

Freedom of Information (Scotland) Act 2002

Information request handling in the

Scottish Government

January to December 2007



Foreword by the Minister for Parliamentary Business

This Annual Report provides information on the Scottish Government's handling of requests made under the Freedom of Information (Scotland) Act 2002 (the Act) in 2007. Our experience, once again, is that the public are continuing to make good use of their right to access information.

The Scottish Government supports freedom of information (FOI). This is reflected in our ['Six Principles of FOI'](#) which I announced in October 2007. The Principles are that the Government -

- Supports FOI as an essential part of open democratic government and responsive public services;
- **Operates within the Act rather than propose significant changes to it, but adjusts the regime where it is necessary and sensible to do so;**
- **Publishes information proactively wherever possible;**
- Maintains the exemptions set out in the Act in particular to protect "private space" for Ministers and others to consider advice and reach decisions;
- Maintains effective relationships with the Scottish Information Commissioner and other key stakeholders; and
- Creates and shares information thoughtfully with regard to the principles above.

The Principles outline our approach to FOI and work is in hand to deliver on all of these commitments. In particular, I would like to highlight the steps being taken to deliver Principles 2 and 3 (highlighted above).

In terms of Principle 2, we will adjust the Act where it is necessary and sensible to do so. There are 3 main developments that I wish to highlight. Firstly, it is clearly imperative that the coverage of the Act remains appropriate. As such we are undertaking exploratory discussions regarding a possible extension of the coverage of the Act to registered social landlords, contractors and local authority trusts or bodies set up by local authorities (for example to deliver leisure and cultural services). The Scottish Information Commissioner, in particular, has raised concerns with us that the public may have lost rights to acquire information under the Act from these bodies as a result of the changing ways in which public functions are now delivered. The exploratory discussions will examine whether these concerns are justified and look at the legal and policy considerations related to any extension of coverage. Any extension of coverage must, for example, be measured and proportionate and take account of the current economic climate.

Secondly, I would highlight the recent making of two orders under the Act which respectively removed various statutory bars to the provision of information and updated the references in the Act to the Scottish public authorities that are subject to the Act (for example, making the Office of the Scottish Charity Regulator and NHS Health Scotland subject to the Act and removing references to various authorities that no longer exist).

Finally, in terms of delivering Principle 2, we are currently reviewing the Codes of Practice and guidance issued under the Act and also the Environmental Information (Scotland) Regulations 2004 and have recently sought the views of interested parties on that matter.

In terms of Principle 3, we will release our information as a matter of course where feasible and not only once an FOI request is made. In this regard, the First Minister announced to Parliament in May 2008, the beginning of a pilot scheme within Government to look at ways in which we can 'substantially increase' the amount of information we proactively publish. The pilot is currently ongoing and we will evaluate its conclusions in due course and consider how we might deliver improvements in transparency regarding the handling of Government business. The Government has also revised our Publication Scheme this year which now sets out the information that we routinely publish and is much more expansive than the previous version.

In process terms, we are continuously looking at how we can improve our handling of FOI requests. In terms of how FOI requests are monitored and handled (for, example, are they responded to on time?), the Scottish Government inherited a system from the previous administration that did not uniformly record requests centrally. This means that the information provided in this Report is not as comprehensive as we would like. A review of our request handling system took place during 2007 and, as of 1 January 2008, the Scottish Government put in place a new Information Request Tracker which will considerably improve the information we hold on request handling. This will enable improved annual reporting for 2008.

Of course, request handling is only a part of the FOI picture. If the Act is to deliver its underlying aims of openness and transparency, there needs to be a change of culture in Government. As I have said before, the FOI regime in Scotland is still relatively new and a change in the culture cannot be achieved overnight. However, I can say with some confidence that this Government has come quite a long way in a short period of time and that we are striding forward to achieve more.

Bruce Crawford

The Freedom of Information (Scotland) Act 2002

The [Freedom of Information \(Scotland\) Act 2002\(the Act\)](#) came into force on 1 January 2005.

The Act introduced a general statutory right of access to all types of 'recorded' information of any age held by Scottish public authorities. Subject to certain conditions and exemptions, any person who makes a request for information will be entitled to receive it.

