Welcome to this workshop which, for some of you, will be your first session with my office in preparing both you and your organisation to deal with your new duties under FOISA from 11 November 2019.

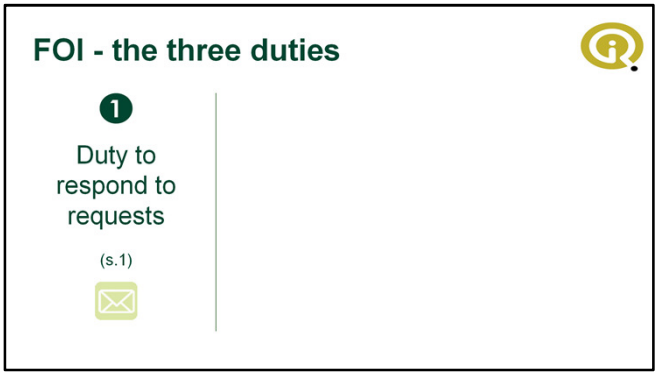
This session is in many ways a more practical, hands-on event than our earlier sessions which have been provided to many of your CEOs and Chairs. Today we will look at the duties and processes in more detail, and will focus on what you and your organisations should be doing now to prepare for the coming on-line of the Order, and we want to get you, as future FOI practitioners, thinking about how you are going to deal with requests, proactive publication, and your duty to advise and assist requesters.

The Order that will bring registered social landlords under the scope of FOI law was passed by the Scottish Parliament on 4 April 2019, so we now have the detail on which bodies are covered in relation to which functions.

Over the next 25 minutes or so I will provide you with an introduction to the day's events and set the scene – I'll look at the terms of the Order itself and discuss what organisations are and are not covered by it. I'll also set out for you some of the benefits of FOI which we hope that you, as FOI practitioners, will champion within your organisations.

However, first of all I want to give you a quick reminder of, or for some of you, an introduction to the 3 core FOI duties which will apply to all bodies covered by the Order, so you always have these in mind when thinking about what designation actually means for your organisations, and for you as a FOI practitioner. We'll then be looking at them in a lot more detail later on.

Please note that my focus is on FOISA and not the EIRs, which RSLs have been subject to for some time, but we will be covering these as well later on today.



The first is the duty to respond to information requests.

This flows from the "right to information" provided by FOI, which is clearly set out in the very first section of the FOI Act. This says:

"A person who requests information from a Scottish public authority which holds it is entitled to be given it…"

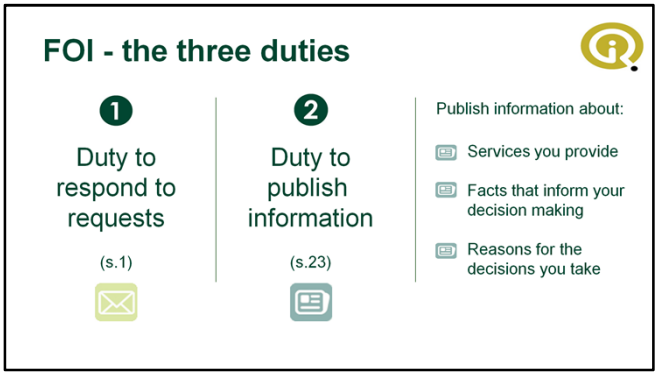
The right to information is a right that we all have, and one that we can all make use of. If you or I request information from a public body, we're entitled to receive it. We don't have to say why we want it or what we want to use it for, and it can only be kept from us if there's a very good reason for withholding it.

The duty to respond to such requests applies to all written requests for information that an organisation receives.

If you receive a request for information under FOI you have a legal duty to respond promptly, and in any event within 20 working days in most cases.

Information requests can be refused, but only in certain circumstances, and only where the law expressly permits it, e.g. if an exemption applies such as substantial harm to commercial interests.

So this is your reactive duty, and we want you to be thinking about how this will be achieved within your organisation.



The second duty is the duty to publish information.

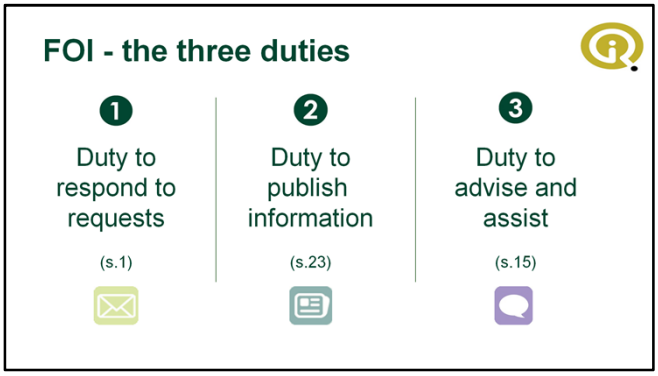
FOI requires organisations to proactively publish information into the public domain. This is the proactive duty.

This duty is referred to as the 'publication scheme' duty, and is contained in section 23 of the FOI Act.

Under this section, organisations should be publishing information about the services they provide and the decisions that they take, to help the public better understand the costs and the standards of services, the reasons for decisions, and the facts/analysis on which decisions of importance to the public have been made.

By putting as much information as you can in the public domain, and publishing information whenever a public interest in that information is identified, you'll be providing people with a route through which they can access that information themselves, meaning they won't have to ask you for it.

A clear, helpful and user-friendly route to information also marks you out as an open and transparent organisation, and helps build trust with service users and the wider public.



The third duty is the **Duty to advise and assist.**

Section 15 of the FOI Act places a legal duty on organisations to advise and assist requesters.

At it's best, FOI can help you build a positive relationship with your service users and stakeholders.

And, as with the publication scheme duty, taking your duty to advise and assist seriously can reduce the impact of FOI request, as well as building trust in your organisations.

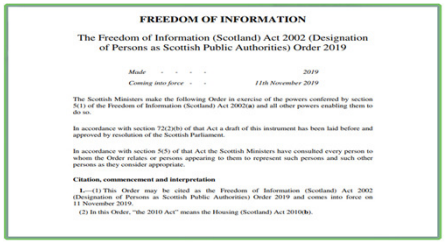
Indeed, one of the things you'll have noticed as I've gone through the duties is that you're probably doing most of this already. What FOISA does is give it structure and enforceability/and appeal process.

RSLs already have a great reputation with tenants, and are starting from a much better position than many other bodies. The 2017/18 National Report on the Scottish Social Housing Charter found that 9 out of 10 tenants are satisfied with their engagement with landlords, compared to 8 in 10 for local authorities, while overall tenant satisfaction sits at 91%.

This is a strong point to start from, and bodes well for the effective fulfilment of the FOI duties, and the benefits that this brings.

So that then is a very quick reminder of the duties which, as I say, will be looked at in more detail later.

Registered Social Landlords Designation Order



FREEDOM OF INFORMATION

The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019

Made - - - - 2019
Coming into force - - 11th November 2019

The Scottish Ministers make the following Order in exercise of the powers conferred by section 5(1) of the Freedom of Information (Scotland) Act 2002(**a**) and all other powers enabling them to do so.

In accordance with section 72(2)(b) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 5(5) of that Act the Scottish Ministers have consulted every person to whom the Order relates or persons appearing to them to represent such persons and such other persons as they consider appropriate.

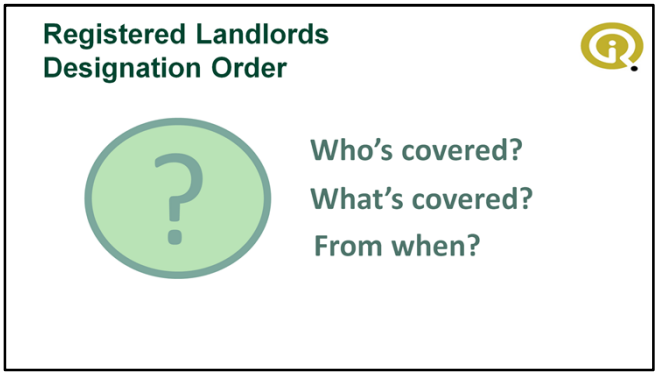
Citation, commencement and interpretation

1.—(1) This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 and comes into force on 11 November 2019.

(2) In this Order, "the 2010 Act" means the Housing (Scotland) Act 2010(**b**).

I promised you that I would look at the terms of the Order so you will know whether or not your organisation is subject to the Act, and in relation to which of its functions.

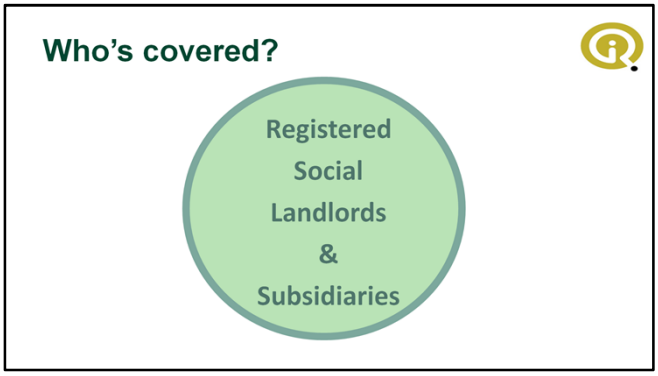
The Order designating RSLs was approved on 4 April. But what does the order tell us? We've been looking at its terms in detail and developing our understanding of it, and published our initial view on the Order terms on our website at the end of last week. This is available at: www.itspublicknowledge.info/rsls.



In general terms, however, the Order sets out the answers to three key questions relating to which bodies are subject to the FOI duties:

- Who is covered – as in which organisations are designated/brought under FOI by the draft Order
- What is covered – what information held by those organisations is covered by FOI law (the Order applies to certain functions)
- From when – the order also gives us an implementation date to work towards

We'll look at these in turn and consider the so-whats for your organisations as we go through today.



The Order unfortunately does not contain all the definitions in the one place, instead it refers to other pieces of legislation, so there are a number of hoops to jump through.

Organisations that are listed on the register kept by the Scottish Housing Regulator will be automatically be covered by the legislation. (This will include subsidiaries that are registered).

For subsidiaries that are not listed on the register, the terms of the order mean that coverage is dependent on a range of factors, including:

- **the corporate structure of the subsidiary and its parent RSL**
  (i.e. are they registered with the Financial Conduct Authority as registered societies, or are they companies or bodies corporate?)

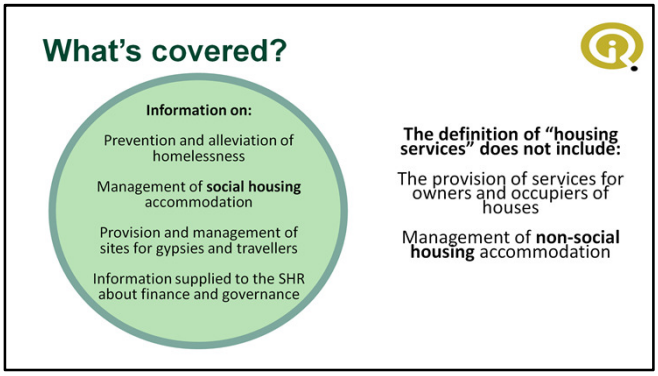
- **the relationship between them**
  (e.g. does the RLS have voting rights, does it control composition of the board of directors?)

We anticipate that most subsidiaries will fall within scope of the definitions provided.

However, its really only you who can identify who your subsidiaries are – it is crucial that you do this asap so they can be trained and so both we as regulator, and public as potential requesters, can identify them.

Subsidiaries should also be detailed in your publication scheme Guide to Information.

RSLs must identify if they have any subsidiaries fall under the Order – they will be bodies subject to the Act, and we will expect them to comply with the 3 duties, including having a publication scheme and guide to information. They therefore need to be identified as soon as possible for their benefit as much as that of potential requesters.



While these organisations are covered, the terms of the order mean that not all information held by these organisations will fall within the scope of FOI law.

The Order sets out that FOI will apply to information held on any activities in relation to housing services, as defined in section 165 of the 2010 Housing (Scotland) Act.

There are, however two parts of the normal definition of housing services which are not included in the Order's definition.

- Information held in relation to the provision of services for owners and occupiers of houses – e.g. factoring services
- Information held in relation to the management of non-social housing – e.g. on private or mid-market rental accommodation.

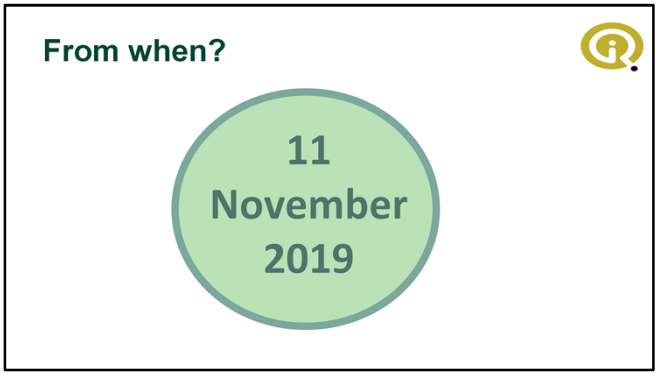
So it is a more restrictive definition of Housing Services than you may be used to.

Rights WILL, therefore, apply to information held about any activity in relation to the following definition of housing services:

- The prevention and alleviation of homelessness
- Management of **social housing** accommodation (as you would expect, this is very wide)
- Provision and management of sites for gypsies and travellers

In addition, the Order makes clear that information supplied to the SHR about finance and governance will also fall within scope (information which can currently be requested from the

Regulator, of course).



The third question answered by the order is the start date.

We know that the Order is to come into effect on 11 November 2019. This is a challenging timescale but also an achievable one.

In order to help RSLs meet their duties, my organisation will be supporting GWSF and SFHA to develop a range of materials, resources and events to help you prepare for FOI.

The importance of FOI practitioners

- Buy-in from the top is essential, and you are their go-to person
- What is your organisational culture? – be a FOI champion
- The benefits of FOI to the organisation

Today's presentations will highlight some of the key points which you should be looking at now (and I appreciate that a number of you are already ahead of the game on this).

First though, we should emphasise the importance of all of you in this process.

In earlier sessions I have emphasised the importance of top-level buy-in to any change programme. If CEOs and senior managers support and are seen to value FOI within their organisations, then staff are much more likely to support it, preparatory work is more likely to be done, and an organisation will increase its chances of meeting its statutory obligations. They will be looking for assurance that everything is going to work come 11 November, and you are the go-to person in your organisation – you will have to make it work in practice, so make sure your bosses know what the organisation needs in order to be ready – structure, training, personnel, linkage to other parts of the organisation.

But it's not just your bosses – it's your colleagues as well – be a champion for FOI within your organisation and help to build an open culture, so that the change is not being driven only from the top, but permeates throughout the organisation.

Your very presence here is a great sign of that buy-in, but I still want to spend a bit of time in pointing out some of the benefits of FOI, not only for requesters, but for your organisations themselves. This will show more tangible benefits for your organisation which you and your people can see, so that you have a culture that complies with FOI because it wants to, rather than because it has to.

Benefits for Public Bodies

- Prevention
- Performance
- People
- Partnership

So, what are these benefits? Well, I don't pretend to be able to identify them all, but they generally fall into 4 categories. This is the way my office sets them out in our strategic plan.

I'd now like to look at each of these.

Prevention relies on the simple premise that people are less likely to misbehave if they think they are more likely to be caught. At the top end of the scale, they are less likely to commit fraud or corrupt practices if accounts and contracts are made public for scrutiny, but the principle applies equally to decision-making – if the reasons for decisions are disclosed, then those making the decisions are more likely to have regard to only proper considerations.

A great example from Brazil involves encouraging children to take photos of their school meals as a way of identifying whether the contractors are supplying what they are meant to. Closer to home is the scandal of MPs and MSPs expenses, and I think it is worth looking at the two very different approaches.

The UK Parliament's response was to fight disclosure of expenses, a private members' Bill even being laid to prevent disclosure. It also appealed against the disclosure which caused the whole process to drag on for over 4 years, feeding the headlines.

The Scottish Parliament's response was for the Presiding Officer to champion openness and agree to publish all expenses claims in a structured way. The first Scottish Information Commissioner, Kevin Dunion, remarked "Rather than resist further disclosure, the Presiding Officer of the Scottish Parliament agreed to the extensive publication of all expense claims, which occasioned no further scandal."

There are 3 aspects to performance –

- demonstrating what you are doing/how you are providing services;

- being able to compare with other authorities' performance;

- being open to scrutiny about what has been done – sometimes painful, but it can identify short-comings, prevent waste, and allow for more focused delivery of services. In other words, view openness and transparency as a powerful tool to achieve the Best Value themes to build trust and relationships, inform **continuous improvement** and identify more **options** to achieve outcomes.

For example, Shelter Scotland made 'round robin' requests to local authorities for details of the number of homeless people housed in temporary accommodation. The data disclosed showed an important picture and allowed comparisons between different local authority areas. In 2017, after a few years of these requests, the Scottish Government saw the value in the data and introduced a mandatory requirement for local authorities to return the data that had been collected by Shelter as part of it's campaigning work.

This data is now published annually as part of official reporting, ensuring it can be easily viewed, monitored, assessed and commented on by anyone with an interest. Importantly, it also allows authorities to see their own performance, compare it with others, and improve their own processes and services.

People – a culture of openness enables understanding and dialogue to foster good relations and support collaboration, helping to deliver better services for those they serve.

The example here involved a request back in 2009 by another charity, Inclusion Scotland - an organisation that works on behalf of people with disabilities - for information on the availability and quality of housing for people with disabilities from Scotland's 32 local authorities.

As a result, Inclusion Scotland discovered that:

- Many Councils were greatly underestimating the number of people with disabilities in their area
  (They asked local authorities for their own figures on the number of disabled people in each area, and then compared this with census data, concluding that housing needs were being assessed using unreliable and out of date data)

- Many houses had adjustments that had been made for people with disabilities removed following the person moving out, rather than rehousing an individual with similar needs in the property.

- Many Councils did not consult with people with disabilities when developing their housing strategies.

Inclusion Scotland's report, compiled using FOI, was launched in Parliament with the support of the Communities Minister. It led to the development of new government guidance recommending that people with disabilities are consulted in the development of housing strategies, to encourage better, more informed decision making by authorities, and stronger relations with key service users.

The result was – better for people with disabilities

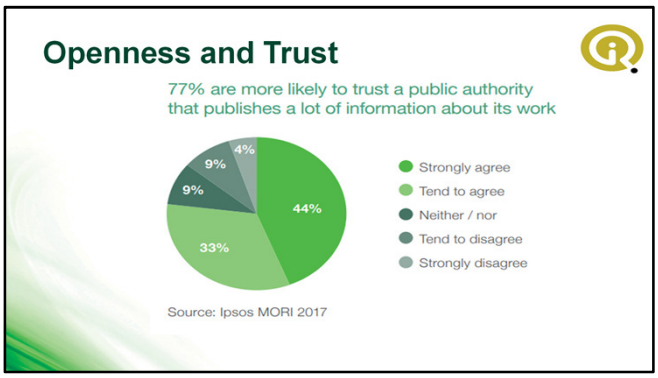
- and better for the public authorities which made better decisions on more reliable information, and had a better relationship with the people who were the users of those services

- and better for other service users as there was less waste.

Benefits

- Prevention
- Performance
- People
- **Partnership**

The final group of benefits is under the heading “Partnership” – this is where “trust” comes in.



We often hear that access to information helps build trust and confidence in public services. In Scotland we wanted to test this, so in an IPSOS Mori Omnibus Poll we asked people – 77% responded that they are more likely to trust an authority that publishes a lot of information about its work.

This is not limited to public bodies – the Scottish Charity regulator (OSCR) carried out its own research in 2018 where 88% of respondents thought that knowing how much of their donations went to the cause would improve trust in a charity.

