

Frequently asked questions about Freedom of Information in Scotland

Why do we need a Freedom of Information Act in Scotland? What difference will it make?

The Act will give everyone the right to access the wealth of information that is held by Scottish public authorities. It will help to increase the accountability of public bodies, breaking down a culture of official secrecy and making sure that public bodies look outward to the needs and aspirations of the individuals and communities that they are there to serve.

What does the Freedom of Information (Scotland) Act 2002 do/what effect will it have?

The Freedom of Information (Scotland) Act 2002 introduces a general statutory right of access to all types of 'recorded' information of any age held by Scottish public authorities. Subject to certain conditions and exemptions, any person who makes a request to a public authority for information will be entitled to receive it.

When and how will the Freedom of Information (Scotland) Act 2002 come into effect?

The Executive has agreed an implementation timetable with the Scottish Information Commissioner, Mr Kevin Dunion, which will fully commence the Act on 1 January 2005. Further detail about this timetable is contained in Chapter 2 of the Report to the Scottish Parliament on Progress on Implementation of the Freedom of Information (Scotland) Act 2002 which was laid before the Scottish Parliament on 28 May 2003. The Report is available at www.scotland.gov.uk/government/foi/reportprogressfoi.pdf

Public authorities should note that this timetable also outlines the deadlines by which they are required to submit publication schemes for approval to the Scottish Information Commissioner and the dates on which the schemes will come into effect.

	submitted by	comes into effect
Parts 1, 2, 3 & 6 of Schedule 1 (central government, local government & the police)	28 February 2004	1 June 2004
Parts 4 & 5 of Schedule 1 (the NHS & educational institutions)	31 May 2004	1 September 2004
Part 7 of Schedule 1 (all other public bodies)	31 August 2004	30 November 2004

What is a publication scheme? Who has to have one and what must they contain?

All Scottish public authorities must have a publication scheme, approved by the Scottish Information Commissioner, and must publish information in accordance with that scheme.

A publication scheme must specify:

- classes of information which the authority publishes or intends to publish;
- the manner in which such information will be published; and
- whether the information is available to the public free of charge or on payment.

Information which is available under a publication scheme is exempt from the access provisions of the Freedom of Information (Scotland) Act 2002 because it is reasonably obtainable without a person having to make a request under the Act.

What rights do I have to find out what information the Government or other organisations are keeping about me personally?

You have rights under the Data Protection Act 1998 to access your personal information held by the Government and other organisations. The Freedom of Information (Scotland) Act 2002 will not change these rights.

Which bodies are covered by the Freedom of Information (Scotland) Act 2002? Where can I find an up-to-date list?

The Act applies to Scottish public authorities. A detailed list is contained in Schedule 1 of the Act. This includes the Scottish Executive and its agencies, Local Authorities, NHS Scotland, Schools, Colleges and Universities, the Police and the Scottish Parliament. The Act also provides for other bodies to be added to this list at a later date, and for organisations to be designated as public authorities if they exercise functions of a public nature or provide a service under a contract which is a function of a public authority.

How can I/will I be able to make a request for information?

Making a request for information is straightforward. All you will need to do is make your application in writing, or in some other format which can be kept permanently, describing as fully as possible the information that you are looking for, and giving your name and address for correspondence. You do not need to give reasons for your request or even mention that it is a Freedom of Information request.

What rights to information do I have now before the Freedom of Information (Scotland) Act 2002 is implemented?

Under the Code of Practice on Access to Scottish Executive Information you have a right to request information held by the Scottish Executive and some other public authorities. A separate Code of Practice on Openness exists in relation to information held by the NHS in

Scotland (covering Health Boards, NHS Trusts and other NHS organisations). There are also statutory rights to certain information held by Scottish Local Authorities.

How does the Freedom of Information (Scotland) Act 2002 relate to the Freedom of Information Act 2000?

The two Acts are separate. Public authorities will be subject to the provisions of one or the other, not both. The UK Act was passed in 2000 and applies to public authorities in England and Wales and to cross-border public authorities. These cross-border public authorities are defined under the Scotland Act 1998, they include the Forestry Commission and the Food Standards Agency. Thus while such bodies may be based, or have offices in Scotland, they will be subject to the provisions of the UK Act.

Who is the Scottish Information Commissioner and how can I contact him?

The Act establishes the post of a Scottish Information Commissioner, with responsibility to promote and enforce the FOI legislation. The Commissioner is a fully independent public official whose duties include:

- the promotion of good practice;
- approving and assisting in the preparation of publication schemes;
- providing information on operation of the Act; and,
- enforcing compliance with the Act.

