

# Freedom of Information (FoI) Requests

## Final Internal Audit Report

September 2022

Swansea Bay University Health Board



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### Acknowledgement

NHS Wales Audit & Assurance Services would like to acknowledge the time and co-operation given by management and staff during the course of this review.

### Disclaimer notice - please note

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## Executive Summary

### Purpose

To provide an assurance on the arrangements in place to ensure compliance with the requirements of the Freedom of Information Act.

### Overview


We have issued reasonable assurance on this area.

The matters requiring management attention include:

- Disclosure log is not kept up to date.
- Training compliance is below the level set by Welsh Government.
- Quarterly performance reports lack sufficient granularity to adequately explain the causes for under-performance and the actions required to improve compliance.
- Limited evidence of review and scrutiny of FoI performance.

Other recommendations / advisory points are within the detail of the report.

### Report Classification

		Trend
Reasonable	Some matters require management attention in control design or compliance.	N/A
	<b>Low to moderate impact</b> on residual risk exposure until resolved.	

### Assurance summary<sup>1</sup>

Assurance objectives	Assurance
1 Governance Framework	Reasonable
2 Policies and procedures	Substantial
3 Provision of information	Reasonable
4 Training and awareness	Reasonable
5 Monitoring and reporting	Limited

### Key matters arising

	Assurance Objectives	Control Design or Operation	Recommendation Priority
1 Disclosure Log	3	Operation	High
2 Training & Monitoring	4	Operation	Medium
3 FoI Performance Report	5	Design	Medium
5 Review and scrutiny of FoI reporting	5	Operating	Medium

<sup>1</sup> The objectives and associated assurance ratings are not necessarily given equal weighting when formulating the overall audit opinion.

## 1. Introduction

- 1.1 The review of the Freedom of Information (FoI) arrangements within the Swansea Bay University Health Board (the 'health board') sought to provide assurance as to the extent to which FoI accountability, policies and procedures, performance measurement controls and reporting mechanisms to monitor compliance are in place and in operation throughout the organisation.
- 1.2 The Freedom of Information Act (the Act) came into effect on 1<sup>st</sup> January 2005. This affects all public sector organisations including the health board.
- 1.3 The purpose of the Act is to ensure openness, transparency, and accountability of all public organisations. Under this Act, all public bodies have a legal duty to ensure that the public, staff, and other organisations are able to access information about how they operate and make decisions about their performance.
- 1.4 The health board has a statutory responsibility to respond to these requests initially to inform the applicant whether the information falling within the scope of their request is held and later to provide that information. The Information Commissioners Office (ICO) currently expects public bodies to have a 90% - 95% compliance rate within a 20-working day timescale.
- 1.5 Without a robust governance process for ensuring the effectiveness of FoI procedures, there is a risk that information may not be made available in compliance with the FoI resulting in regulatory action and/or reputational damage.

## 2. Detailed Audit Findings

- 2.1 The table below summarises the recommendations raised by priority rating:

	Recommendation Priority			Total
	High	Medium	Low	
Control Design	0	1	0	1
Operating Effectiveness	1	2	0	3
<b>Total</b>	<b>1</b>	<b>3</b>	<b>-</b>	<b>4</b>

- 2.2 Our detailed audit findings are set out below. All matters arising and the related recommendations and management actions are detailed in [Appendix A](#).

