





# **Freedom of Information - the basics**

Scottish Environment LINK  
17 September 2015

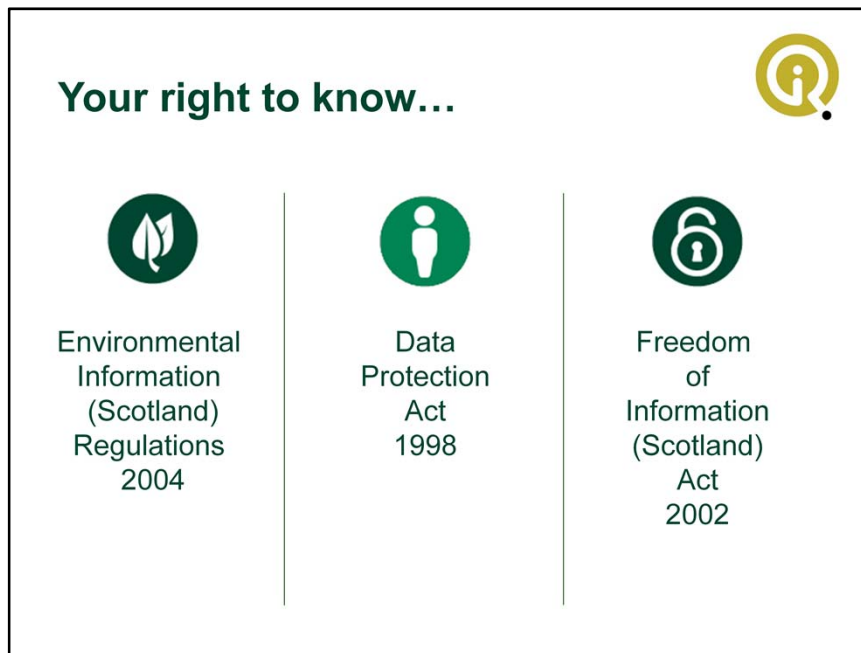




1. The most important thing to take from this session today:

## 2. YOU HAVE A RIGHT TO KNOW

3. As you'll see there are different laws that govern access to different types of information, but the key thing to take from today is that, from a requesters perspective, you often won't have to concern yourself with this – the key thing is simply to understand that **you have a right to know**. You have a right to access information from public bodies and other organisations and, in order to exercise that right, all you have to do is ask for the information.
4. In most cases, you'll get the information you want, at the first point of asking. The overwhelming majority of requests for information are concluded with the provision of some of all of the information requested.
5. It's up to the authority handling your request to ensure that it's dealt with under the correct legislation, so you don't need to think too much about that when you make your request.
6. However, as you'll see, it can be useful to have an understanding about the differences that exist between different laws, particularly if the information you're requesting is environmental.



**1. Data Protection Act**

2. If the information you're looking for is your own personal data, the request is handled under the Data Protection Act.
3. We're not going to focus too much on the DPA from this point on, just say that the DPA governs how organisations manage personal data, and the DPA applies to all organisations that process personal data, including public authorities, private companies and voluntary sector organisations.
4. If you're looking for information about **you**, the request is made under the DPA.

**5. EIRs**

6. If the information you're looking for is environmental, the request is made under the Environmental Information (Scotland) Regulations, or the EIRs.
7. The EIRs apply to Scottish public authorities, and some other bodies, and all requests for EI must be dealt with under the EIRs. Neither the EIRs or FOI will generally apply to private companies or voluntary sector organisations (although there may be some exceptions which we'll discuss later). There are similar regulations applying to UK wide public bodies and organisations operating in the rest of the UK.


**8. FOI Act**

9. If you're looking for any other information (i.e. information that isn't personal to you or environmental) then the request should be dealt with under freedom of information. FOI covers all other information held by public authorities, that doesn't fall into the scope of these first two laws.
- 10.