NB FOI can be a double-edged sword for trust – used positively and proactively it can help rebuild trust; but approaching it negatively and only providing information begrudgingly will do the opposite and damage trust.

Here are a couple of examples to illustrate this in practice.

I mentioned the Shelter example as highlighting the benefit of proactive publication. Here's another:

City of Edinburgh Council property repairs scandal in 2011. It was extremely serious: four council officials were later jailed for accepting bribes.

At the height of media coverage, the FOI team received as many as 70 requests a day for information relating to the fraud investigations. And we received more than 90 appeals from people unhappy because they hadn't received the information they were asking for.

Following contact with the Council, we encouraged it to release Deloitte internal management reports it had commissioned.

It had to redact a great deal of the reports to withhold personal information and information about continuing police investigations.

In the two weeks that followed the publication of these reports, the council went from receiving 70 requests a day to receiving none at all – not even for the redacted information.

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The council learned from the property repairs.

When the Mortonhall crematorium baby ashes scandal broke, the Chief Executive ordered an independent inquiry. From the outset the council announced the report would be published and said when it would be published.

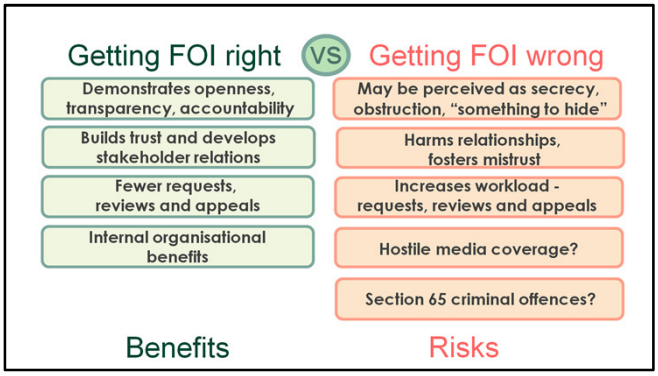
Over the whole of the period, the council received what it described as “a negligible number” of information requests about Mortonhall.

The examples I’ve given here show:

- There is a direct and positive relationship between requester behaviour and proactive publication.
- Interest rises when information is withheld in response to requests. People want to know what’s going on.
- If you have to withhold information, publish what you can and the public is more likely to understand why you can’t publish the rest.

Challenging FOI requests often come from people who are angry, upset or distressed about something. Publication of information is a particularly powerful tool for those requesters.

The more we can publish information the public wants to see, the more we reduce distrust.



So to summarise, getting FOI right – responding to requests on time, giving clear, reasoned decisions which helps the requester understand your actions, doing what you can to advise and support requesters access your information, presents an image of an organisation which is open, transparent, accountable, and working in the interests of service users and other stakeholders.

Getting FOI wrong, on the other hand can have a range of negative consequences – some of which can be extremely serious for your organisation or its staff.

An organisation that fails to respond to requests, doesn't explain its reason for non-disclosures, or is obstructive or unhelpful in its responses will inevitably be perceived and an organisation which is overly-secret, or has something to hide. This in turn can damage relations and foster mistrust, while also leading to an increased workload, thorough follow-up requests, internal review requests, and appeals to my office.

These are inevitably more time-consuming for organisations to deal with, and will involve staff at a more senior level in the organisation. It's much, much easier to get an FOI response right first time, at FOI Officer level, than to get it wrong, then have more senior staff involved in a review of the same request, or even an appeal.

Poor performance can also lead to critical media coverage, which can in turn create a public perceptions which can be hard to shake off.

Finally, at the extreme end, poor performance under FOI can even lead to a criminal prosecution in rare cases. Under FOI it's a criminal offence for staff to delete, change or conceal information with the intention of preventing its disclosure once a request has been received for it. We've been fortunate in that there have yet to be any prosecutions under section 65 in Scotland, but we don't want that statistic to change!

Contact us

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E: enquiries@itspublicknowledge.info
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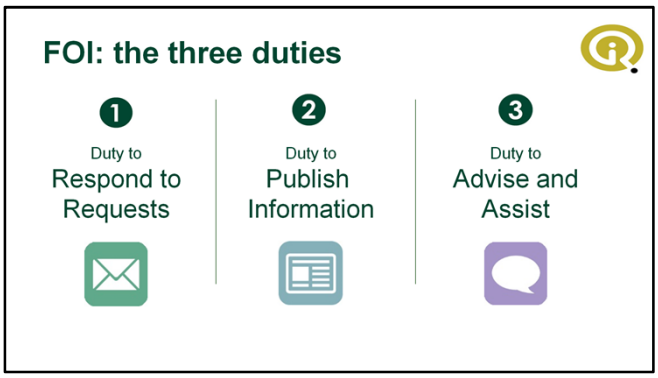
The duty to advise & assist

Paul Mutch
Policy & Information Officer



FOI law places three main duties on organisations:

- The duty to respond to requests
- The duty to publish information
- The duty to advise and assist

Most people who have heard of FOI will naturally associate it with the duty to respond to requests: you make an FOI request, and you receive a response. It's not surprising that this is the most well known – it's the one that we read about regularly when FOI is reported in the press e.g. through the disclosure of information on ambulance waiting times, pollution data, homelessness statistics or MP or MSP expenses.

But there are, of course, two other duties and we're going to discuss these in reverse order in today's workshop.

This is because we want to emphasise that, while the duty to respond is the one with the highest profile, these three duties are of equal importance.

Not only that, but they're also inter-related and have an effect on each another. If you can get your response to duty to publish and the duty to advise and assist right, for example, it can have a real and positive effect on the impact for your organisation from the duty to respond to requests.

The reasons for this should become clear throughout today's sessions.

Out of the three FOI duties, the Duty to Advise and Assist is almost certainly the least well known, and perhaps for this reason, it's one which authorities can find themselves falling foul of from time to time, as they forget or overlook the duty advise and support people seeking information in their hurry to resolve requests, or meet the FOI response timescale.

Since FOI came into force in 2005 we've issued over 3,000 decisions, where people have brought appeals to us because they've been unhappy with a response.

In almost 10% of these cases we've commented on the manner in which the authority met – or most likely failed to meet – their duty to advise and assist the person seeking information.

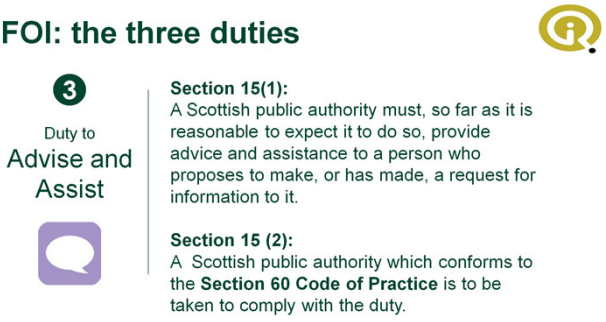
These are often cases where, if the authority had taken a little more to think about their communications with the requester, or thought about the advice and support they could offer, the issue at the heart of the appeal may have been resolved, and the case may never have been appealed.

What the duty to advise and assist does is put customer service and customer engagement at the centre of FOI practice.

It's about your organisational culture towards those who would like to access your information. It's about your approach you take towards the tenants, stakeholders, citizens and communities who want to engage with you.

If you can put the duty to advise and assist at the centre of **your** FOI practice, it will help inform the way that you work – how you develop your procedures, how you engage with requesters, how you respond to requests, what you publish and how you publish it.

FOI: the three duties



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Duty to

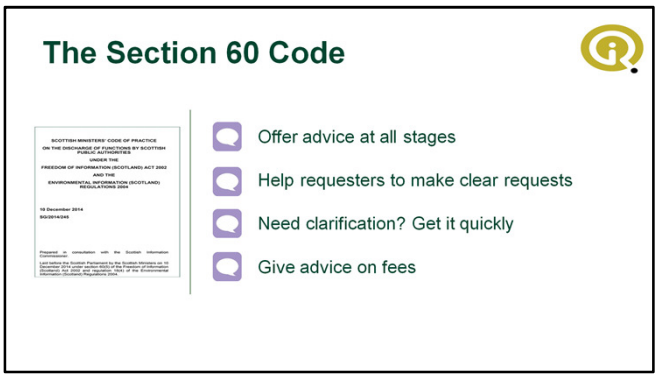
Advise and Assist

Section 15(1):
A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

Section 15 (2):
A Scottish public authority which conforms to the **Section 60 Code of Practice** is to be taken to comply with the duty.

The duty is contained in Section 15 of the FOI Act. This places a duty on organisations to advise and assist people who want to access its information. There's an equivalent duty under the EIRs for requests for environmental information (regulation 9).

You'll notice as well, that Section 15(2) states that an organisation which conforms to the Scottish Ministers Section 60 Code of Practice will be complying with the duty to advise and assist. The section 60 Code contains a lot of guidance on meeting this duty effectively.



The Section 60 Code (and the section 61 Code which covers records management) are essential pieces of Guidance as you prepare for FOI.

The Section 60 Code sets out the standard that Ministers expect from authorities when meeting their duties under FOI law. It includes guidance on a wide range of issues, including:

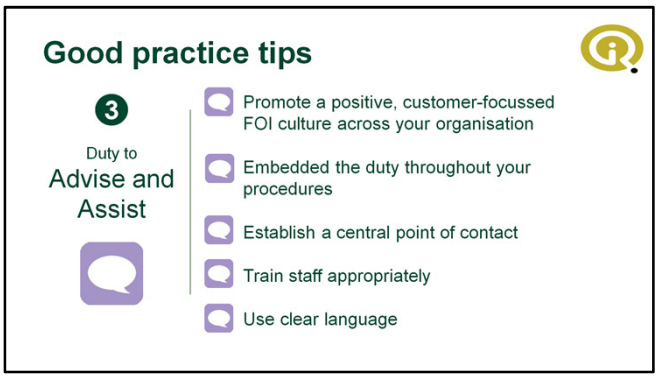
- Managing FOI
- Recording statistics
- Proactive publication
- Consulting with third parties
- Responding to requests around contracts and procurement
- The duty to advise and assist.

In relation to the duty to advise and assist, the Code sets out that:

The duty applies at every stage of an FOI request - for example:

- ***Before* a request is made** - you can provide guidance on making a request to help the requester make a clear request; advice on what information you hold; information on what you already publish and how it can be accessed; etc.
- ***During* the request** - the code says that you should ask for clarification quickly if the request is unclear; tell the requester what you could provide within the cost limit if it applies; clearly explain the reasons for your decisions and actions explain the reasons for your decisions and actions; etc.

- ***After* the request** - offer to provide explanation or clarification if the requester has any questions and be ready to advise on any follow up requests.



Some good practice tips to help you meet the duty:

Promote a positive, customer-focussed FOI culture in your organisation – from the top down – get senior managers on board – communicate the risks and benefits to them, report regularly on progress and performance, keep them engaged and bought-in.

Make sure the duty is embedded throughout your request-handling and publication procedures
Create these procedures with the duty to advise and assist in mind. Take advantage of opportunities to remind staff of their duty at appropriate points throughout the procedures so that, whenever staff refer to these, they're reminded of the requirement.

Establish a central point of contact for those seeking to access information, and promote this on your website, etc - make it easy for people to ask for information – be seen to encourage engagement and welcome requests. It sends a message that you're an open, transparent and accountable organisation.

Train staff – even if you do have a central point of contact, requesters aren't required to use it. A request can come in at any point. Make sure **all** staff are aware of their duty to help requesters.

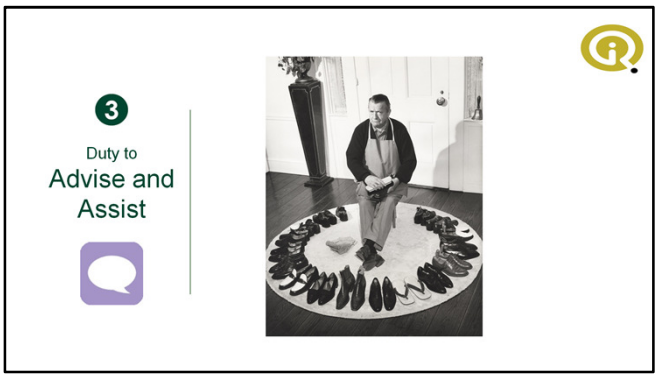
Encourage clear language in communications

FOI is a legal process, and it's important that you meet the legal requirements of FOI law, but be wary of being too 'legalistic', or only using legal language in your communications with requesters. Using language that requesters might find hard to understand can put barriers between your organisation and the requester.

Is there anything you can do to ensure your response is as clear as possible for the requester? If you're withholding information have the reasons for this been clearly communicated? Using plain-English?

If a requester understands your decisions because they're clearly explained and can see why they're reasonable, they're far less likely to ask for a review or make an appeal.

Provide helpful additional information and context.



A couple of other tips:

Put yourself in the shoes of the requester – and encourage staff to do the same. Are you doing everything you can to help? What level of service would you want or expect in a similar situation?

Take account of individual needs. It's a great idea to use template letters for your FOI responses, but don't make these too rigid. Encourage staff to tailor these for individual needs, or to meet individual requirements.

Don't be afraid to pick up the phone – while the legal side of FOI is primarily done in writing, it can often be helpful to invite a requester to give you a ring to talk through a particular issue, to help you understand what they're looking for, and advise them more effectively about how to frame their request, or how you might respond.

Talking through issues with requesters can support better outcomes.

FOI should be part of your customer service, not something that replaces it!

Some resources that will be helpful to you – most of which can be accessed via our website (see: www.itspublicnowledge.info/rsls)

Section 60 Code of Practice – Section 5 of the code has lots of advice on meeting the duty.

Self-assessment toolkit – we have a self-assessment toolkit to help organisations assess and improve their performance in relation to the duty to advise and assist.

Briefings and Guidance – I mentioned that the duty to advise should be threaded through your procedures. Rather than produce specific guidance on the duty we've threaded our advice thorough our guidance on other issues – e.g. the application of the exemptions, fees and charging, etc.

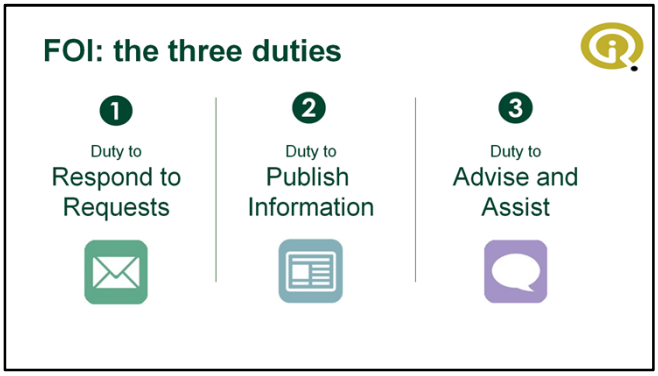
Decisions Round-up – our DRU regularly features advice on meeting the duty effectively. It's published on our website, but you can also receive notifications by following us on twitter: @FOIScotland.

You – you and your colleagues are one of the most important resources. We all know what good customer service looks like, and the standard of service that we would want to see if we were engaging with an organisation. Bear this in mind in your engagement with FOI requesters, and it will help to ensure that FOI runs smoothly for your organisation.

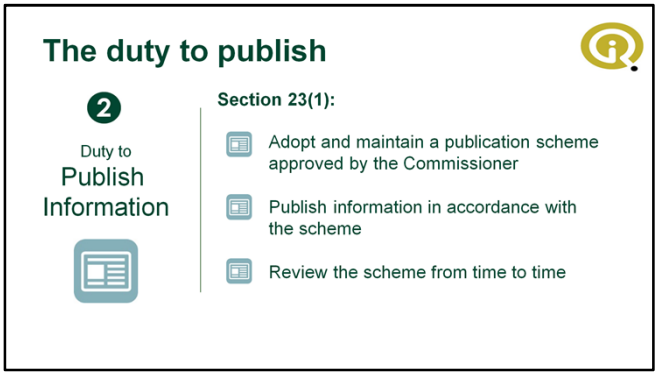
Any Questions?

The duty to publish

Paul Mutch
Policy & Information Officer



So now it's time to take a closer look at the second of our three duties – the duty to publish information.



This duty is contained in Section 23 of the FOI Act. In summary, section 23(1) contains three statutory requirements for publication.

You must:

Adopt and maintain a publication scheme

Adopting the scheme is easy because we have prepared a Model Publication Scheme for authorities. All Scottish public authorities use the same Model and it's scalable to the size of your organisation.

By adopting the Model Publication Scheme you are committing to publish information in accordance with a series of high-level principles, e.g., on the formats in which you publish information, the costs you might charge for access to published information, and the classes, or types, of information that you'll publish (if you hold it).

Publish information in accordance with the scheme

So by adopting the Commissioner's Model Publication Scheme you commit to publishing information in accordance with a series of publication principles.

You then have to meet these principles through the publication of your information.

Authorities that adopt the Model Publication Scheme commit to doing this through the preparation of a Guide to Information – essentially a route through which your stakeholders and service users can access your information. Your Guide to Information should be a webpage or document developed with your stakeholders, in mind, which helps them access the information you make available in accordance with the Model Publication Scheme.

Over the next few weeks we'll be supporting the SFHA and GWSF to develop the 'Open All Hours' publication framework as a template Guide to Information which will ensure that all the minimum standards are met.

Your organisation can then populate this Guide to Information with links to the information you

publish and publish the guide on your website.

You also need to identify any additional information you want to publish, beyond the minimum standard.

Review the scheme from time to time

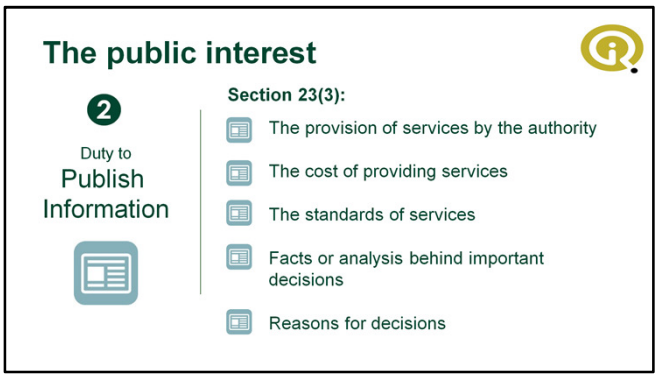
Then you simply set a regular review period – someone needs to check those links are still working and you need to consider afresh whether there is new information that should be published.

In considering what to publish, you need to think about the public interest.

S23 requires an authority to have regard to the public interest in the information it holds when it decides what information to publish.

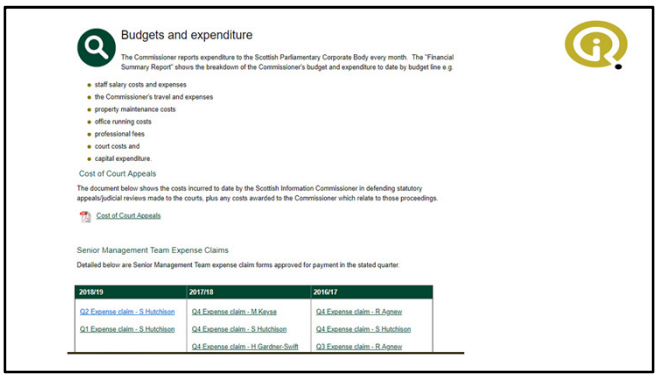
“Public interest” has the same meaning for publication as for requests for information: it means “something which is of serious concern and benefit to the public” or “in the interest of the public”.

Think about – what do you hold that’s in the public interest? What are you being asked about? Are you involved in significant local projects or developments? What should the public know about your work?



