



Integration Joint Board

Freedom of Information Policy

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Purpose of the Policy

The Freedom of Information (Scotland) Act 2002 (usually known as FOISA or FOI) aims to increase openness and accountability in government and across the public sector by making sure that people have the right to access information held by Scottish public authorities. This includes environmental information which is covered by the Environmental Information (Scotland) Regulations 2004 (known as the EIRs). FOI and the EIRs therefore apply to all recorded information held by the Integration Joint Board for Orkney, with the exception of personal information.

The Integration Joint Board is a Scottish Public Authority for the purposes of FOI legislation.

This Policy provides advice and guidance to staff who are responsible for handling FOI requests but is also aimed at members of the public who want to understand their rights and know what to expect, under the Integration Joint Board's policy.

In light of the Integration Joint Board having delegated responsibility for the delivery of a wide range of services within Adult and Children's Social Care and Health Services, a FOI request may be more appropriately dealt with through either NHS Orkney or Orkney Islands Council's FOI policies, unless it is a request concerned directly with information held by the Integration Joint Board.

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.

Further advice and information can be found on the Scottish Information Commissioner's [website](#).

And you can read more about Scottish Law concerning Freedom of Information [here](#).

Our Commitment to Effective Governance

The Integration Joint Board is committed to transparency and will favour disclosure of information whenever possible. This policy will demonstrate commitment to work within the spirit of FOISA and its related Regulations and Codes of Practice. This policy should be interpreted in conjunction with the Records Management and Information Sharing policies, and the Publication Scheme that, together, provide the framework for governing recorded information. The Integration Joint Board commits to:

- Ensure that, where appropriate, information will be published through its publication scheme and on its website.
- Handle all requests promptly and within the legal timeframe.
- Fairly apply the public interest test in cases where a qualified exemption applies.
- Make its members aware that it is an offence to prevent disclosure by altering, defacing, blocking, erasing, destroying or concealing any record.
- Where valid exemptions apply to a FOISA i.e. Data Protection, confidentiality, protection of commercial interests, stating the reasons why it has withheld all or part of the information.

Roles and Responsibilities

Overall responsibility and accountability for compliance with information legislation lies with the Chief Officer of the Integration Joint Board, reporting to the Board Members. Board Members may also be involved in considering complex information requests.

Given the narrow breadth of information 'controlled' by the Integration Joint Board, (see publication scheme), it is likely, in many cases, that an initial FOI request may actually be more appropriately dealt with by either NHS Orkney or Orkney Islands Council as 'data controllers' under their own FOI Policies.

In practice, FOI requests are submitted to officers of NHS Orkney or the Council, who decide to which body the request should be submitted. The request is then forwarded to the appointed FOI Officer.

Information Governance Officer

The Information Governance Officer (IGO) within Orkney Islands Council reports to the Service Manager (Governance). The IGO will provide expert advice, guidance, training, and support on all areas of information governance to members of the Integration Joint Board in partnership with the FOI Officer representing NHS Orkney.

Freedom of Information Officer

The IJB's Freedom of Information Officer (FOI Officer) will administer all requests once received from the Information Governance Officer or NHS Orkney FOI Officer.

Chief Finance Officer

The Chief Finance Officer for the Integration Joint Board has been nominated to oversee the independent review process, should the applicant be dissatisfied with the initial response provided by the FOI Officer.

All Staff

Members of staff within Orkney Islands Council, NHS Orkney or other third party organisations who are asked to provide information in support of a FOI request should forward any relevant information they hold to the FOI Officer immediately, in order to assist with the compliance of the 20-day rule. If a member of staff is contacted by the FOI Officer but does not hold the information necessary, they must inform the FOI Officer immediately. Where a service contact does not respond to the FOI Officer within the set timeframe given, the relevant Director/Head of Service/Manager will be copied into a reminder for the information requested.

It is a **criminal offence** to destroy information that is subject to an FOI request.

Handling Requests for Recorded Information

Anyone can make a request for information held by the Integration Joint Board and, unless there are specific exemptions which apply to the information, this information should normally be provided **within 20-working days**. The 20-working day period starts when the Integration Joint Board first receives the request, not when it reaches the correct personnel.

A request for information must be made in a permanent format, for example in writing or via email or video recording. The request must include the applicant's name with an address or email address to which a response can be sent and should include a description of the information they are seeking.

It is not always the case that the applicant refers to FOISA within the terms of their request and they are not obliged to inform the Integration Joint Board why they want the information. They can also state a preference for how they wish the response to be sent.

It is up to the Information Governance Officer or NHS Orkney FOI Officer,, on behalf of the Integration Joint Board, to determine if the request for information falls under FOISA legislation.

If an applicant requests information that is not held by the Integration Joint Board and it is likely that the information is held by another public authority, the FOI Officer should signpost the applicant to that other authority.

