



Abertay University

FOI Staff Training

Introduction

In Scotland, the Freedom of Information (Scotland) Act 2002 (“FOISA”) is the main piece of legislation. Requests for environmental information are regulated by the Environmental Information (Scotland) Regulations 2004 (“EIRs”). As the EIRs are broadly similar to FOISA, references to FOISA in this training include the EIRs unless otherwise stated. For advice, contact foi@abertay.ac.uk, or the Corporate Governance team in Academic Registry.

What is the main principle of Freedom of Information?

The main principle of FOISA is that any person - anywhere in the world - who requests any information from Abertay University which holds it, is entitled to be given that information. Requesters do not have to give any reason for making an information request - nor even to have intended to make an information request. There is, generally, no provision in FOISA for taking the reason for making a request (if it is even evident), nor the identity of the requester, into account when responding. So, these are irrelevant to how a request is handled (there are certain exceptions; and unless considerations under the Equality Act 2010 apply).

Two ways of obtaining information

Under freedom of information legislation, there are two basic ways in which any member of the public can obtain information from the University. One is via the University’s Publication Scheme, and the other is by making an information request.

How to obtain information from the University’s Publication Scheme

The Publication Scheme is a set of corporate information, laid out in the categories required by the Scottish Information Commissioner. The University is legally required under FOISA to publish this information.

The Publication Scheme is available on the University’s external website, and it can be accessed by clicking on “Freedom of Information” at the foot of the front page. Some of the items of information mentioned in it are available only on request, however, and the target for providing these is 5 working days if requested. There are separate training materials on the Publication Scheme.

What is a valid information request?

Returning to FOI requests, only a few simple words are needed to make a request, and there are very few formal legal requirements for a valid request to be made (see section 8 FOISA).

An information request does not need to say that it is an FOI request; nor does it have to mention the legislation, to be a valid FOI request. All it has to do is ask for any information

(this is because the definition of FOI request in the legislation is so broad). An FOI or EIR request is validly made *no matter who receives it*, across the whole University.

Specific requirements for a valid request

The legislation (section 8) requires only that an FOI request must be in 'verifiable form', i.e. made by email, by letter (or even by recorded voicemail or equivalent), and it must include a description of the information requested, which can be very brief. The requester's name and a return address (even just an email address is enough) are also needed.

If you are in receipt of a recorded voicemail (or similar) message, it should please be transcribed immediately; the date of receipt recorded, and then actioned, unless it is to be treated as "business as usual", which is explained later on.

Information requests within larger communications, or hidden in communications which are not obviously a request for information

As only a few simple words/a question is/are needed to make an FOI request, without any technicalities or mention of the legislation required, an FOI request may easily be included or hidden within a larger or longer communication/correspondence.

A request may therefore be easily overlooked and thus not responded to. Please always be alert to this possibility, because the Scottish Information Commissioner will find the University in breach of FOI legislation if it doesn't identify an FOI request contained in correspondence and reply within the statutory 20 working days (plus other compliance requirements, e.g. advice about appeal rights).

However, in some circumstances, it is possible that some of these information requests (i.e. contained in other, or longer, correspondence) may be better dealt with as "business as usual" (see below).

If it is being dealt with formally as an FOI request, though, please extract the request's actual words (with the name and address/contact details of the requester) and forwarded these *without any delay* to foi@abertay.ac.uk. Please seek guidance from FOI Processing, Corporate Governance, Academic Registry, if you are not sure how to proceed.

What sort of information is covered?

Anything, as long as it is recorded in some way.

This may be recorded be on paper; in a computer file; email; letters; a database; video; even written on a whiteboard; etc.

However, if information exists merely inside someone's head, by definition it falls outwith freedom of information (because it isn't recorded).

If an opinion is requested, it depends: if there is an opinion (on the subject requested) which is recorded anywhere in the University, that information will be caught by FOI, but not if it exists only within someone's head!

Creation of new information

FOISA does not require the University to create new information in order to answer a request, although providing existing information from (say) a larger database such as SITS would be required.

If the University doesn't hold the information, then it cannot be provided to the requester, but the University must so advise the requester (this is required by section 17 of FOISA).

It is important to keep a written record of search locations and terms for requests which are being treated as FOIs, in case of an appeal.

FOI management: the problem

Much of the University's normal business communications (e.g. emails between colleagues; requests from the public about admissions; communications with students about their assessment; or feedback; or teaching materials; or classes, etc) is technically covered by FOI legislation – wherever there is any request for information contained within any communication.

Dealing with every business communication which includes any words requesting any information as a formal freedom of information request would be impractical.

