

Your Right to Know

A guide to freedom
of information
law in Scotland



Scottish Information
Commissioner

Freedom of Information: FOI at a glance



See page 05

FOI gives you a right to receive information from public authorities



See page 09

FOI applies to public authorities, including local councils, the Scottish Government, colleges, universities, the NHS and the Police



See page 07

FOI gives a right to recorded information: that is information stored and held in some way



See page 13

Requests must be made in a recorded format e.g. in a letter, email or audio file



See page 15

If you need help to make your request, public authorities must help you



See page 16

Public authorities must respond promptly, and within 20 working days



See page 16

Most requests result in the information being provided



See page 18

Most information is provided free of charge, although authorities can charge in certain circumstances



See page 21

Information can only be withheld in specific circumstances



See page 11

FOI also requires authorities to publish certain information, to save you having to ask for it



See page 25

If you're unhappy for any reason you can, after asking the authority to reconsider its response, appeal to the Scottish Information Commissioner



See page 27

If the Commissioner thinks an authority has acted wrongly in withholding information from you, she can tell the authority to provide it



See page 31

If the information is environmental, your request will be responded to under separate regulations that cover environmental information



See page 37

Contact the Scottish Information Commissioner for information, advice and guidance

Terms used:

FOI

Freedom of Information

The FOI Act



The Freedom of Information (Scotland) Act 2002



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Contents

	Introduction	05
	What information do I have the right to see?	07
	Which organisations can I ask for information?	09
	The “publication scheme” duty: what is it and how can it help me?	11
	How do I ask for information?	13
	What if I need help to make a request for information?	15
	What happens after I've made a request?.	16
	What could it cost me to get the information?.	18
	Is there information I may not be able to see?	21
	What if I am unhappy with the reply?	23
	What if I am unhappy with the review of my request?	25
	What happens if I appeal to the Commissioner?.	27
	What about my right to see environmental information?	31
	Where can I get further information and help?.	37



Introduction

What are my rights and why would I use them?

You have legal rights to get information from Scottish public authorities. The Freedom of Information (Scotland) Act 2002 (the FOI Act) and the Environmental Information (Scotland) Regulations 2004 give you the right to ask for and be given information from a wide range of public organisations in Scotland. These organisations are called “Scottish public authorities”. See *Which organisations can I ask for information?* (page 09)

You can use your rights to ask for all sorts of information, for example:

- Why decisions affecting local services have been made, such as a decision to cut back some services at your local hospital, or to combine local primary schools.
- How public authorities decide which roads to repair, or who should receive funding.

Or you may want to find out about:

- The contract under which a private company is providing a service for a Scottish public authority, such as a care home service. This could include their charges for providing the service, or details of any agreed standards that the service must meet.
- Studies carried out or considered before decisions are taken, for instance on the safety of vaccines or medicines.

Further examples are given in the section *What information do I have the right to see?* (page 07)

What if I want to see information about me?

The Data Protection Act 1998 gives you the right to see information about yourself. You can find guidance on how to use this right on the UK Information Commissioner’s website www.ico.org.uk

Is there information I may not be able to see?

Access to some information is limited. This is explained later in this guide. If the public authority refuses to give you the information you asked for, you can ask the authority to review its decision. If you are still unhappy, you can appeal to the Scottish Information Commissioner. If the Commissioner decides the public authority should have given you the information, she will enforce your rights under the FOI Act. See *What if I am unhappy with the reply?* (page 23)

Do I always have to make a special request to see information held by public authorities?

No. Freedom of information requires Scottish public authorities to publish a lot of information under what is known as the “publication scheme” duty. If you can, search the public authority’s website before making a request, or even call and ask them about what is available as you may find that you get the information you’re looking for more quickly! The public authority should publish a “Guide to Information” which works like an index to the information they make available. See The *“publication scheme” duty: what is it and how can it help me?* (page 11)



Any questions?
Get in touch, we are happy to help. See page 37 for contact details



What information do I have the right to see?

You can ask to see any kind of recorded information from a Scottish public authority, however old the information is. That includes information recorded on:

- paper
- computer files, including e-mails
- video
- microfiche

To find out which organisations are Scottish public authorities, see *Which organisations can I ask for information?* (page 09)

Examples of the information you can ask for include:

- The number of complaints about a particular issue, for example bullying at school or bin collections, and whether action was taken as a result.
- Information showing whether public authority policies are working well. For example, is a community policing initiative reducing crime in the local area?
- Information that would reveal whether a contract is providing value for money. For example, what standards have been agreed with agencies contracted to supply hospital cleaning or catering services?

Further examples of the information you can ask for can be found on page 05 *What are my rights and why would I use them?*

Environmental information

The FOI Act doesn't apply to environmental information, but the Environmental Information (Scotland) Regulations 2004 give you very similar rights.

