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**Freedom of Information Template Documentation and Guidance Notes – Developed by TC Young**

**Introduction**

1. **Background**

SFHA and GWSF published [Open all Hours - a template Guide to Information](https://www.sfha.co.uk/download.php?file=1205) for RSLs in August 2019 to aid members with the publication requirements of the Freedom of Information Act 2002 (FOISA). Since then, we have been developing further documentation to help members respond to requests for information under the legislation, and to develop their internal processes.

To this end, Edinburgh Leisure provided SFHA and GWSF with access to the letters and processes that they use when dealing with FOI requests, Environmental Information Regulation (EIR) requests and Subject Access Requests under Data Protection legislation. We would like to once again thank Edinburgh Leisure for its generosity in doing so.

SFHA and GWSF took the most relevant of these, adapted them and shared with members in early September 2019. Subsequently, SFHA and GWSF commissioned TC Young to develop further guidance and templates (based around this material) that would be more RSL specific. This includes accompanying narrative on how to use all of the templates provided and additional materials including:

* A Model FOI/EIR Policy
* Additional template letters including responding to FOI requests relating to functions that are not subject to FOI and responding to FOI requests relating to subsidiaries
* Additional narrative about when it would be appropriate to use the templates relating to exemptions, and the exemptions that are likely to be the most relevant
* Further templates and guidance on responding to EIR requests
* Model contract clauses/procurement wording

1. **FOI, EIR and Subject Access Request logging spreadsheet**

Edinburgh Leisure log all FOI, EIR and Subject Access Requests on one spreadsheet. This identifies the time frames associated with each request, and the internal deadlines that must be met. It also includes a means of gathering information for reporting to SIC and internally on FOI requests.

Many organisations will wish to develop their own systems for logging such requests, but for those who wish to wish to adapt the spreadsheet used by Edinburgh Leisure it is available via the link below:

[FOI/EIR/SAR Logging Spreadsheet](https://www.sfha.co.uk/download.php?file=1230)

This spreadsheet was based around a template provided to Edinburgh Leisure by JISC infoNet[[1]](#footnote-1), who provided further guidance on how to use the spreadsheet here:

[JISC infoNet guide on how to use the spreadsheet](https://www.sfha.co.uk/download.php?file=1279)

We previously shared this spreadsheet with members in early September 2019 and have also included here for ease of reference.

1. **FOI and EIR Template Letters and Documentation**

The template letters and documentation provided are intended to assist you when you are dealing with information requests received under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIR).

A template FOI process is identified at Appendix A, and a template FOI/EIR policy included at Appendix B.

The template letters provided are divided into 5 broad categories:

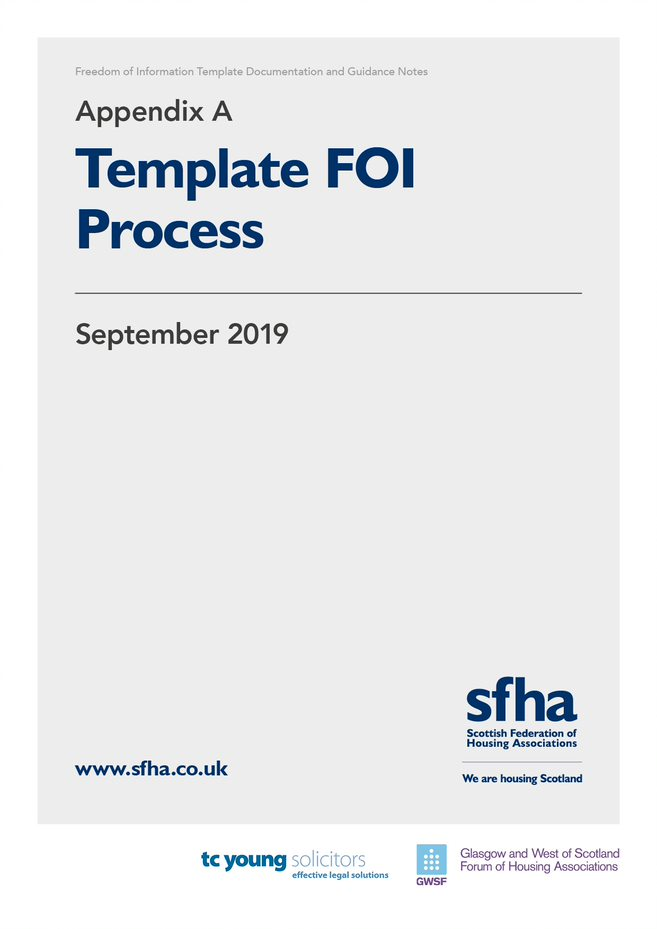
1. Template letters acknowledging request (Appendix C)
2. Template letters seeking further clarification (Appendix D)
3. Template letters for when information is not being provided (Appendix E)
4. Template letters for when information will be provided (Appendix F)
5. Template letters for when a review is requested (Appendix G)

You will need to adjust these letters depending on whether or not you are dealing with a request under FOI or EIR. You will also have to provide information in certain sections. Where you need to make amendments/insert information this is highlighted by use of bold font and square brackets e.g. **[INSERT INFORMATION HERE].**

Each template letter is also accompanied with guidance notes on how and when that template should be used.

The documents provided are designed and intended only for use as a template which will require to be adapted to meet the requirements of any circumstance in which they are used. The style of wording may not be appropriate for all information requests you receive and you should use your best judgement and take appropriate legal advice as required when dealing with information requests.

TC Young also developed Model procurement wording and contract clauses that we shared with members in early September 2019. For ease of reference, this is included at Appendix H and I.



**Template FOI Process – Guidance Notes**

We have identified an 8-stage process (based around that followed by Edinburgh Leisure):

1. Receive, identify, log
2. Clarify
3. Assess
4. Assign Request to department/individual – inform and consult
5. Locate and consider information to be disclosed
6. Consider response
7. Clearing response
8. Issue response

This process is provided to SFHA/GWSF members for illustrative purposes and is not intended to be prescriptive. It could be used as the template for your own internal process, but it is recognised that you may wish to adapt, e.g. to reflect your own departmental structure, in a way that allows you to respond to FOI requests within 20 working days.

The process accounts for situations where you are asked for information which is not covered by the terms of the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order).

Only certain RSL and subsidiary functions are covered by FOI and EIR – these being:

* the prevention and alleviation of homelessness
* the management of social housing accommodation (for which an RSL has granted a Scottish secure tenancy or short Scottish secure tenancy)
* the provision and management of sites for gypsies and travellers
* the supply of information from an RSL to the Scottish Housing Regulator (SHR) in relation to its financial well-being and standards of governance

Where an information request does not relate to these functions you are not obliged under FOI or EIR to provide the information. However, there may be many circumstances in which you are happy to disclose information requested even though you are not legally obliged to do so.

It is also important when considering whether to respond to such requests, to remember the general duty under the Scottish Social Housing Charter, under the Communications outcome:

*Social landlords manage their business so that:*

*tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.* [[2]](#footnote-2)

Where you are providing information that is not subject to the Order you do not need to consider if any FOI or EIR exemptions or exceptions apply and should be particularly careful where any information requested relates to personal data.

|  |  |
| --- | --- |
| **Stage 1 – Receive, Identify & Log**  **Request Received (days 1-2)** Pass to **[INSERT],** who will Log details, validate request, ID Legislation & send acknowledgement | Pass the Request to **[INSERT WHO WILL DEAL WITH FOI REQUESTS]**. They will:   * Evaluate the request and identify which legislation it will be processed under. Is it:   - Freedom of Information (Scotland) Act (FOISA)  - Environmental Information Regulations (EIRs)  - Data Protection Act (DPA)   * Log the request in the **[INSERT LINK TO INFORMATION TRACKING SPREADSHEET OR EQUIVALENT]** * If the request is a complex/controversial case, inform **[INSERT SENIOR STAFF MEMBER/APPROPRIATE DEPARTMENT].** * Send an acknowledgement letter confirming receipt of the request, and the legislation under which it will be processed or proceed to Stage 2. |
| **Stage 2 – Clarify**  **Clarify Request (days 1-2)** **[INSERT]** to contact requester if necessary to seek further clarification  **SFHA/GWSF Templates:** | **[INSERT WHO WILL DEAL WITH FOI REQUESTS]** will ensure that the request is clear regarding what information is being asked for. If the request is unclear clarification will be sought. |
| **Stage 3 - Assess**  **Assess Request (days 3-5)** **[INSERT]** to decide if: the information is covered by the Order; we hold the information & if it is already accessible | **[INSERT]** will assess:   * If the request relates to functions covered by The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order):   + If information covered by the Order will proceed with next steps in Stage 3   + If information not covered by the Order but we are willing to release some or all of the information proceed with next steps in stage 3   + If information not covered by the Order and we are not willing to release any of the information a letter will be sent to the requestor informing them that we are not obliged to provide them with the information * if we hold the information and if it is already accessible: * If we do not hold the information a letter will be sent to the requestor informing them the information is not held. * If the information is held but is already published then a Section 25 exemption letter will be sent to the requestor informing them of where to find this information. Where the information is not covered by the Order we should simply write to the requester and inform them where to find the information. * If the information is held and has not been published then the request process will proceed to stage 4. |
| **Stage 4 -** **Assign Request to Site/Section - Inform & Consult**  **Assign/Inform/Consult (days 3-5)** | **[INSERT]** will send request to appropriate department to request information held.  Relevant department will respond to **[INSERT]** when information has been collected or to inform **[INSERT]** that department does not hold information.  Consult with **[INSERT]** to determine if fees are applicable. **[INSERT]** will advise on applying fees. |
| **Stage 5 - Locate & Consider Information to be Disclosed**  **Locate Information (days 3-5)** Appropriate department collate information. [INSERT] will assist, support & advise | Appropriate department and **[INSERT]** consider if the information can be supplied or whether any exemptions apply. Where the information requested is not covered by the Order you do not need to determine whether or not exemptions apply and can instead choose what information you are prepared to release.  **[INSERT]** will advise and assist in applying exemptions.  Appropriate department obtains information from all sources and collates.  Appropriate department completes information request documents as appropriate. |
| **Stage 6 - Consider Response**  **Consider Response (days 6-10)** [INSERT] review & draft response | **[INSERT]** willreview documents and prepare response letter |
| **Stage 7 - Clearing Response**  **Clearing Response (days 11-15)** | In cases of complex/controversial requests **[INSERT]** will seek clearance and consult with **[INSERT SENIOR MEMBER OF STAFF/LEGAL ADVISERS]** as necessary. |
| **Stage 8 - Issue Response**  **Issue Response (days 16-20)** **[INSERT]** issue response | **[INSERT]** quality checks and issues information requested, stating any exemptions as appropriate. |



**Template FOI and EIR Policy – Guidance Notes**

It is good practice for all member organisations to have a Freedom of Information and Environmental Information Policy. It is also specified under the SIC’s Model Publication Scheme as a document that should be published on your website.

The template policy provided is intended to assist you with putting an appropriate policy in place for your organisation.

It provides a high-level overview of your organisation’s responsibilities under FOI/EIR and also allows you to set out who within your organisation has responsibility for compliance with FOI/EIR. The template policy has a section which allows you to outline these responsibilities in detail. It also flags that all staff members have certain duties in relation to FOI/EIR and provides that senior staff members will have ultimate responsibility for FOI/EIR Implementation.

It is important that this policy is adjusted by you in order to reflect your organisation’s requirements and processes for the day to day handling of FOI/EIR. The style wording provided may not cover how your organisation is implementing FOI/EIR and in these cases the style wording should be updated accordingly.

**Freedom of Information and Environmental Information Policy**

**Introduction**

The Freedom of Information (Scotland) Act 2002 (“FOISA”) and the Environmental Information (Scotland) Regulations 2004 (“EIR”) place a general obligation on Scottish Public Authorities to allow the public access to information that they hold. Both FOISA and EIR are overseen by the Scottish Information Commissioner (“SIC”).

From 11 November 2019 **[INSERT RSL NAME]** will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.

This is the Freedom of Information and Environmental Information Policy of **[INSERT RSL NAME]**. The policy will:

* provide a general understanding of FOISA and EIR; and
* outline where responsibility lies for complying with the legal duties of **[INSERT RSL NAME]** under FOISA and EIR

**Policy Statement**

**[NSERT RSL NAME]** is committed to the underlying principles of openness and transparency underpinning FOISA and EIR and complying fully with the requirements of said legislation. To this end **[INSERT RSL NAME]** will:

* follow the relevant Scottish Ministers Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by SIC;
* take into account the needs of individuals when presenting information under FOISA and EIR;
* make all employees aware of their responsibilities under the FOISA and EIR and support them in fulfilling those responsibilities;
* publish a wide range of information through our Publication Scheme;
* monitor compliance with FOISA and EIR with a view to continuous improvement;
* respect data protection in accordance with the GDPR and Data Protection Act 2018 when complying with FOISA and EIR;
* only withhold information where entitled to do so under FOISA and EIR and explain why information is withheld; and
* provide advice and assistance to individuals seeking to access information

**Responsibilities**

* The **[INSERT SENIOR STAFF POSITION]** has lead management responsibility for FOISA and EIR within **[INSERT RSL NAME].** This will include effective implementation and regular review of this Policy. **[INSERT FURTHER DETAILS/REPSONSIBLITIES AS APPLICABLE]**
* **[INSERT FURTHER INFORMATION IN RESPECT OF STAFF POSITIONS RESPONSIBLE FOR SOME ASPECT OF COMPLIANCE UNDER FOISA AND EIR. CLEARLY SET OUT WHAT RESPONSIBILITIES THIS POSITION HAS –THIS MAY INCLUDE** **IDENTIFYING STAFF POSITIONS WHO WILL BE RESPONSIBLE FOR :**
  + **RESPONDING TO REQUESTS UNDER FOISA AND EIR AND WHO INFORMATION REQUESTS SHOULD BE FORWARDED TO**
  + **COLLATING INFORMATION FOR SENDING OUT TO REQUESTERS**
  + **MAKING INFORMATION AVAILABLE IN ACCORDANCE WITH YOUR PUBLICATION SCHEME**
  + **DEALING WITH REQUESTS FOR REVIEW**

**THE EXAMPLES GIVEN HERE ARE ILLUSTRATIVE ONLY AND YOU SHOULD ENSURE THAT RESPONSIBILITY WITHIN YOUR ORGANISTION FOR FOISA/EIR IS DISTRIBUTED IN ACCORDANCE WITH THE REQUIREMENTS OF YOUR ORGANISATION]**

* All employees are responsible for:
  + **[**familiarising themselves with this policy;
  + forwarding information requests received to **[INSERT RELEVANT STAFF POSITION HERE]** as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from **[INSERT RELEVANT STAFF POSITION HERE]** ;
  + seeking guidance from  **[INSERT RELEVANT STAFF POSITIN HERE]** if they are unsure about any ofthe duties placed on **[INSERT RSL NAME]** by FOISA or EIR;
  + **[INSERT ANY ADDITIONAL RESPONSIBILITIES THAT YOU REQUIRE ALL EMPLOYEES TO FOLLOW]]**
* Employees should be aware that where an information request is received and an employee deletes or alters information held by **[INSERT RSL NAME]** with the intention of preventing disclosure of that information a criminal –offence is committed. Where employees are unsure if deletion or alteration of information may result in an offence they should seek guidance from **[INSERT RELEVANT STAFF POSITION HERE]**
* Compliance with this policy is compulsory for all employees of **[INSERT RSL NAME HERE].**  Any employee who fails to comply with this policy may be subject to disciplinary action.

