



Scottish Information
Commissioner

Freedom of Information and the Third Sector

An untapped resource?

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Third Sector Interface Conference

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What rights are provided under Scotland's Freedom of Information law? – what are your rights as individuals and as organisations?

Which bodies have to respond to freedom of information requests?

Examples of how other organisations have used their freedom of information rights to access information – some inspiration from others

Tips on how to make effective freedom of information requests.



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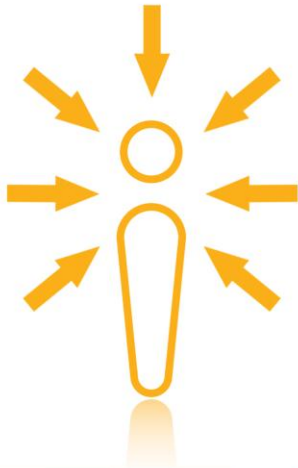


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FOI – in a nutshell

In a nutshell...



Data Protection

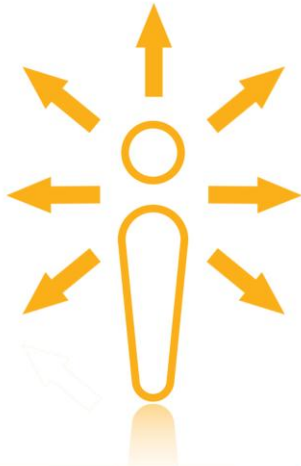
- Provides a right of access to your own personal data
- Applies to all organisations that hold personal data
- Covers public bodies, private companies and voluntary organisations

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Data Protection

Provides a right of access to your own personal data – and governs how the organisations that hold personal data should manage it

In a nutshell...



Freedom of Information

- Provides a right of access to all other information
- Applies to public authorities and companies that are wholly publicly owned
- DOES NOT cover private companies and voluntary organisations

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DPA provides

FOI is of use to

As **requesters** – the FOI right can be a useful tool for your organisation

As **advisers** – advising clients of their FOI rights

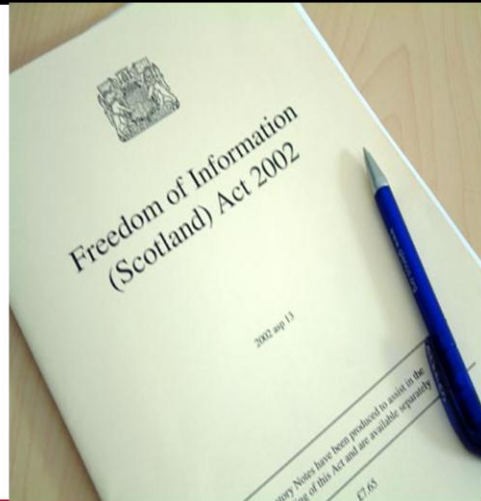
The Freedom of Information (Scotland) Act 2002



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1 General Entitlement

(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.



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FOI came into force in 2005 and for the first time provided individuals and organisations with an automatic right of access to information held by SPAs.

This right is clearly and unambiguously set out in the very first sentence of the Act. Which states:

Individuals have a right to receive the information – this is the default position in the act – if in doubt authorities should release not withhold.

A **person** who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.



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Anyone, anywhere in the world – doesn't have to be Scotland.

Any age over 12 years –and younger than this if you can demonstrate an understanding of what you are asking for

No matter what it's for

Requesters do not have to say who they are, for example if they're a voluntary organisation, elected member or a company employee.

