



# Freedom of Information (Scotland) Act 2002

2002 asp 13

## PART 1 **S**

### ACCESS TO INFORMATION HELD BY SCOTTISH PUBLIC AUTHORITIES

#### *Right to information*

#### **1 General entitlement **S****

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant”.
- (3) If the authority—
  - (a) requires further information in order to identify and locate the requested information; and
  - (b) has told the applicant so (specifying what the requirement for further information is),then, provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- (5) The requested information is not, by virtue of subsection (4), to be destroyed before it can be given (unless the circumstances are such that it is not reasonably practicable to prevent such destruction from occurring).
- (6) This section is subject to sections 2, 9, 12 and 14.

*Status: Point in time view as at 01/04/2008.*

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## 2 Effect of exemptions **S**

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that—
  - (a) the provision does not confer absolute exemption; and
  - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection (1), the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption—
  - (a) section 25;
  - (b) section 26;
  - (c) section 36(2);
  - (d) section 37; and
  - (e) in subsection (1) of section 38—
    - (i) paragraphs (a), (c) and (d); and
    - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

## 3 Scottish public authorities **S**

- (1) In this Act, “Scottish public authority” means—
  - (a) any body which, any other person who, or the holder of any office which—
    - (i) is listed in schedule 1; or
    - (ii) is designated by order under section 5(1); or
  - (b) a publicly-owned company, as defined by section 6.
- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held—
  - (a) by the authority otherwise than—
    - (i) on behalf of another person; or
    - (ii) in confidence, having been supplied by a Minister of the Crown or by a department of the Government of the United Kingdom; or
  - (b) by a person other than the authority, on behalf of the authority.
- (3) Subsection (1)(a)(i) is subject to any qualification set out in schedule 1.
- (4) Information is not held by the Keeper of the Records of Scotland if it is contained in a record transferred to the Keeper by a public authority within the meaning of the Freedom of Information Act 2000 (c.36) unless it is information—
  - (a) to which subsections (2) to (5) of section 22 apply by virtue of subsection (6) of that section; or
  - (b) designated by that authority as open information for the purposes of this subsection.
- (5) Where the public authority mentioned in subsection (4) is the Secretary of State for Scotland and the information is contained in a record transferred as is mentioned in subsection (6) of section 22 the reference in subsection (4)(b) to “that authority” is to be construed as a reference to the Scottish Ministers.

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#### Commencement Information

- II S. 3 partly in force; s. 3 not in force at Royal Assent see s. 75(1); s. 3(1) in force at 30.9.2002 by S.S.I. 2002/437, art. 2

#### 4 Amendment of schedule 1 **S**

- (1) The Scottish Ministers may by order amend schedule 1 by—
- (a) adding to that schedule a reference to—
    - (i) any body which; or
    - (ii) the holder of any office which,  
is not for the time being listed there and is either a part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions; or
  - (b) removing from that schedule an entry for the time being listed there.
- (2) The reference in paragraph (a) of subsection (1) to an authority with mixed functions or no reserved functions is to be construed in accordance with paragraphs 1(4) and 2 of Part III of Schedule 5 to the Scotland Act 1998 (c.46).
- (3) An order under subsection (1) may relate to a specified person or office or to persons or offices falling within a specified description.

#### 5 Further power to designate Scottish public authorities **S**

- (1) The Scottish Ministers may by order designate as a Scottish public authority for the purposes of this Act any person mentioned in subsection (2) who—
- (a) is neither for the time being listed in schedule 1 nor capable of being added to that schedule by order under section 4(1); and
  - (b) is neither a public body nor the holder of any public office.
- (2) The persons are those who either—
- (a) appear to the Scottish Ministers to exercise functions of a public nature; or
  - (b) are providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority.
- (3) An order under subsection (1) may designate a specified person or persons falling within a specified description.
- (4) An order under subsection (1) made by virtue of—
- (a) subsection (2)(a) must specify the functions of a public nature which appear to be exercised;
  - (b) subsection (2)(b) must specify the service being provided.
- (5) Before making an order under subsection (1), the Scottish Ministers must consult—
- (a) every person to whom the order relates; or
  - (b) persons appearing to them to represent such persons.