You can find out more in the section *What about my right to see environmental information?* (page 31) but here are some examples of what could be included:

- Genetically-modified crop trials
- The cleanliness of beaches
- The location of mobile phone masts
- Plans for a new building or wind farm
- Food hygiene inspections
- Chemicals, including cleaning products, used in public buildings
- Management of fish farms

The environmental information regulations apply to a slightly wider range of organisations than the FOI Act, and there are some practical differences in how you can get hold of information under the Act and under the regulations. These differences are explained in the section *What about my right to see environmental information?* (page 31)



Which organisations can I ask for information?

You have the right to ask for information from:

- The Scottish Government and its agencies, including Transport Scotland and the Scottish Prison Service
- The Scottish Parliament
- Local government, including councils, assessors, licensing boards and Strathclyde Partnership for Transport
- The National Health Service, including NHS boards, hospitals, GPs, dentists, pharmacists and opticians
- Universities and colleges
- Police Scotland and the Scottish Fire and Rescue Service
- Other public authorities, including more than 50 types of Scottish public authorities not covered in the categories above. They range from Scottish Enterprise to Scottish Water
- Companies that are wholly owned by one or more public authorities, such as Caledonian MacBrayne and Prestwick Airport. Other companies might include those set up by local authorities and universities
- Organisations set up by councils to develop or deliver recreation, sporting, cultural and social services (for example Edinburgh Leisure, Eden Court Theatre)

The list of Scottish public authorities changes from time to time as new authorities are added or current ones change their names. A list is published on the Scottish Information Commissioner's website at www.itspublicknowledge.info/YourRights/Whocanlask.aspx or you can contact the Scottish Information Commissioner. See *Where can I get further information and help?* (page 37)

What about other organisations providing public services?

Other organisations can be added to the list of Scottish public authorities by the Scottish Government with the Scottish Parliament's approval.

New organisations can be added if they carry out public services that are normally the responsibility of a Scottish public authority. Private companies may also be added if they are involved in significant projects of a public nature, for example through a private finance initiative or a public-private partnership contract. Only the company's involvement in public work would be covered, and not other areas of its business.

What about organisations outside Scotland?

Scottish FOI law does not give you a right to information held by organisations outside Scotland but you have separate rights to it. You have a general right to information held by United Kingdom public authorities under UK FOI laws. These public authorities include government departments and agencies responsible for matters dealt with by the UK Parliament, such as:

- UK foreign policy
- UK defence and national security
- immigration and nationality
- energy: electricity, coal, gas and nuclear energy
- trade and industry, including consumer protection
- social security, including work and pensions
- the economic and monetary system, including the Inland Revenue.

This guide does not cover your rights to information held by UK public authorities. In most cases, the rights to the information are similar to those provided by the FOI Act. For advice on getting information from UK public authorities, contact the United Kingdom Information Commissioner.

See [*Where can I get further information and help?*](#) (page 37)

Don't be put off asking for information just because you're not sure whether you're dealing with a Scottish or a UK public authority. You still have a right to ask for the information and the authority must give you any help you need, whether it is a Scottish or a UK public authority; all you have to do is ask.



The “publication scheme” duty: what is it and how can it help me?

As well as responding to requests, public authorities must publish information. This means that they must make information available publicly, so people don't have to ask for it. This is often referred to as the “publication scheme” duty. Under this duty, all Scottish public authorities must produce a **Guide to Information** that shows:

- the information they already make available or intend to make available
- where you can find the information
- whether it is available free of charge or for a fee.

A list of Scottish public authorities and their website addresses is available on the Scottish Information Commissioner's website at:

www.itspublicknowledge.info/YourRights/Whocanask.aspx

The Guide to Information should tell you how to access a range of information, including:

- management or board meeting minutes
- the authority's annual budget
- details of the services provided by the public authority
- the authority's policies and procedures.

Other information will also be included: for example, a council will publish information about its education, housing, planning and social services. You should be able to find out what services are available, whether you will be charged for them and how well they are delivered.

The Guide to Information will be on the authority's website and should provide links to the information that you can view and download. If you do not use the internet, you can ask for a copy of the Guide. A Guide to Information will also include contact details of staff who can help you access information from the authority. If you are not sure whether information is published, you can ask these staff for help.

What if the information I need isn't in the Guide to Information?

If the information you're looking for isn't in the authority's Guide to Information, you can still ask for it by following the steps described in the next section.



How do I ask for information?

Requesting information from a Scottish public authority is simple; all you have to do is ask. You don't even have to live in Scotland.

You don't have to mention FOI (although you can), nor do you have to give any reasons for asking or say why you want the information.

