



Intellectual Property Information Sheet

Responding to a Freedom of Information Request

Entities deemed to be a “Scottish Public Authority” (“SPA”) under the Freedom of Information (Scotland) Act 2002 (“FOISA”) have a duty to disclose information requested by members of the public (“FOI Request”) unless an appropriate exemption applies. This Information Sheet provides practical guidance in dealing with FOI Requests.

1. Where the SPA does not hold the information requested

- A SPA only has a duty to disclose recorded information which it “possesses” at the date of receipt of the FOI Request.
- If the information requested is not held by the SPA, it should issue a response to the applicant within 20 working days of receipt of the FOI Request stating:
 - (i) that it does not hold the requested information. If it is aware of where the applicant can locate the requested information, it should refer the applicant to that location;
 - (ii) the SPA’s procedure for complaining about the way in which FOI Requests are handled; and
 - (iii) the right of the applicant to ask the SPA to review its decision, failing which the right of the applicant to appeal to the Scottish Information Commissioner (“SIC”).

2. Where the SPA holds the information requested

- If the SPA holds the requested information, consideration should be given to three areas:
 - (i) whether any exemptions under FOISA apply;
 - (ii) whether the request is vexatious; and
 - (iii) what it would cost to disclose this information.
- The exemptions covered under FOISA are very detailed and are out with the scope of this Information Sheet. It should be noted however, that the SIC is always in favour of disclosure wherever possible. Therefore, the SPA must ensure that it has a good standing for applying any exemptions.

- Section 14 of FOISA states that an SPA is not obliged to comply with an FOI Request if the request is vexatious. In addition, where an SPA 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 subsequently similar. An exception to this is where a reasonable period of time has passed during the making of the request complied with and in the making of the subsequent request.
- If the SPA finds that the FOI Request is not vexatious and that exemptions do not apply to the whole of the information requested, it should undertake a costing exercise to work out how much it would be to disclose the requested information as far as it is not exempt. Public Authorities may (but do not have to) charge a certain amount for disclosing information under an FOI Request.

3. Cost Analysis

When calculating how much this will cost, please note the following:

- (i) SPAs can only charge for direct and indirect costs incurred in locating, retrieving and providing information.
- (ii) When calculating this cost, the hourly rate of the employee involved should be multiplied by the number of hours taken to prepare this information for disclosure. The hourly rate is capped at £15 per hour and a person’s time should not be rounded up to the hour but should be expressed as a fraction, if only a fraction is expected to be worked. Please note that if a person on a lower grade of pay could reasonably undertake the work, then the SIC expects the fees notice to reflect the cost of that lower grade.
- (iii) Once calculated, if it amounts to less than £100, then the SPA cannot charge for disclosing this information. If the amount is between £100 and £600 then the SPA is allowed to make a charge of 10% of the figure exceeding £100 e.g. if it will cost £200 to provide this information, the SPA is allowed to charge £100 (£200 less £100) at 10% = £10.

If the SPA wants to charge a fee for disclosing the requested information, it should issue a Fees Notice (this is expanded on below in Part 4 of this Information Sheet.) The issuing of a Fees Notice stops the twenty working day response deadline. The applicant has 3 months from the date of receipt of the Fees Notice to pay the fee. Once payment is received, the remainder of the twenty working day time limit starts again e.g. if the Fees Notice was issued on day 15, once payment is received, the SPA would have 5 working days to disclose the information. It is therefore important that a Fees Notice is issued as soon as possible, if appropriate.

- (iv) If the projected amount exceeds £600, the SPA does not have to provide the information under s.12 of FOISA (excessive cost of compliance). However, the SIC recommends that the SPA contacts the applicant and asks whether they are (i) willing to pay the cost of disclosure notwithstanding the fact that it is over £600 and (ii) whether the applicant can restrict his or her request to bring the cost under the £600 limit. Although this is a recommendation, it is not mandatory. The SIC cannot force a SPA to disclose information if the cost of doing so exceeds £600. Notwithstanding this, the SIC may determine that an SPA has not complied with its duty to provide advice and assistance under s.15 of FOISA.

4. Response to FOI Request

After consideration of the above points, the SPA should respond to the FOI Request within the 20 working day timeframe explaining:

- (i) that the SPA holds this information (if it does not hold all of the information, it should specify what it does and does not hold);
- (ii) that (if applicable) the SPA has chosen not to disclose some or all of the information as it believes the FOI Request is vexatious or information is exempt from disclosure under FOISA (including excessive cost of compliance under s.12 of FOISA);
- (iii) what exemptions (if applicable) the SPA has applied and if appropriate, that the public interest test in respect of the applicable exemption has been satisfied;
- (iv) why (if applicable and if not otherwise apparent) it believes those exemptions apply (unless this would in itself disclose information);
- (v) where the SPA is happy to disclose some, if not all, of the requested information (whether in its current form or in an anonymised, redacted form taking into consideration the Personal Information exemption), the SPA is entitled to issue a Fees Notice. If the SPA does not want to charge any fee, the requested information should be disclosed with the response in an appropriate format; and
- (vi) lastly, the information in points (ii) and (iii) noted above in Part 1 should be provided.



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