FOI management: the answer

If a communication including a request for information is a normal or routine part of the University's business, instead, it can be treated as being "business as usual".

How to deal with a "business as usual" request?

This means responded to by the recipient (not by the FOI Mailbox in Academic Registry) without any of the formalities of FOI compliance.

Thus, the person who receives the information request can simply go ahead and respond to it as normal, and it does not need to be passed to foi@abertay.ac.uk

Regulatory risks of treating requests as "business as usual"

There is some unavoidable regulatory risk in this (because the statutory compliance requirements always continue to apply, even in this situation).

This is due to the width of the legislative definitions, and the obligations set out in freedom of information legislation.

Scottish Information Commissioner

The regulatory risk is that, if such normal business correspondence were subsequently referred to the Scottish Information Commissioner (SIC) by the person requesting the information (if dissatisfied), then the University, by failing to provide the information; the statutory advice about appeal rights; or responding outwith the statutory 20 working days deadline, or otherwise not complying with the legislation in some way, would inevitably lead to a finding of non-compliance with FOISA.

How to identify the type of information request you have received?

Whether or not something should be dealt with as a freedom of information request or as “business as usual” is usually - but not always - clear.

FOI legislation does not address this distinction, and there is no formal guidance on it.

It is therefore a matter of common sense in each case. You can always seek advice from FOI Processing, which is in Academic Registry. Please see below for guidance.

A valid information request can be a simple request for information without any technical language or requirements, and without mentioning freedom of information (or environmental information) legislation.

What to do?

To identify what should be treated as an FOI request, the ‘rule of thumb’ to apply is that if a communication which includes any simple words requesting any information and has been sent to foi@abertay.ac.uk or if it mentions “freedom of information”, “environmental information” (or any other words suggesting the enquirer has their FOI entitlements in mind), it should be dealt with formally as a FOI request. These should please be forwarded immediately to foi@abertay.ac.uk (although FOI Processing will ask you to provide some or all of the actual information requested which is within your area of work).

It is vital to send these requests on to FOI Processing *without delay*, because the 20 working day time-limit for replying starts from whenever the request is received *anywhere* in the University (and not just when it was forwarded on to FOI Processing).

Examples of “business-as-usual” information requests

Examples of what might fall into the “business as usual” category of information requests include enquiries about admissions, courses or entry requirements; residences queries; students emailing with queries about course(s) or teaching materials, feedback, examinations or other assessments; complaints; academic appeals and other academic matters; reference requests; placements; and so on.

Requests for information, whether financial or otherwise, from funding bodies, quality assurance bodies, collaborative partners; overseas institutions and research councils are also likely to be “business as usual” requests.

It is impossible to list every type of “business as usual” communication.

Examples of information requests to be treated as FOI requests

Examples of common types of freedom of information requests include those from politicians; journalists; campaigning groups/individuals; trades unions, and so on. These should please be forwarded immediately to foi@abertay.ac.uk.

Each case is individual, and if required, guidance is available if required from the Compliance Officer in the Corporate Governance team in Academic Registry.

Who should deal with requests?

If a communication including any request for information is informal; or if it is something that any member of staff would expect to deal with as normal business, or if your relationship with the person from whom you have received a communication requesting information is such that you would normally expect to provide the information, then you, or that person, should please continue to do so as business as usual. Please don't send these 'business as usual' information requests to foi@abertay.ac.uk although you are welcome to seek guidance from FOI Processing, Corporate Governance in Academic Registry.

When responding to a business as usual request, if you think information should be withheld (especially if it relates to a person or people) then please contact FOI Processing without delay for advice.

Statutory deadlines for responding to FOI requests

As noted above, the statutory 20 working day time-limit for responding to an FOI request starts from the time the request was received anywhere in the University; and not just when it was forwarded to the FOI Mailbox (if it is being dealt with formally as an FOI request, rather than as a business as usual request), so it is important that anything to be treated as being an FOI request is passed on immediately to foi@abertay.ac.uk

Providing advice and assistance to information requesters

Section 15 of the Act requires that a reasonable level of advice and assistance is provided to help applicants retrieve the information they have requested.

The requirements on the University are further detailed in a Code of Practice (commonly referred to as the Section 60 Code) issued by Scottish Ministers.

While not exhaustive, the following list sets out a number of the standards which the University should observe – the following should be borne in mind when providing advice and assistance:

The University *must* provide appropriate advice and assistance to enable an enquirer to clearly describe the information they are seeking – enquirers may not understand University processes or terminology. If required, a reasonable level of assistance should be provided to help an enquirer submit an information enquiry to the University.

