

Dear

FREEDOM OF INFORMATION REVIEW – PERSONAL DATA

I write in response to your request for review of NHS Lothian's response to your Freedom of Information request about the sharing of your personal data by NHS Lothian to other organisations.

Having considered your request our original response of 4 June 2026 further, I can respond as follows:

Original Request and Response:

Question:

I write to request, under the Freedom of Information Act 2000 (or Freedom of Information (Scotland) Act 2002, where applicable) and Article 15 UK GDPR / Data Protection Act 2018, a determination of whether my personal data has been subject to cross-authority processing.

1. Determination (Primary Request)

Please first confirm whether my personal data has been:

- *shared with, requested by, or discussed with any external public authority; or*
- *used in any joint, coordinated, or multi-agency activity*

including (but not limited to):

- *Health Service Executive*
- *NHS South East London Integrated Care Board*
- *Oxleas NHS Foundation Trust*
- *Lewisham and Greenwich NHS Trust*
- *Royal Borough of Greenwich*
- *Greater Manchester Combined Authority*
- *NHS Greater Manchester Integrated Care Board*
- *Local Government and Social Care Ombudsman*

2. Scope Clarification

This includes activity conducted directly or on behalf of your organisation, via Integrated Care Boards, partnerships, or regional structures, and across UK regions or internationally (including Ireland).

3. If YES (Targeted Disclosure)

If such activity has occurred, please provide:

- a summary of organisations involved
- the purpose of processing
- the lawful basis
- copies of relevant personal data (or a description if extensive)

4. If NO (Assurance)

If no such activity has occurred, please confirm:

- that all relevant systems and partnership channels were searched
- that no data has been shared directly or indirectly

5. Systems and Search Scope

Please confirm searches include:

- case management / clinical systems
- email systems (including deleted/recoverable items)
- shared drives and archives
- messaging platforms used for official business
- systems operated by third-party processors

6. Timeframe

This request relates to 1 July 2024 to present.

7. Absence / Deletion

If records have been deleted, please confirm:

- date of deletion
- authority for deletion

8. Scope Management (Cost Control)

This request is structured to prioritise determination.

Please first confirm whether such processing has occurred. Only where such activity is identified do I request associated records.

If the request would exceed cost limits, please:

- provide records sufficient to establish whether such activity has occurred; and
- engage with me to refine scope

Priority should be given to:

- audit logs
- referral / escalation records
- inter-organisational communications

Answer:

The information you have requested is personal to yourself, and as such cannot be dealt with under the Freedom of Information (Scotland) Act 2002. We have passed your request on to our data protection team to process as a Subject Access Request, and I believe they have already been in touch with you.

Personal information relating to yourself is exempt from release under the section 38 of the Freedom of Information (Scotland) Act 2002. The purpose of this exemption is not to deny individuals a right to access information about themselves but to ensure that the right is exercised under the Data Protection Act 2018, which will determine whether the person has a right to the information.

Review Request:

I acknowledge NHS Lothian's position that requests for an individual's own personal data should ordinarily be considered under the Data Protection Act 2018 rather than the Freedom of Information (Scotland) Act 2002 (FOISA). However, I am concerned that my request may have been characterised too broadly as a request solely for personal information.

Classification of the Request

While aspects of my request undoubtedly relate to my personal data, my request was not limited to obtaining copies of information about myself. It also sought information concerning the processing, sharing, governance, systems, repositories, recipients and organisational arrangements associated with that processing.

The response states that the request has been passed to the Data Protection Team and that the information requested is personal to myself and therefore exempt under section 38 FOISA. However, the response does not explain whether the individual elements of the request were assessed separately, nor whether any part of the request was considered to fall within FOISA as recorded organisational information rather than personal data.

Organisational Information and FOISA Scope

Please review whether any part of the request sought recorded information concerning:

- information-sharing arrangements;
- governance structures;
- audit processes;
- recipient organisations;
- data processors;
- system suppliers;
- case management systems;
- repositories;
- policies, procedures or operational arrangements relating to the handling of information.

To the extent that such information exists, please consider whether it should properly be considered under FOISA rather than being treated solely as a Subject Access Request.

