

**This paper relates  
to Agenda Item 16**



**Title/Subject: Information Governance**  
**Meeting: Integration Joint Board**  
**Date: 24 March 2016**  
**Submitted By: Chief Governance Officer**  
**Action: For Decision**

## **1. INTRODUCTION**

- 1.1 On 1 April 2016, certain statutory functions of the Council and Health Board will be transferred to the Board (although the services to which those functions relate will continue to be delivered by the Council and the Health Board). By virtue of section 25 of the Public Bodies (Joint Working) (Scotland) Act 2014 (the 2014 Act), the Board will have all of the powers and duties which apply in connection with the carrying out of those functions.
- 1.2 The Board has information governance responsibilities in relation to the information it holds in carrying out its functions. The Board will hold a range of information and records - about its business, its members and any operational matters which come to its attention (such as complaints and information requests under freedom of information and data protection legislation). This report highlights the Board's information governance responsibilities and recommends practical steps to be taken to address those.

## **2. RECOMMENDATION**

The Integration Joint Board is asked to:

- 2.1 note the Board's responsibilities under the Freedom of Information (Scotland) Act 2002, the Data Protection Act 1998 (including information security), the Public Records (Scotland) Act 2011, and the steps taken, or to be taken, by officers to deal with those; and
- 2.2 delegate authority to the Board's Chief Officer to sign the declaration of acceptance necessary for the Board to adopt the Forth Valley Accord on the Sharing of Personal Information, and to sign any information sharing protocols necessary to ensure proper governance of any sharing of personal data by, or with, the Board.
- 2.3 agree that the Chief Officer act as the Senior Information Risk Officer for the IJB.

### **3. BACKGROUND**

- 3.1 The Board, as a public body established under the 2014 Act, has various statutory responsibilities in relation to information governance, and in particular in relation to freedom of information, data protection and records management. A sub-group of the governance work-stream has met to consider workable arrangements to ensure compliance with these statutory responsibilities across both this Board and the Clackmannanshire and Stirling Board. These are set out in the next section of this report.

### **4. INFORMATION GOVERNANCE ISSUES**

#### **Freedom of Information**

- 4.1 The Board is a public body for the purposes of the Freedom of Information (Scotland) Act 2002 (FOISA). It must respond to requests for recorded information held by the Board (or held on its behalf by the Council or NHS Forth Valley) within 20 working days.
- 4.2 NHS Forth Valley will take lead responsibility for administering FOI requests, in line with current NHS Forth Valley procedures, adapted for the Board.
- 4.3 NHS Forth Valley will also take the lead on any requests for reviews of original FOI decisions, which also require a response within 20 working days. Any review decisions will be issued by the Chief Officer. Requesters also have the right to appeal to the Scottish Information Commissioner (SIC), if not satisfied with the outcome of their request. NHS Forth Valley will also administer the appeal process. If legal advice is required on an appeal, this will be provided by the Council.
- 4.4 There are Regulations in place under FOISA which permit public authorities to make limited charges for FOA requests which cost more than £100 to process. However, in line with current NHS Forth Valley procedures it is proposed that there will be no charge by the Board for FOI requests. It is proposed that this be reviewed, along with all FOI procedures, after 9 months, ie at the end of 2016.
- 4.5 The Board must also have a publication scheme in place, so that members of the public can see what recorded information is already publicly available, and find out how to access that information. A publication scheme, based on a model for local authorities available from the SIC, will be put in place by Council officers by 1 April 2016 and will be available on the Board's web page. At the outset, there will be minimal information published by the Board, but this will expand over time.

## **Data protection**

- 4.6 The Board is a data controller under the Data Protection Act 1998 (DPA). For the most part, personal data about service users will be held by the Council and the Health Board - integration brings no change to that. However, the Board will hold limited personal data about individuals (such as its members, local contacts, inquirers, complainants and those requesting information under FOISA or the DPA.) Accordingly, the Board must register with the Information Commissioner's Office (ICO) as a data controller. Officers from the Council will ensure this is in place by 1 April 2016.
- 4.7 The Board needs a system to respond to requests for information for personal data, whether those be from individuals themselves by way of a subject access request, or from third parties, such as Police Scotland. NHS Forth Valley will take lead responsibility for administering requests under the DPA, in line with current NHS Forth Valley procedures, adapted for the Board. [The DPA permits data controllers to charge individuals for access to their personal data. This is restricted by Regulations under the DPA to £10. In line with current NHS Forth Valley procedures, it is proposed that there will be no charge by the Board for data protection requests. However, it is proposed that this be reviewed, along with all data protection procedures after 9 months, ie at the end of 2016.]

