

**Freedom of Information (Scotland) Act 2002 (FOISA)
Environmental Information (Scotland) Regulations 2004 (EIRs)
Guidance Note**

Requests for Personal Data

1. Exempting personal data

Personal data is information relating to a living individual, who can be identified from that data and from any other information. FOISA and the EIRs prohibit the release of personal data if this disclosure would breach the Data Protection Act 2018 (DPA). The Access to Information Compliance Team has produced FOISA and EIRs **Criteria Checklists** to assist Services in deciding whether personal information is exempt. These are available on The Zone and external website.

The criteria set out in these Checklists must be applied to each piece of personal data and requests must be treated on a case by case basis. Key factors to consider are:

- Whether the individual has given consent
- Whether they would expect disclosure of their personal data
- Whether it would be fair to release the information
- The sensitivity of the personal data
- Whether the personal data relates to the individual's private or public life
- The seniority of the individual
- Whether they are public facing
- Their level of decision making responsibility
- Whether the personal data is already publicly available
- Whether the public have a legitimate interest in the information (for example, public interest in transparency and expenditure of public money)
- Whether ACC is required under law to make the information publicly accessible in a particular way (for example, inspection of the planning register)

Is it fair to release staff details?

Certain information is already publicly available on ACC's website, particularly in relation to the names and contact details of Directors and Chief Officers. Where this is the case, FOISA and EIR requests will be refused as the information is otherwise accessible on the website.

For information that is not publicly available, the above factors should be considered when determining whether it would be fair to release this sort of information under FOISA or the EIRs.

2. Are statistics personal data?

Statistics (incidents / cases / number of people) will be personal data if they relate to living individuals and can be linked to “other information” by the recipient to identify those individuals.

When determining whether statistics in a response to a FOISA or EIR request should be released the consideration of what “other information” exists in the “public” domain will be key in establishing whether the release could potentially lead to the identification of the individuals captured by the statistics.

The types of “other information” can include other information being released as part of the FOISA or EIR response; previous FOISA or EIR responses; other information published by ACC or by other organisations or individuals. The view of the UK Information Commissioner (ICO), who regulates the DPA, is that “other information” can include somebody’s personal “knowledge” about an individual (i.e. information about someone which is not in recorded format).

Depending on the context of the statistics, the “public” domain can relate to the general, wider public or a specific group of people (for example, parents, teachers and pupils at a particular school).

The ICO recognises that it is sometimes the case that ACC will find it difficult to know what “other information” exists and which could be used, together with the statistics, to identify individuals. ACC is expected to take a risk management approach.

Example: the number of recorded incidents of pupil violence against teachers, broken down by school; date of assault; description of weapon; and disciplinary action taken for the period 2010/2011.

The total number of recorded incidents for the period 2010/2011 (106) was disclosed because it is unlikely that the individuals involved could be identified from that number together with any other information already publicly available.

However, the details specific to each incident was withheld because it is highly likely that disclosing these details, together with the number of incidents, and the personal knowledge of particular members of the public (teachers, parents and other pupils), would allow the individuals involved to be identified.

3. Providing summary information

The ICO and Scottish Information Commissioner (OSIC) are of the view that, where personal data is exempt under FOISA or the EIRs, ACC should provide summary (non-personal) information to the applicant as far as is reasonable. This helps to illustrate that ACC is meeting its duty to provide advice and assistance to applicants and demonstrates ACC's willingness to be transparent and open about its decision making and provision of services.

Personal data can be summarised and made anonymous by:

- Categorising the personal data into subject areas or bands of information
- Replacing the personal data with unique reference numbers
- Replacing the personal data with total figures

Example: the number of recorded incidents of pupil violence against teachers, broken down by school; date of assault; description of weapon; and disciplinary action taken for the period 2010/2011.

Exempted personal data	Summary released
Name of the school	Number of incidents broken down by Primary/Secondary/Special School sector
Date of the assault	The school year 2010/2011
Description of weapon used	Type of weapons used including laser pen; hand; fists
Disciplinary action taken	Number of incidents (15) and action included temporary exclusions and restricted activities

Example: copy of the application forms for candidates interviewed for a Council job including the successful candidate.

This example relates to an investigation by the Commissioner of another Council. The Commissioner concluded that the Council had correctly applied the Personal Information exemption to the application forms.

However, he instructed the Council to provide the applicant with a general summary of the experience and qualifications of the candidates. Under the Council's duty to provide advice and assistance to applicants, providing this summary would help the applicant to better understand the recruitment process. The Commissioner was also of the opinion that the appointments were to fairly senior posts and considered that the successful post holders may therefore expect that their appointment may be subject to some degree of scrutiny, in the context of the public's legitimate interest in the spending of public money.

For further advice and support on any aspect of information request handling, please visit the Access to Information Compliance Team's Zone pages, where you will find copies of all Exemption and Exception Criteria Checklists, as well as many other guides:
http://thezone/directorate_zone/occe/InformationCompliance/ict_occe_home.asp

Or contact the Access to Information Compliance Team directly at:

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