In considering the public interest in its information, section 23(3) says authorities should pay particular attention to allowing access to information about:

i. The provision of services by the authority
ii. The cost of providing those services, or
iii. The service standards attained, or
iv. The facts or analysis behind decisions of importance
v. The publication of reasons for decisions taken by the authority



Budgets and expenditure

The Commissioner reports expenditure to the Scottish Parliamentary Corporate Body every month. The "Financial Summary Report" shows the breakdown of the Commissioner's budget and expenditure to date by budget line e.g.

- staff salary costs and expenses
- the Commissioner's travel and expenses
- property maintenance costs
- office running costs
- professional fees
- court costs and
- capital expenditure.

Cost of Court Appeals

The document below shows the costs incurred to date by the Scottish Information Commissioner in defending statutory appeals/judicial reviews made to the courts, plus any costs awarded to the Commissioner which relate to those proceedings.

Cost of Court Appeals

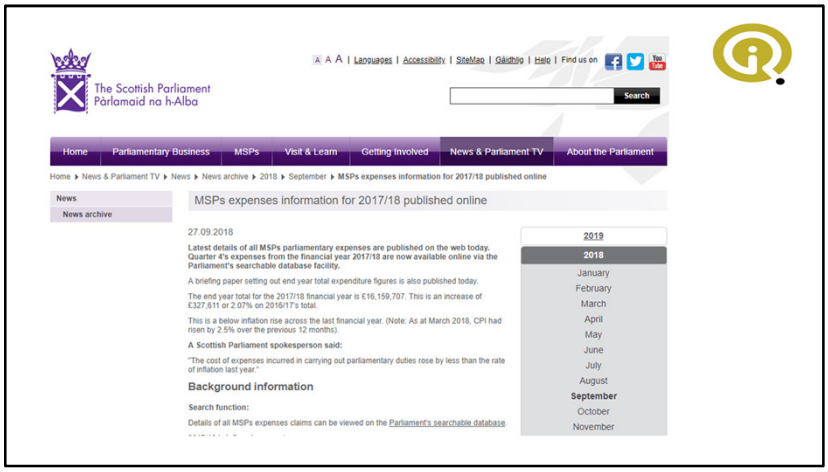
Senior Management Team Expense Claims

Detailed below are Senior Management Team expense claim forms approved for payment in the stated quarter.

2018/19	2017/18	2016/17
Q2 Expense claim - S Hutchison	Q4 Expense claim - M Keyse	Q4 Expense claim - R Agnew
Q1 Expense claim - S Hutchison	Q4 Expense claim - S Hutchison	Q4 Expense claim - S Hutchison
	Q4 Expense claim - H Gardner-Swift	Q3 Expense claim - R Agnew

So in relation to costs of services, for example, our organisation, the Scottish Information Commissioner, publishes a wide range of information on our website in the public interest. This includes financial statements, details of expense claims for senior managers, details of office running costs, etc.

This is published under **Class 4: of the MPS: What we spend and how we spend it**. We've gone further than the requirements of the MPS in some areas, recognising the public interest in certain information. For example, after receiving requests from journalists, we took the decision to publish regularly updated details of the costs incurred and costs awarded as a result of Court Appeals made in relation to the Commissioner's decisions.



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News
News archive

MSPs expenses information for 2017/18 published online

27.09.2018

Latest details of all MSPs parliamentary expenses are published on the web today. Quarter 4's expenses from the financial year 2017/18 are now available online via the Parliament's searchable database facility.

A briefing paper setting out end year total expenditure figures is also published today.

The end year total for the 2017/18 financial year is £16,159,707. This is an increase of £327,611 or 2.07% on 2016/17's total.

This is a below inflation rise across the last financial year. (Note: As at March 2018, CPI had risen by 2.5% over the previous 12 months).

A Scottish Parliament spokesperson said:

"The cost of expenses incurred in carrying out parliamentary duties rose by less than the rate of inflation last year."

Background information

Search function:

Details of all MSPs expenses claims can be viewed on the Parliament's searchable database.

2019
2018
January
February
March
April
May
June
July
August
September
October
November

Similar information is, of course, published by other organisations.

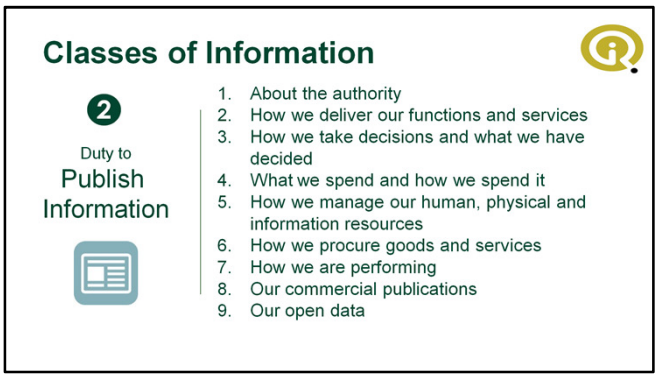
Daren mentioned the differences between the UK and Scottish Parliaments responses to requests around expenses. Here is where information on MSP expenses is accessible on the Scottish Parliament's website.

Dec. No	Applicant	Public Authority	Description	Outcome	Issued	PDF	FOISA Exemptions / Sections	EIR Exceptions / Regulations
003/2019	Mr N	Children's Hearings Scotland	Expense claims	For applicant	11 Jan 2019		12	n/a
116/2018	Mr L	Scottish Prison Service	Expenses of Prison Governors	For authority	06 Aug 2018		12	n/a
110/2017	Ms Katy Sutherland	Scottish Ministers	Travel Expenses: failure to respond within statutory timescales	For applicant	11 Jul 2017		10, 21	n/a
044/2017	Melvich Primary School Parent Council	Highland Council	Travel and expense claims: failure to respond within statutory timescales	For applicant	23 Mar 2017		10, 21	n/a
217/2014	Mr Peter Cherbi	Scottish Court Service	Judicial travel and expenses	For authority	08 Oct 2014		12	n/a
203/2014	Mr Simon Johnson	Scottish Ministers	Ryder Cup delegation expenses	For applicant	22 Sep 2014		1(1), 39(1), 50(1)(a)	n/a
197/2014	Mr Paul Hutcheon	Scottish Fire and Rescue Service	Gifts, Hospitality and Expenses: failure to respond within statutory timescales	For applicant	10 Sep 2014		10, 21	n/a
075/2014	Mr W	Scottish Criminal Cases Review Commission	Legal expenses	For applicant	26 Mar 2014		33(1)(b)	n/a
254/2013	Mr Peter Mortimer	Glasgow City Council	Expenses claimed	For authority	14 Nov 2013		38(1)(b)	n/a
126/2013	Ms Nicola Frail	University of Aberdeen	Itemised breakdown of expenses	For authority	28 Jun 2013		38(1)(b)	n/a
078/2013	Mr Sandy Longmuir	Angus Council	Activities and expenses of two Council employees	For authority	29 Apr 2013		17, 38(1)(b)	n/a
201/2012	Ms A	Stirling Council	Guidance relating to travel expenses	Partially upheld	06 Dec 2012		15, 17, 21	n/a
195/2012	Mr Andrew Sharp	Scottish Ministers	Breakdown of expenses for foreign travel	Partially upheld	29 Nov 2012		12, 15, 21	n/a
083/2012	Mr X	Crown Office and	Total expenses claimed by	For authority	10 May 2012		38(1)(b)	n/a

If there's a public interest in the information, you can almost guarantee you're going to get requests for it and if the information is withheld, your response is likely to be appealed to us. The public don't like being refused this kind of information.

To illustrate this, here's a snapshot of the decision notices the Commissioner has issued on expenses in recent years. The number of such appeals has declined over time as authorities are more wise to the importance of publishing the information – and it might also be to do with them knowing we'll require disclosure in most cases.

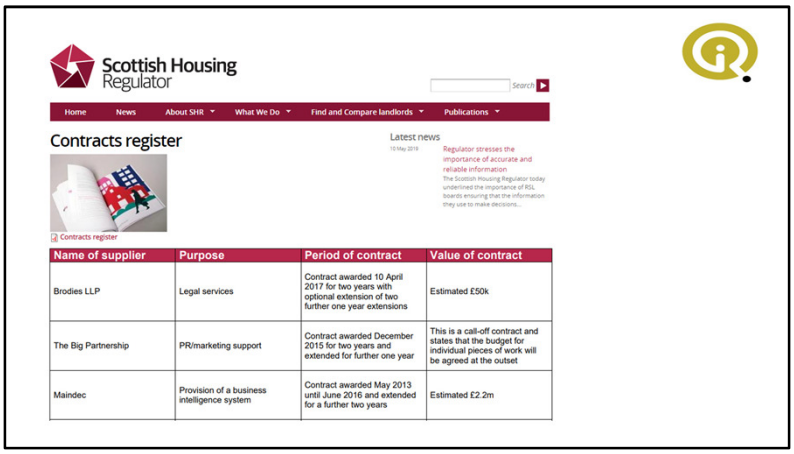
So by publishing this type of information, you'll avoid or at least reduce requests and, importantly, you'll send a clear message to the public that you are open.



Financial Information is published under Class 4 of the Model Publication Scheme. There are eight other classes of information, and our MPS Guidance sets out the types of information you should publish under each class.

A key thing to note is that you only have to publish information if you hold it. You don't have to create information in order to publish it.

So for some classes, e.g.: About the authority; How we take decisions; how we are performing; you may hold a reasonable amount of information for others, you may hold little. If you don't produce any commercial publications, for example, then you won't have anything to put in your Guide to Information under this class.



Scottish Housing Regulator

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Contracts register

Latest news

10 May 2019

Regulator stresses the importance of accurate and reliable information

The Scottish Housing Regulator today underlined the importance of RSL boards ensuring that the information they use to make decisions...

Name of supplier	Purpose	Period of contract	Value of contract
Brodies LLP	Legal services	Contract awarded 10 April 2017 for two years with optional extension of two further one year extensions	Estimated £50k
The Big Partnership	PR/marketing support	Contract awarded December 2015 for two years and extended for further one year	This is a call-off contract and states that the budget for individual pieces of work will be agreed at the outset
Maindec	Provision of a business intelligence system	Contract awarded May 2013 until June 2016 and extended for a further two years	Estimated £2.2m

Class 6 of the Model Publication Scheme requires the publication of information about procurement.

Under this class all public authorities that hold relevant information, like the Scottish Housing Regulator here, will publish a register of all contracts that have gone through formal tendering, including the name of the supplier, the period of the contract and the contract value.

Accessible procurement information

	buyer/name	tender/title	tender/description	tender/v	tender/c
4	Yoker Housing Association c/o Bruce Stevenson Insurance Brokers Ltd	Insurance Tender (Provision of Insurance Contract & Ancillary Services)	Material Damage, Buildings Insurance including Loss of Rent/Alternative Accommodation including Property Owners Liability. Insurance Broking is excluded.		
45	Albyn Housing Society Limited	Provision of Legal Services - Tenancy Management	Albyn would like to procure a legal services provider to provide expert advice and support to its customer services teams in relation to all aspects of tenancy management and enforcement action. In particular, this provider will support Albyn in the recovery of rent, service charge and factoring arrears and in responding to anti-social behaviour. The anticipated length of contract is 4 years with the option for a 1-year extension.	100000	GBP
79	Hebridean Housing Partnership Ltd	Goathill Farm Development	Construction work for new build housing at Goathill.		
96	Weslo Housing Management Ltd	Bathroom Replacement Contract	Generally the works will comprise of the removal of the existing bathroom suite, pipe boxing and bulkheads where required and stripping back the wastes and supplies to a suitable point to allow for removal. The replacement of hot and cold supplies to the w/h/b, bath and new electric shower and the installation of a cold supply to the wc pan, forming new bulkheads and pipe boxing as required. Installing a proprietary wet wall ceiling and fitting wet wall panels round the bathroom suite. Fitting a new extract fan and fitting new extract fan and bathroom light. It is anticipated that 680 bathrooms in total will be replaced, this will be spread approximately 200 per annum over the next 4 years in the West Lothian and Falkirk areas.	3361765	GBP
34	Weslo Housing Management Ltd	landscape Maintenance Contract	Generally the works will comprise the regular maintenance of grassed areas, rough grassed areas, shrub beds, isolated trees and woodland in accordance with a maintenance schedule which will be attached to the main contract documents. The contract period will be from March to October annually for the duration of the contract. A tree survey will be undertaken at the end of every growing season and the results of this survey actioned during the winter months in accordance with our tree management plan. As a guide, the grassed areas requiring maintenance is approx.175,612m2. The rough grassed areas requiring maintenance is approx. 7,255m2. The shrub bed areas requiring maintenance is approx. 13,959m2. The trees requiring maintenance and survey are approx. 1,643 in number. The hedges requiring maintenance is approx. 1,119m. The hard standing areas requiring weed spraying is approx. 61,028m2.	261959	GBP

This information is already available about housing association procurement through the Open Contracting transparency information on the Public Contracts Scotland website.

For example, from this, I can see that:

- Weslo Housing Management Ltd has just awarded a bathroom replacement contract worth £3.5m
- Albyn Housing Association has awarded a contract to a legal services provider, worth £100k

If there's a public interest in information there can be a real benefit in publishing it – even if you may not be required to disclose it under FOI.

For example, 10 years ago Glasgow City Council sold Westhorn Recreation Ground to Celtic Football Club for £675k.

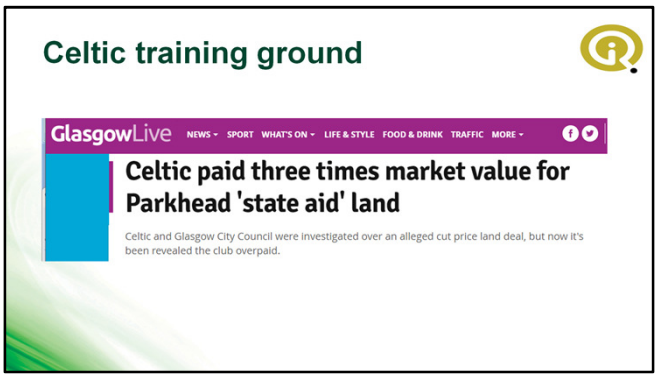
The deal was the subject of criticism that the Council had favoured Celtic over its football rivals. Allegations of state aid were made to the European Commission.

The Council received "more than 150" information requests about the issue. These led to requests for review and then an appeal to the Commissioner. On considering the case, we decided in the Council's favour. We didn't order it to disclose information as we agreed that disclosure would be likely to harm commercial interests.

In 2016 requests for the same information started up again and the Council realised these were going to rise.

It decided to disclose information, even though there had been a previous decision in support of non-disclosure.

The Council published a huge range of information, including its valuation for the land, the valuation methodology, surveys on the condition of the site, etc.



The information showed that in fact Celtic FC had paid more than three times the independent valuation for the land (valued at £200,000).

The Council didn't have to publish this information but, recognising the public interest in the matter they did.

In less than 24 hours the disclosed information was viewed more than 2000 times. So that's 2000 people who might have made requests for the information. And no information requests.

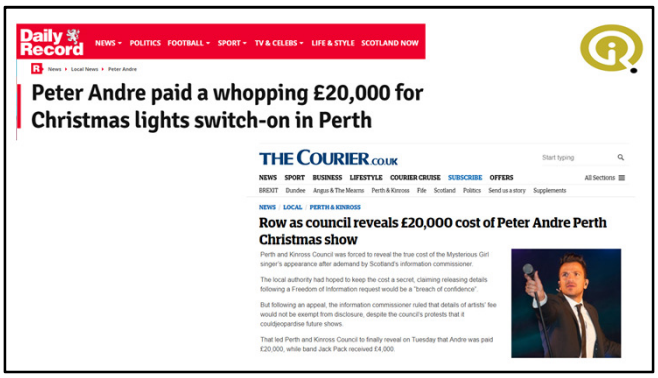
Which brings us on to a story about....

Peter Andre's Christmas Party.

Like many local authorities, Perth and Kinross Council stages an annual Christmas light switch on to attract business to Perth city centre. The lights are switched on by a major celebrity. In 2015, it was Peter Andre.

In 2015 someone asked the council how much it paid Mr Andre. It refused, saying if it divulged the price, it would not be able to attract other star acts (it would damage its commercial interests). The requester reviewed the refusal, and the case was eventually appealed to the Commissioner.

The Commissioner disagreed, and after months of media speculation, the disclosed information led to these headlines.



Daily Record NEWS POLITICS FOOTBALL SPORT TV & CELEBS LIFE & STYLE SCOTLAND NOW

News > Local News > Peter Andre

Peter Andre paid a whopping £20,000 for Christmas lights switch-on in Perth

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NEWS | LOCAL | PERTH & KINROSS

Row as council reveals £20,000 cost of Peter Andre Perth Christmas show

Perth and Kinross Council was forced to reveal the true cost of the Mysterious Girl singer's appearance after ademand by Scotland's information commissioner.

The local authority had hoped to keep the cost a secret, claiming releasing details following a Freedom of Information request would be a "breach of confidence".

But following an appeal, the information commissioner ruled that details of artists' fee would not be exempt from disclosure, despite the council's protests that it couldjeopardise future shows.

That led Perth and Kinross Council to finally reveal on Tuesday that Andre was paid £20,000, while band Jack Pack received £4,000.

Not happy headlines for the Council. But not only that, the initial refusals to disclose the information, and the subsequent appeal to our office and decision requiring disclosure also had reputational issues for the Council.

The Council had stated that disclosure of the sum would prevent it being able to attract equivalent celebrities in future.

Did the council's fears come to pass the next year?

Relax. They were able to book Slade for the 2016 event (albeit without Noddy Holder).

But that's not all...

They were also able to secure East 17 for the after-party (minus Brian Harvey).

Other bookings included Professor Green and Basil Brush.

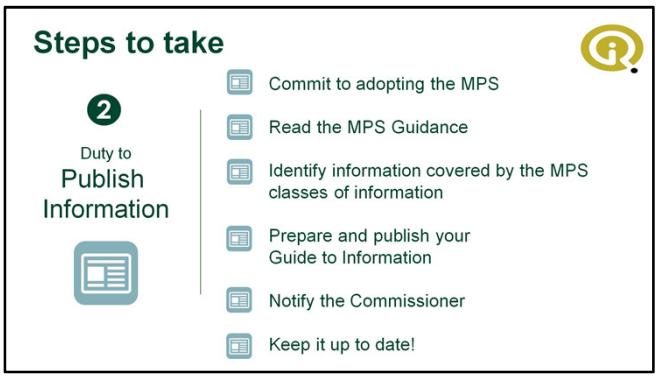
The point with these last two stories is that you can decide to publish over and above the requirements in FOISA.

Of course the publication of the information didn't necessarily make the stories go away. The Daily Record, for example still has an ongoing interest in the cost of the event. Here's the story from last year's switch-on.

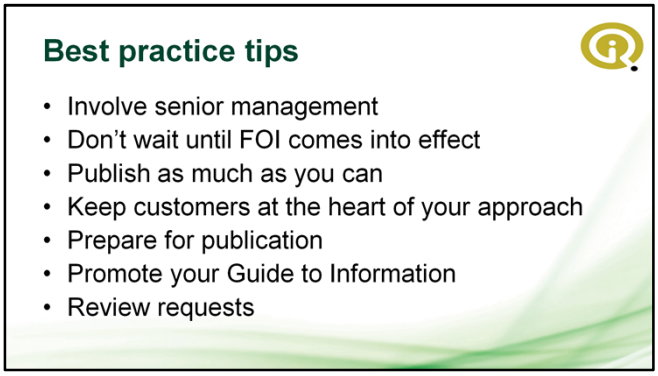
But what it did do was remove the perception of the information having to be dragged out of the Council, or of the Council having "something to hide". It took the heat out of the story.

