

Factsheet

What is the Freedom of Information (Scotland) Act all about? What new rights does it provide for people seeking information?

A Brief Introduction to the Act

The Freedom of Information Act (Scotland) 2002 enables any person to obtain information from Scottish public authorities. This is a legal right and will ensure that all people get information to which they are entitled.

This legal right of access includes all types of 'recorded' information of any date held by Scottish public authorities. From 1st January 2005 any person who makes a request for information must be provided with it, subject to certain conditions (outlined below).

The Act is promoted and enforced by Kevin Dunion, the first Scottish Information Commissioner. He is Scotland's first independent enforcer of freedom of information with legal powers to ensure the public's right of freedom of information is upheld.

The Act came into force on 1st January 2005.

The Act generally:

Entitles any person that requests information held by a Scottish public authority to receive it (subject to certain conditions).

The Act applies to:

All Scottish public authorities including the Scottish Executive and its agencies; The Scottish Parliament; Local Authorities; NHS Scotland; Universities and further education colleges; and the Police.

General principles of the Act:

There is a general right to apply to a Scottish public authority for information. The Act places an obligation on all Scottish public authorities to adopt and maintain a 'publication scheme'. This scheme sets out: the categories of information the authority publishes, the manner in which it is published, and details of any charges for receiving the information.

The public authorities have to allow access to the following information: the provision, cost and standard of its service; factual information or decision-making; and the reasons for decisions made by it.

Exemptions under the Act:

There are exemptions - information relating to national security and defence, police investigations, and the formulation or development of government policy. If a public authority decides not to release information, as it considers it exempt, it must give reasons for its decision. This 'refusal notice' will allow the applicant to request a review to the decision, and then to seek a determination from the Scottish Information Commissioner.

Other information may be exempt as it is already 'published' and therefore easily accessible.

The public interest:

Even if an exemption applies, the public authority still has to consider whether to release the information in view of the public interest. All the circumstances surrounding the release of the information are considered including the grounds for exemption - and the balance will always be in favour of disclosure. Information will only be withheld if the public interest in withholding it is greater than the public interest in releasing it.

There are some absolute exemptions where this rule does not apply. Categories include: information otherwise accessible; statutory prohibitions on disclosure; breaches of confidence; court records; and information for which other rights are provided.

The Scottish Information Commissioner:

The Scottish Information Commissioner is responsible for ensuring that people get the information from the public authorities to which they are entitled. The Commissioner will actively promote and enforce the compliance of the Freedom of Information Act. He will deal with specific applications for decisions by any person who feels information has been unjustifiably withheld. More generally he will encourage a culture of openness by public authorities. This will be done through the promotion of good practice - which involves making sure all material requested is provided clearly, concisely and in plain English. It also ensures that the authorities react to requests within a reasonable time frame.

Enforcement of the Act:

Anyone who has made a request for information may apply to The Scottish Information Commissioner for a decision as to whether the public authority has properly dealt with the request.

If it is decided an appeal is valid, the Commissioner will try to achieve a settlement between the public and authority. If this is not possible then the Commissioner will issue a decision notice.

The Commissioner has powers to require an authority to provide information necessary for him to come to a decision. So, if an authority is not co-operating with an investigation, he can issue 'information notice', obliging the authority to supply to him the information in question. He can also issue good practice notices recommending changes in the way in which authorities conform to the Act.

Freedom of Information and Data Protection:

Individuals already have the right to access information about themselves under the Data Protection Act 1998. This is a completely separate matter which is the responsibility of the UK Information Commissioner. Requests by individuals for personal information about themselves do not come under the Freedom of Information (Scotland) Act.