

# *Freedom of Information Policy*

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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 Inverclyde Integration Joint Board. 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 establishment<sup>1</sup>. The Act gives a general right of access to information held by public authorities, subject to certain exemptions. The Act also imposes additional responsibilities:-

- 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 & 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

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<sup>1</sup> The Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order  
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information and of the right to pursue an appeal to the Scottish Information Commissioner if dissatisfied with the decision of the authority.

- 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 costs.

### **Data Protection Act 1998**

Under the Data Protection Act 1998 the subject of personal data (i.e. 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.

## **2. Scope of Policy**

This policy sets out the arrangements that the Inverclyde Integration Joint Board 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 Inverclyde Integration Joint Board and to Board Members. Under the delegation arrangements entered into with

Inverclyde Council and NHS Greater Glasgow & Clyde, 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***<sup>2</sup> and that we may have to disclose information which is provided to us by them.

The Policy will provide a framework within which Inverclyde Integration Joint Board 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

Inverclyde Integration Joint Board 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 Head of Administration & Business Support (Freedom of Information)** has responsibility for advising the Chief Officer on the application of ***freedom of information legislation*** and for ensuring that the Board meets its obligations under this 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 via the Senior Management Team.

**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.

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

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<sup>2</sup> **Freedom of Information legislation** is to be read as reference to **both** the FOIA and EIRs  
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## 4. Policy Statement

Inverclyde Integration Joint Board is committed to being open and honest in the conduct of its operations and complying fully with the Freedom of Information (Scotland) Act and the Environmental Information (Scotland) Regulations 2004. To this end Inverclyde Integration Joint Board 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 Inverclyde Integration Joint Board 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 NHS Greater Glasgow & Clyde or Inverclyde Council. Where information cannot be located or 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 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 – **Requirement for Review** – appended to this Policy will be made publicly available and will be followed in processing any Requests for Review under the Act (See Annex 2).
- that a Records Management Plan under the 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 the **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.

## 6. Recording & Monitoring

All FoI requests must be recorded promptly by submission to the Head of Administration & Business Support (Freedom of Information) for recording.

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

## **7. Social Media**

With the increasing use of social media e.g. Facebook and Twitter, and blogging sites such as Blogger and Wordpress, it is recommended that more and more requests for information may be submitted using these channels rather than traditional emails. Messages received by these media which are directed to Integration Joint Board social media accounts will be monitored to 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 Fol 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 e.g. recordings to out of hours services where permanent recordings of all calls are made, this may be regarded as a valid Fol 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.

## **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, noises, 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 programmes, 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.

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)  
AND THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRs)**

**YOUR RIGHT TO REQUEST A REVIEW AND APPLY TO THE  
SCOTTISH INFORMATION COMMISSIONER**

This leaflet is designed to be issued with any notice the Inverclyde Integration Joint Board (IJB) may send in relation to a request for information made under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 (EIRs). It sets out your rights of recourse should you be dissatisfied with the way the IJB has dealt with your request (including inaction) or the extent of the information you have or have not received.

**Requesting an Internal Review**

If you are dissatisfied with the way in which the IJB has dealt with your request for information you may ask the Board to review its action and/or decisions. A request for review must be in writing (or in some other recordable form) and should be sent to:

Vicky Pollock  
Legal Services Manager  
Legal & Property Services  
Inverclyde Council  
Municipal Buildings  
Greenock  
PA15 1LX  
Email: [vicky.pollock@inverclyde.gov.uk](mailto:vicky.pollock@inverclyde.gov.uk)

Your requirement for a review must:

- i. be made within 40 working days of receipt of the notice;
- ii. specify your full name and address for correspondence;
- iii. specify the request for information to which the review relates; and
- iv. specify the reason your dissatisfaction

Your case will be reviewed within 20 working days.

You may also request a review if you have not received a response to your original request within the normal 20 working days of receipt of that request by the Board (40 days if extended by the Board under the EIRs). Your complaint in that case must be made within 40 working days of the last date you should have received the response.

**Application to the Commissioner**

Should you be dissatisfied with the review decision or not receive the review decision within the 20 working days you must apply to the Scottish Information Commissioner for a decision. You should apply to the Commissioner in writing (or in some other recordable form) at:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
[www.itspublicknowledge.info/appeal](http://www.itspublicknowledge.info/appeal)  
Tel: 01334 464610  
Fax: 01334 464611

Your application must:

- i. be made within six months of the review decision or the expiry of the 20 working days within which a review decision should have been made;
- ii. specify your name and address for correspondence;
- iii. specify the request for information to which the review relates; and
- iv. specify the reason for your dissatisfaction.