



Scottish Information
Commissioner
It's public knowledge

Your Right to Know

freedom

A guide to freedom of information law in Scotland

Foreword

This booklet is a practical guide to your rights to information under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. These are legal rights that entitle you to see information from Scottish public authorities or other organisations that provide services for them.

All you have to do is ask for the information. You don't have to say why you want it, or what you want it for. You don't even have to mention the laws. Every Scottish public authority must respond to all information requests they receive. They even have a duty to advise you about making a request and help you make one, and they must provide the information within 20 working days.

Some types of information can still be kept back for good reasons, but you should be given those reasons. If you don't agree, you have the right to appeal to the independent Scottish Information Commissioner. If the Commissioner finds that the public authority should give you the information, she can use her enforcement powers to make sure it happens.

People use their rights to information every day. They ask public authorities about plans that concern them and their families and they find out how public money is being spent. Freedom of information is essential for all of us if our public authorities, including

our government, are to be open and accountable to all the people they serve.

We want you to know about your rights so that you too can get information you want to see. This guide explains your rights under the law in Scotland. We can't give a full explanation of the law in this short booklet, but we hope that we have provided the information you will need. If the guide does not answer all your questions, please contact the Scottish Information Commissioner - see **Where can I get further information and help?** at the end of this guide (page 45).

This guide was originally produced in 2004, as a joint project between the Commissioner and the Scottish Consumer Council, one of the predecessor bodies to Consumer Focus Scotland. This version, revised by the Scottish Information Commissioner in 2011, and again in 2012, has been endorsed by Consumer Focus Scotland. We acknowledge the contribution of Derek Manson-Smith in compiling the original guide.



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Introduction

What are my rights and why would I use them?

You have legal rights that entitle you to see information from Scottish public authorities. The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 give you the right to ask for and be given information from a wide range of public organisations in Scotland. These organisations are called “Scottish public authorities” – see

Which organisations can I ask for information?

You may want to use your rights to ask, for example:

- ④ why decisions affecting local services have been made, such as a decision to cut back some services at your local hospital, or to combine local primary schools
- ④ how public authorities decide who gets priority on waiting lists for services such as health or housing.

Or you may want to find out about:

- ④ the contract under which a private company is providing a service for a Scottish public authority, such as a traffic warden service. This could include their charges or conditions for providing the service
- ④ any studies carried out or considered before decisions are taken, for instance on the safety of vaccines or medicines.

Further examples are given in the section **What kind of information do I have a right to see?**

What if I want to see information about me?

The Data Protection Act 1998 gives you the right to see information about yourself. You can find guidance on how to use these rights in **‘What’s on my record? A practical guide to your rights of access to personal information** – for details of where you can get a copy, see the section **Where can I get further information and help?**

Is there information I may not be able to see?

Access to some information is limited – this is explained later in this guide. If the public authority refuses to give you the information you asked for, you can appeal to the Scottish Information Commissioner. If she thinks the public authority should have given you the information, she has a wide range of powers to enforce your rights under the Act. (See **What if I am unhappy with the reply?**)

Do I always have to make a special request to see information held by public authorities?

No – Scottish public authorities already make some information available through their publication schemes. Publication schemes are designed to make it easier for you to find information published by the authority without having to make a special freedom of information request – see **Publication schemes – what are they and how can they help me?**



What kind of information do I have a right to see?

You can ask to see any kind of recorded information from a Scottish public authority, however old the information is. That includes information recorded on:

- 📄 paper
- 📄 computer files, including e-mails
- 📄 video
- 📄 microfiche.

To find out which organisations are Scottish public authorities, see **Which organisations can I ask for information?**

Some examples of the information you can ask for are given in the introduction to this guide. Further examples could be:

- 📄 the number of complaints about a particular service, for example street cleaning or refuse collection, and whether action was taken as a result
- 📄 information showing whether public authority policies are working well – for instance, is a community policing initiative reducing crime in the local area?
- 📄 information that would reveal whether a contract is providing value for money – for instance, what standards have been agreed with agencies contracted to supply hospital cleaning or catering services?

Information that has already been published or is readily available from each public authority is described in its **publication scheme**. There is more information about publication schemes and how you could find them useful in the section Publication schemes – **what are they and how can they help me?**

Environmental information

The Freedom of Information (Scotland) Act doesn't apply to environmental information, but the Environmental Information (Scotland) Regulations 2004 give you very similar rights.

You can find out more in the section **What about my right to see environmental information?** but here are some examples of what could be included:

- 📌 Genetically modified crop trials.
- 📌 The cleanliness of beaches.
- 📌 The location of mobile phone masts.
- 📌 Plans for landfill sites.
- 📌 Action taken or information held by environmental health officers in respect of food premises.
- 📌 Chemicals, including cleaning products, used in public buildings.

The environmental information regulations apply to a slightly wider range of organisations than the Freedom of Information (Scotland) Act, and there are some practical differences in how you can get hold of information under the Act and under the regulations. These differences are explained in the section **What about my right to see environmental information?**



Which organisations can I ask for information?