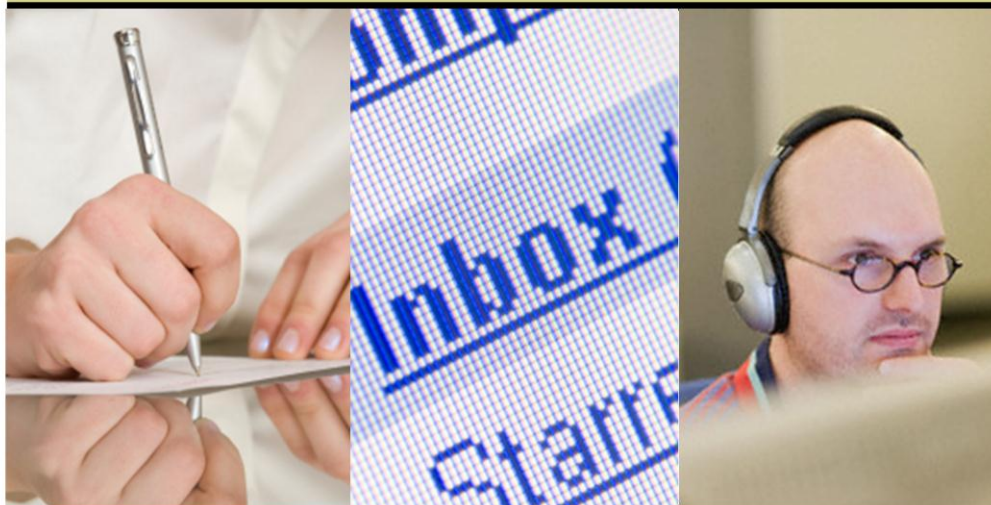
The requester can be a company or organisation.

In this way, FOISA is said to be “applicant blind” – the identity of the requester has no bearing on whether the information should be released. So if you are a voluntary organisation, your relationship with a public authority is immaterial in relation to your right to information under FOI.

A person who **requests** information from a Scottish public authority which holds it is entitled to be given it by the authority.



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The FOI entitlement refers to information requests. The Act sets out that these must be:

- Made in writing (or some other recordable format) – letter, email, fax, recording, etc – does not include verbal/phone requests;
- Include the applicant's name
- Include an address for correspondence – can be an email address
- Describe the information required – sufficiently well for it to be identified and located

Requests don't have to reveal why the information is sought or what the requester will do with it – and (in most circumstances) the authority is not entitled to ask.

Aren't required to mention the Act for the rights to apply.

A person who requests **information** from a Scottish public authority which holds it is entitled to be given it by the authority.



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Act covers every piece of recorded information held by an authority – internal documents, correspondence, reports, minutes of meetings, emails, cctv footage, videos, photos and images, audio recordings – anything that is recorded and held.

Information must be held at the time the request is received – if something has been destroyed previously then an authority is not obliged to recreate it or track it down from other sources. But it is a criminal offence to destroy information once it has been asked for.

Information of any age – email created that morning to a document buried deep in the archives.

Act does not require authorities to create new information in response to requests – e.g. comment or opinion – (but they are of course, free to do so)

Information not copies of specific documents – although documents are a common way of requesting information.

A person who requests information from a **Scottish public authority** which holds it is entitled to be given it by the authority.



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The Act applies to Scottish public authorities – over 10,000 covered by the legislation – including Parliament, Government, local authorities, the Police, the NHS, universities and colleges, and other public authorities such as Scottish Water, Audit Scotland, Scottish Information Commissioner

Scottish public authorities are set out in Schedule 1 of the Act. Changes all the time – we publish Sch 1 and try and keep it as up to date as possible.

Two other ways a body can be covered:

If it is a publicly owned company, wholly owned by one or more Scottish public authority. E.g. CalMac wholly owned by Ministers.

It has been designated by Scottish Ministers. Ministers have not designated any bodies yet, but Ministers considered some e.g. GHA, private prisons, leisure trusts recently.

It doesn't cover UK public authorities, including those with Scottish divisions or which operate in Scotland e.g. BBC Scotland, Scottish MoD premises. There are covered by FOI, but it's the UK Act, not the Scottish one.

It doesn't cover e.g. private companies, utilities, housing associations or charities.

When in doubt: Check schedule one. Ask the organisation.

A person who requests information from a Scottish public authority which holds it is **entitled to be given it** by the authority.



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Act places an obligation on authorities to respond to all requests for information within 20 working days.

Not an option for authorities to ignore or avoid requests for information.

Requesters have the ultimate right to appeal to the commissioner if their requests are ignored.

Authority has to give effect to the requester's preference in terms of format.

For example, the requester might ask for:

a digest or summary.

information in a particular format e.g. Audio recording, Braille, large print.
Authority must observe equality legislation.

Authority must do what is reasonable but can take cost into account when deciding what is reasonable. Cannot consider cost when meeting equality obligations.

Release to an applicant is release to the world at large, not just to that applicant. Once info has been released it cannot be subsequently withheld

from someone else (remember the Act is applicant blind).

Many authorities operate disclosure logs, and it is worth checking this if it exists. It is also worth checking what the authority has proactively published – you can do this by looking in its publication scheme.