## **Data sharing**

- 4.8 There will on occasion be need for the Board to share personal information with the Council and/or the Health Board, and vice versa, and this is permitted specifically by the 2014 Act. It is good practice, and in line with ICO guidance, to have appropriate data sharing arrangements in place.
- 4.9 The Council and Health Board are already party to the Forth Valley Accord on the Sharing of Personal Information (Accord), which sets out high level information sharing principles and governance arrangements agreed amongst its parties (which include all 3 Forth Valley Councils, the Health Board and the now defunct Central Scotland Police). Any particular information sharing arrangements are set out in detail in a separate information sharing protocol, with sits under the Accord. As an example, the Council and the Health Board have an information sharing protocol in place to enable matching of health and social care datasets to plan for and deliver integrated health and social care services (the Health and Social Care Data Integration and Intelligence Project).
- 4.10 In the Falkirk Integration Scheme, the Council and Health Board committed to review the Accord to ensure it was fit for purpose, with a view to recommending that the Board also sign up to this, to enable information to be shared with the Board, where appropriate, under the 2014 Act.

- 4.11 The Council and Health Board agree that the governance arrangements and the practical arrangements for its implementation of the Accord need improvement. In addition, the establishment of Police Scotland has meant that local multi-agency information sharing agreements will be subject to review. Further, the Scottish Government is working on a new information sharing toolkit, which includes a new template for information sharing agreements, which is likely to supersede the templates used for sharing information under the Accord.
- 4.12 In view of this changing landscape, it is recommended that the Board sign up to the Accord at this stage, and that any particular protocols required for information sharing sit under this. However, the Council and the Health Board will continue to review the suitability of the Accord, and bring any proposed new arrangements back to the Board.
- 4.13 The recommendation is that the Board delegate authority to the Chief Officer to sign the declaration of acceptance necessary for the Board to adopt the Accord, and to sign any necessary information sharing protocols necessary to ensure proper governance of any sharing of personal data by, or with, the Board.

### **Information security**

- 4.14 A key principle of the DPA is that appropriate technical and organisational measures are in place to ensure that personal data is held securely. The Council and Health Board have their own information security policies and procedures in place, which help protect service users' personal data. To the limited extent that the Board holds personal data, officers will develop an information security policy based on the Council's policy (which is due for review). In the event of a data breach, the Board will follow the ICO's guidance on data breach security management.

### **Senior Information Risk Owner**

- 4.15 Both the Cabinet Office and the Scottish Government advocate that all public bodies should appoint a Senior Information Risk Owner (SIRO) who is responsible for information risk. As a public body, it is appropriate that the IJB also has a SIRO. The SIRO is responsible for:
- The information risk profile of the Board
  - Identifying all of the information risks in relation to the responsibilities of the Board
  - Making sure that appropriate mitigations are in place so that the risks can be accepted.
- 4.16 It is recommended that the Chief Officer should act as SIRO on behalf of the Board.

## **Records management**

- 4.17 The Board is also subject to the Public Records (Scotland) Act 2011 (PRSA). The PRSA promotes efficient and accountable record keeping by public authorities. It requires an authority to produce and implement a records management plan. The plan must clearly describe the way an authority manages the records it creates, in any format, when performing its functions.
- 4.18 The Keeper of the Records of Scotland has not yet set a timescale for the Board to submit a records management plan. It is likely that he will give the Board 6 months' notice before an invitation is issued to submit a plan within a further 6 months. A plan may not be required until 2017/18. However, it is recommended that the Board develop and document arrangements for the management of its records as its work develops. Support for this will be provided to the Board by either the Council or the Health Board depending on the agreement reached in respect of corporate support to the Board.

## **5. CONCLUSIONS**

- 5.1 Partners have worked together to ensure the Board meets its statutory obligations in relation to information governance by 1 April 2016.

### **Resource Implications**

The Board should note that the two partners are contributing significant resources to supporting information governance. This should be covered as part of any corporate support arrangements and reviewed after 9 months, once the extent of the resource required is known.

### **Impact on IJB Outcomes, Priorities and Outcomes**

This work will ensure that the Board meet the core legal requirements in relation to information governance, and so is able to continue its work under the 2014 Act.

### **Legal & Risk Implications**

There is a risk if priority work as outlined is not completed the Board will fail to meet its statutory obligations. This is considered a minimal risk. Arrangements will be reviewed after 9 months to ensure they are working effectively.

### **Consultation**

Given the information governance obligations are laid down by legislation, no consultation has been necessary.

## **Equalities Assessment**

The recommendations in this report do not require an Equalities Impact Assessment.

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Approved for Submission by: Chief Governance Officer, Falkirk Council

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**Date:** 7 March 2016

**List of Background Papers: none**