Under the Freedom of Information (Scotland) Act you have the right to get information from any of the following Scottish public authorities or office-holders:

- ④ Scottish Ministers in charge of all departments of the Scottish Government and its agencies.
- ④ The Scottish Parliament.
- ④ Non-ministerial office holders in the Scottish Administration, including the chief medical and dental officers, the chief inspectors of constabulary, prisons and fire services, rent officers and social work inspectors.
- ④ Local government, including councils, assessors, fire services, licensing boards and the Strathclyde Passenger Transport Authority.
- ④ The National Health Service, which includes NHS boards, community health partnerships, hospitals, GPs, dentists, pharmacists, opticians and other health professionals.
- ④ Educational institutions such as universities and colleges.
- ④ The police.
- ④ Other public authorities, including more than 50 types of Scottish public authorities not covered in the categories above. They range from Scottish Enterprise to the Water Industry Commissioner for Scotland.
- ④ Companies that are wholly owned by one or more public authorities. These include, for example, companies set up by local authorities to explore new economic and transport initiatives, and companies set up by universities to develop the products of their research commercially.

The list of Scottish public authorities will change from time to time as new authorities are added or current ones change their names. A list can be found on the Scottish Information Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Whocanlask.asp> or you can

contact the Office of the Scottish Information Commissioner – see **Where can I get further information and help?**

What about other organisations providing public services?

Other organisations can be treated as Scottish public authorities if they carry out public services that are normally the responsibility of a Scottish public authority, such as a traffic warden service or a leisure service. Private companies can also be included if they are involved in significant projects of a public nature, for example through a private finance initiative or a public-private partnership contract. Only the company's involvement in public work would be covered, and not other areas of its business. The Scottish Parliament has to give its approval before such organisations are brought under the Act, and you then have the right to ask for information from them.

What about organisations outside Scotland?

You also have a general right to information held by United Kingdom public authorities under separate UK laws. These public authorities include government departments and agencies responsible for matters dealt with by the UK Parliament, such as:

- 🇬🇧 UK foreign policy
- 🇬🇧 UK defence and national security
- 🇬🇧 immigration and nationality
- 🇬🇧 energy: electricity, coal, gas and nuclear energy
- 🇬🇧 trade and industry, including consumer protection
- 🇬🇧 social security, including work and pensions
- 🇬🇧 the economic and monetary system, including the Inland Revenue.

This guide does not cover your rights to information held by UK public authorities. In most cases the rights to the information they hold are very similar to those provided by the Freedom of Information (Scotland) Act, but there may be some differences, for example in the way fees are charged

or in the time allowed for public authorities to reply to your request. For information and advice on getting information from UK public authorities, contact the United Kingdom Information Commissioner – see **Where can I get further information and help?**

Don't be put off asking for information just because you're not sure whether you're dealing with a Scottish or a UK public authority – you still have a general right to receive information you ask for, and the authority must give you any help you need, whether it is a Scottish or a UK public authority.



Publication schemes - what are they and how could they help me?

All Scottish public authorities have produced a publication scheme that shows:

- 📍 the information they already make available or intend to make available
- 📍 where you can find the information
- 📍 whether it is available free of charge or for a fee.

If an authority's publication scheme is available on its website, you may find that the site provides links to copies of documents that you can download or read online. A list of Scottish public authorities and their website addresses is available on the Scottish Information Commissioner's website at <http://www.itspublicknowledge.info/YourRights/Whocanask.asp>

Usually the publication scheme will include information such as:

- 📍 management or board meeting minutes
- 📍 the authority's annual budget
- 📍 details of the services provided by the public authority.

Other information may also be included: for example, a local authority

publication scheme may show classes of information, such as educational services, housing services, and social services. The housing services class may include details of its housing allocation and anti-social behaviour policies.

A publication scheme also includes contact details of staff who will deal with requests for information, and tells you how to make a request. If you are not sure whether information is included in the publication scheme, you can ask these staff for help. The publication scheme should be available on the authority's website, or provided on request. Companies wholly owned by Scottish public authorities must produce their own publication schemes.

What if the information I need isn't in the publication scheme?

If the information you are looking for isn't in an authority's publication scheme, you can still ask for it to be provided, by following the steps described in the next section.



How do I ask for information?

Whether you live in Scotland or anywhere else in the world, you can ask for information held by a Scottish public authority.

- ④ You must put your request in writing or any other form that can be kept for future use, such as e-mail, fax, audio or video tape. You must provide a name and address so that the authority can reply. If you make your request by email you must include your name within the body of the email but you do not need to provide your postal address, although it is likely to be helpful if you do. You can add your phone number or any other contact information if you are happy for the authority to contact you this way. It can help speed up the response if the authority can get in touch with you quickly to check a point.