**Scope of the Policy**

This policy applies to any information held by **[INSERT RSL NAME]** which relates to one or more of the functions set out above, regardless of format. This will include information created internally and information received from third parties. It will also relate to information which is held on behalf of **[INSERT RSL NAME]**.

This policy applies to all **[INSERT RSL NAME]** employees.

**Background**

Why is **[RSL NAME]** subject to FOISA and EIR?

**[INSERT RSL NAME]** is subject to both FOISA and EIR by virtue of the: Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the “Order”).

The Order came into effect on 11 November 2019 and brought all Registered Social Landlords (“RSLs”) and certain RSL subsidiaries under the scope of FOISA and the EIR.

What is subject to FOISA and EIR?

However, in accordance with the terms of the Order, not everything that **[INSERT RSL NAME]** does is subject to FOISA and EIR. Instead, **[INSERT RSL NAME]** is only subject to these regimes in respect of certain functions, namely ‘housing services’ (as defined in s.165 of the Housing (Scotland) Act 2010) which **[INSERT RSL NAME]** carries out – subject to some restrictions. Looking at the definition of ‘housing services’ and the restrictions which are set out in the Order the following functions carried out by **[INSERT RSL NAME]** are covered by FOISA and EIR:

* + - the prevention and alleviation of homelessness
    - the management of social housing accommodation
    - the provision and management of sites for gypsies and travelers; and
    - the supply of information to the Scottish Housing Regulator (SHR) by an RSL or a connected body (i.e. a subsidiary) in relation to its financial wellbeing and standards of governance.

What is the difference between FOISA and EIR?

EIR provides a right of access to ‘Environmental Information’ held by **[INSERT RSL NAME]**. Environmental Information has a very wide definition which is set out in Regulations. Where a request under FOISA is received for Environmental Information it should be processed in accordance with EIR.

Whilst the obligation under FOISA and EIR are similar – there are some key differences that employees must be aware of when dealing with requests for information. Further guidance on the differences are available on SIC’s website.

**Legal Duties**

**[INSERT RSL NAME]** has a number of legal duties which it must comply with under FOISA and EIR. These are set out in more detail below:

Responding to Information Requests

People have the right to request information from **[INSERT RSL NAME]**. Where the information requested is within the scope of the Order and **[INSERT RSL NAME]** holds that information it must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. **[INSERT RSL NAME]** shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice and any relevant guidance produced by SIC.

**[INSERT RSL NAME]** will aim to respond to information requests promptly, and in any event within 20 working days of receiving the request (except in some circumstances under EIR where **[INSERT RSL NAME]** is entitled to extend the timescale for responding by an additional 20 working days).

Where **[INSERT RSL NAME]** is providing an individual with the information they have requested they will, in so for as is reasonable to do so, provide information in the format that the individual has requested and will adhere to any duties under the Equality Act 2010. Where **[INSERT RSL NAME]** is refusing to provide information to individuals it will clearly explain to said individual what provision in FOISA or EIR allows **[INSERT RSL NAME]** to withhold that information and why **[INSERT RSL NAME]** believes that provision applies (including, where required, an explanation of how **[INSERT RSL NAME]** has carried out the Public Interest Test).

Where **[INSERT RSL NAME]** is asked to provide information which it does not hold, but **[INSERT RSL NAME]** knows that another Scottish Public Authority does hold the requested information – **[INSERT RSL NAME]** shall provide contact details of said Authority to the individual requesting the information and explain that the individual may wish to request the information from that Scottish Public Authority. Where a request is being handled under EIR and these circumstances apply **[INSERT RSL NAME]** shall offer to transfer the individual’s request to the other Scottish Public Authority.

**[INSERT RSL NAME]** may choose to charge for fulfilling information requests received from individuals. Any charges made by **[INSERT RSL NAME]** shall be made in accordance with:

* for requests being handled under FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004
* for requests being handled under EIR: the Schedule of Charges [**INSERT LINK TO PULBISHED SCHEDULE HERE]** of **[INSERT RSL NAME]**

Any fee charged by **[INSERT RSL NAME]** will be reasonable and will not exceed the costs to **[INSERT RSL NAME]** of providing requested information.

Responding to Requests for Review

Where someone has requested information from **[INSERT RSL NAME]** and:

* **[INSERT RSL NAME]** has failed to respond to the request within the 20 working day deadline (or extended deadline in respect of certain requests made under EIR); or
* the person requesting the information is unhappy with the response to the request (for example where information has been withheld under one of the exemptions or exceptions available under FOISA/EIR)

then they have the right to request that **[INSERT RSL NAME]** reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

Where **[INSERT RSL NAME]** performs a review and determines that a response to a request is not in accordance with FOISA or EIR **[INSERT RSL NAME]** will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).

Where **[INSERT RSL NAME]** performs a review and determines that a response to a request is in accordance with FOISA or EIR then **[INSERT RSL NAME]** will notify the individual who asked for a review as quickly as possible.

In any event **[INSERT RSL NAME]** will handle all requests for review in accordance with the timescales set out in FOISA and EIR.

Where an individual is unhappy with the response to their review request they may appeal to SIC. If an appeal is made by SIC and a decision handed down by them both **[INSERT RSL NAME]** and the individual in question have a right to appeal to the courts on a point of law.

Provision of Advice and Assistance to Individuals

**[INSERT RSL NAME]** must provide individuals seeking to access information with advice and assistance. This advice and assistance will be provided with a view to ensuring that all barriers which may potentially prevent an individual from accessing information are removed. **[INSERT RSL NAME]** will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

Publication of Information

**[INSERT RSL NAME]** shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of **[INSERT RSL NAME]** will be available on its website and a paper format will also be available on request.

**[YOU MAY WISH TO INSERT LINKS HERE TO WHERE YOUR GUIDE TO INFORMATION CAN BE FOUND IN THIS SECTION].**

Data Protection

**[INSERT RSL NAME]** is committed to upholding its data protection obligations set out in the GDPR and the Data Protection Act 2018.

Under data protection laws, individuals have the right to request access to all of the information that **[INSERT RSL NAME]** holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to **[INSERT REFERENCE TO APPLICABLE DATA PROTECTION POLICY]** when dealing with these rights.

**[YOU MAY WISH TO PROVIDE LINKS TO WHERE THE POLICY IS STORED OR DETAILS ON HOW TO ACCESS THE POLICY].**



**Acknowledgement Letter – Guidance Notes**

Where you receive a valid request under FOI or EIR (an “Information Request”) you should aim to send an acknowledgement to the requester within 2 working days.

Remember that under both FOI and EIR you should respond any Information Request **as soon as possible,** so if it is possible to send out a full response within 2 working days you should not send this Acknowledgement Letter and instead send a full response.

The template Acknowledgement Letter covers both FOI and EIR. Whilst it can sometimes be hard to determine whether a request should be dealt with under FOI or EIR –you should, from the outset of a request, attempt to determine what regime the request should be handled under. If, once the letter is sent out you determine that the request should be dealt with under a different regime, then there are further template letters that you can use to inform the requester of your decision.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] - Acknowledgement of Request**

Subject: **[INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED]** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Your request is being processed under the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004].**

You will receive the information requested promptly and within 20 working days from the date of our receipt of your initial request unless **[INSERT RSL NAME]** does not hold the information, or there is a reason for it to be withheld. We will write to you within the 20 working day time limit in any event.

In some circumstances a fee may be payable and if that is the case, we will let you know.

If you have any requirements regarding the format any information should be supplied in, e.g. the language to be used, audio, large print and so on, then please let us know.

If you have any queries or concerns, do not hesitate to get in touch. Please quote the reference number above in any future communications.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Letter stating FOI request not an EIR request (and vice-versa) – Guidance Notes**

You should use this letter where you have determined that the request should be dealt with under FOI rather than EIR (and vice-versa).

This letter should be sent to the requester **as quickly as possible** once a determination is made.

The definition of Environmental Information is extremely wide so requests should be reviewed carefully to ensure they are not asking for Environmental Information. The SIC has guidance on the definition of [Environmental Information](http://www.itspublicknowledge.info/Law/EIRs/WhatIsEnvironmentalInformation.aspx) to assist you.

It is also important to note that when you are providing the information requested, it is less likely that the requester for that information is going to be concerned regarding whether you provide this under FOI or EIRs.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Following a further assessment of your request for information dated **[INSERT DATE OF REQUEST]** which we received on **[INSERT DATE RECEIVED]** we have decided that your request should be answered under the terms of the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]** and not the **[Environmental Information (Scotland) Regulations 2004] [OR] [Freedom of Information (Scotland) Act 2002]**, as initially acknowledged.

You will receive the information requested, promptly and within 20 working days from the date of our receipt of your initial request, unless **[INSERT RSL NAME]** does not hold the information, or there is a reason for it to be withheld. We will write to you within the 20 working day time limit in any event.

In some circumstances a fee may be payable and if that is the case, we will let you know. A fees notice will be issued to you, and you will be required to pay before we will deal with your request.

If you have any requirements regarding the format any information should be supplied in, e.g. the language to be used, audio, large print and so on, then please let us know.

If you wish to discuss further, please get in touch. Please remember to quote the above reference number in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in [**[When dealing with a request under FOI]** *a recordable format (email, letter, audio tape etc.)*][**[When dealing with a request under EIR]** [*in writing*] and should state that you are asking for a review of this decision and why you are unhappy with the decision made.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

Website www.itspublicknowledge.info

Further information about your rights and accessing information is available on our website here **[INSERT LINK TO FOI SECTION ON WEBSITE]**

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Letter stating an FOI/EIR request not Subject Access Request – Guidance Notes**

You should use this letter where you have determined that the request should be dealt with under FOI or EIR rather than the GDPR/Data Protection Act 2018. This might happen where someone has made a Subject Access Request for information that is not their own personal data.

This letter should be sent to the requester **as quickly as possible** once a determination is made.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Following a further assessment of your request for information dated **[INSERT DATE OF REQUEST]** which we received on **[INSERT DATE RECEIVED]** we have decided that your request should be answered under the terms of the **[Freedom of Information (Scotland) Act 2002] [OR]** [**Environmental Information (Scotland) Regulations 2004]** and not the GDPR/Data Protection Act 2018, as initially acknowledged.

You will receive the information requested, promptly and within 20 working days from the date of our receipt of your initial request, unless **[INSERT RSL NAME]** does not hold the information, or there is a reason for it to be withheld. We will write to you within the 20 working day time limit in any event.

In some circumstances a fee may be payable and if that is the case we will let you know. A fees notice will be issued to you, and you will be required to pay before we will deal with your request.

If you have any requirements regarding the format any information should be supplied in, e.g. the language to be used, audio, large print and so on, then please let us know.

If you wish to discuss further, please get in touch. Please remember to quote the above reference number in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in [**[When dealing with a request under FOI]** *a recordable format (email, letter, audio tape etc.)*][**[When dealing with a request under EIR]**[*in writing*] and should state that you are asking for a review of this decision and why you are unhappy with the decision made.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

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Website www.itspublicknowledge.info

Further information about your rights and accessing information is available on our website here **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**



**Request for Clarification Letters – Guidance Notes**

Sometimes people will make Information Requests which are unclear and you will not know what information they are actually looking for.

You must remember that under both FOI and EIR you are obliged to give advice and assistance to requesters. This includes giving assistance to enable a requester to clarify what information they want.

How you deal with clarification is slightly different under FOI and EIR. However - generally speaking - where you receive a valid Information Request but it is not possible to identify what information the requester wants, you must ask the requester for clarification **as soon as possible**.

You should seek clarification in the most efficient way possible. For simple clarification issues a telephone call may be appropriate. For more complex issues you should contact the requester in writing and these template letters are intended to help you with this.

There are two versions of this letter – one relating to FOI and one relating to EIR. This is because clarification under FOI and EIR is different:

1. Under FOI where you ask a requester for clarification the 20 working day response clock will “reset” and will not begin again until you receive clarification. Once clarification has been received the deadline for responding will be the 20th working day after you receive the additional information needed from the requester in order to process the request.

1. Under EIR the 20 working day timescale does not reset when you request clarification. You will still need to give a response within the 20 working day limit (or the 40 working day limit where a request is voluminous and complex). Instead where you have sought clarification and receive no response you may be able to reject the EIR request under Regulation 10(4)(c) (requests which are too general). If you are going to refuse the request an official refusal notice should be issued. If you receive clarification, SIC advises that you should treat the clarification as a **new** request and will therefore have 20 working days to comply.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002 – Request for Clarification**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED]**. In your request you asked for:

1. **[INSERT DETAILS OF REQUEST]**
2. **[INSERT DETAILS OF REQUEST]**

Your request is being processed under the terms of the Freedom of Information (Scotland) Act 2002. Unfortunately, we cannot identify the information you have requested from the details you have provided. To help us meet your request, could you please provide the following:

1. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**
2. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**

On receipt of further details, we will respond to your request within 20 working days, as required under the legislation. Please note that the statutory 20 working day deadline for responding to your request will not start until clarification has been received.

