



Freedom of Information Policy

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Briefly identify what changes have been made and in which section of the document.	

FREEDOM OF INFORMATION POLICY

It is the policy of the Care Inspectorate to be open, accountable and transparent at all times and to endeavour to comply with the spirit as well as the letter of the Freedom of Information (Scotland) Act 2002, known throughout this document as 'the Act' and the Environmental Information (Scotland) Regulations 2004, known throughout this document as 'the Regulations'.

The Care Inspectorate will endeavour to make as much information as possible available through its publication scheme, and to disclose all the Care Inspectorate information requested which it does not consider exempt under the Act or Regulations as quickly as possible.

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Senior Information Risk Owner (SIRO)

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INTRODUCTION

This policy document is intended as a reference for the Care Inspectorate's compliance with the Act and the Regulations. All employees have an obligation to understand and comply with the policy and are accountable for any material requested and/or provided that relates to their business area.

The Freedom of Information (Scotland) Act 2002 (FOISA)

The Act was passed by the Scottish Parliament in order to develop a greater culture of openness and accountability within the public sector.

The main thrust of the Act is to give members of the public a general right of access to all types of recorded information and documentation held by Scottish public authorities. Much of this information was previously inaccessible.

The Environmental Information (Scotland) Regulation 2004 (EIRs)

Environmental information has been accessible in the UK for over 24 years. The Regulations, which were amended in 1998, gave the public the right to ask for information which relates to the environment.

In 1998, the UK signed the Aarhus Convention from which an EU Directive was derived. The new Regulations ensure that Scotland complies with the Convention and the Directive. There are separate Regulations for the rest of the UK.

THE HUMAN RIGHTS ACT 1998 (HRA)

(HRA) requires all public bodies to comply with the European Convention on Human Rights (ECHR) for example, the Office of the Scottish Information Commissioner (OSIC).

Article 10 of the ECHR states that everyone has the right to hold an opinion and to receive and impart information. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers, these rights can evolve over time.

DEFINITIONS

Throughout the policy the term 'FOISA' refers to both the Act and the Regulations.

SCOPE

The policy applies to all employees including the Chief Executive, Directors, Information Asset Owners, and the Board Members and non-CI employees being supervised by members of staff e.g. inspection volunteers.

The policy is applicable to all information held by the Care Inspectorate and covers:

Roles and responsibilities;
Publication scheme;
Application of exemptions and public interest test;
Handling requests;
Handling of requests for review;
Monitoring the decisions taken;
Charging;
Learning and awareness;
Equality and diversity;
Human Rights (Freedom of expression) and
Compliance.

ROLES AND RESPONSIBILITIES

Chief Executive

The Chief Executive has a duty to ensure that the Care Inspectorate complies with the Act, Regulations and the Information Commissioner's Codes of Practice.

Executive Directors and Information Asset Owners

The Directors, Chief Inspectors and Information Asset Owners have a duty to ensure that practices and systems in their areas comply with the policy and any related procedures for handling FOISA requests.

The Information Governance Lead

The Information Governance Lead is responsible for ensuring that there is consistency in the management of and response to FOISA requests. They are also responsible for ensuring that professional advice and guidance is provided across the organisation and that the publication scheme is comprehensive and up-to-date.

Care Inspectorate staff

All staff must work within the Care Inspectorate guidelines and procedures at all times when recording and filing information as per our Information Governance Policy and associated procedures and guidance; be able to justify what has been recorded; be prepared for that information to be released as part of a FOISA request; and dispose of information according to retention periods adopted by the Care Inspectorate or laid down by statute.

All staff must assist the Information Governance team, when requested, in identifying, providing and collating information that we may need, in order to answer FOISA requests as efficiently and effectively as possible.

The Office of the Scottish Information Commissioner (OSIC)

The Office of the Scottish Information Commissioner is the independent public official responsible for promoting and enforcing Scotland's FOISA law.

The Commissioner is appointed by His Majesty the King, on the nomination of the Scottish Parliament, and serves for a fixed term of six years. The Scottish Parliament meets the Commissioner's salary and provides funding for the Commissioner's office.