- ❓ You do not have to say you are using your rights under freedom of information or give any reasons for asking. You do not have to say why you want the information, but it will help if you explain exactly what you want to know.
- ❓ You can ask anyone from a receptionist to a senior official for the information. If you want information from a school, for example, you can make your request to the school. Some people prefer to send their requests to the authority's address for information requests because it will be received by staff who are used to responding to information requests. You can see a list of these addresses here:
<http://www.itspublicknowledge.info/YourRights/Whocanlask.asp>
If you use the internet, you may be interested in looking at a website for making information requests www.whatdotheyknow.org.uk
- ❓ You can ask for any recorded information the authority holds at the time of your request. Think about the types of information that the authority might hold that are of interest to you, for example, internal correspondence, staff procedure manuals, information in a database.
- ❓ Try to make your request as clear as possible so that it cannot be misunderstood. Focus on the information you really want to see. If your request is too broad, it may be refused because of the cost of responding to it. For example, ask for information between two dates, or about a particular decision. If you do not know which documents you want, try to describe them.
- ❓ If you do not provide enough detail to allow the authority to identify the information, or if your request is unclear, the authority can ask you to supply more details. That may include asking you why you want the information. However, you do not have to tell the authority why you want it and if you choose not to give a reason you should not be treated any differently.

- Q Keep a copy of your request and any correspondence until you get the information you want to see. You may need these if you want to appeal to the Commissioner.

What if I am not sure exactly what information I want to see?

You can ask the public authority to help you describe the information you are looking for more clearly and in more detail. It often helps you to word your request if you have a sense of what the authority is likely to hold that is of interest to you. Staff may help you by describing some different kinds of information available from the authority, which may give you what you are looking for. If the authority does not have the information you have asked for, staff may be able to tell you which other authority could provide it. You may also find it helpful to look at the public authority's publication scheme, which will show the range of information it already makes available. For more information see the section **Publication schemes – what are they and how can they help me?**

What if I need help to make a request for information?

The authority has a duty to help you if you have difficulty making your request, for example in writing a description of the information you want. This is especially so if you have a disability or find it difficult to say exactly what you are looking for. Staff may offer to take a note of your request over the telephone and then send the note for you to confirm, with a stamped addressed return envelope. They could also offer to tape-record your request over the phone or over the counter, or for you to tape your request and send it in. Your recorded request may then be sent to a person or agency that could help you or make the request on your behalf.

What if I need information in a particular format?

As far as is reasonable, the authority must provide the information in the

format you prefer (for example, a summary of the information or an audio-tape version) or give you an opportunity to see it. Say how you would like the information to be provided to you; for example, a copy, an electronic file or a summary. You can also ask to see the information at the authority's office and then ask for copies of the information.

In deciding what is reasonable, the authority must not discriminate against you if you have a disability. (For more information about this, you should contact the Equality and Human Rights Commission – see **Where can I get further information and help?**)

If you need the information in a language other than English, the authority does not generally have to provide it in that language. But depending on the authority and where you live, the authority may decide to translate the information for you.

Do young people have the right to ask for information?

Yes, if you are 12 or over you automatically have the same rights to information. If you are under 12 you can still ask for the information, but you may be asked to show that you understand what you are doing.

If I make my request by email do I have to give my postal address?

No, an email address is enough so that the authority can reply, although it may help if you can also give a postal address.

Can I make an anonymous request?

You must give your name and address in your request so that the authority can reply. If you use a false name the Commissioner and the courts would not be able to enforce your rights.

Information from a publicly owned company

Some public authorities set up companies to manage activities on their behalf, such as local development projects or commercial activities. If a company wholly owned by one or more public authorities has the information you want, then you should ask the company rather than the authority for the information. If you want information about a service provided by a private company through a contract with a public authority, then you should ask the public authority concerned.

What happens after I've made a request?

When you request information the authority must provide it to you or tell you why it will not provide it, as quickly as possible and in all cases within 20 working days. You should allow time for posting. Use the 'response calculator' on our website to check when you should expect a response:

<http://www.itspublicknowledge.info/calculator/calculator.php>



When may I have to wait more than 20 working days?

If you have asked the Scottish Government for information that's no longer in regular use, you may find it has been transferred to the Keeper of the Records of Scotland. If so, you may have to wait up to 30 working days, not 20, for a reply.

For most information requests the 20 working day time limit will apply.

What kind of reply can I expect?

After 20 working days, normally you will have received one of the following:

-  All the information you asked for, in most cases free of charge.
-  A fees notice, if there is a charge for the information – see **What could it cost me to get the information?**

- ❓ A refusal – see **Why may my request be refused?**
- ❓ No response, which you should treat as a refusal – see **What if I am unhappy with the response to my request for information?**
- ❓ Some of the information – see **Is there information I may not be able to see?**

Should I allow time for posted letters to arrive?

If your request is sent by letter you should allow three days for your letter to reach the authority and three days for the authority's response to reach you. The first working day of your request is the day after the date on which it is received.

Why may my request be refused?

Information should usually be made available on request, but there are some circumstances when your request may be refused.