Reasons for refusal



- Ⓜ Information not held
- Ⓜ Costs too much
- Ⓜ Exemption applies

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Not held – anecdotal evidence suggests this is the most common reason for refusal by authorities – when information is not held it will not fall within the scope of the Act.

However – duty to advise and assist – is other relevant info held? Does another PA hold the information?

Excessive cost - £600 upper limit – duty to advise and assist – what can be provided within the upper limit

Vexatious or repeated – rarely used – request not requestor – few cases considered by the Commissioner – 722 requests in one day from one firm of solicitors – “wholly inappropriate’ language with no discernable request.

Exemption – the Act allows information to be withheld in certain circumstances, e.g. where release would harm national security, commercial be a breach of the data protection act, or would harm the effective conduct of public affairs. However most exemptions have a public interest override, information must be released if it is in the public interest to do so.

Right of appeal



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Where information is refused, appeals can be made to the Scottish Information Commissioner (following a first-stage appeal to the public authority). The Commissioner has the power to force the release of information if he finds that an authority has withheld in inappropriately.

So in summary

Ask – in writing. If you get a response you're not happy with or don't hear after 20 working days you should..

Ask again. If once again you're not happy with the response or don't hear back, then after 20 worknig days you can

Appeal to the Commissioner. Check out the "your Rights" section of our website for detailed guidance on how to go about this and what to expect.

Inclusion Scotland

Working towards a society where disabled people are equal citizens

*'Not enough housing for
disabled' claims charity*

**Homes must
be 'fit for
disabled'**

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Requested information on the availability and quality of housing for people with disabilities from all 32 local authorities.

Discovered that many Council's greatly underestimated the number of disabled people in their area

Many houses were having the adjustments that had been made for people with disabilities removed, following a disabled person moving out, rather than rehousing a disabled person in the property.

Many Council's were failing to consult with disabled people as part of their housing strategy.

Report was launched in Parliament, with the support of the Communities minister. Led to the development of new government guidance recommending that disabled people are consulted in the development of housing strategy.

Learning Disability Alliance Scotland



STUCK!
869

People With Learning Disabilities Resident in Care Homes For Older People In Scotland



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LDAS:

The Alliance, a coalition of organisations that support people with learning disabilities, was aware anecdotally that some people with learning disabilities were being inappropriately housed in care homes for the elderly – places that will often lack the specific skills or resources required to meet their particular needs.

It decided to conduct its own research on this issue, using FOI to gather data from public authorities to examine the true extent of the problem. The Alliance's subsequent report, "Stuck" highlighted that over 800 people in Scotland with learning disabilities are being housed in this way.

The research also found that over 300 of these people were aged under 65 – and some as young as 19 – while the average age of care home residents was approximately 85 years.

The Alliance has subsequently used the report to bring their concerns to the attention of a wide range of stakeholders, including local authorities, the Scottish Government, and the Care Commission. The group's campaign to end the practice of housing people with learning disabilities in care homes for the elderly continues.

heraldscotland

Wednesday 1 December 2010 The Herald | sundayherald

C Diff victim's daughter calls for stringent hospital inspections

8 Jun 2010

Hospitals should be subject to robust hygiene inspections equivalent in their thoroughness to HME reports on schools, the daughter of one of the victims of a clostridium difficile outbreak victim has said.

Brenda Bowes yesterday told the first day of oral hearings at a public inquiry into the outbreak at the Vale of Leven Hospital in West Dunbartonshire that, following the death of her mother, Margaret Dalton, there on December 31, 2007, she could not find details of any hygiene inspection.

A total of 55 patients at the hospital contracted C Diff between December 2007 and June 2008, with 18 of them dying. The infection was blamed for nine deaths and said to be a contributory factor in another nine. Bowes, a primary school teacher, compared the system to that of HME inspections of schools, adding that she could find a report on the hospital's tea bar, but not on the wards.



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Click on Sound Clip

C Diff Justice Group, which was set up following the Clostridium Difficile outbreak at the Vale of Leven hospital in 2008, which claimed 18 lives.

The group mostly comprises relatives of those who fell victim to C Diff (Michelle Stewart lost her mother in law to the outbreak), and the group is campaigning to raise awareness of C Diff and to prevent outbreaks from happening again.