All you have to do is:

- Make your request in a form that can be kept for future use such as writing, e-mail, fax, audio or video tape.
- Give your full name, and address (email or postal) so that the authority can reply.
- Ask for the information you want. Describe the information as clearly and as briefly as you can. If you do it is more likely the authority will respond quickly and accurately.
- Send your request to a Scottish public authority. It is a good idea to check whether the authority has a special FOI address or contact person. Use these details if you have them. You can see a list of addresses at: www.itspublicknowledge.info/YourRights/Whocanask.aspx
- If you don't have this address you can send your request to anyone in the authority, from a receptionist to a senior official.

Tips for asking for information

- You can ask for any recorded information the authority holds at the time of your request. Think about the types of information that the authority might hold that are of interest to you, for example, internal correspondence, staff procedures, reports, minutes of meetings, or information in a database.
- Try to make your request as clear as possible so that it cannot be misunderstood.
- Focus on the information you really want to see. If your request is too wide-ranging it might be refused because of the cost of responding. To keep your request narrow, try asking for information between two dates, or limiting your request to a particular subject or decision.
- It may be helpful to add your phone number or other contact information if you are happy for the authority to contact you this way. It can help speed up

your response, allowing the authority to get in touch with you quickly to check a point. If you do not provide enough detail to allow the authority to identify the information, or if your request is unclear, the authority may ask you for clarification.

- Keep a copy of your request and any correspondence until you get the information you want to see. You'll need these if you want to appeal to the Commissioner.

There's more useful guidance on making requests available at:
www.itspublicknowledge.info/tipsforrequesters

What if I am not sure exactly what information I want to see?

You can ask the public authority to help you describe the information you are looking for more clearly and in more detail. They have a duty to help you and should not refuse. It may help if you can ask them more about what you are interested in seeing.

Staff may explain what kinds of information the authority holds, and in what format. If they don't have the information you want, staff may be able to tell you which other organisation could provide it.

You may also find it helpful to look at the public authority's Guide to Information, which will show the range of information it already makes available. For more information see the section The "*publication scheme*" duty: *what is it and how can it help me?* (page 11)

Information from a publicly owned company or local authority trust

Some public authorities set up companies to manage services on their behalf, such as local development projects or commercial activities. If a company wholly owned by one or more public authorities has the information you want, then you should ask the company rather than the authority for the information.

If you want information about a service provided by a private company through a contract with a public authority, then you should ask the public authority. The contracting company will not normally be covered by FOI law. See *Which organisations can I ask for information?* (page 09)



What if I need help to make a request for information?

The authority has a duty to help you make your request, for example with the wording. If you find it difficult to put your request in writing or have a disability, staff may offer to take a note of your request over the telephone and then send the note for you to confirm, with a stamped addressed return envelope. Remember that if you have trouble writing, you can also send an audio recording of your request. Staff may also offer to help you by recording your request over the phone or over the counter.

What if I need information in a particular format?

As far as reasonable, the authority must provide the information in the format you prefer. If you would like the information to be provided in a particular way, say so in your request. You might, for example, request a photocopy, an electronic file or a summary of the information. You can also ask to see the information at the authority's office and then ask for copies.

In deciding what is reasonable, the authority must not discriminate against you if you have a disability. (For more information about this, you should contact the Equality and Human Rights Commission. See *Where can I get further information and help?* (page 37))

If you need the information in a language other than English, the authority does not generally have to provide it in that language. But depending on the authority and where you live, the authority may decide to translate the information for you.

Do young people have the right to ask for information?

Yes, if you are aged 12 or over you automatically have the same rights to information. If you are under 12 you can still ask for the information, but you may be asked to show that you understand what you are doing.

If I make my request by email do I have to give my postal address?

No. An email address is enough so that the authority can reply, although it often helps with the delivery of information if you also give a postal address.

Can I make an anonymous request?

No. You must give your real name in your request so that the authority can reply. If you don't use your real name, the authority doesn't have to reply, and the Commissioner won't be able to investigate your case.



What happens after I've made a request?

The authority must give you the information you asked for or tell you why it will not provide it. It should do this promptly and in most cases within 20 working days. If you send your request by post you should allow time for posting. Use the “response calculator” on the Scottish Information Commissioner’s website to check when you can expect a response: www.itspublicknowledge.info/calculator/calculator.php

What kind of reply can I expect?

Within 20 working days, normally you will have received one of the following:

- All the information you asked for, in most cases free of charge.
- Some, but not all, of the information. See *Is there information I may not be able to see?* (page 21)
- A fees notice, if there is a charge for the information. See *What could it cost me to get the information?* (page 18)
- A refusal. See *Why might my request be refused?* (below)
- No response, which you should treat as a refusal. See *What if I am unhappy with the reply to my request for information?* (page 23)

Why might my request be refused?

Information should usually be made available on request, but there are some circumstances when your request may be refused.