If we do not hear from you we will assume that you are no longer seeking the information you have requested and will take no further action.

If you wish to discuss further, please get in touch. Please remember to quote the above reference number in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in a recordable format (email, letter, audio tape etc.)
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Environmental Information (Scotland) Regulations 2004 – Request for Clarification**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED]**. In your request you asked for:

1. **[INSERT DETAILS OF REQUEST]**
2. **[INSERT DETAILS OF REQUEST]**

Your request is being processed under the terms of the Environmental Information (Scotland) Regulations 2004. Unfortunately, we cannot identify the information you have requested from the details you have provided. To help us meet your request, could you please provide the following:

1. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**
2. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**

On receipt of further details, we will respond to your request within 20 working days. Please note that if we do not hear from you we may need to refuse your request under Regulation 10(4)(c) of the Regulations.

If you wish to discuss further, please get in touch. Please remember to quote the above reference number in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in writing.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

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Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS**

**No Response to Request for Clarification – Guidance Notes**

You may not receive a response to your first request for clarification. In these circumstances you should write to the requester and explain that you cannot proceed with their Information Request without clarification.

Again, there are separate letters for FOI and EIR. This is because under EIR you will likely be issuing a refusal notice under Regulation 10(4)(c) which allows you to refuse EIR requests where a request is too general.

Under EIR where you request clarification to a request, the 20 working day (or 40 working day where the request is complex and voluminous) clock does not stop (unlike FOI) so responses should be sent out within the statutory timescales. This exception is subject to the Public Interest Test and you must explain why the public interest favours withholding the information in this instance.

Generally, where you do not know what information a request relates to the public interest in maintaining the exception will outweigh the public interest in disclosing the wrong information. SIC has more [guidance](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/EIRsexceptionbriefings/Regulation10(4)(c)/Regulation10(4)(c)Requestswhicharetoogeneral.aspx) on this exception which you should refer to when assessing whether or not to send the EIR follow-up letter.

Where you are sending out the FOI follow-up letter this should be sent out 20 working days after you sent the original clarification letter.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002 – Request for Clarification**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

We wrote to you on **[INSERT DATE]**asking if you could provide some further details to help us identify the information you are interested in. To date we have not received a response from you. Unfortunately, we cannot proceed with your request until you provide us with the following:

1. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**
2. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**

On receipt of these further details, we will respond to your request within 20 working days. Please note that the statutory 20 working day deadline for responding to your request will not start until we have received the requested clarification from you.

If we do not hear from you, we will assume that you are no longer seeking the information you have requested and will take no further action.

If you wish to discuss your request, or have any questions please do not hesitate to get in touch. Please quote the reference number above in any future communications.

Further information about your rights and accessing information is available on our website. Click [here](https://www.edinburghleisure.co.uk/freedom-of-information).

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in a recordable format (email, letter, audio tape etc.)
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Environmental Information (Scotland) Regulations 2004 – Request for Clarification**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

We wrote to you on **[INSERT DATE]**asking if you could provide some further details to help us identify the information you are interested in. To date we have not received a response from you. Unfortunately, we cannot proceed with your request until you provide us with the following:

1. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**
2. **[INSERT POINTS THAT REQUIRE FURTHER CLARIFICATION]**

Under the terms of the Regulations a request for information can be refused when formulated in too general a manner and we have given you advice and assistance to clarify your request (Regulation 10(4)(c). In this case **[INSERT RSL NAME]** has determined that this exception applies as:

**[EXPLAIN WHY THE EXCEPTION APPLIES TAKING INTO ACCOUNT POINTS LISTED ABOVE- INCLUDING A DETAILED EXPLANATION AS TO WHY THE PUBLIC INTEREST BALANCE FALLS IN FAVOUR OF WITHHOLDING RATHER THAN RELEASE]**

If you can clarify the above points we will treat your clarification as a new request under the Regulations and deal with it accordingly.

If you wish to discuss your request, or have any questions please do not hesitate to get in touch. Please quote the reference number above in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in writing.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

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

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**Send your appeal by post**

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Request for Clarification – Closure (FOI Only) – Guidance Notes**

If the requester has failed to provide any further clarification you can then issue this letter explaining that as the timescale for reply has expired, and you assume that the requester is no longer looking for the information. This letter should be sent 40 working days after your original clarification request.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002 – Request for Clarification - Closure**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

We wrote to you on **[INSERT DATE]**and again on **[INSERT DATE]**asking if you could provide some further details to help us identify the information you were interested in.

To date we have not received a response from you.

As 40 working days have elapsed, we have assumed that you are no longer seeking the information you have requested and have closed your request.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in a recordable format (email, letter, audio tape etc.)
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Letter stating extension of time for EIR – Guidance Notes**

Typically requests under EIR should be dealt with within 20 working days. However, the Regulations do allow you to extend the time limit by a further **20 working days** if the volume and complexity of the information requested make it impracticable for you to comply with the original time limit.

Where you are going to extend the time limit, you must notify the requester **as soon as possible**, and no later than 20 working days from the receipt of the request.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Environmental Information (Scotland) Regulations 2004 – Extension of Time**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED]**. In your request you asked for:

1. **[INSERT DETAILS OF REQUEST]**
2. **[INSERT DETAILS OF REQUEST]**

Generally, we aim to respond to requests under the Regulations within 20 working days of our receipt of your request. However, under Regulation 7(1) of Regulations we are allowed to extend this time limit by an additional 20 working days where the volume and complexity of the request makes it impracticable for us to respond within the original time limit.

In this case I regret that we must extend the time limit for responding by   
20 working days as:

* **[EXPLAIN WHY INFORMATION REQUESTED IS VOLUMINOUS AND COMPLEX]**
* **[EXPLAIN WHY INFORMATION REQUESTED IS VOLUMINOUS AND COMPLEX]**

We will still aim to provide the information you have requested as quickly as we can, but want to ensure we provide the correct information to you.

If you wish to discuss your request, or have any questions please do not hesitate to get in touch. Please quote the reference number above in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in writing.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Confirmation of Verbal Request**

If you receive a verbal request for information there are some points you should consider:

* is the request for Environmental Information? Remember that **it is possible to make a valid EIR Request verbally**.
* where the request does not relate to Environmental Information:
  + has it been made via telephone or voicemail?
  + this may be a valid FOI Request where you record telephone calls and have a suitably sophisticated telephone system.
  + the SIC has guidance to help you determine this [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Areverbalrequestsvalid/Areverbalrequestsvalid.aspx).

Where a verbal request may have been made it is good practice to:

* make a note of what information was requested; and
* write to the requester, **as soon as possible,** in order to confirm the verbal request.

This letter will assist you with this.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Confirmation of Verbal Request**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

I refer to your **[TELEPHONE CALL/DISCUSSION ETC.]** with **[INSERT NAME OF RELEVANT STAFF MEMBER/POSITION]** on **[INSERT DATE OF VERBAL REQUEST].**

We believe you have requested information under the **[Freedom of Information (Scotland) Act 2002][OR][The Environmental Information (Scotland) Regulations 2004].** The information we believe you have requested is:

* **[INSERT DESCRIPTION OF INFORMATION REQUESTED]**
* **[INSERT DESCRIPTION OF INFORMATION REQUESTED]**

If you have not requested information or our understanding of what you have requested is incorrect please contact:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Otherwise we will respond to your request within 20 working days of our receipt of your request.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in **[FOR FOI REQUESTS ONLY] [**a recordable format (email, letter, audio tape etc.)] [**FOR EIR REQUESTS ONLY]** [in writing]
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Confirmation of requester’s name and/or correspondence address (FOI only) – Guidance Notes**

Under FOI, requesters must provide their name and a correspondence address (generally a postal or email address) in order for their request to be valid.

Where a requester makes a request under FOI but does not include their name or address you should, under your obligation to give advice and assistance, tell the requester that their request is invalid and explain how to make a valid request. This should be done even in circumstances where you are happy to provide them with all of the information as the requester’s right to review or appeal to SIC under FOI may be impacted where their request is not valid.

This template letter can be used in order to assist you with this.

Requests under EIR are slightly different. There is no requirement for a requester to give their name or a correspondence address and requesters should not be pressured to do this. However, you may have difficulty in responding to a request when you do not know where to send the information. You might consider allowing the requester to review the information requested in your office or collect it in person where they do not want to provide a correspondence address.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002 – Confirmation of [NAME [AND]/[OR] [CORRESPONDENCE ADDRESS]**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED]**. In your request you asked for:

1. **[INSERT DETAILS OF REQUEST]**
2. **[INSERT DETAILS OF REQUEST]**

Your request is being processed under the terms of the Freedom of Information (Scotland) Act 2002.

Under the terms of the Act a request is not valid if it does not contain:

* the requester’s name; and
* a correspondence address for the requester (i.e. a postal or email address)

As your request does not [**STATE YOUR FULL NAME/STATES A PSEUDONYM INSTEAD OF YOUR ACTUAL NAME/DOES NOT PROVIDE A CORRESPONDENCE ADRESS]** we do not consider it to be a valid request and are not obliged to respond to it. You should also be aware that where you make an invalid request under the Act this may impact your ability to seek a review of our decision if you are not happy with our response.

However, if you provide us with [**YOUR NAME/A CORRESPONDENCE ADDRESS]** we will be able to fully consider your request and respond in accordance with the Act. This will also mean you are entitled to your full rights under the Act in respect of reviewing our decision.

If you need any further assistance with making a valid request to **[INSERT RSL NAME]** please contact:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**



**Information otherwise accessible – Guidance Notes**

You can use this letter when the information that has been requested has already been published. The letter advises the requester of where they can find the information requested.

You will see that the letter covers both FOI and EIR. The position in respect of information that is already accessible is slightly different under EIR and FOI, namely:

* FOI has a specific exemption for information that is already publicly available so you may **refuse** FOI requests for information which you already publish.

* Under EIR there is no exception where information is otherwise available – so you cannot refuse a request on this basis. However, where a requester has asked for information in a set format and that information is already available you may rely on the provision in Regulation 6(1) to refuse to provide the information in the format that the requester has asked for.

Despite these differences you will ultimately need to write to the requester and explain how they can access the information. This would normally be by providing details of where to access the information via your Guide to Information. You will see that the Letter has different sections which you can use to deal with the differences under both pieces of legislation.

If the requester does not have internet access to view your Guide to Information, the letter should inform them of alternative ways they can access the information. Remember your obligation to assist requesters and be prepared to offer them more advice on how to access the information. You should also remember your obligations in terms of the Equality Act 2010 where requests are made for information in a particular format (for example for the information to be provided in large print).

Where information is otherwise accessible you will still have to respond to the request within 20 working days.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Information – Information Otherwise Accessible**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED]**.

Your request is being processed under the terms of the **[Freedom of Information (Scotland) Act 2002]** **[OR] [Environmental Information (Scotland) Regulations 2004]**. The information you have requested is contained within our Guide to Information**.** This means it is already published on our website and can be found here: **[INSERT LINK TO INFORMATION].**

If you do not have access to the Internet at home, you may be able to use facilities at your local public library or you can visit our office at:

**[INSERT OFFICE ADDRESS]**

**[[FOR FOI REQUESTS ONLY]]** Under the terms of the Act, a request for information can be refused where one or more of the exemptions listed in the Act apply. In this instance, **[INSERT RSL NAME]** is claiming an exemption under section 25 of the Act because the information is ‘otherwise accessible’.**]**

**[[FOR EIR REQUESTS ONLY WHERE REQUESTERS HAVE ASKED TO RECEIVE INFORMATION IN A CERTAIN FORMAT AND YOU ARE NOT COMPLYING WITH THIS].** We note that you have requested the information to be sent to you by **[POST/EMAIL ETC.]** under the terms of the Regulations as the information requested is already publicly available and easily accessible in another form or format we do not need to comply with this request.**]**

If you do have difficulty in accessing the information or if you have any queries about this letter, please contact me quoting the reference number above.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

**Email: [INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in **[[FOR FOI REQUESTS ONLY]** a recordable format(email, letter, audio tape etc.)**] [[FOR EIR REQUESTS ONLY]** in writing**]**.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Vexatious Requests (FOI Only) – Guidance Notes**

Under FOI you are not obliged to provide any information in relation to vexatious requests. However, there is no set test for determining whether or not a request is vexatious. You should also keep in mind that this exclusion only relates to vexatious *requests* and not vexatious request*ers*. The SIC has further guidance on vexatious requests which can be found [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx). You should refer to the guidance, the Section 60 Code of Practice[[3]](#footnote-3), and the legislation itself when determining if a request is vexatious.

If you decide that a request is vexatious, you must issue a notice to the requester informing them that you are not responding to their request for this reason and you must set out the reasons why you believe the request is vexatious.

This notice must be sent within 20 working days of receiving the request – **except where** you have already issued such notice in relation to an identical or substantially similar request and it would be unreasonable to expect you to serve a further notice.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002– Vexatious Request**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Your request is being processed under the Freedom of Information (Scotland) Act 2002.

Under Section 14(1) of the Act, we do not have to fulfil requests which can be termed as vexatious. After careful consideration, we have concluded that your request falls into this category because **[INSERT REASONS].**

As a result, we will not be processing your request for information on this occasion.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email**: [INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in a recordable format (email, letter, audio tape etc.)
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner:

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Repeated Request (FOI Only) – Guidance Notes**

You may receive a request from an individual which is identical or substantially similar to earlier requests they have made. Where you have already responded to the earlier request you do not need to comply with any subsequent request.

Instead you should issue this letter within the 20 working day time limit.

In order for a request to be ‘repeated’ you should consider the following:

1. has the information requested changed since the earlier request?; and
2. have the circumstances changed since the earlier request?

If the answer to both questions is **no** then the request is likely to be a repeated request. The SIC has guidance available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx) to help you answer these questions.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002 – Repeated Request**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Your request is being processed under the Freedom of Information (Scotland) Act 2002.

