

## Freedom of Information (Scotland) – Guide to Information

### Introduction / Background

The Freedom of Information (Scotland) Act 2002 is an Act of the Scottish Parliament which gives everyone the right to ask for any information held by a Scottish Public Authority. An Order under Section 5 of the Act brings grant-aided and special schools within the scope of Freedom of Information (FOI) from 1 September 2016.

The section 5 Order designation of grant-aided and special schools focuses on a specific function: the function of provision of education. It does not cover other functions delivered by the special schools, such as residential or other kinds of care, so these functions are not subject to FOI.

There are 3 access to information 'regimes':

1. Freedom of Information Scotland Act 2002 (FOISA) - provides a right to request any information held;
2. Environmental Information (Scotland) Regulations 2004 (EIRs) - provides a right to request any environmental information held;
3. Data Protection Act 1988 (DPA) – provides a right to access personal data.

### Statutory Duties

Under FOI law, the organisation has a duty to adopt an approved publication scheme and proactively publish information; respond to information requests and reviews; and provide assistance/advice.

#### *Adopting an approved publication scheme:*

The organisation is required to adopt and maintain a publication scheme which sets out the information it publishes proactively and explains how to access it. The publication scheme must be approved by the Information Commissioner.

#### *Respond to information requests and reviews:*

The organisation has a duty to respond to requests for information that it holds. Response must be no later than 20 working days after receipt of the request.

#### *Provide assistance and advice:*

The organisation must provide advice and assistance to a person who proposes to make, or has submitted, a request for information, as far as it is reasonable to do so.

### Delegated Responsibilities

Overall responsibility for ensuring that the organisation meets the statutory requirements of the FOISA, EIR and DPA lies with the Board of Directors, and the Chief Executive Officer has overall responsibility for information management issues. The Corporate Services Manager has responsibility and accountability for establishing and applying procedures/practices and staff training.

The Director of Finance ensures that policy makes it clear who is responsible to responding to requests and reviews; and ensures that the policy makes it clear who is responsible for setting up and maintaining the organisation's publication scheme.

## **Responding to Requests**

A 'request' needs only to ask for information and provide the requester's name and contact details for their FOI rights to apply. Under FOISA, the request must be made in a recordable format, such as a letter, email or audio file. Under the EIRs the organisation can receive a verbal request.

All requests for information are referred to the Finance Director, who will ensure that the request is logged within a specific file. The Finance Director will then initiate the search for information

A response can be any one, or a combination, of the following:

- A request for clarification;
- Disclosing the information;
- Issuing a fees notice;
- Responding that the organisation doesn't hold the information;
- A refusal on the grounds of excessive cost;
- A "neither confirm nor deny" notice;
- A refusal on the grounds that the request is vexatious or repeated, or unreasonable.

In responding to requests, the organisation will focus on the requested information and respond in terms of FOI law, and each request is handled on a case-by-case basis.

When the organisation discloses information, it will issue a response enclosing the information and will set out the rights to review and appeal.

If the organisation withholds information, it will issue a response:

- Stating that it holds the information;
- Specifying the exemption on which it is relying;
- Stating the reason for the exemption;
- Stating the requester's right to request a review, and if still dissatisfied, to appeal to the Commissioner.

## **Responding to Reviews**

Where a requester is dissatisfied with the way the organisation has handled their request for information, the requester has the right to ask the organisation to review the handling of their request.

Although requesters are not required to specifically ask for a review, they must state, in writing, why they are dissatisfied, and if the organisation receives such a communication then it will trigger the review process.

The aim of the review is to allow the organisation to: confirm the original decision or to substitute a different decision. The review will be independent and be undertaken by a Senior Manager not involved in the initial response. All reviews must be completed within 20 working days, and the response to the requester will include their right to appeal to the Commissioner within 6 months.

## **Timescales**

FOI requests should be dealt with within 20 working days, excluding school holidays. Requests for Data Protection (subject access requests) should be dealt with within 40 calendar days. Requests for pupil education records should be dealt with within 15 school days.

## **Proactive Publication**

The FOISA obliges the organisation to make information proactively available in the form of a "publication scheme". This scheme lists categories, or "classes" of information that will routinely be made available without the need for a specific information request. The scheme is published on the organisation's website.

The scheme will be reviewed regularly by the Director of Finance. Whenever any information is provided in response to a recorded FOISA enquiry, the organisation will assess whether the information is suitable for wider publication. In general, there will be a presumption in favour of publishing such information on the organisation's website.

