

SUMMARY REPORT ON RESPONSES TO THE CONSULTATION ON THE DRAFT CODE OF PRACTICE UNDER SECTION 60 OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

Introduction

1.1 The Freedom of Information (Scotland) Act 2002 ("the Act") was passed by the Scottish Parliament on 24 April 2002 and received Royal Assent on 28 May 2002. It will come fully into force on 1 January 2005 and will introduce a general right of access to information held by public authorities. Subject to certain conditions and exemptions, any person who makes a request in writing (or some other permanent form) to a public authority will be entitled to receive it. The Act will be promoted and enforced by a fully independent Scottish Information Commissioner ("the Commissioner").

1.2 Under section 60 of the Act, and after consultation with the Scottish Information Commissioner, the Scottish Ministers must issue, and from time to time revise, a Code of Practice ("the Section 60 Code") which will provide best practice guidance to authorities on how to carry out their functions under the Act.

Consultation on a draft Code

2.1 With the assistance of the Scottish Freedom of Information Implementation Group (SFOIIG) and others, the Scottish Executive drew up a draft Code which it issued for consultation in July 2003. The draft was issued to a wide range of bodies which had previously expressed interest in FOI and to Scottish public authorities covered by the Act (other than certain categories of local primary health care bodies), as well as being available on the Scottish Executive's FOI web-pages. A list of initial consultees is included at Annex A, although the draft Code was subsequently sent to a number of other individuals and organisations as well.

2.2 As well as seeking general comments on the draft Code the Executive sought answers to 6 particular questions:

1. How well does the draft Code meet your expectations and/or requirements?
2. Does the Code provide sufficiently clear guidance to authorities on their responsibilities under the Act?
3. Is there more that authorities might reasonably do to enable applicants to access the information they seek?
4. How well does the Code deal with any concerns you may have about social inclusion/equality mainstreaming?
5. Are there other areas on which it would be helpful to provide guidance?
6. Is the tone appropriate?

2.3 The consultation period finished formally on 31 October 2003, although some responses were received after this date and have also been included within the following summary. A total of 123 responses to the Consultation were received; five of the respondents specifically requested that their responses be treated in confidence and a further six of the responses did not complete the relevant sections indicating their approval for their responses to be published, despite specific reminders from the Executive. We must therefore assume that those responses should also be treated as being in confidence, although their comments

are included in the summaries that follow in this paper. Responses came from a wide variety of people and organisations including individual members of the public, local authorities, health bodies and environmental organisations. A chart summarising respondents by sector is included below (Figure 1). Annex B provides a full list of non-confidential responses.

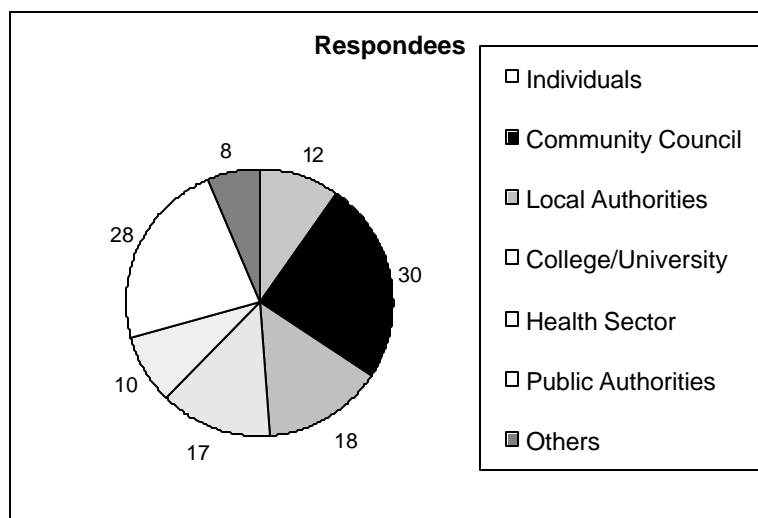


Fig 1: Responses to consultation on draft S60 Code by category of respondent.