In a smart move, the Council has also responded to this by choosing to publish their internal reports on the event as well, leading to headlines like this in the paper – showing that the event attracted 90,000 people and brought an estimated £2 million to the local economy. Not a bad investment for the £130,000.

This publication also helped the Council's dialogue with the wider community, helping the wider population people recognise the benefits of the Council investing in the event.



So that's what you need to do – and here's now to do it – details on our website at www.itspublicknowledge.info/rsls.



We also have best practice tips on our website. For example:

i. **Involve senior management** – make sure senior staff have the information they need to promote the benefits of publication to staff across the authority

ii. **Don't wait until FOI comes into effect** – start publishing information now

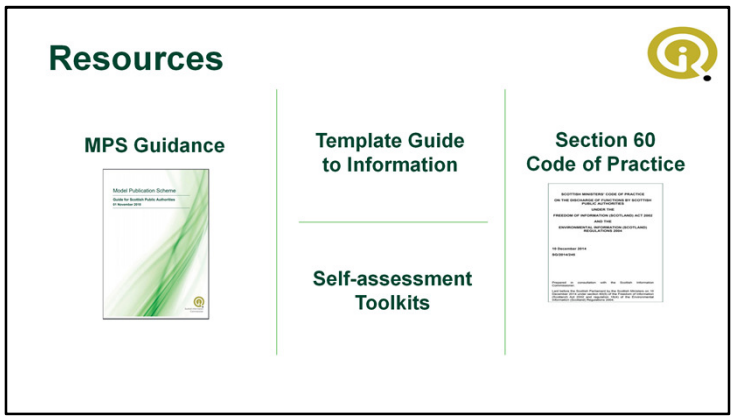
iii. **Publish as much as you can** – the more you publish, the fewer requests you'll receive

iv. **Keep customers at the heart of your approach** – think about what they want to see and make sure information is clearly described in a way that will make it easy to find

v. **Prepare for publication** – whenever you're creating new information, think about publication. Create new documents that are "publication ready", reducing the work involved in publishing

vi. **Promote your Guide to Information** – let service-users and staff know about your Guide to Information and how they can use it

vii. **Review requests** – regularly review the information requests you receive. Can you publish information that's asked for routinely? You get requests now – what information do people want?



Some resources that will be helpful to you – most of which can be accessed (or will be accessible) via the duty to publish page on our website.

MPS Guidance – essential

Template Guide to Information – being developed by SFHA and GWSF – should be available in June.

Section 60 Code of Practice – Section 3 has good practice guidance on proactive publication.

Self-assessment toolkit – we publish a self-assessment toolkit designed for helping authorities assess their performance in meeting the publication scheme duty.

Hi I am Julie Frew, one of the investigating officers working for the Scottish Information Commissioner

This means that I investigate applications that the Commissioner receives.

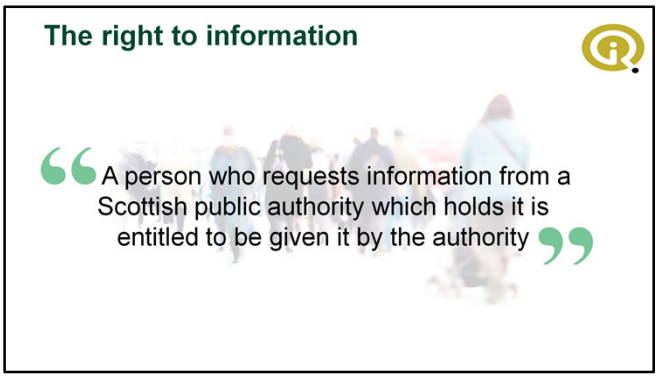
After I complete an investigation, I submit a recommendation to the Commissioner as to whether the requested information is held and should be disclosed or not.

The decision is then issued.

Prior to working for the Commissioner, I spent a year working for a public authority responding to requests.

So I am in the unique position of understanding the challenges BUT also opportunities from both sides.

QUESTIONS AT THE END – You can phone our office for assistance.



YOU will be reminded of this fact continually.

Whatever your thoughts on the Act are – you have to leave any concerns behind, and accept that:

"A person who requests information from a Scottish public authority which holds it is entitled to be given it…"

The core underlying principle here is that the information which is held by those organisations that deliver public functions and provide public services is **public information.**

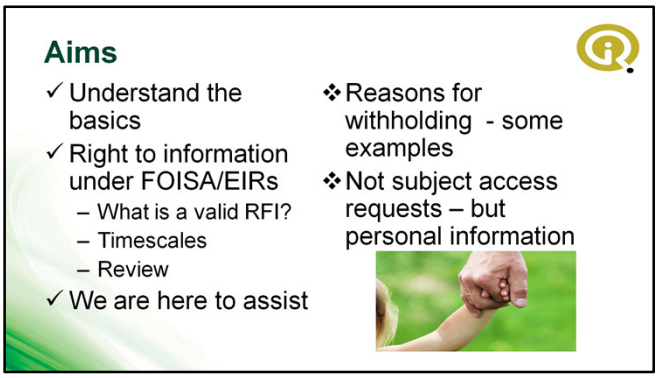
It is paid for by taxpayers and therefore belongs to us - all of us - as individuals and citizens.

FOI is a right that we all have, and one that we can all make use of.
If you or I request information from a public body, we're entitled to receive it.
We don't have to say why we want it or what we want to use it for, and it can only be kept from us if there's a very good reason for withholding it.

From **11 November 2019**

All registered social landlords and most - if not all – subsidiaries* will be required to respond to requests for information. In your organisations, you will address which subsidiaries are covered

We are here to help



As I said above you will be keep being advised that everyone has the right to ask – you cannot get away from this fact and have a duty to respond to the request.

The aim of this presentation is to make compliance with this right easier.

Over the next few slides, I intend to provide you with a good understanding of the basics for responding to information requests.

I do not intend to overload you with information, but provide you with the advice, tools, guidance so you know what to do and what sources of information are available.

When people ask for advice, I always explain that the legislation (FOISA and EIRs) is your friend and are there to assist you in responding to requests. For example:

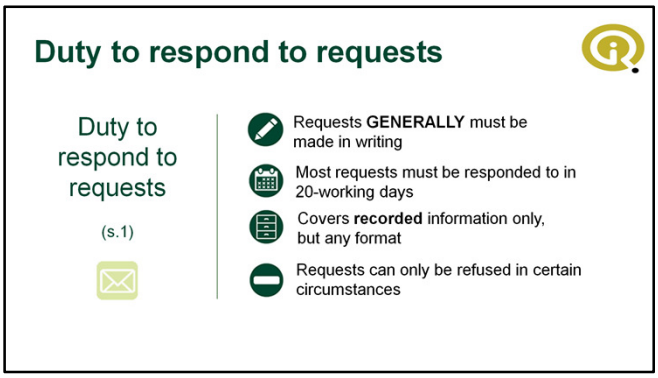
i. not all correspondence is a valid request / request for recorded information

ii. there are set timescales to respond to a request – if you respond within that time frame, then the requestor cannot complain about the time to respond.

iii. Before an appeal can be submitted to the Commissioner, the individual has to request a review. Again if the review is in line with FOISA/EIRs, then even if the person applies to the Commissioner, he is likely to uphold the response.

In the presentation this afternoon – I will talk through the key principles for withholding information and some examples

Not going to discuss subject access requests in detail but provide a brief overview of when personal information can be withheld / disclosed.



So what does FOI designation actually mean? Well FOI law places three core duties on organisations.

The first, and the one that we all most commonly associate with FOI, is the duty to respond to information requests.

FOI law applies to all written requests for information that an organisation receives (although remember, that if the requester is looking for environmental information then oral requests will also be covered under the environmental information regulations)

IN THE HUNDREDS OF CASES I HAVE INVESTIGATED, THERE MAY HAVE BEEN ONE VERBAL REQUEST

If you receive a request for information under FOI you have a legal duty to respond within 20 working days in most cases.

Remember though, that the FOI right applies to recorded information only – that is it covers requests for pre-existing information that your organisation has recorded and stored in some way – whether it be in a document, email, spreadsheet, file or note.

Information requests can be refused, but only in certain circumstances, and only where the law expressly permits it.

Differences – what difference?

- Two different pieces of legislation/wording:
  - FOISA and EIRs
- Familiar with EIRs?
- Reasons for withholding:
  - FOISA exemptions
  - EIRs exceptions
- Key points:
  - Written and verbal requests
  - Charging and cost limits
  - Late reviews
  - Extend time response

Throughout this presentation I will refer to two sets of legislation : FOISA and EIRs

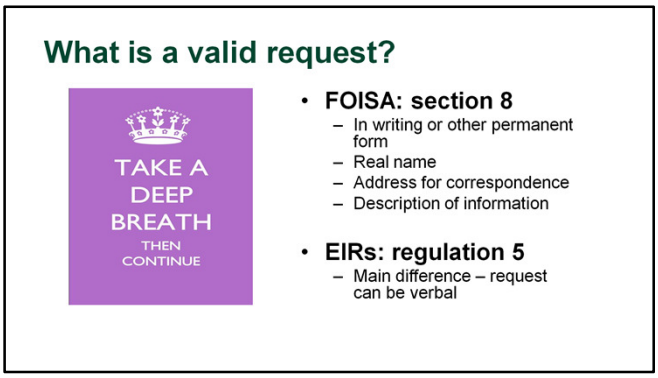
Freedom of Information (Scotland) Act 2002 (FOISA) and Environmental Information (Scotland) Regulations 2004 (EIRs) – I will refer to the acronyms throughout.

All you need to understand is that there are two pieces of legislation and both of them entitle an individual to request recorded information from a Scottish public authority.

You may be familiar with the EIRs – this applies to requests for environmental information.

The reasons for withholding are similar, but they have different names

1. Key points between the two sets of legislation are:
   i. Under FOISA only written requests are permitted, EIRs verbal requests are permitted – note later best to write it down and confirm with requestor.
   ii. Charging there is an upper limit in FOISA, but not EIRs.
   iii. Under FOISA an authority can accept a late review, but not under EIRs.
   iv. Under EIRs time can be extended – volume and complexity – notify requestor. Just 20 working days in FOISA.



PRINT OUT REQUEST – READ IT CAREFULLY

Ensure what recorded information is being requested.

Requests can be buried in a long letter, so that is why you need to read the request in detail and ensure you understand what is being asked for.

DO NOT HAVE ANY PRECONCEPTIONS – Many times the Commissioner has received an application and the request which has been misinterpreted.

In the acknowledgement letter, it may be helpful to refer to what information is being asked for and include any interpretation that is required.

If the request is truly unclear you can ask for clarification of the request, but it shouldn't be used or seen to be used as a delaying tactic.

Real name – If not the individual cannot appeal the Commissioner's decision to Court of Session – can ask for proof of id – again have to take a balanced approach

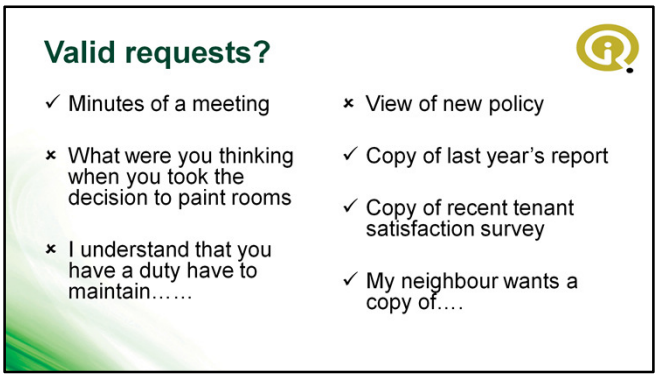
Address for correspondence can be an email addresses

Clearly describe the information being requested.

There are differences between the two regimes, but basic principles are the same

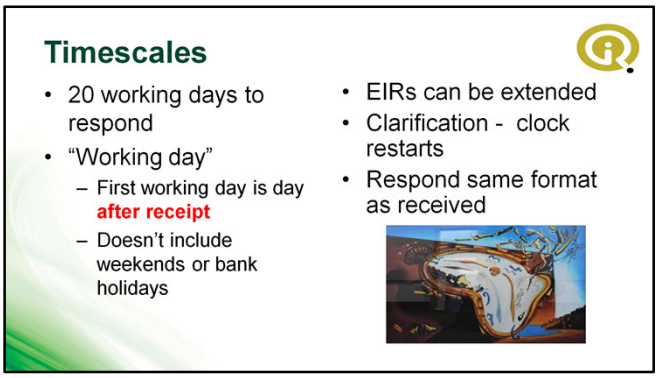
The request doesn't have to be writing – if you receive a verbal request or on an answering machine etc – **write it down and confirm in acknowledgement of request**

Presumption in favour of disclosure



Just to get you thinking here are some very quick examples of valid and non valid requests.

(12:00)



EMPHASISE that clock starts from day of receipt of request BY ORGANISATION – not when you receive it.

Ensure staff have out of office on email / phones – colleagues check emails and phones.

Start working on the request as soon as possible.

Don't wait until 18th day to start working on a request.

NEED TO SET UP PROCEDURES TO ENSURE FOI OFFICERS HAVE INPUT FROM ORGANISATION EARLY ENOUGH, SO CAN DRAFT AND REVIEW THE RESPONSE – MORE LATER.

In the previous Commissioner's special report in August 2014 - *Every failure to respond is a denial of someone's statutory right to information…..*
Counterpart Commissioner (ICO) – did failure of an organisation that did not respond promptly to a request

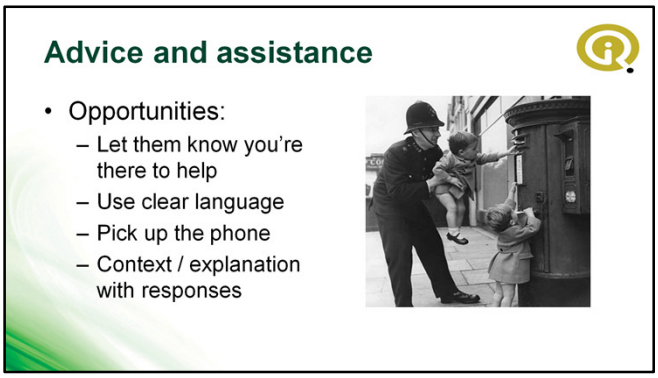
EIRs can be extended if request is voluminous or complex – but you need to advise requestor in writing

Clarification not used as a delaying tactic

May help with responding if you have template response letters.

Can state that response is late, be upfront and honest.

Legislation allows for time to respond (in writing), but must send it by final day.



I AM NOT GOING TO TALK THROUGH THIS SLIDE IN DETAIL

IT IS A REMINDER THAT UNDER THE ACTS YOU HAVE TO PROVIDE RELEVANT ADVICE AND ASSISTANCE

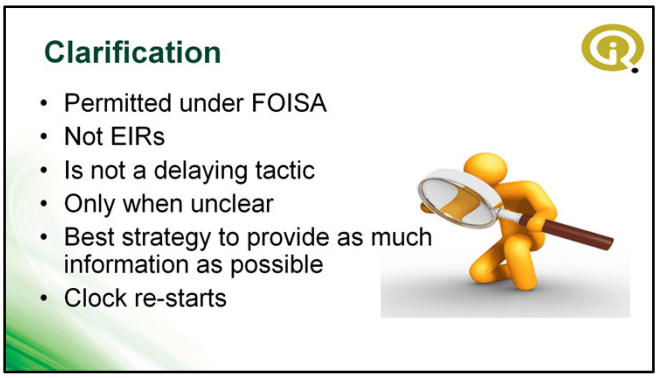
If you're wondering how this customer service duty might sit in an FOI context – here are a few tips:

- You can let requesters know that you have a legal duty to advise and assist them – this can help get relationships off on the right foot. It lets them know that you're there to help them out, and to help resolve the issues they might be facing.

- Use appropriate language and plain-English wherever you can to help the requester understand the FOI process, and the decisions you're making. While FOI is a legal process, try and avoid falling into the trap of being overly-legalistic in your communications with requesters, using language that might frustrate, confuse or alienate them. Strike a balance, explaining decisions clearly, meeting the needs of each individual requester.

- Don't be afraid to pick up the phone – while the legal side of FOI is primarily done in writing, it can often be helpful to invite a requester to give you a ring to talk through a particular issue, to help you understand what they're looking for, and advise them more effectively about how to frame their request, or how you might respond.

- While FOI requires the provision of the requested information, it can be helpful to provide a requester with additional context when you provide a response, to help them understand the information disclosed. Be seen to be helpful and also correct any likely misunderstandings.



Clarification of a request is permitted under FOISA, but not EIRs

Use this gift wisely

It is for those really difficult requests, which are completely unclear – did they really mean X?

From the hundreds of applications I have investigated, **clarification has not been much used by authorities.**

One aspect of clarification, is that once clarification is received from the requestor, the response clock (of 20 working days) is reset. THIS IS WHY YOU NEED TO USE THIS WISELY.

Fees and charging - FOISA

- Can charge a fee
- Maximum hourly rate
- Locating and retrieving
- Not determining if information should be provided
- Charge for photocopies
- **Clock stops and restarts**

- However if the estimated cost is £600 (or more)
- Which is approximately 40 working hours
- Then you do not need to respond to request
- (Check calculation before issuing response)

MANY DECISIONS – OVER £600 there are 155 decisions

JUST CHARGING – 6 decisions

1. Can charge for photocopies
2. Chargeable amount
   i. < £100, no charge
   ii. > £100, 10% of costs up to £600
   iii. > £600, do not need to comply

Fees and charging - EIRs

- No upper limit
- Not exceed a reasonable amount
  - Not dissuade
  - Careful when set a charge
- Or costs in producing information
- Free inspection
- Clock stops and restarts
- Must publish charges
- Two decisions:
  - Not publishing charge: Decision 095/2007
  - Charges for a plan Decision 089/2017

Briefing on Commissioner's website

Two relevant decisions:

095/2007

Following an investigation, the Commissioner found that the Council had not calculated the fees notice in line with the Environmental Information (Scotland) Regulations 2002 (the EIRs) and ordered the Council to issue a revised fees notice to Mr Mackintosh. The Commissioner also ordered the Council to publish and make available a schedule of charges under the EIRs.

Regulation 8(8) of the EIRs imposes a duty on Scottish public authorities to publish and make available to applicants a schedule of its fees and information on the circumstances in which a fee may be charged, waived or required to be paid in advance.

089/2017

The Commissioner concluded that the Council had incorrectly charged for this information

The Council has set a standard charge of £50 for providing information from a planning application. However, in this case, Q requested a copy of a **single plan:** it did not request a copy of the entire planning application file.

The Council had benchmarked the cost of providing a planning application file against other authorities is irrelevant. The publication scheme guidance (and the guidance in regulation 8(3) of the EIRs) is clear: the charge to the applicant must not be more than the actual cost of providing the information

Summary

- Duty to respond all information requests
- Recorded information solely
- EIRs and FOISA
- Valid requests
- 20 working days
- Advice and assistance
- Clarification
- Fees and charging

1. So this is what has been covered this morning
2. This afternoon I will explain some aspects of responding to requests in more detail.

Any questions

Workshop Exercise

Things to think about:

- Validity
- Is information held?
- FOI or EIRs?
- Advice and assistance
- Published information
- Clarification
- Searching for information
- Fees and charging

What are you going to do about my neighbours? They play loud music until 3am and I've got to get up for work.

Possible issues:

- Not an FOI request – not a request for information that is recorded and held.
- It might be appropriate to signpost to published info that might be helpful in your response – e.g. anti-social behaviour policies and procedures.
- This request isn't valid, but bear in mind that valid request about noise will fall under the EIRs, not the FOI Act. (under reg 2(1)(b)) (even verbal ones!)

