

**CFoIS**

**Promoting the Right to Information in Scotland**

**FoI, Civil Society and COVID-19**

Scotland can balance the management of our health emergency with delivering access to information rights. CFoIS recognises the pressure on publicly funded services but believes it is all the more important to maintain transparency and accountability to facilitate scrutiny at this critical time. CFoIS has produced this short briefing to help civil society to access the information they need to save lives, protect the NHS and recover fairly.

The Coronavirus (Scotland) Act 2020 amends the Freedom of Information (Scotland) Act 2002 (FoISA) in a number of ways but the following rights and duties still apply:

* The Environmental Information (Scotland) Regulations 2004 (EISRs) govern access to environmental information. The Scottish Information Commissioner has produced Guidance on how to use it.[[1]](#footnote-1) Lots of information requests on COVID-19 can be obtained using this process given its infectious nature eg the possibility of airborne transmission.[[2]](#footnote-2) The Scottish Parliament does not have the authority to change the EISRs.
* Over 10,000 public sector bodies in Scotland must still proactively publish useful information such as on how they deliver services. This is required under their FoISA ‘Publication Scheme.’[[3]](#footnote-3)
* The right to request information from the public sector under FoISA remains and each should be dealt with ‘promptly’. However, the 2020 Act increases the maximum length of time to answer requests from 20 to 60 working days.
* The right to request an internal review under FoISA is still in force and is engaged if some or all of your information request is refused. Such a request must be complied with ‘promptly’. However, the 2020 Act increases the maximum length of time to undertake the review from 20 to 60 working days.
* After that, if a request is still unsuccessful, you can appeal to the Scottish Information Commissioner under FoISA – a free process.
* Requests, reviews and appeals which pre-date the 2020 Act, ie before 7th April, are covered by the extended response timelines.
* Some exemptions to releasing information under FoISA are now more

controversial and need to be rigorously challenged. For example, Section 29

permits information that informs the development of Scottish Administration

policy to be exempt from disclosure subject to the ‘public interest’ test. At this

time the public interest test needs to be broadly interpreted to enable full disclosure. Also, Ministers need to publish promptly, and pro-actively, the scientific and professional advice they are receiving which informs their decisions. Such disclosure should not ‘inhibit the free and frank provision of advice’ or the ‘effective conduct of public affairs’.

* UK FoI law has not changed so the right to access information on reserved matters remains the same although the UK Information Commissioner is relaxing practice on enforcing the right.[[4]](#footnote-4)

**Conclusion**

Accessing official information helps civil society ensure that publicly funded initiatives and services are working the way they should and are properly managed. By finding out who is involved in decision making, accessing Minutes of meetings, obtaining data, reviewing public procurement decisions and verifying compliance measures will inform your work on safely getting the country fully back to work and help people access the services they need.

Concurrently, we need to ensure that information created, data gathered, actions agreed and decisions taken on COVID-19 are properly logged to enable future scrutiny. CFoIS sees an opportunity for the Scottish Government to reassure us in its statutory reports to Parliament every two months, that information management and disclosure remain on track. Therefore, CFoIS has written to MSPs to ask them to support four actions so please support the ‘FoI COVID-19 Agenda’ too.

1. MSPs require regular reports from Ministers on backlogs to FoI requests accumulating in the public bodies for which they are responsible across Scotland[[5]](#footnote-5), eg health boards and local authorities.
2. MSPs seek assurances from Ministers that the current ‘Publication Scheme’, required under FoISA, is still being complied with in the sectors which they fund and have responsibility for.
3. MSPs seek new pro-active information disclosure from the Scottish Government and establish a quality assurance methodology which informs the type and timing of the information disclosed in ‘the public interest’.
4. MSPs request regular reports from the Scottish Information Commissioner on regulatory practice of over 10,000 designated public bodies under FoISA.[[6]](#footnote-6)

**About CFoIS**

The Campaign for Freedom of Information in Scotland (CFoIS) was established in 1984, by the Scottish Consumer Council, to improve public access to official information, to secure legal rights to access information and to enforce those rights.  We believe in the right of people to find out about how they are governed and how their services are delivered. For more information and briefings go to [www.cfois.scot/](http://www.cfois.scot/) **Please consider donating to CFoIS to help fund our work generally and during this time when FoI rights need to be respected, protected and fulfilled.** **Contact us at** [**info@cfois.scot**](mailto:info@cfois.scot) **and follow us at @CFoIScot**

1. Free information including a video at <http://www.itspublicknowledge.info/Law/EIRs/EIRs.aspx> [↑](#footnote-ref-1)
2. See UK Government website at <https://www.gov.uk/government/publications/wuhan-novel-coronavirus-background-information/wuhan-novel-coronavirus-epidemiology-virology-and-clinical-features> accessed on 6th May 2020. [↑](#footnote-ref-2)
3. The Model Publication Scheme is available at <http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/TheModelPublicationScheme.aspx> [↑](#footnote-ref-3)
4. See <https://ico.org.uk/about-the-ico/news-and-events/icos-blog-on-its-information-rights-work/> [↑](#footnote-ref-4)
5. Scottish Government website sets out ‘responsibilities’ at <https://www.gov.scot/about/who-runs-government/cabinet-and-ministers/cabinet-secretary-health-and-sport/> [↑](#footnote-ref-5)
6. The Commissioner’s Guidance on the Act acknowledges quarterly statistical returns may be delayed <http://www.itspublicknowledge.info/ScottishPublicAuthorities/Covid-19-AuthorityFAQs.aspx#foistats> [↑](#footnote-ref-6)