Summary of Responses

3.1 In general, respondents welcomed the Code and the guidance it provides. The implementation of Freedom of Information raises many complex issues, especially for the public authorities who will have to abide by the legislation. The responses cover many of these issues. Many of the responses also cover issues which arise from those who will wish to use the rights to be afforded to them by the legislation.

3.2 The FOI Unit is continuing to analyse the points made and to consider the scope for possible amendments to the draft Code in the light of these. However, on the basis of an initial survey, the key issues and the number of responses in which they were specifically raised are set out below (Figure 2).

3.3 The table provides a broad indication of the level of interest in a particular issue; it does not, of course, provide any indication of the range or depth of views, nor of the level or nature of the detailed points made. Equally, several respondents took the opportunity to comment on the text of the legislation itself, or on matters which are outside the scope of the Code itself. Some respondents recognised explicitly that the Code was a high-level document which would be, and would need to be, enforceable by the Commissioner, while others made a plea for more detailed or focused guidance than could be provided by a formal Code of Practice of this nature. For example, there is now separate guidance on publication schemes issued by the Commissioner, and there will be separate regulations and associated guidance on fees in due course.

3.4 However, it is clear that the main areas in which respondents as a whole felt the draft Code itself could be improved are:

1. Definition of vexatious/repeated request
2. Interface between data protection and FOI
3. Practicalities of handling transfers of requests
4. Monitoring
5. Copyright
6. Confidentiality and commercial confidentiality

Fig 2: Main issues raised by respondents to the consultation

Issue	No. of Responses
Confidentiality clauses	8
Copyright issues	10
Cost of implementation	13
DPA/FOI interface	26
Exemptions	4
Fees	13
Gender bias	1
Hindsight (Impossible to judge code now)	7
Language/Tone	6
Monitoring of requests	15
Publication schemes	2
Definition of public interest	2
Response time (20 working days)	2
Telephone requests	3
3 rd Party permission non response	2
Provision of training	8
Transfer of applications	15
Translation	6
Twelve week exemption	6
Definition of vexatious/repeated request	32

Responses to core consultation questions

4.1 In terms of the 6 core questions posed in the consultation, respondents felt broadly as set out in Figure 3. (It should be noted that this is very much an impressionistic summary of responses which does not fully do justice to the points made.)

Fig 3: Core consultation questions and broad summary of responses

Q1. How well does the draft Code meet your expectations and/or requirements?	On the whole, both public authorities and others were satisfied that the draft Code gave the right messages and provided the level of guidance and support that they had expected. Some public authorities sought more or less detail on particular issues, or across the draft as a whole, but most were content that the draft Code had got the balance about right.
Q2. Does the Code provide sufficiently	Most authorities were positive about the

clear guidance to authorities on their responsibilities under the Act?	clarity of the guidance, although particular points were raised around the clarity of the provisions on transfers of requests and on commercial and other forms of confidentiality.
Q3. Is there more that authorities might reasonably do to enable applicants to access the information they seek?	Most respondents were satisfied that the draft Code went about as far as it was reasonable to go, although several noted that there might be a distinction between the aspirations and principles of the Code and what would happen in practice.
Q4. How well does the Code deal with any concerns you may have about social inclusion/equality mainstreaming?	Most respondents who answered this question were positive about the Code's contribution to social inclusion and equality mainstreaming, in particular the references to, and inclusion of an Annex on, the Disability Discrimination Act. Some respondents sought greater clarity around the provision of documents in alternative languages and formats; some noted the potential costs of these; and others were concerned that there should be appropriate recognition of the distinctive needs of some particular groups of actual or potential requesters.
Q5. Are there other areas on which it would be helpful to provide guidance?	There were a number of areas where respondents felt there could be more, or more detailed, guidance than the draft Code currently offered; these are set out in Figure 2 above. Other than on the exemptions (either in general or on specific exemptions) there were very few suggestions for guidance outside the areas already covered by the Code.
Q6. Is the tone appropriate?	Most respondents were content with the tone of the Code. Some thought the tone patronising; some thought it too simplistic; some thought both the language and content were too complicated. On the whole, however, respondents were complimentary about the tone and language of the draft.

