

Freedom of Information Policy

(also covering Environmental Information (Scotland) Regulations 2004)

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Section 1 - Introduction

- 1.1 The [Freedom of Information \(Scotland\) Act 2002](#) ('FOISA') and the [Environmental Information \(Scotland\) Regulations 2004](#) ('EIRs') enable the public to access information held by Scottish public authorities.
- 1.2 These regimes require authorities to either make available the information requested by an applicant or to explain why the information is not being made available.
- 1.3 Throughout this document, reference to 'the regimes' and to FOI is a reference collectively to FOISA and the EIRs.
- 1.4 Public authorities subject to FOISA must have a [Publication Scheme and Guide to Information](#) that sets out the information which they will routinely publish.
- 1.5 The Scottish Information Commissioner ('SIC') is responsible for enforcing and promoting both regimes.
- 1.6 The Commissioner for Ethical Standards in Public Life in Scotland ('ESC') is a listed body under Schedule 1, Part 7 of FOISA and is therefore subject to both the FOISA and the EIRs.
- 1.7 This document outlines the ESC's policy in relation to FOISA and EIRs.
- 1.8 The ESC has separate policies relating to the requirements of the Data Protection Act 2018 (the [Data Protection Policy](#)) and the Public Records (Scotland) Act (the [Records Management Plan](#)).

Section 2 - Commissioner's Statement

- 2.1 The Commissioner supports the aims of FOISA and the EIRs and encourages all staff members to follow both the letter and spirit of the law. They encourage good practice in providing advice and assistance to applicants and promote the importance of proactively publishing information. The Commissioner aims to support and promote improved openness and accountability in the public sector.

Section 3 - Main Terms of the Regimes

- 3.1 Anyone may make a request for recorded information. FOISA applies to all information while the EIRs apply to environmental information only.
- 3.2 Requests for information must be answered **as soon as possible** and within 20 working days. If a request is for environmental information and the information held is both complex and voluminous, the authority may extend this period up to a maximum of 40 working days.
- 3.3 A fee may be payable for receipt of the information requested. Authorities should publish their scheme of charges for all requests for information.

- 3.4** There is a presumption in favour of disclosure under both regimes. However, the right of access is not absolute.
- 3.5** FOISA and the EIRs set out 'exemptions' and 'exceptions' respectively under which information may be withheld. If any information is withheld, the authority must explain why. Authorities are not obliged by either regime to apply exemptions or exceptions, even where they could be applied. This means they can disclose information through choice, unless prevented by other legislative provisions such as the UK GDPR and the Data Protection Act 2018.
- 3.6** Where information is subject to an exemption or exception, in many cases the authority must also decide whether it is more in the public interest to withhold the information than to make it available. There is an in-built presumption in the regimes that it is in the public interest to disclose information unless the authority can show why there is a greater public interest in withholding the information. Where competing public interests are evenly balanced, the information should be disclosed.
- 3.7** If the applicant does not receive a response or is dissatisfied with the response (e.g. because they have not received all of the information asked for or they disagree with the authority's reasons for withholding the information), they may ask the authority to review their decision within 40 working days of receiving the response (or, where no response has been received, within 40 working days of the deadline for the original request).
- 3.8** If the applicant is still dissatisfied after the internal review, or fails to receive a review response, they have six months to appeal to the SIC for a decision on whether the authority has appropriately handled their request. Thereafter the applicant and the authority may have a right of appeal to the Court of Session on a point of law.
- 3.9** The regimes encourage the publication of information. Public authorities subject to FOISA must have a [Publication Scheme and Guide to Information](#). The [Guide to Information](#), specifies the information (including environmental information) that an authority will routinely publish.
- 3.10** Under FOISA, authorities have a duty to provide advice and assistance to any applicant who makes a request for information.

Section 4 – The Role of the SIC

- 4.1** The SIC is responsible for enforcing and promoting Scotland's freedom of information laws. The SIC:
- investigates applications and issues legally enforceable decisions
 - promotes good practice amongst public authorities
 - provides the public with information on their rights.
- 4.2** In addition, the SIC provides a Model Publication Scheme that the ESC has adopted and collects statistics about the operation of the FOISA regime.
- 4.3** The SIC has a number of powers to enforce FOISA and the EIRs.

