

# FREEDOM OF INFORMATION (SCOTLAND) ACT 2002



**This Act came into full force on 1<sup>st</sup> January 2005**

**It contains important provisions about which all staff should be aware.  
Please read this short guide to the Act to discover what it means to you in  
your daily work.**

## **INTRODUCTION**

The act aims to increase openness and accountability in government and across the public sector by ensuring that people have the right to access information held by Scottish Public authorities. People will be able to see and question how such bodies function and how decisions are made.

## **WHO DOES IT APPLY TO?**

The Act applies to practically all public bodies in Scotland, including local authorities, the NHS, colleges and universities, the police, the Scottish Parliament and the Scottish Executive. The Act also applies to companies wholly owned by a public authority. If designated by the Scottish ministers, it may even apply to private companies carrying out a function for a public authority, for example under a contract.

***The Act applies to all of NHS Greater Glasgow and Clyde.***

## **WHAT DOES FREEDOM OF INFORMATION MEAN FOR US?**

We have developed a publication scheme so that the public can see what sort of information we hold. Where information is not proactively made available, through such a scheme, we will have to respond to specific requests for information. The Act allows anyone (individual or organisation), anywhere to ask for information from a Scottish public authority. It does not matter how old the information is or why it was created. If we hold the information then we have to give access to it, provided that an exemption does not apply.

## **MAKING INFORMATION AVAILABLE**

Each public authority must have a publication scheme in place before the Act comes into force in 2005. The purpose of a scheme is to provide information proactively in an easily

accessible form, so that people can access it without having to make an individual request. A scheme will set out what classes of information the authority publishes or intends to publish, how the information is made available and whether there is a fee for the information. Within NHS Greater Glasgow and Clyde we have adopted a model scheme which has been prepared for the NHS and approved by the Scottish Information Commissioner.

### **Example**

*An individual who wants to find out information on health services in our area could start by looking at the publication schemes of the Scottish Executive and NHS Greater Glasgow and Clyde to see what information may be available. The publication schemes will tell him where to get information and whether there is a cost involved.*

*If the publication schemes do not provide all the information an individual is looking for, the individual can make a written request to the Scottish Executive and/or NHS Greater Glasgow and Clyde for any further information that they have.*

## **RECORDS MANAGEMENT**

Good records management practices should assist authorities to meet their duties under the Act. If records are easy to locate then requests can be dealt with quickly. A Code of Practice covers records management. The Code provides guidance on records management policies, records management training and the keeping, management and destruction of records, both paper based and electronic.

Local arrangements apply for records management systems at present across parts of the health service in Greater Glasgow and Clyde. It is expected that further advice on future systems will be issued in due course. Advice will also be issued to staff on the retention and destruction of records.

## **HOW IS A REQUEST MADE?**

Anyone, anywhere can make a request for information and will be entitled to receive it, provided no exemptions apply. The request can be made by an individual or an organisation and does not have to be made by someone in Scotland.

Authorities are only obliged to provide recorded information, such as computer files, documents, handwritten notes and videos. It does not matter how old the information is.

Requests must be in writing or in another permanent form.

Requests must state the name and address of the applicant and describe what information is required.

Authorities may charge a fee in accordance with fees regulations which are to be prepared by the Scottish Executive.

**There is no need to cite the Act or explain why information is being asked for.**

## HOW SHOULD AN AUTHORITY HANDLE A REQUEST?

Authorities will be obliged to help anyone who proposed to make a request for information, as set out in a Code of Practice. All requests should be dealt with promptly and in any case within 20 working days. An authority can ask for more details in order to identify the information requested. An authority is not obliged to comply with a request if:

- an exemption applies,
- the cost of doing so would exceed the amount set by the Fees Regulations,
- or the information is not held by the authority.

In any of these instances, it must notify the applicant. If an applicant is dissatisfied with the way their request is dealt with, they can ask the authority for a formal review. If following that review, the applicant remains dissatisfied the applicant may appeal to the Scottish Information Commissioner.