The public authority is allowed to refuse your request in the following circumstances:

- The information can be withheld under the FOI Act. See *Is there information I may not be able to see?* (page 21)
- The authority does not have the information. If the authority does not have the information you ask for, it should tell you promptly by sending you a notice saying it does not hold it. If it is aware that another authority has it, it should consider the best way to help you, perhaps by giving you contact details of the other authority.



- You have not provided enough detail for the authority to identify and find the information. In these circumstances, the authority may ask you for more information. If it does, the maximum 20 working day response time will start only when the authority receives that extra information from you. The authority should help you to describe more clearly what information you want.
- It will cost the authority more than £600 to provide the information. See *What could it cost me to get the information?* (page 18). In these circumstances, the authority should tell you whether it can provide any of the information within the cost limit of £600 or advise you about how you could change your request to bring it within the £600 limit.
- The authority believes your request is “vexatious”. This term could be used to describe requests where the impact would be to disrupt the authority’s work (even if you didn’t mean to). A public authority cannot decide your request is vexatious simply because it finds you or your request irritating or a nuisance.
- You have asked for information that has already been given to you or for information that the authority has already refused to give you, and a reasonable period of time has not passed since your last request (this is called a “repeated request”). This refusal should not happen if the information has changed since you first asked for it.
- You have asked for the information to be given to you in a format that the authority cannot reasonably provide.
- If the authority decides to refuse your request, or part of your request, for any of the above reasons, its reply to you must:
 - be sent in writing within 20 working days of receiving your request
 - state clearly the reasons for the refusal (including any legal reasons)
 - tell you how to appeal against this decision.

For more information, see *What if I am unhappy with the reply?* (page 23)



What could it cost me to get the information?

Published information

Most of the information that an authority publishes under the “publication scheme” duty (that is, information it makes available without you having to ask for it) is free of charge or available for a small fee. If there is a charge, the authority’s Guide to Information must show details of the charges.

See *The “publication scheme” duty: what is it and how can it help me?* (page 11)

The charge for providing some information, for example birth, marriage and death certificates, may be set by other laws.

If you have a disability which means that you need information in a particular format, an authority cannot charge you for what it had to pay to provide it in that format.

Requests for information not already published

Most responses will give you information free of charge. If a fee is charged, it is likely to be small.

Authorities are allowed to charge in certain circumstances but, in practice, you’ll find that most authorities do not charge for responding to a request.

If you have a disability which means that you need information in a particular format, an authority cannot charge you for the costs of providing it in that format.

What is the most I would have to pay?

An authority cannot charge you for the first £100 it costs to find and provide you with the information. So, if the cost to the authority of providing the information to you is £100 or less, you will get it free of charge.

If the cost to the authority is more than £100, but up to and including £600, the authority can charge you 10% of the cost of providing the information (the first £100 worth is always free). So the maximum an authority could charge you would be £50 (this would be where the cost to the authority is £600).



For example, if the cost to the authority is £200, it can only charge you £10 (10% of the difference between £200 and £100).

If the total cost to the authority is more than £600, the authority can refuse your request. In doing so, it should offer to advise you how to reduce the costs by making changes to your request. Authorities can choose to respond to requests which cost more than £600 if they want to, but they may first ask you to pay the full costs above the £600 limit.

The authority must tell you if it is going to charge by sending you a “fees notice” (see next section) within 20 working days of your request. If it does, the time between issuing the notice to you and receiving your payment does not count towards the 20 working days the authority is allowed to respond to your request. So for example, if an authority sends you the fees notice 10 working days after getting your request, the authority still has another 10 working days left to respond to your request when it gets your payment.

What is a fees notice?

A fees notice is a notice that shows the estimated fee and how it has been calculated. It also tells you how you can complain about the fee and appeal against it. A fees notice is often in the form of a letter but it must say clearly that it is a fees notice.

In working out the fee, the authority can charge you for:

- staff time to find and gather the information up to a maximum of £15 per hour
- reasonable costs for photocopying or providing it in another format if you want a copy of the information.

For example, if an authority normally charges 10p a page for photocopies, charging any more than that would not be reasonable; or if it provides it on a CD, it can only charge you the cost of buying the CD.

An authority cannot charge you for staff time or any other costs associated with deciding whether it has the information or if any exemptions apply.

An authority cannot increase the fee if the actual cost turns out to be more than it estimated in the fees notice. If the cost turns out to be less than it estimated, it should consider refunding any overpayment you have made.

When you get the fees notice, it is up to you whether you want to pay for the information. You must pay the authority before it will provide the information. If you decide not to pay the fee, then the authority does not have to send you any information.

If you decide to pay the fee, you should do so within three months of the date on the fees notice, otherwise the authority does not have to respond to your request.

If you are unhappy with the fees notice, you can ask the authority to review its decision about how much it wants to charge you for the information. The fees notice should tell you how to do this.



