



**AGENDA ITEM**

4.4

**DIGITAL & DATA COMMITTEE**

**Information Governance Highlight Report**

<b>Date of meeting</b>	13 March 2023	
<b>FOI Status</b>	Open/Public	
<b>If closed please indicate reason</b>	Not Applicable - Public Report	
<b>Prepared by</b>	Andrew Nelson, Chief Information Officer	
<b>Presented by</b>	Andrew Nelson, Chief Information Officer	
<b>Approving Executive Sponsor</b>	Stuart Morris, Director of Digital	
<b>Report purpose</b>	FOR NOTING	
<b>Engagement (internal/external) undertaken to date (including receipt/consideration at Committee/group)</b>		
<b>Committee/Group/Individuals</b>	<b>Date</b>	<b>Outcome</b>
N/A		

<b>ACRONYMS</b>	
FOI	Freedom of Information
SAR	Subject Access Request
ICO	Information Commissioner's Office
WHSSC	Welsh Health Specialised Services Committee
WASPI	Wales Accord on the Sharing of Personal Information



## **1. SITUATION/BACKGROUND**

- 1.1 The purpose of this report is to provide an update on compliance against the key performance indicators (KPI's) set for dealing with requests for information under the Freedom of Information Act (FOIA) and Data Protection Act 2018.
- 1.2 These include timeliness in responding to FOIA and Data Subject Access information requests, compliance with mandatory training requirements and members of staff found to have breached the DPA by accessing clinical systems against NHS Wales policy.

## **2. SPECIFIC MATTERS FOR CONSIDERATION BY THIS MEETING (ASSESSMENT)**

- 2.1 The Freedom of Information Act 2000 provides public access to information held by public authorities. The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.
- 2.2 The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a subject access request under the Data Protection legislation.
- 2.3 The Act places a number of duties on the organisation including:
  - Ensuring that a significant amount of routinely published information about the Health Board is made available to the public as a matter of course via a Publication Scheme
  - Ensuring that other information not included in the Publication Scheme is readily available on request and that such requests are dealt with in a timely and appropriate manner
  - Ensuring that reasonable advice and assistance is provided to applicants who approach the Health Board seeking information.



2.4 The Act stipulates that all requests for information must be responded to within 20 working days and all Directors are responsible for ensuring that the FOIA Policy and the associated Procedures are implemented and adopted within their areas of responsibility.

## 2.5 Data Protection Legislation

2.5.1 The General Data Protection Regulation (GDPR) controls how personal information is used by organisations, businesses or the government. Everyone responsible for using data has to follow strict rules known as the 'principles'. This legislation creates some new rights for individuals and strengthens some of the rights that currently exist under the previous Data Protection Act.

2.5.2 Article 15 of the legislation sets out an individual's right of access, commonly referred to as subject access. This gives individuals the right to obtain a copy of their personal data as well as other supplementary information. It helps individuals to understand how and why an organisation is using their data, and whether we are processing it lawfully.

2.5.3 Subject access requests allow individuals to ask organisations about what information they hold about them. If any information is held, the organisation is usually required to supply copies to the individual making the request. It is a legal requirement to comply with these requests.

## 2.6 Freedom of Information Requests

The table below represents a summary of the activity relating to FOIAs for the health board in 2022. Compliance for the year was 92.5% and for Quarter 4 was 94%.

Freedom of Information CTMUHB	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Number of Requests	54	45	42	36	28	37	41	45	50	50	49	37
Number of Requests withdrawn	0	0	0	0	0	0	0	0	0	0	0	0
No responded within timescales	47	40	40	33	27	30	38	39	47	45	49	34
% responded within timescales	87%	88%	95%	91%	96%	81%	92%	86%	94%	90%	100%	91%
Number of exemptions applied	17	10	10	7	11	12	13	14	9	14	13	18
Actual number of questions	284	351	245	184	167	213	240	225	369	210	269	227
ICO appeals	0	0	0	0	0	0	0	0	0	0	0	0
Number of requests still outstanding (Unanswered)	5	2	0	3	0	0	0	2	0	1	0	0



The table below represents a summary of the activity relating to FOIAs for WHSSC and shows that WHSSC achieved 100% compliance with the Act in regards to timeliness of response.

Freedom of Information WHSSC	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Number of Requests	0	0	0	1	0	1	0	1	0	0	0	0
No responded within timescales				1		1		1				
% responded within timescales				100%		100%		100%				
Number of exemptions applied				0								
Actual number of questions				2		3		6				
ICO appeals				0								
Number of requests still outstanding (Unanswered)				0		0		0				

## 2.7 Subject Access Requests

The table below shows the number of Personal Data Requests for CTMUHB for the period January 20223 to February 2023. It is split into Service Groups who manage their own request process. Unfortunately owing to staffing shortages and organisational change, data is incomplete at the time of writing. It is anticipated that a more complete version will be tabled at the meeting, as the data for the area facing the greatest challenges historically is outstanding and is required to provide assurance.