**Freedom of Information**  
What it is...

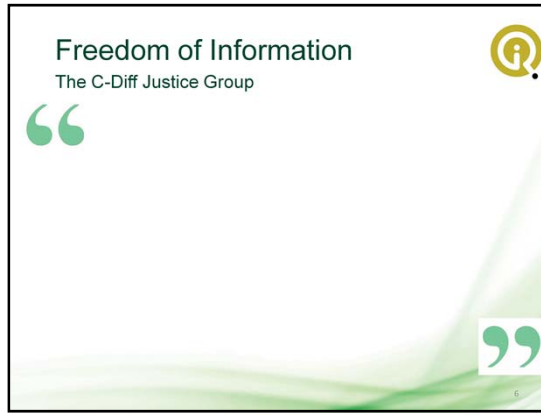
 

 "Freedom of information gave a lot of power to our campaign"  
**C-Diff Justice Group**

 "FOI helped us to highlight the concerns of Scotland's most vulnerable people"  
**Learning Disability Alliance Scotland**

 "FOI opened up information that we couldn't have got any other way."  
**Inclusion Scotland**

1. FOI only applies to public authorities, arms length trusts providing culture and leisure services and wholly publicly-owned companies.
2. It DOES NOT apply to private companies and voluntary organisations.
3. As far as voluntary organisations and FOI are concerned therefore, we view FOI as representing an **opportunity** – a tool that voluntary sector organisations can use to help them in their work.
4. A tool which can provide access to information that can be used to support a range of activities, including:
  5. Policy work
  6. Research
  7. Campaigning
  8. tendering /procurement
  9. advising clients
10. Some voluntary sector users are shown here.
11. Also an example of how one community organisation used FOI as part of their campaigning activity (C Diff video – view at: <https://vimeo.com/39398150>).



1. <https://vimeo.com/39398150>

# **Freedom of Information**

The Freedom of Information  
(Scotland) Act 2002



## 1. FOI in brief

- FOI provides you, and anyone else (including your clients, those you represent etc) with a right to request information from public bodies.
1. It applies to Scottish public authorities, including the Scottish Government and Parliament, all 32 local authorities, the NHS Police Scotland further and higher education institutions and other bodies, including SEPA, SNH, Audit Scotland, the Scottish Information Commissioner.



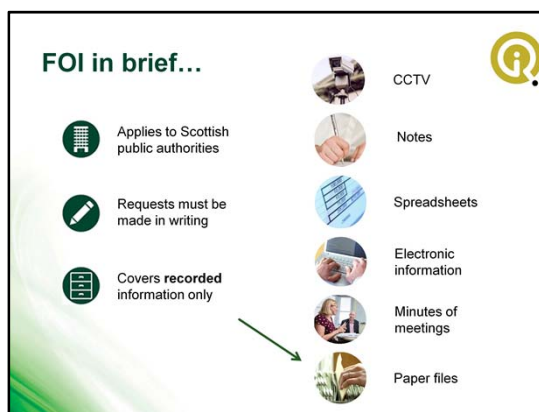


## 1. FOI in brief

2. [Click]

- For a request to be a valid FOI request, it should be made in a recorded format –oral requests aren't covered by FOI, so to make an FOI request you should put it in an email, letter, or in an audio recording.

1. [



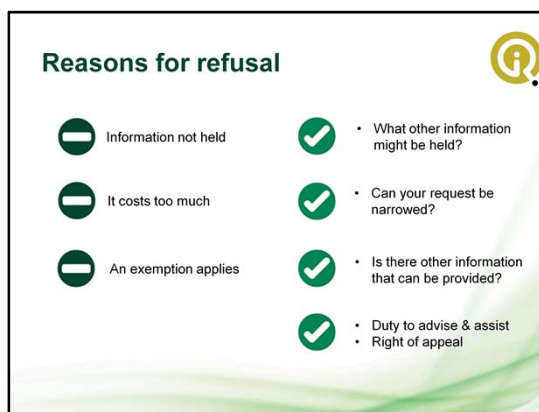
## 1. FOI in brief

- FOI only applies to recorded information – information must be recorded and held by the organisation for it to be covered by FOI. If the information you’re looking for isn’t written down or otherwise recorded, then it won’t be covered. But FOI does cover EVERY piece of recorded information that an authority does hold – from archived documents to an email sent this morning.
- So it will cover information stored in e.g.:
- Paper files, Minutes of meetings, Information stored electronically, e.g. in email or a database, information is spreadsheets including data and financial information, handwritten notes, even information stored in a visual or audio format, including CCTV, photographs, audio files.



