

Freedom of Information & Data Protection Issues

1. This paper provides some brief notes on freedom of information and data protection issues for the Mixed Stock Fisheries Working Group as requested at its first meeting on 12 November 2008.

Freedom of Information (Scotland) Act 2002

2. The Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIR) confer on citizens a right of access to recorded information held by Scottish public authorities such as the Scottish Government and its advisers Fisheries Research Services (FRS).

3. The Scottish Information Commissioner is responsible for enforcing and promoting the right to access information held by public authorities created by the FOISA and EIR. The Scottish Information Commissioner has statutory powers to order public authorities to release information which they have withheld.

Data Protection Act 1998

4. The law on freedom of information works alongside other laws designed to protect some information from release. Information protected by the Data Protection Act 1998 (DPA) cannot be released in response to a freedom of information request. The DPA gives individuals certain rights to privacy of 'personal' information relating to them and held by third parties, and places obligations on those who hold and process that information. Broadly speaking, personal data means information which can identify a living individual to whom the data/information relate.

Personal data

5. The UK Information Commissioner is responsible for regulating and enforcing access to, and use of, personal information. The Commissioner has stated in the *Information Commissioner's Legal Guidance*, that information relating to an individual in a business capacity (and not only in relation to an individual in a private capacity) may constitute "personal data". For example information about the business of a sole trader will amount to personal data as information about the business will be about the sole trader. Information about an individual in a partnership will be personal data if it relates to a specific partner. This may be more likely in a small partnership.

Data Protection Principles

6. Information requests concerning personal data are subject to the Data Protection Act. The Act sets out 8 Data Protection Principles which say that data must be:

- Fairly and lawfully processed;
- Processed for limited purposes;
- Adequate, relevant and not excessive;

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- Accurate;
- Not kept for longer than is necessary;
- Processed in line with an individual's rights;
- Secure; and
- Not transferred to other countries without adequate protection.

Information submitted to the Working Group

7. The Scottish Government, and FRS as its advisers, has a duty to meet its obligations under FOISA, EIR and the DPA with respect to all data it holds. Insofar as Information submitted in connection with the group's deliberations may be considered in law to be held by a public authority then the rules on freedom of information may apply to any requests for its release. The group may therefore wish to look at the principles which should apply to mixed stock fisheries rather than specific cases, individuals or businesses.

Scottish Government: Marine Directorate

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