The public authority is allowed to refuse your request in the following cases:

- ❓ The information is exempt from the Freedom of Information (Scotland) Act – see **Is there information I may not be able to see?**
- ❓ The authority does not have the information. If the authority does not have the information you ask for, it should tell you so promptly by sending you a notice saying it does not hold it. If it is aware that another authority has it, it should consider the best way to help you, perhaps by giving you contact details of the other authority. Before doing so, it should first confirm that the other authority has the information so that there is no unreasonable delay in responding to your request.
- ❓ You have not provided enough detail for the authority to identify and find the information. In these circumstances, the authority may ask you for more information. In this case, the maximum 20 working day response time starts when it receives that extra information from you. The authority

should help you to describe more clearly what information you want.

❗ It will cost the authority more than £600 to provide the information – see **What could it cost me to get the information?** In this case, the authority can tell you what information it could provide within the cost limit of £600.

❗ The authority believes your request is “vexatious”. This term could be used to describe requests that are clearly intended to disrupt the authority’s work, rather than genuine requests for information. It might also apply if you have already made the same request and had it rejected on appeal to the Commissioner, or if you have unreasonably failed or refused to give the authority enough detail to identify the information you want. However, a public authority cannot decide your request is vexatious simply because it finds you or your request irritating or a nuisance.

❗ You have asked for information that has already been provided to you or for information that the authority has already refused to give you, and a reasonable period of time has not passed between your requests. (This is called a “repeated request”.) This refusal should not happen if the information has changed since you first asked for it.

❗ Your request is for the same information asked for by others, or it appears that the requests are part of an organised campaign, or it will cost the authority more than £600 to supply the information to all those asking for it – see **What could it cost me to get the information?** Even if an authority refuses your request for these reasons, it should consider publishing the information and so making it available to the public through its publication scheme, or placing it on its website, or both. If it decides to publish the information, the authority must do this within 20 working days.

❗ You have asked for the information to be given to you in a format that the

authority cannot reasonably provide. However, if you have a disability, the authority must provide it in the format you prefer, except in exceptional and extreme circumstances.

If the authority decides to refuse your request or part of your request for any of the above reasons, its reply to you must:

- 🔊 be made in writing within 20 working days of receiving your request
- 🔊 state clearly the reasons for the refusal (including any legal reasons)
- 🔊 tell you how to appeal against this decision.

For more information, see **What if I am unhappy with the reply?**



What could it cost me to get the information?

Most requests should be dealt with free of charge; and where a fee is charged, it is likely to be small. If you have a disability and because of that you want information in a particular format, an authority cannot pass on to you any extra costs it has to pay to provide it in that format.

Information contained in a publication scheme

Most information in a publication scheme is free of charge or available for a small fee. If there is a charge, the scheme must show details of the charges.

The charge for providing some information, for example birth, marriage and death certificates, may be set by other laws.


Requests for other information

If you ask for information that is not included in an authority's publication

scheme, in many cases you will not have to pay for the information.


An authority cannot charge you for the first £100 it costs to find and provide you with the information. So if the cost to the authority of providing the information to you is £100 or less, you will get it free of charge.


What is the most I would have to pay?

 If the cost to the authority is more than £100 but £600 or less, the authority can charge you 10% of the cost of providing the information, but the first £100 is always free. So the maximum it can charge you in most situations is £50 (this would be where the cost to the authority is £600).

For example, if the cost to the authority is £200, it can only charge you £10 ($10\% \times (£200 - £100)$).

If the cost to the authority is £600, it can charge you £50. ($10\% \times (£600 - £100)$).

 If the total cost to the authority is more than £600, the authority can refuse your request. If, however, it decides to deal with your request, the authority can charge you the full costs (i.e. up to £15 an hour for staff time plus reasonable photocopying costs) over and above this £600 limit. The authority may be able to advise you how to reduce the costs by making changes to your request.

 For example, if the cost to the authority is £700, it can charge you £150 ($10\% \times (£600 - £100) + £100$ (i.e. total cost above £600)).

The authority must tell you if there is going to be a fee for providing the information, and will send you a “fees notice” (see next section) within 20 working days of your request. Any time between sending out the fees notice

and getting your payment does not count towards the 20 working days the authority is allowed to provide the information. So for example, if it sends you the fees notice 10 working days after getting your request, the authority still has another 10 working days left to respond to your request when it gets your payment.

What is a fees notice?

This is a notice that shows the estimated fee and how it has been calculated. It also tells you how you can complain about the fee and appeal against it.

In working out the fee, the authority can charge you for:

- 🕒 staff time to find and gather the information up to a maximum of £15 per hour
- 🕒 reasonable costs for photocopying or providing it in another format if you want a copy of the information.

For example, if an authority normally charges 10p a page for photocopies, charging any more than that would not be reasonable; or if it provides it on a CD, it can only charge you the cost of buying the CD.