## 1. FOI in brief

- The Act requires authorities to respond to your request promptly, and within 20 working days - they have a legal obligation to do so.
- Information can only be withheld in certain circumstances, and only when the law expressly permits it. More on this shortly.
- The common experience, however, is that most requests for information are responded to in full, at the first time of asking, and within 20 working days.



1. I mentioned that information requests can be refused in certain circumstances. The most common reasons for refusal that we see are that:

- The information is not held. This is probably the most common reason for refusal that we see. Where an authority doesn't hold the information you're looking for in a recorded format, they're not obliged to create it to provide it for you.
- Where responding to the request would cost too much. FOI law says that requests can be refused if it would cost the authority £600 or more to respond.
- Requests can also be refused if the information falls within the scope of one of the exemptions set out in the FOI Act. The Act allows information to be withheld in certain circumstances, e.g. where release would substantially harm national security, or commercial interests, where it would breach the data protection act, or would harm the effective conduct of public affairs. Most, but not all, FOI exemptions have a public interest override, meaning that even where an exemption applies, information must be released if it's in the public interest to do so.

1. If your request is refused, it's also not necessarily the end of the line. There are a number of things that you might want to think about doing. For example:

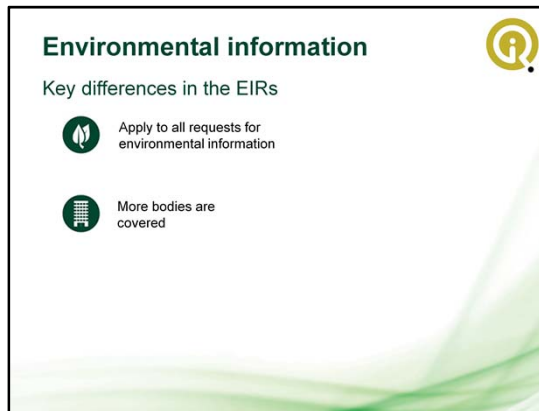
- If you're told that information is not held, you might want to think about whether other information might be held which would answer your question, or if you could word your request in a different way to more clearly seek access to recorded information. It may also be that the information you're looking for, is held by an authority, so you may want to think about making a request to another body.
- If your request is refused because it would cost too much, think about whether there is a way

that your request could be narrowed to reduce the resource required to respond. Could you, for example narrow the time period? Or only seek records concerning particular individuals or departments?

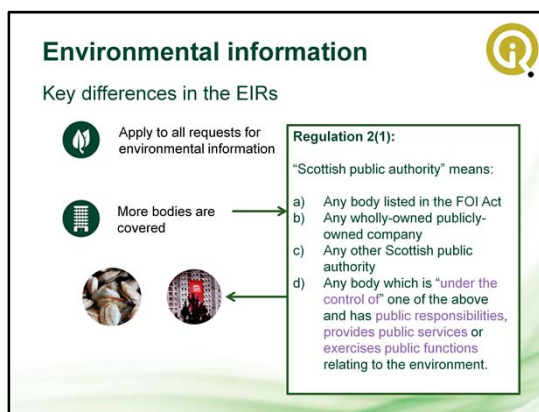
- If an exemption applies you may want to think about whether there is other information outside the exemption that might be provided. It can be a good idea, for example to make it clear in your requests that you're not seeking access to personal information relating to a third party, personal information will often be exempt.
- It's also useful to remember that public authorities have a duty to advise and assist those requesting information – ideally they should do this without being prompted (but there's no harm in reminding them of this duty if you feel that more could be done). So, for example, in relation to a “not held” notice, they should, where appropriate, tell you whether there is information held which might be relevant, or tell you if they know that another authority may hold the information. Or if it costs too much it may be appropriate to tell you if relevant information can be provided within the cost limit.
- And of course, if you're unhappy with the way a request was handled for any reason, you also have a right of appeal. We'll tell you a bit more about that shortly.

