

Dealing with requests for information: a guide for all staff



Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004

DEALING WITH REQUESTS FOR INFORMATION: A GUIDE FOR ALL STAFF

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1. Overview

The Freedom of Information (Scotland) Act 2002 (FOISA) allows anyone to obtain information from public bodies, which for the purposes of FOISA includes Universities. In addition the Environmental Information (Scotland) Regulations 2004 (EIR) separately allows access to 'environmental' information.

In simple terms this legislation means that if someone contacts the University asking for information that we hold we are obliged provide them with that information within 20 working days. The person requesting the information does not have to quote the legislation.

There are some exceptions when the University does not have to respond which can include:

- Where the information is not held
- Where the time taken to gather together the information requested exceeds a cost limit (this equates to approximately one week of work)
- Where the information relates to identifiable living individuals, in which case Data Protection legislation will apply
- Where the information is commercially sensitive
- Where the information is readily available elsewhere
- Where the requester is seeking opinions rather than information e.g. some questionnaires.
- Where other exemptions and exceptions detailed in the relevant legislation apply (see <http://www.stir.ac.uk/media/services/registry/planning/legalcompliance/ExemptionsGuide.pdf> for FOISA exemptions)

There are some differences between the University's obligations under FOISA and EIR legislation which are covered in more detail in section 2.

Handling requests

- If any member of staff receives a request for information that quotes FOISA or EIR they should immediately forward it to the FOI Unit.
- If you receive a request for information that does not quote the legislation, and is something that you would normally deal with, you should respond as usual within 20 working days.
- If you receive a request for information that is not something you would normally deal with or you are concerned that we should not be responding due to one of the exceptions detailed above (e.g. cost, data protection, commercially sensitive etc), then please forward it immediately to the FOI Unit.

To assist with handling information requests efficiently it is important to have good record keeping so information held can be quickly and easily identified. This includes ensuring that records are disposed of timeously if they are no longer required and in accordance with the University's retention schedule.

For more detailed guidance please read the rest of this guidance.

or contact:

Freedom of Information Unit

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Policy, Planning & Governance
Extn: 6670
FOIUnit@stir.ac.uk

2. The Acts

The Freedom of Information (Scotland) Act 2002 (FOISA) is intended to allow anyone to obtain information from public bodies, such as the University. This places three basic requirements on us:

- that we routinely put into the public domain as much information about the University as is reasonably possible
- that we ensure that, where an individual requests information that we hold but have not already published, we provide the enquirer with the relevant information (with some exceptions specified in the Acts)
- that we have in place a properly structured approach to managing records to ensure that essential records of our activities are created and maintained and can be retrieved in a timely fashion.

On 1st January 2005 the Environmental Information (Scotland) Regulations 2004 (EIR) came into force alongside the Freedom of Information (Scotland) Act 2002. These regulations provide a separate regime governing access to information defined as “environmental”.

The definition of environmental information in the regulations is very wide ranging and includes information on:

- The state of elements of the environment including air, water, earth, landscape and the habitats of animals and plants.
- Factors which affect the state of elements of the environment including emissions, radiation, noise or other sources of pollution.
- Measures and activities affecting the state of elements of the environment including environmental policies, plans, programmes and agreements.

Information on the state of human health and safety, conditions of human life, the food chain, cultural sites and built structures which are affected by the state of elements of the environment e.g. effect on human population of air pollution.

There are some differences between the FOISA and EIR legislation for example:

- Requests for information can be made orally under EIRs
- In some circumstances the period for responding to complex EIR requests can be extended to 40 working days
- The provision for charging fees is different and there is no upper limit
- EIRs have exceptions rather than exemptions

A more detailed analysis of the differences between the two pieces of legislation can be seen at:

<http://www.itspublicknowledge.info/Law/EIRs/EIRsDifferencesEIRSandFOISA.aspx>

This guide is designed to help you identify and deal with requests for information that come under the terms of information legislation.

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3. The University's Publication Scheme

As required by FOISA, all of the information that the University commits to make available to the public is listed in our Publication Scheme, which describes both the types of information available and where it can be located. The University's Publication Scheme is available on the University's web site at www.foi.stir.ac.uk. You should always refer to the scheme online for the most up-to-date version.

4. The right to request information

The right to request information under the Acts extends to anyone who wishes to make an enquiry – whether they are an employee or student of the University, an employee of another organisation or any other member of the public. There is no limitation on who may make an enquiry – the law gives the right to minors and adults alike, and foreign nationals (even those based abroad) are equally entitled to request information.

Enquirers' reasons for requesting information are not relevant and they are not obliged to disclose these when making their request. Although it may be helpful in answering their enquiry to know why they are asking, you should not give the impression that they are obliged to do so. Enquirers need not quote (or even be aware of) the relevant Act, or their rights under it, when making a request for information. Under FOISA the only requirement the law places on an enquirer is that they must make their enquiry **in writing or other permanent form** for it to have the authority of a request made under the terms of the Freedom of Information (Scotland) Act. The legislation also places a formal duty on us to advise and assist enquirers when making their request. Under EIR requests for environmental information can be made orally i.e. over the phone or in person and do not need to be in writing.