They also successfully campaign for the setting up of the new Healthcare Environment Inspectorate (HEI) to scrutinise hospital acquired infection in Scotland, and for the setting up of a public inquiry into C Diff outbreaks in Scotland outbreak, which is ongoing.

The group used FOI to seek a wide range of information to answer questions they had in relation to C Diff outbreaks. Information requested included details of Scotland-wide infection rates, and statistics on new cases. They also accessed the report into cleanliness at the Vale of Leven Hospital using FOI, and accessed information relating to the timescales for setting up the HEI.

The C Diff Justice Group's campaign was named 'Public Campaign of the Year' at the Herald Politician of the Year award in November.

Wording your request



1. What do I want to know?

2. How will the authority have recorded the information I want?

3. How should I word my request to best seek access to that information?

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3 questions to ask yourself to help you word your request:

What questions do I want answered by the public authority?

Where is the information that you want to see likely to be recorded and held? Spreadsheet? Emails between officials? A report? Minute of a meeting? If the information which would answer your request isn't likely to be recorded, then making an FOI request won't be the most appropriate route. Try thinking of another way to make your request which does seek access to recorded information.

How should I word my request to best seek access to the information – how can you frame your request as narrowly and precisely as possible to seek access to that information? Include a time frame? Reference to specific, individuals, meetings, dates, issues, subjects, reports, etc?

Tips for success



- 📌 Ask for **recorded** information
- 📌 Be specific
- 📌 Provide a time period
- 📌 Keep copies
- 📌 Communicate with the authority

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Communicate –engage in dialogue with the bodies

- Authorities have a duty to advise and assist requesters
- Consider picking up the phone and discussing the information you're looking for in advance of making the request.
- You can ask what information they are likely to hold on a particular subject.

We're aware that there are concerns amongst some voluntary organisations that FOI requests may potentially be viewed as 'confrontational'. - discussing request in advance may help to counter this. Helps to maintain good relations with the authority.

It may also be the case that a public authority reveals that it is happy to provide the information to you without the need to submit a formal written request.

Failing that, they may be able to offer information on what they do hold that falls within the scope of your request.

Remember that FOI covers **RECORDED** information – try and phrase your request so that this is what is being sought – will help to focus authorities in their search e.g. all minutes, emails, or correspondence relating to...

If you're not sure what an authority holds, it can also be helpful to seek guidance on this initially – either informally via a telephone call or, for example, by requesting a file list in relation to a particular subject area.

Be specific – try and be as specific as possible in terms of what you want – a request that is framed too broadly may:

Result in information which is of no interest to you

Places an unnecessary burden on authorities

Be refused on cost grounds

Provide a time period – time period will help to narrow and focus that request. Similarly other contextual information, on what subject etc, will help to focus the request and increase the likelihood of a successful request.

Keep copies – if you're making an appeal to the Commissioner these will be required.

Communicate – this time communicate with each other:

Share best practice and what does and doesn't work

Communicate with our office. We run an enquiry service which is open every working day, and can provide support and guidance on how to make a request, and what to do if a request is refused.

Tips for success



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- ① Keep FOI requests separate
- ① Request info electronically?
- ① Duty to advise and assist
- ① Communicate with others

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Keep FOI requests separate – keep your requests separate from other correspondence. If there are other issues you want to raise with an authority do this separately. We know from our experience with public authorities that they can find requests which are buried within lengthy correspondence on other issues difficult to deal with. Requests may get ‘lost’ within the correspondence, or the authority may be unsure whether the request is intended to be a request or a rhetorical question. It’s best to keep your request correspondence as ‘clean’ and focused as possible, to minimise the likelihood of problems.

Request info electronically – Some requesters have suggested to us that, if you are seeking a large amount of information from authorities, or are requesting the same information from a number of different authorities, it can be helpful to ask for the information electronically. Authorities are obliged to provide the information to you in your preferred format, providing it is reasonably practicable for them to do so. Having the information electronically can help you when collating and comparing the information, or when searching through the information for specific facts and figures for future use – using electronic searches rather than doing this manually.

Duty to advise and assist – reminder that authorities have this duty

Communicate –this time communicate with each other:

Share best practice and what does and doesn't work

Communicate with our office. We run an enquiry service which is open every working day, and can provide support and guidance on how to make a request, and what to do if a request is refused.

Questions?



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Further information



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