

## **Know How No 7** *guidance for research & evaluation in Fife*

## **Freedom of information**

### **What this is about?**

This Know How explains the Freedom of Information (Scotland) Act, 2002, and highlights implications for research and evaluation for public authorities.

### **Who is it for?**

Anyone who wants to know more about the implications of the Act for public authorities in Fife and how to deal with requests for information.

### **What do you need to know?**

**WHAT?** The Act creates a right to access any information held by a Scottish public authority.

**WHO?** The Act applies to nearly all public bodies in Scotland, including local authorities, the NHS, Colleges and Universities, the Police, the Scottish Parliament and the Scottish Executive. It also applies to companies wholly owned by a public authority. Private companies too carrying out a function for a public authority may be subject to the Act. An authority can, and Fife Council will, specify in contracts with their agents that the Act will apply to the contract so contractors may be required to furnish background information and notes. A full list of the organisations affected is set out in the Act and the Scottish Ministers can add further bodies.

**WHEN?** The Act comes fully into force from 1<sup>st</sup> January 2005.

**WHERE?** The Act applies to Scottish public authorities and can be used by anyone, anywhere regardless of whether they are an individual, a journalist, an organisation, business or another public authority.

**WHY?** The Act aims to increase openness and accountability in government and across the public sector by ensuring that people have the right to access information held by Scottish public authorities.

### **WHAT TYPE OF INFORMATION IS COVERED?**

The Act covers any information of any age, which is held by the public board and is recorded in a permanent form, such as documents, copy correspondence, hand-written notes, information on computer, e-mails, photos, audio and video tapes.

### **WHO WILL USE THE ACT?**

Evidence from other countries suggests that journalists, activists and opposition politicians will be frequent users of the Act. A survey of public awareness in Scotland found only 30% had heard of the Act and only 12% quite likely to use

it in the next year. This may change.

### **MAKING A REQUEST FOR INFORMATION**

- From 1 January 2005, anyone, anywhere can make a request for information and will be entitled to receive it, provided no exemptions apply.
- The request can be made by an individual or an organisation and does not have to be made by someone in Scotland.
- They do not have to refer to the Act or say why they want the information.
- Requests must be in writing or in another permanent form (such as an email, or recorded on a video/audio tape, answer machine), give name and address and describe the information required.
- Public authorities must provide “recorded information”, such as computer documents including copies of e-mails, hand-written notes and videos.
- It does not matter how old the information is.
- Scottish Executive Fee Regulations permit a public authority to charge a 10% fee if it costs more than £100 to provide the information. It does not have to meet requests that would cost over £600 to deal with.

### **HOW SHOULD PUBLIC AUTHORITIES HANDLE REQUESTS?**

- You must help anyone who wants to make a request for information.
- All requests should be dealt with promptly and in any case within 20 working days of receipt.

- They are entitled to a copy of the information, a digest or summary, or to inspect a document.
- A request by an individual for personal information about him/herself will continue to be handled under the Data Protection Act. If someone makes a request for information about another living individual, this will be handled under the Freedom of Information (Scotland) Act.
- Public authorities do not have to comply with a request if an exemption applies, if the cost of doing so would exceed the amount set by the Fees Regulations, or if the authority does not hold the information. The requester must be notified in any of these instances.
- A requester unhappy with the way their request has been dealt with can ask the public authority for a formal review. If still not satisfied they can appeal to the Scottish Information Commissioner

### **CAN INFORMATION ALWAYS BE ACCESSED?**

No. Authorities can apply any of the **absolute exemptions** where:

- The information is otherwise available, e.g. in the Publication Scheme.
- The public authority is prohibited from releasing the information, e.g. by statute.
- The information relates to court proceedings, e.g. court records.
- The information constitutes personal information about an individual.
- Disclosure of information obtained by the Council from someone else would

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constitute an actionable breach of confidence.

There are other **non-absolute exemptions** where the public authority will have to apply a public interest test to decide whether to release the information. This means that public authorities can only withhold the information if the public interest in withholding it is greater than the public interest in releasing it. For a full list of all exemptions go to [www.itspublicknowledge.info](http://www.itspublicknowledge.info).

### WHAT IMPLICATIONS DOES THE ACT HAVE FOR RESEARCH?

Research data, analysis and reports are no different from any other information held by a public authority and so are subject to the Act.

**Publish the knowledge:** research or performance statistics, reports, indices that are already published and available through a Publications Scheme are exempt. Thus it makes sense to make as much information as possible routinely available as published material. This also shares the knowledge.

**The 12 week rule:** information intended for future publication is exempt under the Act if it is already being held with a view to publication within 12 weeks and it is reasonable that the information be withheld until the publication date. This does require planned publication dates for research work so the 12 weeks can be measured.

All research information, including background information and

statistics in the course of preparation and prior to the 12-week period before publication will be subject to the Act and must be made available on request even when they are incomplete and/or not of quality fit for publication. It is reasonable to point out the data problems, provide guidance on interpretation, or even suggest withdrawing the request until partial data is completed. However authorities cannot refuse the request just because data is incomplete or unreliable.

### Exemption of a Research Programme:

Section 27(2) of the Act exempts information that forms part of a research project, if releasing the information would substantially prejudice the programme of research or the interests of anyone involved in commissioning it or carrying it out. This is intended as a safeguard against the forced disclosure of incomplete research, which could result in misinterpretations of incomplete data from third parties, significantly harming the value of the research. Requested by Universities to protect potentially commercially valuable or pre-patent activity, other public authorities can apply it too. Three exemption conditions must all apply:

- information is part of a 'research programme';
- there must be an intention to publish the results of this research at a future date. In this case it does not have to be within 12 weeks.
- premature disclosure would or would be likely to substantially prejudice the programme, the interests of participants, or any

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public authority holding the information.

To sustain a 'substantial prejudice' exemption, an authority would need to be able to show evidence of real, actual and significant harm and meet a public interest test. In practice, this exemption may be difficult to support.

**Confidential data:** The Act does not require release of information disclosive of an individual person or which otherwise contravenes the Data Protection Act. Similarly where disclosure of information would constitute a breach of confidence actionable by that person or any other person, an exemption may be claimed. However authorities cannot simply give an undertaking not to make information publicly available unless some other FoI exemption applies.

**Management or performance statistics (or analysis)** produced on a routine basis for general information are not exempt, unless their release would substantially prejudice the effective conduct of public affairs. More of this information is now published routinely and 'substantial prejudice' may be arguable in only very limited cases.

### To sum up

Freedom of Information provides anyone, anywhere with a legal right of access to information held by Scottish public authorities. Research and Evaluation information is no different and cannot be withheld unless a specified exemption applies. Sharing information appropriately means we should all know Fife a little better.

### Where can you get more information?

This briefing paper gives general guidance only and should not be treated as a complete and authoritative statement of the law. For further information:

#### Background information:

Scottish Information Commissioner  
<http://www.itspubliknowledge.info>

The Scottish Executive FOI Unit  
<http://www.scotland.gov.uk/Topics/Government/FOI>

#### For general information and further advice:

##### Fife Council:

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