The Act is enforced by the [Scottish Information Commissioner](#), a fully independent public official.

Information request handling in the Scottish Government

The Scottish Government makes large amounts of information available, both on request and proactively. As an established and routine part of our business, this includes information released in the form of leaflets, through correspondence, in reports and other published material, on the topic pages of our website and through our Publication Scheme.

To provide an indication of the volumes in question, during 2007 approximately 37,488 pieces of Ministerial correspondence were handled, our Central Enquiry Unit received in the region of 8768 emails, and countless other pieces of correspondence were handled on a daily basis by Scottish Government staff. All information released by us on request is covered by the Act. Whilst the figure in relation to Ministerial correspondence remained almost static compared to 2006 (a slight drop of 0.30% was recorded) there has been a substantial increase (over 25%) in the number of enquiries made through our Central Enquiry Unit.

To register and monitor all such activity across the Scottish Government would not be feasible, and is not required by the section 60 Code of Practice on the discharge of functions by public authorities under the Act. However up until 1 January 2008 the Scottish Government's Freedom of Information Unit asked staff to notify the Unit of what are termed as "non-routine" requests.

For the period covered by this Report, "non-routine" requests are those where staff have required assistance in handling the request under the terms of the Act, and it has therefore been notified to the FOI Unit.

Consequently, for the period up to 1 January 2008 we do hold centrally certain information on requests, but this only provides an indication of the handling of

the more complex requests, and does not reflect the true extent to which information requests are being handled and responded to across the Scottish Government.

The information made available in this report for 2007 is therefore based on this subset of the overall information requests received by the Government.

However, from 1 January 2008, the definition of “non-routine” requests has been extended to cover any requests other than those which are received regularly and are easily dealt with, such as requests for copies of publications or for general information about the Scottish Government. Requests which result in information being provided to a requester are not necessarily “routine” and will still be logged. This will ensure that future Annual Reports will provide a more comprehensive overview of how information requests are dealt with across the Government, not just those cases where [exemptions have been applied - the FOI unit has been required to provide assistance].

The associated Environmental Information Regulations (EIRs) also came into force on 1st January 2005 but the number of requests handled under the Regulations has been relatively low and these are not separately analysed in this report.

How to Request Information from us

We make a lot of information available already. Before an applicant decides to make a request, the applicant should consider if the information required is already available. To see if it is an applicant can:

1. [Search](#) our website for the information.
2. Check our [Publication Scheme](#)
3. Find out if the information has been published on our [Disclosure Log](#)

If an applicant is still unable to find what they are looking for, or they require information available on our website in a different form (a hard copy, for example) they may ask for it by:

Emailing us at ceu@scotland.gsi.gov.uk
or by writing to us at:

The Scottish Government
St Andrew's House
EDINBURGH
EH1 3DG

An applicant should be specific as possible about the information they want, as this will help us to find it. In responding to an applicant's request for information we will do so in accordance with the Act. Some information may not be available because it falls within one of the exemptions of the Act. When that happens, we will tell the applicant which exemption applies and, in most cases, why the information cannot be provided.

About our publication scheme

The Scottish Government's publication scheme has recently been revised and updated. We are pleased it now provides a greater range of information to the public.

The purpose of the scheme is to provide details of the range of information that the Scottish Government routinely publishes. The Scheme also provides details of how the applicant can access this information and tells the applicant whether it is available free or if there is a charge for the information. This scheme has been approved by the Scottish Information Commissioner, who is responsible for enforcing the Act. In order to keep the scheme as inclusive as possible we will review the [publication scheme](#) from time to time.

Communication networks

The Scottish Government established the Scottish Freedom of Information Implementation Group (SFOIIG) in January 2001 to support the implementation of the Act in Scotland.

Since the Act came into force, the Group continued to meet and proved an extremely useful forum for a number of activities, including: to hear and discuss progress updates from the Scottish Information Commissioner and the Scottish Government; to consider the experiences of different public authorities in Scotland; to discuss challenging issues and to share knowledge and good practice; and to gain an understanding of the perspective of users of the Act.

