

The Campaign for Freedom of Information in Scotland

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Response to Consultation on the Scottish Information Commissioner's Draft Publication Scheme

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Introduction

These comments refer to the Scottish Information Commissioner's draft Publication Scheme, circulated for comment on May 27 2004. We think the draft publication scheme contains a number of useful classes of information. However, we think some additional classes might be added and our comments focus on these.

The Commissioner's decisions

An important omission from the classes of information whose publication is proposed is the Commissioner's decisions. The draft scheme suggests that only (a) statistics about the numbers requests for decisions and their outcomes and (b) summary data about cases in which enforcement powers have been used will be published. We think it essential that the decisions themselves are published in full¹ and would hope to see these form part of the publication scheme.

This should cover cases dealt with either by decision notice or enforcement notice. Practice recommendations made under section 44 of the Act should also be included. Where cases are dealt with by mediation (under section 49(4)) rather than by formal decision, we hope that a summary of the outcome will be published, at least in significant cases. The higher the proportion of cases dealt with informally, the more important it would become that information about their outcomes is publicly available.

The scheme should also include copies of, or links to, any court decisions resulting from appeals under section 56 of the Act or judicial review or arising from the Environmental Information (Scotland) Regulations.

Section 45 restriction on disclosure

We assume that the restriction on disclosure in section 45 of the Act cannot be an obstacle to the publication of decisions referred to above. These disclosures would be regarded as made for the purpose of, and necessary for, the discharge of a function under the Act [s 45(2)(c)(i)], the function itself being laid down in section 43(2).

¹ The names of individual requesters might be removed first, unless they agreed to be identified.

We think the reference to section 45 in the draft scheme² appears unnecessarily restrictive, not only for the above reason, but also because the restriction itself cannot apply to information which could not be withheld under the Act itself.³

Internal guidance

The draft scheme includes a class of information dealing with “internal policies” but it is not clear whether this term extends to the internal *guidance* to the Commissioner’s staff. Such guidance is included in the Scottish Executive’s publication scheme⁴ and we hope an equivalent commitment will appear in the Commissioner’s scheme. Amongst the matters that should be covered are internal guidance on the investigation of complaints and on handling requests for information made to the Commissioner’s office.⁵

Information about publication schemes

We welcome the proposal to provide access to public authorities’ publication schemes through the SIC’s scheme. We think this provision would be strengthened by also providing access to the completed Approval Questionnaires submitted to the Commissioner by authorities. These will in particular help to identify what, if any, new information authorities have included in their schemes.

Consultation responses

The scheme includes “draft documents published for comment” by the Commissioner and responses to them.⁶ However, not all consultations involve the circulation of a draft document for comment. Omitting the word “draft” could strengthen this provision.

A further class of information that could be included are the Commissioner’s responses to consultations carried out by other bodies and any evidence given by the Commissioner to the Scottish Parliament or to formal inquiries.

² Section 6 of Part 1 states: “Please note also that s 45 of the Act limits the release of information obtained by or given to the Commissioner for the purposes of the Act. This means, for example, that information collected in the course of investigations by the Commissioner and his staff cannot usually be released.”

³ Section 45(2)(e)

⁴ <http://www.scotland.gov.uk/about/LPS/LPS-CPS/00019260/intseguid.aspx>

⁵ Such information appears in the UK Information Commissioner’s publication scheme, see: <http://www.informationcommissioner.gov.uk/eventual.aspx?id=551>

⁶ Class 3, subclass 2.

Contracts

It would be useful if the scheme included details of any contracts entered into by the office of the Scottish Information Commissioner. The inclusion of such information in the Commissioner's own scheme would encourage greater openness in this important area by authorities generally.

Request/disclosure log

The draft scheme includes a proposal to publish statistics about the numbers of requests for information received by the Commissioner's office. We are keen to see authorities publish more detailed information in the form of a log of either (a) requests made to them and the outcomes (excluding purely routine requests), or (b) disclosures made as a result of the Act that would not otherwise have occurred. We hope the SIC's scheme would include a commitment to publish such information in relation to requests made to the Commissioner's office.
