

Scottish Charity Regulator

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

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1. Policy Aim

This policy aims to set out the obligations of the Scottish Charity Regulator (OSCR) to comply with the Freedom of Information (Scotland) Act 2002 (FOISA) and that Environmental Information (Scotland) Regulations 2004 (EIRs).

2. Legal background

The Freedom of Information Act gives people the right to request information from Scottish Public authorities. It is intended to promote a culture of openness and accountability amongst public sector bodies, which then facilitates better public understanding of how authorities carry out their duties, why they make the decisions they do, and how they spend public money.

The principles that underpin freedom of information also reflect OSCR's commitment to two of the values of better regulation.

- **Accountable:** we are answerable, in different ways, to our stakeholders which includes involving others on a continuous and appropriate basis, demonstrating our impact, providing value for money and welcoming external scrutiny.
- **Transparent:** we act in a way that is open, predictable and understandable. This includes making available the relevant criteria and facts underpinning our actions.

More about our values can be found here at [this link](#)

Other legislation relating to accessing information:

- **Data Protection Act 2018:** gives individual's the right to access to information about themselves and how that information is used by an organisation.
- **Environmental Information (Scotland) Regulations 2004:** gives people the right to access environmental information held by or on behalf of Scottish public authorities and certain other bodies carrying out public functions relating to the environment.

- **Re-use of Public Sector Information Regulations 2005 (ROPSI):** Applications for an electronic copy of the whole Scottish Charity Register or parts of it for re-use are dealt with separately by OSCR.

Other OSCR policies relating to accessing information:

- **Data Protection Policy:** This policy sets out how OSCR complies with the Data Protection Act 2018(DPA).
- **Records Management Policy and Retention Schedules:** This policy aims to make sure that all OSCR staff understand what they must do to protect and manage records effectively.
- **Policy on provision of electronic copies of publicly available information:** This policy governs the extent to which OSCR may make available electronic copies of the Scottish Charity Register.
- **Model Publication Scheme:** OSCR has adopted the Model Publication Scheme and has published a Guide to Information which gives details and links to all information currently available from OSCR, this can be found at the following link: [oscr-guide-to-information foisa final updated-2018-12-04.pdf](#)

3. Information subject to FOISA

Within the context of FOISA, the term 'information' means all recorded information held by OSCR, whether paper or electronic. It includes all draft documents, agendas, minutes, emails, diaries and handwritten notes.

4. Right of access to information

FOISA gives anyone the legal right to ask if a Scottish public authority holds information and if it does, to access the information held. A request must be made in writing or any other form that can be kept for future use, such as email, fax, audio or video tape. The request must state the name and address of the person applying for the information and the required information.

The Environmental Information (Scotland) Regulations 2004 (EIRs)¹ provide a right of access to any environmental information held by OSCR. Requests for environmental information can be made verbally or in writing. Any requests for environmental information should be directed to the Data Protection and Freedom of Information team.

The duty on OSCR is to confirm or deny whether it holds the information and if it does, to provide the information. If information has been requested but is not held, it will normally be reasonable to inform the applicant of this fact. However, there may be some exceptional cases where it would not be appropriate to confirm or deny whether the information exists.

5. Our Publication Scheme

Publication schemes are a requirement under FOISA. It is the statutory duty of all Scottish Public authorities, to adopt and maintain a publication scheme that has been approved by the Scottish Information Commissioner. A publication scheme is both a public commitment to make certain information available, and a guide to how that information can be obtained. The scheme also details how much it will cost if there are any charges. Our latest Guide to Information can be found [here](#).

6. Exemptions to release

FOISA governs all recorded information held by OSCR; however, there are certain circumstances when information may not be released because it is exempt under FOISA. Examples of exemptions that may be used by OSCR are:

| FOISA exemption | Type of exempt information |
|--|---|
| Section 25: Information otherwise accessible | Information already published on our website. |
| Section 30: Prejudice to effective conduct of public affairs | Policy formation and decision making discussions. |

¹ Scottish Information Commissioner’s Environmental Information Guidance <http://www.itspublicknowledge.info/Law/EIRs/EIRs.aspx>

| | |
|----------------------------------|--|
| Section 35: Law enforcement | Inquiries into and complaints about charities. |
| Section 36: Confidentiality | Information supplied by charities to OSCR in confidence. |
| Section 38: Personal information | Names and addresses of complainants and other relevant persons |

More information about exemptions can be found at the Scottish Information Commissioner's website [here](#).