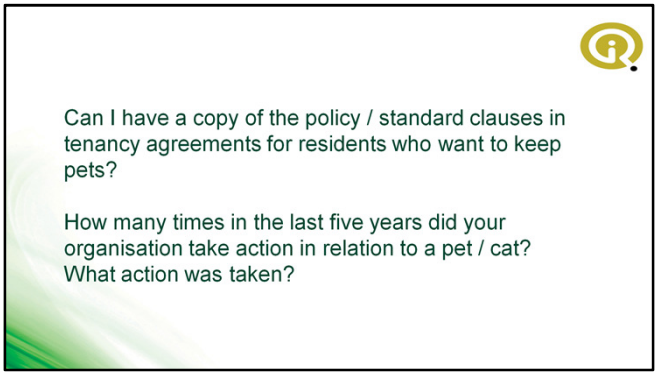
Please provide:

- Confirmation of whether your organisation (or its subsidiaries) provides a factoring service
- The names of any subsidiaries that provide a factoring service
- The number of properties for which factoring services are provided
- The total revenue generated from those services during 2018

Possible issues:

- Requests relate to factoring services, a function which isn't covered by FOI law. See: www.itspublicknowledge.info/ScottishPublicAuthorities/NewAuthorities/RSLsandsubsidiaries.aspx for more inforamtion on the terms of the FOI designation order.

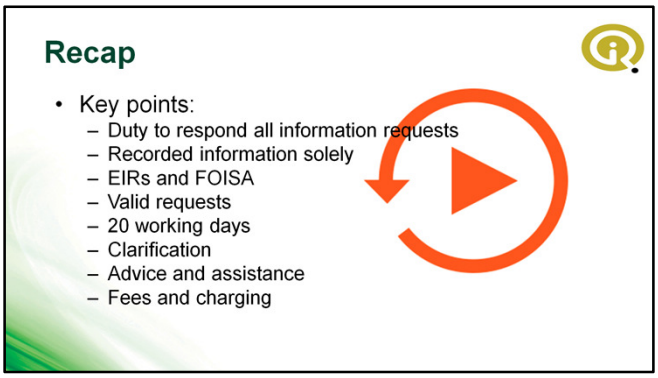
- Is there any information that you might consider disclosing or signposting the requester to anyway? (e.g. information already in the public domain – whether factoring is provided, names of subsidiaries, information available in published reports / accounts, etc?)



Possible issues:

- First part should be relatively straightforward.
- Some information – policies, standard agreements may be published – signpost the requester to that.
- Clarification may be required – e.g. Are the only interested in cats? Definition of a pet? What does “taking action” mean?
- If clear – how easy is it to access the information? How would you search? Is the information easily accessible?
- Fees and charging – would retrieving information cost more than £600?
- Advice and assistance – can you give advice on narrowing the request?

Hi again



A reminder of the key points of this morning's presentation.

So you are happy that you have a valid request

What do you ?

I am going to discuss in next few slides what I see as the pragmatic steps in the process

Prior to the order coming into force, your organisation should have documented procedures as how IT will respond to information requests.

I do not intend to take you step by step through this part of the process, as each organisation will have its own ways of working.

But it is up to you, to create your own procedures and decide how best to deal with requests.

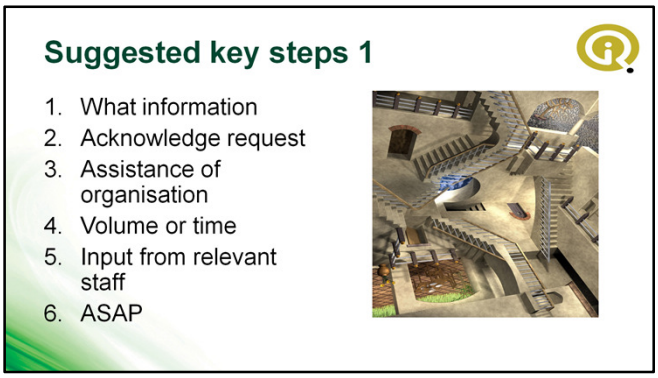
You are not the first organisation that has been designated and required to respond to information requests. Later today, there is a presentation from a recently designated body – leisure trusts

It is important to spend time in deciding the processes for responding, this time will be well spent.

Let all staff know that from November 2019 you are required to respond to requests.

Ensure one person considers all requests and makes the ultimate decision.

The main point to bear in mind, is that requests have to be responded to within 20 working days.



I have identified the general points that need to be considered when responding to a request.

You have received a request, as I said before print out the request, breath, and read it carefully. – WHAT INFORMATION IS ACTUALLY BEING ASKED FOR?

I suggest you do not need to send name of individual with request, as under the legislation the response is on the basis of anyone requesting the information – not just that individual.

VERY IMPORTANT - You need to obtain input from relevant staff ASAP – especially if volume or time issue with responding to a request –
You do not want to be advised on day 18 that the request involves hundreds of files or that it is going to take several days to search for information.

Important now also organise your records, so that it makes it easier to identify information + you may want to considering publishing some information.

In presentations that follow, they aim to obtain input from colleagues by day 5/6.

You need to allow yourself time to consider the input, see if there is any issues which need to be addressed.

Suggested key steps 2

7. FOI Officer check input and information
8. FOI Officer decides whether information can be disclosed or not.
   a. Commissioner's briefings
   b. Commissioner's decisions
8. FOI Officer drafts the response
9. Issue response
10. Keep records

Following on from previous slide

The FOI Officer will need to check the response and information provided,

FOI Officer should be making the ultimate decision whether info disclosed or not. If you are really torn then it may be best to withhold but explain clearly why to requestor.

The Commissioner has published briefings on each of the exemptions and exceptions, there are also 1000s of published decisions that you can use as a resource.

The Commissioner's database is keyword searchable so you type in a word – say resident or minutes

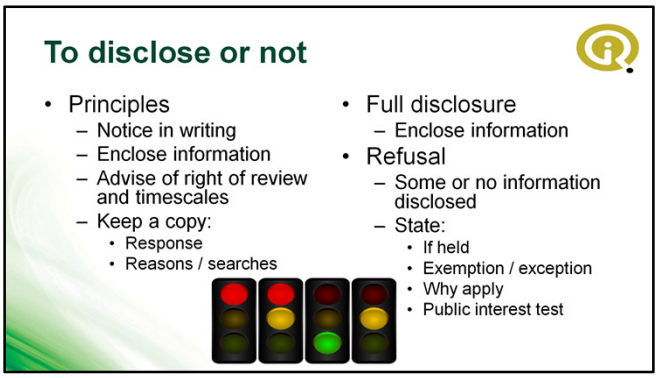
General advice issue response in the same format as received.

You may want a manager to review response before it is issued; but this shouldn't delay the response.

Keep reasonable records as to how request was handled; for example if searches were carried, have they been noted.

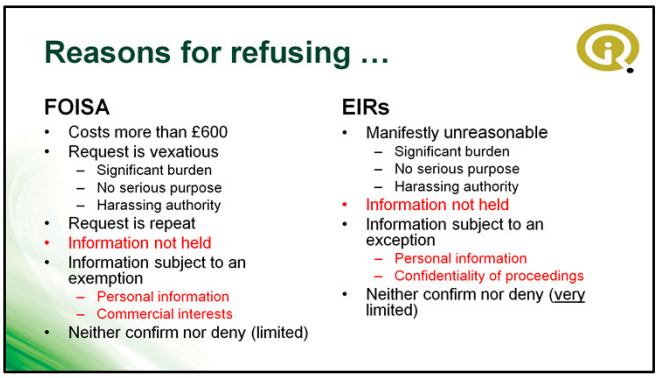
Keep a copy of the information disclosed and that withheld.

You need to decide how long to keep copies. But need to wait until at least review and appeal period has passed.



Appeal within 40 working days

Who should they contact to request a review



Slide looks at reasons for refusing to disclose information, but this shouldn't be the focus. Focus should be on disclosing information wherever possible.

Briefings on Commissioner's webpage

Aim to disclose as much information as possible – redactions – variance in how – exclude full pages or black text

NOW IS THE TIME TO LEARN – READ BRIEFINGS

I have listed the key categories as to why info can be withheld.

Vexatious – 96 decisions

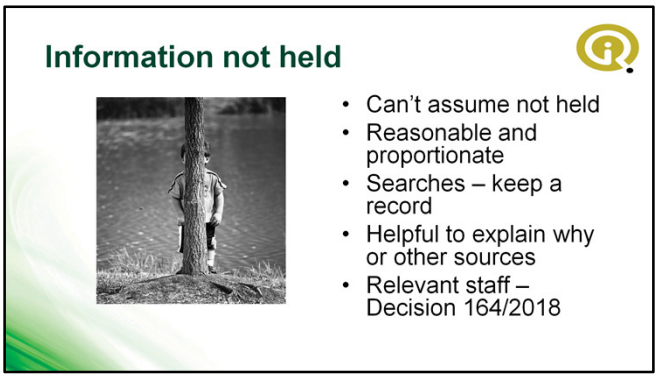
Manifestly unreasonable – 28 decisions

The other important one is NCND – interesting one, sometimes it is relevant not to confirm that this information is held or not. For example have you taken action against a client for y. It is one of those reasons, that once it is out there you cannot take it back.

NCND FOISA – 28 (relations UK), 29 (Policy), 30 (Prejudice comms), 31 (Nat Security), 32 (International rels), 33 (Commercial), 34 (Investigations), 35 (law enforcement), 38 (Personal info), 39 (Health & Safety), 41 (Comms with Queen)

NCND EIRs -Under regulation 10(8) of the EIRs, a public authority may refuse to reveal whether it holds information if doing so would involve making information available which would, or would be likely to, prejudice substantially international relations, defence, national security or public safety and if revealing whether the information is held would not be in the public interest.

Vexatious and manifestly unreasonable similar but different. Tests in briefings. Many decisions published.



Keep a note of reasons for reaching conclusion –

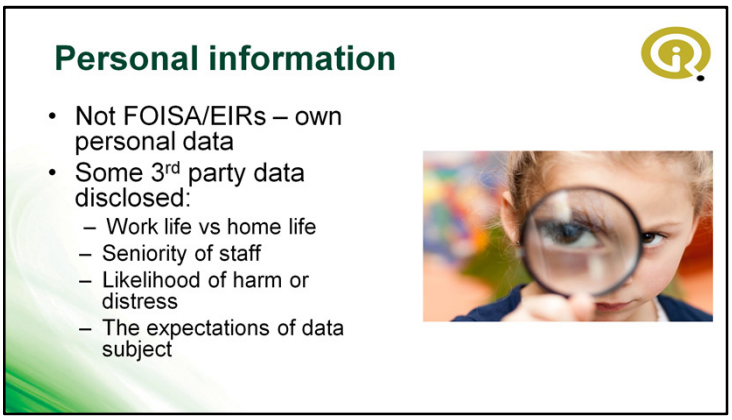
i. we do not hold information as we have searched x / y

ii. Information not held – have to be certain information is not held. Many cases info found when appeal is made to Commissioner.
Searches – contacted relevant staff

In Decision 164/2018, request was about Rough Sleeping Task Force - Social Work FOI Team initially misinterpreted her request, review stage, the Council consulted officers from its Homelessness Team – not aware.

Transpired was a primarily a political initiative, had been 2 meetings, Chief Executive wrote to applicant, after the review outcome had been issued, and apologised for the Council's inaccurate response. The Council disclosed minutes of two meetings.

Sometimes such things happen – it is not unavoidable but try to mitigate.



RSLs will inevitably receive requests for personal information. If a requester is asking for their own personal information then the request is, of course, responded to under Data Protection Law and not FOI.

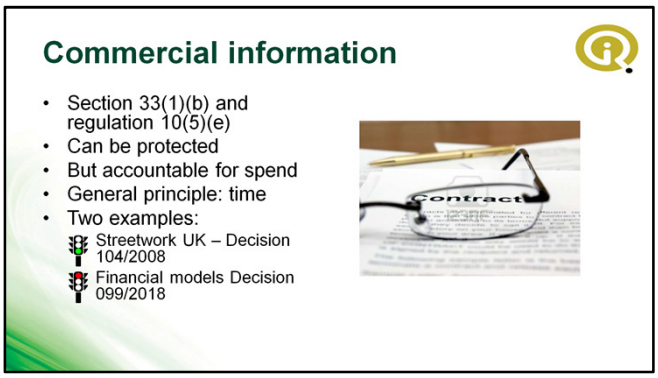
Where the information involves a third party's personal data, however, then the request should be responded to under FOI.

There are clear tests to consider when assessing whether or not information can be disclosed, and our guidance on this provides a step-by-step guide to these tests.

In many cases, the test may involve a balancing exercise, balancing the rights and freedoms of the data subject against the legitimate interests of the requester in accessing that information.

Factors which may play a part in this assessment include:

- Consideration of whether the information relates to an individual's **work life or home life** – information that relates to someone's private life normally generally deserve more protection that information that relates someone carry out official business in a professional capacity.
- **Seniority of staff –** in general, the more senior a staff member is, the more appropriate it may be to disclose information about their work.
- Likelihood of harm or distress
- The expectations of data subject – what expectations do the have – e.g. through your privacy notice, or any legislative power under which data was collected?



Other exemptions you may find yourself considering are those that relate to commercial information.

33(1)(b) – Commercial interests and the economy: its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

10(5)(e) – the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.

We are aware that RSLs may have concerns about the impact of FOI on your relationships with existing contractors, or in relation to your own commercial activities.

Information can normally be withheld where it's disclosure would either:

- cause substantial harm to an organisations commercial interests
- or where disclosure would breach the law of confidentiality.

General principle is time, the more recent the contract, the more likely the Commissioner will consider that the information can be withheld.

We have detailed guidance on each of these exemptions on our website.

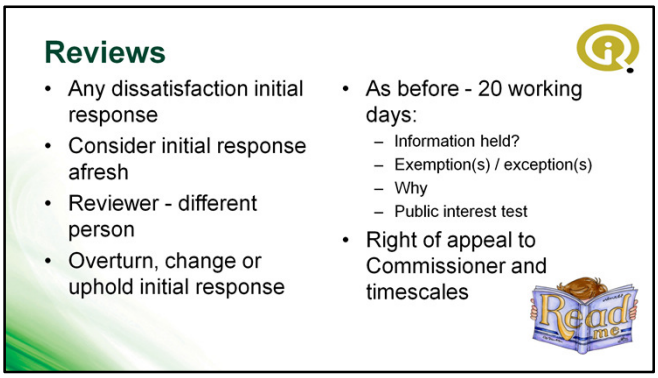
Streetwork UK requested a copy of the successful bid for the Street Outreach Service (Homelessness) from Glasgow City Council. The Commissioner did not uphold the reliance on section 33(1)(b). – As request was nine months after the Council had taken its decision to award the contract

Financial model – REH Phase 1 – accepted the harm in disclosure – action would be taken if disclosed within 2 years + still maintaining building.

Challenging requests

- FOISA and EIRs are you friend
- What **recorded** information requested
- Been asked before or many times
- Volume or time
- Exceptions / exemptions
- Respond within 20 working days
- Processes and templates
- Get ready now

Not include in detail – as I said at the start the legislation is your friend – use it to help



It may be the case that you did not respond to initial request – in response note and accept this fact.

Consider initial response afresh – look again impartially and factually

Any dissatisfaction with initial response.

This is the chance to consider the initial response carefully and whether the response was right

Need to consider the circumstances that applied at review date, but information held at initial response date

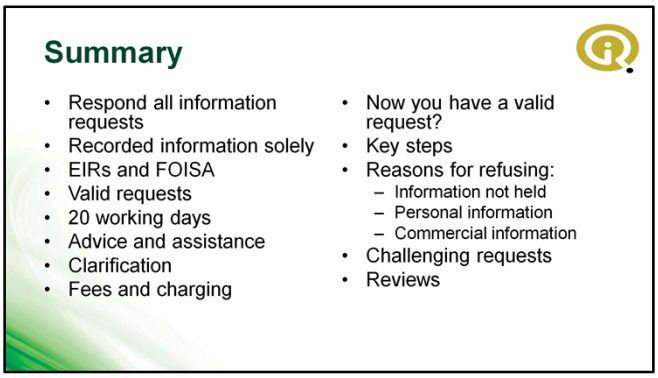
Guidance from Scottish Ministers in Section 60 code, reviewers should be different from initial person who issued response.

You will have decide on whether summary passed on from initial response or just initial response file.

Reviewers can review as they see appropriate but need to look at request and response afresh. This is your opportunity to “appeal proof responses”.

You could require further searches to be conducted, if not satisfied searches were proportionate and appropriate before. You could overturn initial decision, for example the response cited costs but you do not consider this to be the case – all information held one file.

6 months to appeal to Commissioner



1. So this is what has been covered this morning
2. This afternoon I have explained some aspects of responding to requests in more detail.

Getting It Right First Time Poster

1. Copies available, very clear process on what you have to do.

Further guidance

Briefings on exemptions and exceptions

The decision database is key word searchable and

Our enquiry service

Workshop Exercise

Things to think about:

- Validity
- Is information held?
- FOI or EIRs?
- Advice and assistance
- Exemptions / exceptions
- Published information
- Clarification
- Searching for information
- Fees and charging

How many complaints have you received from tenants about mould or damp in properties since 2010?

Can you send me copies of the complaints received?

Possible issues:

- EIRs – environmental information
- Searching for information – how is this recorded? Is it easily retrievable?
- Size of search / work required. Cost? It's a large period. Manifestly unreasonable?
- Duty to advise and assist – narrow request? Reduce time period?
- Request for complaints – personal information? Consider relevant exceptions / exemptions. Data to be redacted?

Please send details of all active contracts with third parties, including the supplier of the contract and its value.

Please provide full copies of all contracts which are due to expire within the next 12 months.

Possible issues:

- Otherwise accessible – register of contracts awarded is available through Guide to Information under Class 6 of the publication scheme
- Consider exemptions – esp. those relating to commercial interests and confidentiality
- Be aware of the passage of time – how sensitive is information likely to be now? Would disclosure lead to substantial harm? Have market conditions / prices changed?

How many “near miss” incidents have occurred on your social-housing properties since 2014?

Please provide details of the incident, including what happened, where it happened, who was involved, how it was remedied.

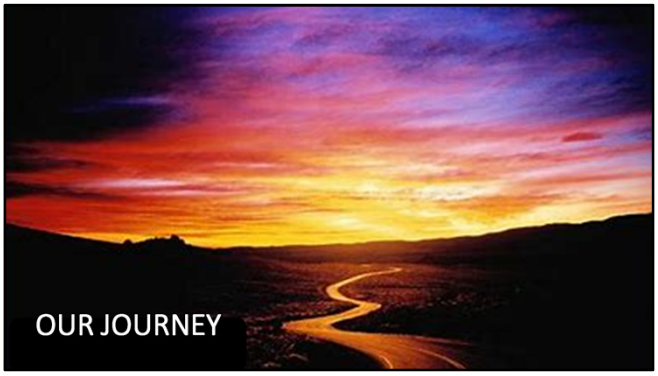
Possible issues:

- Is information recorded / held?
- Details of incidents - Does this reveal personal information? Can individuals be identified? Section 38 (personal data) considerations.
- Advise and assist - can information be anonymised / provided in a way which does not identify individuals? E.g. age, gender of those involved?
- Is information recorded in a way that can be easily identified and extracted? If not, cost considerations / duty to advise and assist.

