

Freedom of Information (Scotland) Act 2002 (FOISA): A Field Researcher's Guide

Independent research and accountability work rely heavily on accessing recorded information held by Scottish public authorities, including local councils, education authorities, and health boards. Here is how to navigate your rights effectively.

1. Your Core Rights Under FOISA

- **The Right to Know:** Any individual, anywhere in the world, has the legal right to request recorded information held by Scottish public authorities. You do not need to be a journalist, lawyer, or resident to make a request.
- **Recorded Information Only:** FOI applies to *recorded* information (emails, memos, meeting minutes, policy drafts, data sheets, recordings). It does not require authorities to create new information, answer subjective opinions, or solve hypothetical questions.
- **Applicant Blindness:** By law, requests must be treated as "applicant blind." The authority cannot legally take into account who you are, what your activist background is, or why you are asking when deciding whether to release the information.

2. How to Submit a Valid Request

To ensure your request is legally valid and cannot be dismissed on technicalities, it must meet four basic requirements under Section 1(1) of FOISA:

1. **Be in writing:** This includes letters, emails, or digital contact forms.
2. **State your real name:** Anonymous requests are not processed under FOISA.
3. **Provide a correspondence address:** An email address is sufficient for receiving responses.
4. **Describe the information clearly:** Be specific about the documents, dates, departments, or topics you are targeting. Vague requests can be rejected or result in a request for clarification, delaying the process.

3. Statutory Timelines & Rules

- **The 20-Working-Day Rule:** Once received, the public authority has a maximum of **20 working days** to respond.
- **Extensions:** In specific circumstances (such as complex or voluminous requests), authorities can extend this by a further 20 working days, but they must notify you within the initial window.
- **Cost Limits (Section 12):** Authorities are not obliged to comply with a request if the estimated cost of doing so exceeds the statutory limit (currently £600 in Scotland). This is calculated based on staff time charged at £15 per hour. *Tip: Keeping requests tightly scoped to specific date ranges and document types prevents them from hitting cost exemptions.*

4. Exemptions and Refusals

Authorities may withhold information only if it falls under a specific legal exemption (e.g., commercial interests, personal data under the UK GDPR, or ongoing legal proceedings).

- **Absolute vs. Qualified Exemptions:** Some exemptions require a "public interest test," meaning the authority must weigh the harm of releasing the information against the public benefit of transparency.
- **The Right to Review:** If an authority refuses your request, redacts information, or fails to respond within 20 working days, you have the legal right to request an **internal review** within 40 working days of receiving their response. If the internal review upholds the refusal, you can appeal directly to the **Scottish Information Commissioner (SIC)** for an independent decision.