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## 6 Publicly-owned companies **S**

- (1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if it is wholly owned—
  - (a) by the Scottish Ministers; or
  - (b) by any other Scottish public authority listed in schedule 1, other than an authority so listed only in relation to information of a specified description.
- (2) For the purposes of subsection (1), a company is wholly owned—
  - (a) by the Scottish Ministers if it has no members except—
    - (i) the Scottish Ministers or companies wholly owned by the Scottish Ministers; or
    - (ii) persons acting on behalf of the Scottish Ministers or of such companies; and
  - (b) by any other Scottish public authority if it has no members except—
    - (i) the authority or companies wholly owned by the authority; or
    - (ii) persons acting on behalf of the authority or of such companies.
- (3) In subsections (1) and (2), “company” includes any body corporate.

## 7 Public authorities to which Act has limited application **S**

- (1) An order under section 4(1)(a) may, in adding an entry to schedule 1, list the authority only in relation to information of a specified description; and where an authority is so listed nothing in this Act applies to any other information held by the authority.
- (2) The Scottish Ministers may by order amend that schedule—
  - (a) by limiting the entry relating to an authority to information of a specified description; or
  - (b) by removing or amending any such limitation for the time being contained in an entry so relating.
- (3) Nothing in this Act applies to information held by a person designated as a Scottish public authority by order under subsection (1) of section 5 if the order is made by virtue of—
  - (a) subsection (2)(a) of that section and the information does not relate to the functions; or
  - (b) subsection (2)(b) of that section and the information does not relate to the service,  
specified in the order.
- (4) Nothing in this Act applies in relation to information—
  - (a) held by a publicly-owned company; and
  - (b) of a description specified in relation to that company in an order made for the purposes of this subsection by the Scottish Ministers.

## 8 Requesting information **S**

- (1) Any reference in this Act to “requesting” information is a reference to making a request which—

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- (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) states the name of the applicant and an address for correspondence; and
  - (c) describes the information requested.
- (2) For the purposes of paragraph (a) of subsection (1) (and without prejudice to the generality of that paragraph), a request is to be treated as made in writing where the text of the request is—
- (a) transmitted by electronic means;
  - (b) received in legible form; and
  - (c) capable of being used for subsequent reference.

## 9 Fees **S**

- (1) A Scottish public authority receiving a request which requires it to comply with section 1(1) may, within the time allowed by section 10 for so complying, give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for so complying.
- (2) Subsection (1) is subject to section 19.
- (3) If a fees notice is given to the applicant, the authority is not obliged to give the requested information unless the fee is duly paid; and for the purposes of this subsection and section 10(2) due payment is payment within the period of three months beginning with the day on which the notice is given.
- (4) Subject to subsection (7), a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers.
- (5) Without prejudice to the generality of subsection (4), the regulations may in particular provide that—
  - (a) a fee is not to exceed such amount as may be specified in, or determined in accordance with, the regulations;
  - (b) a fee is to be calculated in such manner as may be so specified; and
  - (c) no fee is payable in a case so specified.
- (6) Before making the regulations, the Scottish Ministers are to consult the Commissioner.
- (7) Subsection (4) does not apply where provision is made, by or under any enactment, as to the fee that may be charged by the authority for the disclosure of the information.

### Commencement Information

**I2** [S. 9](#) wholly in force at 1.1.2005; [s. 9](#) not in force at Royal Assent, see [s. 75\(1\)](#); [s. 9](#) in force for certain purposes at 31.10.2003 by [S.S.I. 2003/477](#), [art 3\(2\)](#); [s. 9](#) wholly in force at 1.1.2005 by [S.S.I. 2004/203](#), [art. 3\(2\)](#)

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## 10 Time for compliance **S**

