



E: humanrights@gov.scot

Gino Diaz
Via WhatDoTheyKnow website:
[request-578483-451b5adf@whatdotheyknow.com](https://www.whatdotheyknow.com/request-578483-451b5adf)

Your ref: request-578483-451b5adf
Our ref: Fol/19/01393

20 June 2019

Dear Gino Diaz

REQUEST UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

Thank you for your request dated 23 May 2019 under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request

You asked the Scottish Government to provide:

1. An explanation of “what measures are taken into place to protect the people from any governmental abuses and oppression” and supply you with references to these laws and documents.
2. Documents on what can be done when government do abuse and oppress the fundamental rights, interests and welfare of the people.
3. Evidence that the judiciary is independent from government influence.

Response to your request

1. What measures are taken into place to protect the people from any governmental abuses and oppression?

The information held by the Scottish Government in relation to this topic is available on the Scottish Government website¹. Under section 25(1) of FOISA, the Scottish Government is not required to provide information which is already reasonably accessible to you. If, however, you do not have internet access or are otherwise unable to access this information via the Scottish Government website, then please provide a postal address and I will send you paper copies.

¹ <https://www.gov.scot/policies/human-rights/>

In particular, the Scottish Government website provides specific details of the international human rights treaties that have been ratified by the UK and which apply to Scotland. The Scottish Government has published detailed statements which describe how we are giving effect to these obligations. This information can be found at: www.gov.scot/policies/human-rights/our-international-obligations/).

2. Documents on what can be done when government do abuse and oppress the fundamental rights, interests and welfare of the people

In response to this request, I have attached a copy of an information sheet that we provide to members of the public enquiring about human rights in Scotland. This document is not currently available online, although the content does reflect information which is published on the Scottish Government website. Further information on what to do if you believe your rights have been breached can also be found at <https://www.mygov.scot/report-human-rights-abuse/>.

Whilst the Scottish Government cannot provide legal advice in relation to such matters, you will wish to be aware that both the Scotland Act 1998² and the Human Rights Act 1998³ provide statutory protection for human rights in Scotland. A solicitor or other legal professional will be able to advise you in relation to the specific application of these legal protections.

3. Evidence that the judiciary is independent from government influence

Our aim is to provide information whenever possible, but in this instance the Scottish Government does not have the information you have requested.

Information about the independence of the judiciary in Scotland can however be obtained from the website of the Judicial Office for Scotland at: <http://www.scotland-judiciary.org.uk/23/0/Judicial-Office-for-Scotland>. Judicial independence is guaranteed in statute under the Judiciary and Courts (Scotland) Act 2008⁴.

Additional information about Scottish Government policy

The Scottish Government is strongly committed to respecting, protecting and fulfilling human rights. This includes promoting public awareness and understanding of human rights and the contribution they make to ensuring that every member of society can live with human dignity. Indeed, that commitment to human rights is now explicitly set out in a formal National Outcome which forms part of Scotland's National Performance Framework⁵.

Whilst I am only able to provide limited information in response to your specific FOISA request, I am happy to provide a range of supplementary information, over and above the specific material you had identified. This can be found in the Annex to this letter. I hope this supplementary material will be of assistance in exploring the issues you have raised. This further information includes links to a number of documents which are available on the Scottish Government website and through other freely-accessible on-line resources published by third-party organisations.

² <http://www.legislation.gov.uk/ukpga/1998/46/contents>

³ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

⁴ Judiciary and Courts (Scotland) Act 2008 <https://www.legislation.gov.uk/asp/2008/6/contents>

⁵ <https://nationalperformance.gov.scot/national-outcomes/human-rights>

More generally, you may also be interested to know that the First Minister's Advisory Group on Human Rights Leadership, which reported in December 2018, has recommended the development of a new statutory human rights framework for Scotland, to be delivered by an Act of the Scottish Parliament. The Scottish Government is currently in the process of establishing a National Taskforce on Human Rights Leadership⁶ to take that work forward.

