

Freedom of Information Policy

| Descriptor | Changes made | Date | Version |
|--------------------------|---|----------|---------|
| Policy first implemented | - | Mar 2014 | |
| Review no. 1 | Updates to reflect change in organisational responsibility for FOI Policy | Sep 2019 | |
| Review no. 2 | Updates to reflect change in name of the team which conducts reviews | Oct 2020 | |
| Review no. 3 | Annual review | Sep 2021 | |

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| Name of policy being superseded (if applicable) | SDS FOI Policy (2017) |
| Related SOPs | n/a |
| Related Guidance | n/a |
| Equality Impact Assessment completed | No |
| Intended Audience | All SDS staff and the general public |
| Team responsible for policy | Government and Parliamentary Team |
| Policy owner contact details (email) | Kenneth MacEachen (foi@sds.co.uk) |
| Policy due for review (date) | September 2022 |

Contents

| | |
|--|---|
| Freedom of Information Policy | 1 |
| 1. Policy summary | 3 |
| 2. Policy purpose and objectives | 4 |
| 3. Strategic context | 4 |
| 4. Definitions | 4 |
| 5. Scope..... | 5 |
| 6. Policy detail..... | 5 |
| 7. Further Guidance | 9 |

1. Policy summary

Skills Development Scotland (SDS) will comply with the spirit and letter of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). To this end, we set out our commitments on information request handling in the [Access to Information section](#) on our website, and we publish information on the volume of Freedom of Information (FOI) requests that we handle in our [annual report](#).

We seek to maintain the trust and confidence of our customers and clients. We ensure that where information relating to third parties is the subject of a request we will consider whether it is appropriate to apply exemptions, and consult the third parties as appropriate.

SDS is committed to proactive publication of information of interest to the general public about SDS and its services and in 2019 completed the process to be confirmed as a provider of official statistics. To reflect the wide range and frequency of information that is/will be routinely published we review and update our Publication Scheme quarterly.

We provide SDS staff with regular training and continuous professional development on FOI matters, equipping them to deal with FOI requests and reviews.

2. Policy purpose and objectives

This policy document sets out the principles of the approach adopted within SDS to ensure compliance with the Freedom of Information (Scotland) Act 2002 (FOI(S)A).

The purpose of this policy is to establish the framework for SDS's FOI procedures and practices and to inform staff of their obligations when dealing with individual requests for information under FOI(S)A.

3. Strategic context

As a general principle SDS seeks to maintain high standards of transparency and openness with regard to information handling and publication, and to process FOI requests in accordance with statutory obligations, in particular with regard to:

- i. FOI(S)A;
- ii. The Code of Practice issued by the Scottish Ministers in accordance with Sections 60 and 62 of the FOI(S)A on the Discharge of Functions by Scottish Public Authorities under, respectively, the FOI(S)A and the Environmental Information (Scotland) Regulations 2004 (EIRs);
- iii. Section 61 of the FOI(S)A, the Code of Practice on Records Management;
- iv. The Public Records (Scotland) Act 2011 (PRSA)
- v. The Data Protection Act 2018 and the UK GDPR (as defined in Section 3(10) (as supplemented by Section 205(4)) of the Data Protection Act 2018)
- vi. The Public Services Reform (Scotland) Act 2010 (PSRA);
- vii. Other relevant statutory requirements.

SDS will also take into account any relevant guidance issued by the Scottish Government, Scottish Information Commissioner or Keeper of the Records of Scotland.

In line with Section 23 of the FOI(S)A, SDS is committed to the proactive publication of information of interest to the general public.

This FOI policy is consistent with the information handling protocol agreed between SDS and Scottish Government which applies to the handling of requests received by SDS for information made under the FOI(S)A and the EIRs. Under this protocol both the Scottish Government and SDS recognise that there may be a need to communicate sensitive information to each other in the course of their working relationship.

4. Definitions

4.1 Exemption:

One of the grounds for withholding information permitted under FOI(S)A.

4.2 Excessive Cost of Compliance:

Where the cost of complying with an FOI request would exceed an amount prescribed in regulations made by Scottish Ministers (currently £600).

4.3 Freedom of Information (FOI) Request:

A request for information which is in writing or another permanent form which states the name of the applicant and an address for correspondence and describes the information requested.

4.4 Personal Information:

Information relating to natural persons who can be identified or who are identifiable, directly from the information in question; or who can be indirectly identified from that information in combination with other information.

4.5 Public Interest Test:

This is the process whereby information which would otherwise be exempt from being released is considered for release examining whether the release would be in the greater public interest.

