

**Campaign for
Freedom of
Information
in Scotland**



Introducing Fol

You have the right to access information in Scotland from ‘designated’ public authorities and they have a duty to pro-actively publish information. Transparency and accountability lead to better government. This leaflet summarises how to exercise and enforce your rights.

The Law

The Freedom of Information (Scotland) Act 2002 (FoISA), and the Environmental Information (Scotland) Regulations 2004 (EISRs) provide the main legal framework for access to information rights on devolved matters in Scotland. Rights are enforced, for free, through the Scottish Information Commissioner (SIC). FoISA and the EISRs give you the ‘right to receive’ information and places a duty on the body that holds information to provide it unless there are legal reasons not to such as: the requested information is subject to one of the numerous exemptions which allows the body to withhold it; the body is outwith the scope of the legislation.

A separate Fol regime applies to reserved matters and to UK wide public authorities: the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 which are enforced by the UK Information Commissioner.

There are key differences between between FoISA and the EISRs and the SIC explains the detail at [Differences between EIRs and FOISA \(itspublicknowledge.info\)](http://itspublicknowledge.info) FoISA is used more than the EISRs. Under FoISA you can submit an information request and you have the right to receive it within 20 working days. Bodies covered include local authorities, colleges, the police, regulators and health boards. If you are refused all the information, or in part, you can ask for an internal review and if that is unsuccessful you have the right to appeal to the SIC. Timelines for responding are a feature of the process, and replies are required to be ‘prompt’ and the 20 working days is a maximum. Helpful information about exercising your rights and the rules on charging appear at [Freedom of information at a glance \(itspublicknowledge.info\)](http://itspublicknowledge.info)

75% of FoISA and EISRs appeals to the SIC come from the public and 67% of his decisions were wholly or partially upheld in favour of the requester.¹

Popularity of Rights

The public has consistently used access to information rights and the enforcement system to force publication of information. For example, there were 79,300 reported

¹ SIC Annual Report 2019-20 pgs. 14 and 20 at [SIC_ARA_2019-20_FOR_PUBLICATION.pdf \(itspublicknowledge.info\)](http://itspublicknowledge.info)

requests for information in 2019/20². In 2017 independent polling for the SIC revealed that 94% agreed it is important for the public to access information and 77% would be more likely to trust an authority that publishes a lot of information about its work.³ Right to information laws allow people to ensure government officials make good decisions on the environment and a host of other matters. Transparency of public authorities is a key feature of good governance and combats 'fake news'. It strengthens organisations' legitimacy in the eyes of people, and its confidence in them.

Duty Bearers

The business of government is not static. Therefore, rights need to keep up to date but several initiatives to protect rights have stalled: the 2019 proposed inclusion of bodies under FoISA such as care homes run by the private and Third Sectors; actioning the Scottish Parliament's post legislative scrutiny report on FoISA of May 2020. In parallel there are regional and global developments to extend FoI rights and increase transparency and accountability of public bodies which CFoIS supports:

- a. The Council of Europe's 'Tromso Convention', the first binding international legal instrument to recognise a general right of access to official documents held by public authorities, came into force on 1st December 2020⁴.
- b. Article 10 of the European Convention on Human Rights (ECHR) has been ruled to give the right to information to form an opinion⁵ if publication meets four public interest tests: the purpose of the information request; the nature of the information sought; the particular role of the seeker of the information in "receiving and imparting" it to the public; and whether the information was ready and available. The ECHR is given effect through the Scotland Act 1998 and the Human Rights Act 1998.

Top 5 Tips

Accessing information rights in Scotland helps individuals and families, community groups and trade unions to get information. Using rights is simple but only if you are digitally included. Relying on the post takes more time and is more complicated during 'lockdown'. The two regimes present different challenges. For example, there is a lack of clarity on what does and does not constitute environmental information and some think that authorities are picking the regime which allows them to charge more. Our general tips on accessing information are:

- 1. Check the website to see if the information is already published.**
- 2. Think about your question – be clear what 'information' you want.**
- 3. Make an FoI request rather than specify FoISA or EISRs.**
- 4. Ask for the information in a 'recorded' way such as by email.**
- 5. Request a 'prompt' acknowledgement of your request.**

For more information contact: CFoIS www.cfois.scot/ info@cfois.scot @CFoIScot

² SIC Annual Report 2019-20 pg. 21

³ SIC

<http://www.itspublicknowledge.info/home/SICReports/OtherReports/PublicAwarenessResearch2017.aspx>

⁴ Council of Europe website at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205>

⁵ For example, the Grand Chamber decision in the case of on Magyar Helsinki Bizottság v. Hungary (Application no. 18030/11) 8th November 2016 <http://hudoc.echr.coe.int/eng?i=001-167828> and Studio Monitori and Others v. Georgia (applications nos. 44920/09 and 8942/10) 30th January 2020 at <http://hudoc.echr.coe.int/eng?i=001-200435>