An authority cannot charge you for staff time or any other costs associated with deciding whether it has the information or if any exemptions apply.

The authority cannot increase the fee if the actual cost turns out to be more than it estimated in the fees notice. If the cost turns out to be less than it estimated, it should consider refunding any overpayment you have made.

When you get the fees notice, it is up to you whether you want to pay for the information. You will have to pay the authority before it will provide the information. If you decide not to pay the fee, then the authority does not have to send you any information.

If you decide to pay the fee, you should do so within three months of the date

on the fees notice, otherwise the authority does not have to deal with your request.

If you are unhappy with the fees notice, you can ask the authority to review its decision about how much it wants to charge you for the information. The fees notice will tell you how to appeal against the notice.



Is there information I may not be able to see?

You have a general right to see all recorded information from Scottish public authorities. Only in certain circumstances can information be kept from you because it is exempt from the Freedom of Information (Scotland) Act.

If the authority decides to keep information from you, it must justify why it thinks the information is exempt from your general right to receive it. You should not be put off applying just because you think information may be exempt. Even if the information falls within one of the exemptions in the Act, the public authority may still be willing to let you have all or part of it.

Some categories of information are completely excluded from your rights of access – for example, documents prepared for court cases. Other categories of information may be exempt in certain circumstances where the authority can prove there would be real and significant damage to the authority or to other people if the information were made public. (The authority may call this “**substantial prejudice**” in its letter to you.) This may include information which is commercially valuable or information that is confidential.

However, when deciding whether to provide information that may be covered by one of these exemptions, the authority must consider whether it would be in the “**public interest**” for the information to be made public. This means that if the benefit to the public is going to be greater than the harm to the authority or other people affected, the authority must release the information.

There are also some categories of information which authorities are generally allowed to keep back, even if there would be no damage to the authority or to other people if the information were made public. This includes, for example, information about the development of government policies. However, information in these categories can still be released if it is in the public interest to do so.

In deciding whether it is in the public interest to provide information, authorities should **not** take into account:

- 🕒 the possibility of embarrassment to officials
- 🕒 the possible loss of confidence in the authority
- 🕒 the seniority of the people involved, or
- 🕒 the risk of you misinterpreting the information.

If it refuses your request, the authority must tell you which exemption it thinks applies. Unless the exemption relates to a category of information that is completely excluded from your rights of access, the authority must tell you why it thinks there is greater public interest in keeping the information secret than in making it available. It must explain the reasons for this decision.

If your request is for a combination of information that can be released and information that is exempt, the authority should, where possible, remove information that is exempt and give you the rest. If information is removed, the authority must still explain the reasons for removing it.



What if I am unhappy with the reply?

When you request information, the authority must provide it as soon as possible but in any event within 20 working days (remember to allow time for letters to arrive in the post), or send you a notice that tells you why it will not provide it.

You can ask the authority to review its decision if it does not respond or you are unhappy with the way it has dealt with your request, for example by:

- Ⓜ refusing to give you the information
- Ⓜ failing to reply to you within the time limit allowed
- Ⓜ claiming the information is exempt
- Ⓜ failing to give you advice about, and help with, making your request
- Ⓜ asking you to pay a fee that you feel is unreasonable.

Any notice sent to you by the authority must tell you how to use its review procedure.

How do I ask the authority to review its decision?

Your request for a review must be in writing, or any other form that can be kept for future use, for example email, a recording on audio or video tape. You must give your name, an address for correspondence, and details of your original request, and say why you want a review.

You should ask for the review no later than 40 working days after:

- Ⓜ the end of the period for responding to your request (if the authority did not reply to your request), or
- Ⓜ the date the authority responded, or
- Ⓜ the date the authority sent you a fees notice, or

- 🔍 the date the authority sent you a refusal notice or a notice saying that it does not have the information.

If you are late in asking for a review, the authority can still accept your request but does not have to do so.

If you are unhappy with the reply you receive or because an authority has not replied to your original request, staff in the Office of the Scottish Information Commissioner can advise you how to ask for a review. See **Where can I get further information and help?**

The authority should reply promptly in writing to your request for a review, taking no longer than 20 working days. (You can withdraw your request for a review at any time before the authority makes its decision. You must do this in writing.)

What kind of reply can I expect?

You should receive one of the following:

- 🔍 All the information you asked for – the authority must send this to you promptly, but at most within 20 working days of your request for a review.
- 🔍 Some of the information you asked for, with an explanation as to why the authority has kept the rest of it from you.
- 🔍 A notice from the authority confirming that it still intends to keep the information from you and saying why. The notice must tell you about your right to appeal to the Scottish Information Commissioner if you are unhappy with this decision. See **What if I am unhappy with the review of my request?**
- 🔍 The authority's decision about the level of fee to be charged, if your reason for requesting the review was that you were unhappy about the fees notice.
- 🔍 A notice giving you a decision on your request, if the authority did not reply to your original request.