A request must be sent to:

**Freedom of Information Officer
Orkney Health and Social Care Partnership
School Place
Kirkwall
Orkney
KW15 1NY**

Or by email to: FOI@orkney.gov.uk.

An applicant will receive a written acknowledgement of their request (via email or post) detailing the deadline to which they should expect a response. A response should be issued as soon as possible and always **within the 20-working day rule**.

Where a request has been received but more information is required from the applicant to identify and locate the relevant information the FOI Officer should approach the applicant for clarification as soon as possible.

As per sections 1(3) and 10(1)(b) of the Act the statutory 20 working days deadline will not start until sufficient clarification has been received from the applicant to allow the FOI Officer to identify and locate the requested information.

If no clarification is received from the applicant **within 60-working days**, the request shall be closed. See the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (the Code) [here](#) for further information.

Once a written response has been received by the applicant, if they are unhappy with the response, they have the right to challenge the information provided and ask the FOI Officer to review their response. **The Chief Finance Officer** is responsible for undertaking the review in liaison with relevant FOI Service Contacts and Caldecott Guardian where necessary (NHS Orkney), which will be followed by a second and independent response being sent to the applicant.

If after further correspondence, the applicant continues to be dissatisfied, they then have the right to appeal to the Scottish Information Commissioner who will decide if further investigation is necessary. The website address for the Scottish Information Commissioner can be found in the earlier section of this document.

What isn't a FOI request?

- Telephone requests are not subject to FOISA, unless they are capable of being used for subsequent reference, such as audio or video tapes, or a digital recording.
- A request for a service, such as for care at home services or frozen meal delivery, is not dealt with under FOISA. Instead, these requests will be passed to the relevant service area, either within NHS Orkney or Orkney Islands Council to be dealt with through normal operations.
- Requests for personal information either about themselves or about another individual (and they can prove they are acting as that person's representative) should be handled under Subject Access Request legislation (**Data Protection Act 2018**). Subject Access Requests would fall within the policies of either Orkney Islands Council or NHS Orkney, as the **Integration Joint Board does not hold personal data**.
- **The Access to Health Records Act 1990** grants rights to certain individuals to see what has been written about a deceased person in a hospital and other health records. Access is available to the deceased patient's personal representative or to any person having a claim arising out of a patient's death.

Responding to a FOI Request – 20 Days

As already noted, the statutory timescale for responding to a FOI request is 20 working days. Working days are defined as Monday to Friday, 09:00 to 17:00, excluding public holidays and weekends. All FOI requests must be responded to within the statutory period, regardless of staff absence or working patterns.

The 20-day period commences when the request is first received and must be date stamped by the receiving Integration Joint Board. The FOI Request will be recorded in order to support formal reporting to the Information Commissioner. Suitable arrangements will be made to respond to FOI requests in the absence of the FOI Officer and relevant mailboxes monitored daily. The 20-day period is 'stopped' when:

- The information is sent to the applicant.
- A fees Notification/refusal notice is issued.
- Further clarification is required from the applicant to inform the response.

Publication Scheme

FOISA requires all public authorities to produce and maintain a publication scheme. A publication scheme sets out the following:

- The classes of information already available to the public.
- Details of how the information can be obtained.
- Its location.
- Whether there is a charge for providing the information.

The Publication Scheme for the Integration Joint Board can be found [here](#).

Charges

The Integration Joint Board may charge an appropriate fee for dealing with a specific request.

The Integration Joint Board 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, **nor can a charge be levied for providing information in a particular format.**

If costs exceed £600, the Integration Joint Board 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, the Integration Joint Board can charge 10% of this cost.
- Over £600 – no obligation to provide information.

The cost for responding to a request should be calculated before the request is answered and within the 20-working day deadline. **A fee notice will be issued and the applicant's request only needs to be answered on payment of the fee.** The payment must be received within 3 months.

Where a fee notice is issued or as per the information below, a refusal notice is issued, the Integration Joint Board will advise applicants on how to narrow their request for information, thus lowering the cost of responding.

Exemptions and refusal to respond

The Integration Joint Board does not have to comply with information requests if the information is exempt under the provisions made in Sections 25 to 41 of the Act.

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 their deputy shall apply exemptions to responses as applicable. If necessary, the application of exemptions will be discussed with the Information Governance Officer. There are two types of exemptions and these are outlined below.

Non - Absolute Exemptions

The 'public interest' test applies to determine if the public interest in disclosing the information outweighs the public interest in maintaining confidentiality. This includes commercial interests and personal information of third parties.

Absolute Exemptions

If an absolute exemption applies the Integration Joint Board will not release the information. Absolute exemptions include confidential material and information published elsewhere amongst others. The 'public interest' test does not need to be considered.

The Integration Joint Board will favour disclosure wherever possible. If applying an exemption, it will inform the applicant and provide information on why the request has been refused.