Any questions?
Get in touch, we are happy
to help. See page 37 for
contact details



Is there information I may not be able to see?

You can ask Scottish public authorities for any information they hold. But some information may not be given to you because it is exempt under FOI law – authorities do not have to disclose exempt information to you.

If the authority decides information is exempt, it must tell you why. You should not be put off asking for information just because you think it may be exempt. Even if the information falls within one of the exemptions in the FOI Act, the public authority might still be willing to let you have all or part of it.

Some categories of information are completely excluded from your rights of access, for example, documents prepared for court cases.

Other categories of information may be exempt in circumstances where the authority can prove there would be real and significant damage to the authority or to other people if the information were made public. (The authority may call this **“substantial prejudice”** in its letter to you.) This may include information which is commercially valuable or information that is confidential.

When an authority gives you information, it is the same as making the information publicly available. This means that, when deciding whether to give you information that may be covered by an exemption, the authority must consider whether it would be in the **“public interest”** for the information to be made public. What **“being in the public interest”** means is that the benefit to the public from disclosure is greater than the harm to the authority or other people affected.

There are also some categories of information which authorities are generally allowed to keep back, even if there would be no damage to the authority or to other people if the information were made public. This includes, for example, information about the development of government policies. Information in these categories must still be released if it is in the public interest to do so.

In deciding whether it is in the public interest to provide information, authorities should not take into account:

- the possibility of embarrassment to officials
- the possible loss of confidence in the authority
- the seniority of the people involved, or
- the risk of anyone misinterpreting the information.

If it refuses your request, the authority must tell you which exemption it has applied to the information. Unless the exemption relates to a category of information that is completely excluded from your rights of access, the authority must tell you why it thinks there is greater public interest in withholding the information than in making it available. It must explain the reasons for this decision.

If your request is for a combination of information that can be disclosed and information that is being withheld, the authority should, where possible, remove information that is exempt and give you the rest. If information is removed, the authority must still explain the reasons for removing it. Sometimes information cannot be removed easily so it may be “redacted”. This means it is “blacked out” so you can’t read it.



What if I am unhappy with the reply?

When you request information, the authority must either:

- give it to you, or
- send you a notice telling you why it is not giving it to you.

In either case, the authority must reply as soon as possible, and certainly within 20 working days (remember to allow time for letters to arrive in the post).

You can ask the authority to review its decision if it does not respond or you are unhappy with the way it has dealt with your request, for example by:

- refusing to give you some or all of the information
- failing to reply to you within the time limit allowed
- claiming the information is exempt
- failing to give you advice about, and help with, making your request
- asking you to pay a fee that you feel is unreasonable.

Any notice sent to you by the authority must tell you how to use its review procedure.

How do I ask the authority to review its decision?

Your request for a review must be in writing, or any other form that can be kept for future use, for example email or a recording on audio or video tape.

You must give your full name, an address for correspondence, and details of your original request. You must tell the authority why you are unhappy with the response to your original request. If you don't the authority can refuse to carry out a review.

You should ask for the review no later than 40 working days after:

- the end of the period for responding to your request if the authority did not reply, or
- the date the authority responded.

If you are late in asking, the authority does not have to carry out a review, but can do so if it wants to.

The authority and the Scottish Information Commissioner can give help if you need advice about asking for a review. See [Where can I get further information and help?](#) (page 37)

The authority should reply promptly in writing to your request for a review, taking no longer than 20 working days.

What kind of reply can I expect to my review request?

You should receive one of the following within 20 working days of asking for a review:

- All the information you asked for.
- Some of the information you asked for, with an explanation as to why the authority has kept the rest of it from you.
- A notice from the authority, confirming that it still intends to keep the information from you and saying why.
- The authority's decision about the level of fee to be charged, if your reason for requesting the review was that you were unhappy about the fees notice.
- A notice giving you a decision on your request, if the authority did not reply to your original request.
- A notice from the authority telling you it's not going to carry out a review because your request was vexatious, or was a repeat of a request you had made before. There's more information about vexatious or repeated requests in [Why might my request be refused?](#) (page 16)

In each case, the authority must reply promptly, and within 20 working days of its receipt of your request for a review. If you don't get any response to your request for a review, you should treat this as a refusal to supply the information. Any notice withholding information or refusing to respond to your information request must tell you about your right to appeal to the Scottish Information Commissioner if you are unhappy with this decision. See [What if I am unhappy with the review of my request?](#) (page 25)



What if I am unhappy with the review of my request?

If you are still unhappy with the authority's handling of your request, the next step is to appeal to the Scottish Information Commissioner. You can appeal to the Scottish Information Commissioner if:

- you are unhappy with the outcome of an authority's review
- the authority refuses to review its decision because it says your request is “vexatious” or “repeated”. See [Why might my request be refused?](#) (page 16) for an explanation of what this means
- the authority hasn't responded to your request for review.