The Commissioner is based in St Andrews, Fife and is supported by a small team.

OSICs main functions

Investigating FOISA appeals

Promoting the public's right to know

Promoting good FOISA practice to public authorities

Intervening when public authority practice is not compliant with FOISA law

The main task for the Information Commissioner is to enforce the right to access public information created by the Act.

If a public authority refuses a request for information, the person requesting the information has the right to appeal against the decision to the Information Commissioner. The Information Commissioner will then investigate whether the information should or should not be released. The Information Commissioner has powers to force an authority to release information if they decide that it has acted wrongly in refusing a request.

Alongside the job of enforcing the Act the Information Commissioner is responsible for ensuring that as many people as possible are aware of their right to access information.

PUBLICATION SCHEME

The Care Inspectorate has adopted the [Information Commissioner's Model Publication Scheme](#) in its entirety. In adopting the model scheme, we have produced a 'Guide to Information' which:

- Allows you to see what information is available (and what is not available) in relation to each class; states what charges may be applied;
- Explains how to find the information easily;
- Provides contact details for enquiries and to get help with accessing the information;
- Explains how to request information that has not been published.

The publication scheme is available on our website and will be maintained, reviewed and updated by the Information Governance Team.

APPLICATION OF EXEMPTIONS AND PUBLIC INTEREST TEST

The Care Inspectorate must consider whether information requested falls under an exemption under the Act or the Regulations. If so, it has a right to withhold the information from disclosure, subject to guidance or instruction from the Information Commissioner's Office and the Court of Session.

Any request for information which is judged to be exempt, but not subject to an absolute exemption, will be subject to the public interest test and a decision will be made as to whether the information should be released. Information classed as being subject to an 'absolute exemption' will not be disclosed under the Act.

FOISA exemption	Type of exempt information
Section 25: Information otherwise accessible – Absolute	Information already published on our website
Section 26, Prohibitions on disclosure – Absolute	Where disclosure would be punishable, such as Contempt of Court
Section 30: Prejudice to effective conduct of public affairs	Policy formation and decision making discussions
Section 33: Commercial Interests and the Economy	May constitute a trade secret or prejudice the commercial interests of a person or service
Section 35: Law enforcement Inquiries	Information about ongoing investigations and concerns raised about registered services
Section 36: Confidentiality – Section 36(2) Absolute	Information supplied by services to the Care Inspectorate in confidence
Section 37, Court Records – Absolute	Information prepared for the purpose of the Court for the purpose of proceedings, arbitration or an inquiry
Section 38: Personal information – (a),(c) and (d) Absolute, (b) in most cases	Names and addresses of complainants and other relevant persons

HANDLING OF REQUESTS

The Information Governance Team will be the main point of contact for receiving, handling and processing FOISA requests.

In compliance with its statutory duty under FOISA, Information Governance will inform the applicant in writing whether it holds the information requested and if so, communicate that information to the applicant within 20 working days after receipt of the request. If it is not possible to comply with the 20-day limit, the applicant will be informed and given an indication of when the information is likely to be provided. Requests for information will normally be acknowledged within 5 working days of receipt.

FOISA governs all recorded information held by the Care Inspectorate; however, there are certain circumstances when information may not be released because it is exempt under FOISA.

Further information about exemptions can be found at the OSIC website [here](#). Where a request relates to information that is already publicly available it is not a FOISA request.

Examples of information that is already publicly available are:

Inspection reports;
Enforcement notices;
Upheld Complaint outcomes;
Care Inspectorate leaflets and promotional material;
National Care Standards;
Copies of legislation
Our Annual Report or Corporate Plan;
Human Resources procedures; and
Our Complaints Procedure.

Examples of FOISA requests

Our registration, inspection and enforcement evidence;
Complaint evidence;
Minutes, agendas and papers of internal meetings or working groups;
Financial or contractual information;
Internal guidance to operational staff; and
Health & safety information.