Next steps

5.1 The responses to the consultation on the Draft Code of Practice under Section 60 of the Freedom of Information (Scotland) Act 2002 will be further analysed and considered by the Scottish Executive Freedom of Information Unit during the redrafting of the Code of Practice. Proposed revisions to the Code will be put to the Scottish FOI Implementation Group and recommended to Ministers. Ministers will then need to formally consult the Commissioner before the Code can be finalised and laid before Parliament.

5.2 Copies of this paper can be obtained from the Scottish Executive Freedom of Information Unit. The paper is also available on the Scottish Executive website at:

<http://www.scotland.gov.uk/foi>

The Scottish Executive Freedom of Information Unit can be contacted at:

Freedom of Information Unit
Scottish Executive
G-A (North)
Victoria Quay
EDINBURGH
EH6 6QQ

Telephone 0131-244 4615
Fax 0131-244 2582
E-mail foi@scotland.gov.uk

5.3 Copies of the full responses (other than those who requested confidentiality) will be available for viewing on the Executive's FOI web pages, noted above, and at:

Scottish Executive Library
Saughton House
Broomhouse Drive
EDINBURGH
EH11 3XD

Telephone 0131 244-4564

**CONSULTATION ON THE DRAFT CODE OF PRACTICE UNDER SECTION 60
OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

SUMMARY LIST OF CONSULTEES

Scottish Executive Agencies
The Scottish Parliament
The Scottish Parliamentary Corporate Body

NON MINISTERIAL OFFICE HOLDERS IN THE SCOTTISH ADMINISTRATION

The Chief Dental Officer of the Scottish Administration
The Chief Medical Officer of the Scottish Administration
Her Majesty's Chief Inspector of Constabulary
Her Majesty's Chief Inspector of Prisons for Scotland
Her Majesty's Inspector of Anatomy for Scotland
Her Majesty's Inspector of Fire Services for Scotland
Her Majesty's Inspector of Schools
The Keeper of the Records of Scotland
The Keeper of the Registers of Scotland
Procurators fiscal (Crown Office contact to disseminate)
The Queen's and Lord Treasurer's Remembrancer
The Queen's Printer for Scotland
The Registrar General of Birth's, Deaths and Marriages for Scotland
The Registrar of Independent Schools in Scotland
Chief Rent Officer
Chief Inspector of Social Work Services in Scotland

LOCAL GOVERNMENT

Assessors (Valuation Joint Boards)
Councils (Local Authorities)
Joint boards (Joint Fire Boards and Tay Road Bridge Joint Board)
Licensing Boards
The Strathclyde Passenger Transport Authority

THE NATIONAL HEALTH SERVICE

The Clinical Standards Board for Scotland
The Common services Agency for the Scottish Health Service
Health Boards
The Health Education Board for Scotland
The Health Technology Board for Scotland
Local Health Councils
National Health Service Trusts
NHS 24
The Post Qualification Education board for Health Service Pharmacists in Scotland
The Scottish Advisory Committee on Distinction Awards

The Scottish Advisory Committee on the Medical Workforce
The Scottish Ambulance Service Board
The Scottish Council for Post Graduate Medical and Dental Education
The Scottish Dental Practice Board
The Scottish Health Advisory Service
The Scottish Hospital Endowments Research Trust
The State Hospitals Board for Scotland

HIGHER & FURTHER EDUCATION INSTITUTIONS

Colleges of Further Education
Universities of Higher Education

POLICE

Chief Constables of all Police Forces in Scotland
Joint Police Boards
The Police Advisory Board for Scotland

OTHERS (Schedule 1)