### **Example**

*The individual who wants to make an access request will need to write to each authority. Contact could be by e-mail or other permanent form. The applicant needs to provide his/her name and address and a description of the information being requested; in this case information on health services in our area. If the applicant is unsure how to make the request, authorities must provide him/her with advice and assistance, for example by explaining the rules.*

*When the authority receives the request it should determine whether a fee is payable and if so issue the applicant with a fees notice. It should establish whether any exemptions apply. It must ensure it responds within the timescale allowed.*

## HOW DOES FREEDOM OF INFORMATION FIT WITH OTHER INITIATIVES?

Prior to the Act coming into force, there are other rights to access information. Some of these rights are superseded by the Act, others continue to exist.

Non-statutory codes which now provide access to information, such as the NHS Code of Practice on Openness, ceased to apply from 1<sup>st</sup> January 2005.

The Environmental Information (Scotland) Regulations 2004 SSI No. 520 apply to access to environmental information.

Almost every public authority will hold some environmental information and so should be aware of the rules for handling requests for such information. A request for environmental information does not have to be in writing and can be made orally. The authority has to respond to the request within 2 months and a reasonable charge can be made for the information. Exemptions exist in relation to some information.

Where the law forbids the disclosure of information this will not be affected by the Act. An example might include provision of information in a health record to a person who is not the subject of that record.

## CAN INFORMATION ALWAYS BE ACCESSED?

No, there are exemptions in the Scottish Act but most of these are not designed to be applied on a blanket basis.

There are two types of exemptions: absolute and non-absolute. If an absolute exemption applies, the authority will not have to release the information. Some absolute exemptions apply to areas that you would expect, such as national security or confidential material. Other absolute exemptions apply to information which is available via another route, for example if information is contained in an authority's publication scheme. If a non-absolute exemption applies then the authority will have to apply a public interest test to establish whether the information should be released. There are 17 categories of exempt information covering areas such as government interests and relations public sector administration, national security and defence, law enforcement and commercial interests.

Authorities should favour disclosure wherever possible and this is where the balance should lie. If an exemption applies the applicant should be given a written refusal notice which explains why the request is being refused. The notice should also inform the applicant of their right to apply for a review of the decision.

### **Example**

*In the above example the authority may have information from third parties such as the cost of providing services by a commercial undertaking. If this information became public knowledge it may affect the third parties' businesses. There is an exemption in the Act for trade secrets. There are also exemptions where information is obtained in confidence from another person and where disclosure of information would substantially prejudice the commercial interests of any person. **The authority will need to carefully consider these exemptions before claiming them, as its starting point should always be to favour openness.** It should take into account the Code of Practice on handling requests and any guidance from the Scottish Information Commissioner.*

## HOW DOES FREEDOM OF INFORMATION FIT WITH DATA PROTECTION?

The Data Protection Act 1998 aims to secure individuals' rights to privacy by protecting information that is held about them. Any authority that handles personal data must comply with the data protection principles which control how such data is processed. These principles include, amongst others, that personal data should be fairly and lawfully processed. Individuals have the right to ask for a description of the personal data held about them. This is known as a subject access request, and to receive a copy of the information.

A request by an individual for information about themselves is exempt under Freedom of Information and will continue to be handled under data protection. However, certain amendments have been made to the Data Protection Act. Prior to the Freedom of Information (Scotland) Act the Data Protection Act only covered computerised information and some manual files. This has now been changed so that when an individual makes a subject access request he will be given all recorded information held by an authority, including information in unstructured files. If individuals want access to unstructured data they must describe the information so that the authority can find it.

If someone makes a request for information about another living individual, this will be handled under the Freedom of Information (Scotland) Act, but certain data protection considerations will still apply, for example the authority will not have to provide the information if the disclosure would breach the data protection principles. If the authority decides that it may wish to disclose the information, then it should usually notify the individual and take account of their wishes, although the authority does not have to be bound by the views of the individual.