If you receive such an oral enquiry (and it is not something you can easily answer there and then) you should advise the enquirer how to make the request in writing (this is essential for FOISA and preferable for EIR) and if appropriate direct them to the webpage [Requesting Information from the University](#) to assist them in making the request.

When an individual makes a written request for information (this includes emails and faxes, as well as letters), we **must** provide them with that information, except in a handful of cases where exemptions apply (this issue is covered in Section 6). In some cases this will mean supplying them with instructions about how to find information which is already available on the website or through the Publication Scheme. In other cases an enquirer may ask for information that the University does not usually make available to the public. In these cases, we will have to provide that information directly to them. ***The most important thing to remember is that any email/letter/fax you receive that asks for information may constitute a Freedom of Information request and must be responded to in accordance with the law.***

For FOISA enquiries, a response must be provided within **twenty working days** of receiving a written enquiry. For some complex requests for environmental information under EIR the time period for responding can be extended from 20 working days to 40 days. These response times are very short, if you are in any doubt as to whether an enquiry may be a Freedom of Information enquiry, or you cannot respond from the records available to you, you must contact the FOI Unit **immediately**. The FOI Unit can be contacted on ext. 6670 or at foiunit@stir.ac.uk.

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5. Data Protection vs. Freedom of Information

It is important to distinguish requests made by individuals under the terms of the Data Protection Act from those made under the terms of the Freedom of Information (Scotland) Act. Basically, if an individual wishes to see information we hold that **relates to themselves**, then this is a **Subject Access Request** made under the terms of the Data Protection Act. Such enquiries should be referred straight to the University Data Protection Unit at data.protection@stir.ac.uk ext 6670.

Any requests covering both Data Protection (i.e. relates to an individual) and Freedom of Information should be forwarded as soon as possible to the FOI Unit.

6. Handling requests for information

If you are contacted directly by an individual requiring information – either face-to-face, or on the telephone and it is not information you would routinely supply or can easily provide, you should ask them to submit the request in writing (email/letter/fax) and refer them to the “Guide to Requesting Information from the University”.

Once you have the request in writing you should immediately forward it to the FOI Unit unless your role normally involves distributing information on request in any case (e.g. if you are involved in sending out University prospectuses) then you should continue to deal with these requests as normal (but please note that the law now **requires** that you respond within 20 working days). Where documents are being sent a copy of the University’s FoISA Copyright Declaration (appended) should be sent out with the information provided.

If the information requested is not a matter that you or other people in your faculty/service area routinely deal with then it should be forwarded immediately to the FOI Unit. The FOI Unit may request you or your colleagues to help identify the information requested if it is not already available in our Publication Scheme or published on the University’s website.

In all cases you should forward the request to the FOI Unit **immediately** if:

- the enquirer has quoted Freedom of Information in their request for information (so the FOI Unit can keep a record of all requests quoting FOI)
- you think legal advice may be required (the University solicitors should not be consulted without first checking with the FOI Unit)
- you believe the information is not held by the University
- the time taken to respond to the request will be considerable
- you would not normally respond to such requests as part of your day-to-day job
- it is not clear what information is being requested
- the request appears to cover potentially problematic or exempt information (for example, information that might contain the personal details of an employee or student, is commercially sensitive or confidential)
- the applicant has a disability and has requested the information in an alternative format (e.g. Braille)
- the information requested could be described as environmental

The process for dealing with enquiries is also described in the attached flow chart “Handling Information Requests”. Generally, you should only respond directly to any

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enquiries that are routine requests for information that can be dealt with simply and completely within your faculty/service area: any other enquiries should be forwarded to the FOI Unit.

For the majority of requests for information the FOI Unit themselves will not hold the information requested so will need the assistance of colleagues in other service areas and faculties to gather the information requested. When this is the case the FOI Unit will contact the area(s) that hold the information concerned and will normally give an early deadline to provide the information to the FOI Unit. The reason for giving this shorter deadline is to allow the FOI Unit time to do the following:

- Compile the information received where it has been sourced from a number of different areas
- Review the information and ensure it is compliant with legislation e.g. Data Protection Act by redacting personal information
- Clarifying the information received with the faculties/services that have provided it and seek additional information if the query has not been fully addressed.
- Seek expert/legal advice from other FOI practitioners or solicitors when required.
- Compose a formal response quoting appropriate exemptions under the legislation if required.
- Ensure all responses are authorised by the appropriate senior officer prior to submitting a response.

Staff searching for information requested should keep a record of the searches they have made, particularly in cases where the information requested is not found, as this may be required as evidence in the case of an appeal by the requester.

It is important to remember that the University is required to provide information held in response to a request. We are not obliged to create information not previously held or to express opinions on matters.

An important factor in dealing with FOI is ensuring good records management so documents can be located promptly and records that are no longer required can be disposed of in accordance with the records retention schedule. Details of the University's records management policy and retention schedule can be found at <http://www.rec-man.stir.ac.uk/>.

