gov.uk/Files/OHAC/OHAC\\_Docs/IJB\\_FOI\\_Policy\\_Accessible.pdf](http://www.orkney.gov.uk/Files/OHAC/OHAC_Docs/IJB_FOI_Policy_Accessible.pdf)).

### 5. Auditable Standards

Monitoring requirement	Monitoring type	Frequency
Scottish Information Commissioner	Statistic	Quarterly

### 6. Content

#### 6.1 Records management

Effective and efficient management of records is essential for making access to information possible. A record is defined as anything that contains information in any media, e.g. paper, audio or video recording and electronic media.

Records Management covers all aspects of records throughout their lifecycle from creation to their eventual disposal, and NHS Orkney has specific responsibilities for its information as outlined in the Public Records (Scotland) Act 2011.

NHS Orkney has a separate policy to ensure compliance with the Scottish Ministers Code of Practice on Records Management under section 61 of the Act.

NHS Orkney's Records Management Policy is available here:

<https://www.ohb.scot.nhs.uk/publications>.

Under Section 65 of the Act, it is a criminal offence for a public authority to alter, damage, erase, destroy or conceal any record after a request for the information has been made.

The Scottish Government Records Management Health and Social Care Code of Practice sets out best practice information management as available here:

[informationgovernance.scot.nhs.uk/wp-content/uploads/2020/06/SG-HSC-Scotland-Records-Management-Code-of-Practice-2020-v20200602.pdf](http://informationgovernance.scot.nhs.uk/wp-content/uploads/2020/06/SG-HSC-Scotland-Records-Management-Code-of-Practice-2020-v20200602.pdf).

## **6.2 Charges**

Any information made available through the Publication Scheme will be free of charge unless otherwise specified.

However, NHS Orkney may charge an appropriate fee for dealing with a specific request. This charge will be calculated in accordance with the statutory 'fees regulations'.

NHS Orkney can charge direct and indirect costs incurred in locating, retrieving and providing information. Charging for time spent determining whether the information is held cannot be charged for.

If costs exceed £600 NHS Orkney does not have to comply (section 12 of the Act) with the request.

Staff time can be charged for up to a maximum of £15 per hour. The fees regulations limit the chargeable amounts as follows:

- Up to £100 - no charge can be made;
- £100 to £600 – first £100 deducted, NHS Orkney can charge 10% of this cost;
- Over £600 - no obligation to provide information.

If a charge is to be made before information is released a fees notification will be provided to the applicant.

Information will not be released until the sum has been received by NHS Orkney.

## **6.3 Exemptions and refusal to respond**

NHS Orkney does not have to comply with information requests if the information is exempt under the provisions made in Sections 25 to 41.

Exemptions will be applied on a case by case basis rather than applying on a blanket basis, (see Appendix 1 for a full listing of exemptions). Exemptions may be applied to an entire request or part of a request. The FOI officer or deputy shall apply exemptions to responses as applicable.

NHS Orkney will favour disclosure wherever possible. If applying an exemption NHS Orkney shall inform the applicant and provide information on why the request has been refused.

NHS Orkney is not obliged to comply with a request deemed to be vexatious or repeated (section 14 of the Act). The request log can be used to identify repeated or vexatious requests. Under section 17 of the Act if NHS Orkney does not hold the requested information the applicant shall be informed of this.

## **6.4 Requirement to review**

An applicant has 40 working days following the receipt of a response (or the date at which they expected to be issued with a response) to lodge a review request. NHS Orkney has developed a FOI review procedure in line with The Scottish Minister's Code of Practice which provides in depth details of the review procedure.

Following completion of an internal review if an applicant remains dissatisfied they may apply to the Information commissioner for an appeal.



Requests for an independent review should be made in writing to the Scottish Information Commissioner:

Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS

[enquiries@foi.scot](mailto:enquiries@foi.scot)

### **6.5 Monitoring**

The FOI Officer will maintain a register of all requests made for information under the Act. Details of the applicant, important dates, staff involved, exemptions applied must be collected along with other useful details.

A log shall also be kept of all review requests and appeals. Details of important dates, deadlines and staff involvement must be collated.

Quarterly reports will be submitted to the Digital and Information Operations Group. As and when required, reports and presentations shall be given to the Senior Leadership Team to highlight areas of concern or provide feedback.

The FOI officer will ensure that the requirement to submitted quarterly statistics to the Scottish Information Commissioner is fulfilled.

### **6.6 Contact details and further information**

Additional information can be obtained from the NHS Orkney's website

(<http://www.ohb.scot.nhs.uk/>)

Or please contact:

Freedom of Information Officer, The Balfour, Foreland Road, Kirkwall, KW15 1NZ

[ork.FOIrequests@nhs.scot](mailto:ork.FOIrequests@nhs.scot)

### **Useful websites**

[www.scotland.gov.uk](http://www.scotland.gov.uk)

<https://www.foi.scot/>

### **Related local documents:**

NHS Orkney Data Protection Policy

NHS Orkney Freedom of Information Request Handling Procedure

NHS Orkney Freedom of Information Review Procedure

NHS Orkney Information Governance Policy

NHS Orkney Publication Scheme – Guide to Information

NHS Orkney Publication Scheme Procedure

NHS Orkney Records Management Policy

NHS Orkney Subject Access Request Policy

## 7. Appendices

### Appendix 1 – Freedom of Information exemptions summary

Section	Summary details
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**Absolute exemptions** – exemptions that do not require a public interest test to be undertaken

S25	Information otherwise accessible
S26	Prohibition on Disclosure
S36(1)	Confidentiality – information obtained from another party
S37	Court records
S38	Personal information – e.g. deceased persons health records, personal data of applicant

**Non-absolute exemptions** - subject to public interest test, applies to determine if the public interest in disclosing the information outweighs the public interest of maintaining confidentiality. Most commonly applied to commercial interests and third party personal information

S27	Intended for future publication (within 12 weeks)
S28	Relations within the United Kingdom
S29	Formulation of Scottish Administration Policy
S30	Prejudice to effective conduct of public affairs
S31	National security and defence
S32	International relations
S33	Commercial interests and the economy
S34	Investigations by Scottish Public Authorities
S35	Law enforcement
S36(1)	Confidentiality – legal proceedings
S38	Personal information – 3 <sup>rd</sup> party information
S39	Health, Safety and Environment
S40	Audit functions
S41	Communications with his majesty etc, an Honours