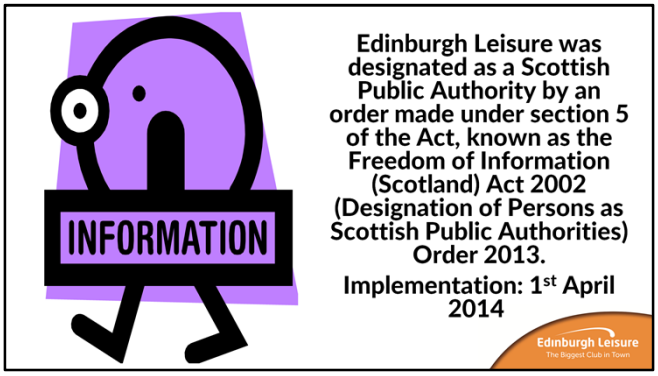
1. I was asked to talk to you about preparing for FOI.

The focus of this presentation will be on how Edinburgh Leisure approached preparing for FOI and what we did, I will also share with you some of my resources, hints and tips.

1. A little bit about us
2. Established in 1998 to manage and develop sport and leisure services on behalf of the City of Edinburgh Council
3. Company limited by guarantee
4. Not for Profit
5. 1000+ Staff
6. Turnover of £30 million
7. 4 million customer visits a year



1. I've been asked to share information about our preparation our approach tools and resources.



Edinburgh Leisure was designated as a Scottish Public Authority by an order made under section 5 of the Act, known as the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2013.

1. 142 requests since 2014

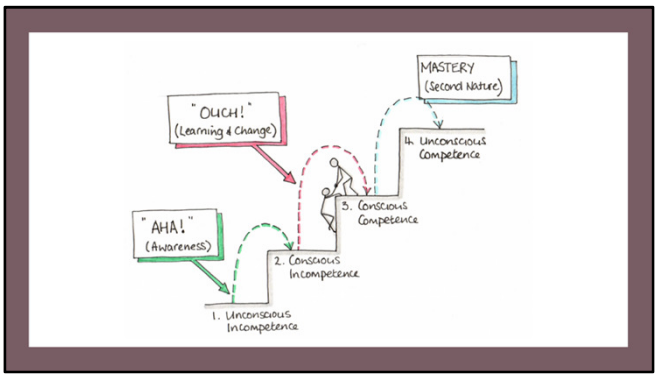
2. FOI - 93
3. EIR - 21
4. DPA – 19
5. Internal Reviews - 8
6. Appeals to OSIC - 1

7. Who asks – everyone, children, students, journalists, customers, disgruntled people, interested people, staff

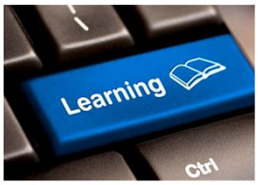
8. But – we don't get to know why they want the information
9. Applicant Blind

GETTING READY

1. This is me at the start!



1. I had to go through a very steep learning curve – at the point of the amendment order being passed, I had little or no knowledge of Information legislation apart from DPA. The organisation decided I would be the one to lead on the implementation project.



FIRST STEPS

Lots of Research & Lots of Learning

1. Project Management

2. I was project manager of our FOI working group and created a series of key workstreams with individuals working within each workstream. We met regularly and shared progress, made decisions and supported each other.

3. We met from October 2013 – July 2014

4. Created an Action Plan

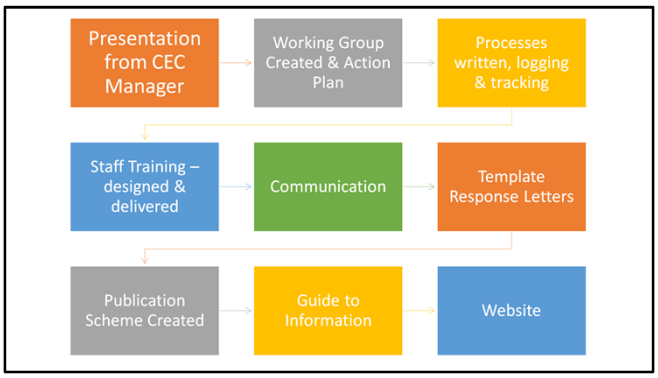
5. Stakeholder Analysis

6. Comms Plan

7. Identified Workstreams

8. Visualised success

9. Backwards Action Planning

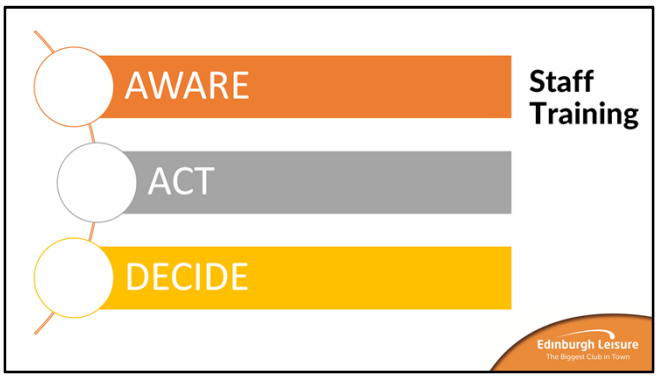


1. Presentation from CEC
2. Working Group
3. Action Plan
4. Workstreams
5. Processes
6. Staff Training
7. Communications – Bitesize
8. Template Letters
9. Publication Scheme
10. Guide to Information
11. Website

Month	Item	Key Dates	Dependancies	Lead	Others	Progress Status	Notes
	Work with SICO & ZX Leisure trusts to ID template for Guide To Publication Scheme	02.12.13		JD		Complete	
	Discuss Retention Schedule	02.12.13		GF	ALL	Complete	
	Identify Audit resource	02.12.13		GF	KA, KS	Not Started	Audit process should lie with teams.
	FOI Project Team Meeting	02.12.13		JD	ALL	Complete	
	KS & JD to review Job description	02.12.13	KS	JD		Complete	JD to update Job Description & consider permananet or fixed contract posiiton
	Understand what we need to do, create fuller action plan	03.12.13		AH		Complete	
	Start Guide to Information	03.12.13		JD		Complete	Draft 1 completed
	Advertise for resources, temporary, permanent	04.11.13		JD		Complete	Meeting with Holly to be arranged
	Attend FOI Conference	05.12.13		JD		Complete	
	L&D Facilitator volunteers to assist in designing FOI training	06.12.13		JD		Complete	Kate, Kerry, Steph to assist JD
	JD & RK to meet to review Web site Plan	06.12.13	JD	RK		Complete	Site plan reviewed, RK to feedback to Whitespace
	Internal Records retention Schedule to team	06.12.13		GF	KA, KS	Complete	
	Arrange meeting for FOI Training design team	07.12.13		JD		Complete	Emailed 07.12.13
	Training design dates arranged for January	07.12.13		JD	KC, KP, SH	Complete	Dates arranged
	FOI Project Board Meeting	09.12.13			AL, JD, KJ, JP	Complete	
	Retrospective info on PEM (re mudflats) if not passed to new provider	10.12.13		AH		In Progress	
	Communication at One Team - Raise awareness or FOI re purging, record mgt etc	12.12.13		KH	JM	Complete	

1. We created an action plan by identifying all the tasks we needed to do and working backwards from the implementation date. We mapped tasks for each of the workstreams, identified leads and support staff and set dates for completion. Each member of the working group was responsible for updating their tasks.

Staff Training

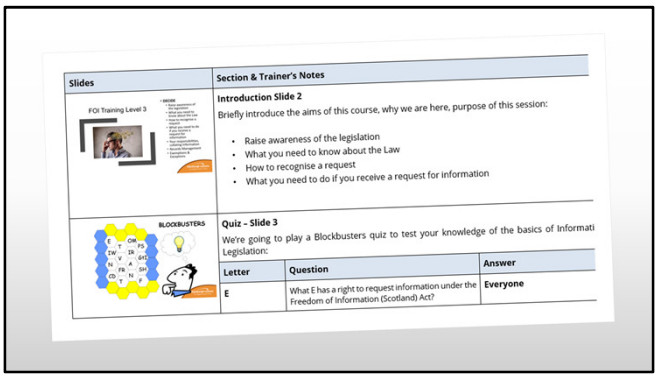


1. I designed and delivered 3 levels of training each with learning objectives and activities designed to upskill our entire staffing group. I delivered to all 900+ staff in the run up to going live. I have now designed and created eLearning modules which sits on our eLearning platform.

2. AWARE - This training was geared towards all front line staff and introduced them to the legislation, the legal obligations, covered recognition of requests, timescales and what they needed to do with a request, review cycle & appeals

3. ACT - This training is geared towards Edinburgh Leisure Duty Managers, Supervisors, Development Officers who will require a deeper understanding of FOISA & their obligations under the Act. It covered all the objectives in level 1 training and additional deeper understanding of handling recognition and responding to requests

4. DECIDE - This training is geared towards Edinburgh Leisure Managers, Heads of Service & Directors who will require a deeper understanding of FOISA & their obligations under the Act. They will need to make decisions on what we disclose & what we withhold when we receive information requests. As well as all the objectives with level 2 training it covered exemptions and exceptions and public interest test.



Slides	Section & Trainer's Notes
FOI Training Level 3	**Introduction Slide 2** Briefly introduce the aims of this course, why we are here, purpose of this session: • Raise awareness of the legislation • What you need to know about the Law • How to recognise a request • What you need to do if you receive a request for information
BLOCKBUSTERS	**Quiz - Slide 3** We're going to play a Blockbusters quiz to test your knowledge of the basics of Informati Legislation:

Letter	Question	Answer
E	What E has a right to request information under the Freedom of Information (Scotland) Act?	Everyone

1. For each session I created a set of training notes along with handouts and activities. The idea was to make the sessions as interactive as possible. The initial sessions have been updated over the years and a new eLearning module is available on our Elevate platform.

All staff need to be able to recognise a request and know what to do with it. As part of the training I designed an exercise that they complete where they have to identify which legislation it falls under and think about who would this be sent to – who holds the information? I have a few requests here relating to Housing Associations which we can try it.

For each request DECIDE which legislation it falls under. I'll call out a letter A, B, C, D and if you think it is that stand up.

- A = FOI
- B = EIR
- C = DPA
- D = BAU

1. A
2. B Factors relating to state of human health & safety – accident statistics.
3. A
4. C This is a subject access request, as it is a request for personal information
5. A or D In this instance we could actually refuse to provide the information using S25 information otherwise accessible – but point the requester to your website where the information can be found.
6. D BAU provide the information

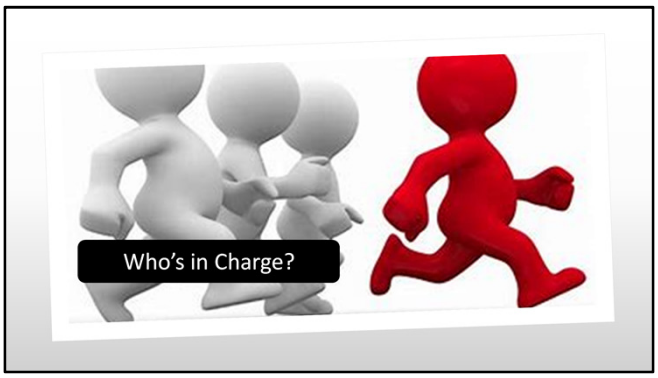
1. Part of my role is managing procedures so I created our FOI processes. You need to work out what your process is considering:

2. Who manages requests
3. Who responds
4. Who identifies

5. As an organisation you need to identify if there is one person or one department or several departments responsible for handling requests – if several then consider how you will track and manage these requests. We decided I would manage all requests.

1. I created procedures for our staff and the process for handling requests. This was covered during staff training.

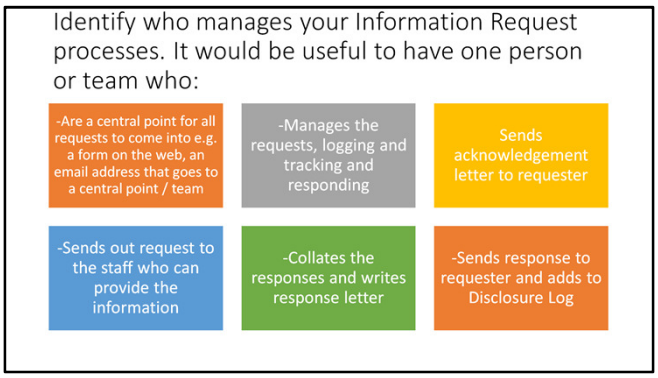
2. Again CEC were very helpful in sharing a process manual which I used as the starting point for EL processes.



1. In managing requests, all staff need to be able to identify if the request is FOI / EIR / DPA or BAU – and if BAU answer it immediately, or if it's more complex know the process you have outlined for managing requests.

2. The Team / department / individual responsible identifies which legislation the request falls under and then sends out to who they think would hold the information.

3. In EL I am responsible for managing all info requests – they all come through me.



1. Identify who manages your Information Request processes. It would be useful to have:

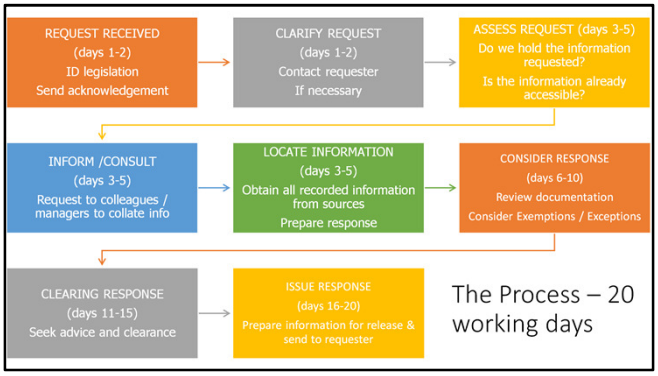
- A central point for all requests to come into e.g. a form on the web
- One person or team who manages the requests
- Sends out to the staff who can provide the information
- Collates the responses
- Sends response to requester

1. Identify who to send it to – who will hold or is likely to hold this information?

2. This may be one person or many people.

3. **Action** – work out who holds what so your responsible person knows where to go.

4. I was aware of who would potentially hold what information therefore it is relatively easy for me to send requests to the appropriate people. I also created a guide for each department / section with what they were responsible for which would be useful for any staff if they were assisting me managing FOI Requests.

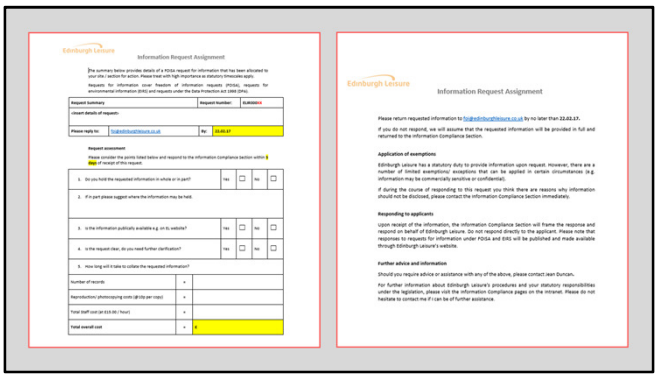


1. Identify and agree a process for managing requests. This is my process.

2. FOI / EIR – you have 20 working days

3. The process could look like this.

4. I try and work through as quickly as possible and not let the request response be delayed. Most departments and sections are quick to respond when a request is allocated to them. The organisation is aware of the timescales.



Edinburgh Leisure

Information Request Assignment

The summary below provides details of a FOISa request for information that has been allocated to your site / section for action. Please treat with high importance as statutory timescales apply.

Requests for information cover Freedom of Information requests (FOISa), requests for environmental information (EIRS) and requests under the Data Protection act 1998 (DPA).

Request Summary		Request Number:	ELR0000X
Linsert details of request:-			
Please reply to:	foi@edinburghleisure.co.uk	By:	22.02.17

Request assessment

Please consider the points listed below and respond to the information Compliance Section within 5 days of receipt of this request.

1. Do you hold the requested information in whole or in part?	Yes	☐	No	☐
2. If in part please suggest where the information may be held.				
3. Is the information publically available e.g. on its website?	Yes	☐	No	☐
4. Is the request clear, do you need further clarification?	Yes	☐	No	☐
5. How long will it take to collate the requested information?				
Number of records	x			
Reproduction/ photocopying costs (@10p per copy)	x			
Total Staff cost (at £15.00 / hour)	x			
Total overall cost	x	#		

Edinburgh Leisure

Information Request Assignment

Please return requested information to foi@edinburghleisure.co.uk by no later than 22.02.17.

If you do not respond, we will assume that the requested information will be provided in full and returned to the information Compliance Section.

Application of exemptions

Edinburgh Leisure has a statutory duty to provide information upon request. However, there are a number of limited exemptions/ exceptions that can be applied in certain circumstances (e.g. information may be commercially sensitive or confidential).

If during the course of responding to this request you think there are reasons why information should not be disclosed, please contact the Information Compliance Section immediately.

Responding to applicants

Upon receipt of the information, the information Compliance Section will frame the response and respond on behalf of Edinburgh Leisure. Do not respond directly to the applicant. Please note that responses to requests for information under FOISa and EIRS will be published and made available through Edinburgh Leisure's website.

Further advice and information

Should you require advice or assistance with any of the above, please contact Jean Duncan.

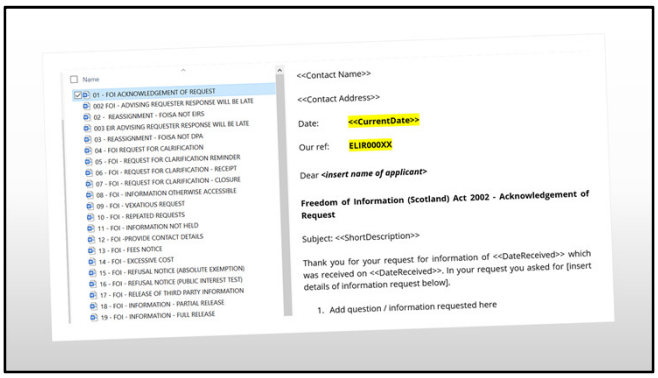
For further information about Edinburgh Leisure's procedures and your statutory responsibilities under the legislation, please visit the Information Compliance pages on the intranet. Please do not hesitate to contact me if I can be of further assistance.

1. I have an INFORMATION REQUEST Assignment form which I use to send to the person(s) who I think have the information.

2. They are asked to respond back by a specific date with the information, or contact me to discuss.

3. If they wish to withhold information I ask them to contact me to discuss exemptions and public interest arguments ASAP.

4. **Action** – Define your process and how you will send the request to the person(s) who have the info. Be aware of the dates where you wish the information to be returned by.



1. I have a number of template letters for FOI, EIR & DPA, from an acknowledgment of requests to request response. I use these at each stage of the request process.

2. I've shared these with OSIC and the Event Team who should be providing you with copies which you can amend to suit your own organisation.