# **Environmental Information**

The Environmental Information  
(Scotland) Regulations 2004



1. As mentioned the Environmental information (Scotland) Regulations, or the EIRs, govern access to environmental information.
  2. Requests for environmental information are dealt with separately from requests for other information. This is because the EIRs have their basis in European law.
  3. The EIRs pre-date FOI in Scotland by some way. The current version can be traced back to 1998's Aarhus convention. The Convention gave rise to an European Council Directive (2003/4/E), which in turn gave rise to the Scottish Regulations in 2004.
  4. When drafting the EIRs, the Scottish Government aimed to make them as compatible as possible with FOI rights, while taking into account the requirement of the directive. Where it was possible to align, they aimed to align, where it was not possible, there are differences.
  5. The differences are important as, in most cases, they work in the requesters favour, meaning that your right to information under the EIRs is wider than that under FOI.
- First thing to note is that the EIRs apply to all requests for environmental information – if it's environmental, and authority has to process your request under the EIRs and not FOI. The definition of EI is wide - more on that in a moment.
  - The EIRs apply to a wider range of organisations than FOI law.






- The EIRs apply to a wider range of organisations than FOI law.
  - Like FOI, the EIRs apply to any body listed in the FOI Act and
  - any wholly-owned company. (So far so FOI)
  - However, unlike the FOI Act, they also apply to any other Scottish public authority with either mixed functions or no reserved functions (i.e. functions derived from the Scottish Parliament or both Scottish Parliament and Westminster (but not Westminster exclusively)).
  - And, in addition, they also apply to those bodies that are "under the control" of a Scottish public authority with public responsibilities, or who provide public services or deliver public functions relating to the environment.
1. While we haven't had many decisions which have required us to consider whether bodies are covered, we have had a couple e.g. we recently found that Housing Associations were covered in relation to a request, while we've previously found that Solway Shellfish Management Association were covered, – both had public responsibilities relating to the environment and under the control of public bodies.



## Environmental information

Key differences in the EIRs

-  Apply to all requests for environmental information
-  More bodies are covered
-  Timescales can be extended (sometimes)

- The EIRs allow public authorities to extend the timescale beyond 20-working days in certain circumstances

## Environmental information

Key differences in the EIRs

- Apply to all requests for environmental information
- More bodies are covered
- Timescales can be extended (sometimes)

**Regulation 7(1):**  
The period of 20 working days... may be extended by a further period of 20 working days if the volume and complexity of the information requested makes it impractical either to comply with the request, or to make a decision to refuse to do so.

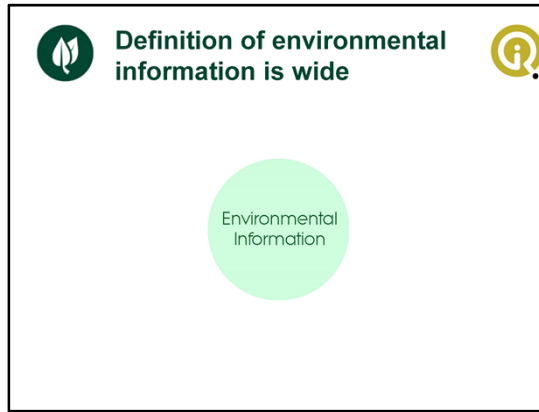
- i.e. where a request is for information that is particularly complex and voluminous. In such circumstances the response can be extended by a further 20 working days.
- Key words are complex and voluminous – information must be both complex and voluminous, and the authority must write to you telling you that it is extending the timescale.
- You can also appeal against this, if you choose.