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**Audit objective 1: There is a governance framework to support compliance with FOI responsibilities.**

- 2.3 The health board has implemented a governance structure around Freedom of Information, with overall responsibility sitting with the Director of Corporate Governance, who is supported by the FoIA Team. An FoIA policy is in place within the health board, which outlines employees' roles and responsibilities to the FoIA (see objective 2). This can be found on the health boards designated FoIA SharePoint page (which supersedes the health board intranet page).
- 2.4 The FoIA Team consists of two members of staff, the FoIA Lead Manager and FoIA Officer. It was noted that both members of the team sit within Corporate Services and have other responsibilities away from FoI requests, including site management of headquarters, health and safety, the health board's corporate policy library, management of reception (petty cash, contract sealing service) and the mailroom at the headquarters, as well as other general inquiries to the health board. The team members carry or are working towards professional qualifications in FoI. The small team presents a challenge to ensure there is appropriate capacity to manage FOI requests during annual leave or sickness absence. We haven't raised a recommendation in this respect, noting the health board's overall compliance rate captured in objective 5 below.
- 2.5 FOI requests received by the health board are captured on a database and are managed by the FoIA Team. The FoI Lead Manager monitors requests and provides high level information around the number and type of FoI requests received on a weekly basis to Betsi Cadwaladr University Health Board (BCUHB). BCUHB collate this information to produce a weekly report on FoI requests in NHS Wales for the Welsh Government. Quarterly reports on FoI performance are also produced and presented at the Information Governance Group. (For high level reporting please see Objective 5).
- 2.6 The health board has a publication scheme in place, which is available via the designated FoIA section of the health board internet site. A review of the scheme identifies that it follows the model set out by the Information Commissioners Office (ICO). The scheme is reviewed on a regular basis and updated as and when required. The Scheme currently has a message to indicate that due to the Coronavirus pandemic requests may take longer than normal to process.
- 2.7 The FoI request process has a quality assurance (QA) stage built into it, with all responses drafted by the FoIA Officer before QA by the FoIA Lead Manager. In addition, the response needs to be reviewed by the Directorate Lead which the request relates to. The Communications Team is involved if the response contains sensitive information. The response then requires sign off via the relevant Executive Director / Senior Manager before final sign off by the Director of Corporate Governance.
- 2.8 The website and responses to FoI requests make it clear that the requestor has a right to request a review if unsatisfied with the response. Reviews are to be

undertaken by someone independent of the original request. It was noted that this is usually the FoIA Lead Manager, although they are part of the QA process, before being issued to the Chair of the Health Board for review and sign off. Contact details for the ICO are provided if the requestor wants to make a further complaint.

#### Conclusion:

2.9 The health board has implemented a governance structure around Freedom of Information, with overall responsibility sitting with the Director of Corporate Governance, who is supported by the FoIA Team. The health board has a publication scheme in place, which follows the model set out by the ICO. The FoIA Team consists of only two members of staff, who also have additional responsibilities to the FoI process, which presents a challenge to ensure there is appropriate capacity to manage FOI requests. We award **Reasonable** assurance for this objective.

#### **Audit objective 2: There are policies and procedures in place which explain the health boards approach to, and responsibilities for FOI, and that these are complied with.**

2.10 The health board has a Freedom of Information Policy. This is made available to staff via the SharePoint site, under the designated FoIA section within the Information Governance page. The Policy was reviewed and approved by the Management Board in July 2021, with the next review date set for July 2024.

2.11 A review of the Policy's content identified that it outlines the roles and responsibilities for staff within the health board, including for the Chief Executive, Director of Corporate Governance, Corporate Service Manager / FoIA Lead, FoIA Officer, Operational Leads, and other Directors and Managers.

2.12 The Policy supports the ICO guidance by outlining the health board's approach to the following:

- Publication Scheme;
- General rights of access to recorded information;
- Processing a request;
- Exemptions;
- Refusal of requests;
- Time limits for compliance with requests;
- Complaints; and
- Training and awareness.

2.13 In addition, the Corporate Services Team have produced a Standard Operating Procedure (SOP), a desktop document outlining various aspects of processing FoIA requests within the health board. Included within the document are flow diagrams that outline the steps the FoIA Team should be undertaking when processing FoIA request. Supporting appendices are also attached that include templates for acknowledgment letters, requests for information from the

departments and final response. The document was reviewed and updated in April 2021 and is not due for review again until April 2023.