- Q A notice from the authority stating that it does not think it has to review its original decision because it considers your original request vexatious or very similar to a request you made before (unless a reasonable period of time has passed between the two requests). In this situation, the authority does not have to review its decision but must tell you that is the reason why it won't review it. There's more information about vexatious or repeated requests in **Why may my request be refused?** in the section **How do I ask for information?**

If you don't get any response to your request for a review, you should treat this as a refusal to supply the information.



What if I am unhappy with the review of my request?

The next step is to appeal to the Scottish Information Commissioner. You can appeal to the Scottish Information Commissioner if:

- Q you are unhappy with the outcome of an authority's review
- Q the authority refuses to review its decision because it says your request is "vexatious" or "repeated". (See **Why may my request be refused?** for an explanation of what this means.)

The Commissioner cannot take action until you have:

- Q asked the authority to review its decision and allowed 20 working days for it to reply, or
- Q asked the authority to reconsider the fee it wants to charge for giving you the information, and allowed 20 working days for it to reply.

If the authority replies before the 20 working days are up, you can go straight to the Commissioner. When calculating working days do remember to allow

up to three days for letters to arrive in the post.

What is the role of the Scottish Information Commissioner?

The Scottish Information Commissioner is independent of the Scottish Parliament, the Scottish Government, and other Scottish public authorities. The Commissioner's duties include:

- 🔊 telling people about their right to see information held by Scottish public authorities
- 🔊 making sure public authorities follow the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004
- 🔊 encouraging public authorities to introduce and follow procedures that will help them make their information available to you
- 🔊 carrying out investigations when information has not been provided on request.

How do I apply to the Commissioner?

Your application must be in writing or any other format that can be kept for future use, for example, e-mail or a recording on audio or video tape.





What should I say in my application?

You must include the following information:

- 🔊 Your name.
- 🔊 An address for correspondence (eg, a postal or email address).
- 🔊 Details of your original request.
- 🔊 Why you are unhappy with the way it was dealt with by the public authority.

Should I send any other information?

You should include copies of the correspondence you have had with the public authority. Most importantly, please include:

-  your original request for information
-  the response you received (if the authority replied)
-  your request for a review
-  the response to your request for a review (if the authority replied).

You must appeal to the Commissioner within six months of receiving the review decision from the authority. If the authority did not carry out a review or failed to tell you the outcome of the review, you should appeal within six months of the date by which it should have replied to you (20 working days after you asked it to review its decision). The Scottish Information Commissioner can allow you to appeal after the six months' time limit if she considers it appropriate to do so.

What happens if I appeal to the Commissioner?

The Commissioner will investigate your complaint. If she decides that the authority has failed to follow the Act she may send them a formal decision notice that sets out the steps the authority should take, for example by giving you all or part of the information you asked for. If the authority fails to take these steps, the Commissioner can inform the Court of Session that the authority has not done so. The court can then investigate and deal with the authority as if it were in contempt of court. This means the court may give the authority an unlimited fine.

If you appeal to the Commissioner, she does not have to carry out an investigation if:

-  you have not fully used the authority's review procedure
-  she thinks your original request was "frivolous" (not a serious request for

information) or “vexatious” (see page **Why may my request be refused?** for an explanation)

 she thinks you have withdrawn or abandoned your request.

However, if she does not intend to investigate your case, she must tell you why.




If the Commissioner does investigate your case, she will aim to reach a decision within four months from the date of your appeal. If the case requires more time she will keep you informed of progress. She may also try to help you and the public authority come to an agreement.

Does the Commissioner have the final say?

In some very limited circumstances, the First Minister may issue a “ministerial certificate” which has the effect of overturning a decision notice issued by the Commissioner. If this happens in your case, the Commissioner will tell you.

Cases where you cannot appeal to the Commissioner

You cannot appeal to the Scottish Information Commissioner if your original request was to:

-  a procurator fiscal
-  in some cases, the Lord Advocate
-  the Scottish Information Commissioner herself. (As with any other public authority you can ask the Commissioner to review her original decision not to provide the information you requested, but if she decides that her original decision was correct, you cannot take your appeal further.)

In these circumstances, your only option is to challenge the decision of these organisations by asking the Court of Session for a judicial review. If you want to do this, you should get legal advice (see **Where can I get more information and help?**)



What if I am unhappy with the Scottish Information Commissioner's decision?

If you are unhappy with a decision by the Scottish Information Commissioner, you may be able to take the matter to the courts or complain to the Scottish Public Services Ombudsman.

Going to the courts

You can appeal to the Court of Session against a decision by the Commissioner, but on a point of law only, not because you disagree with the Commissioner's view of the case. The point of law could be, for example, that the Commissioner adopted the wrong definition of a legal term or concept, or misinterpreted the Act or her powers.

The public authority concerned also has the right to appeal against a decision by the Commissioner, again on a point of law.