Duty to Assist

The main responsibility of Care Inspectorate staff is to promptly forward all initial requests made to the Information Governance (IG) Team. The IG Team has primary responsibility for managing and responding to the requests with cooperation from Care Inspectorate staff. If requests are made verbally, staff must ask the requester to

put their request in writing, unless the request falls within the scope of the EIRs (appropriate assistance will be provided to requesters with access requirements).

All members of staff have a duty to assist a person who wishes to make a request for information and should recognise that any written or recorded request received for information held is a valid request under FOISA and thus should be passed to our team without delay.

Consideration of the applicant's identity or motives

In principle all staff should generally consider a request for information under the FOISA or for Environmental Information without reference to the requester's identity or motives. We will, however, consider the requester's identity and motives in some limited circumstances, namely when:

There is reason to believe the requester hasn't given their real name;

Deciding whether the cost of two or more requests reach the total cost of compliance;

The requested information contains the requester's own personal data;

Assessing whether the information is reasonably accessible to the requester by other means;

Assessing whether the request is a repeated request; or

If we consider refusing a request as vexatious or manifestly unreasonable.

Where the request is from the media and there is an opportunity to provide additional background to the information provided;

On receipt of a request from a member of staff, the expectation is that their rights will be considered without prejudice or fear of repercussions from such a request. The names of such staff where possible will remain confidential to the Information Governance Team.

HANDLING REQUESTS FOR REVIEW

If the applicant is not happy with the response they receive from the Care Inspectorate they must first ask the Care Inspectorate to conduct an internal review. Details of how to request an internal review are provided within the response to the applicant. The applicant must state their reason(s) for the dissatisfaction, by emailing or writing within 40 working days of receiving the Care Inspectorate response.

Wherever possible reviews will be conducted by a different member of staff who was not previously involved in the original decision. The Reviewer will either-confirm the original decision; make a different decision or where no decision had been reached the first time, make a decision. Requesters who remain dissatisfied may appeal to the Scottish Information Commissioner who will decide whether the Care Inspectorate has acted in accordance with the statutory duties set out in FOISA.

Requests for review will be handled by a member of the Information Governance Team. The staff member conducting the review will be responsible for carrying out the investigation while gathering and collating all evidence before compiling the written draft response. The draft review letter and supporting evidence will be shared for internal QA before being shared with other relevant parties for any further considerations, other parties may include, but aren't limited to:

- Intelligence – lead or deputy
- Communications – media
- Scrutiny & Assurance – nominated person
- Legal

Following any amendments to the response it can then be sent for sign off. The Care Inspectorate have 20 working days in which to respond.

SIGN OFF AUTHORITY FOR DRAFTED FOISA RESPONSES

This table outlines the level for FOISA request sign off. However, every request needs to be assessed individually and therefore this table is just a general guide.

	RISK	THEMATIC (If required)
RED	SIRO (unless escalated by SIRO up to CE)	Executive Director (or delegated authority)
AMBER	Deputy SIRO (unless escalated By deputy SIRO up to SIRO)	Executive Director (or delegated authority)
GREEN	IG Lead	Information Asset Owner (IAO)

Red – involves highly contentious information and/or has wide political implications requiring SIRO review before being sent out to assess against the current organisational circumstances.

Amber – some sensitive information or other issue requiring part of the response to be reviewed by Deputy SIRO for wider organisational impacts.

Both Red and Amber responses may have been quality assured by the following: Head of Legal Services, Policy & Communications Lead, or a relevant Directorate before being sent for sign off and this will be made clear to the signatory

Green - These may include requests where the information is not held or is otherwise accessible, or assessed as non-contentious and can be signed off by the IG Lead.

MONITORING OF DECISIONS TAKEN

The Information Governance Team will maintain a database of all requests processed and the action taken on each application. The database will ensure consistency by identifying whether the same or similar information has previously been requested and provided or refused and the reasons for refusal.

The database will also be used to identify duplicate or vexatious requests and allow recurring requests to be published within our publication scheme.

Performance will be monitored by the Information Governance Lead and overseen by the Senior Information Risk Owner (SIRO) and Deputy SIRO. Statistics will also be reported to OSIC as required by the Act.

