



University
of Dundee

Research Visit – Hungarian National Authority for Data Protection and Freedom of Information

20 September 2022





Centre for Freedom of Information

Established in 2009, with the intent of providing a space for research to engage in research on information law and practice



Honorary Professor Kevin Dunion



Professor Colin Reid



Dr Sean Whittaker

Annual Centre for Freedom of Information Practitioners' Conference
External engagement and events

FREEDOM OF INFORMATION IN SCOTLAND IN PRACTICE

Kevin Dunion

Foreword by The Rt Hon
The Lord Wallace of
Tankerness, QC

INFORMATION

The Right of Access to Environmental Information

Sean Whittaker

CAMBRIDGE

Freedom of Environmental Information

Aspirations and Practice

Sean Whittaker, Colin T. Reid and Jonathan Mendel



 INTERSENTIA



Proactive Disclosure and Publication Schemes

Users primarily seek access to information through proactively disclosed information

- Where users do not find the desired information, they may submit a request under the Freedom of Information (Scotland) Act 2002 (FOI(S)A)

However, most users do so through methods other than publication schemes (e.g. online search engines, public authority websites, etc).

- Proactive disclosure often not done by Freedom of Information Officers

Scottish Information Commissioner has expressed an interest in introducing “modern and responsive pro-active publication/transparency requirements”



Public Awareness of the Right to Access Information

Proactively disclosed information – using the right, or just business as usual?

Scottish Information Commissioner Public Awareness Research 2022

- 89% of respondents have heard of FOI(S)A
- 67% of respondents have never asked for information
- Less than 50% of respondents confident that they would get a response or receive the requested information

Who uses the right?

- “Ordinary” people make the greatest use of the right (in terms of number of requests)
- Issues experienced by particular “professional” users – [journalists](#) and [NGOs](#)



Legal Matters
THE COURIER



The Ferret



Charges for Accessing Information



Charges in Theory

Section 9 Freedom of Information (Scotland) Act 2002

1) How much and 2) When can an authority charge?



Charges in Practice

Oct-Dec 2021: 15,573 total requests; 11 charges for information levied; 2 charges paid

In interviews, users do not really mention charges



Level of Compliance with FOI(S)A

Response time?

- Between Oct-Dec 2021, 13,866 responded to on time (89%); 1616 responded to late (10%); 210 received no response (1%)

Result of the request?

- Between Oct-Dec 2021, 8,117 led to full release of information (52%); 3,295 led to some release of information (21%); 484 led to no release of information (3%)

Number of internal reviews or appeals to the Scottish Information Commissioner?

- Between Oct-Dec 2021, 448 internal review requests; 58 appeals to the Scottish Information Commissioner



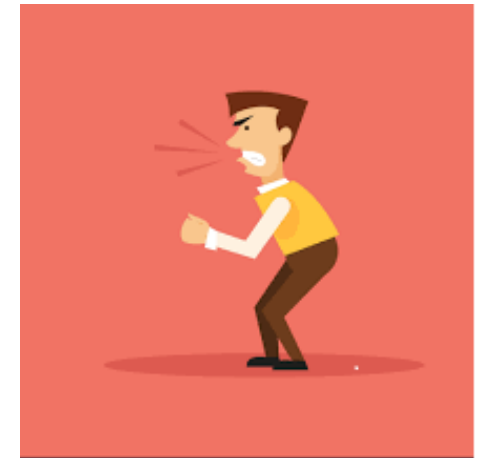
Exceptions under FOI(S)A

Long list of exceptions, potentially dissuading requests

- Some exemptions direct authorities to use other information regimes (e.g. Environmental Information (Scotland) Regulations 2004)
- Reducing number of exceptions and broadening those remaining?

Vexatious requests

- Theoretical (negative) impact on information requests
- In practice, rarely used – only 15 requests between Oct – Dec 2021 (0.1%) refused on this ground
- Public authority discomfort in labelling requests as vexatious

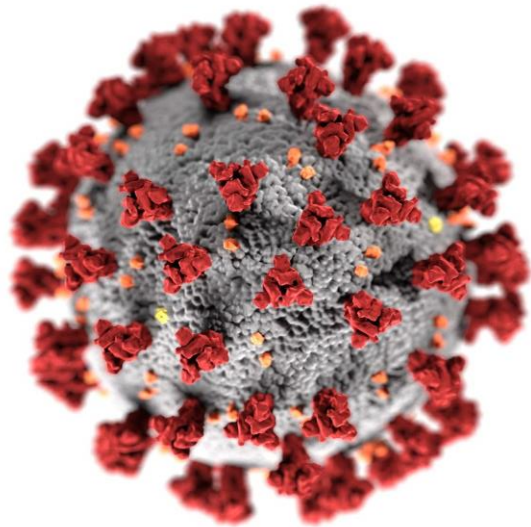




FOI(S)A and the COVID-19 Pandemic

Pressure of public resources and FOI Officers

- Less resources available across authorities
- More requests being submitted (about COVID-19)



Emergency changes to FOI(S)A under the Coronavirus (Scotland) Act 2020

- Extension of time to respond to request – from 20 days to 60 days
- Commissioner can take into account impact of COVID-19 where an authority fails to comply with FOI(S)A

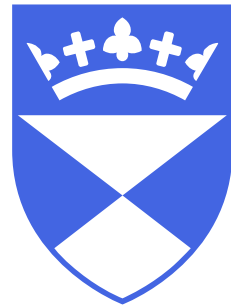


General Assessment

Overall, it appears that FOI(S)A is working well in guaranteeing the right to access information in Scotland

[Campaign for Freedom of Information in Scotland and the Freedom of Information \(Scotland\) \(No.2\) Bill](#)

- New statutory role for Freedom of Information Officers
- To extend FOI(S)A to encapsulate more bodies providing “delivering public services, services of a public nature and publicly funded services”
- Provide a legal duty for proactive publication of information (See also Scottish Information Commissioner proposals on proactive disclosure and publication schemes)
- Funding for the Scottish Information Commissioner



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