All responses to FOI queries should include details of what the requestor can do if they are dissatisfied with the way their request has been handled. This includes the right to an internal review followed by the opportunity to appeal the decision to the Scottish Information Commissioner.

7. Other relevant issues

- (i) **Exemptions & Exceptions** - FOISA permits the University certain exemptions from the usual requirement to respond to information requests. These include information that may be commercially sensitive or confidential, and to personal information that relates to individuals other than the enquirer. If you are providing information to the FOI unit for a response to a query and you have concerns about disclosing information e.g. the information relates to individuals (staff, students etc) or is commercially sensitive or confidential information, then please let the FOI Unit know when you pass the information to them. A full list of possible FOISA exemptions is available from the FOI Unit. EIR have different exceptions from disclosure (known as exceptions), these include incomplete information, adverse effect to intellectual property

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rights, internal communications and confidentiality of commercial information.
NB. The FOI Unit will always take responsibility for *refusing* any request – refusal should not be undertaken by anyone else.

- (ii) **Complaints and appeals** - In any case where the University declines to respond (or fails to respond *fully*) to an information request, the enquirer has the right to appeal to the University and, once our own review process has been exhausted, to appeal to the Scottish Information Commissioner. Should anyone complain in writing to you about the nature and/or content of any information you have sent as part of your routine job or as a result of an FOI response that has been sent by the FOI Unit ***you must*** forward this complaint to the FOI Unit immediately.
- (iii) **Clarification** - The University has the right to ask an enquirer for more details to clarify their request in cases where it may not be immediately clear what information they require. If the FOI Unit asks you for information in response to a request and you think it is not clear what information you have been asked to provide please let the FOI Unit know. The FOI Unit may approach the enquirer for clarification. Please note that the clock does not start counting down on the 20 working days until the clarification is received.
- (iv) **Costs and fees** – FOISA allows for a percentage of costs beyond the first £100 to be recovered through a fee and sets an upper cost limit of £600 beyond which requests need not be answered. The vast majority of requests will not require any charge, however, if you are asked to provide information by the FOI Unit and it appears to be excessively time consuming, please let the FOI Unit know. The FOI Unit will determine whether any fee should be levied, or the request refused on cost grounds. The provision for charging fees under EIR is different as there is no lower or upper threshold to charging. The University has the option of recovering in full the actual cost of supplying the information. **NB. The FOI Unit will always take responsibility for issuing fees notices or *refusing* any request – refusal should not be undertaken by *anyone* else.**
- (v) **False Names and Pseudonyms** – For an information request to be valid under FOISA it must include the name of the applicant and this must be their real name. Please note, as companies can be a legal person, the name of a business or organisation alone is acceptable for a request to be valid. If you are forwarding a request for information on to the FOI Unit and you believe the name to be false or a pseudonym please let the FOI Unit know.
- (vi) **“Buried” Fol Requests** – Be aware that requests for information which are valid under the Act are often contained within correspondence which is principally concerned with other matters (usually complaints and disputes) and can be easily missed. It is important to recognise these “buried” requests and ensure that the FOI Unit is made aware of them.
- (vii) **Recording/monitoring requests** – As any written request for information received anywhere in the University will be an FOI request, it will not be possible or practical to keep a central record of all such requests. However, the FOI Unit will keep a record of all requests quoting Freedom of Information or the Environmental Information Regulations and a record of requests refused and reasons, fees charged, and reviews carried out.

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- (viii) **Questionnaires, surveys and mailbases** – The issue of whether questionnaires and surveys received by the University must be answered under the provisions of the Freedom of Information (Scotland) Act 2002 is one which concerns staff.

In terms of the Act, where the questionnaire/survey asks for information which we hold, then it is covered and should be answered – subject to cost limits and exemptions. Where the questionnaire/survey seeks comment, views, opinion or asks for information which would require us to undertake analysis and interpretation of information we hold in order to create new information, then this is not covered and need not be answered. In practice, staff will need to exercise judgement according to the circumstances of each case in order to decide whether or not to respond.

Questions can also sometimes be raised on mailbases or forums that individuals subscribe to. In these cases the assumption is that the questions are being addressed to the forum as a whole rather than the individual institutions so the practice is generally that institutions are not obliged to respond.

For further advice on this matter or if you receive a questionnaire or survey and are unsure whether you should respond under FoISA, please contact the FOI Unit.

8. In summary

Please be aware of the implications of the Freedom of Information (Scotland) Act and Environmental Information (Scotland) Regulations and make sure that colleagues are also aware that:

- individuals may ask for us to provide them with much of the information held by the University, whether held at faculty or central level
- any request in writing has the force of the Freedom of Information (Scotland) Act, whoever it is addressed to

If in doubt refer any potential/apparent information request to the FOI Unit - we may have only twenty working days to respond.

FOI Unit
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x6670

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Appendix 1

Freedom of Information (Scotland) Act 2002

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Appendix 2