## **Records Retention**

The organisation retains records of all requests, and review requests where applicable; correspondence with the requester; a record of searches asked for and their outcomes; the request and review responses including the information disclosed; the information the organisation holds; any information withheld and under what exemption; and correspondence with the Commissioner if the requester appeals.

## **Logging and Tracking Requests**

The organisation will log, track and monitor requests and reviews, and will submit quarterly FOI statistics to the Commissioner via a statistics portal. These statistics will be published quarterly and anyone can make reference to them.

## **Staff Training**

The Corporate Services Manager is responsible for ensuring that staff are adequately trained and supported at all levels in carrying out their FOI duties, and will ensure that all staff can recognise a request that has been made to them; and are aware of any procedures for forwarding requests or enquiries to staff who are able to answer them.



## Useful Guide Information – 6 Steps

1. Availability and formats
2. Exempt Information
3. Copyright
4. Charges
5. Contact us / Appeals / Scottish Information Commissioner
6. The classes of information that we publish

### **1. Freedom of information – Availability and formats**

The information published through this Guide to Information is, wherever possible, available on our website. We will try and offer an alternative, individual arrangements for people who do not want to, or cannot, access the information online. For example, we can usually arrange to send information to you in paper copy (although there may be a charge for this – see Section 4: Charges).

#### Advice and assistance:

If you have any difficulty identifying the information you want to access, then please contact us to help you.

### **2. Freedom of information – exemptions**

#### **Why some information might be withheld**

We try to make as much information as possible available. However, sometimes there is a good reason why we withhold information. If we propose to withhold information, we will explain to you why.

#### **Exemption categories in the FOI Act**

**The FOI Act lists several categories of information which may be exempt from disclosure:**

If information is otherwise accessible (in another place, or under other legislation)

If we are prohibited from disclosing it (by other legislation)

If we intend to publish information in the future (within 12 weeks). If the information is personal information that would breach the Data Protection Act

If disclosure of the information would substantially prejudice:

- the effective conduct of public affairs, or investigations by Scottish public authorities
- National security and defence, international relations, relations within the UK, formulation of policy
- Commercial interests and the economy
- Law enforcement, Audit functions
- Confidentiality
- Health, safety and the environment
- Communications with Her Majesty etc. and honours.

### **"Absolute" and "Non-Absolute" Exemptions**

A few of the exemptions are "absolute", which means that if information falls into one of these categories, we do not have to take anything further into consideration before withholding the information.

#### **Examples of absolute exemptions:**

- information that is otherwise accessible
- information that is prohibited from disclosure
- court records
- actionable breaches of confidence
- most personal information.

All other exemptions are "non-absolute" which means that even if the information requested fits the exemption, we must also consider whether disclosure would cause "substantial prejudice", and also where the "public interest" lies.

### **Substantial Prejudice**

In most cases, information is not exempt simply because it falls into an exemption category. We must also consider whether or not disclosure would cause "substantial prejudice". This means that the prejudice caused must be "real, actual and of significant substance" before we can withhold information.

### **Public Interest**

Even where we consider disclosure would cause "substantial prejudice", we will also have to consider the public interest before we withhold information. This involves looking at whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption. "Public Interest" is not defined in the FOI Act, although there are some guidelines in the Code of Practice on the Discharge of Functions by Public Authorities under the FOI (Scotland) Act 2002.

### **Can I use the FOI Act to get access to my personal information?**

No. A request by an individual for information about himself/herself will be exempt under the Freedom of Information (Scotland) Act 2002 and will continue to be handled as a 'subject access request' under the Data Protection Act 1998. In certain circumstances such a request may involve the release of associated third party information.

### **Can I use the FOI Act to get access to personal information about other people?**

Perhaps. The Freedom of Information (Scotland) Act 2002 extends access rights which already exist under the Data Protection Act 1998. Where an applicant specifically requests information about a third party, or where responding to a FOI request would involve the disclosure of personal information about a third party, the request falls within the remit of the Freedom of Information (Scotland) Act 2002. However, the Council must apply the Data Protection Principles when considering the disclosure of information relating to living individuals. The Council must not release third party information, if to do so would mean breaching one of the Principles.

### **3. Freedom of information – copyright**

All of this information, from our publication scheme can be copied or reproduced without our formal permission, provided it is copied or reproduced accurately, is not used in a misleading context, is not used for profit, and provided that the source of the material is acknowledged.