**Environmental information**

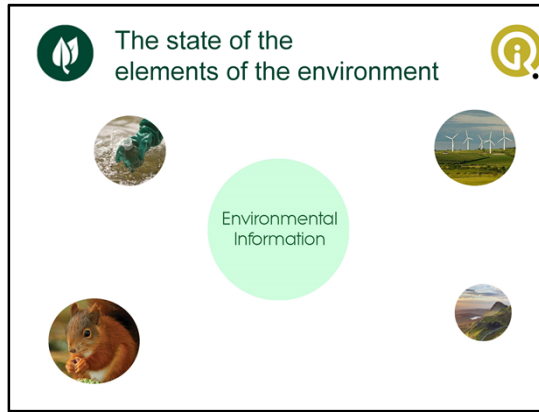
Key differences in the EIRs

- Apply to all requests for environmental information
- Requests can be made orally (but a good idea to follow-up in writing)
- More bodies are covered
- No upper cost limit
- Timescales can be extended (sometimes)
- All exceptions subject to a public interest test

- Under the EIRs requests can also be made orally (e.g. over the telephone) but we'd strongly recommend that you put any request in writing, in order to ensure that there's appropriate evidence that a request has been made.
  - There's no upper cost limit under the EIRs, meaning that authorities can't refuse requests where the cost of responding exceeds £600. Be warned though they can ask you to pay the full cost before they'll provide information, so it's always a good idea to keep your request as narrowly-defined and specific as possible.
  - I mentioned that most FOI exemptions are subject to a public interest test, with some exceptions (e.g. court records). Under the EIRs all the equivalent exceptions are subject to a PI test, meaning that where the balance of the public interest favours release, information should be disclosed.
1. If information is withheld, or if you're unhappy for any other reason, you have, as with FOI a right of appeal.
  2. More on that shortly



1. The definition of environmental information in the EIRs is very broad.

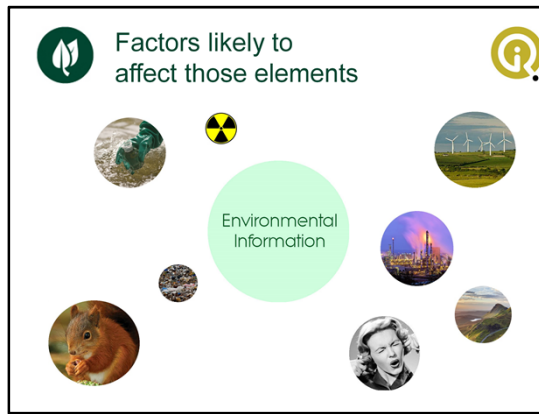


1. Regulation 2(1) of the EIRs sets out that it covers information on:

**2. The state of the elements in the environment**

3. Information on the condition air, water, soil land, etc, so this will include:

- Information on the land, landscape and land use, including
- Information on windfarms
- Information on water quality
- Information on wildlife, protected species, biological diversity, GMOs



1. It also covers:

**2. Factors likely to affect those elements**

3. Including information on things like:

- Emissions, discharges and pollution
- Waste and waste disposal
- Noise pollution
- Radiation and radioactive waste



1. The definition extends even further than this, covering:

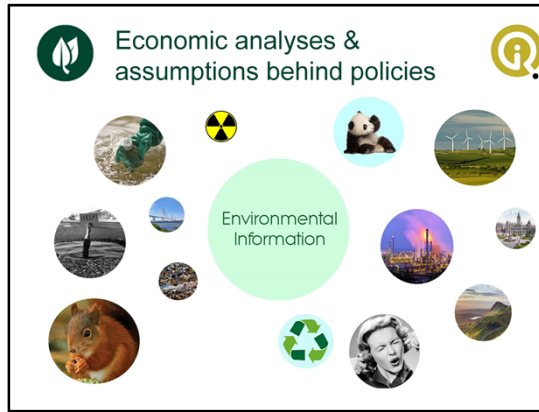
**2. Relevant legislations, plans and policies likely to affect those elements and factors**

3. So including for example that might include:

- Policies and plans relating to recycling and waste disposal

1. We've also found in our decisions that:

- A council policy for handling compensation claims about pothole damage fell within scope, as did
- Communications concerning the diplomatic issues around the introduction of pandas to Scotland (the information related to the transfer of a protected species from one part of the world to another).