I note from our records that you recently made an identical or substantially similar request to **[INSERT RSL NAME]**, and we provided you with the requested information on **[INSERT DATE]*.*** Since then, the information has not changed significantly. Under section 14(2) of FOISA we do not have to respond to repeated requests for information. As a result, we are not going to process your request on this occasion.

I would be happy to receive a similar request from you when sufficient time has elapsed for the information to change **[INSERT SUGGESTED TIME FRAME]*.***

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in a recordable format (email, letter, audio tape etc.)
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

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St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS**

**Request is manifestly unreasonable (EIR Only) – Guidance Notes**

You may refuse to disclose environmental information under the EIRs where a request is manifestly unreasonable. There is no set definition of ‘manifestly unreasonable’ and there are a range of factors that you should consider. The SIC has guidance on this provision and how to determine if a request is manifestly unreasonable available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Manifestly_unreasonable_requests.aspx).

Broadly speaking, this provision operates in a similar way to the vexatious request provision in FOI - in that it provides RSLs with way of dealing with requests that impose a significant burden or lack serious purpose or value. Keep in mind that, despite being similar to the vexatious request provision, **it is not identical.**

One key difference is that this exception is subject to the Public Interest Test. This means that there may be circumstances where you will still need to disclose environmental information in response to a request where the public interest favours disclosure. The SIC has issued guidance on the public interest test under EIR which is available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/ThePublicInterestTest/ThePublicInterestTestEIRs.aspx).

If you determine that a request is manifestly unreasonable then you must send this response out within the 20 working day statutory time limit (or the extended time limit if you have determined this applies).

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Environmental Information (Scotland) Regulations 2004 – Manifestly Unreasonable Request**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Your request has been considered under the provisions of the Environmental Information (Scotland) Regulation 2004.

Under Regulation 10(4)(b) of the Regulations, we do not have to fulfil requests which can be termed as manifestly unreasonable. After careful consideration, we have concluded that your request falls into this category because **[INSERT REASONS - INCLUDING A DETAILED EXPLANATION AS TO WHY THE PUBLIC INTEREST BALANCE FALLS IN FAVOUR OF WITHHOLDING RATHER THAN RELEASE].**

As a result, we will not be processing your request for information on this occasion.Please note that this letter constitutes a formal refusal notice under Regulation 13 of the Environmental Information (Scotland) Regulations 2004**.**

**[IF MANIFESTLY UNREASONABLE DUE TO EXCESSIVE COSTS]** *[You may wish to refine and resubmit your request so that it reduces the cost of providing the information. Please contact me for further advice on refining your request quoting the reference number above.]*

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in writing.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

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**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Information not held – Guidance Notes**

If a requester requests information that you do not hold, you must issue a notice to them to explain that the information is not held by you. You should also ensure that you include the reasons why you do not hold the information e.g. another party holds the information or the information has been destroyed in line with your retention and destruction policy. This template letter will assist you with this and should be sent out within the statutory time limits.

If another party holds the information, tell the requester this and give them sufficient information to be able to request the information from the party that does hold it. If a request falls under the EIRs, and you do not hold the information but you know who does, you should offer to transfer the request to the party who does hold the information in line with the Section 60 Code of Practice.

Where you are using this template, it is recommended that you keep details of whatever searches for the information you have carried out, because you may need to provide this to the SIC if the requester is unhappy with your response and asks for a review.

Remember, where you are dealing with a request under the EIRs this exception is subject to the Public Interest Test.

You must, in your response to requesters explain: how you have applied the Public Interest Test and why the public interest favours withholding. It can be difficult to understand how to apply the Public Interest Test when dealing with this exemption.

Generally, the SIC has held that where a Public Authority does not hold the information requested there is no conceivable public interest in making said information available. Therefore, the public interest in maintaining the relevant exception would outweigh the public interest in disclosure. This may be how you want to address the public interest test in your response letters.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Information not held**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Your request is being processed under the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004].**

Unfortunately, we are unable to provide you with the information requested as it is not held by **[INSERT NAME OF RSL].**

**[INSERT EXPLANATION AS TO WHY THE INFORMATION IS NOT HELD, e.g. BECAUSE RSL DOES NOT RECORD THAT INFORMATION, OR IT IS HELD BY ANOTHER AUTHORITY – IF YOU ARE HANDLING THE REQUEST UNDER THE EIRS THIS SHOULD INCLUDE AN EXPLANATION AS TO WHY THE PUBLIC INTEREST BALANCE FALLS IN FAVOUR OF WITHHOLDING RATHER THAN RELEASE. IF YOU KNOW WHO DOES HOLD THE INFORMATION YOU MUST GIVE THE REQUESTER SUFFICIENT INFORMATION TO ENABLE THEM TO MAKE A REQUEST TO THE PERSON WHO HOLDS SUCH INFORMATION AND IF DEALING WITH THE REQUEST UNDER EIR ASK THE REQUESTER TO LET YOU KNOW IF THEY WOULD LIKE YOU TO TRANSFER THE REQUEST].**

**[[IF FOI]** Please note that this letter constitutes a formal refusal notice under Section 17(1) of the Freedom of Information (Scotland) Act 2002*.***]**

**[[IF EIR]** Please note that this letter constitutes a formal refusal notice under Regulation 13 of the Environmental Information (Scotland) Regulations 2004**.]**

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

**Email: [INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in **[[IF FOI]** a recordable format (email, letter, audio tape etc.)**][[IF EIR]** in writing**]**
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Fees Notice – Guidance Notes**

Under both FOI and EIRs you may charge requesters a fee for complying with their requests. However, fees are dealt with differently under each regime. Because of this there are separate template letters for you to use when you are charging a fee under FOI and charging a fee under EIR. The information below is intended to assist you with using the template letters.

**FOI**

Fees must be handled in accordance with the Freedom of Information (Fees Required for Disclosure) (Scotland) Regulations 2004 (the “Fees Regulations”).

In accordance with the Fees Regulations you may only charge for locating, retrieving and providing requested information (so for example, staff time spent searching files/computer systems and redacting documents).

When calculating charges you must consider: how many staff members will be required to deal with the request; how long will it take them to carry out the required tasks; and what is their hourly rate (capped at £15.00 per hour). Remember that you cannot charge your total costs for complying with a request. Where it costs you less than £100.00 to comply with a request you cannot charge the requester and where it your costs amount to between £100.00 - £600.00 you may only charge 10% of your costs.

You should refer to the Fees Regulations and the SIC’s guidance, available here, for more information on how to deal with [charges](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees_and_charging/ChargingFOISA.aspx) under FOI.

The template letter below is intended to assist you when issuing a fee notice under FOI. You will see that you must clearly set out in the letter how the fee you are charging has been calculated.

**EIR**

You may charge a ‘reasonable amount’ for complying with requests under the EIR – however the charge should not exceed your costs for producing the information requested. Keep in mind that charges may not be applied for allowing people to access Environmental Information via public registers or at a place where you keep said information available for inspection (for example at your office).

Information about what you charge under the EIRs should be publicly available in your Schedule of Fees. **If you do not publish this then you are not able to charge** for dealing with requests under the EIRs

The SIC has more guidance available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees_and_charging/ChargingEIRs.aspx) on charging under the EIRs. You should review this when determining whether or not to charge a fee.

The template letter below is intended to assist you when you issuing a fee notice under the EIRs. You will see that you must clearly set out in the letter how the fee you are charging has been calculated. This should be done in accordance with your Schedule of Fees. You may want to adopt the approach taken in the FOI Template Letter and set the information out in a table – however it is ultimately up to you to decide how this should be done.

The template letter has assumed that when you are issuing the Fee Notice, you have not determined that you will need to extend the 20 working day time limit.

**General Points**

Where you are charging a fee this letter should be issued to the requester **as soon as possible**, and in any event within the statutory timescales under FOI and EIR.

When you issue this template letter to a requester the statutory deadline for responding to their Information Request stops and will resume when the requester makes payment. You no longer have any obligation to comply with the Information Request if the requester does not respond to this template letter within:

* 3 months of the date of the letter under FOI; or
* 60 working days under the EIRs

Generally, where you issue this letter and receive no response after 20 working days you should remind the requester that you cannot proceed with their request until they respond.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002 – Fees Notice**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Your request is being processed under the Freedom of Information (Scotland) Act 2002.

Under section 9 of the Act*,* we can make a charge for providing information when the total costs to **[INSERT RSL NAME]** of doing so exceeds £100. We can charge 10% of any amount over £100. We have calculated that in this case the total cost of complying with your request is **[INSERT TOTAL COST]** meaning a total charge to you of **[INSERT TOTAL CHARGE].**

This sum has been calculated as follows:

**Description of costs**

**[INSERT IN THE TABLE BELOW A DESCRIPTION OF WORK, INCLUDING THE NUMBER OF RECORDS, (HARD COPY AND ELECTRONIC), AND THE ESTIMATED TIME CHECKING EACH RECORD, CHARGE PER HOUR, REPRODUCTION COSTS BASED ON NUMBER OF RECORDS TO COPY AND TOTAL COSTS]**

|  |  |
| --- | --- |
| Estimated number of records to be located, retrieved and provided |  |
| Number of staff hours involved |  |
| Charge per hour | **£[INSERT COST UP TO £15]** |
| Reproduction costs for copying information to be able to provide it to the requester at **[INSERT PHOTOCOPYING AND PRINTING COST PER PAGE]** |  |
| Total Cost |  |
| Less first £100 which is exempt from charge |  |
| Total Chargeable Amount (10%) |  |

Please note that the 20 working days limit is suspended and no information can be provided until payment is received. Payment can be made through **[INSERT HOW TO MAKE PAYMENT – TAKING INTO ACCOUNT YOUR OWN POLICIES APPLICABLE TO RECEIVING PAYMENTS ETC.]*.*** If payment has not been received within three months, we will assume that you are no longer seeking the information you have requested and will take no further action.

It may be possible to provide you with a portion of the information without a charge. If you wish to discuss this option further, or have any other queries about the fees notice, please do not hesitate to contact me. Please remember to quote the reference number above in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

**Email: [INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in a recordable format (email, letter, audio tape etc.)
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Environmental Information (Scotland) Regulations 2004 – Fees Notice**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Your request is being processed under Environmental Information (Scotland) Regulations 2004.

Prior to releasing this information, the Regulation 8 of the Environmental Information (Scotland) Regulations 2004 allows **[INSERT RSL NAME]** to charge a fee. There is no upper or lower fee limit in the Environmental Information (Scotland) Regulations 2004 however our fees will not exceed a reasonable amount and will not our actual costs of producing the information requested.

We have calculated in this case that the total charge to you shall be **[INSERT TOTAL CHARGE].**

This sum has been calculated as follows:

**Description of Costs**

**[INSERT DETAILS OF HOW THE CHARGE HAS BEEN CALCULATED. THIS SHOULD BE IN ACCORDANCE WITH YOUR SCHEDULE OF FEES AND PROVIDE SUFFICIENT DETAIL IN ORDER TO ALLOW REQUESTERS TO UNDERSTAND HOW THE FIGURE HAS BEEN REACHED]**

Please note that the 20 working days limit is suspended and no information can be provided until payment is received. Payment can be made through **[INSERT HOW TO MAKE PAYMENT – TAKING INTO ACCOUNT YOUR OWN POLICIES APPLICABLE TO RECEIVING PAYMENTS ETC.]*.*** If payment has not been received within 60 working days, we will assume that you are no longer seeking the information you have requested and will take no further action.

It may be possible to provide you with a portion of the information without a charge. If you wish to discuss this option further, or have any other queries about the fees notice, please do not hesitate to contact me. Please remember to quote the reference number above in any future communications.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

**Email: [INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in writing.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

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Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Excessive Cost (FOI only) – Guidance Notes**

Under FOI, where it will cost you more than £600.00 to respond to a request you are not obliged to comply. This letter is intended to assist you with notifying requesters when the £600.00 cost-cap has been exceeded and you wish to refuse their request on this basis. You must issue this letter to a requester within the 20 working day time limit.

When responding to requesters you should include an estimate of the cost of complying with the request. You can use this estimate to assist you in any subsequent review requests you receive or in the event that an appeal made to SIC regarding your decision to refuse the request on the grounds of excessive costs. The SIC has guidance available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees_and_charging/ChargingFOISA.aspx) on refusing requests due to excessive costs.

Remember, you have an obligation to advise and assist requesters so that they can access the information they want. This would include providing advice on, or assisting a requester with, narrowing their request so that it can be brought under the £600.00 limit.

If a narrower request is submitted you should treat this as a new request

You cannot use this letter for requests under EIR as there is **no cost-cap** applicable under these Regulations. However, it may be that where the cost of responding to a request under the EIR is excessive, you could treat the request as ‘manifestly unreasonable’ and use the applicable template letter. The SIC has guidance available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Manifestly_unreasonable_requests.aspx) that provides more details on manifestly unreasonable requests.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002 – Excessive Cost**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

Unfortunately, we are unable to provide you with the information you have requested as the cost to **[INSERT RSL NAME]** of locating, retrieving and providing you with the information is greater than the statutory maximum of £600.

Section 12 (1) and Section 16 (4) of the Act does not oblige us to comply with a request for information if we estimate that the cost of complying with the request would exceed the statutory limit.

The total cost of complying with your request is **£[INSERT TOTAL COST]**

The sum has been calculated as follows:

**Description of costs**

**[INSERT IN THE TABLE BELOW A DESCRIPTION OF WORK, INCLUDING THE NUMBER OF RECORDS, (HARD COPY AND ELECTRONIC), AND THE ESTIMATED TIME CHECKING EACH RECORD, CHARGE PER HOUR, REPRODUCTION COSTS BASED ON NUMBER OF RECORDS TO COPY AND TOTAL COSTS]**

|  |  |
| --- | --- |
| Estimated number of records to be located, retrieved and provided |  |
| Number of staff hours involved |  |
| Charge per hour | **£[XX UP TO £15]** |
| Reproduction costs for copying information to be able to provide it to the requester at **[INSERT PHOTOCOPYING AND PRINTING COST PER PAGE]** |  |
| Total Cost | **£** |

You may wish to refine and resubmit your request so that it reduces the cost to within the prescribed limit (under £600). **[IF POSSIBLE PROVIDE CLEAR ADVICE HERE AS TO HOW THE REQUESTER COULD NARROW THEIR REQUEST].** Please contact me for further advice on refining your request quoting the reference number above.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in a recordable format (email, letter, audio tape etc.)
* You have 40 working days upon receipt of this letter to ask for a review.
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Website [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Information Being Withheld (Absolute Exemption) – Guidance Notes**

Under both FOI and EIR there will be situations where you are entitled to withhold information and can do so without carrying out the Public Interest Test.