If you refer your case to the Commissioner and she fails to reach a decision on your appeal after four months or other reasonable period, you could ask the Court of Session for a judicial review. If you are thinking about an appeal or a judicial review, you should get legal advice. (See **Where can I get further information and help?**)

Complaining to the Scottish Public Services Ombudsman

If you are unhappy with the way a decision has been reached by the Scottish Information Commissioner or you think she or her staff have provided a poor service, you may be able to complain to the Scottish Public Services Ombudsman – see **Where can I get further information and help?**

The Ombudsman will consider a case only when it has already been fully investigated by both the authority and the Scottish Information Commissioner.

The Ombudsman will not consider:

- ❏ a matter that you could take to a court (see above)
- ❏ in general, a properly made decision that the Commissioner has a right to make even if you disagree with it.



What about my right to see environmental information?

If the information you want is about the environment, your request will be dealt with under separate environmental information rules, not freedom of information law. They are called the Environmental Information (Scotland) Regulations. The rights provided by these regulations are similar to those you have under the Freedom of Information (Scotland) Act, but there are important differences you should be aware of. These are explained below.

What is “environmental information”?

Environmental information covers a broad range of topics, such as:

- ❏ the environment itself, including air, water, earth and the habitats of animals and plants
- ❏ things that affect the environment, such as emissions, radiation, noise, and other forms of pollution
- ❏ policies, plans and laws on the environment.



Examples of environmental information are:

- ❏ levels of chlorine in swimming pools
- ❏ water- and air-quality test reports
- ❏ genetically modified crops
- ❏ air-conditioning systems in public buildings.

For more examples of environmental information, please see page 8.

Which organisations can I ask for environmental information?

The environmental information rules apply to all the Scottish public authorities described earlier in this guide (see **Which organisations can I ask for information?**). They also apply to:

-  any person or body providing public environmental services that is controlled by one of the Scottish public authorities covered by the Freedom of Information (Scotland) Act 2002, and
-  any other person or body providing public services in Scotland.

This means you may also be able to get information from private organisations, companies or public-private partnerships providing services such as waste disposal, water, energy, and transport.

How do I ask for environmental information?

You don't need to make a written request for environmental information. You can make your request by phoning the organisation that has the information, or by visiting it and asking a member of staff for what you need. You can also send your request by email, letter or any other recorded format if you prefer.

If you want to ask for both general and environmental information, you should make your request in writing. The organisation receiving your request will decide whether it should be dealt with under the environmental information rules or the Freedom of Information (Scotland) Act 2002.

Apart from this, the rules about asking for environmental information are the same as for other types of information. Staff in the organisation receiving your request should give you any help or advice you need. See the section **How do I ask for information?**

What happens after I've made a request for environmental information?

The organisation should reply to your request for information as soon as possible but in most cases must do so within 20 working days.

When may I have to wait more than 20 working days?

If you have made a complex request for information involving large amounts of material, the organisation is allowed up to 40 working days to reply. If it will take longer than 20 working days to provide the information, the organisation should let you know within 20 working days of receiving your request.

What kind of reply can I expect?

After 20 working days (remember to allow three days for letters to arrive), normally you will have received one of the following:

- 🔊 All the information you asked for.
- 🔊 A written notice that the organisation requires you to pay a fee for the information before it makes the information available to you – see **What could it cost me to get environmental information?**
- 🔊 A refusal – see **Why may my request for environmental information be refused?**
- 🔊 No response, which you should treat as a refusal – see **What if I am unhappy with the response to my request for environmental information?**
- 🔊 Some of the information – see **Is there environmental information I may not be able to see?**

Why may my request for environmental information be refused?

Information should usually be made available on request, but in some circumstances your request may be refused.

The organisation is allowed to refuse your request in the following cases:

- 🔊 The information is excepted from the Environmental Information (Scotland) Regulations 2004 – see **Is there environmental information I may not be able to see?**
- 🔊 The organisation does not have the information you asked for.
- 🔊 Finding or preparing the information would cause an unreasonable amount of work and disrupt the organisation's services.
- 🔊 Your request is too general to allow the information to be identified and the organisation has done all it can to advise and assist you.

What could it cost me to get environmental information?

There should be no charge for:

- 🔊 looking at public registers
- 🔊 looking at information on the authority's premises or at an information service centre.

In any other case, the organisation can choose to make environmental information available free of charge or to charge a reasonable fee. If fees are to be charged, the organisation must set out clearly (for instance, in a leaflet or on the authority's website) when a fee may be:

- 🔊 charged
- 🔊 waived
- 🔊 required to be paid in advance.

The organisation must not charge you more than it will cost to provide the information.

If you feel the fee is unreasonably high, you can ask the organisation to review it. If, after the review, you still feel it is too high you can appeal to the Scottish Information Commissioner. See **What if I am unhappy with the reply to my request for environmental information?**

Is there environmental information I may not be able to see?

