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Scottish Executive Review of FOI one year on



In October, Scottish Ministers announced a review of the Freedom of Information (Scotland) Act after one year in force. As part of its review the Scottish Executive has issued a consultation with a closing date for contributions by 31 March 2006.

Further details about the consultation can be found on the Scottish Executive's website:

<http://www.scotland.gov.uk/Publications/2005/12/1494543/45433>



Revised guidance on requests made using a pseudonym

As a result of legal advice, the Commissioner has changed his guidance on how public authorities should deal with requests made under a pseudonym. Although the Commissioner previously advised that an applicant could use a pseudonym, updated guidance makes it clear that for an application to be valid, the actual name of the applicant must be used. The Commissioner will not investigate cases where a pseudonym has been used. The Commissioner has prepared a new FAQ for public authorities, suggesting ways of dealing with applications made under a pseudonym.

See <http://www.itspublicknowledge.info/yourrights/faqs/faqspas.htm>. Applicants who have made a request under a pseudonym may wish to contact the Commissioner for advice on how to proceed.



Website Survey



Thank you to all who took part in our online survey about the Commissioner's website. The responses were overwhelmingly positive, and you've given us lots of constructive suggestions for ways in which we can improve the site in future, including improved search facilities for the growing number of decisions published. As you'll see below, we've managed to address this already with the launch of our decisions database.

A full report of the survey results will be available on the website at a later date.

Three lucky participants were drawn at random to receive a £20 book token as a reward for their efforts - the winners were Dawn Haswell, Margaret Watson and G Owenson. Congratulations to them, and thanks again to all who took the time to complete the survey.



Decisions database

On 21 November 2005, the Scottish Information Commissioner launched an online decisions database which is now available on his website:

<http://www.itspublicknowledge.info/appealsdecisions/decisions/index.php>

The database allows visitors to list every decision issued, search for decisions by individual sections of the Freedom of Information (Scotland) Act 2002, and list decisions which concern the Environmental Information (Scotland) Regulations 2004. More search functions will be introduced over the coming weeks and these will include the ability to search by public authority, case number, and date.



Freedom of Information and Human Rights

In a paper contributed to the W.Green / Sweet and Maxwell seminar on Human Rights in Edinburgh on 10 October the Commissioner considered whether the freedom of information regime in Scotland meets the principles espoused by the Special Rapporteur to the UN Commission on Human Rights. The Rapporteur has stated that “the right to receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself. As such it is one of the rights upon which free and democratic societies depend.”

The key principles of a public right to know adopted by the Rapporteur were:

- Maximum disclosure;
- An obligation on public bodies to publish information and to actively promote open government;
- Exceptions to the right to information should be narrowly drawn and subject to strict harm and public interest tests;
- Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available;
- Individuals should not be deterred from making requests for information by excessive costs;
- Disclosure takes precedence.

The Commissioner concluded that Scotland could be assessed positively against such criteria given the right to information under FOISA, the free or low costs of receiving information; the 20 day limits for authorities; the right to a free and independent appeal process; the requirement to maintain an approved publication scheme and so on. There are, however, exemptions under FOISA which are not subject to harm or public interests test and there are Acts prohibiting disclosure of information.

The full article can be found in the media / articles section of our publication scheme: [full article in PDF format](#).



Award winning campaign



The Union advertising agency and the Scottish Information Commissioner won the Best Consumer Direct Mail award at the Scottish Advertising Awards at the end of October.

As part of the Commissioner's Freedom of Information in Scotland promotional campaign, an "open" envelope was delivered to a sample of addresses in Edinburgh at the beginning of this year. We propose to pilot a new promotional approach in evening newspapers in December.



The first 50 decision notices

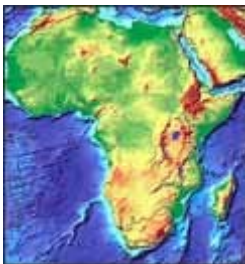
By the end of December the Commissioner will have issued more than 80 decisions. On 21 November, the Commissioner issued his 50th decision notice. Analysis of the first 50 decisions shows that they have covered a wide range of public authorities and a wide range of subjects. The majority of cases decided so far involved central and local government, with 18% of decisions involving the Scottish Executive and its agencies and 60% involving local authorities, from the Western Isles to the Dumfries & Galloway.

The Commissioner has found in favour of the applicant in 34% of those cases. He has found in favour of the public authorities in 42% of cases and has partially upheld the decision in favour of the applicant in 24% of cases. Where cases have been "partially upheld", the Commissioner has often found that public authorities were correct to withhold information but that the authorities have failed to comply properly with one of the technical aspects of the freedom of information legislation, e.g. by failing to issue a proper refusal notice or by failing to provide adequate advice or assistance to the applicant.

Two decisions have been appealed to the Court of Session. The Commissioner has been advised that it is unlikely, however, that the first case appealed will be considered by the Court of Session until November 2006.



Visits from Malawi and Kenya



The Office of Scottish Information Commissioner was visited at the end of November by Alistair Tough of the University's Humanities Advanced Technology and Information Institute along with two Commonwealth Professional Fellows to the Institute; Paul Lihoma, Director of the National Archives of Malawi, and Richard Wato of the Kenya National Archives and Documentation Service.

The visit focused on the Freedom of Information (Scotland) Act 2002, the Commissioner's role in implementing it, and its relationship to records management in public authorities. The discussion also touched upon issues affecting archives and the Office's relationship with the Keeper of the Records of Scotland.



More news...

- Previous editions of the Commissioner's newsletter can be found on the [newsletter archive page](#). The [diary of speaking engagements](#) for the Commissioner and his team is updated regularly.
- An archive of [Press releases, speeches and presentations](#) is also available.

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