## **WHAT HAPPENS IF A PUBLIC AUTHORITY DOES NOT PROVIDE INFORMATION?**

The Act will be enforced by the Scottish Information Commissioner. The first Commissioner is Kevin Dunion. The Commissioner has a wide variety of powers under the Act to ensure compliance and an authority could be found in contempt of court if it fails to comply with a notice issued by the Commissioner.

The Commissioner is a fully independent public official. His duties and legal powers should ensure that people get the information from Scottish public authorities to which they are entitled. He has a number of responsibilities which include: dealing with complaints, promoting good practice to authorities, informing the public about the Act and enforcing the Act.

Complaints concerning requests can only be made to the Scottish Information Commissioner once an applicant has exhausted the authority's review procedure. If an applicant is dissatisfied with the response from the authority, they can take their complaint to the Scottish Information Commissioner. If the Commissioner decides to proceed he will invite comments from the authority and then decide if the complaint is valid. The Commissioner will notify both the applicant and the authority of his decision.

On occasions, the Commissioner will require more information before he can make a decision concerning a complaint and so he will issue the authority with an information notice. The Commissioner also has the right to apply for a warrant to enter an authority's premises and seize documents, but such incidents are likely to be very unusual.

## **ENFORCEMENT AND PROSECUTION**

On occasions, the Commissioner may become aware that an authority is not complying with its duties under the Act. In this situation he can issue an enforcement notice, informing the authority which part of the Act it is failing to comply with and what it needs to do to put things right.

The Scottish Information Commissioner is primarily responsible for overseeing the Act. There are a small number of occasions when the courts may become involved. It is a criminal offence for anyone to destroy or erase information after a request has been received. This offence can be committed by the authority or its employees. Such cases will be dealt within the Sheriff court and the offence carries a fine of up to £5,000.

In most cases the Commissioner will make the final decision regarding what information should be released, with one exception. The First Minister can overrule the Commissioner when it relates to certain decisions taken by the Scottish Administration.

## WHAT DOES IT COST?

Authorities may charge for handling a request in accordance with fees regulations. Requests that cost an authority up to £100 to deal with will not be charged for. There is a maximum limit on the cost to an authority, beyond which they will not be obliged to provide information.

## FURTHER INFORMATION

[www.scotland.gov.uk/government/foi](http://www.scotland.gov.uk/government/foi) - Scottish Executive

[www.itspublicknowledge.info](http://www.itspublicknowledge.info) – Scottish Information Commissioner

[http://library.nhs.uk/mediaAssets/library/publication\\_scheme.pdf](http://library.nhs.uk/mediaAssets/library/publication_scheme.pdf) - To view our Publication Scheme

***Within NHS Greater Glasgow and Clyde there will be a number of individuals who have a good working knowledge of the Act and our systems for applying it. You should contact the following for further information or advice on your local contact:***

### BOARD HEADQUARTERS

Email: [foi@ggc.scot.nhs.uk](mailto:foi@ggc.scot.nhs.uk)  
Tel: 0141 201 4461

### MEDIA REQUESTS

Email: [foi.comms@ggc.scot.nhs.uk](mailto:foi.comms@ggc.scot.nhs.uk)  
Tel: 0141 201 4751

### ACUTE SERVICES DIVISION

Email: [foi.acute@nhs.uk](mailto:foi.acute@nhs.uk)  
Tel: 0141 201 1257

### MENTAL HEALTH PARTNERSHIPS / COMMUNITY HEALTH PARTNERSHIPS

Email: [foi.mhp@ggc.scot.nhs.uk](mailto:foi.mhp@ggc.scot.nhs.uk)  
Tel: 0141 201 4543

## **KEY POINTS**

The key point for staff to be aware of is that any request for information may be an FOI request. It is important to recognise one because:

- a) a clock starts ticking – we have 20 working days to respond to requests;
- b) we may need to start considering if we need to be providing advice and assistance;
- c) the material that is being asked for might be in a publication scheme and can be readily accessed; and
- d) we may need even at that stage to consider getting help from colleagues who know more about information management issues in the organisation.