We endeavour to hold meetings in publicly accessible buildings, and members of the public are welcome to attend. The Group last met in March 2007 under this title but thereafter they continued with a new name and remit as the Scottish Public Information Forum (SPIF) to reflect that the Act has now been in force for over 3 years. At its last meeting on 14 April 2008 the Forum was pleased with the interest their discussions had generated and it was encouraging that 18 members of the public attended to view proceedings and take the opportunity to comment as users of the Act. The Forum will continue to meet during 2008 and beyond.

Information held on Scottish Government requests handled during 2007

The Scottish Government's FOI Unit was notified of 779 requests which were handled by the Scottish Government core departments between the beginning of January 2007 and the end of December 2007. The FOI Unit was notified fully of the terms and outcome in the case of 431 of those requests for information. As noted above, these are "non-routine" requests, and these therefore represent only a subset of the information requests received by the Government.

Of these requests, 13 were invalid or withdrawn, for example because the request was incorrectly logged or the applicant decided not to proceed with the request, leaving 418 requests where we hold a record of the request and its outcome on which to base an analysis.

These requests concerned many and wide-ranging subjects, and where information is released by us in response to a request, we believe that in many cases this will be of interest to the wider public in addition to the original applicant. We therefore endeavour to publish the information on our [disclosure log](#), or the appropriate topic area in the Scottish Government's web page.

The Act recognises the presumption of openness, but it also expressly recognises that there must be some limitations to this. The legislation strikes a responsible balance between correct disclosure and correct withholding of information, and there are 17 categories of exempt information in total. There are two types of exemptions: some are absolute, which means that if the exemption applies the information will not be released under the Act; the others are conditional in that they require consideration of the public interest in deciding whether or not to disclose the information even if the exemption does apply.

The exemptions cover areas such as formulation of Scottish Government policy, national security and defence, law enforcement, and commercial interests. In response to some requests, information has been partially withheld. This means that we have released new information, but also that we consider that some of the information requested is exempt from disclosure under the Act, for example where it constitutes the personal information of a third party, or where providing the information would be a breach of confidentiality.

During 2007, based on the subset of 418 requests as outlined above, the Scottish Government released new information in the majority of cases - 58%.

It will not be appropriate in all cases for us to release information. For example it may not be appropriate to release information about a policy in the course of

development or if it contained sensitive or personal information. It is also important that we respect the nature of Government business and use such exemptions appropriately. In relation to information withheld, due to the types of information we hold and the information requested from us, certain exemptions may apply more often than others. During 2007, the exemptions which were most often applied to information requested, based as a percentage of the 418 requests, were:

- ◆ Prejudice to effective conduct of public affairs (section 30) – 17%;
- ◆ Formulation of development of Government policy (section 29) – 9.8%;
- ◆ Personal information (section 38) – 9.8%;
- ◆ Confidentiality (section 36) – 5.5%;
- ◆ Information otherwise accessible (section 25) – 5.3%.

The majority (61%) of the requests were answered on time. The Act does not allow public authorities to extend the 20 working day deadline for responding to requests beyond 20 working days, and we take our obligations under the Act extremely seriously. However, in spite of best efforts, some requests have not been answered within the statutory time limit for example because they have been complex or have involved large amounts of information. We are pleased that, in relation to the number of requests we receive overall, we have had an extremely low number of full investigations by the Scottish Information Commissioner where an applicant has approached the Commissioner through dissatisfaction with the timeliness of our response.

Where an applicant is dissatisfied with our response to a request or if, as mentioned above, an applicant is dissatisfied that we have not provided a response within 20 working days, a review can be requested.

If an applicant is unhappy with the outcome of a review or, as above, an applicant is dissatisfied that we have not provided a response to the request for a review within 20 working days, an appeal can be made to the Scottish Information Commissioner.

During 2007, a review was requested in 24% of cases, which indicates that in the main, applicants are satisfied with our initial response to their request.

60 new applications had been made during 2007 for a decision by the Scottish Information Commissioner for cases involving the Government or Government Agencies. More information on appeals and decisions is available at <http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp>

Improvements in FOI handling for 2008

As already highlighted, the system used in 2007 did not uniformly record requests received within the Scottish Government centrally.

A new information request tracker system (IRT) has been introduced across the Scottish Government. We propose to publish an Annual Report in relation to our handling of requests in 2008, early in 2009.