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**Briefing for Civil Society**

**Exercising Your Right to Know & How to Access Information**

**Support Legal Reform**

The Campaign for Freedom of Information in Scotland (CFoIS) encourages you to use your enforceable right to access information in the UK. However, we know the law is outdated and urgently needs improved so we are working to build all party support for the [Freedom of Information Reform (Scotland) Bill](https://www.parliament.scot/bills-and-laws/bills/s6/freedom-of-information-reform-scotland-bill), introduced by Katy Clark MSP, to deliver transparency by design and strengthen accountability and scrutiny.

**Unlocking Your Access to Information Rights**

There are lots of reasons civil society organisations need to access information from government or a public body:

* to form an opinion
* to gather evidence for a campaign
* to expose service limitations
* to establish the decision making process and who was/was not involved
* to empower communities and people to exercise their economic, social, cultural, civil and political rights.

The right to form an opinion by receiving and imparting information and ideas is a [human right](https://www.echr.coe.int/documents/d/echr/FS_Whistleblowers_ENG) and a tool to debunk fake news, provide evidenced opinions and expose corruption.

**The Law and Enforcement of Rights and Duties**

The legally enforceable right to access information in the UK is delivered by:

* **Devolved** The Freedom of Information (Scotland) Act 2002 (FoISA), and the Environmental Information (Scotland) Regulations 2004 (EISRs) which are enforced, for free, through the [Scottish Information Commissioner](https://www.foi.scot/) (SIC).
* **Reserved** The Freedom of Information Act 2000 (FoIA) and the Environmental Information Regulations 2004 (EIRs), enforced for free by the [UK Information Commissioner](https://ico.org.uk/for-the-public/official-information/) (ICO).

Both Commissioners provide lots of free advice and information for the public. There is a duty to provide advice and assistance to requestors before or after a request is made. The environmental and FoI legal regimes are similar but [not identical](https://www.foi.scot/sites/default/files/2022-03/DifferencesbetweenEIRSandFOISA.pdf).

**Using Your Enforceable Right to Information**

* You have the right to request information from many public authorities.
* Under FoISA/FoIA, the request must be recordable such as in an email, online form or letter. Under the EISRs/EIRs the request can be made verbally.
* Requesters don’t need to explain why they want the information.
* Information requests can be refused but only for specific, legal reasons.
* If you are unhappy with the response, or you don’t get one, you have the right to request an internal review within 40 working days. The review is undertaken by the public body and usually answered within 20 working days.
* If you remain unhappy with the outcome, you can enforce your right by

appealing to the SIC for devolved matters and the ICO for reserved matters.

* Devolved matters include health, social care, education, housing and policing.
* Reserved matters include defence, foreign affairs, immigration and trade.

Routinely, certain categories of information should be pro-actively published which are set out in the [Model Publication Scheme](https://www.foi.scot/publication-schemes) ([MPS](https://ico.org.uk/for-organisations/foi/publication-schemes-a-guide/)) for FoI and under environmental law bodies should organise and keep information up to date, disseminate that information actively and systematically. However in practice the MPS in Scotland is not working which forces people to make an information request. The FoI Reform Bill would fix the problem on devolved matters by giving the SIC the power to enforce the pro-active publication of classes of information and how they should be available and searchable.

**Top Tips**

1. Check if the “public authority” is covered by FoI laws or Environmental laws. If not, think about another authority that is connected to the same issue, is a funder or a regulator as they might “hold” the information you want.
2. Look at the website for any disclosure log run by the authority to see if the information is already published or should be pro-actively published.
3. Be clear what ‘information’ you want – [helps frame your request](https://ico.org.uk/for-the-public/official-information/preparing-and-submitting-your-information-request/).
4. Make an FoI request rather than specify FoISA/EISRs or FoIA/EIRs.
5. Ask for a ‘prompt’ acknowledgement of your request, to prove it is being processed, especially if the request is time sensitive e.g. to inform a campaign.

**Popularity of Rights**

The public has consistently used their access to information rights. For example, the SIC estimates that [1.4 million FoI requests](https://www.foi.scot/celebrating-20-years-foi-20-numbers) have been made to Scottish public authorities and its polling shows a high level of [public awareness](https://www.foi.scot/public-awareness-of-foi) and support: in 2024 88% of people had heard of FoI and 97% agreed that it was important for the public to access the information held by public bodies.

**Public Authorities/Duty Bearers**

The definition is different e.g. Housing Associations are subject to FoISA but not by FoIA. FoI rights have been reduced as some services delivered by the public sector have migrated to the private and third sectors. That makes the exercise of FoI rights tricky and inconsistent e.g. FoISA applies to GPs operating as private companies in the NHS but not to publicly funded care homes delivered by the private sector. The definition of a public authority is wider under EIR law as it extends to private or public companies with public responsibilities. Currently over 10,000 bodies are subject to FoISA.

**FoISA Reform**

Please support our campaign by writing to your MSP to ask them to support the Bill and explain the Bill strengthens the outdated FoI law in Scotland by:

* Introducing a new, enforceable duty to pro-actively publish information
* Improving legal compliance by designating an FoI officer in each public body
* Strengthening the enforcement powers of the Scottish Information Commissioner.

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