

**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE****POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (Scotland) ACT 2002****SUBMISSION FROM: NHS LANARKSHIRE**

I refer to your consultation on post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002. NHS Lanarkshire welcomes the opportunity to comment on the matter.

We do have some comments to make on the impact of the Act as follows:-

- 1. In your view, what effects has the Freedom of Information (Scotland) Act (FOISA) had, both positive and negative?**
- 2. Have the policy intentions of FOISA been met and are they being delivered? If not, how should they be addressed?**

When FOI was first introduced it was difficult to anticipate the level of requests some authorities would receive. We have found our requests have quadrupled and resources have not. As a result the staff resource to manage the process is not always adequate to meet the increasing demand. The impact of the legislation is felt, not only within the teams managing the requests but the services which are required to provide the information. In the NHS it can be staff and clinicians providing patient care that require to locate information to answer the requests.

In a time of limited resources in the NHS, and the public sector more widely, it is a difficult issue to address. In order to make further improvements in the way FOI is handled in boards then further resources would have to be invested in order to ensure it is embedded in the culture, resources are managed etc.

We are, however, beginning to see a gradual shift in how FOI is being viewed within NHS Lanarkshire. There is growing awareness that the legislation can be used as a tool for the benefit of the organisation. Locating information to respond to requests can identify gaps encouraging us to improve record collection and retention. It can identify issues we were not aware of enabling us to take action if appropriate. It encourages us to work at being more open by, for example, publishing more on the website as the advantages of sign-posting an applicant to already published information become apparent.

- 3. Are there any issues in relation to the implementation of practice in relation to FOISA? If so, how should they be addressed?**

One thing could be improved is the vexatious exemption where an individual has to put in multiple requests on the same subject matter before we can apply the exemption. In reality it is often the applicant rather than the subject matter that we would want to apply vexatious exemption to. At present applicants can submit multiple requests and use different

processes across the organisation and there is nothing we can do but process the requests. This is resource intensive.

Another area we feel could be improved is within the cost exemption. The current bar of £600 which equates to 40 hours work on one request is too high. If the bar was reduced that would be a way of managing the time constraint at a better level.

In reality this means we are often required to source records over long periods of time (in some cases decades). These are limited in their usefulness as technology, recording mechanisms and key performance indicators change frequently so the information is not always helpful to applicants in identifying trends and often requires lengthy and complex explanations to make sense of the information provided. A lower cost exemption would reduce the burden on services without necessarily reducing the applicants access to meaningful information.

**4. Could the legislation be strengthened or otherwise improved in any way?  
Please specify why and in what way.**

Within Lanarkshire the majority of our questions are across all hospitals in Lanarkshire. NHS Lanarkshire has received requests for information in relation to our PFI/PPP hospitals. Members of the public do not see hospitals as being PFI or NHS. They see hospitals as being within Lanarkshire and the responsibility of NHS Lanarkshire, however the PFI contractors are not subject to FOI.

Two of our hospitals are PFI hospitals and one is NHS. Currently if we receive any requests for information in relation to these hospitals we consult with the contractors and where possible obtain the information from them and respond to the applicant direct. While we have a good partner working relationship with our contractors in respect of FOI, we believe the public should have access to the information about our PFI hospitals. Information is not always given to us to provide the applicant with a full answer. This results in different levels of information being provided to the applicant. We believe that benefit will be achieved by extending the coverage of the Act to contractors who building and maintain hospitals.

**5. Are there any other issues you would like to raise in connection with the operation of FOISA?**

NHS Lanarkshire agrees with the proposal to amend the legislation as it has been over 10 years since the Act was implemented. The shift in culture towards greater openness and accountability and the public's expectations of being able to access information earlier could be enhanced by addressing the issues raised above which have been encountered since the Act came into force.

If you require any further information on the above comments please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Campbell', written in a cursive style.

Calum Campbell  
Chief Executive  
NHS Lanarkshire