



## **FREEDOM OF INFORMATION IN SCOTLAND**

### **INTRODUCTION**

The Freedom of Information (Scotland) Act 2002 comes into full force on 1 January 2005. The Act aims to increase openness and accountability in government and across the public sector by ensuring that people have the right to access information held by Scottish public authorities. People will be able to access information about how such bodies function and how decisions are made.

The Act allows any person or organisation to ask for information held by a Scottish public authority. It does not matter how old the information is or why it was created: if the authority holds the information then it will have to give access to it, unless an exemption applies.

### **WHO DOES IT APPLY TO?**

The Act applies to public authorities in Scotland, including local authorities, the NHS, universities and colleges, the police, the Scottish Parliament and the Scottish Government. The Act also applies to companies wholly owned by a public authority and, if designated, it may even apply to private companies carrying out a function for a public authority, for example under a contract.

A full list of organisations affected is set out in the Act and further bodies can be added by the Scottish Ministers. The Scottish Law Commission ("the Commission") is listed as a Scottish public authority in Part 7 of Schedule 1 to the Act.

### **WHAT DOES FREEDOM OF INFORMATION MEAN FOR THE COMMISSION?**

The Act requires each Scottish public authority to prepare a publication scheme setting out the classes or types of information that it proactively provides or will provide.

Our publication scheme has been prepared in consultation with the Law Commission for England and Wales and has been approved by the Scottish Information Commissioner, Kevin Dunion. It will shortly be made available on our website and in paper form on request. Where information is not proactively made available through our publication scheme, any person wanting to obtain information will need to make a request, which will be dealt with under the Act.

## **MAKING INFORMATION AVAILABLE**

Our publication scheme lists the classes of information that we make available or intend to make available, how the information can be obtained and whether we will charge a fee for providing it.

The purpose of the scheme is to set out the classes or types of information that we proactively provide or will provide, so that people can access it without having to make a request to us in terms of the Act. The Scottish Information Commissioner is encouraging public authorities to make available as much information as possible in terms of their publication schemes so that they have fewer requests to deal with.

***Example:** a person who wishes to obtain information relating to one of our law reform projects could start by looking at our publication scheme. At the end of the publication scheme there is a list of the types of information that we make available or will make available in future. Some of the information listed is available on our website, and some is available in paper form only on request. If the information sought is **not** available under the publication scheme, the person can make a request for it and we will deal with it as an FOI request under the Act.*

## **RECORDS MANAGEMENT**

Good records management practices will assist us to meet our duties under the Act. If records are easy to locate then we will be able to deal with requests quickly. A Code of Practice on Records Management has been prepared which provides guidance to public authorities on records management policies, records management training and the keeping, management and destruction of records, both paper-based and electronic.

## **HOW IS A REQUEST MADE?**

Any individual or organisation anywhere in the world can request us to provide information and will be entitled to receive it, provided we hold the information and no exemptions apply. We are only obliged to provide recorded information, such as printed material, handwritten notes and electronic documents. It does not matter how old the information is. Requests must be in writing or in another permanent form. Requests must state the name and address of the applicant and describe what information is required. There is no need to cite the Act or explain why information is being requested.

## **HOW WILL WE HANDLE A REQUEST?**

We will help anyone who proposes to make a request for information, as set out in a Code of Practice. All requests should be dealt with promptly and in any case within 20 working days of receipt. If the request does not contain sufficient details to enable us to identify the information requested or respond to the request, we will ask an applicant for more details. We will not be obliged to comply with a request if-

- we do not hold the information; or

- an exemption applies; or
- the cost of providing the information would exceed the amount set by the Fees Regulations.

In any of these instances, we will notify the applicant. If an applicant is dissatisfied with the way we have dealt with the request, he or she can ask us for a review. An applicant who is dissatisfied with the outcome of our review can take his or her complaint to the Scottish Information Commissioner.

## **EXEMPTIONS - CAN INFORMATION ALWAYS BE ACCESSED?**

Not all information can be obtained. The Act provides for exemptions although most of these are not designed to be applied on a blanket basis. There are two types of exemptions: absolute and non-absolute.

- **Absolute exemptions:** If an absolute exemption applies, we will not release the information. Some absolute exemptions apply to areas that you would expect, such as national security or confidential material. Other absolute exemptions apply to information which is available via another route, for example if information is contained in our publication scheme.
- **Non-absolute exemptions:** If a non-absolute exemption applies then we will have to apply a "public interest" test to decide whether the information should be released. There are 17 categories of exempt information covering areas such as government interests and relations, public sector administration, national security and defence, law enforcement and commercial interests.

