



FOISA/EIRs Guidance

Information requests: the name of the requester or applicant

Introduction

1. The Freedom of Information (Scotland) Act 2002 (FOISA) gives everyone the right to ask Scottish public authorities for the information they hold.
2. An information request must contain the name of the person making the request (sometimes known as the “true requester” or “true applicant”). (The definition of “person” includes companies and organisation.) This means that requests cannot be made anonymously and pseudonyms (fake names) cannot be used.
3. It also means that, if someone is making a request on behalf of another person, the person on whose behalf it is being made must be identified in the request.

FOISA requests: the name of the applicant

4. Under section 1(1) of FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given the information by the authority. (FOISA refers to the person making an information request as “the applicant.” In this briefing, we refer to the person as “the requester” because it is the more commonly used term.) The right to be given information is subject to various provisions and exemptions in FOISA.
5. Section 8 of FOISA sets out what a request must include to be valid. If a request is invalid, the public authority is under no obligation to comply with the request, although it should contact the person in order to meet its duty to provide advice and assistance (section 15 of FOISA). The Commissioner has no power to carry out an investigation into invalid requests or to order an authority to disclose information if the request was invalid.
6. Section 8(1)(b) makes it clear that the request must state the name of the requester to be valid.¹
7. FOI is sometimes described as “applicant blind”. This does not mean that requests can be anonymous, but that who the requester is should not make a difference to how the request is handled. There are some notable exceptions to this. For example, the identity of the person making the request might affect whether:

¹ Requests for review (section 20(3)(b)) and applications to the Commissioner (section 47(2)(b)) must also contain the name of the requester/applicant to be valid.

- (i) the exemption in section 25 (Information otherwise accessible) applies
- (ii) the exemptions in section 38 (Personal information) applies or
- (iii) a request is a repeat request under section 14(2) of FOISA.

8. See **Appendix 1: Resources** for a link to the Commissioner's guidance on these provisions.

What if the request is anonymous?

9. All requests must name the person making the request. (Again, remember that a "person" may be a company or organisation.) If the request does not include a name, the request will not be valid and the public authority does not need to comply. It should, however, contact the person making the request (if an address for correspondence was provided) and explain that they need to provide their name for the request to be valid.

What if someone has used a pseudonym (a fake name)?

- 10. If someone has used a fake name to make a request (e.g. Mickey Mouse), the request will not be valid and the public authority does not need to comply. However, the requester should be told that they will receive a response if they make the request under their own name.
- 11. Matters are more complex where a public authority suspects that a pseudonym has been used or that an information request has been made on behalf of another person, but the authority does not know for certain that this is the case.
- 12. If the request is straightforward and the public authority intends to disclose the information in full, the authority can choose to provide the information (and explain why the request may have been invalid if it thinks it is necessary to do so). But where a public authority wishes to confirm the identity of the requester before responding to a request, it could, for example, ask the person submitting the request to provide proof of identity.
- 13. This must be done as quickly as possible – if the original request proves to be valid, the public authority will have 20 working days to respond following receipt of the request (and not from the date of confirmation that the requester is the true requester).
- 14. **The Commissioner expects public authorities to check the validity of a request only where there are reasonable grounds for believing that the request might not be valid.** Otherwise, the Commissioner expects the authority to simply deal with the request.

Does someone have to give their full name for the request to be valid?

- 15. It is difficult to give hard and fast rules about when a name will or won't be enough. In general, for a request to be valid, the requester must provide enough of their real name to give anyone reading the request a reasonable indication of their identity.
- 16. However, first (or given) names on their own won't be enough. Even where the requester is known to the authority, a request which only includes a first name will not be valid.
- 17. Requests will normally be valid if they include a surname/family name and an initial/title. Some examples:

Name used	Valid?
Janice McDonald	✓
Janice	✗
J McDonald	✓
Mrs McDonald	✓
Janice M	✗

18. However, while a request in the name of “Mrs McDonald” or “J McDonald” will usually be enough, if an authority knows that there are two people with that description living at the same address, it may be reasonable to check which of them is making the request, to determine whether the request is, for example, a repeat request.