3. **Action** – Create your template letters

Tracking & Logging

- This has formulas added for calculating dates
- It also pulls through info for the Statistics portal

Home	Ref	Short description	Requester's name	Received by	Quotes legislation?	Progress comments	Date received anywhere in the organisation (dd/mm/yy)	Month	Type	Clarification sought	Clarification received (dd/mm/yy)	Request closed due to lack of clarification or withdrawal	External due date	Site/Section request assigned to	Staff deadline for supplying information (set as 10 working days before due date but can be changed)	Date responded to requester or closed due to lack of clarification or withdrawal	Working days taken to respond	Total time taken to respond, including inactivity (in days)	New start date	Working days to go
	ELR00001	Request for evaluation process for grading of Mobile Pool Plant Operator			Yes - References FOI legislation		01/04/14	Apr	FOI				30/04/14	HR	15/04/14	17/04/14	12	16		
	ELR00002	Request for number of times disabled parking areas at CLTC are checked			No - Made through FOI request page		07/04/14	Apr	FOI				07/05/14	CTLC	22/04/14	17/04/14	8	10		
	ELR00003	Request for "on request" disclosure log information			No - Made direct to foi inbox		14/04/14	Apr	FOI	Yes	15/04/14		15/05/14	HR	30/04/14	23/04/14	5	8		

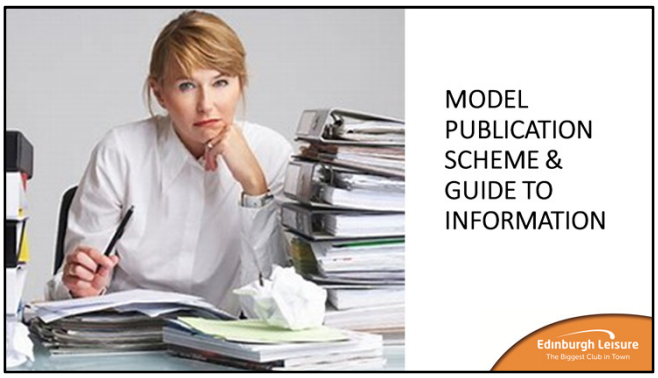
Organisation | FOI & EIR | DPA | FOI & EIR - optional | DPA - optional | FOI & EIR current | FOI & EIR quarterly | DPA current | DPA quarterly | Overview all | Summary FOI & EIR | Holidays | ICC Requests

I use a Logging and Tracking spreadsheet

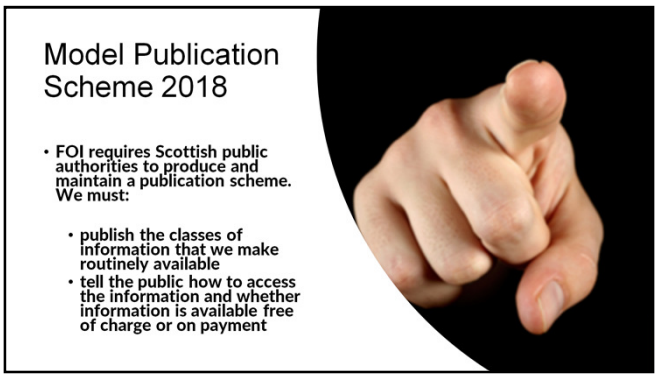
The spreadsheet has formulas which identify the date the request should be completed by.

1. It also allows you to pull through information for the OSIC stats.

2. Action – Define how you will track responses. I've shared this template with OSIC who should be sharing with you.



1. As part of the working group we created our Model Publication Scheme and Guide to Information. This also included thinking about where we would host it we decided to share it on our website therefore had to decide what our FOI section would look like and what we would have on the wesbite.



1. **Model Publication Scheme** – A standard framework for authorities to publish information under FOISA approved by the Scottish Information Commissioner

2. The Freedom of Information (Scotland) Act 2002 (the Act) requires Scottish public authorities to produce and maintain a publication scheme. Authorities are under a legal obligation to:

3.

- publish the classes of information that they make routinely available
- tell the public how to access the information and whether information is available free of charge or on payment

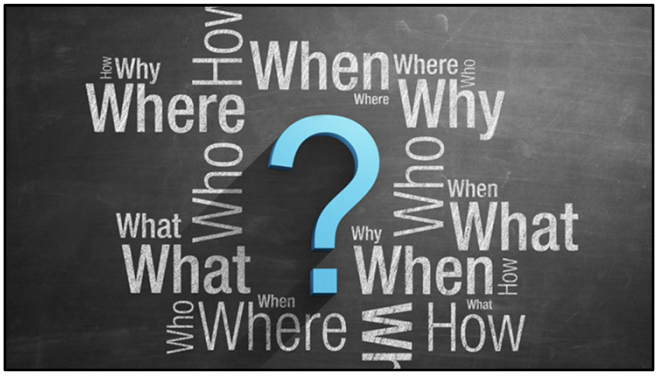
1.

2. Alongside FOISA, the Environmental Information (Scotland) Regulations 2004 (the EIRs) provide a separate right of access to the environmental information that we hold. This guide to information also contains details of the environmental information that we routinely make available.

3. We have adopted the Scottish Information Commissioners Model Publication Scheme 2018.

4. This outlines 8 classes of information under which we publish our information

1. The MPS can be viewed on Edinburgh Leisure's Website



- You need to adopt the 2018 Model Publication Scheme
- The scheme sets out your commitment to make certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information
- You need to create your Guide to Information.

Action - Adopt the 2018 Model Publication Scheme

1. Our guide to information is on the website – also available in hard copy on request, it can be downloaded from the website.

2. Provides detailed information on the information EL publishes and where to find it

3. Part of our website holds all of our company information including our Model Publication Scheme & Guide to Information.

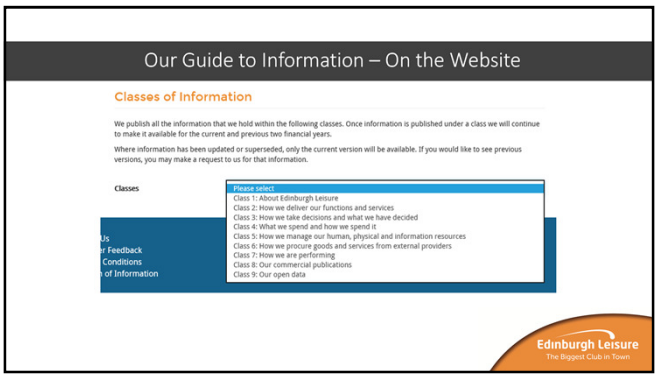
4. The Classes of Information Section provides detailed information on Edinburgh Leisure and what we publish.

5. We also have a disclosure log which lists our responses to requests made under the Freedom of Information (Scotland) Act 2002 and the Environmental Information Regulations 2004.

6. The purpose of the guide is to:
7.

- allow the public to see what information is available (and what is not available) in relation to each class
- state what charges may be applied
- explain how to find the information easily
- provide contact details for enquiries and to get help with access to the information
- explain how to request information that has not been published.

1.
2. Alongside FOISA, the Environmental Information (Scotland) Regulations 2004 (the EIRs) provide a separate right of access to the environmental information that we hold. This guide to information also contains details of the environmental information that we routinely make available.
3.



1. The Classes of Information Section provides detailed information on Edinburgh Leisure and what we publish.

2. **Action** – You need to identify all documents / information you hold under what class of information and look to proactively publish these.

1. Identify all the different documents / information you hold under each class of information – and publish it. As part of the working group we brain dumped all our documents / information then categorised them into each of the classes. I then collected the documents and ensured they were uploaded onto our website in the appropriate section. This was a lost of working identifying and collating all the documents we would share in each class. As well as adding to website I had to share them in the actual GTI.

2. Think about your communications and what you hold e.g. minutes

The Act covers every piece of recorded information held by you so think about what you hold, how you capture it and what impact a request would have.

i. internal documents
ii. reports
iii. minutes of meetings

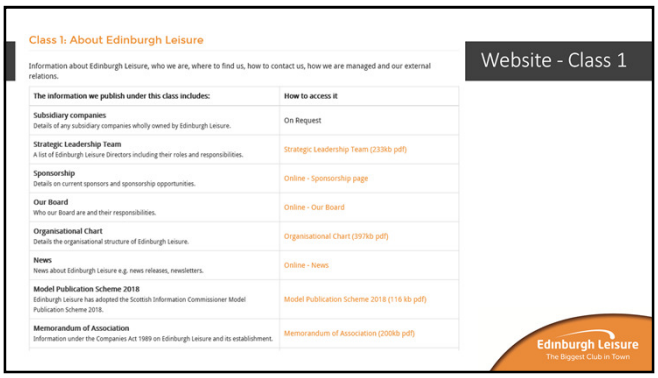
iv.emails

v.CCTV footage

vi.anything that is recorded and held.

1. If your minutes and documents are full of names and personal data then that will all have to be redacted if a request comes in and you haven't already published it as part of your GTI.

2. THE MORE YOU CAN PUBLISH THE LESS YOU WILL BE ASKED FOR!



Website - Class 1

Class 1: About Edinburgh Leisure

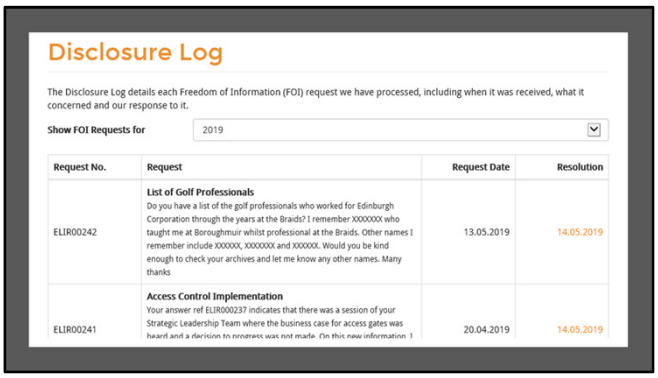
Information about Edinburgh Leisure, who we are, where to find us, how to contact us, how we are managed and our external relations.

The information we publish under this class includes:	How to access it
Subsidiary companies Details of any subsidiary companies wholly owned by Edinburgh Leisure.	On Request
Strategic Leadership Team A list of Edinburgh Leisure Directors including their roles and responsibilities.	Strategic Leadership Team (233kb pdf)
Sponsorship Details on current sponsors and sponsorship opportunities.	Online - Sponsorship page
Our Board Who our Board are and their responsibilities.	Online - Our Board
Organisational Chart Details the organisational structure of Edinburgh Leisure.	Organisational Chart (397kb pdf)
News News about Edinburgh Leisure e.g. news releases, newsletters.	Online - News
Model Publication Scheme 2018 Edinburgh Leisure has adopted the Scottish Information Commissioner Model Publication Scheme 2018.	Model Publication Scheme 2018 (116 kb pdf)
Memorandum of Association Information under the Companies Act 1989 on Edinburgh Leisure and its establishment.	Memorandum of Association (200kb pdf)

Edinburgh Leisure
The Biggest Club in Town

1. The Classes of Information Section provides detailed information on Edinburgh Leisure and what we publish.

2. Each of the published information documents provide links to parts of your website or open a PDF copy of the document.



Disclosure Log

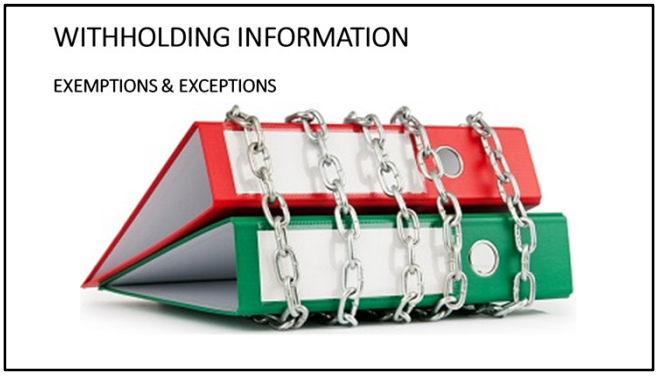
The Disclosure Log details each Freedom of Information (FOI) request we have processed, including when it was received, what it concerned and our response to it.

Show FOI Requests for 2019

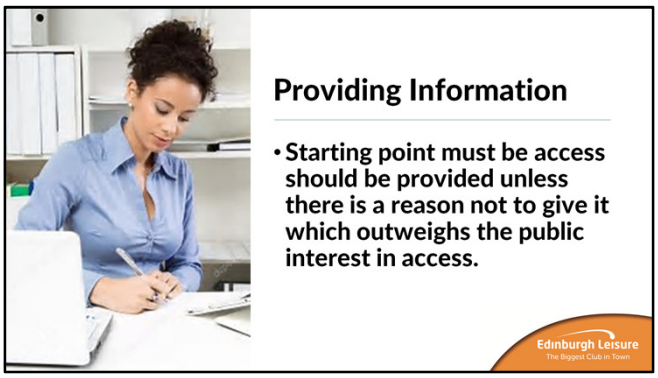
Request No.	Request	Request Date	Resolution
ELIR00242	**List of Golf Professionals** Do you have a list of the golf professionals who worked for Edinburgh Corporation through the years at the Braids? I remember XXXXXXX who taught me at Boroughmuir whilst professional at the Braids. Other names I remember include XXXXXX, XXXXXXX and XXXXXX. Would you be kind enough to check your archives and let me know any other names. Many thanks	13.05.2019	14.05.2019
ELIR00241	**Access Control Implementation** Your answer ref ELIR000237 indicates that there was a session of your Strategic Leadership Team where the business case for access gates was heard and a decision to progress was not made. On this new information, I	20.04.2019	14.05.2019

1. We publish all requests and responses in our Disclosure log on our website.

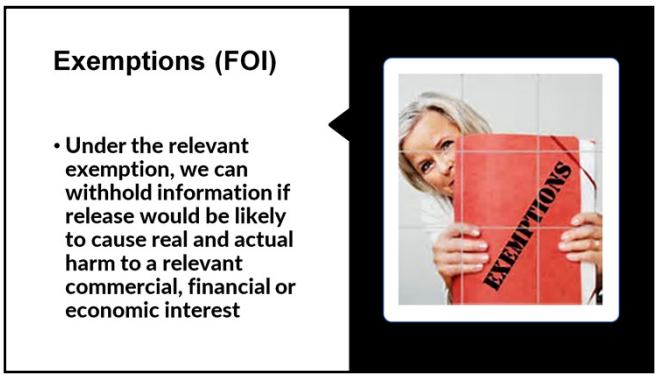
2. https://www.edinburghleisure.co.uk/freedom-of-information/disclosure-log



1. As part of the learning journey I needed to learn about the exemptions and exceptions that could be used when withholding information.



1. I start on the basis of providing the information.



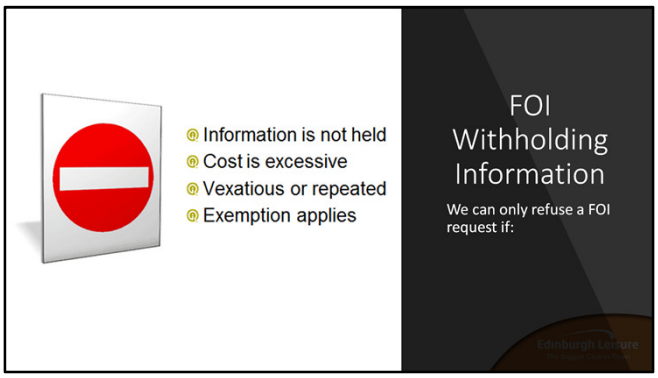
Under the relevant exemptions and exceptions, information will normally only be appropriately withheld where it can be demonstrated that release would be likely to cause real and actual harm to a relevant commercial, financial or economic interest

1. We need to develop full and appropriate reasoning and / or evidence in support of any exemption / exception

2. The effect of the release of commercial, financial or economic information will frequently diminish over time

3. Each of the relevant FOISA exemptions and EIR exceptions are subject to a public interest test.

4. This means that, even where a public authority considers that an exemption applies, the information should nevertheless be disclosed unless the public interest in withholding it outweighs that in disclosure. If the two are evenly balanced, the presumption should always be in favour of disclosure.



In refusing a request, we must say which reason we are citing and why it applies in the case. We must also provide the requester with details of their rights to review and appeal.

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FOI Absolute Exemptions

S25 Information otherwise accessible

S26 Information prohibited from disclosure

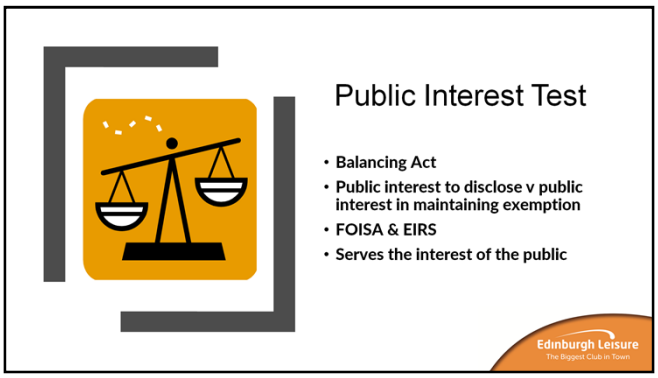
S36 Information subject to an actionable breach of confidence

S37 Court records

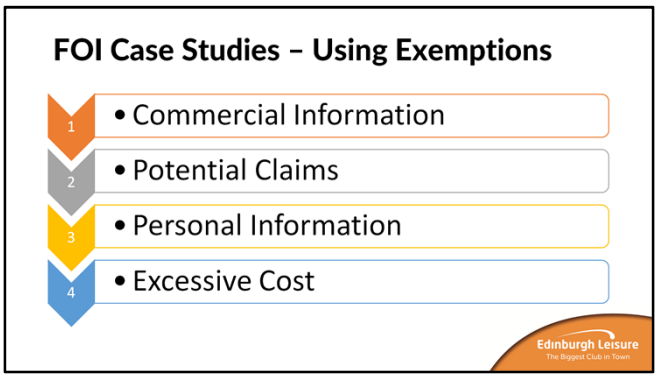
S38 Personal data where the applicant is the data subject

Edinburgh Leisure
The Biggest Club in Town

1. If an exemption is absolute, we do not have to conduct a public interest test e.g. if someone asks for something which is on our website, we can refuse under section 25 and then point the requester to the website – or send them a copy!



1. If we apply a non-absolute exemption e.g. S33 or exception we must apply the public interest test.
2.
3. Where an *absolute* exemption applies, we can withhold the information without a public interest. However, most of the exemptions are subject to the public interest test.
4.
5. This means information should be released unless the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
6.
7. Where the competing public interests are evenly balanced, the information should be disclosed.



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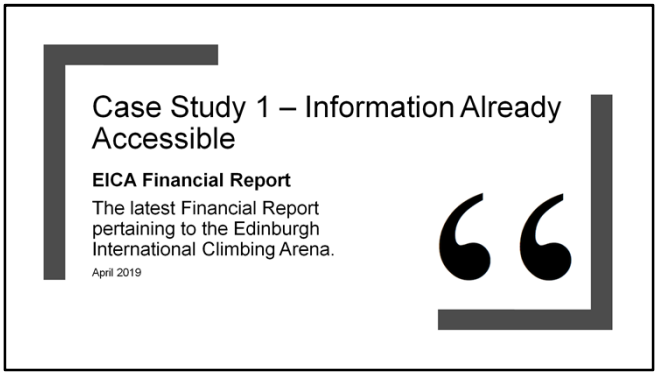


1. We've had several like this for financial information, we publish our financial board reports and annual report through our Publication Scheme on the website.

In this case I can refuse to release citing S25 Information otherwise accessible and point them to the website. This particular request wanted annual P&L so I also used S27 Intended for future publication as our annual report will be published within 12 weeks. I always try and give them as much information as possible therefore provided the most recent data which was 10 months to January 2019.

Case Study 2 – Commercial Information

Request for information held by Edinburgh Leisure in regards to detailed Income and Expenditure at Silverknowes Golf Course for last 5 years.

April 2016

1. We've had several like this for our venues, we publish our financial board reports and annual report through our Publication Scheme on the website.

2. In a lot of cases where the requester is looking for specific detailed information / breakdown of costs we may apply the Section 33 (1)(b) commercial interests exemption – in that case we also have to identify public interest arguments for disclosing / withholding.