1. It also covers:

**2. The economic analyses and assumptions behind policies**

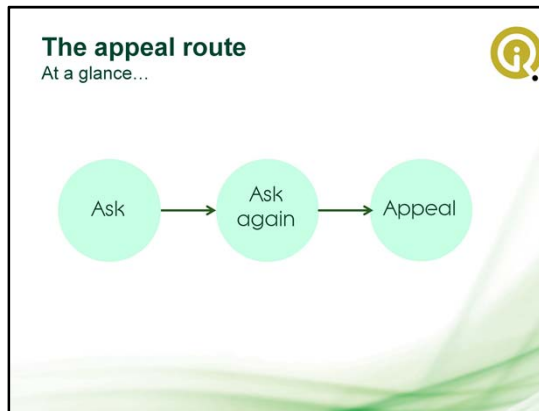
3. So for example our decisions have previously found that:

- The scorecards used by the judges when assessing the George Square design competition
- The cost breakdowns of the Queensferry Crossing work





1. And beyond that, it also covers information on:
- 2. Human health and safety, cultural sites and built structures**
3. In as far as they interact with elements of the environment.
4. So information relating to e.g.
  - The condition, maintenance and repair of buildings may fall within scope, alongside information on
  - Contamination in the food chain
  - The impact of toxic land on human health or, as we saw in the C-Diff Justice Group example, information on:
  - Hospital infections, or the cleanliness of wards.



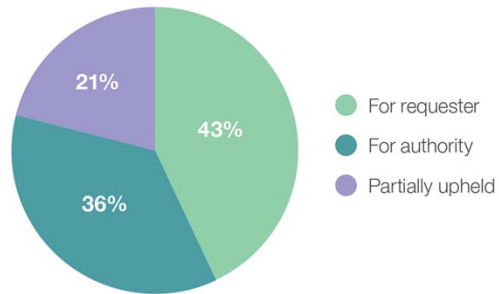
1. The FOI appeal route is simple.

- First, of course you have to make your initial request for information. While in most cases, of course, your requests should be answered first time with the provision of the information, if you get a response you're not happy with or don't hear after 20 working days you should:
- Ask again. If once again you're not happy with the response or don't hear back, then after 20 working days you can:
- Appeal to the Commissioner. The "your Rights" section of our website for detailed guidance on how to go about this and what to expect.

## Appealing to the Commissioner



Decision outcomes 2014/15

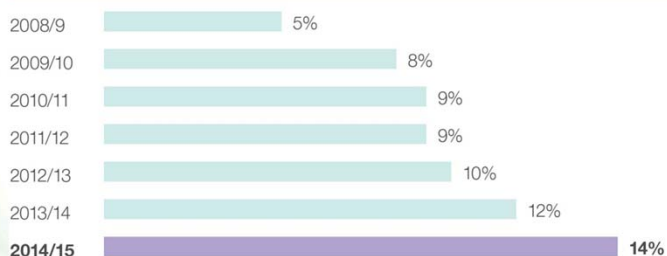


1. Most appeals result in more / all information being provided.
2. 36% for authority
3. 43% fully in favour of requester
4. 21% Partially in favour of requester
5. 64% therefore normally result in the provision of more information

## Appealing to the Commissioner



Proportion of EIRs appeals



1. EIR appeals occupying a growing proportion of our workload – 14% - the highest proportion to date.
2. One in five decisions are made under the EIRs.
3. Our cases last year included requests about:
  - Road maintenance
  - Flood prevention
  - Windfarms
  - Trams
  - Fracking
  - School estates
  - Noise pollution
  - Fish farming
1. Increasing proportion – suggests a growing awareness in public bodies about their responsibilities, and increasing concern about environmental issues among the wider public.