If a request or part of a request is subject to an exemption, and is therefore being refused, the response will include a **refusal notice**. The refusal notice will include notice that the Integration Joint Board does or does not hold the required information, details of the exemption being claimed, including the appropriate section of the Act and an explanation of why the exemption applies. The notice will also include information about how to request a review or make an appeal to the Scottish Information Commissioner.

The Integration Joint Board 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.

When applying the 'public interest' test, the Integration Joint Board will explain the reason(s) for claiming the public interest if applying the exemption outweighs the public interest in disclosure.

How the Integration Joint Board will respond

The Equality Act 2010 places a duty on public authorities to be sensitive to the requirements of applicants. For example, where reasonable, information should be provided in a format requested such as in large print, Braille, audio or recording or other languages.

A standard template will be used to provide the response from the FOI Officer of the Integration Joint Board.

Where information is being used in the response that concerns either Orkney Islands Council, NHS Orkney or both, the FOI Officer will first seek approval from both bodies prior to issuing the response from the Integration Joint Board in partnership with the relevant FOI Service Contacts and will issue a copy of the response to the relevant body.

Requesting a Review

If the applicant is dissatisfied with the way a request has been dealt with or is unhappy with the decision, they may request a review to be undertaken under FOISA.

The request for a review must also be in writing or in a permanent form, for example, email. The request for a review must be made no later than **40-working days** following receipt of the response to the original request.

The applicant must explain what issue they are dissatisfied with, for example:

- The application of exemptions.
- The handling of the request.
- The fact that no response was received to the original request within the prescribed deadline of 20 working days.

The request should state the name of the applicant and an address (which can be an email address).

The Integration Joint Board does not have to conduct a review if the review request or the original request is deemed to be vexatious. However, it will explain this to the applicant and include information on their rights of appeal to the Scottish Information Commissioner.

The Integration Joint Board has **20-working days** within which to conduct and respond to the request for a review, from the date it was first received. The Chief Finance Officer of the Integration Joint Board will contact the applicant acknowledging their request for a review.

The Chief Finance Officer may work with the Chair of the Integration Joint Board and consult with any staff involved in the original request. If required, the Chief Finance Officer will obtain advice from the Information Governance Officer.

The review process will be:

- Fair and impartial.
- Able to reach a different decision if appropriate.
- Straightforward and capable of reaching an outcome promptly.
- As per paragraph 66 of the Scottish Ministers Code of Practice, handled by staff who were not involved in the original decision, where this is reasonably practicable.

The applicant can expect the following outcomes following a review:

- Confirmation of the original decision.
- The release of all or part of the information initially withheld.
- A finding that the Integration Joint Board did not follow the correct procedures for dealing with the request for information.

The Scottish Ministers' Code of Practice, under Section 60, provides valuable guidance and advice on dealing with review requests.

Following receipt of the outcome, applicants who continue to be dissatisfied with the Integration Joint Board's decision, or the way in which their request was handled, can appeal to the Scottish Information Commissioner. Applicants can **appeal within six months** from the date on which they received a response to their request for a review.

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

Details on how to contact the Commissioner or submit an appeal are available [here](#).

Records Management and Monitoring

The Integration Joint Board will maintain a register of all requests made for information under the Act. Details of the applicant, important dates, staff involved and exemptions applied will 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 will be collected.

The Chief Officer will make arrangements to ensure that the requirement to submit quarterly statistics to the Scottish Information Commissioner is fulfilled.

Records created under FOISA are retained in accordance with relevant Records Retention and Disposal Schedule. After the end of the relevant retention period, the records are destroyed.

Contact Us.

For further advice or guidance on this document please contact:

Orkney Health and Social Care Partnership
School Place
Kirkwall
Orkney
KW15 1NY

Or by email to: foi@orkney.gov.uk.

Telephone: 01856873535.

Appendix 1 – Summary of FOISA Exemptions

Exemption	Absolute	Public Interest	Substantial Prejudice	Section of FOISA
Information otherwise accessible.	Yes.			25.
Prohibition on disclosure by other legislation.	Yes.			26.
Confidential information obtained from a third person.	Yes.			36(2).
Court Records.	Yes.			37.
Access to personal data about themselves.	Yes.			38.
Information intended for future publication (within 12 weeks).		Yes.		27.
Relations within the United Kingdom.		Yes.	Yes.	28.
Formulation of Scottish administrative policy.		Yes.		29.
Prejudice to the effect conduct of public affairs.		Yes.	Yes.	30.
National security and defence.		Yes.		31.
International relations.		Yes.	Yes.	32.
Commercial interest and the economy.		Yes.	Yes.	33.
Investigations by Scottish public authorities.		Yes.		34.
Law enforcement.		Yes.	Yes.	35.
Confidentiality of communication in legal proceedings (legal privilege).		Yes.		36(1).
Personal information about a third party.		Yes.		38.
Health, safety and the environment.		Yes.		39.
Audit functions.		Yes.	Yes.	40.
Communications with the Royal household and the granting of honours.		Yes.		41.