- 2.14 As part of the Quality Assurance process, all draft responses are reviewed at multiple stages to ensure no personal information is released. During testing of a sample of FOI requests, we noted that no personal information was provided within final responses.

#### Conclusion:

- 2.15 The health board has a Freedom of Information Policy in place. The Policy is within its review date and is available to staff via SharePoint. A review of the Policy's content identified that it outlines roles and responsibilities and supports the ICO guidance. An additional Standard Operating Procedure is also available to employees undertaking FoI requests. We award **Substantial** assurance for this objective.

### **Audit objective 3: There are procedures in place to deal with requests for information which ensure that information is provided in compliance with FOI, and that these are complied with.**

- 2.16 The health board website includes guidance on how to make a request under the Freedom of Information Act 2000, with the site directing the user to the relevant postal and email addresses.
- 2.17 The health board has a disclosure log in place, designed to help the public access information that has been published by the health board. The disclosure log is intended to give a brief outline of previous requests received by the organisation, together with the relevant responses issued under the Freedom of Information Act 2000.
- 2.18 A review of the health board's disclosure logs for 2021 and 2022 identified omissions in uploading information. For 2021 it was identified that only 332 disclosure responses were uploaded, in comparison to the 556 requests made. To date only 11 disclosures have been uploaded on the 2022 log (January – July), with several months not having any disclosures published. In comparison, 234 FoI requests were recorded as being closed on the team's database up until the end of June 2022, with another 39 open. (See **Matter Arising 1**).
- 2.19 For the disclosures that were uploaded, it was noted that personal identifiable information is redacted prior to it being uploaded to the internet site. The team explained that updating the log is a time consuming and clunky exercise, with redactions for example taking up a lot of resource. The team is looking into implementing a more effective process.
- 2.20 Our sample testing of 30 FoI requests identified the following:
- Audit trails were available for all requests sampled;
  - All with the exception of two requests were acknowledged within the two-day timeframe;

- We found six instances where the requirement to respond within 20 working days was not achieved, noting that most of the responses were not significantly delayed with five of these issued within 25 days (two on day 21) with the longest delayed response issued on day 32;
- The testing did note that a further five responses exceeded 20 working days but were deemed compliant as they were put on hold due to the health board requiring further clarification from the requestor.
- Responses are scrutinised by the FoIA Lead Manager prior to approval being sought from the Directorate and Executive Directors / Senior Management the data relates to;
- Evidence that the FoIA Team engaged with the Communications Team was evidenced for eight of the responses due to their confidential / sensitive nature;
- All requests have final sign off by the Director of Corporate Governance, noting that four of the sample were signed off by an Executive Director in their absence;
- Exemptions are applied on a case-by-case basis, by appropriately trained staff, with no evidence of the use of blanket exemptions; and
- 21 of the FoIA responses were not uploaded onto the health boards disclosure log.

2.21 A review of the breaches showed that the main reason for these was due to delays in departments responding to requests for data and obtaining authorisation from Executives.

#### Conclusion:

2.22 The health board has a disclosure log in place, as per ICO guidelines. However, the log is not updated regularly, with few requests uploaded since November 2021. When responses have been uploaded, personal identifiable information is redacted. Our testing of a sample of requests identified that the majority were responded to in a timely manner, with relevant approval and sign off sought. Due to this we assign this objective **Reasonable Assurance**.

#### **Audit objective 4: There are procedures in place for the provision and monitoring of staff training in relation to FOI and the awareness of associated requirements relating to their roles and responsibilities.**

2.23 The review identified that staff responsible for coordinating responses to FoI requests are suitably qualified with professional qualifications, mainly BCS Practitioner Certificate in Freedom of Information. They also operate as the key point of contact within the health board for queries regarding the FoIA.

2.24 Freedom of Information is included within the All-Wales mandatory Information Governance (IG) training module. The compliance rate within the health board is monitored via ESR and presented at each Information Governance Group (IGG) meeting. It is subsequently included in the IGG Chair's Assurance report presented to the Audit Committee.