In parallel with the Taskforce, we are also taking action to further strengthen children's rights in Scotland⁷, by incorporating the UN Convention on the Rights of the Child (UNCRC)⁸ into domestic law. A public consultation⁹ on this proposal is currently live and runs until 14 August.

Further general information about the Scottish Government's work to respect, protect and fulfil human rights, and to report on compliance with our obligations, can be found on the Scottish Government website at <https://www.gov.scot/policies/human-rights/>

Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to Stephen Gallagher, Director, Local Government and Communities, The Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ or email stephen.gallagher@gov.scot. Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Yours sincerely

Marisa Strutt
Human Rights Policy Adviser

⁶ To be jointly chaired by the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP, and Professor Alan Miller – see news release for further information <https://news.gov.scot/news/new-national-taskforce-to-lead-on-human-rights-in-scotland>

⁷ Scottish Government policy - children rights <https://www.gov.scot/policies/human-rights/childrens-rights/>

⁸ United Nations Convention on the Rights of the Child <https://www.unicef.org/child-rights-convention>

⁹ <https://consult.gov.scot/children-and-families/uncrc/>

Annex

Further helpful sources of information

Human rights are protected by international and domestic law. Scotland, via the UK, is party to 7 core United Nations human rights treaties¹⁰. By ratifying them, the UK Government has made a formal commitment to honour these treaties meaning both the UK and Scottish Governments must uphold the rights contained in them. The Scottish Ministerial Code¹¹ expresses the responsibility of Scottish Ministers to comply with the law, including international law and treaty obligations.

Scotland (as part of the UK) reports formally to the United Nations¹² and Council of Europe¹³ on implementation of applicable human rights treaties. The Scottish Government also publishes its own separate position statements, setting out in more detail how Scotland is meeting its human rights obligations. In December 2017, the Scottish Government published a response to the Universal Periodic Review of the UK,¹⁴ which also addressed recommendations from UN treaty monitoring bodies.

In Scotland civil and political rights are protected by the Scotland Act 1998¹⁵ and the Human Rights Act 1998¹⁶ (HRA). The Scotland Act means that all laws passed by the Scottish Parliament and all actions of Scottish Ministers must be compatible with the European Convention on Human Rights (ECHR)¹⁷. The HRA is UK-wide legislation reserved to the UK Government, which brings the ECHR into domestic law and enables courts in the UK to hear cases about alleged breaches of human rights. The Human Rights Act makes it unlawful for public authorities in Scotland to act incompatibly with core ECHR rights.

The actions of Scottish Government ministers are subject to the requirements of the Scottish Ministerial Code. Whilst this is not itself a legally-binding document, it does explicitly recognise the overarching duty on Scottish Ministers to comply with the law, including international law and treaty obligations. The code can be found at: www.gov.scot/publications/scottish-ministerial-code-2018-edition/.

An important role is played by National Human Rights Institutions (NHRIs) which act to protect, promote and monitor the implementation of internationally-recognised human rights at the national level.

The Scottish Human Rights Commission (SHRC)¹⁸, established by the Scottish parliament in 2008, is a UN-accredited, A-status NHRI. The functions and powers of the Commission, set out in the Scottish Commission for Human Rights Act 2006¹⁹, are to promote human rights and to encourage best practice in relation to human rights.