The Accounts Commission for Scotland
The Advisory Committee on Sites of Special Scientific Interest
Area Tourist Boards
Audit Scotland
The Auditor General for Scotland
The Board of Trustees for the National Galleries of Scotland
The Board of Trustees for the National Museums of Scotland
The Board of Trustees of the Royal Botanic Garden, Edinburgh
The Central Advisory Committee on Justices of the Peace
The Crofters Commission
The Deer Commission for Scotland
The Fisheries Committee
The General Teaching Council for Scotland
Highlands and Islands Enterprise
The Historic Buildings Council for Scotland
Justice of the Peace Advisory Committees
Learning and Teaching Scotland
The Local Government Boundary Commission for Scotland
The Mental Welfare Commission for Scotland
National Park Authorities
The Parole Board for Scotland
The Royal Commission on the Ancient and Historical Monuments of Scotland
The Scottish Agricultural Wages board
The Scottish Arts Council
The Scottish Charities Nominee
The Scottish Children's Reporter Administration
The Scottish Commission for the Regulation of Care
The Scottish Criminal Cases Review Commission
Scottish Enterprise

The Scottish Environment Protection Agency
The Scottish Further Education Funding Council
The Scottish Higher Education Funding Council
The Scottish Industrial Development Advisory Board
The Scottish Information Commissioner
The Scottish Law Commission
The Scottish Legal Aid Board
Scottish Natural Heritage
The Scottish Prison Complaints Commission
The Scottish Public Services Ombudsman
The Scottish Qualifications Authority
The Scottish Records Advisory Council
The Scottish Sports Council
The Scottish Tourist Board
Scottish Water
The Standards Commission for Scotland
The Trustees of the National Library of Scotland
The Water Industry Commissioner for Scotland

COMMUNITY COUNCILS

EQUALITY GROUPS

Commission for Racial Equality
Disabled Person's Housing Service
Equal Opportunities Commission Office for Scotland
British Deaf Association Scotland
Age Concern, Scotland
Capability Scotland
Deaf Blind Scotland
Disability Rights Commission Office for Scotland
ENABLE
Royal National Institute for Blind
Scottish Association of Mental Health
Royal National Institute for Deaf People
SENSE Scotland
The Scottish Council on Deafness
Scottish Disability Equality Forum
Inclusion Scotland
Scottish Accessible Information Forum
UPDATE
Scottish Council for Single Homeless

POLITICAL

Scottish Labour Party
Scottish National Party
Scottish Conservative Party
Scottish Liberal Democrats
Scottish Socialist Party
Scottish Green Party

Independent
MSP for Falkirk West
Senior Citizen's Unity Party

Elsbeth Attwooll MEP, Lib Dem
Ian Hudghton MEP, SNP
Neil MacCormick MEP, SNP
David Martin MEP, Lab
Bill Miller MEP, Lab
John Purvis MEP, Con
Struan Stevenson MEP, Con
Catherine Stihler MEP, Lab

CLERICAL

Action of Churches Together in Scotland
Catholic Parliamentary Office
Scottish Inter-Faith Council
Evangelical Alliance (Scotland)
The General Assembly of the Church of Scotland
Scottish Churches Parliamentary Office

LEGAL DEPOSIT LIBRARIES

The British Library
The Bodleian Library
The Cambridge University Library
The National Library of Scotland
The Library of Trinity College
The National Library of Wales

OTHERS

The Educational Institute for Scotland
National Association of Women Pharmacists
British Medical Association
The Open University
Friends of the Earth Scotland
Scottish Consumer Council
Consumers Association
The Saltire Society
The Association for the Protection of Rural Scotland
COSLA
Scottish Environment LINK
Campaign for Freedom of Information
Scottish Civic Forum
Scottish Youth Parliament
Young Scot

Youthlink Scotland
Confederation of British Industry
Scottish Federation of Housing Associations
Civil Engineering Contractors Association (Scotland)
Scottish Media Lawyers Society
The Royal Institute of Chartered Surveyors
Mining and Environment Group Ayrshire
Ciba Speciality Chemicals plc
Scottish Landowners Association
Turcan Connell Solicitors
The Royal Town Planning Institute in Scotland
The Law Society of Scotland
Individuals who responded to previous consultations.