This template letter is intended for use in these cases and should be sent out within the applicable statutory time limits. When you are responding you will need to explain:

1. exactly which section of the Act (if FOI) or Regulation (if EIR) allows you to withhold the information and specifically which document/ piece of redacted information it applies to;

1. why the exemption/exception applies (if not otherwise apparent)

The template letter has sections for you to fill out this information.

You will only be able to use this letter in certain circumstances. The information below is intended to assist you with determining when it will be appropriate to do so – **however keep in mind that you must assess each information request on its own merits, according to the circumstances applicable at the time the request is received**.

**FOI**

Under FOI, information may be withheld if it is ‘exempt’ from disclosure. There are many exemptions under FOI, however there are two broad categories of exemptions: ‘Absolute Exemptions’ and ‘Qualified Exemptions’ as described below. This letter is intended to be used for ‘Absolute Exemptions’.

Where you are relying on ‘Absolute Exemption’ you only need to establish that the exemption applies to the information in question in order to withhold said information. You do not need to carry out a ‘Public Interest Test’ as you must do with Qualified Exemptions.

The following Exemptions are Absolute Exemptions:

1. Information otherwise accessible (Section 25 of the Act): you may use this exemption where the information requested is already accessible through your Guide to Information. There is a separate template letter for this exemption.

1. Prohibitions on disclosure (Section 26 of the Act): this allows you to withhold information where you are prohibited to do so by law (for example by a piece of legislation or a court order).

1. Confidentiality (Section 36(2) of the Act): information can be withheld where you could be successfully sued in court for breaching an obligation of confidentiality. An example of this may be where information regarding tender submissions is requested before completion of the tendering process.

1. Where the requester has asked for their own personal data (Section 38(1)(b) of the Act): this may happen as people incorrectly make Subject Access Requests under FOI. In these circumstances their request should be rejected under FOI but handled as a Subject Access Request in accordance with the GDPR/Data Protection Act 2018.

1. Where disclosure of the requested information (where that information is personal data) would breach the data protection principles (Section (38)(1)(b) of the Act): for example you may be able to use this exception where someone requests details of disciplinary investigations carried out against staff members.

1. Where the information requested is personal census information (Section 38(1)(c) of the Act) or a deceased person’s health record (Section 38(1)(d) of the Act)

The SIC has detailed guidance on all of the above exemptions available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx). **You should refer to the SIC guidance and the terms of the Act when determining if these exemptions apply.**

**EIR**

Generally, you will need to apply the Public Interest Test when withholding information under the EIRs – unless the information requested relates to personal data. In these cases you can withhold information without carrying out the Public Interest Test where:

1. the requester has asked for their own personal data (Regulation 11(1)) – as above requests of this nature should be rejected under EIRs and dealt with as a Subject Access Request;

1. the information requested includes personal data and disclosure would breach the data protection principles (Regulation 11(2)).

The provisions of Regulation 11 read in alongside the provision of Regulation 10(3) allow you to withhold personal data under the EIRs.

The SIC has guidance on when you can refuse to provide information in accordance with these regulations available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/EIRsexceptionbriefings/Regulation11/Regulation11PersonalInformation.aspx). **You should refer to the SIC guidance and the terms of the Regulations when deciding to whether or not to withhold information under the EIRs**.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Refusal Notice**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**
2. **[INSERT QUESTION/INFORMATION REQUESTED HERE]**

This has been processed under the **[Freedom of Information (Scotland) Act 2002] [OR]** **[Environmental Information (Scotland) Regulations 2004]** .Your request has been considered and, although we hold the requested information, it is not possible to provide you with the information you have requested on this occasion.

Under the terms of the legislation, a request for information can be refused where one or more **[IF FOI]** [*exemptions*] **[OR] [IF EIR]** [*exception*s] listed in the legislation apply. In this instance, **[INSERT RSL NAME]** is applying the following **[IF FOI]** [*exemptions*] **[OR] [IF EIR]** [*exception*s] to the information that you have requested:

**[INSERT NAME OF EXEMPTION(S)/ EXCEPTION(S) AND SECTION(S) OF ACT/REGULATIONS. IN LINE WITH SECTION 16 OF THE ACT/ REGULATION 13 OF THE EIRS. EXPLAIN WHY EACH EXEMPTION/EXCEPTION APPLIES TO THE WITHHELD INFORMATION].**

Please note that this letter constitutes a formal refusal notice under **[Section 16 of the Freedom of Information (Scotland) Act 2002] [OR] [Regulation 13 of the Environmental Information (Scotland) Regulations 2004]**.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in **[**[**IF FOI]** a recordable format (email, letter, audio tape etc.)**]** **[[IF EIR]**] writing.**]**
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Information Being Withheld – Qualified Exemption**

This letter should be used where you are withholding information and have had to carry out the Public Interest Test in order to determine that you are entitled to do so.

Where you have established that you are entitled to withhold requested information this letter should be issued to the requester as soon as possible, and in any event, within the applicable statutory time limits.

When you are responding you will need to explain:

1. exactly which part of the Act (if FOI) or Regulations (if EIR) allows you to withhold the information and specifically which document/ piece of redacted information it applies to;

2. why the exemption/exception applies (if not otherwise apparent)

3. why the public interest favours maintaining the exemption/exception. If you are dealing with the Request under EIRs and apply more than one exception, you must state your public interest arguments in relation to each exception applied AND then explain separately why, collectively, the public interest in maintaining the exceptions outweighs the public interest in disclosure.

You will see that the template has sections for you to fill out this information.

You will only be able to use this letter in certain circumstances. The information below is intended to assist you with determining when it will be appropriate to do so – **however keep in mind that you must assess each information request on its own merits, according to the circumstances applicable at the time the request is received.**

**FOI**

Under FOI, information may be withheld as it is ‘exempt’ from disclosure. There are many exemptions under FOI, however there are two broad categories of exemptions: ‘Absolute Exemptions’ and ‘Qualified Exemptions. This letter is intended to be used for ‘Qualified Exemptions’ as described below.

Where you are relying on a Qualified Exemption you must first establish that the exemption applies to the information in question. You then need to carry out a ‘Public Interest Test’. Where you can determine that the public interest favours withholding the information you may then proceed to notify the requester that you will not provide them with the requested information. Where the public interest favours disclosure – you must release the information. The SIC has guidance on carrying out the Public Interest Test available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/ThePublicInterestTest/thePublicInterestTestFOISA.aspx) that you should refer to when dealing with Qualified Exemptions.

Below are some examples of Qualified Exemptions which RSLs may wish to rely on when dealing with FOI requests. **This list is not exhaustive and is only intended to illustrate some exemptions which RSLs may routinely use**:

1. Information Intended for Future Publication – (Section 27 of the Act): this allows you to, where it is reasonable to do so, refuse to disclose information where you intend to publish it within 12 weeks of receiving a request.
2. Prejudice to effective conduct of public affairs – (Section 30 of the Act): where disclosure of information would prejudice the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation or the effective conduct of public affairs, then it may be withheld.
3. Commercial Interests and the Economy – (Section 33 of the Act): this exemption can be used to withhold information numerous circumstances. For RSLs the most relevant is where disclosure of requested information is likely to cause substantial prejudice to a party’s commercial interests. This, for example, might be where someone has requested information relating to your contracts with contractors or information you have obtained during a procurement exercise.
4. Law Enforcement – (Section 35 of the Act): this allows you to withhold information in a wide range of circumstances. For RSLs the most relevant is likely to be where disclosure of requested information would substantially prejudice the detection or prevention of a crime as this may cover circumstances which, where information was released, could put an RSL at risk of crime (for example where information about office security alarm systems are requested).
5. Confidentiality – (Section 36(1) of the Act): you may withhold information where the information requested is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. For example, this could relate to legal advice obtained from solicitors.
6. Health, safety and the environment – (Section 39 of the Act): allows you to withhold information where disclosure may endanger the physical or mental health or safety of an individual or if the information requested is Environmental Information (and therefore subject to EIR)

The SIC has detailed guidance on all of the Qualified Exemptions available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx). **You should refer to this guidance and the terms of the Act when determining if these exceptions apply.**

**EIR**

Under EIR, information may be withheld as it is ‘excepted’ from disclosure. The majority of exceptions under the EIR are subject to the Public Interest Test.

Where you are relying on these exceptions under the EIR you must first establish that the exception applies to the information in question. You then need to carry out a ‘Public Interest Test’. Where you can determine that the public interest favours withholding the information you may then proceed to notify the requester that you will not provide them with the requested information. Where the public interest favours disclosure – you must release the information. The SIC has issued guidance on carrying out the Public Interest Test which is available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/ThePublicInterestTest/ThePublicInterestTestEIRs.aspx) and which you should refer to when dealing with exceptions under the EIR.

Below are some examples of exceptions which RSLs may wish to rely on when dealing with FOI requests. **This list is not exhaustive and is only intended to illustrate some exceptions which RSLs may routinely use**:

1. Material in the course of completion – (Regulation 10(4)(d): may allow you to withhold information where it is unfinished but will be completed within some reasonable time frame. For example, this may apply where you have been asked for details of environmental surveys which are being carried out.
2. Internal Communications – (Regulation 10(4)(e): allows you to withhold internal communications such as email exchanges or file notes.
3. Intellectual Property Rights – (Regulation 10(5)(c): where the requested information is protected by IP rights you are able to withhold the information where disclosure would substantially prejudice those rights.
4. Confidentiality of commercial or industrial information – (Regulation 10(5)(e)): where the information requested is commercial or industrial and you are subject to a legally binding duty of confidentiality in respect of said information – then you may be able to withhold it. This may apply where someone requests information that relates to contracts with your contractors. Please note you cannot use this exception where the information requested relates to emissions.
5. Third party interests – (Regulation 10(5)(f): where you receive information voluntarily from third parties with the expectation that said information would not be disclosed, then this exception may apply. For example, this exception might be used where an information request relates to information collected from tenants via a survey. Please note you cannot use this exception where the information requested relates to emissions.

The SIC has guidance on some of the exceptions available [here](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx). **You should refer to this guidance and the terms of the Regulations when determining if these exceptions apply.**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Refusal Notice**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED].** In your request you asked for:

1. **[INSERT DETAILS OF REQUEST]**
2. **[INSERT DETAILS OF REQUEST]**

Your request has been processed under the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004].**

Your request for information has been considered and it is not possible to meet your request. Unfortunately, it is not possible to meet your request.

Under the terms of the legislation, a request for information can be refused where one or more [**[FOR FOI]** exemptions] [**[FOR EIR]** exceptions] listed in the legislation apply. In this instance, **[INSERT RSL NAME]** is claiming the following [**[FOR FOI]** exemption(s)] [**[FOR EIR]** exception(s)] to the information that you have requested:

**[INSERT NAME OF EXEMPTION/EXCEPTION AND SECTION OF ACT/RELEVANT REGULATION. EXPLAIN WHY THE EXEMPTIONS/EXCEPTIONS APPLY TO THE WITHHELD INFORMATION - INCLUDING A DETAILED EXPLANATION AS TO WHY THE PUBLIC INTEREST BALANCE FALLS IN FAVOUR OF WITHHOLDING RATHER THAN RELEASE**

**IF EIR EXECEPTION AND YOU ARE APPLYING MORE THAN ONE EXCEPTION, YOU MUST STATE YOUR PUBLIC INTEREST ARGUMENTS IN RELATION TO EACH EXCEPTION APPLIED AND THEN EXPLAIN WHY, COLLECTIVELY, THE PUBLIC INTEREST IN MAINTAINING THE EXCEPTIONS OUTWEIGHS THAT IN DISCLOSING THE INFORMATION]**

Please note that this letter constitutes a formal refusal notice under **[Section 16 of the Freedom of Information (Scotland) Act 2002] [OR] [Regulation 13 of the Environmental Information (Scotland) Regulations 2004]**.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in [**[FOR FOI]** a recordable format (email, letter, audio tape etc.)**]** **[[FOR EIR]** in writing**]**.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Refusal as information requested is not covered by order – Guidance Notes**

Only certain RSL and subsidiary functions are covered by FOI and EIR – these being:

* + the prevention and alleviation of homelessness
  + the management of social housing accommodation (for which an RSL has granted a Scottish secure tenancy or short Scottish secure tenancy)
  + the provision and management of sites for gypsies and travellers
  + the supply of information from an RSL to the Scottish Housing Regulator (SHR) in relation to its financial well-being and standards of governance

Where an information request does not relate to these functions you are not obliged under FOI or EIR to provide the information.

Whilst it is always preferable to provide information where you can, there may be situations where you do not wish to do so.

This template letter can be used in these circumstances.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Following a further assessment of your request for information dated **[INSERT DATE OF REQUEST]** which we received on **[INSERT DATE RECEIVED]** we have determined that the information you have requested does not fall within the scope of the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order).

The Order is the piece of legislation which makes **[INSERT RSL NAME]** subject to FOI and sets out that only certain functions which we carry out are covered by the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]** .

As the information requested does not relate to any of the functions specified in the Order we are not legally required to provide you with the information. However **[INSERT RSL NAME]** is continually striving to be open and transparent and would generally look to make available information about  
our work and services. Whilst we believe that responding to requests for additional information plays an important part in ensuring this we do not want to divert resources from providing services to tenants. Therefore we assess  
on a case by case basis whether or not it would be reasonable to provide  
the information requested, even though we are not legally obliged to do  
so.

Unfortunately in this case we will not be providing you with the information you have requested.