4.6 Publication Scheme:

A scheme approved by the Scottish Information Commissioner which specifies the classes of information which a Scottish Public Authority publishes or intends to publish, the manner in which information in each class is published and whether it is available to the public free of charge or on payment.

4.7 Publish:

To make information available publicly – on the internet and/or in hard copy. SDS will normally publish information by making it publicly available on our corporate website (or one of our other websites).

4.8 Routine Information Request:

A request for information which can be readily dealt with through access to existing information, relates to information which is not SDS confidential and is not likely to raise any external sensitivities. Information requests may be received by any part of the organisation and all colleagues should be able to distinguish between a routine information request and an FOI request and ensure FOI requests are handled according to the standard FOI process.

5. Scope

The policy aims to ensure the effective management of individual requests for information submitted to SDS and that SDS fully meets all its obligations under FOI(S)A. The policy also sets out elements of good practice in relation to FOI. SDS seeks at all times to demonstrate good practice in relation to FOI, as part of our commitment to openness and transparency and to business excellence.

The policy applies to all information held by SDS in all formats. This will include, but is not limited to, published reports; draft documents; emails; MS Teams messages, SMS messages sent from an SDS phone; as well as comments and conversations on SDS social media accounts.

The policy applies to all staff, whether part-time, full-time, permanent, a contractor, temporary or seconded.

6. Policy detail

Some FOI responsibilities and functions are corporate in nature and are delivered centrally:

6.1 Roles and responsibilities

6.1.2 Directors Group (DG) / Chief Executive

The Chief Executive as Accountable Officer, has overall strategic accountability for FOI at SDS and for ensuring compliance throughout the organisation.

The Directors Group (DG), headed by the Chief Executive, is responsible for ensuring the monitoring of SDS compliance with FOI regimes and relevant codes of practice, and creating a culture supportive of the public's right to know.

6.1.3 SDS Board and Committees

A report outlining volumes of requests, any issues with the handling of requests, the identification of areas of work and types of information frequently the subject of requests is provided to the SDS Finance and Operational Performance Committee on an annual basis. A statutory compliance report, including the volume of the FOI requests and any breaches, is submitted to the Audit and Risk Committee annually.

6.1.4 Central FOI Team

Corporate advice and support on FOI is provided by a cross-functional central team, drawn from the Government and Parliamentary team, Information Governance and Organisational Resilience, and Legal Services colleagues. Quarterly reports are provided to the Information Governance Leadership Group (IGLG).

6.1.5 The Government and Parliamentary team

DG has delegated responsibility for the review and approval of individual FOI request responses to the Director, Corporate Affairs. Where appropriate the Director of Corporate Affairs will seek Chief Executive approval prior to release of information under FOI(S)A.

The Director of Corporate Affairs is accountable for ensuring effective management of FOI requests and the Government and Parliamentary team has a system to log, track and closely monitor all FOI requests through to completion.

Within the Government and Parliamentary team the Government & Parliamentary Manager and Parliamentary Liaison and FOI Team Leader have day-to-day responsibility for FOI request handling, and are the main points of contact for the Scottish Government in relation to requests in which both the Scottish Government and SDS might have an interest. Where the Scottish Government is responding to an FOI request which relates to SDS the Scottish Government has committed to provide SDS with 48 hours' advance notice of their proposed response, to allow SDS to prepare any lines as required. Furthermore, after the publication of the response on the Scottish Government website, a link to that response will be sent to the Government and Parliamentary team.

The team works flexibly to provide cover for staff absence (whether planned or un-planned), so that it does not affect SDS's ability to respond to requests for information, and requests for review, within statutory timescales.

The Government and Parliamentary team has oversight for developing and regularly updating the SDS Publication Scheme under FOI(S)A.

The Government and Parliamentary team is responsible for co-ordinating FOI training and signposting to Continuing Professional Development (CPD) for colleagues. Key staff members involved in the handling of FOI requests will be expected to undertake regular FOI refresher training. This will ensure colleagues are aware of FOI obligations, policy, procedures and support, enabling them to be confident in handling requests for information, with support from the central FOI team as required.

The Government and Parliamentary team (with a dedicated inbox foi@sds.co.uk) is the point of contact within SDS for all information requests from applicants. The Government and Parliamentary team is also responsible for coordinating responses to information requests which have been received elsewhere within SDS and do not explicitly reference FOI, but where, due to their sensitive, complex or non-routine nature, FOI exemptions may apply. These should be treated in a consistent manner with formal FOI requests and responded to within the statutory 20 working day timeline.

The Government & Parliamentary Team (foi@sds.co.uk) is the point of contact for applicants requesting web access, hard copy or e-mail copies of information in the SDS Publication Scheme. The Government and Parliamentary team is also responsible for regular reporting on FOI performance.