Data Protection - Subject Access requests for 2022/23		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Medical Records (These inc. all 3rd party requests, i.e. police, etc.)		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		192	233	250	214	273	260	217	239						
Number of exemptions applied		0	0	0	0	0	0	0	0						
Number of late responses		0	0	0	0	0	0	0	0						
Mental Health		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		26	37	1	29	34	33	32	35						
Number of exemptions applied		0	0	0	0	0	0	0	0						
Number of late responses		0	14	16	3		13	11	12						
Mental Health - SARs for POW Acute and Mental Health (completed under SLA with SBUHB)		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		63	84	72	81	77	95	94	109	104	84	100	121	114	101
Number of exemptions applied		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Number of late responses		0	0	0	0	0	0	0	0	0	0	0	0	0	0
CAMHS		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		15	12	14	12	22	17	16	21						
Number of exemptions applied		1	2	0	0	0	0	1	3						
Number of late responses		1	0	0	0	0	0	1	1						
Corporate		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		0	1	0	0	0	0	1	1	3	1	2	4	1	1
Number of exemptions applied		0	0	0	0	0	0	0	2	3	0	0	0	0	0
Number of late responses		0	0	0	0	0	0	0	1	1	1	0	2		
Workforce and OD		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		0	2	1	1	0	1	2	2						
Number of exemptions applied		0	1	1	0	0	0	1	2						
Number of late responses		0	1	0	0	0	0	0	1						
Occupational Health		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		2	0	2	2	1	1	0	0						
Number of exemptions applied		0	0	1	0	0	0	0	0						
Number of late responses		0	0	0	0	0	0	0	0						
WHSSC - SARs		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		0	0	0	0	0	0	0	1	0	0	0	0	0	0
Number of exemptions applied		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Number of late responses		0	0	0	0	0	0	0	0	0	0	0	0	0	0
GP practices		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Number of requests		30	20	31	19	32	38	44	32						
Number of exemptions applied		0	0	0	0	0	0	0	0						
Number of late responses		27	17	19	4	14	9	3	32						



## 2.8 Staff Training

A key requirement of the ICO's office has been to increase our mandatory training compliance to 85%. As at the end of February 2023 compliance stood at 74.29%, with 9388 staff out of 12637 having completed their IG training in the past 24 months.

## 2.9 NIIAS Incidents

NIIAS is a software auditing tool available to all Health Boards / Trusts across NHS Wales. It is used to detect potentially inappropriate access to electronic clinical records, where employees may have viewed data they are not entitled to as part of their official duties.

As identified in the table below, in 2022 we had 515 breaches identified by the NIIAS tool, whereby staff had inappropriately accessed their own record or that of a direct family member. Trend analysis would suggest that there has been little change over the course of the year, although there has been positive correlation noted between covid prevalence and NIIAS breaches.

NIIAS - Year 2022		
	Own Record	Family Record
January	42	18
February	25	18
March	31	15
April	33	18
May	27	15
June	19	12
July	19	10
August	17	13
September	39	17
October	25	21
November	28	24
December	24	15
<b>Total</b>	<b>329</b>	<b>196</b>

### 3. KEY RISKS/MATTERS FOR ESCALATION TO BOARD/COMMITTEE

- 3.1 A risk assessment was undertaken in Spring 2022 identifying that there was insufficient resource to comply with data protection legislation and this was duly recorded on the corporate risk register. The Board's resource allocation decision to not invest in the team resulted in the departure of two of the three members of the IG team.
- 3.2 Since then circumstances have been challenging and the outlook is that they will continue to be. There is a significant reliance on contractor staff and both the SIRO and DPO are frequently having to divert hours of their time onto IG matters, without sufficient training and expertise.
- 3.3 The discipline of the Information Governance Group has been lost as resources have prevented the meeting being scheduled and papers being prepared.
- 3.4 The absence of comprehensive figures for Subject Access Requests is a matter of concern, however it is testimony to all staff involved that Freedom of Information compliance and SAR compliance in Mental Health has continued to remain high.

### 4. IMPACT ASSESSMENT

<b>Quality/Safety/Patient Experience implications</b>	There are no specific quality and safety implications related to the activity outlined in this report.
<b>Related Health and Care standard(s)</b>	Governance, Leadership and Accountability
<b>Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.</b>	Not required

<b>Legal implications / impact</b>	Yes (Include further detail below)
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	GDPR, Data Protection, Freedom of Information Act
<b>Resource (Capital/Revenue £/Workforce) implications / Impact</b>	There is no direct impact on resources as a result of the activity outlined in this report.
	There are no specific quality and safety implications related to the activity outlined in this report.
<b>Link to Strategic Goals</b>	Improving Care

## 5. RECOMMENDATION

5.1 The Committee are asked to consider and **NOTE** the contents of this report