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in [**[When dealing with a request under FOI]** *a recordable format (email, letter, audio tape etc.)*][**[When dealing with a request under EIR]** [*in writing*] and should state that you are asking for a review of this decision and why you are unhappy with the decision made.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

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Kinburn Castle

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St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

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You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

Website www.itspublicknowledge.info

Further information about your rights and accessing information is available on our website here **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Information withheld as subsidiary not covered by FOI/EIR – Guidance Notes**

Some RSL subsidiaries will be subject to FOI/EIR. This is determined by:

* The level of control that the RSL parent has over the subsidiary; and
* The functions that the RSL subsidiary carries out (as they need to carry out functions specified in the Order to be subject to FOI/EIR)

Most RSLs will have determined which of their subsidiaries (if any) will be subject to FOI/EIR before 11 November 2019. However if you have any questions the SIC has guidance on this which is available [here](http://www.itspublicknowledge.info/ScottishPublicAuthorities/NewAuthorities/RSLsandsubsidiaries.aspx).

Where an information request does not relate to a subsidiary covered by the order, you are not obliged under FOI or EIR to provide the information.

Whilst it is always preferable to provide information where you can, there may be situations where you do not wish to do so.

This letter can be used where your subsidiary is not providing the requested information.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Following a further assessment of your request for information dated **[INSERT DATE OF REQUEST]** which we received on **[INSERT DATE RECEIVED].**

**[INSERT SUBSIDIARY NAME]** is not currently subject to the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]**; therefore we are not legally obliged to provide you with the information requested.

However **[INSERTSUBSIDIARY NAME]** is continually striving to be open and transparent and would generally look to make available information about  
our work and services. Whilst we believe that responding to requests for additional information plays an important part in ensuring this we do not want to divert resources from providing services to **[INSERT RELEVANT STAKEHOLDERS E.G. TENANTS OF PARENT RSL, COMMUNITY MEMBERS ETC.]**. Therefore we assess on a case by case basis whether or not it would be reasonable to provide  
the information requested, even though we are not legally obliged to do  
so.

Unfortunately in this case we will not be providing you with the information you have requested.

If you are unhappy with our response please contact:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Request for Third Party Information**

The Section 60 Code of Practice has guidance on determining when consultation with third parties should take place and how this should be carried out. You should refer to the guidance in the Code whenever an information request relates to information that relates or a third party or has been supplied by them.

You should use this letter if the information requested has been supplied by a third party or relates to a third party. You are notifying the third party of the request and giving them the opportunity to respond. This is particularly important in two circumstances:

1. where you are seeking to rely on an exemption or exception which maintains that information cannot be released as its disclosure will cause substantial prejudice to a third party. The SIC has advised that, where a Public Authority relies on this argument and the requester appeals to the SIC, it is not enough for the Public Authority to speculate on the harm that might be caused to the third party. Instead, the third party itself should make representations as to how likely it is that disclosure will bring about prejudice and how severe this prejudice might be. This letter allows you to obtain those representations from a relevant third party.
2. where disclosure of the information may result in you breaching an obligation of confidentiality or any data protection laws.

This letter will likely be of use where a request relates to information that has been received during a procurement exercise or relates to a contract with an external contractor.

It is important to note that the 20 working day timescale (or, where applicable the extended timescale available under EIRs) still applies here, so you should ensure that you contact the third party regarding the request within those 20 working days and ideally **as soon as possible**.

You will see that the letter allows you to insert a deadline by which the third party needs to respond. It is still your responsibility to adhere to the statutory timescales, so it is important to ensure that the deadline you give still allows you to respond to the request within the 20 working day timescale.

Remember, whilst it is good practice to consult with third parties where an information request relates to them, **this should not lead to a failure to respond within the statutory timescales.** Where it is impossible to consult with a third party and meet these timescales or the third party fails to respond timeously, this will not relieve you of your obligation to respond within the time limits.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF THIRD PARTY]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Release of Third-Party Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

We have received a request for information which is being processed under the terms of the **[Freedom of Information (Scotland) Act 2002] [OR]** [**Environmental Information (Scotland) Regulations 2004].** Under this legislation, applicants have a right of access to information that **[INSERT RSL NAME]** holds, unless information requested has been supplied by a third party or relates to a third party **[IF FOI]** [*exemptions*] **[OR] [IF EIR]** [*exception*s] applies.

The applicant has asked for information relating to **[INSERT BRIEF DESCRIPTION OF INFORMATION RELATING TO OR SUPPLIED BY THIRD PARTY]*.*** As the information requestedwas **[supplied by/relates to you (DELETE AS APPROPRIATE)]**, I am writing to seek yourviews on its disclosure to the applicant. I enclose a copy for your consideration.

If you think there are any issues which should be considered when determining whether this information should be disclosed, or you consider it to be of a sensitive nature please let me know by **[INSERT DATE],**quoting the reference number above. All relevant factors will be considered in our decision on whether the information is required to be disclosed.

Please note that the applicant has the right to challenge any non-disclosure decisions that we make. This means that we cannot guarantee that this information will not be disclosed.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**



**Partial Release of Information – Guidance Notes**

An Information Request may cover a range of information, some of which you are happy to disclose and some of which you will need to withhold or have already published. It may also be that an Information Request relates to a mixture of information that you do and do not hold.

In these circumstances you should consider the component parts of the Information Request and:

* release information that you are able to disclose;
* explain to the requester why some of the information will have to be withheld (by specifying what exceptions/exemptions apply and why you believe this to be the case – including, where applicable, demonstrating why the public interest favours withholding said information)
* tell the requester where to access any information which is already accessible

This letter is intended to assist you in responding to requests of this nature.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Partial Release of Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED**], which has been processed under the terms of the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]***.*Unfortunately, **[INSERT RSL NAME]** is only able to meet part of your request. The information you asked for **[INSERT DETAILS OF INFORMATION REQUESTED]** is released to you now in the format requested as per the below:

**[INSERT INFORMATION/DETAILS OF HOW THIS IS PROVIDED AS APPROPRIATE].**

**[THEN INSERT AND DELETE AS APPLICABLE FROM 3 OPTIONS BELOW]**

**[OPTION 1]**

***[INSERT RSL NAME]*** *does not hold the following information that you requested:*

***[INSERT DESCRIPTION OF INFORMATION NOT HELD. INSERT EXPLANATION AS TO WHY THE INFORMATION IS NOT HELD, e.g. BECAUSE RSL DOES NOT RECORD THAT INFORMATION, OR IT IS HELD BY ANOTHER AUTHORITY – IF YOU ARE HANDLING THE REQUEST UNDER THE EIRS THIS SHOULD INCLUDE AN EXPLANATION AS TO WHY THE PUBLIC INTEREST BALANCE FALLS IN FAVOUR OF WITHHOLDING RATHER THAN RELEASE. IF YOU KNOW WHO DOES HOLD THE INFORMATION YOU MUST GIVE THE REQUESTER SUFFICIENT INFORMATION TO ENABLE THEM TO MAKE A REQUEST TO THE PERSON WHO HOLDS SUCH INFORMATION AND IF DEALING WITH THE REQUEST UNDER EIR ASK THE REQUESTER TO LET YOU KNOW IF THEY WOULD LIKE YOU TO TRANSFER THE REQUEST]***

*[****IF FOI]*** *[Please note that this letter constitutes a formal refusal notice under Section 17(1) of the Freedom of Information (Scotland) Act 2002.]*

***[IF EIR]*** *[Please note that this letter constitutes a formal refusal notice under Regulation 13 of the Environmental Information (Scotland) Regulations 2004.]*

**[OPTION 2]**

*The information that you asked for regarding* ***[INSERT DESCRIPTION OF INFORMATION]*** *will not be released. Under the terms of the [Act]* ***[OR]*** *[Regulations]], a request for information can be refused where one or more* ***[IF FOI]*** *[exemptions]* ***[OR] [IF EIR]*** *[exceptions] listed in the legislation apply.*

*In this instance,* ***[INSERT RSL NAME]*** *is applying the following [IF FOI] [exemption(s)] [OR] [IF EIR] [exception(s)]to the information that you have requested:* ***[INSERT NAME OF EXEMPTION/EXCEPTION AND SECTION OF ACT/RELEVANT REGULATION AND EXPLAIN WHY THE EXEMPTION(S)/EXCEPTIONS APPLIES TO THE WITHHELD INFORMATION. IF A QUALIFIED EXEMPTION APPLIES OR THE EXCEPTION IS SUBJECT TO THE PUBLIC INTEREST TEST - INCLUDE A DETAILED EXPLANATION AS TO WHY THE PUBLIC INTEREST BALANCE FALLS IN FAVOUR OF WITHHOLDING RATHER THAN RELEASE. IF EIR EXECEPTION AND YOU ARE APPLYING MORE THAN ONE EXCEPTION, YOU MUST STATE YOUR PUBLIC INTEREST ARGUMENTS IN RELATION TO EACH EXCEPTION APPLIED AND THEN EXPLAIN WHY, COLLECTIVELY, THE PUBLIC INTEREST IN MAINTAINING THE EXCEPTIONS OUTWEIGHS THAT IN DISCLOSING THE INFORMATION]****.*

*Please note that this letter constitutes a formal refusal notice under [Section 16 of the Freedom of Information (Scotland) Act 2002]* ***[OR]*** *[Regulation 13 of the Environmental Information (Scotland) Regulations 2004].*

**[OPTION 3]**

*The information you have asked for regarding* ***[INSERT DESCRIPTION OF INFORMATION]*** *is available within our Guide to Information on our website here:* ***[INSERT LINK TO PUBLISHED INFORMATION].***

*If you do not have access to the Internet at home, you may be able to use facilities at your local public library or you can arrange to view at our office:*

***[INSERT ADDRESS]***

*[****[FOR FOI ONLY]***

*Under the terms of the Act, a request for information can be refused where one or more of the exemptions listed in the Act apply. In this instance,* ***[INSERT RSL NAME]*** *is claiming an exemption under section 25 of the Act because the information is ‘otherwise accessible’.*

*Please note that this letter constitutes a formal refusal notice under section 16 of the Freedom of Information (Scotland) Act 2002.*

*If you do have difficulty in accessing the information or if you have any queries about this letter, please contact me quoting the reference number above.]*

**[[FOR EIR REQEUESTS ONLY WHERE REQUESTERS HAVE ASKED TO RECEIVE INFORMATION IN A CERTAIN FORMAT AND YOU ARE NOT COMPLYING WITH THIS].**

*We note that you have requested the information to be sent to you by* ***[POST/EMAIL ETC.]*** *under the terms of the Regulations as information requested is already publicly available and easily accessible in another form or format we do not need to comply with this request. ]*

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in **[[FOR FOI REQUESTS ONLY]** a recordable format (email, letter, audio tape etc.)] **[[FOR EIR REQUESTS ONLY]** in writing.]
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Full Release of Requested Information – Guidance Notes**

This letter should be used when you are providing all of the information that has been requested in response to an Information Request.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Release of Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your request for information of **[INSERT DATE OF REQUEST]** which was received on **[INSERT DATE RECEIVED**], where you asked for: **[INSERT DETAILS OF REQUEST].**

Your request has been processed and considered under the terms of the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]***.* The information requested is provided below.

**[INSERT INFORMATION/DETAILS OF HOW THIS IS PROVIDED AS APPROPRIATE].**

Please note that this response constitutes full release under the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]***.*

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in **[[FOR FOI REQUESTS ONLY]** a recordable format (email, letter, audio tape etc.)] **[[FOR EIR REQUESTS ONLY]** in writing.]
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

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Kinburn Castle

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Fife

KY16 9DS

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS**

**Request not covered by FOI/EIRs but still providing information – Guidance Notes**

Only certain RSL and subsidiary functions are covered by FOI and EIR – these being:

* the prevention and alleviation of homelessness
* the management of social housing accommodation (for which an RSL has granted a Scottish secure tenancy or short Scottish secure tenancy)
* the provision and management of sites for gypsies and travellers
* the supply of information from an RSL to the Scottish Housing Regulator (SHR) in relation to its financial well-being and standards of governance

Where an information request does not relate to these functions you are not obliged under FOI or EIR to provide the information.

However, there may be many circumstances in which you are happy to disclose information requested even though you are not legally obliged to do so.

This Letter can be used in these circumstances. This letter can also be adjusted where you have a subsidiary which is subject to FOI/EIR but has been asked for information which is not covered by the Order.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Following a further assessment of your request for information dated **[INSERT DATE OF REQUEST]** which we received on **[INSERT DATE RECEIVED]** we have determined that the information you have requested does not fall within the scope of the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order).

The Order is the piece of legislation which makes **[INSERT RSL NAME]** subject to FOI and sets out that only certain functions which we carry out are covered by the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]** .

As the information requested does not relate to any of the functions specified in the Order we are not legally required to provide you with the information. However **[INSERT RSL NAME]** is continually striving to be open and transparent and would generally look to make available information about  
our work and services. Whilst we believe that responding to requests for additional information plays an important part in ensuring this, we do not want to divert resources from providing services to tenants.

Therefore we assess on a case by case basis whether or not it would be reasonable to provide the information requested, even though we are not legally obliged to do  
so.

In this case we have determined that we will be able to provide you with the information requested. The information requested is provided below.

**[INSERT INFORMATION/DETAILS OF HOW THIS IS PROVIDED AS APPROPRIATE].**

**Your right to seek a review**

If you have made a request and are unhappy with the response from us (or have not had a response), you have the right to request a review from us. You can do this by writing to the:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Please note:

* Your request must be in [**[When dealing with a request under FOI]** *a recordable format (email, letter, audio tape etc.)*][**[When dealing with a request under EIR]** [*in writing*] and should state that you are asking for a review of this decision and why you are unhappy with the decision made.
* You have 40 working days upon receipt of this letter to ask for a review.
* You will receive a full response to your review request within 20 working days of its receipt.
* Please quote the reference number above in any future communications.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

* You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

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Website www.itspublicknowledge.info

Further information about your rights and accessing information is available on our website here **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Subsidiary not covered by FOI/EIR but providing information – Guidance Notes**

Some RSL subsidiaries will be subject to FOI/EIR. This is determined by:

* The level of control that the RSL parent has over the subsidiary; and
* The functions that the RSL subsidiary carries out (as they need to carry out functions specified in the Order to be subject to FOI/EIR)

Most RSLs will have determined which of their subsidiaries (if any) will be subject to FOI/EIR before 11 November 2019. However if you have any questions the SIC has guidance on this available [here](http://www.itspublicknowledge.info/ScottishPublicAuthorities/NewAuthorities/RSLsandsubsidiaries.aspx).

