

Our Ref: 202301402

Mr Ross McGuffie
Chief Executive, NHS Forth Valley

By email: [email address redacted]

28 October 2024

Dear Mr McGuffie,

FOI Intervention – timescales (responding and reviews)

As you will know, Forth Valley Health Board (NHS Forth Valley) has been the subject of a Level 1 intervention by my office since 9 November 2023. During this time, my office has been monitoring improvements in compliance with statutory timescales under both [The Freedom of Information \(Scotland\) Act 2002 \(FOISA\)](#) and the [Environmental Information \(Scotland\) Regulations 2004 \(the EIRs\)](#) for:

- i) responses to information requests, and
- ii) requirements for reviews,

It is apparent from these monitoring processes that the levels of performance, though slightly improved, are still well below the levels we would expect to see. We have taken the decision to take a more direct approach to implementing compliance in your authority in the areas highlighted above.

I am writing to advise that I am now escalating this intervention to Level 3. This escalation will enable me to set time measured goals and improve compliance within your Authority. There are a number of practice areas causing me concern where your authority is not meeting its obligations with FOISA, the EIRs and the associated Codes of Practice.

To explain, as part of my duty to promote and enforce FOI law, my office carries out interventions in cases where it appears a Scottish public authority has failed to fulfil its statutory obligations or to follow good practice in the discharge of those functions (including the good practice set out in the Section 60 and 61 Codes). You can find more details in our Intervention Procedures, which are available via www.foi.scot/Interventions.

Please note that the primary aim in undertaking interventions is not to penalise authorities for poor practice, but to support them in improving performance by identifying and resolving issues of concern.

By raising this intervention to Level 3, my staff will assist you in identifying ways to remedy the serious systemic practice failures we have identified in terms of timescales for both responding and conducting reviews. In doing so we will set deadlines and measure improvements to ensure that NHS Forth Valley's performance is sufficiently improved as quickly as possible. As you will see

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from our interventions guidelines, Level 3 interventions require a detailed action plan to be put in place to address the failures and practice concerns identified and achieve a required outcome and we will assist in identifying what further actions are now required.

We acknowledge that work has been undertaken to improve the situation regarding compliance in responding to requests, but it has still not reached above 85% on time and we would really like to see in excess of 90% of requests being responded to on time. Indeed, we know from your own statistics submitted to our office that the numbers of requests did not exceed 80% on time for the two months of July and August 2024.

In addition, in August and September 2024, an unacceptably high number of reviews went unanswered within the statutory 20 working days. Performance in handling reviews has fallen well short of satisfactory and is below the performance we are seeing in many other Scottish public authorities in your sector.

The performance issues outlined in this letter are indicative of a continued serious, systemic failure that will require senior management attention, resourcing and prioritisation. Every response and review decision outside of the statutory timescales set in FOISA is a breach of Freedom of Information legislation and denies the requester's statutory right to receive requested information promptly. It is particularly so when a requirement for review goes unanswered, give the subsequent right of appeal to me thereafter, as set out in [Section 47 of FOISA](#)

Level 3 Intervention approach

This intervention will therefore consider:

- what "backlogs" remain, what approach is being taken now and to what extent they are being cleared while ensuring that the content of notices/ (rights conferred by sections 20(1) and 47(1) of FOISA) are being addressed.
- any other pinch points which may still exist in your authority's handling of FOI/EIR requests
- what approach is being taken to recognising and handling requirements to reviews and what actions are needed to ensure review decisions are answered promptly within 20 working days.
- the adequacy of current procedures; this will include the escalation processes currently in use to ensure prompt responses to requests and reviews within 20 working days,
- what preventative measures have been put in place to date to ensure there is sufficient resilience in this function and what resources/focus these have been given.

As I explained, the aim of this intervention is to support NHS Forth Valley to improve its practice in these areas by identifying and resolving or overcoming any internal issues that continue to impact performance and compliance.

Next steps - Actions required

As a first step to achieving this outcome, please provide the following information in writing **no later than 10 December 2024**.

- NHS Forth Valley's overarching FOI/EIRs Policy Statement
- your existing action plan to tackle the ongoing performance issues identified.
- a full breakdown of your "backlog". List all requests with dates received and dates on which any contact has been made with the requesters to keep them updated.

- Please describe the current staff resources that are (i) currently assigned to FOI/EIRs handling as of the date of this letter, including FTE equivalent, in which departments they sit, and reporting structures and (ii) details of any additional staff resource which are due to be put in place within the next 2 months.
- Please describe the review process in use currently; you may wish to supply a copy of any review manual/guidance used and quantify the current staff resources assigned to this function for both FOI and EIRs reviews.
- Details of training offered to staff
- Any other FOI/EIRs handling procedures and any related staff guidance you wish to provide. This must include your approach to handling the backlog.
- Details on how FOI performance is reported and monitored within your organisation.
- Please outline how FOI/EIR requests have been prioritised since November 2023. Explain how escalation to senior management has been operated within the last 6 months (eg copies of internal emails, any “traffic” light escalations systems in your FOI tracking system etc).

After we have received and reviewed this information, we will be in touch to agree the next steps in our intervention, which will be taken forward with your authority’s lead officer.

Our interventions with Public Authorities have delivered significant and positive changes for organisations. Similarly, my office will work positively and supportively with your team to identify measures which can bring improvement in this important area.

Please be aware that I plan to publish this letter on my website on **5 November 2024**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Hamilton', with a stylized flourish at the end.

David Hamilton
Scottish Information Commissioner