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after—
  - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
  - (b) in a case where section 1(3) applies, the receipt by it of the further information.
- (2) If—
  - (a) the authority is the Keeper of the Records of Scotland; and
  - (b) the information is information to which section 22(2) to (5) applies,
 subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) Where the authority gives a fees notice to the applicant and the fee is duly paid, the working days in the period—
  - (a) beginning with the day on which that notice is given; and
  - (b) ending with the day on which the fee is received by the authority,
 are to be disregarded in calculating, for the purposes of subsection (1), the twentieth (or as the case may be the thirtieth) working day mentioned in that subsection.
- (4) The Scottish Ministers may by regulations provide that subsections (1) and (3) are to have effect as if references to the twentieth (or as the case may be the thirtieth) working day were references to such other working day, not later than the sixtieth, after receipt by the authority of the request as is specified in, or determined in accordance with, the regulations.
- (5) Regulations under subsection (4) may—
  - (a) prescribe different days in relation to different cases; and
  - (b) confer a discretion on the Scottish Information Commissioner, exercisable both at the request of the authority and where no such request has been made.

## 11 Means of providing information **S**

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.
- (2) The means are—
  - (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
  - (b) such provision to the applicant of a digest or summary of the information; and
  - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.
- (3) In determining, for the purposes of subsection (1), what is reasonably practicable, the authority may have regard to all the circumstances, including cost; and where it determines that it is not reasonably practicable to give effect to the preference it must notify the applicant of the reasons for that determination.

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- (4) Subject to subsection (1), information given in compliance with section 1(1) may be given by any means which are reasonable in the circumstances.
- (5) Such tests of reasonable practicability as are imposed by this section are not to be construed as detracting from any duty which a provider of services has under or by virtue of section 21 of the Disability Discrimination Act 1995 (c.50) (duty to make adjustments to practices, policies, procedures or physical features so that use of services by disabled persons is facilitated or made possible).

## 12 Excessive cost of compliance **S**

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
- (2) The regulations may provide that, in such circumstances as they may specify, where two or more requests for information are made to the authority—
  - (a) by one person;
  - (b) by different persons who appear to it to be acting in concert or whose requests appear to have been instigated wholly or mainly for a purpose other than the obtaining of the information itself; or
  - (c) by different persons in circumstances where the authority considers it would be reasonable to make the information available to the public at large and elects to do so,then if the authority estimates that the total cost of complying with both (or all) of the requests exceeds the amount prescribed, in relation to complying with either (or any) of those requests, under subsection (1), section 1(1) does not oblige the authority to comply with either (or any) of those requests.
- (3) The regulations may, in respect of an election made as mentioned in subsection (2)(c), make provision as to the means by which and the time within which the information is to be made available to the public at large.
- (4) The regulations may make provision as to—
  - (a) the costs to be estimated; and
  - (b) the manner in which those costs are to be estimated.
- (5) Before making the regulations, the Scottish Ministers are to consult the Commissioner.
- (6) References in this section to the cost of complying with a request are not to be construed as including any reference to costs incurred in fulfilling any such duty under or by virtue of the Disability Discrimination Act 1995 (c.50) as is mentioned in section 11(5).

### Commencement Information

- I3** [S. 12](#) wholly in force at 1.1.2005; [s. 12](#) not in force at Royal Assent, see [s. 75\(1\)](#); [s. 12](#) in force for certain purposes at 30.4.2004 and wholly in force at 1.1.2005 by [S.S.I. 2004/203](#), [art. 3](#), [Sch.](#)



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### **13 Fees for disclosure in certain circumstances** **S**

- (1) A Scottish public authority may charge for the communication of any information—
  - (a) which by virtue of section 12(1) or (2) it is not obliged to communicate; and
  - (b) which it is not otherwise required by law to communicate,such fee as may be determined by it in accordance with regulations made by the Scottish Ministers.
- (2) Without prejudice to the generality of subsection (1), the regulations may in particular provide that a fee—
  - (a) is not to exceed such amount as may be specified in, or determined in accordance with, the regulations; and
  - (b) is to be calculated in such manner as may be so specified.
- (3) Before making the regulations, the Scottish Ministers are to consult the Commissioner.
- (4) Subsection (1) does not apply where provision is made, by or under any enactment, as to the fee that may be charged by the authority for the disclosure of the information.

### **14 Vexatious or repeated requests** **S**

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

### **15 Duty to provide advice and assistance** **S**

- (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.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).



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