2.25 The current compliance rate for the mandatory IG module (as of June 2022 IGG meeting) is 82%, which is an increase from the 77% that was reported at the March 2022 IGG meeting. However, this is still short of the 95% compliance rate required. A review of the June IG compliance rate identified seven areas where compliance is below 75% and require staff to prioritise the completion of IG training: (See **Matter Arising 2**).

Area	Compliance as at 01/06/2022
Board Secretary	71%
Chief operating Officer	67%
Clinical Medical School	68%
Director of Strategy	68%
Director of Transformation	52%
Finance & Estates	61%
Morrison Hospital	72%

2.26 The health board has produced a staff handbook which is to be presented to all staff on their induction to the organisation. The handbook refers to Freedom of Information and states that all staff are required to read the FoIA policy within the first week of appointment. The handbook also has contact details for the FoIA Team, should an employee have any further queries.

#### Conclusion:

2.27 The review identified that staff responsible for coordinating responses to FoIA requests are suitably qualified with professional qualifications. The health board's compliance rate for the mandatory IG module is currently 82%. Directorates/Service Delivery Group leads have been asked ensure staff prioritise completion of the training. We award **Reasonable** assurance for this objective.

#### **Audit objective 5: Appropriate monitoring and reporting arrangements are in place.**

2.28 Quarterly performance reports are produced by the FoIA manager and issued to the IGG. The reports focus on the following key performance indicators (KPIs):

- Number of FoIA requests made during the quarter;
- Percentage of requests responded to in 20 working days;
- Number of FoIA requests made, directly linked to Covid-19;
- Number of requests made to departments, returned to the FoIA team within 10 working days;
- Number of complaints made about the FoIA process within the health board; and
- Source of the requestor making the FoIA request (Media, personal, MP, etc).

	No. of requests	No. of requests linked to Covid-19	% Linked to Covid-19	% Responded in 20 working days	% Department compliance with 10 working-day internal timescale	Number of Complaints
Q1	138	25	18.12%	83.33%	73.18%	2
Q2	138	20	14.49%	89.85%	76.08%	1
Q3	136	36	26.47%	82.35%	66.91%	1
Q4	145	25	17.24%	83.45%	70.34%	1
<b>Total</b>	<b>557</b>	<b>106</b>	<b>19.03%</b>	<b>84.74%</b>	<b>71.63%</b>	<b>5</b>

- 2.29 As shown in the table above, the health board failed to achieve the 90% target set by the ICO during 2021-22. However, it was noted that the health board consistently reported compliance figures of above 80% and were very close to achieving the 90% target during quarter 2. The FoIA updates do not provide further detail and therefore lack sufficient granularity to adequately explain the causes for under-performance and the actions required to improve compliance. (See **Matter Arising 3**).
- 2.30 The FoIA Team set a 10 working-day internal timescale for departments to provide the required information. Compliance with this target is lower and is likely to contribute to the health board's overall performance. We understand that the ability to comply with this timescale can also be affected by the nature of the request, as some can be complex often requiring numerous departments/directorate involvement. Further analysis would be helpful to understand if certain departments take longer than others to respond.
- 2.31 Whilst the reports do highlight the number of complaints made in each quarter, no further detail is given or if there is any correlation between complaints and best practice identified.
- 2.32 A review of the IGG minutes also noted limited evidence of discussion, suggesting further review and scrutiny of the reports could be undertaken. (See **Matter Arising 4**).
- 2.33 The IGG reports to the Audit Committee via the IGG Chair's Assurance report. This is a standing item on the Audit Committees' work programme with triannual reports expected at Committee meetings.
- 2.34 A review of the IGG Chair's Assurance reports issued to the Audit Committee in 2021 and 2022 (May 2021, November 2021, March 2022 & July 2022) identified that they do not include the performance related to FoI. (See **Matter Arising 4**).