Section 5 – Our Role and Responsibilities

- 5.1** Ultimate responsibility for compliance with the regimes lies with the Commissioner, delegated to the Head of Corporate Services (HCS) and Information Management and IT Officer (IMITO).
- 5.2** In order that the ESC can meet this responsibility, all staff members must
- be able to identify an information request
 - be able to explain to applicants how to make such a request
 - be aware of the procedures for forwarding requests to those staff members who are trained in how best to respond.
- 5.3** The Information Management and IT Officer (IMITO) acts as the ESC's information officer and is responsible for:
- recording all information requests received
 - monitoring whether responses are issued within the terms of the relevant legislation
 - providing advice to the Commissioner and other staff members about the regimes and on how to respond to requests for information
 - submitting statistical information to the SIC
 - maintaining their knowledge of the regimes
 - maintaining the [Publication Scheme and Guide to Information](#) on an annual basis.
- 5.4** The Corporate Support Officer (CSO) will assist the IMITO with these duties and provide cover for annual leave, etc.
- 5.5** The HCS, IMITO, CSO and wider Corporate Services Team (CST) are also referred to as information officers.
- 5.6** The Senior Management Team (SMT) will review the effectiveness of ESC's FOI procedures annually.
- 5.7** Line managers will identify whether the staff members for whom they are responsible have sufficient knowledge of the regimes and the ESC's procedures. Knowledge in this area will be examined during the staff member's annual appraisal and any specific training requirements identified. Issues arising during the year will be referred to the HCS who will arrange ad hoc training as necessary.
- 5.8** The Commissioner has established a panel to consider complex requests and carry out reviews. The pool of panel members will be appropriately trained and drawn from across the organisation. Requests that are complex, voluminous, vexatious or involve the application of an infrequently used exemption or exception should be referred to the panel. Staff members should refer such requests to the HCS who will decide whether a panel should be convened and assign the panel members. Further details about the operation of the panel is available in ESC's [FOI Panel Guidance](#)

Section 6 – Training Arrangements

- 6.1** The ESC will:

- provide training to ensure that all staff members have sufficient knowledge of the regimes
- ensure that staff members with responsibility for responding to requests for information have undertaken appropriate training to ensure that responses meet statutory requirements
- provide appropriate training for staff members responsible for conducting reviews or sitting on the FOI Panel
- ensure that training is refreshed on a regular basis.

6.2 Arrangements will be flexible, allowing for ad-hoc training when necessary.

Section 7 – Staff Contingency and Cover

7.1 The ESC must respond to requests for information, and requests for review, within statutory timescales. Therefore, it is important that all requests for information are identified promptly.

7.2 Applicants are directed to the info@ethicalstandards.org.uk email address. This email address is advertised on our website and measures must be taken to direct applicants to this address. Postal requests or those sent to this email address will be captured by the CST.

7.3 Staff members should be aware that they may receive requests for information directly to their own individual or other shared mailboxes. These still constitute valid requests and must be answered within 20 working days of the email **arriving** in the inbox. Staff must forward these requests to the CST at info@ethicalstandards.org.uk as soon as possible.

7.4 If a staff member is absent for any reason, they must enable an out of office message that states that any requests for information must be sent to the info@ethicalstandards.org.uk email address as soon as possible. Under the regime, a request is still considered valid when sent to an email address that has an out of office alert enabled.

7.5 If a staff member is absent long term or for unexpected reasons, their line manager should arrange for the IMITO to periodically check their mailbox for requests.

Section 8 – Recoding and Reporting Statistics

8.1 The ESC must submit a statistical return to the SIC each quarter. This will be compiled by the IMITO.

8.2 The return includes details about the number of requests received under FOISA and the EIRs, if they were processed within the statutory timeframe, whether and what exemptions were used, the fee charged, outcome of reviews and the number of appeals to the SIC.

8.3 The HCS will report the statistics at SMT meetings, identifying any trends or issues and flagging up any lessons to be learnt.

Section 9 – Publication Scheme

9.1 The ESC has adopted the SIC’s Model Publication Scheme and has created a guide to the information.

9.2 The [Publication Scheme and Guide to Information](#) are available on the ESC website

9.3 Types of information the ESC publishes

As a minimum, the ESC publishes information about:

- the functions of the office, how it operates (including decision-making processes) and performance
- finances, including funding allocation, procurement and the awarding of contracts.

In addition, the ESC will publish:

- information which is regularly the subject of information requests
- key information relating to the procurement process and contracts.