All requests will be reviewed for deletion after 5 years in accordance with the published review and retention schedule.

CHARGING

We will not charge for providing information in response to a request unless it is information for which a charge is ordinarily set. The publication scheme will provide details of charges for published information where these apply. In these circumstances, payment must be made in advance before we will process the request.

The Care Inspectorate reserves the right not to respond to a FOISA Request where it is deemed that the cost of compliance is excessive under the terms laid down by the Scottish Government's Fee Regulations. A clear breakdown of estimated costs must be provided to the requester, along with an explanation of the refusal to comply with the request.

LEARNING AND AWARENESS

The Care Inspectorate has developed good information governance and IAO training which incorporate FOISA awareness. The lead responsible for Information Governance, in conjunction with Directors, Chief Inspectors, IAO, and employee development will ensure that all existing and new staff receives appropriate learning and awareness.

EQUALITY AND DIVERSITY

The Care Inspectorate will endeavour to meet the disability compliance standards and comply with the Equality Act 2010.

We will use various techniques to provide pages on the website which will meet the accessibility standards for site visitors with movement, cognitive and visual impairments. We will also ensure that hard copy versions of the information requested meet the accessibility standards and are committed to making alternative formats and languages available if appropriate. Appropriate assistance will also be provided to people with learning disabilities when they submit an information request.

COMPLIANCE MONITORING

The Information Governance Lead will report on compliance with this policy, when appropriate. Quarterly reports will be prepared for the SIRO and annual SIRO reports will be submitted to the Audit and Risk Committee which will detail any issues or risks associated with our response to the Act or the Regulation. Quarterly statistics detailing our response rates and compliance with timescales will also be sent to OSIC as required by law.

REVIEW DATE

The policy will be reviewed every two years, and at any time there is a need to bring forward changes to reflect statutory requirements or other developments that would be considered beneficial to the Care Inspectorate or the operation of the policy. The lead responsible for information governance, in conjunction with other relevant staff is responsible for conducting the review.

Appendix 1 – Key contacts list

For any queries relating to this policy please contact the following:

Name	Job title	Email address
Janice Morgan-Singh	Information Governance Lead & DPO	Janice.Morgan-Singh@careinspectorate.gov.scot

All requests however should be referred to the portal or to the generic email box which is always manned @: infogovernance@careinspectorate.gov.scot

We are happy to answer your enquiries about data and information so please use the request form by clicking the request portal link below.



Details of how to contact the Information Commissioner are noted below.

Scottish Information Commissioner

Kinburn Castle,
Doubledykes Road,
St Andrews, Fife
KY16 9DS

Tel: 01334 464610

Fax: 01334 464611

E-mail: enquiries@itspublicknowledge.info

Appendix 2 - Other Relevant Legislation

There are a number of acts, regulations and policies which following this act will facilitate. This includes but is not limited to:

- [General Data Protection Regulation](#)
- [UK Data Protection Act 2018](#)
- [Human Rights Act 1998](#)
- [Freedom of Information \(Scotland\) Act 2002](#)
- [Environmental Information Regulations \(Scotland\) 2004](#)
- [Equality Act 2010](#)
- [Public Records \(Scotland\) Act 2011](#)
- [Model Publication Scheme](#)
- The Care Inspectorate aims to operate in accordance with [HMG Security Policy Framework](#), HMG Information Assurance (IA) standards and their associated Good Practice Guides / Supplements / IA Notices.
- The Care Inspectorate aims to operate in accordance with the following best practice standards for security and recordkeeping:
 - BS ISO 27001: 2005 - Information Technology - Security Techniques
 - BS EN 15713: 2009 – Secure Destruction of Confidential Material
 - BS ISO 15489-1:2016 - Information and documentation. Records management. Concepts and principles

Appendix. 3 - Other Related Policies and Procedures

- Information governance policy – July 2020
- Information governance enquiry procedure – October 2022
- Enquiries internal procedure – v1
- Data protection policy – June 2018
- Data Breach Policy 1.0
- Core Privacy Notice – October 2022