Application of Section 38 FOISA

If NHS Lothian's position is that every element of the request is exempt under section 38 FOISA, please identify which specific parts of the request were assessed and explain why each element was considered to constitute my personal data rather than organisational information held by NHS Lothian.

Transfer to the Data Protection Team

Please clarify whether any part of my request relating to information-sharing arrangements, audit records, recipient organisations, processors, system suppliers, repositories, case management platforms or governance arrangements remained within the FOI process, or whether all elements were transferred to the Data Protection Team.

If all elements were transferred, please explain the basis upon which NHS Lothian concluded that no part of the request sought recorded organisational information falling within the scope of FOISA.

Decision-Making Framework

Please identify the basis upon which NHS Lothian concluded that the request fell wholly within the scope of the Data Protection Act 2018 rather than, in whole or in part, within the scope of FOISA.

This should include any criteria, guidance, policy, procedure or assessment framework relied upon in reaching that conclusion. If a recorded assessment exists documenting that decision, please advise whether it can be provided.

Handling of the Request Prior to Reclassification

I would also be grateful if you could confirm:

- the date on which the request was transferred to the Data Protection Team;
- whether any FOI searches, consultations or assessments had already commenced prior to that transfer;
- whether the request was initially accepted and processed as a valid FOI request before being reclassified; and
- whether any recorded information was identified before the decision was taken to rely upon section 38 FOISA.

Identity Verification

For completeness, I note that the response confirms that the request has been passed to the Data Protection Team for handling as a Subject Access Request. This appears to indicate that any requests for identity verification relate to the SAR process rather than the validity of the FOI request itself.

I would be grateful if the reviewer could confirm that distinction.

Cross-Authority Information Sharing and Governance

Given the wider issues raised in my correspondence concerning cross-authority information sharing, governance arrangements, data processors, hosted systems and the handling of personal information across multiple public authorities, I believe it is important that the boundary between FOISA and data protection legislation is clearly identified and applied to each element of the request rather than treating the request as a single category of personal information.

Review Response:

I have considered the points raised in your request for review, including your view that elements of the request may relate to recorded organisational information rather than solely to your own personal data. NHS Lothian recognises the importance of distinguishing between requests made under the Freedom of Information (Scotland) Act 2002 and requests made under data protection legislation, including Article 15 of the UK GDPR and the Data Protection Act 2018.

Your request is framed by reference to whether information about you has been shared with, requested by, discussed with, or otherwise processed in connection with named external organisations or multi-agency activity. Any search required to answer that question would therefore be a search for information about you as an identifiable individual, rather than a search for general organisational information unrelated to you.

Personal data is not limited to clinical or patient records. It can include any recorded information relating to an identified or identifiable individual, including correspondence, enquiries, audit information, access records, governance records, or communications where those records relate to that individual. For that reason, NHS Lothian's position remains that the request was correctly treated as a request for your own personal data and is exempt from disclosure under section 38(1)(a) of FOISA.

I have also considered whether any part of the request could reasonably be separated and handled as a request for general organisational information under FOISA. The request, however, is framed by reference to whether your personal data has been subject to particular processing or sharing activity. The governance arrangements, recipients, processors, systems, repositories, audit records and communications referred to in the request are sought only in the context of establishing whether NHS Lothian holds or has processed information about you. They are therefore inseparable from the personal-data element of the request.

Accordingly, NHS Lothian did not carry out FOISA searches for personal data about you before transferring the request. The request was transferred to the Data Protection Team on 15 May 2026 for consideration as a Subject Access Request. As part of that process,

the Data Protection Team will consider whether NHS Lothian holds any personal data about you, including any non-clinical information, and whether any information can properly be disclosed or whether any exemptions apply.

For clarity, the requirement for identity verification applies to the Subject Access Request process and not to the validity of a FOISA request. It is required so that NHS Lothian can be satisfied that personal data is disclosed only to the individual entitled to receive it.

If you are not satisfied with this response you still have the right to make a formal complaint to the Scottish Information Commissioner who you can contact at the address below or using the Scottish Information Commissioner's Office online appeals service at <https://www.foi.scot/appeal>. If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
e-mail: enquiries@foi.scot

Yours sincerely

Tom Power
Freedom of Information Reviewer /
Director of People and Culture