9.4 Maintenance of the publication scheme

- The [Publication Scheme and Guide to Information](#) will be updated at least annually by the CSO. The HCS will monitor the types of information which are frequently requested and consider adding them to the scheme. Additionally, the HCS will ensure that the commitments made in the scheme are being met.

Section 10 – Making Information Accessible

10.1 Members of the public should be able to find published information easily.

10.2 The ESC will ensure that information is also available to people who cannot access the internet. This may be achieved by offering to print out information from the website on request.

10.3 Staff members should also have regard to our duties under the Equality Act 2010 in ensuring accessibility for all.

Section 11 – Making a Request for Information

11.1 The ESC provides guidance for the public which explains how to make a valid information request, and the procedure that will be followed once a request has been received.

11.2 The guidance includes:

- an address (including a postal address) to which applicants may direct their requests for information or ask for assistance
- where possible, the telephone number of someone who can provide advice and assistance
- procedures, and information about the charging regime
- a link to the SIC’s guidance for applicants.

11.3 This guidance will be referred to in the [Publication Scheme and Guide to Information](#).

11.4 All staff must be aware that a request received by any individual staff member is, in terms of the legislation, received by the ESC.

Section 12 – Identifying an Information Request

12.1 All communications involve some exchange of information. Therefore, all staff members will respond to requests for information on a regular basis. However, it would be disproportionate to treat all requests for information as a formal request under FOISA or the EIRs. Some requests may be considered ‘business as usual’.

12.2 A request may be treated as a ‘business as usual’ request if it is:

- simple and straightforward
- all the information is released on time, **and**
- it is unlikely that the applicant will be dissatisfied with the response.

12.3 In addition, the ESC considers the following to be ‘business as usual’ requests:

- requests for information from the Scottish Parliament or the Scottish Government
- requests for information on how to make a complaint about the conduct of local authority councillors, MSPs, members of public bodies, appointment rounds, or our performance
- requests for information from those involved in investigating a complaint (e.g. the local authority, legal advisors, etc.)
- requests for information from those involved in an appointment round (e.g. the Public Appointments Advisor, etc.)
- requests for our response to a consultation.

12.4 Staff members should be aware that valid requests for information may be contained within other correspondence, e.g. where a request for information is made within a complaint or correspondence on a range of matters.

12.5 All formal requests for information should be referred to the information officers (IMITO, HCS, CSO or wider CST) who will advise on the next steps.

12.6 Any request from an individual for the information the ESC holds about them is a subject access request under the Data Protection Act and is handled differently from an FOI request. Please refer to one of the information officers for further guidance. See also the [Data Protection Policy](#).

12.7 Please refer any requests for environmental information to an information officer. The EIR regime is slightly different and the information officer will ensure that the request is handled in line with the EIRs and any applicable case law.

12.8 If staff members are at all concerned about whether a request should be considered a ‘formal’ FOI request, please contact one of the information officers.

12.9 Examples of ‘business as usual’ requests:

- How many complaints about local authority councillors have you investigated in the past 5 financial years?
- What is your annual budget?

- What is your postal address?
- How do I make a complaint about a councillor?
- How do I make a complaint about your service?
- I've been asked to run an appointment round, what do I do?
- Please let me have a copy of your annual report
- When are your accounts published?
- Are your IT services managed inhouse?
- XX shouldn't have been appointed as Chair; they have a conflict of interest. How do I raise this?
- How many staff do you have?
- Is anyone paid below the 'living wage'?

12.10 Examples of requests for information to be handled under FOISA:

- How many women have sat on boards in each of the past 3 years?
- How many complaints have you received about xx Council in the past 15 years?
- How many disabled people do you employ?
- Please supply all the documents relating to xx complaint
- Please supply all the documents used in preparing xx consultation response
- Please supply all the information used and generated in preparing xx FOI response.

12.11 Examples which could be either

- How many complaints have you investigated in the past 5 years?
- When is the hearing about case xx?
- Please provide details about the length and value of your IT services contract?
- How much do you spend on overseas travel each year?

Please note that requests stating they are being made under FOISA and press enquiries must be assessed on their individual content.

Section 13 – Providing Advice and Assistance

13.1 Under FOISA, the ESC has a duty to provide advice and assistance to anyone making a request for information.

13.2 The ESC will take into account the circumstances of each individual applicant; for example, private individuals may be more likely to need assistance than large organisations or other public authorities. Staff members should also have regard to their duties under the Equality Act 2010 in ensuring accessibility for all.

