



# Freedom of Information (Scotland) Act 2002

2002 asp 13

## PART 1

### ACCESS TO INFORMATION HELD BY SCOTTISH PUBLIC AUTHORITIES

#### *Responses to request*

#### **16 Refusal of request**

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a “refusal notice”) which—
  - (a) discloses that it holds the information;
  - (b) states that it so claims;
  - (c) specifies the exemption in question; and
  - (d) states (if not otherwise apparent) why the exemption applies.
- (2) Where the authority’s claim is made only by virtue of a provision of Part 2 which does not confer absolute exemption, the notice must state the authority’s reason for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.
- (3) The authority is not obliged to make a statement under subsection (1)(d) in so far as the statement would disclose information which would itself be exempt information.
- (4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.
- (5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if—

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*Changes to legislation: Freedom of Information (Scotland) Act 2002, Cross Heading: Responses to request is up to date with all changes known to be in force on or before 17 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
  - (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.
- (6) Subsections (1), (4) and (5) are subject to section 19.

## 17 Notice that information is not held

- (1) Where—
- (a) a Scottish public authority receives a request which would require it either—
    - (i) to comply with section 1(1); or
    - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
 if it held the information to which the request relates; but
  - (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.

## 18 Further provision as respects responses to request

- (1) Where, if information existed and was held by a Scottish public authority, the authority could give a refusal notice under section 16(1) on the basis that the information was exempt information by virtue of any of sections 28 to 35 [F138,] 39(1) or 41 but the authority considers that to reveal whether the information exists or is so held would be contrary to the public interest, it may (whether or not the information does exist and is held by it) give the applicant a refusal notice by virtue of this section.
- (2) Neither paragraph (a) of subsection (1) of section 16 nor subsection (2) of that section applies as respects a refusal notice given by virtue of this section.

### Textual Amendments

- F1** Word in s. 18(1) inserted (31.5.2013) by [Freedom of Information \(Amendment\) \(Scotland\) Act 2013 \(asp 2\)](#), **ss. 2, 7**; S.S.I. 2013/136, art. 2

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- sch. 1 para. 74A inserted by [2023 asp 6 sch. 2 para. 2\(2\)](#)