3. Causing real or actual harm to a relevant commercial, financial or economic interest

Public Interest Arguments - Withhold

- EL is an arms-length not for profit charitable trust charged with operating as a private company in a market which is open to entry from private competitors. In our view, we would be unable to compete effectively or equally with those competitors if (unlike its competitors) we are obliged to disclose commercially sensitive cost information
- It is in the public interest to ensure that we can operate in the competitive environment, and that we are able to do so without our status as a public body impacting significantly on our ability to operate effectively in a competitive market
- Any profits that we generate are reinvested in our services. Consequently, we could be viewed as a net contributor to, rather than a drain on public finances, and our ongoing commercial good health benefits everyone who lives and works in Edinburgh and the surrounding area. As a result, we consider the greater public interest lies in the continued success of our business and our ability to compete fairly with its competitors
- We believe there is a strong public interest in avoiding significant harm to the commercial interests of our organisation
- We believe there is a strong public interest in avoiding prejudice to our own commercial interests by providing the detailed cost information for Meggetland Sports Complex, competitors would be able to use this information to gain a competitive advantage against us
- There is also a strong public interest in avoiding prejudicing our own commercial interests, as disclosure would be likely to lead to higher costs which would need to be paid using public funds
- It is in the public interest for Edinburgh Leisure, in common with other Scottish public authorities, to be able to offer services in a competitive market, thus securing best value for the public purse
- It is also in the public interest for any supplier of a public service to remain commercially viable and capable of offering best value, along with its potential competitors on a fair and equal footing.

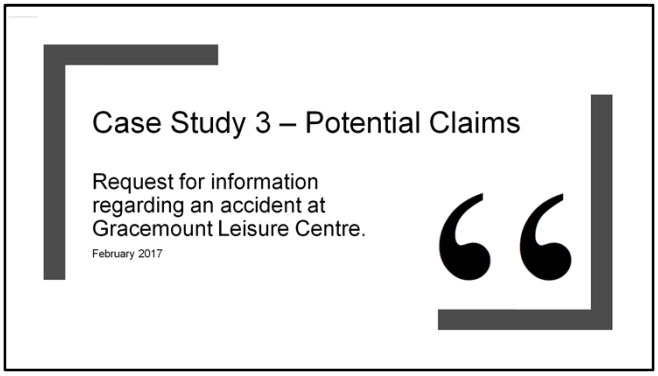
- **Public Interest Arguments – Disclose**
- There is a public interest argument in providing information about the performance of Meggetland and the annual expenditure given the subsidy that EL receives from City of Edinburgh Council. It is for that reason that EL discloses performance information in their Board Reports, Annual Report & Audited Financial Statements in our Published Information and Guide to Information which can be found on our Corporate Website. However, the numbers disclosed are carefully considered so as not to damage our commercial interests.
- Our financial statements and annual report can be found on our website here.
- Given the substantial funding received from the City of Edinburgh Council, it could be argued that there is a public interest in disclosing this information to ensure that value for money is seen to be obtained as it relates to the spending of the public purse (funded by CEC)
- It could also be argued that in agreeing final accounts they obtain the most economically advantageous outcome for the public.

Edinburgh Leisure
The Biggest Club in Town

1. Public Interest Test arguments

2. Edinburgh Leisure engaged the exemption in section 33(1)(b) and then considered whether, in all the circumstances of the case, the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exemption in section 33(1)(b).
3. Having balanced the public interest for and against disclosure, Edinburgh Leisure concluded that, in all the circumstances of the case, the public interest in maintaining the exemption in section 33(1)(b) outweighs that in disclosure of the information under consideration.
4. This is on the basis that disclosing the information would cause substantial prejudice to the commercial interests of Edinburgh Leisure.

5. I go to the OSIC Website, filter on the exemption and have a look at decisions and then read the report. This provides me with some good information on public interest arguments given, it's a great starting point for formulating your own arguments.



1. This was an EIR request regarding an accident – we get a few from legal firms like DIGBY Brown that usually have several questions they want answered.

2. In this case there were 9 questions and were most likely collecting information for a personal injury claim.

3. We responded with what we had however there was some information requested which we did not hold – Regulation 10 (4)(a) information not held.

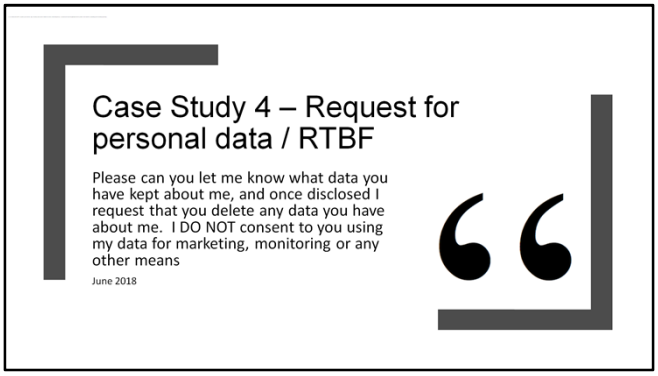
4. There were some reports which we no longer held as they had been destroyed as part of our retention schedule.

5. We also redacted the personal information using Regulation 11 Personal data.

6. Regulation 10(3) makes it clear that, where a request for environmental information includes personal data, the personal data must not be made available (i.e. disclosed) otherwise than in accordance with regulation 11.

7. Personal data must not be disclosed if it is:
8. the personal data of the person requesting the information (regulation 11(1));
9. the personal data of a third party – and other conditions apply (regulation 11(2)).

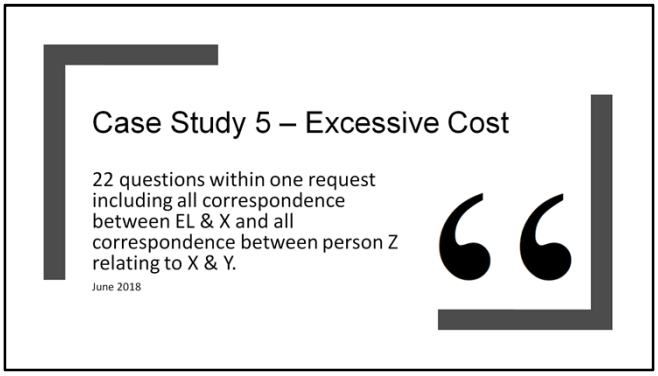
10. We provided the rest of the information requested redacting any personal information.



1. 2018 saw an increase in the number of DPA / GDPR requests including RTBF.

2. We had 4 on the run up to and in the months just after GDPR – we are also receiving a lot of enquiries / calls from customers where they are quoting their rights. The knowledge of the general public has definitely increased since last year.

3. We do not publish the response on our website – but we do add as an information request.



1. This was came in last year with 22 questions within one request. We responded to as many of the questions as possible, however due to the nature of the requests e.g. all correspondence, we used ‘Excessive cost’ as our justification to withhold.

2. If using Excessive cost you have to provide a breakdown of the cost to cmply:

3. 885 records
4. 84 staff hours
5. £15.00 per hour
6. Total cost £1260.00

7. Excessive cost allows you to withhold if compiling the information takes over 40 hours or £600.00.

8. We also used the following exemptions - s17 Information not held and S33(1)(b) Commercial interests

Staff name	Number of hours anticipated to collate	Number of hours actual	Hourly rate	Anticipated costs incurred	Actual costs to collate
Schools 1	14	5	£15.00	£210.00	£75.00
Schools 2	5	5	£15.00	£75.00	£75.00
Schools Bookings x 4	7	3	£15.00	£105.00	£45.00
Operations 1	4	4	£15.00	£60.00	£60.00
Sports Pitch 1	4	4	£15.00	£60.00	£60.00
Pitch Bookings x 3	4	4	£15.00	£60.00	£60.00
Pitch moible team		2	£15.00	£0.00	£30.00
Sports Pitch 2		0	£15.00	£0.00	£0.00
Saughton staff		2	£15.00	£0.00	£30.00
Meggetland staff		2	£15.00	£0.00	£30.00
CEO	1	1	£15.00	£15.00	£15.00
Director 1	6	6	£15.00	£90.00	£90.00
Director 2	2	2	£15.00	£30.00	£30.00
Finance team		0	£15.00	£0.00	£0.00
Information Compliance	60	42	£15.00	£900.00	£630.00
Support 1	0	0	£15.00	£0.00	£0.00
Support 2		0	£15.00	£0.00	£0.00
		0	£15.00	£0.00	£0.00
TOTAL	107	82	£270.00	£1,605.00	£1,230.00

1. Excessive cost £1230,00 to collate and redact all the information requested.

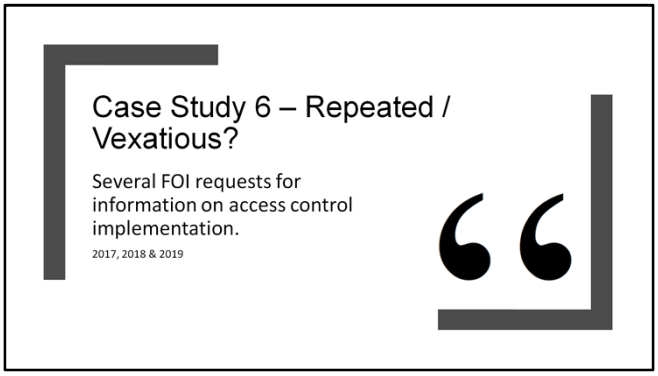
2. Ended up providing as much information as I could and redacting all emails.

3. Painful!

1. I could have refused this whole request as vexatious - causing or tending to cause annoyance, frustration, or worry.

2. All requests should be applicant blind so the name of the request should not be disclosed to the individuals providing the information.

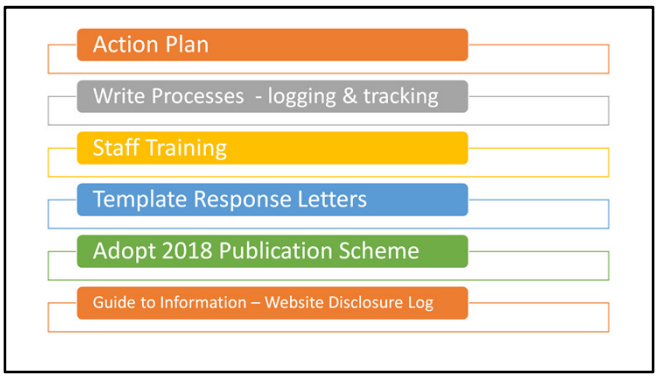
3. In this case the requester was known to me and it was evident from a long history of dealing with this individual that they were digging for ammunition to prove that they were being dealt with unfavourably.



1. This started in Oct 2017:

2. 3 in 2017 – Oct, Nov, Dec
3. 2 in 2018 Jan, Feb
4. The requester also bombarded all the venues sending emails to every info.venue email address and every manager. Exactly the same question. It ended up with me writing to the requester and informing them that I would let them know if there was any change as every question was exactly the same.
5. It stopped for a while however has started again in 2019 with 3 requests so far in April. As well as the 3 FOI requests, again the requester emailed every venue and venue manager with the same request.

WHAT
NOW?



- Start learning about FOI legislation

- Procedures, help guides and manuals and processes for your staff
- Training
- Get your template response letters ready – I've shared mine with OSIC and they will be providing you with my copies to amend to your own
- Adopt the 2018 Model Publication scheme
- Write your Guide to information – have a look at EL and other websites and you'll find versions that you can use.
- I've shared resources with OSICS – training packs, GTI, template letters, procedures

Research & Resources

- Scottish Information Commissioner Website
- Briefings & Guidance
- City of Edinburgh Council
- Google!
- Websites
- Jisc
- Template Letters

Scottish Information Commissioner
it's public knowledge

1. Search other organisations that were currently complying with the legislation look at the layout of their FOI pages, read their information and gain ideas on what to add to your website and information

Jean Duncan - Customer Development Manager

jeanduncan@edinburghleisure.co.uk

https://www.edinburghleisure.co.uk/home

Edinburgh Leisure
The Biggest Club in Town

TIME FOR QUESTIONS

Housing FOI Requests – the Renfrewshire Council Experience

Allison Black
Managing Solicitor (DPO)

"In theory, there is no difference between theory and practice. But in practice, there is."

Lawrence Berra

Who?

- Press
- Tenants
- General public
- MSPs, researchers
- Councillors
- Insurers
- Contractors
- Charities

What?

- **Homelessness**

numbers, reasons, grant availability, homeless accommodation, age ranges, evictions, rough sleepers, gender, homeless deaths

RSLs?

numbers of -lets to homeless,

properties provided as temporary accommodation ,

Renfrewshire

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What Else?

- **Travellers**
  Spend
  Numbers of encampments

- Different for RSLs? –
  number, clean up costs?

General Housing Issues

- Repair costs
- Works and length of time to complete
- Neighbour disputes

How Many?

- Varies
- Overall increase
- Motive irrelevant
- Public interest?
- Triggers e.g. Grenfell, Universal Credit

Renfrewshire Council

To Disclose or Not to Disclose?

Exemptions

- Otherwise accessible (s25) v context?
- Not held (s17) - overlap with RSLs?
- Personal data (s38) - third party data?

Challenges

- Recognising requests
- Myth busting
- Business as usual
- Pro-active publication
- Log and track – respond on time
- Some more "public" than others?

Hints and Tips

- "Engage from the top"
- Bottom up
- Scope early
- Beware of clarification
- Right wrongs on review
- Beware of the non-response!
- Advise and assist
- Don't forget EIRs!

Renfrewshire Council

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And finally……..

- Achievable
- Don’t panic!

Engage! Engage! Engage!

Renfrewshire

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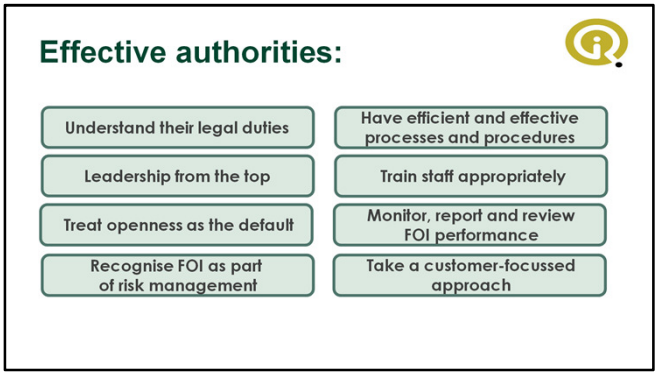
Q&A
Discussion

Resources and support



I hope you have found today useful. It should help your preparations in preparing yourself and your organisation for 11 November so that your authority hits the ground running.

The characteristics that mark out organisations that perform well under FOI are similar to those characteristics that help organisations succeed in other areas.

Typically, an organisation that performs well under FOI will:

Understand their legal duties

- There will be a general awareness of the legal requirements of FOI across the organisation, while key staff – those with direct responsibility for FOI - will have a good understanding of the detail of FOI law.
- Importantly, understanding won't just be limited to FOI and EIR law. Staff will also have a good understanding of the Scottish Ministers Codes of Practice and our own guidance.

Leadership from the top

- Effectively performing organisations are typically those where senior managers lead by example on FOI, taking a positive approach to FOI culture and commitments. That work can start now - for example, by making clear the organisation approach to FOI principles in staff newsletters, briefings and training.
- A senior member of staff should also have strategic responsibility and be accountable for the management of the FOI function.

Have openness as the default position

- It's usually much easier for organisations to disclose information than to withhold it.
- Try and view disclosure as your default position. Ensure that the first question you ask when considering a request isn't "How can we withhold this?" but instead is "Can we disclose it?"

Recognise FOI a part of risk management

- Effectively performing authorities recognise the risks of getting FOI wrong and the benefits of getting it right and set up their systems, processes and procedures accordingly.
- They seek to avoid unnecessary reviews and appeals, and the risk of disgruntled stakeholders and potential bad press that can arise.

Have efficient and effective processes and procedures

- Effectively performing authorities have efficient and effective processes and procedures. There's more guidance on this in the s.60 code but these should, for example:
- Enable requests to be identified easily and passed quickly to the right person for a response
- Make clear who is responsible for what, and what authority they have to progress requests quickly
- have effective timelines in place to ensure you meet the response timescales
- Your records management system should also support the fast identification of requested information

Train staff appropriately

- A key word here is appropriately. Different staff will have different training needs.
- Not every staff member has to be an expert in FOI, but everyone in your organisation should be trained to recognise an information request, and should know what to do with it.
- Key staff with responsibility for FOI should, of course, have a strong understanding of the legal duty and, as mentioned, the knowledge and authority to carry out their role.
- Key staff also need support from colleagues to cover absences - whether planned or unplanned - and those colleagues need to know what to do.
- Make FOI awareness part of your staff induction, and give regular refresher FOI training to all staff.

Monitor, report and review FOI performance

- Monitor performance and report this to senior management, so that performance can be reviewed, and senior staff can respond to issues, learn lessons and identify efficiencies.
- Also put in place measures to regularly review your procedures, performance, training, communications, etc. Build review into your procedures.

Take a customer-focussed approach

Put the requester and their needs at the centre of your FOI practice.

Online Guidance

www.itspublicknowledge.info/rsls

Other Resources

- FOI Workshops –September
- Centre for FOI Practitioners' Conference
- FOISA Forum Knowledge Hub
- Decisions Round-up
- @FOIScotland
- Get it right first time Poster

FOI Workshops – September – follow-up workshops are being organised in partnership with SFHA and GWSF. More details will be available from those organisations shortly...

Centre for FOI Practitioners' Conference – an Annual FOI Practitioners' Conference which takes place each year in Dundee. We also support the Annual Holyrood FOI Conference, which takes place each December in Edinburgh.

FOISA Forum on Knowledge Hub – an online community of FOI Practitioners. You can register here to post questions, raise issues, share resources or initiate discussions with more than 120 FOI specialists from across Scotland. Visit: https://khub.net/group/foi-scotland-forum to register.

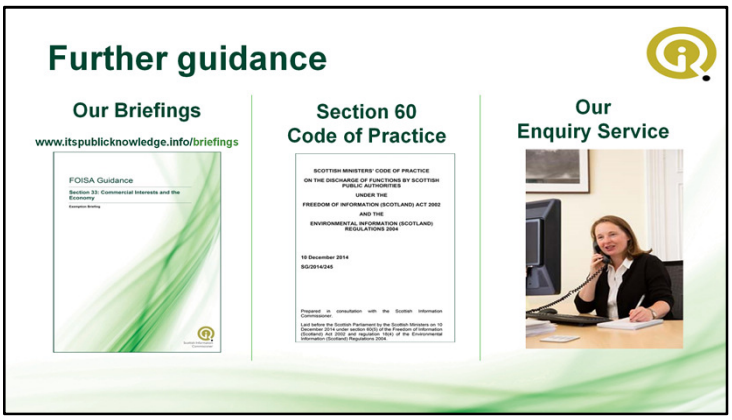
Decisions Round-up and Twitter Feed. Follow us at @FOIScotland for details of FOI news and events, and to be notified of the Commissioner's regular Round-up of learning from decisions.

FOI Poster – this is also available to download at:
www.itspublicknowledge.info/ScottishPublicAuthorities/NewAuthorities/RSLResources.aspx

Please remember that we are here to help you. We will continue working with staff from GWSF and the SFHA to support the development of a range of resources, including training workshops, template letters, and a template to support the publication of information.

Start thinking now about what needs to be done, and today's presentations, combined with our new RSL web pages should really help you with that. Visit www.itspublicknowledge.info/rsls.

Also, please take advantage of all training and network opportunities. Take advantage of opportunities to attend events, sign up to mailing lists, read the guidance, do the preparation. The more you can do to prepare effectively, the easier and more straightforward the experience post designation.



There's more information in our briefings – we have detailed guidance on all of the exemptions under FOI.

- Lots more guidance can be found in the Scottish Minister's section 60 Code of Practice. Covers several areas, but there is a whole chapter dedicated to procurement and contracts. It gives guiding principles and best practice advice.
- Also - use our enquiries service

Contact us

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W: www.itspublicknowledge.info

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