**Conclusion:**

2.35 Quarterly FoI performance reports are issued to the IGG meetings. However, the reports lack sufficient granularity to adequately explain the causes for under-performance and the actions required to improve compliance, with limited evidence of review and scrutiny of the reports. This Group reports into the Audit Committee, however the reports do not highlight the health board's performance relating to FoI requests. We award **Limited** assurance for this objective

## Appendix A: Management Action Plan

Matter arising 1: Disclosure Log (Operation)	Impact	
<p>The health board has a disclosure log in place, designed to help the public access information that has been published by the health board. The disclosure log is intended to give a brief outline of previous requests received by the organisation, together with the relevant responses issued under the Freedom of Information Act 2000.</p> <p>A review of the health board’s disclosure logs for 2021 and 2022 identified omissions in uploading information. For 2021 it was identified that only 332 disclosure responses were uploaded, in comparison to the 556 requests made. To date only 11 disclosures have been uploaded on the 2022 log (January – July), with several months not having any disclosures published. In comparison 234 FoI requests were recorded as being closed on the team’s database up until the end of June, with another 39 open.</p> <p>The team explained that updating the log is a time consuming and clunky exercise and is looking into implementing a more effective process.</p>	<p>Potential risk of:</p> <ul style="list-style-type: none"> <li>• Incomplete and/or inaccurate information published within the disclosure log non-compliance with legislation</li> </ul>	
Recommendations	Priority	
<p>1.1 The organisation should ensure that the published disclosure log is updated to include the correct information as soon as practicable and is maintained in a timely manner.</p>	<p>High</p>	
Management response	Target Date	Responsible Officer
<p>1.1 The FOIA SOP has been revised. Responses adapted, so no longer require redaction, ensuring responses can be uploaded to the disclosure log quicker and therefore a more effective process in place.</p>	<p>Completed – August 2022</p>	<p>Corporate Services Manager/FOIA Lead</p>

Matter arising 2: Training & Monitoring (Operation)		Impact
<p>Freedom of Information is included within the All-Wales mandatory Information Governance (IG) training module. The compliance rate within the health board is monitored via ESR and presented at each Information Governance Group (IGG) meeting. It is subsequently included in the IGG Chair's Assurance report presented to the Audit Committee.</p> <p>The current compliance rate for the mandatory IG module (as of June 2022 IGG meeting) is 82%, which is an increase from the 77% that was reported at the March 2022 IGG meeting. However, this is still short of the 95% compliance rate required. A review of the June IG compliance rate identified seven areas where compliance is below 75% and require staff to prioritise the completion of IG training.</p>		<p>Potential risk of:</p> <ul style="list-style-type: none"> <li>Non-compliance with legislation.</li> </ul>
Recommendations		Priority
<p>2.1 Staff should be reminded to prioritise the completion of IG training, with more focussed and targeted action being taken in the under-performing areas.</p>		Medium
Management response	Target Date	Responsible Officer
<p>2.1 IG KPI's are a regular agenda item at IGG with IG training highlighted. Compliance is improving, however will continue to be driven forward and monitored closely with those 7 areas targeted, with leads to provide reports to IGG on improvement plans.</p>	Jan 2023	Director of Digital – Chair of IGG

**Matter arising 3: FoI Performance Report (Design)**

**Impact**

Quarterly performance reports are produced by the FoIA manager and issued to the IGG. The reports focus on the following key performance indicators (KPIs):

- Number of FoIA requests made during the quarter;
- Percentage of requests responded to in 20 working days;
- Number of FoIA requests made, directly linked to Covid-19;
- Number of requests made to departments, returned to the FoIA Team within 10 working days;
- Number of complaints made about the FoIA process within the health board; and
- Source of the requestor making the FoIA request.