13.3 There is a duty to give advice at all stages. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded.

13.4 The aim of assisting the applicant is to give them the opportunity to discuss their application and help them describe the information being sought reasonably clearly, so that it can be identified and located. Applicants should not be given the impression that they are obliged to disclose the intent behind their request or that they will be treated differently if they do so.

Section 14 – Valid Information Requests

- 14.1** A request for information has to be valid. That is:
- it is in writing (electronic and legible) or is in a format that can be used for subsequent reference (e.g. an audio recording).
 - states the name of the applicant and an address for correspondence
 - describes the information requested.
- 14.2** If the request is not ‘valid’, the staff member should contact the applicant and advise them how to make the request valid. If the request remains ‘invalid’ and is rejected on that basis, the staff member must still advise the applicant of the right to request a review of this decision and, if the applicant remains dissatisfied, the right to make an application to the SIC for a decision on the handling of their request.
- 14.3 Validity of requests submitted through social media**
Staff members should be aware that valid requests for information may be submitted through any social media sites we operate. Staff members responsible for maintaining these sites on the ESC’s behalf should ensure that any potential requests submitted via those sites are identified.
- 14.4** It is good practice to ensure that any social media account is monitored regularly for information requests. Where available, notification emails should be enabled, with the emails sent to socialmedia@ethicalstandards.org.uk.
- 14.5 Validity of voice mail requests**
Requests for information left on a voicemail will only be valid if the voicemail can be transferred, accessed and retained as a permanent record. The ESC’s telephone system allows voicemail messages to be stored as an audio file and so constitutes a valid request.
- 14.6** A request made by phone call or voicemail for environmental information is valid regardless of whether the call or voicemail can be permanently stored or not. This is because the EIRs allow for requests to be made verbally in an unrecorded state.
- 14.7 Provision of an applicant’s full name and pseudonyms**
Under FOISA, an information request must include the applicant’s full name. Using first or given names alone will not be sufficient. The use of a surname plus a title, e.g. Mrs Jamieson, will generally be sufficient. There should be a presumption that any full name provided is genuine, unless there is a clear and demonstrable reason to believe otherwise.
- 14.8** Where an applicant has not given a sufficient name, or where it is clear that an applicant has used a pseudonym, the request will not be valid. In such cases, ESC would normally continue to process the request. However, the staff member should explain that the SIC would not be able to accept any appeal arising from a request if a pseudonym or insufficient name had been used by the applicant.
- 14.9 Requests on behalf of other people**
Information requests can be made by a third party on behalf of an applicant. The request must contain the name of the person on whose behalf the request is being made, often referred to as the “true applicant”. If the request appears to have been

made on behalf of an unnamed person, the staff member should contact the applicant to explain what needs to be done in order for a valid request to be made.

14.10 Requests for documents or copies of documents

FOISA provides a right of access to information and not a right of access to copies of specific documents. However, the ESC will not refuse a request for a copy of a document (e.g. a report, a minute or a contract) as long as it is reasonably clear from the request that it is the information recorded in the document that the applicant wants.

Section 15 - Impact Assessments

Equality Impact Assessment

Does this policy comply with the general Public Sector Equality Duty (s149 Equality Act 2010)?

This policy applies to all employees and to the wider public. Its impact was considered when drafting. We consulted with all employees prior to publication to identify and address any issues. We have provided a range of alternative methods for members of public to exercise their rights to information.

Data Protection Impact Assessment

Have we considered any effect the policy may have on the collecting, processing, and storing of personal data?

The implementation of this policy will involve the processing of personal data and will generate records containing personal data. Safeguards for managing this information are set out in the supporting FOI procedures, the [Data Protection Policy](#) and the [Records Management Plan](#).

Information Security Impact Assessment

Have we considered the impact any policy may have on our cyber-resilience?

This policy should have no impact on our cyber-resilience.

Records Management Impact

Have we considered the impact any policy may have on our ability to manage our records?

The implementation of this policy will generate records containing a range of information including personal data and this information will be released to the public. Safeguards for managing this information are set out in the supporting FOI procedures, the [Data Protection Policy](#) and the [Records Management Plan](#).

Section 16 - Policy Versions

Version	Description	Author	Date
4.0	Reformatting of original FOI policy.	IMITO	23/07/2024