You have a general right to see all recorded environmental information from the organisations covered by the environmental information rules. However, environmental information may be kept from you in certain circumstances if the organisation believes that giving it to you would cause real harm. (The organisation may call this “substantial prejudice” in its letter to you.) This kind of exception may cover information which:

- 🔒 relates to international relations, defence, national security or public safety
- 🔒 relates to the course of justice, the ability of someone to receive a fair trial, or the ability of a Scottish public authority to conduct an enquiry of a criminal or disciplinary nature
- 🔒 is commercially valuable or confidential
- 🔒 includes details of sensitive environments, for example, the location of a bird-of-prey nesting site, or where giving the information may lead to harm or pollution
- 🔒 is currently incomplete, as with ongoing research.

However, when deciding whether to provide information that may be covered by one of these exceptions, the organisation must decide whether it is more in the “public interest” to keep it secret or to make it public. See page 22 for more information about how they make this decision.

If your request is refused, the organisation must tell you which exception it thinks applies. It must also tell you why it thinks there is greater public interest in keeping the information secret than in making it available. It must explain the reasons for this decision. You should not be put off applying just because you think an exception may apply. Even if the information does fall within one of the exceptions in the rules, the organisation may still be willing to let you have it, or part of it.






If your request is for a combination of information that can be released and information that is excepted, the organisation should, where possible, remove

information that is excepted and give you the rest. If information is removed, the organisation must still explain the reasons for removing it.

Information about emissions into the environment is a special case. The organisation should normally provide it on request even if the information would normally be kept from you because, for instance, it is commercially sensitive.

What if I am unhappy with the reply to my request for environmental information?

You can ask the organisation to review its decision if it does not reply to you or you are unhappy with how it has dealt with your request, for example by:

-  refusing to give you the information
-  failing to reply to you within the time limit allowed
-  claiming the information is excepted
-  failing to give you advice and assistance in making your request
-  asking you to pay a fee that you feel is unreasonable.

If after the review you are still unhappy with its reply, you can appeal to the Scottish Information Commissioner for a decision. The procedures for asking for a review or making an appeal are described fully in the section **What if I am unhappy with the reply?** and **What if I am unhappy with the review of my request?**

If the Commissioner agrees that you are entitled to receive the information you asked for, she will order the organisation to give it to you. However, the Commissioner may decide that the organisation was right to refuse you the information. You can appeal to the Court of Session on a point of law against a decision by the Commissioner – see **What if I am unhappy with the Scottish Information Commissioner’s decision?**

With environmental information requests you have a further route of appeal to the European Court of Justice. If you are considering an appeal, you should get legal advice. (See **Where can I get further information and help?**)



Where can I get further information and help?

For further information, advice and assistance about freedom of information in Scotland, contact:

The Office of the Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife KY16 9DS
Tel: 01334 464610
Fax: 01334 464611
E-mail: xxxxxxxx@xxxxxxxxxxxxxxxxxxxxx.xxxx
www.itspublicknowledge.info

For further information, advice and assistance about freedom of information and data protection (relating to information about you) in the United Kingdom, contact:

The Information Commissioner's Office

Wycliffe House
Water Lane
Wilmslow SK9 5AF
General enquiries:
Tel: 0303 123 1113
Fax: 01625 524 510
E-mail: xxxxxxxx@xxx.xxx.xxx.uk
www.ico.gov.uk

or the UK Information Commissioner's office in Scotland at:

The Information Commissioner's Office – Scotland

45 Melville Street

Edinburgh

EH3 7HL

Tel: 0131 244 9001

E-mail: xxxxxxxx@xxx.xxx.xxx.uk

What's on my record? is a practical guide to your rights of access to personal information, produced by:

Consumer Focus Scotland

Royal Exchange House

100 Queen Street

Glasgow G1 3DN

Tel: 0141 226 5261

Fax: 0141 221 9695

E-mail: xxxx@xxxxxxxxxxxxxxxxxxxxxxxxxxx.xxx.xx

www.consumerfocus.org.uk

What's on my record? can be downloaded as a PDF file from:

<http://www.consumerfocus.org.uk/scotland/files/2010/11/WOMR.pdf>

The Scottish Public Services Ombudsman

Freepost EH641

Edinburgh

EH3 0BR

Tel: 0800 377 7330

Fax: 0800 377 7331

Text: 0790 049 4372

E-mail: xxx@xxxx.xxx.xx

www.spso.org.uk

Scottish public authorities

You can find a list of Scottish public authorities covered by the Freedom of Information (Scotland) Act at: <http://www.itspublicknowledge.info/yourrights>

For advice and information on human rights or equality matters, or for information on your legal rights e.g. if you have a disability, contact:

Equality and Human Rights Commission

Optima Building
58 Robertson Street
Glasgow G2 8DU

Tel: 0845 604 5510

Textphone: 0845 604 5520

Email: xxxxxxxx@xxxxxxxxxxxxxxxxxxxxx.xxx

www.equalityhumanrights.com

For more information contact:

The Scottish Information Commissioner

Kinburn Castle, Doubledykes Road, St Andrews KY16 9DS

T: 01334 464610

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www.itspublicknowledge.info