Requests from companies or organisations

19. If the request has been made by a company or organisation, then a request made in the name of the company or organisation will be valid.
20. Where the request is from a sole trader, the authority should accept either the proprietor’s name or the company name.
21. Again, companies’ names should generally be accepted at face value, but in any case where the authority has reason to verify the authenticity of the company, it should carry out appropriate checks (e.g. Companies House) to clarify whether it is a genuine organisation.
22. While it may be helpful to have a named contact for corresponding with a company or organisation in response to a request, this is not essential as the company/organisation name is sufficient for the request to be valid

Names in emails

23. Where requests are sent by email, the name of the requester should appear in the text of the email, not just in the email address. If the name is not in the body of the email, the request is invalid. This is because more than one person may use an email address. For example, it will not be clear who has sent an email from an address such as JaniceandStuartMcDonald@xxxxxxxx.com.

Has the request been made on behalf of a third party?

24. Anyone can make a request on behalf of another person (e.g. a solicitor on behalf of a client, or an elected official on behalf of a constituent). However, the person on whose behalf the request is being made **must** be named or the request is not valid. (See **Appendix 1: Resources** for a link to a Court of Session judgment on this point.)

In summary

25. An information request under FOISA is invalid if any of the following apply:
- (i) the request is anonymous.
 - (ii) the requester’s name is not in the text of an email.
 - (iii) the requester has only used a first name.
 - (iv) the requester has used a pseudonym.
 - (v) the requester has not been named by someone making a request on their behalf.

26. This is not a full list of why a request may be invalid, just the reasons relating to the requester's name. See **Appendix 1: Resources** for more information about validity of requests.

Duty to provide advice and assistance

27. A public authority which receives an invalid request must provide reasonable advice and assistance to the person who submitted the request to explain what needs to be done to make a valid request (section 15 of FOISA).
28. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (commonly known as "the Section 60 Code" – see **Appendix 1: Resources**) states, at paragraph 4.6.2:

Where [a requester] has not given a sufficient name, or where an authority is satisfied that an applicant has used a pseudonym, the request will not be valid. In such cases, the authority should advise [the requester] that if they give their full name or made a request in their own name the authority would be able to respond to the request in accordance with FOISA. The authority should explain that the Commissioner would not be able to accept any appeal arising from a request if a pseudonym or insufficient name had been used by [the requester].

29. Of course, if the public authority intends to disclose the information in full, it can choose to simply provide the information (and, if it thinks it is necessary, explain why the request was invalid). In some cases, this may be more efficient for the public authority.

Right to seek a review

30. Where a public authority refuses to respond to an information request on the basis that the request has been made on behalf of another, unnamed, person, the authority should advise the requester of their right to seek a review and to make an application to the Commissioner.
31. This approach is recommended in paragraph 4.2.2 of the Section 60 Code:

Where any authority rejects a request on the basis that it is invalid, it must still advise [the requester] of the right to request a review of the authority's decision and, if [the requester] remains dissatisfied, the right to make an application to the Commissioner for a decision on the handling of their request.

EIRS requests: the name of the applicant

32. The Environmental Information (Scotland) Regulations 2004 (the EIRs) provide a separate right to environmental information. Under regulation 5(1) of the EIRs, a Scottish public authority which holds environmental information has to make it available when requested to do so. (This right is subject to various provisions and exceptions in the EIRs.)
33. It's worth bearing in mind that there are differences in the legislation. For example:
- (i) under the EIRs, requests don't have to be made in writing – they can be made verbally
 - (ii) there is no equivalent of section 8 of FOISA in the EIRs. This means there is no specific requirement that a requester gives their name.

34. So, an anonymous request, a request made using a pseudonym or a request made on behalf of another person might still be valid if it is made under the EIRs. Of course, for practical purposes, it is helpful to check the name of the requester and to give them advice and assistance about why they are doing it. In any event, the requester will have to give their name to the Commissioner in the event that they make an appeal.

Appendix 1: Resources

Paragraph	Resource	Link
7	Commissioner's guidance on Section 25: Information otherwise accessible	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section25/Section25.aspx
7	Commissioner's guidance on Section 38: Personal information	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.aspx
7	Commissioner's guidance on vexatious or repeated requests	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx
24	Glasgow City Council v Scottish Information Commissioner [2009] CSIH 73	<p>This case involved a request made to a public authority by a firm of solicitors on behalf of an unnamed client. The Court of Session concluded that, because the request did not name the "true applicant" (i.e. the client), the request was invalid.</p> <p>http://www.scotcourts.gov.uk/search-judgments/judgment?id=cc8f86a6-8980-69d2-b500-ff0000d74aa7</p>
27	Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under the FOISA and the EIRs	https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/
26	Information about the validity of requests can be found in Appendix 1 of the Commissioner's Investigations Handbook	http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=7792&SID=105

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