Public authorities are being encouraged to favour disclosure wherever possible. If an exemption applies, we will send the applicant a written notice explaining why the request is being refused and giving details of the right to apply for a review of the decision.

## **WHAT DOES IT COST?**

### ***Information provided under our publication scheme***

Our publication scheme gives details of the charges we will make for providing paper copies of information listed in the scheme.

### ***Information provided in response to a request under the Act***

Where information is not available under our publication scheme, we may charge for providing information in response to a request in terms of the Act. We will do so in accordance with Fees Regulations made under the Act.

The provision of information costing up to £100 will be provided free of charge. Where the cost of providing information is projected to exceed that amount, public authorities

may charge 10% of the projected cost between £100 and £600. For example, where the projected cost amounts to £250 we may charge a fee as follows:

|  |            |
|--|------------|
| Projected costs                                  | £250       |
| <u>Less</u> amount to be provided free of charge | £100       |
| Amount on which charge calculated                | £150       |
| Cost to applicant - 10% of £150 -                | <b>£15</b> |

There is no obligation to provide information where the projected cost exceeds £600. Public authorities may still provide such information but separate provision is made for the charging of fees in these circumstances.

We will supply further details of the charges involved on request.

## **HOW DOES FREEDOM OF INFORMATION FIT WITH DATA PROTECTION?**

The Data Protection Act 1998 aims to secure individuals' rights to privacy by protecting information that is held about them. An authority that handles personal data must comply with the data protection principles which control how such data is processed. These principles include, amongst others, that personal data should be fairly and lawfully processed. Individuals have the right to ask for a description of the personal data held about them, by making what is called a Subject Access Request, and to receive a copy of the information.

When the Freedom of Information (Scotland) Act 2002 comes into force a request by an individual for information about himself or herself will be exempt under freedom of information and will continue to be handled under the Data Protection Act. If a person makes a request for information about someone else, this will be handled under the Freedom of Information (Scotland) Act 2002. However, certain data protection considerations will still apply, for example we will not provide the information if the disclosure would breach the data protection principles. If we decide that we may wish to disclose the information about a person, we will notify that person and take account of his or her wishes, although we do not have to be bound by any views expressed.

## **WHAT HAPPENS IF WE DO NOT PROVIDE INFORMATION?**

The Freedom of Information (Scotland) Act 2002 will be enforced by the Scottish Information Commissioner, who has a wide variety of powers under the Act to ensure compliance with the Act.

The Commissioner is a fully independent public official. His duties and legal powers should ensure that people get the information from Scottish public authorities to which they are entitled. He has a number of responsibilities which include: dealing with complaints, promoting good practice among authorities, informing the public about the Act and enforcing the Act. He also has the right to apply for a warrant to enter a public

authority's premises and seize documents, but such incidents are likely to be very unusual.

Complaints concerning requests can be made to the Scottish Information Commissioner only after an applicant has exhausted our review procedure. He is entitled to ask for more information to enable him to make a decision concerning a complaint. If he decides to proceed, he will invite comments from us and then decide if the complaint is valid. He will notify us and the applicant of his decision.

## **ENFORCEMENT AND PROSECUTION**

If the Scottish Information Commissioner becomes aware that an authority is not complying with its duties under the Act, he will be able to issue an enforcement notice, informing the authority which part of the Act it is failing to comply with and what it needs to do to put things right.

Although the Scottish Information Commissioner is primarily responsible for overseeing the Act, there are a few occasions when the courts may become involved. It is a criminal offence for anyone to destroy or erase information after a request has been received. This offence can be committed by the authority or its employees. Such cases will be dealt with in the sheriff court and the offence carries a fine of up to £5000.

## **USEFUL LINKS FOR FURTHER INFORMATION ABOUT FREEDOM OF INFORMATION**

[www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk) – Scottish Law Commission website

[FOI@scotlawcom.gov.uk](mailto:FOI@scotlawcom.gov.uk) – e-mail address for Scottish Law Commission Freedom of Information enquires

[www.itspublicknowledge.info](http://www.itspublicknowledge.info) - Scottish Information Commissioner's website

[www.scotland.gov.uk/government/foi](http://www.scotland.gov.uk/government/foi) - Scottish Government freedom of information website

