

Appendix 3

Handling of Freedom of Information requests

Memorandum of Understanding (MoU) between NHS Dumfries and Galloway and Dumfries and Galloway Council to cover requests made under the remit of the Integration Joint Board (IJB).

Purpose

This MoU will apply to the handling of requests for information made under the Freedom of Information (Scotland) Act 2002 (FOISA) and Environmental Information (Scotland) Regulations 2004 (EiRs). It is made between NHS Dumfries and Galloway and Dumfries and Galloway Council to cover requests falling under the remit of IJB.

In adopting this MoU all parties recognise that there is a need for them to share information with each other in the course of their working relationship. It is in the public interest for them to ensure that their officials and stakeholders can communicate freely and frankly with each other regarding policy and other issues. Under FOISA, all parties may be asked to disclose recorded information relating to each other which is held by them under the auspices of joint working.

Requests made to services operated via IJB

Requests may be made to any of the partners within the IJB.

Information not held

When a request is received for information that is not held by the party, the requester should be provided with a notice under section 17 of FOISA. This notice advises the requester that the information is not held by the authority and in accordance with section 15 of FOISA (providing advice and assistance), the authority, if known, advises the requester where they can obtain the information they require.

This practice should continue in respect of the IJB. It is advisable, if there is any doubt that the other party within the partnerships holds the information, it would be prudent to contact them in the first instance. [See annex 1 for contact details for all FOI contacts within the IJB.]

Information held - shared and sensitive information

There may be occasion where the request will cover shared information.

The following provisions are intended to ensure that there is mutual confidence within the IJB regarding shared information. Section one of FOISA gives the applicant the right to request information 'held' by a Scottish Public Authority.

Where requests are made for shared information consideration needs to be given whether to disclose or withhold, subject to an exemption or exclusion.

Where information is shared, it is the responsibility of the party, which shares the information, where reasonably practicable, makes it clear at the time it is shared whether the information is considered by the party to be sensitive.

Consultation about requests for shared and/or sensitive information

If a request is made under FOISA for the disclosure of recorded information which is shared information which might be regarded as sensitive, the party receiving the request will, where reasonably practicable, consult with the other party before disclosing information in response to the request.

Procedure for consultation

If the requested information falls within the terms of what is considered to be sensitive information under this MoU, details of the information being requested should be passed to the other party as soon as possible thereafter, and in any event within five working days of the request being made

If it is thereafter considered that any or all of the information sought should be withheld, a full explanation will be given, stating which exemptions(s) apply and, if relevant, why the balance of the public interest test falls in favour of withholding the information. This explanation will be provided to the party having received the request within five working days from having been notified of the FOI request.

There needs to be commitment between the partners of the HSCPs to share information. Each party agrees to the timeous release to any requested information which can be released in terms of any Data Sharing Agreement between the parties, already in place or under this MoU regardless as to which party the request was initially made, so that a response can be made within statutory deadlines.

All parties will give effect to this MoU in a manner which is compliant with the Data Protection Act 1988, FOISA, EiRs and the Human Rights Act 1998. Nothing herein shall be regarded as authorising or requiring either party to act at any time otherwise than in accordance with these enactments.

However, it is for the party receiving the request to make a final decision about whether the information requested falls under the Act and must be disclosed.

Enforcement of MoU

This MoU is intended to set out, in general terms, matters agreed with a view to facilitating collaboration between the parties. It is not intended to constitute an agreement enforceable by either party against the other.

Either party can withdraw from this MoU at any time on written notice.

Review of memorandum

The memorandum will be reviewed by representatives of all parties at least annually and updated when necessary.

Signed on behalf of NHS Dumfries and Galloway

NAME (Please Print): _____

Signature: _____

Date: _____

Signed on behalf of Dumfries and Galloway Council

NAME (Please Print): _____

Signature: _____

Date: _____

Signed on behalf of Integration Joint Board

NAME (Please Print): _____

Signature: _____

Date: _____