7. Duty on OSCR to advise requesters

OSCR is required to tell the requester whether the information is held and if so provide it promptly and in any event no later than **20 working days** after the day of receipt.

Under section 15 of FOISA all Scottish Public Authorities have a statutory duty to provide advice and assistance to those making, or wishing to make a request. For example, how to make a request to OSCR and what information is already available via the website.

In some cases a request may be refused in whole or in part. A refusal notice must be issued setting out the exemptions relied on and the reasons why. If the exemption is a qualified one then the public interest test reasoning must also be explained.

The notice must also explain how the requester can ask for an internal review if they are not satisfied with the response and their right to ask the Scottish Information Commissioner to decide whether the request has been properly dealt with.

8. Handling of requests

In compliance with its statutory duty under FOISA, OSCR will inform the applicant in writing whether it holds the information requested and if so, communicate that

information to the applicant within **20 working days** after receipt of the request. If it is not possible to comply with the 20 day limit, the requester will be informed and given an indication of when the information is likely to be provided. Requests for information will normally be acknowledged within **5 working days** of receipt.

9. Reviews of our responses

If the requester is not happy with the response they receive they must first ask OSCR to conduct an internal review. Details of how to request an internal review will be provided with the response.

Reviews will normally be acknowledged **within 5 working days** of receipt and a response provided within **20 working days** following the day after receipt.

Wherever possible reviews will be conducted by a different member of staff who was not involved in the original decision. The Reviewer will either, confirm the original decision; make a different decision or where no decision had been reached the first time, make a decision.

Requesters who remain dissatisfied may appeal to the Scottish Information Commissioner who will decide whether OSCR has acted in accordance with the statutory duties set out in FOISA.

10. Appeals to the Scottish Information Commissioner

Any requester who is dissatisfied about the handling of his or her request by OSCR can appeal to the Scottish Information Commissioner (contact details below).

11. Staff Responsibilities

The main responsibility of OSCR staff is to promptly forward all initial requests made to the Data Protection and Freedom of Information Officer. The Data Protection and Freedom of Information Officer has primary responsibility for managing and responding to the requests with cooperation from OSCR staff.

If requests are made verbally, staff must ask the requester to put their request in writing, unless the request falls within the scope of the EIRs (appropriate assistance will be provided to requesters with access requirements).

12. Management Responsibilities

The Senior Management Team has overall responsibility for the FOISA policy. The Head of Support Services has direct responsibility for overseeing the work of the Data Protection and Freedom of Information practitioners and the handling of internal reviews. All Senior Managers are responsible for ensuring implementation and compliance with the policy and procedures for handling requests and reviews. Senior Management will make provision for a regular review of OSCR’s FOISA Policy and publication scheme.

13. Recording and Reporting of Requests

All internal recording of requests, reviews and appeals will be held and updated by the Data Protection and Freedom of Information practitioners in Support Services. Reports will be provided to Senior Management Team every month by Support Services on the number and nature of the requests; and on the compliance with statutory timescales.

Quarterly reports will be sent to the Scottish Information Commissioner and published on OSCR’s website.

14. Contact Details

| Scottish Charity Regulator | Scottish Information Commissioner |
|---|---|
| Support Services 2nd Floor Quadrant House 9 Riverside Drive Dundee DD1 4NY | Scottish Information Commissioner Kinburn Castle Doubledykes Road St Andrews Fife KY16 9DS |
| Tel: 01382 220446 Email: info@oscr.org.uk Web: www.oscr.org.uk | Tel: 01334 464610 Email: enquiries@itspublicknowledge.info Web: www.itspublicknowledge.info |