The Commissioner cannot take action until you have asked the authority to review its decision and allowed 20 working days for it to reply.

If the authority replies before the 20 working days are up, you can go straight to the Commissioner. When calculating working days remember to allow time for posting.

What is the role of the Scottish Information Commissioner?

The Scottish Information Commissioner is impartial and independent of the Scottish Government, the Scottish Parliament, and other Scottish public authorities. This means the Commissioner cannot be told what the outcome of an appeal must be, but decides it based on the evidence and arguments from both the requester and the authority.

The Commissioner's duties include:

- telling people about their right to see information held by Scottish public authorities
- making sure public authorities follow the FOI Act and the Environmental Information (Scotland) Regulations 2004
- monitoring FOI and encouraging public authorities to have and follow procedures for making their information available to you
- making sure public authorities publish information under the “publication scheme” duty (page 11)
- carrying out investigations when information has not been provided on request.

How do I appeal to the Commissioner?

The Commissioner has produced a short form to help you make an application for appeal. If you have access to the internet, you can download a copy of this form at www.itspublicknowledge.info/appeal, or call us on **01334 464610** and we will send you a copy.

You don't have to use this form to appeal, but if you do it will make sure that you provide all the information that the Commissioner needs to investigate your case quickly.

If you don't use the form, your appeal must be in a format that can be kept for future use, for example, in writing, by e-mail or a recording on audio or video tape. Contact us if you need help doing this.

What should I say in my application?

You must include the following information:

- your full name
- an address for correspondence
- details of your original request
- why you are unhappy with the way it was dealt with by the public authority
- why you are unhappy with the outcome of the review

Should I send any other information?

You should include copies of the correspondence you have had with the public authority about your request. Most importantly, include copies of:

- your original request for information
- the response you received (if the authority replied)
- your request for a review
- the response to your request for a review (if the authority replied)

You must appeal to the Commissioner within six months of receiving the review decision from the authority. If the authority did not carry out a review or failed to tell you the outcome of the review, you should appeal within six months of the date by which it should have replied to you (20 working days after you asked it to review its decision).



What happens if I appeal to the Commissioner?

The Commissioner will investigate your complaint if it is “valid”. A valid appeal is one where you have been all the way through the authority’s review procedure; where you provided the Commissioner with the information needed to investigate your complaint; and where you have told the Commissioner what you are unhappy with. You are most likely to make a valid appeal if you use the Commissioner’s application form. See [How do I appeal to the Commissioner?](#) (page 26)

If the Commissioner investigates your appeal there will usually be one of three outcomes:

1. The Commissioner may decide that the authority failed to follow the FOI Act and send you and the authority a formal decision notice. This will set out what steps the authority must take. These could include, for example telling it to give you all or some of the information you asked for. If the authority fails to take these steps, the Commissioner can refer the case to the Court of Session. The Court could treat it as contempt of court and give the authority an unlimited fine.
2. The Commissioner may decide that the authority followed the FOI Act properly and send you and the authority a formal decision notice explaining why.
3. The Commissioner might suggest a way to resolve matters without a formal decision. She will only stop investigating if you agree, and withdraw your appeal.

The Commissioner does not have to carry out, or continue with, an investigation if:

- you have not already asked the authority for a review and waited for the response
- your appeal is “frivolous” (not a serious request for information) or “vexatious” See [Why might my request be refused?](#) (page 16) for an explanation
- you withdraw or abandon your appeal.

If the Commissioner does not intend to investigate your case, you will be told why.

Does the Commissioner have the final say?

There are two circumstances where the Commissioner does not have the final say.

You and the authority have the right to appeal to the Court of Session if you think the Commissioner made a mistake about a point of law. The Court may reach a different decision or tell the Commissioner to reconsider the appeal.

In some very limited circumstances, the First Minister has the power to issue a “ministerial certificate” which has the effect of overturning a decision notice issued by the Commissioner. If this happens in your case, the Commissioner will tell you.

Cases where you cannot appeal to the Commissioner

You cannot appeal to the Scottish Information Commissioner if your original request was to:

- a procurator fiscal and in most cases, the Lord Advocate. The Commissioner can compel these authorities to respond to a request or request for review, but not investigate appeals.
- the Scottish Information Commissioner herself. (As with any other public authority you can ask the Commissioner to review her original decision not to provide the information you requested, but if she decides that her original decision was correct, you cannot take your appeal further.)

In these circumstances, your only option is to challenge the decision of these organisations by asking the Court of Session for a judicial review. If you want to do this, you should get independent legal advice as neither the Commissioner nor the authority can give you advice.



What if I am unhappy with the Scottish Information Commissioner's decision?