1. The most important part of FOI is in the way that you construct your request. If a request is badly worded, too vague or uses terms that are unfamiliar to the organisation that you're contacting, the chances are that you won't get what you're looking for.
2. Some simple tips to help you get the most out of FOI:
  - **Build relationships.** This is perhaps the most important of our tips. If you have a positive, professional working relationship with key members of staff within an authority this can often really help with the process of requesting information. Particularly if it's an organisation that you're in contact with regularly. FOI isn't a substitute for good relationships and good relationships with key staff generally will often help a request to run more smoothly and more efficiently.
  - For example, a good working relationship can increase the chances of staff coming back to you for clarification around aspects of your request that they're unsure about.
  - Discussing a request with an authority prior to submission can also help you to understand what information they may or may not hold, and help to focus your request. We are also happy to offer advice on any FOI request at any stage in the process, so feel free to contact us also.
  - It's also worth remembering that FOI Officers can be a useful ally. In our experience most FOI officers are fully committed to the principles of FOI, and it is often the case that they will act as the "champion" of FOI within a particularly authority, arguing the case for disclosure internally, and supporting colleagues in the correct application of FOI law. They are, for the most part, good people to have on side and, if you're a regular requester, a professional and positive working relationship with the FOI officer can often help ensure that your requests runs more smoothly.

- Is the information already available? It's always a good idea to do a little bit of research before submitting your request. Public authorities have a duty to publish a range of information under FOI (the "publication scheme" duty). It's a good idea to check first whether the information you are interested in is already available, bypassing the need for an FOI request. Even if information isn't held, doing a little bit of research like this can help you to word any subsequent request, as it will give you an insight into the types of information that is published, the terminology that is used, etc.
- Ask for recorded information. Remember that FOI covers RECORDED information – try and phrase your request so that this is what is being sought – will help to focus authorities in their search e.g. all minutes, emails, or correspondence relating to... - think about what might be recorded and held, and frame your request to seek access to this.
- Be as specific as you can. We'd advise against framing requests too broadly. The more precise you can be, the more likely you are to be successful, and the less likely it is that the request will be refused on cost grounds. Wide-ranging, unfocussed requests also put an unnecessary burden on authorities as they gather information that you're not interested in. Specific, targeted requests will normally yield more successful results.
- Provide a time period. Providing a time period will help to narrow and focus your request. Other contextual information, such as the specific subject matter, the individuals involved in a discussion, the type of document you're interested in, will help to focus your request and increase the likelihood of a successful response.
- Keep copies – if you're making an appeal to the Commissioner these will be required.



- Offer to provide clarification. Again, part of maintaining good relations, but providing a telephone number and asking staff to contact you if they have any questions about your request or need further clarification in order to respond can help to address problems before they arise. If your request is ambiguous or there's a problem in the interpretation of your request, you want to get this clarified at the beginning, rather than receive a response based on an incorrect interpretation.
  - Read through before sending. Common sense, but try and read through before you send, putting yourself in the position of the person receiving the request. Will what you are looking for be absolutely clear? Are any aspects open to interpretation? Gives you the opportunity to correct any issues before they arise.
1. Finally reference to a couple of things that may not be appropriate for every request, but you might want to consider:
- Request information electronically? The legislation gives you a right to ask for information in a particular format, and provided it's reasonable, the authority should meet that obligation. If you're asking for a lot of information, or for information from a number of authorities to compare, it can be useful to receive it electronically, rather than in paper format, so you can e.g. use "search" functions to identify keywords, or easily manipulate the data you receive.
  - Set out the public interest? As mentioned, most FOI exemptions and all EIR exceptions are subject to the PI test. You don't have to do this, but it can be helpful to set out why you consider it to be in the public interest for information to be disclosed – particularly if you think that the authority might apply and exemption. Doing so can help the authority in it's consideration of the public interest test.
  - Refer to the Act. I've put a question mark here as it may not be advisable in every case – where an authority is unclear of their obligations under the legislation or is being difficult,

then this can be very helpful in terms of focusing the request. It can also be useful when you're asking for the same information from a number of different authorities, helping to ensure that they all deal with the request properly under the correct legislation, at the earliest opportunity. And remember, even if you don't call it an FOI or EIR request, if you're seeking general information in writing, on environmental information orally or in writing, it is.



## Useful Resources



[www.itspublicknowledge.info](http://www.itspublicknowledge.info)



**/tipsforrequesters**  
**/yourrights**  
**/eirs**  
**/briefings**  
**/decisions**  
**/signup**

Tel: 01334 464610  
Email: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

1. Our website has a whole range of useful resources.

## Any questions?



**Scottish Information Commissioner**  
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W: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

1. And you can also contact us for advice at any stage in the process.