¹⁰ 7 ratified treaties by the UK <https://www.gov.scot/policies/human-rights/our-international-obligations/>

¹¹ Scottish Ministerial Code <https://www.gov.scot/publications/scottish-ministerial-code-2018-edition/>

¹² UN Office of the High Commissioner for Human Rights – UK information <https://www.ohchr.org/EN/countries/ENACARegion/Pages/GBIndex.aspx>

¹³ Information about ECHR and the Council of Europe's work on human rights, rule of law and democracy is available at <https://www.coe.int/en/web/portal/home/>

¹⁴ The Scottish Government response to recommendations from the third Universal Periodic Review of the UK's overall human rights record in May 2017 <https://www.gov.scot/publications/universal-periodic-review-human-rights-united-kingdom-december-2017-scottish/>

¹⁵ Scotland Act 1998 <http://www.legislation.gov.uk/ukpga/1998/46/contents>

¹⁶ Human Rights Act 1998 (HRA) <http://www.legislation.gov.uk/ukpga/1998/42/contents>

¹⁷ European Convention on Human Rights (ECHR) https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁸ Scottish Human Rights Commission (SHRC) <http://www.scottishhumanrights.com/>

¹⁹ Scottish Commission for Human Rights Act http://www.legislation.gov.uk/asp/2006/16/pdfs/asp_20060016_en.pdf

The Equality and Human Rights Commission (EHRC)²⁰ is a NHRI and a statutory non-departmental public body, established by the Equality Act 2006²¹. The EHRC's remit extends across Great Britain and is responsible for promoting equality and diversity, enforcing laws and promoting mutual respect including good relations. Unlike SHRC, the EHRC has the power to take legal cases on behalf of individuals or intervene in litigation to test and extend the right to equality and human rights. It can also conduct inquiries, investigations and assessments to examine the behaviour of institutions

In Scotland, the SHRC and EHRC have a shared human rights remit and their relationship is regulated by a Memorandum of Understanding²². The EHRC covers human rights issues arising from matters reserved to the Westminster Parliament, and in relation to treaties with a particular emphasis on race, gender and disability. The SHRC covers issues arising from devolved matters, unless it gives consent for the EHRC to handle them.

In addition, there are regulatory bodies in Scotland that also help protect human rights. The Scottish Information Commissioner²³ promotes and enforces Scotland's Freedom of Information law, which helps fulfil civil rights provided by ECHR.

The Scottish Public Services Ombudsman (SPSO)²⁴ deals with final stage complaints about most devolved public services in Scotland. The Ombudsman is an independent officeholder and, in the exercise of her functions, is not subject to the direction or control of any member of the Scottish Government or Scottish Parliament. The SPSO can consider alleged breaches of human rights as part of its consideration of a complaint. Details about how SPSO handles complaints is available at <https://www.spsso.org.uk/how-we-handle-complaints>

As well as the information available on the Scottish Government website above, information about human rights obligations, human rights institutions and other organisations that help protect people from governmental abuses and oppression is available from other sources. You may find this additional information, provided in the following table, of assistance.

Organisation	Information about	Website URL
UN Human Rights	Country information - UK	https://www.ohchr.org/EN/countries/ENACARegion/Pages/GBIndex.aspx
Council of Europe	ECHR, European Social Charter, and the Council of Europe's work on human rights, rule of law and democracy	https://www.coe.int/en/web/portal/home/

²⁰ Equality and Human Rights Commission (EHRC) in Scotland <https://www.equalityhumanrights.com/en/commission-scotland>

²¹ Equality Act 2006 <http://www.legislation.gov.uk/ukpga/2006/3/contents>

²² EHRC Memoranda of Understanding (MOU) <https://www.equalityhumanrights.com/en/legal-work-scotland/legal-work-scotland/memoranda-understanding>

²³ The Scottish Information Commissioner (SIC) <http://www.itspublicknowledge.info/home/AboutSIC/AboutCommissioner.aspx>

²⁴ Scottish Public Services Ombudsman <https://www.spsso.org.uk/>

SHRC	Scottish Human Rights Commission	http://www.scottishhumanrights.com/
EHRC	Equality and Human Rights Commission in Scotland	https://www.equalityhumanrights.com/en/commission-scotland
SIC	Scottish Information Commissioner	http://www.itspublicknowledge.info/home/AboutSIC/AboutCommissioner.aspx
SPSO	Scottish Public Services Ombudsman	https://www.spsso.org.uk/