Kevin Dunion has been appointed to this post by Her Majesty, on the nomination of the Scottish Parliament. He can be contacted at:

Scottish Information Commissioner,
Kinburn Castle,
Doubledykes Road,
St Andrews,
Fife
KY16 9DS

Telephone: 01334 464610
Fax: 01334 464611
e-mail: enquiries@itspublicknowledge.info

Further information about the Commissioner is available on his website (<http://www.itspublicknowledge.info/>).

What is the relationship between the Scottish Information Commissioner and the Information Commissioner?

The Scottish Information Commissioner is primarily responsible for the promotion and enforcement of the Freedom of Information (Scotland) Act 2002. The Information

Commissioner has similar responsibilities in respect of the UK Act, but in addition has responsibility for Data Protection, which is a reserved matter. Matters relating to Data Protection in Scotland would therefore be handled by the Information Commissioner, not the Scottish Information Commissioner.

How much will I have to pay to get the information I want?

This will be finalised in Regulations to be prepared in Summer 2004. However, Scottish Executive Ministers have already indicated that applicants should only be expected to pay a proportion of the costs associated with meeting their requests for information – this is likely to involve the first £100 of costs being met by the public authority, not the applicant, and thereafter only 10% being feed to the applicant up to an upper cost in the region of £550. Therefore under the likely scheme, an applicant might expect to pay £30 for information costing £400 to produce.

What help can public bodies get to sort out their records in advance of implementation of the Freedom of Information (Scotland) Act 2002?

The section 61 Code of Practice on Records Management provides authorities with guidance as to the keeping, management and destruction of the authorities' records, and on the review and transfer of records to both the Keeper of the Records of Scotland at the National Archives of Scotland (NAS) and other public archives. The S61 Code of Practice is available on the Scottish Executive website at www.scotland.gov.uk/about/FCSD/MCG-NW/00018022/s61code.pdf

To assist Scottish public authorities to develop records management arrangements which comply with the Code, the Keeper of the Records of Scotland has produced a generic Model Action Plan, which should be read in conjunction with the Section 61 Code. It can be used as a guide by individual organisations, and can also be used as the basis for the development of sector-specific codes tailored to the needs and business practices of particular types of public authority. The generic Model Action Plan is available on the National Archives of Scotland website at www.nas.gov.uk/miniframe/foi/map.pdf.

What help is the Executive making available to public bodies to prepare for the Freedom of Information (Scotland) Act 2002?

The Scottish Executive has commissioned core training materials to help public authorities prepare for implementation of Freedom of Information legislation. The training material consists of an open learning workbook, a template for an awareness-raising leaflet and a trainers' pack. The training materials are available to download from the Scottish Executive website at www.scotland.gov.uk/about/LPS/LPS-CPS/00018775/introduction.aspx

Will the Freedom of Information (Scotland) Act 2002 mean I can get hold of any documents I want?

Documents published by a Scottish public authority will be covered by its publication scheme and, subsequently, be exempt from the access provisions in the Act. In contrast, an authority will be required to respond to requests for information which is 'unpublished' on a case-by-case basis, taking into account the right of access and any exemptions which may apply.

What are the main reasons a public body may withhold information from me?

Certain types of information held by a public authority may be regarded as exempt information i.e. it would not have to be provided in response to an individual request. The Act sets out a number of such categories, relating to matters such as national security and defence, police investigations, and the formulation or development of government policy.

Who has the final say on whether I can have the information I have asked for?

If dissatisfied with a public authority's response to a request for information, the applicant must first ask the authority to review its decision. If still dissatisfied, the applicant can then appeal to the Scottish Information Commissioner who has the power to order the authority to disclose the information.

How long will I have to wait for the information I have requested?

The authority must reply within 20 working days of receiving your request. If the authority has asked you to provide further information to help them to identify and locate the requested information, the 20 day period starts when they receive that further information. The 20 day period does not include any time between the authority requesting a fee from you and that fee being received by the authority.

Can I say how I want the information to be given to me?

Yes. The authority should provide the information in the form you prefer, if it is reasonably practicable to do so. The Act lists 3 means by which you may ask for information to be provided:

- a copy, in permanent form or some other form acceptable to you;
- a summary or digest;
- an opportunity to inspect a record containing the information.

Where can I find more help and information?

The Scottish Executive FOI Unit is happy to help with any enquiries. They can be contacted at:

The Freedom of Information Unit
Scottish Executive
G-A North
Victoria Quay
Edinburgh
EH6 6QQ

Tel: 0131 244 5210

email: foi@scotland.gsi.gov.uk

In addition, further information about Scottish FOI can be found on the Scottish Executive website (<http://www.scotland.gov.uk/foi/>) and the Scottish Information Commissioner's website (<http://www.itspublicknowledge.info>).

Details about Data Protection and the UK FOI regime can be accessed from the Information Commissioner's website (<http://www.dataprotection.gov.uk>).