If you are unhappy with a decision issued by the Scottish Information Commissioner, you may be able to take the matter to the courts but only if you think the Commissioner made an error in the way the law was applied. If you are unhappy with the service you received from the Commissioner, you should contact the Commissioner's office to complain. If you remain unhappy with the service you can complain to the Scottish Public Services Ombudsman. See *Complaining to the Scottish Public Services Ombudsman* (page 30).

Going to the courts

You can appeal to the Court of Session against a decision by the Commissioner, but only on a point of law, not just because you disagree with the outcome. The point of law could be, for example, that the Commissioner adopted the wrong definition of a legal term or concept, or misinterpreted the Act or her powers. The public authority concerned also has the right to appeal against a decision by the Commissioner, but again only on a point of law.

If you are thinking about an appeal or a judicial review, you should get legal advice.

Complaining to the Scottish Public Services Ombudsman

If you are unhappy with the service provided by the Scottish Information Commissioner, you may be able to complain to the Scottish Public Services Ombudsman.

The Ombudsman will expect you to have complained to the Commissioner about the service first. If you remain unhappy after having made a complaint to the Commissioner, you can then complain to the Ombudsman.

See *Where can I get further information and help?* (page 37)

The Ombudsman will not consider:

- a matter that you could take to a court (see above)
- in general, a properly made decision that the Commissioner has a right to make even if you disagree with it.



Any questions?
Get in touch, we are happy
to help. See page 37 for
contact details



What about my right to see environmental information?

If the information you want is about the environment, the authority will respond under separate environmental information rules, not the FOI Act. They are called the Environmental Information (Scotland) Regulations.

The rights provided by these regulations are similar to those you have under the FOI Act, but there are important differences you should be aware of. These are explained below.

What is “environmental information”?

The regulations give you a right to access environmental information.

Environmental information covers a broad range of topics, such as:

- the environment itself, including air, water, earth and the habitats of animals and plants
- things that affect the environment, such as emissions, radiation, noise, and other forms of pollution
- policies, plans and laws on the environment.

Examples of environmental information are:

- levels of chlorine in swimming pools
- water and air-quality test reports
- genetically modified crops
- air-conditioning systems in public buildings.

For more examples of environmental information, please see page 08

Which organisations can I ask for environmental information?

The environmental information rules apply to all the Scottish public authorities described earlier in this guide. See *Which organisations can I ask for information?* (page 09).

They also apply to:

- any person or body providing public environmental services that is controlled by one of the Scottish public authorities covered by the FOI Act, and
- any other person or body providing public services in Scotland.

This means you may also be able to get information from private organisations, companies or public-private partnerships providing services such as social housing, waste disposal, water, energy, and transport.

How do I ask for environmental information?

Requests for environmental information can either be in writing (or other recordable format) or verbal (e.g. by phone or in person).

It is a good idea to send your request by email, letter or other recorded format, and to keep a copy, just in case things go wrong. If you made a verbal request, it is also a good idea to ask for a receipt and to follow-up with a written request to confirm what you asked for.

If you are unsure about whether the information you want is environmental, or if you want to ask for information that might be both general and environmental, you should make your request in writing. The organisation receiving your request will decide whether it should be dealt with under the environmental information rules or the FOI Act.

Apart from this, the rules about asking for environmental information are the same as for other types of information. Staff in the organisation receiving your request should give you any help or advice you need. See the section *How do I ask for information?* (page 13)

What happens after I've made a request for environmental information?

The organisation should reply to your request for information as soon as possible and usually within 20 working days.

When may I have to wait more than 20 working days?

If you make a request for a lot of complex information, the organisation is allowed up to 40 working days to reply. If it will take longer than 20 working days to provide the information, the organisation must let you know within 20 working days of receiving your request.



What kind of reply can I expect?

After 20 working days (remember to allow three days for posted letters to arrive), normally you will have received one of the following:

- All the information you asked for
- Some, but not all, of the information. See *Is there environmental information I might not be given?* (page 34)
- A fees notice, if there is a charge for the information. See *What could it cost me to get environmental information?* (see below)
- A refusal. See *Why might my request for environmental information be refused?* (see below)
- No response, which you should treat as a refusal. See *What if I am unhappy with the response to my request for environmental information?* (page 36)

Why might my request for environmental information be refused?

Information should usually be given to you, but in some circumstances your request may be refused.

The organisation is allowed to refuse your request if:

- The information is excepted from the Environmental Information (Scotland) Regulations 2004. See *Is there environmental information I might not be given?* (page 34)
- The organisation does not hold the information you asked for.
- Finding or preparing the information would cause an unreasonable amount of work and disrupt the organisation's services.
- Your request is so general the information cannot be identified and the organisation has done all it can to advise and assist you.

What could it cost me to get environmental information?

There should be no charge for:

- looking at public registers
- looking at information on the authority's premises or at an information service centre.