TRADE UNIONS

STUC (For onward transmission to affiliated members)

RESPONDENTS TO CONSULTATION ON THE DRAFT CODE OF PRACTICE UNDER SECTION 60 OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

College/University
Aberdeen College
Association of Scottish Colleges
Central College of Commerce
Dumfries & Galloway College
Falkirk College
Fife College of Further & Higher Education
Ladywell Community College
Moray College
Napier University
Reid Kerr College
Royal Scottish Academy of Music & Drama
University of Edinburgh
University of Glasgow
University of Glasgow
University of St Andrews
Community Council
Bridgend Gannochy & Kinnoull Community Council
Claythorn Community Council
Closeburn Community Council
Culross Community Council
Dunblane Community Council
East Mains Community Council
Edrom, Allanton and Whitsome Community Council
Findhorn and Kinloss community Council
Fortrose and Rosemarkie Community Council
Fyvie, Rothie & Monquhitter Community Council
Gallowhill Community Council
Hilton, Milton & Castle Heather Community Council
Inverloch & Torlundy Community Council
Liberton Community Council
Lochgilphead Community Council
Mearns Community Council
New Galloway & Kells Parish Community Council
Newarthill Community Council
Newcastleton & District Community Council
Oban Community Council
Peebles and District Community Council
Salsburgh Community Council
Stockbridge Community Council
Stoneykirk Community Council
Tarbert&Skipness Community Council
Tillicoultry Community Council
Uddingston Community Council
Westhill Community Council
Health Sector

Argyll and Clyde Health Council
Ayrshire & Arran Primary Care NHS Trust
Forth Valley Primary Care NHS Trust
Greater Glasgow NHS Trust
Greater Glasgow Primary care NHS Trust
Highland NHS Board
Highland Primary Care NHS Trust
NHS Education for Scotland
NHS Grampian
The Lothian University Hospitals NHS Trust
Local Authority
Angus Council
Borders Local Health Council
East Ayrshire Council
Falkirk Council
Highland Council
North Ayrshire Council
North Lanarkshire Council
Perth and Kinross Council
Renfrewshire Council
Scottish Borders Council
South Ayrshire Council
South Lanarkshire Council
West Dunbartonshire Council
West Lothian Council
Other
Association of Chief Police Officers in Scotland
Dumfries Friends of the Earth
Royal National Institute of the Blind, Scotland
Scottish Human Rights Centre
Scottish Socialist Party
The Campaign for Freedom of Information in Scotland
UHI Millenium Institute
UNISON Scotland
Public Authority
Advisory Committee on Sites of Special Scientific Interest
Care Commission
Common Services Agency
Fisheries Committee
National Museums of Scotland
Office of the Queen's Printer for Scotland
Office of the Scottish Information Commissioner
Registers of Scotland
Scottish Ambulance service
Scottish Arts Council
Scottish Assessors Association
Scottish Children's Reporter Administration
Scottish Consumer Council
Scottish Criminal Cases review Commission
Scottish Enterprise
Scottish Environment Protection Agency

Scottish Legal Aid Board
Scottish Museums Council
Scottish Natural Heritage
Scottish Parliament, Justice 1 Committee
Scottish Parliamentary Corporate Body
Scottish Qualifications Authority
Scottish Social Services Council
Scottish Water
Standards Commission for Scotland
UK Information Commissioner
Universities Scotland
Individual
Arnott Wilson
Dr C Cohen
C Menlove
D Astbury
D Thomson
GDR Walkinshaw
Graham Morison
H S Murphy
J Scott
J.M Surkamp MBE Hon Sec.