Where an information request does not relate to a subsidiary covered by the order, you are not obliged under FOI or EIR to provide the information.

Whilst it is always preferable to provide information where you can, there may be situations where you do not wish to do so.

There may however be many circumstances in which you are happy to disclose information requested even though you are not legally obliged to do so.

This Letter can be used in these circumstances.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Information**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Following a further assessment of your request for information dated **[INSERT DATE OF REQUEST]** which we received on **[INSERT DATE RECEIVED].**

**[INSERT SUBSIDIARY NAME]** is not currently subject to the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]**; therefore, we are not legally obliged to provide you with the information requested.

However **[INSERT SUBSIDIARY NAME]** is continually striving to be open and transparent and would generally look to make available information about  
our work and services. Whilst we believe that responding to requests for additional information plays an important part in ensuring this we do not want to divert resources from providing services to **[INSERT RELEVANT STAKEHOLDERS E.G. TENANTS OF PARENT RSL, COMMUNITY MEMBERS ETC.]**. Therefore, we assess on a case by case basis whether or not it would be reasonable to provide  
the information requested, even though we are not legally obliged to do  
so.

In this case we have determined that we will be able to provide you with the information requested. The information requested is provided below.

**[INSERT INFORMATION/DETAILS OF HOW THIS IS PROVIDED AS APPROPRIATE].**

If you are unhappy with our response please contact:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**



**Acknowledgement of Review Request – Guidance Notes**

If a requester is unhappy with your response to their Information Request – they are entitled to ask you to review your decision.

A review is essentially an opportunity to assess how you have handled the request and ensure you have complied with the requirements of the legislation. This may involve carrying out further searches to see if you hold any information or reviewing your use of exemptions.

The Section 60 Code of Practice has guidance on carrying out reviews which you should follow if you are ever asked to review your response.

It is good practice to acknowledge a request for review as soon as possible. This template letter will assist you with this.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Request for Review**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your correspondence of **[INSERT DATE]**(received by us on **[INSERT DATE OF RECEIPT]** asking that **[INSERT RSL NAME]** reviews its handling of your request for information dated **[INSERT DATE OF ORIGINAL INFORMATION REQUEST].**

You requested a review as you were dissatisfied with **[INSERT REASONS FOR DISSATISFACTION EXPRESSED BY REQUESTER].**

I can confirm that **[INSERT RSL NAME]** will deal with your review promptly under the provisions of the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004].** You will receive a full response no later than 20 working days upon receipt of your request.

**Your right to seek a review**

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy with the response from us following the review outcome, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

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If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Review Request Invalid – Guidance Notes**

Requirements for validity of a request for review under EIR and FOI are set out below:

|  |  |
| --- | --- |
| **Requirements for validity under EIR** | **Requirements for validity under FOI** |
| Request must be in writing | Request must be in writing or in another recordable format |
| Request for review must be made no later than 40 working days after the date you respond to the request – OR – where you fail to respond to a request 40 working days after the end of the 20 working day period for complying with a request (or any applicable extended timescales under EIR). | Request must state the name of the requester and an address for correspondence |
|  | Request must specify the information to which the request relates and must specify why the requester is unhappy with how you dealt with their Information Request |
|  | Request for review must be made no later than 40 working days after the date you respond to the request – OR – where you fail to respond to a request 40 working days after the end of the 20 working day period for complying with a request. You may respond to late requests to review under FOI where it is reasonable to do so. |

Where you receive an invalid review request you must provide the requester with advice and assistance in order to help them make a valid request.

This template letter is intended to assist you in giving assistance to a requester who has submitted an invalid review request in order to enable them to submit a valid request. It may not be possible in all circumstances to assist the requester with this and you should modify this letter accordingly in these situations.

You should also review the guidance in the Section 60 Code of Practice whenever you are dealing with a review request.

This letter should be sent to the requester **as quickly as possible.** It may also be appropriate to contact the requester in other ways to quickly provide them with advice and assistance so that they can make a valid request.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Invalid Request for Review**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your correspondence of **[INSERT DATE]**(received by us on **[INSERT DATE OF RECEIPT]** asking that **[INSERT RSL NAME]** reviews its handling of your request for information dated **[INSERT DATE OF ORIGINAL INFORMATION REQUEST].**

Your request is being processed under the terms of the **[Freedom of Information (Scotland) Act 2002]** **[OR] [Environmental Information (Scotland) Regulations 2004].**

Under the terms of the **[Act] [OR] [Regulations]** a request for review must meet certain requirements. Unfortunately, on review of your request it is invalid under the terms of the **[Act] [OR] [Regulations]** as **[CLEARLY EXPLAIN HERE WHY THE REQUEST IS INVALID].** As we do not consider it to be a valid request, we are not obliged to respond to it.

You should also be aware that where you make an invalid request this may impact your ability to make an appeal to the Scottish Information Commissioner. Therefore, we want to help you with making a valid request.

If you can provide us with **[PROVIDE DETAILS OF WHAT IS REQUIRED IN ORDER TO MAKE A VALID REQUEST – HIGHLIGHTING TIMESCALE THAT REQUESTER WILL NEED TO RESPOND IN TO MEET REQUEST DEADLINES]** we will be able to fully consider your request and respond in accordance with the **[Act] [OR] [Regulations]**. This will also mean you are entitled to your full rights under the **[Act] [OR] [Regulations]** in respect of appealing to SIC if you are dissatisfied with how we handle your review request.

If you need any further assistance with making a valid request to **[INSERT RSL NAME]** please contact:

**[INSERT CONTACT NAME AND POSTAL ADDRESS]**

Email: **[INSERT E-MAIL ADDRESS]**

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Review not required as request vexatious/repeated (FOI Only) – Guidance Notes**

Where you have determined that the original Information Request (or the review request itself) is vexatious – or the original request was repeated - you do not need to carry out a review.

Where you decide not to respond to requests of this nature you must inform the requester within 20 working days of receiving the review request. This letter is intended to assist you with this.

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**Freedom of Information (Scotland) Act 2002– Vexatious Request**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Thank you for your correspondence of **[INSERT DATE]**(received by us on **[INSERT DATE OF RECEIPT]** asking that **[INSERT RSL NAME]** reviews its handling of your request for information dated **[INSERT DATE OF ORIGINAL INFORMATION REQUEST].**

Your request is being processed under the terms of the Freedom of Information (Scotland) Act 2002.

Under section 21(9) of the Act we do not have to carry out a review where **[the requirement to carry out a review is vexatious] [OR] [the initial request itself was [vexatious] [OR] [repeated]]**. After careful consideration, we have concluded that your request falls into this category because **[INSERT REASONS].**

As a result, we will not be processing your review request on this occasion.

**Your right to seek a review**

If you are unhappy with this review outcome, or the way we handled your request and review, you have a right of appeal to the Scottish Information Commissioner.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service. [www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal)

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

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

**Appeal to the Court of Session**

If you have appealed to the Scottish Information Commissioner and are unhappy with the decision they have made then you may be able to appeal to the Court of Session.

You can only do this where you think the Commissioner has incorrectly applied the law – not because you disagree with his decision.

If you are considering appealing to the Court of Session you should seek legal advice.

You can find further information on appealing to the Court of Session on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywithdecision.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Review successful – Guidance Notes**

When carrying out a review of how you handled an Information Request you should follow the procedure set out in the Section 60 Code of Practice.

There may be instances where, after carrying out a review, you determine that you have not handled the Information Request in accordance with the requirements of the legislation. In these situations, you should take immediate steps to remedy any breach – typically by providing further information to the requester that was originally withheld or not supplied.

The response should be sent out **as soon as possible,** and in any event within 20 working days of your receipt of the review request.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Review Outcome Successful**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Further to my letter of [insert date of acknowledgement letter] I have considered your request for a review in which you explained that you were dissatisfied that **[INSERT REASONS FOR DISSATISFACTION]**. Having carried out a review in accordance with the provisions of the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]** I can confirm that your appeal was successful.

The information requested is enclosed in the format requested.

**Your right to Appeal**

If you are unhappy with this review outcome or the way we handled your request and review, you have a right of appeal to the Scottish Information Commissioner.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service.

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

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

**Appeal to the Court of Session**

If you have appealed to the Scottish Information Commissioner and are unhappy with the decision they have made then you may be able to appeal to the Court of Session.

You can only do this where you think the Commissioner has incorrectly applied the law – not because you disagree with his decision.

If you are considering appealing to the Court of Session you should seek legal advice.

You can find further information on appealing to the Court of Session on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywithdecision.aspx).

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**

**Review Unsuccessful**

When carrying out a review of how you handled an Information Request you should follow the procedure set out in the Section 60 Code of Practice.

There may be instances where, after carrying out a review, you determine that you have complied with the requirements of the legislation and are not prepared to change your initial decision. This letter will assist you with notifying the requester of your decision.

The response should be sent out **as soon as possible,** and in any event within 20 working days of your receipt of the review request.

**[INSERT CONTACT NAME]**

**[INSERT CONTACT ADDRESS]**

Date:

Our ref:

Dear **[INSERT NAME OF APPLICANT]**

**[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004] – Review Outcome Unsuccessful**

**Subject: [INSERT ONE SENTENCE SUMMARY OF REQUEST]**

Further to my letter of [insert date of acknowledgement letter] I have considered your request for a review in which you explained you were dissatisfied that **[INSERT REASONS OF DISSATISFACTION]**. Having carried out a review in accordance with the provisions of the **[Freedom of Information (Scotland) Act 2002] [OR] [Environmental Information (Scotland) Regulations 2004]*,*** I can confirm that your appeal was unsuccessful.

The original decisions have been upheld **[INSERT ARGUMENTS SUPPORTING YOUR DECISION]**

I appreciate that this decision may be disappointing but hopefully there is sufficient information to explain why the original decision was upheld.

**Your right to seek a review**

If you are unhappy with this review outcome, or the way we handled your request and review, you have a right of appeal to the Scottish Information Commissioner.

**Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by accessing the **Online Appeal Service** on the Commissioners’ website. This is the best way to make an appeal, it provides help in real time and collects exactly what the Commissioner needs so they can investigate your case quickly.

Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx?utm_source=Email+Campaign&utm_medium=email&utm_campaign=40239-367602-2016+12+14+Online+Appeal+Portal+Chief+Execs) to access the online appeal service. [www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal)

If you don’t wish to appeal online, you can contact the Commissioner. Your appeal must be in a format that can be kept for future use, e.g. in writing, by email or a recording on an audio or video tape.

**Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

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If you want to send your appeal by post, you should send your letter to:

Office of the Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

If you need help making an appeal you can contact the Commissioner’s Office:

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Telephone: 01334 464610

You can find further information on making an appeal on the Commissioner’s website. Click [here](http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/OtherWaysToAppeal.aspx).

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

**Appeal to the Court of Session**

If you have appealed to the Scottish Information Commissioner and are unhappy with the decision they have made then you may be able to appeal to the Court of Session.

You can only do this where you think the Commissioner has incorrectly applied the law – not because you disagree with his decision.

If you are considering appealing to the Court of Session you should seek legal advice.

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

Further information about your rights and accessing information is available on our website here: **[INSERT LINK TO FOI SECTION ON WEBSITE]**.

Yours sincerely,

**[INSERT NAME, JOB TITLE, AND CONTACT DETAILS]**



**Background to template procurement wording**

Information that you receive from bidders during procurement exercises may have to be released in response to Information Requests (so, both requests made under the Freedom of Information Scotland Act 2002 (**FOISA**) and the Environmental Information (Scotland) Regulations 2004 (**EIRs**)). Handling requests of this nature can sometimes be challenging as:

* bidders may have a limited understanding of how FOISA or EIRs work; and
* tender documentation may contain information which is exempt from disclosure under FOISA or EIRs – generally because its release would cause harm to commercial interests or the information itself is subject to a duty of confidentiality.

From the outset of any procurement exercise it is important to ensure that: bidders are aware that information provided may be subject to disclosure or publication and any information that may be commercially sensitive or confidential is flagged as such. This is to ensure that bidders’ commercial interests are respected.

However, it is equally important to ensure that you are entitled to release information in accordance with FOISA and EIRs as and when required.

This is why having clear FOI/EIR provisions in procurement documentation is crucial.

The sections at p142-144 set out model terms that you may wish to incorporate into your procurement documentation (for example Invitations to Tender) and reflect what is recommended by the Scottish Ministers’ Section 60 Code of Practice[[4]](#footnote-4).

This wording is designed and intended only for use as a template which will require to be adapted to meet the requirements of any transaction in which it is used. The style of wording may not be appropriate for all tenders and you should work with your procurement teams and take appropriate advice to determine what wording should be included in any tender documentation you produce.