Providing access to information does not mean that copyright has been waived, nor does it give the recipient the right to re-use information for commercial purposes.

The Publication Scheme may contain information where the copyright holder is not Moore House Care & Education. In most cases, the copyright holder will be obvious from the documents. In cases where the copyright is unclear it is the responsibility of the person accessing the information to locate and seek the permission of the copyright holder before reproducing the material or in any other way breaching the rights of the copyright holder.

### **4. Freedom of information – charges**

In the event that we decide to impose a charge we will issue you with notification of the charge and how it has been calculated. The information will be provided to you on payment of the charge. If you decide not to proceed with the request there will be no charge to you.

Charges are calculated on the basis of the actual cost to Moore House Care & Education providing the information.

- Photocopying is charged at 10p per A4 sheet for black and white copying, 20p per A4 sheet for colour copying.
- Postage is charged at actual rate for Royal Mail First Class.
- Staff time is calculated at actual cost per staff member hourly salary rate to a maximum of £15 per person per hour.

The first £100 worth of information will be provided to you without charge.

Where information costs between £100 and £600 to provide, you will be asked to pay 10% of the cost. That is, if you were to ask for information that cost us £600 to provide, you would be asked to pay £50, calculated on the basis of a waiver for the first £100 and 10% of the remaining £500.

Where it would cost more than £600 to provide the information to you, however, we will ask you to pay the full cost of providing the information, with no waiver for any portion of the cost.

**Charge for request for your own personal data:**

The minimum cost is £10 rising to a maximum of £50 depending on the volume and type of information requested, plus reproduction and postage costs (both on the same basis as for FOI requests).

**5. Freedom of information – contact us / appeals / scottish information commissioner**

**If you are unhappy with our response to your FOI request.**

If you are not satisfied with our response to your request, you can contact us at Moore House Care & Educations, Finance Director, for a review of the original decision.

Please note that the Act says you have 40 days in which to request that we review our decision.

Your request will be reviewed and you will receive a reply within 20 working days.

To request a review of the way your request for information has been handled, contact:

The Records and Information Compliance Manager, Viewforth, Stirling FK8 2ET. Tel: 01786 233989

If you are still unhappy with the Council's response, you can then contact to Scottish Information Commissioner to complain and ask him to investigate further. Contact:

The Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews KY16 9DS. Tel: 01334 464610. Fax: 01334 464611. Email: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

## **6. Freedom of information – the classes of information that we publish**

### **Publication Scheme**

The Freedom of Information (Scotland) Act 2002 (the Act) requires Moore House Care & Education to produce and maintain a publication scheme.

Moore House Care & Education are under a legal obligation to:

- publish the classes of information that they make routinely available
- tell the public how to access the information and what it might cost

The scheme has the Commissioner's approval.

## Publication Scheme

<b>About our organisation</b>	
Organisation name, address and contact details	www.moorehouse.org.uk
Organisational structure, roles and responsibilities	www.moorehouse.org.uk
Contact details in relation to FOISA	www.moorehouse.org.uk/FOISA/
Publication scheme and guide to information	www.moorehouse.org.uk
Charging schedule	www.moorehouse.org.uk
Legal framework for the authority, including constitution, articles of association	Contact Finance Director: info@moorehouse.org.uk
Names, responsibilities and biographical details of the people who make strategic and operational decisions about the performance of function and/or delivery of services by the organisation, eg Board members, CEO	www.moorehouse.org.uk
Mission Statement	Contact Finance Director: info@moorehouse.org.uk
<b>How we deliver our services</b>	
List of services	www.moorehouse.org.uk
Information for service users, including how to access the services	www.moorehouse.org.uk
<b>How we take decisions and what we have decided</b>	
Decisions taken by the organisation: agendas, reports and papers provided for consideration and minutes of Board meetings	Contact Finance Director: info@moorehouse.org.uk
Reports of regulatory inspections, audits and investigations carried out by the authority	<a href="http://www.careinspectorate.com">www.careinspectorate.com</a> www.educationscotland.gov.uk
<b>What we spend and how we spend it</b>	
Financial statements, including annual accounts and any regular statements	www.companieshouse.gov.uk
<b>How we manage our human, physical and information resources</b>	
Strategy for and management of human resources	Contact Finance Director: info@moorehouse.org.uk
Description of the authority's land and property holdings	Contact Finance Director: info@moorehouse.org.uk
Freedom of information policies and procedures	www.moorehouse.org.uk
Data Protection policy	Contact Finance Director: info@moorehouse.org.uk