6.1.6 Information Governance and Organisational Resilience (IGOR) and Chief Executive Office

IGOR has responsibility for broader Information Governance topics at SDS and will assist the Government & Parliamentary Team to promote awareness and transparency, and information about FOI(S)A and EIRs within SDS. IGOR will conduct any reviews of FOI responses which are required.

Staff within the Chief Executive Office monitor compliance with FOI(S)A and provide regular reports to the Audit and Risk Committee on FOI(S)A compliance as part of wider reporting on SDS compliance with statutory obligations.

6.1.7 Legal Services

The SDS Legal Services team provides advisory support on the legal requirements of FOI(S)A and on current FOI guidance and good practice, to inform the development of FOI policy and procedures and help inform SDS senior management decision-making on FOI matters. Further, the Legal Services team provides advice on whether it would be appropriate to seek external legal advice on a particular FOI request.

6.1.8 All Colleagues

Any request for recorded information that is not routine business should be considered a FOI request. All colleagues have a responsibility to recognise such requests when they come in and should refer immediately to the FOI Team.

If a colleague is asked by the FOI team to provide information to answer an FOI request, they have a responsibility to retrieve the information and pass it to the FOI team, ensuring that it is

relevant, accurate, up to date and fully addresses the terms of the request. They also have a responsibility to provide the information within the timeline set by the FOI team so that SDS can meet statutory timescales.

Where an information request is a routine part of business interaction with external partners or stakeholders and there is no sensitivity about releasing the information, the request should normally be handled and responded to locally. This type of request would not be treated as a 'formal' FOI request (and would not be included in corporate reporting).

6.2 Charging

SDS will not charge for fulfilling requests for information which is not in our Publication Scheme but reserves the right to invoke the provisions relating to excessive cost of compliance¹.

6.3 Refusal on Grounds of Excessive Costs

When a request is received where we estimate that it will cost over £600 to retrieve and supply the information, we will, always attempt to narrow the scope of the request with the requester and provide what we can within the threshold rather than refusing it outright.

6.4 Application of exemptions

Decisions on the application of exemptions for individual FOI requests and FOI reviews, including consideration of the public interest test, will be reached through discussion between relevant SDS colleagues and the Government and Parliamentary team. Legal and compliance advice will be sought where appropriate. The Government and Parliamentary team will make a recommendation to the relevant director for decision on information release. Where appropriate a final decision regarding the release of information which is exempt under the terms of FOI(S)A may be made by the SDS Chief Executive.

Staff within the CEO office are responsible for applying relevant exemptions in respect of information that is contained in corporate governance documentation (e.g. Board & Committee papers) and that is designated as being either exempt from proactive publication or to be withheld from release in the case of an ad hoc FOI request.

6.5 Requests for Environmental Information

Access to environmental information is governed by separate regulations, known as the Environmental Information (Scotland) Regulations 2004 (EIRs). We will only treat such requests differently when the regulations require us to do so. These circumstances are:

- The need to include oral requests for environmental information in the formal process
- The application of the exemptions/exceptions which are different in FOI(S)A and EIRs
- The handling of complex or voluminous requests, as there is no cost ceiling under EIRs.

The Government and Parliamentary team is responsible for handling all requests received which are covered by the EIRs.

¹ See Scottish Ministers Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002.

6.6 Communication of responses

SDS is committed to providing responses in the requester's preferred format and language. We may also respond by inviting the requestor to SDS premises to review the material there, rather than send them a large volume of information.

SDS will meet its obligations to provide reasonable advice and assistance to whoever makes a request, in order for them to be able to better articulate what information they want.

7. Further Guidance

7.1 Legislation:

Relevant statutory obligations are set out in the following pieces of legislation:

- Data Protection Act 2018 and the UK GDPR (as defined in Section 3(10) (as supplemented by Section 205(4)) of the Data Protection Act 2018)
- Freedom of Information (Scotland) Act 2002
- Public Records (Scotland) Act 2011
- Section 60 Code of Practice 2016
- The Public Services Reform (Scotland) Act 2010 (PSRA);

7.2 Associated Policies

The following SDS policies and policy statements are also relevant to effective FOI management:

- [Code of Conduct Policy](#)
- [Data Protection Policy](#)
- [SDS Policy on the Use of Protective Markings](#)
- [Using SDS IT Equipment and Systems](#)
- [Records Management Policy](#)
- Social Media Policy

7.3 Monitoring and Review

SDS's FOI Policy will be reviewed every year and updated whenever organisational or procedural changes take place that materially affect the information contained in the policy.

Skills Development Scotland
September 2021