

Freedom of Information & the Voluntary Sector

What is the 'Freedom of Information Act'?

The Freedom of Information (Scotland) Act 2002 came into force in January 2005, giving everyone the right to request information held by public authorities. In general terms, information about yourself, is governed by the provisions of the Data Protection Act 1998. Information about a third party, is covered by the Freedom of Information .Scotland Act 2002. The Scottish Information Commissioner, based in Fife, decides what information can be accessed, what is exempt and is subsequently tasked with upholding the rights of the individual.

What kind of information can you request?

Public authorities must produce publication schemes listing the information they have. Some of this will already be publicly available. Examples of the kinds of information which the legislation allows you to see include education records, health and medical records, housing records, social work records, credit reference scores,

Not only can you request information, you can also insist that wrong information is corrected and if you can prove that you have been physically or financially damaged by inaccurate information being held on you, you may be able to be compensated.

What kind of information do I not have a right to see?

There are a number of exemptions to the list of what can be seen. Personal data may only be requested by the person concerned. Information that may prejudice commercial interests or considered as being important to the economy or national security may be exempt. Information about the developing of government policy and information which would 'prejudice or be likely to prejudice substantially the effective conduct of public affairs' is exempt. The Scottish government has the power to interpret the broadness with which the legislation is interpreted and Ministers can add organisations to the list of exemptions in respect of specific material.

Are voluntary organisations and charities liable to provide information under the Act?

In theory, the legislation can be seen to apply to any voluntary or charitable organisation that delivers a public service on behalf of a public authority. It is unlikely at the present time, that many voluntary sector, or small charitable organisations will be designated public authorities, but there may be circumstances in which they 'provide a function of a public nature on behalf of a public authority'. Any organisations in this position eg. housing associations and care providers would be wise to seek advice and start to plan how to comply with the provisions of the Act by drawing up a publication scheme of their own. The wider voluntary sector will have to wait to see if, as individual organisations, they may be designated in the future. This will depend on legal cases or decision by government Ministers or the Scottish Information Commissioner. Before organisations can be added to the list, they must first be consulted and the Ministerial decision to add them to the list would also have to be ratified by the Scottish Parliament.

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MasterBank Factsheet : Freedom of Information Act & the Voluntary Sector

What are the procedures for making an information request?

Anyone can apply in writing (either by standard post or through an e-mail request) to the public authority holding the information you seek.

There are no age limits, although the individual data controller must be satisfied that a requesting person can understand what it means to exercise their rights. In the case of Scotlans, this is taken to mean anyone from the age of 12 years onwards.

Your letter of request should contain all relevant details including:

- your relationship with the organisation i.e. 'patient' or 'former employee'
- relevant dates and reference numbers
- details of the information you are requesting.

Where possible, requests should be sent via recorded delivery and it is important that you keep copies of any correspondence. While requests for information are generally free, public authorities do have the right to levy a charge of up to £10 to handle your request if you are seeking a considerable amount of information.

The 'data controller' should write back to you within 20 working days.

What happens if I do not get the information I request?

You should first appeal to the public authority to review their decision not to give you the information you have requested. Although there are a number of specific grounds under which authorities can refuse to provide information, the law presumes that wherever possible, information will be provided to those who request it.

If this is not successful, you can contact the Scottish Information Commissioner and enclose copies of the correspondence.

The SIC will review your case, and may direct the public authority to release the information or it may commence an appeal on your behalf.

The website of the Scottish Information Commissioner is www.itspublicknowledge.info

The full legislation is located at:

www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20020013.htm

The Freedom of Information Unit at the Scottish Executive can be accessed at

www.scotland.gov.uk/Topics/Government/FOI

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