**Short Form Procurement Wording**

*Drafting Notes*:

* *this wording is intended for tenders which are low value and relate to the procurement of services, works and goods which are not: critical to your core functions; long term or likely to be controversial.*
* *you should use an appropriate heading for this section such as ‘Freedom of Information’ when inserting into your document.*
* *the wording in bold square brackets should be updated to reflect the language used in your tender documents. You may also want to change the layout of the wording in order to reflect the style of your tender documents.*

|  |
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| All information submitted to **[Organisation]** may need to be disclosed in response to a request for information made pursuant to the Freedom of Information (Scotland) Act 2002 (“**FOISA**”) and/or the Environmental Information (Scotland) Regulations 2004 (“**EIRs**”) or may need to be published under **[Organisation’s]** publication scheme - unless such information falls within an exemption under FOISA and/or EIRs. The decisions of the **[Organisation]** in the interpretation of FOISA/EIRs shall be final and conclusive.  If [**Bidders**] consider that any information included in their submission is commercially sensitive and/or confidential, they should identify the information and explain what harm may result from disclosure and the time period applicable to that sensitivity. Where a request received under FOISA or EIRs relates to information that a **[Bidder]** has identified as commercially sensitive and/or confidential **[Organisation]** shall undertake to (insofar as it is reasonable to do so) consult with the **[Bidder]** before replying to such a request. It should be noted however that even where **[Bidder]** has indicated that information is commercially sensitive and/or confidential the **[Organisation]** (in its sole discretion) may be required to disclose or publish said information under FOISA/EIRs.  **[Bidders]** should note that receipt of any material marked ‘confidential’ or equivalent should not be taken to mean **[Organisation]** accepts any duty of confidence by virtue of such marking. |

**Long Form Procurement Wording**

*Drafting Notes*

* *this wording is intended for tenders which are high value and relate to the procurement of services, works and supplies which are: critical to your core functions; long term or likely to be controversial.*
* *the long form wording is made up of two parts. Section 1 should be inserted in the body of any ITT or other procurement document. It highlights your obligations under FOISA and EIRs to bidders and makes it clear you may need to disclose information submitted. Section 2 should be inserted as an appendix or schedule to your Invitations to Tender or other procurement documentation (but not ESPDs). It requires bidders to identify any information included in their submission which they consider to be commercially sensitive and any instructions given to bidders should clearly state that this section should be completed.*
* *you should use appropriate headings for each section when inserting into your documents.*
* *the wording in bold square brackets should be updated to reflect the language used in your tender documents. You may also want to change the layout of the wording in order to reflect the style of your tender documents.*

**Section 1**

|  |
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| All information submitted to **[Organisation]** may need to be disclosed in response to a request for information made pursuant to the Freedom of Information (Scotland) Act 2002 (“**FOISA**”) and/or the Environmental Information (Scotland) Regulations 2004 (“**EIRs**”) or may need to be published under **[Organisation’s]** publication scheme - unless such information falls within an exemption under FOISA and/or EIRs. The decisions of **[Organisation]** in the interpretation of FOISA/EIRs shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under their terms.  If [**Bidders**] consider that any information included in their submission is commercially sensitive and/or confidential, they should, by completing [**insert reference to relevant annex or schedule],** identify the information and explain what harm may result from disclosure and the time period applicable to that sensitivity. Where a request received under FOISA or EIRs relates to information that a **[Bidder]** has identified as commercially sensitive and/or confidential **[Organisation]** shall undertake to (insofar as it is reasonable to do so) consult with the **[Bidder]** before replying to such a request. It should be noted however that even where **[Bidders]** have indicated that information is commercially sensitive and/or confidential the **[Organisation]** (in its sole discretion) may be required to disclose or publish said information under FOISA/EIRs.  **[Bidders]** should note that receipt of any material marked ‘confidential’ or equivalent should not be taken to mean **[Organisation]** accepts any duty of confidence by virtue of such marking. |

**Section 2**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **[Schedule or Appendix Heading]**  Commercially Sensitive Information  **[Bidders]** should list here any information forming part of their submission which they consider to be genuinely commercially sensitive. Bidders should also, insofar as they are able to do so, identify why the information is confidential and/or commercially sensitive and how long it is likely to be so.  Where **[Organisation]** receives a request for the information noted below during the relevant period of sensitivity, it shall, insofar as it is reasonable to do so, seek to consult with the relevant **[Bidder]** as to whether or not any relevant exemptions apply under FOISA and/or EIRs. However **[Bidders]** acknowledge that, **[Organisation]** may, in its sole discretion, have to disclose the information noted below in accordance with their obligations under FOSIA and/or EIRs.   |  |  |  | | --- | --- | --- | | **Commercially Sensitive Information** | | | | Information | Reason for Sensitivity | Duration of Sensitivity | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |



**Background to template contract clauses**

You may be asked to share information about contracts you have with third party contractors – and under FOISA and EIRs will be obliged to disclose this information unless a relevant exemption applies. Handling requests of this nature can often be challenging as:

* contractors may have a limited understanding of how FOISA or EIRs work;
* contract documents, or anything produced in relation to a contract, may contain information which is exempt from disclosure under FOISA or EIRs – generally because its release would cause harm to commercial interests; and
* the contract may place an obligation on you to keep all information relating to the contract confidential.

It is important that contractors are clear about your obligations under FOISA and EIRs. It is also important to remember that the Scottish Information Commissioner’s (**SIC**) position is that:

* where a contract has been **negotiated** SIC is unlikely to accept that information in that contract is subject to the confidentiality exemption in section 36(2) of FOISA;
* you should not accept blanket confidentiality clauses (or other confidentiality restrictions) in any contracts **unless you can demonstrate a good reason for this.**

So, when entering into contracts it is important to ensure that contractors are aware of your duties under FOISA and EIRs – as well as that any obligations regarding confidentiality are appropriate.

The Section 60 Code of Practice also recommends that contracts include:

* disclosure provisions;
* an annex or schedule which sets out what information under the contract is considered to be commercially sensitive (where appropriate taking into account the nature of the contract); and
* an obligation on you to attempt to consult with contractors where you receive a request for information which is identified as sensitive.

The sections at p148-152 contain model contract clauses which you could insert into your contracts to cover the above points.

This wording is designed and intended only for use as a template which will require to be adapted to meet the requirements of any transaction in which it is used. The style of wording may not be appropriate for all contracts and you should take advice where appropriate.

**Pre-FOI contracts**

Contracts that existed before 11 November 2019 will still be subject to FOISA and/or EIRS, however many of these contracts may have:

* blanket confidentiality wording; and/or
* little to no acknowledgement of your duties under FOISA and EIRs

You may need to consider:

* Option 1: updating existing contracts in order to incorporate the template wording in Appendix B.  How you approach this will depend on the wording of the contract and your relationship with the relevant contractor - however it is likely that both you and the contractor would need to sign an Amendment Agreement; or
* Option 2: contacting current contractors in order to explain your new duties under FOISA and EIRS - in particular making it clear that information relating to the contract may need to be disclosed in response to an FOI or EIR request.  In these circumstances it is also recommended that you work with your contractors in order to develop a consultation process in respect of such requests that relate to contractual information.

What approach you take will depend on the nature of the individual contracts in question  - and it may be that, for some contracts, looking to enter into Amendment Agreements or set up consultation processes will be unnecessary and disproportionate.

When identifying: contracts that may need to be amended or have consultation processes put in place you should follow the Section 60 Code of Practice and focus on contracts which are:

* high value;
* critical to your core functions;
* controversial;
* long term; or
* likely to be the subject of FOI/EIR requests

Finally, given that EIRS have applied to the sector since 2014, it may be that contracts contain provisions in respect of EIRs – but do not provide for FOISA. Again, contracts should either be amended (likely via an Amendment Agreement) to refer to your obligations under FOISA as per Option 1 or, as per Option 2, contractors should be notified of your FOISA duties and a consultation process agreed. As before – the exact approach you take (if any) will depend on the nature of the contract.

**Short Form Contract Clause**

*Drafting Notes:*

* *this wording is intended for commercial transactions and is not suitable for use in consumer transactions. It is prepared on the assumption that both parties to the contract are based in the UK.*
* *the Short Form Clause is intended to be used in contracts which: due to their nature, style or the parties involved would make using the Long Form Wording inappropriate.*
* *the wording in bold square brackets should be updated to reflect the language used in your contract documents. You may also want to change the layout of the wording in order to reflect the style of your contract documents (for example the section numbering may need to be amended).*

|  |
| --- |
| 1. **[Freedom of Information]**     1. The **[Contractor]** acknowledges that **[Organisation]** is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (**“Information Legislation**”) and shall:       1. provide (at its own expense) all assistance and cooperation as reasonably requested by the **[Organisation]** to comply with its obligations under the Information Legislation;       2. transfer to the **[Organisation]** any request (or apparent request) for information under the Information Legislation (a **“Request for Information**”) relating to this **[Agreement]** that it receives as soon as practicable and in any event within 2 working days of receipt;       3. provide the **[Organisation]** with a copy of all information belonging to the **[Organisation]** requested in a Request for Information which is in its possession or control in the form that the **[Organisation]** requires within 5 working days (or such other period that the **[Organisation]** may reasonably specify) of the **[Organisation’s]** receipt of the Request for Information; and       4. not respond directly to a Request For Information unless authorised in writing to do so by the **[Organisation]**.    2. If the [**Contractor]** considers that all or any information provided to the **[Organisation]** under this **[Agreement]** a “trade secret” in accordance with the Information Legislation or is commercially sensitive information disclosure of which would be likely to prejudice the commercial interests of any party in accordance with the Information Legislation, or a duty of confidentiality applies under the Information Legislation, or is exempt by the operation of any other provision the Information Legislation, the **[Contractor]** shall ensure that the relevant Information, the claimed exemption or exception and if a qualified exemption, its views on where the public interest lies, is clearly identified to the **[Organisation]**.    3. The **[Contractor]** acknowledges that the **[Organisation]** may be required under the Information Legislation to disclose information concerning the **[Contractor]** or **[[Services][Works][Goods]** *[Drafting Note: insert reference to whatever is being provided under the Contract]***]** including information which the **[Contractor]** may have identified to the **[Organisation]**  in accordance with **[clause 1.2 above]** without consulting or obtaining consent from the **[Contractor]**. The **[Organisation]** shall take reasonable steps to notify the **[Contractor]** of a Request For Information (in accordance with any relevant guidance issued under the Information Legislation) to the extent that it is permissible and reasonably practical for it to do so, but (notwithstanding any other provision in this **[Agreement]**) the **[Organisation]** shall be responsible for determining in its absolute discretion whether any information relating to the **[Agreement]** or **[[Services][Works][Goods]** *[Drafting Note: insert reference to whatever is being provided under the Contract]***]**  is exempt from disclosure in accordance with the Information Legislation. |

**Long Form Contract Clause**

*Drafting Notes:*

* *this wording is intended for commercial transactions and is not suitable for use in consumer transactions. It is prepared on the assumption that both parties to the contract are based in the UK.*
* *the wording in bold square brackets should be updated to reflect the language used in your contract documents. You may also want to change the layout of the wording in order to reflect the style of your contract documents (for example the section numbering may need to be amended).*
* *the Long Form Wording is split into 3 sections:*
  + *Section 1: Definitions*
  + *Section 2: Freedom of Information Clause*
  + *Section 3: Commercially Sensitive Information Schedule*
* *each section has its own drafting notes that you should refer to*

**Section 1: Definitions**

*Drafting Notes: you should insert the definitions listed here into any definitions section in your contract. If your contract has no definitions section you will need to consider how to incorporate these definitions into the body of the Contract*

|  |
| --- |
| **Commercially Sensitive Information:**  the information listed in [**insert reference to schedule or annex]** comprising the information of a commercially sensitive nature relating to the **[Contractor]**, its intellectual property rights or its business that if disclosed by **[Organisation]**, would cause the **[Contractor]** significant commercial disadvantage or material financial loss, including any Contractor’s Confidential Information.  **Contractor’s Confidential Information:**  any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the **[Contractor]**, including intellectual property rights, together with all information derived from the above.  **FOISA Code:** means the Scottish Ministers’ Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.  **Information:** has the meaning given under section 73 of the Freedom of Information (Scotland) Act 2002.  **Information Legislation:** means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.  **Request for Information:**  a request for information or an apparent request under the Information Legislation. |

**Section 2: Contract Wording**

*Drafting Notes: you should insert this section into the body of your contract. You will need to consider if any of the language or provisions need to be changed to account for any other provision in the contract.*

|  |
| --- |
| 1. **[Freedom of Information]**     1. The **[Contractor]** acknowledges that **[Organisation]** is subject to the requirements of the Information Legislation and shall:       1. provide (at its own expense) all assistance and cooperation as reasonably requested by the **[Organisation]** to comply with its obligations under the Information Legislation       2. transfer to the **[Organisation]** all Requests for Information relating to this **[Agreement]** that it receives as soon as practicable and in any event within 2 working days of receipt;       3. provide the **[Organisation]** with a copy of all Information belonging to the **[Organisation]** requested in a Request for Information which is in its possession or control in the form that the **[Organisation]** requires within 5 working days (or such other period that the **[Organisation]** may reasonably specify) of the **[Organisation’s]** request for such information; and       4. not respond directly to a Request For Information unless authorised in writing to do so by the **[Organisation]**.    2. If the **[Organisation]** receives a Request for Information concerning the **[Agreement]**, the **[Organisation]** is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with the Information Legislation, notwithstanding any other terms of this **[Agreement]**.    3. The **[Contractor]** acknowledges that the **[Organisation]** may, acting in accordance with the recommendations set out in the FOISA Code, be obliged under the Information Legislation to disclose Information:       1. without consulting the **[Contractor];** or       2. following consultation with the **[Contractor]** and having considered its views.    4. Where **[clause 1.3.1]** applies the **[Organisation]** shall, insofar as it is practicable to do so, give the **[Contractor]** advance notice of the disclosure or, failing that, draw the disclosure to the attention of the **[Contractor]** after such disclosure    5. Where a Request for Information concerns Commercially Sensitive Information specified in **[insert reference to relevant schedule or annex]** (having regard to the justifications and durations set out there), the **[Organisation]** must take reasonable steps, where practicable, to consult with the **[Contractor]** before disclosing it pursuant to a Request for Information or publishing it in accordance with its duties under the Information Legislation (declaring however that the final decision as to whether or not to disclose or publish said information shall rest with the **[Organisation],** notwithstanding any other terms in this **[Agreement])**. |

**Section 3: Commercially Sensitive Information Schedule**

*Drafting Notes: this section should be inserted at the end of your Agreement with any other Schedules or Annexes. You should ask the Contractor to fill out this section and work with them in order to agree suitable wording here.*

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **[Schedule or Appendix Heading]**  **Commercially Sensitive Information**   |  |  |  | | --- | --- | --- | | **Information specified as commercially sensitive** | **Reason why information is commercially sensitive** | **Duration of commercial sensitivity** | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |  |  |  | |

1. [JISC infoNet website](http://bcs.jiscinfonet.ac.uk/he/default.asp) [↑](#footnote-ref-1)
2. Scottish Government (April 2017) [Scottish Social Housing Charter](https://www.gov.scot/publications/scottish-social-housing-charter-april-2017/pages/2/) [↑](#footnote-ref-2)
3. Scottish Government (2016) [Section 60 Code of Practice](https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/) [↑](#footnote-ref-3)
4. Scottish Ministers (Dec 2016) [Section 60 Code of Practice](https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/) [↑](#footnote-ref-4)