In any other case, the organisation can choose to make environmental information available free of charge or to charge a reasonable fee. If fees are to be charged, the organisation must set out clearly (for instance, in a leaflet or on the authority's website) when a fee may be:

- charged
- waived
- payable in advance.

The organisation must not charge you more than it will cost to provide the information.

If you feel the fee is unreasonably high, you can ask the organisation to review it. If, after the review, you still feel it is too high you can appeal to the Scottish Information Commissioner. See *What if I am unhappy with the reply to my request for environmental information?* (page 36)

Is there environmental information I might not be given?

You have a general right to see all recorded environmental information held by organisations covered by the environmental information rules. However, environmental information may be kept from you in particular circumstances if the organisation believes that giving it to you would cause real harm.

(The organisation may call this “**substantial prejudice**” in its letter to you.)

This kind of “exception” may cover information which:

- relates to international relations, defence, national security or public safety
- relates to the course of justice, the ability of someone to receive a fair trial, or the ability of a Scottish public authority to conduct an inquiry of a criminal or disciplinary nature
- is commercially valuable or confidential
- includes details of sensitive environments, for example, the location of a bird-of-prey nesting site, or where giving the information may lead to harm or pollution
- is currently incomplete, e.g. ongoing research.



When deciding whether or not to give you information covered by one of these exceptions, the organisation must decide whether the “public interest” lies in withholding or disclosing it. See page 34 for more information about how they make this decision.

If your request is refused, the organisation must tell you which exception it applied to the information. It must also tell you why it thinks there is greater public interest in keeping the information secret than in making it available. It must explain the reasons for this decision. You should not be put off applying just because you think an exception may apply. Even if the information is ‘excepted’ under the rules, the organisation can choose to let you have it, or some of it.

If some of the information you have asked for will be disclosed and some withheld, the organisation should, where possible, remove information that is excepted and give you the rest. If information is removed, the organisation must still explain the reasons for removing it.

There are special rules for information about emissions into the environment. The organisation can usually provide it, even if the information would normally be kept from you because, for instance, it is commercially sensitive. This will not always be the case as other exceptions may apply. If you need advice about this contact the authority or the Scottish Information Commissioner.

What if I am unhappy with the reply to my request for environmental information?

You can ask the organisation to review its decision if it does not reply to you or you are unhappy with how it has dealt with your request, for example by:

- refusing to give you all or some of the information, e.g. because it falls under one of the exceptions
- failing to reply to you within the time limit allowed
- failing to give you advice and assistance in making your request
- asking you to pay a fee that you feel is unreasonable.

The procedures for asking for a review or making an appeal are described fully in the section *What if I am unhappy with the reply?* (page 23) and *What if I am unhappy with the review of my request?* (page 25).



Where can I get further information and help?

Scottish Information Commissioner

For information, advice and assistance about freedom of information in Scotland, contact:

Scottish Information Commissioner

Kinburn Castle, Doubledykes Road
St Andrews, Fife KY16 9DS

t 01334 464610

f 01334 464611

e enquiries@itspublicknowledge.info

www.itspublicknowledge.info

You can also visit the “Your Rights” section of the Commissioner’s website for information on your rights and how to use them, plus a handy calculator to help you check when you should receive a response to a request:

www.itspublicknowledge.info/YourRights

A list of Scottish public authorities covered by the Freedom of Information (Scotland) Act is available at: **www.itspublicknowledge.info/YourRights/Whocanlask.aspx**

UK Information Commissioner

For information, advice and assistance about freedom of information in the rest of the UK, and data protection (relating to information about you) contact the UK Information Commissioner’s office in Scotland at:

The Information Commissioner’s Office

Wycliffe House
Water Lane
Wilmslow SK9 5AF

General enquiries:

t 0303 123 1113

f 01625 524 510

e casework@ico.org.uk

www.ico.org.uk

The Information Commissioner’s Office Scotland

45 Melville Street
Edinburgh EH3 7HL

t 0131 244 9001

e scotland@ico.org.uk

The Scottish Public Services Ombudsman

If you are unhappy with the service provided by a public authority, you may be able to complain to the Scottish Public Services Ombudsman:

The Scottish Public Services Ombudsman

FREEPOST EH641

Edinburgh

EH3 0BR

t 0800 377 7330

f 0800 377 7331

e www.spsso.org.uk/online-contact

www.spsso.org.uk

Before complaining to the Ombudsman, you should first go through the formal complaints procedure of the public authority.

Equality Advisory and Support Service

For advice and information on human rights or equality matters, or for information on your legal rights if, for example, you have a disability, contact:

Equality Advisory Support Service

FREEPOST FPN4431

t 0808 800 0082

Textphone 0808 800 0084

www.equalityadvisoryservice.com

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Scottish Information Commissioner

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