The aim of providing advice and assistance is to help the enquirer identify precisely the information being sought, not to determine the enquirer's aims or motivation, which broadly is irrelevant.

Advice and assistance should be provided as soon as reasonably possible – the Scottish Information Commissioner will take a hard stance where a Scottish public authority takes an unreasonable length of time to provide support.

Management reporting

FOI Processing logs all FOI requests; assigns them within the University to wherever the information is likely to be held, sends out replies to requesters, and monitors response times. Reports and statistics are provided regularly to University Court and to the Scottish Information Commissioner.

Out-of-office email replies

Please set up an out of office email including the words:

“If you wish to make a Freedom of Information request, please do not send it to this email address and instead re-send it to foi@abertay.ac.uk”

Opening post

Sometimes (although rarely) information requests come in by post. Please monitor all post and ensure it is opened, if necessary by someone else when you away from the office.

Information requests by postal letter may be “business as usual”, in which case please go ahead and deal with them, or they may need to be treated as FOI requests. If the latter, please note the date of receipt of the postal request, and send it urgently to FOI Processing, Corporate Governance, Academic Registry.

Withholding information

The way in which the legislation has been drafted, and the underlying principle adopted by the Scottish Parliament of maximising the disclosure of information, means that nuggets of information can only be withheld where a specific exemption (or other provision of FOISA) applies, and where the conditions which apply to exemptions have been satisfied. Please contact the Corporate Governance team in Academic Registry for advice.

What are exemptions?

The application of an exemption, and the ability to withhold information, is not automatic, and it cannot apply to whole documents. Each request, and the information held by the University, must be considered individually.

Where an exemption does apply, only specific “nuggets” of information may be exempted (by redaction), and the remaining information must be disclosed. Exemptions are termed “exceptions” under the EIRs.

If you wish to apply an exemption when providing information for a response, please discuss it first with FOI Processing, in the Corporate Governance section of Academic Registry, as there are specific requirements and restrictions on each exemption/exception, and note that *only the minimum amount of information* should be redacted.

How many exemptions are there?

There are 17 exemptions in FOISA. A few are ‘absolute’, and others are subject to a ‘public interest’ test, which weighs the public interest in disclosing the information against the public interest in withholding it.

Personal data

One might think that personal data would always automatically be exempt from disclosure under Freedom of information legislation, but there is a complex test in FOISA which requires (for example) the balancing of the “legitimate interests” as between the organisation and the person requesting the personal data to determine whether there should be disclosure.

A person can apply to see their own personal data, but this would be granted to them only as a Subject Access Request, under the Data Protection Act 1998, as there is another provision excluding this from Freedom of Information legislation. This is because disclosure under FOI is equal to disclosure to the world at large, which is generally inappropriate for personal data.

How do I know what an environmental information request is?

It's a request which asks for any information which is at all relevant, or related, to the environment in any way. The definition is very wide.

Normally, FOI Processing, Corporate Governance, Academic Registry will identify and respond to environmental information requests formally in terms of the EIRs. Otherwise, please contact the Corporate Governance team, Academic Registry, for advice.

Examples of environmental information

It is impossible to provide a definitive list, but examples are information about: air; water and its supply; chemicals; antibiotics and other medicines; drainage and sewerage; rivers; lochs; seas; fauna and flora; soil; land; landscape; geology; fossil and other fuels; atmosphere; noise; vibration; climate change; weather; wetlands; flooding; biodiversity; genetically-modified organisms; planning (applications/consents/compliance, etc); building; demolition; construction; building materials; energy efficiency; architecture; heating; lighting; recycling; all types of energy (all aspects, including strategy; means of generation; cost; use; generation; storage; tariffs, waste, and rates of consumption); transport; roads; radioactivity; pollution; carbon and all other emissions; the storage, treatment, transport and disposal of hazardous and all other forms of waste; contamination; policies/strategies about, or impacting on, the environment, even indirectly (including estates strategies); roads and road-building, transport, environmental conservation and regulatory bodies (and interactions with them).

Destroying information

It is a criminal offence under FOISA (section 65) to delete or otherwise destroy requested information to avoid disclosing it.

What is an internal review under FOI?

If a requester is dis-satisfied with the response to an information request, that person is entitled to request an internal review, which must be completed and a response provided within 20 working days.

This is carried out by an internal review panel or individual drawn from the Senior Management Group.

External appeal

If, after an internal review has taken place, the requester is still dis-satisfied, s/he is entitled to request an investigation from the Scottish Information Commissioner.