The FoIA updates do not provide further detail and therefore lack sufficient granularity to adequately explain the causes for under-performance and the actions required to improve compliance.

The FOIA Team set a 10 working-day internal timescale for departments to provide the required information. Compliance with this target is lower and is likely to contribute to the health board’s overall performance. We understand that the ability to comply with this timescale can also be affected by the nature of the request as some can be complex often requiring numerous departments/directorate involvement. Further analysis would be helpful to understand if certain departments take longer than others to respond.

Whilst the reports do highlight the number of complaints made in each quarter, no further detail is given or if there is any correlation between complaints and best practice identified.

Potential risk of:

- Without a robust governance process for ensuring the effectiveness of the FOI process there is a risk that information may not be made available in compliance with the FOIA, resulting in regulatory action and/or reputational damage.

**Recommendations**

**Priority**

3.1 The health board should look to improve its FoI performance monitoring and reporting to adequately explain the causes for under-performance and the actions required to improve compliance.

**Medium**

**Management response**

**Target Date**

**Responsible Officer**

3.1 Review performance monitoring to include key themes for non-compliance with the ICO 20-day target, the 10 working-day internal timescale for departments and complaints.

Jan 2023






Corporate Services  
Manager/FOIA lead

Matter arising 4: Review and scrutiny of FoI reporting (Operation)		Impact
<p>Quarterly performance reports are produced by the FoIA manager and issued to the IGG. A review of the IGG minutes also noted limited evidence of discussion, suggesting further review and scrutiny of the reports could be undertaken.</p> <p>A review of the IGG Chair’s Assurance reports issued to the Audit Committee in 2021 and 2022 identified that they do not include the performance related to FoI.</p>		<p>Potential risk of:</p> <ul style="list-style-type: none"> <li>Without a robust governance process for ensuring the effectiveness of the FOI process there is a risk that information may not be made available in compliance with the FOIA, resulting in regulatory action and/or reputational damage.</li> </ul>
Recommendations		Priority
4.1	There should be a focus by the health board to improve its FoI performance monitoring and reporting, including more review and scrutiny of performance reports.	Medium
Management response		Target Date
4.1	Quarterly performance reports to include detail around non-compliance with ICO targets and areas for improvement. Audit Committee reports to be reviewed and FOIA performance to be included going forward.	Jan 2023
		Corporate Services Manager/FOIA Lead Director of Digital – Chair of IGG

## Appendix B: Assurance opinion and action plan risk rating

### Audit Assurance Ratings

We define the following levels of assurance that governance, risk management and internal control within the area under review are suitable designed and applied effectively:

	<b>Substantial assurance</b>	Few matters require attention and are compliance or advisory in nature. <b>Low impact</b> on residual risk exposure.
	<b>Reasonable assurance</b>	Some matters require management attention in control design or compliance. <b>Low to moderate impact</b> on residual risk exposure until resolved.
	<b>Limited assurance</b>	More significant matters require management attention. <b>Moderate impact</b> on residual risk exposure until resolved.
	<b>No assurance</b>	Action is required to address the whole control framework in this area. <b>High impact</b> on residual risk exposure until resolved.
	<b>Assurance not applicable</b>	Given to reviews and support provided to management which form part of the internal audit plan, to which the assurance definitions are not appropriate. These reviews are still relevant to the evidence base upon which the overall opinion is formed.

### Prioritisation of Recommendations

We categorise our recommendations according to their level of priority as follows:

Priority level	Explanation	Management action
High	Poor system design OR widespread non-compliance. Significant risk to achievement of a system objective OR evidence present of material loss, error or misstatement.	Immediate*
Medium	Minor weakness in system design OR limited non-compliance. Some risk to achievement of a system objective.	Within one month*
Low	Potential to enhance system design to improve efficiency or effectiveness of controls. Generally issues of good practice for management consideration.	Within three months*

\* Unless a more appropriate timescale is identified/agreed at the assignment.



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