



SCOTTISH EXECUTIVE

**CODE OF PRACTICE ON
ACCESS TO SCOTTISH
EXECUTIVE
INFORMATION**

PART I

Purpose

1. This Code of Practice supports Scottish Ministers' policy of extending access to official information, and responding to reasonable requests for information. The approach to release of information should in all cases be based on the assumption that information should be released except where disclosure would not be in the public interest, as specified in Part II of this Code.

2. The aims of the Code are:

- to facilitate policy-making and the democratic process by providing access to the facts and analyses which form the basis for the consideration of proposed policy;
- to protect the interests of individuals and companies by ensuring that reasons are given for administrative decisions, except where there is statutory authority or established convention to the contrary; and

These aims are balanced by the need:

- to maintain high standards of care in ensuring the privacy of personal and commercially confidential information; and
- to preserve confidentiality where disclosure would not be in the public interest or would breach personal privacy or the confidences of a third party, in accordance with statutory requirements and Part II of the Code.

Information the Scottish Executive will release

3. Subject to the exemptions in Part II, the Code commits those Scottish public bodies falling under the jurisdiction of the Scottish Parliamentary Commissioner for Administration (the Scottish Commissioner):

- i) to publish the facts and analysis of the facts which Scottish Ministers consider relevant and important in framing major policy proposals and decisions; such information will normally be made available when policies are announced;
- ii) to publish, or otherwise make available, explanatory material on the Scottish Executive's and other public bodies' dealings with the public (including such rules, procedures, internal guidance to officials, and similar administrative manuals as will assist better understanding of these bodies action in dealing with the public) except where publication could prejudice any matter which should properly be kept confidential under Part II of the Code;
- iii) to give reasons for administrative decisions to those affected;

iv) to publish

- full information about how public services are run, how much they cost, who is in charge, and what complaints and redress procedures are available;
- full and, where possible, comparable information about what services are being provided, what targets are set, what standards of service are expected and the results achieved.

v) to release, in response to specific requests, information relating to their policies, actions and decisions and other matters related to their areas of responsibility.

4. There is no commitment that pre-existing documents, as distinct from information, will be made available in response to requests. The Code does not require the Scottish Executive and other public bodies to acquire information they do not possess, to provide information which is already published, or to provide information which is provided as part of an existing charged service other than through that service.

Responses to requests for information

5. Information will be provided as soon as practicable. The target for response to simple requests for information is 20 working days from the date of receipt. This target may need to be extended when significant search or collation of material is required. Where information cannot be provided under the terms of the Code, an explanation will normally be given.

Scope

6. The Code applies to those Scottish public bodies within the jurisdiction of the Scottish Commissioner (as listed in Schedule 1). The Code also applies to Agencies within the Scottish Executive and to functions carried out on behalf of the Scottish Executive or public bodies by contractors. Information obtained from or relating to the Security and Intelligence Services is not within the scope of the Code.

Charges

7. Where a request is complex and would require extensive searches of records or processing or collation of information, charges, reflecting reasonable costs, may be notified. Details of charges are available from the Scottish Executive on request.

Relationship to statutory access rights

8. This Code is non-statutory and cannot override provisions contained in statutory rights of access to information or records (nor can it override statutory prohibitions on disclosure). Where the information could be sought under an existing statutory right, the terms of the right of access

takes precedence over the Code. The Code is operated in line with the obligations placed by the ECHR on the Scottish Executive.

Public records

9. The Code is not intended to override existing statutory provisions on access to government records. In Scotland there is no general rule on access comparable to the 30 year rule fixed by the Public Records Act 1967, which does not apply to the records of any government body which is wholly or mainly concerned with Scottish affairs, or which carries on its activities wholly or mainly in Scotland. However, current practice applied to these records follows the 1967 Act, as modified by the White Paper on Open Government (Cm2290), and will continue to do so.

Jurisdiction of courts, tribunals or inquiries

10. The Code applies only to Government information held by the Scottish public bodies listed at Schedule 1. It does not apply to or affect information held by courts or contained in court documents. ("Court" includes tribunals, inquiries). Present practice covering disclosure of information before courts, tribunals and inquiries will continue to apply.

Investigation of complaints

11. Complaints that information which should have been provided under the Code has not been provided, or that unreasonable charges have been demanded, should be made first to the Scottish Executive or body concerned. If the applicant remains dissatisfied, complaints may be made through a Member of the Scottish Parliament to the Scottish Commissioner. Complaints will be investigated at the Scottish Commissioner's discretion in accordance with the procedures provided in The Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order (SI 1999/1351).

PART II

Reasons for confidentiality

The following categories of information are exempt from the commitment to provide information in this Code. In those categories which refer to harm or prejudice, the presumption remains that information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available.

References to harm or prejudice include both actual harm or prejudice and risk or reasonable expectation of harm or prejudice. In such cases it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available.

The exemptions will not be interpreted in a way which causes injustice to individuals.

1. *Defence, security and international relations*

- a) Information whose disclosure would harm national security or defence.
- b) Information whose disclosure would harm the conduct of international relations or affairs.
- c) Information received in confidence from foreign governments, foreign courts or international organisations.

2. *Internal discussion and advice*

Information whose disclosure would harm the frankness and candour of internal discussion, including:

- proceedings of Scottish Cabinet and Scottish Ministerial committees;
- internal opinion, advice, recommendation, consultation and deliberation;
- projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;
- confidential communications between departments, public bodies and regulatory bodies;

3. *Communications with the Royal Household*

Information relating to confidential communications between Ministers and Her Majesty the Queen or other Members of the Royal Household, or relating to confidential proceedings of the Privy Council.

4. *Law enforcement and legal proceedings*

- a) Information whose disclosure could prejudice the administration of justice (including fair trial), legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigations (whether actual or likely) or whose disclosure is, has been, or is likely to be addressed in the context of such proceedings.
- b) Information whose disclosure could prejudice the enforcement or proper administration of the law, including the prevention, investigation or detection of crime, or the apprehension or prosecution of offenders.
- c) Information relating to legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.
- d) Information covered by legal professional privilege.
- e) Information whose disclosure would harm public safety or public order, or would prejudice the security of any building or penal institution.
- f) Information whose disclosure could endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.
- g) Information whose disclosure would increase the likelihood of damage to the environment, or rare or endangered species and their habitats.

5. *Immigration and nationality*

Information relating to immigration, nationality, consular and entry clearance cases. However, information will be provided, though not through access to personal records, where there is no risk that disclosure would prejudice the effective administration of immigration controls or other statutory provisions.

6. *Effective management of the economy and collection of tax*

- a) Information whose disclosure could harm the management of the economy, prejudice the conduct of official market operations, or could lead to improper gain or advantage.
- b) Information whose disclosure would prejudice the assessment or collection of tax, duties or National Insurance contributions, or assist tax avoidance or evasion.

7. *Effective management and operations of the public service*

- a) Information whose disclosure could lead to improper gain or advantage or would prejudice:
 - the competitive position of a department or other public body or authority;
 - negotiations or the effective conduct of personnel management, or commercial or contractual activities;
 - the awarding of discretionary grants.
- b) Information whose disclosure would harm the proper and efficient conduct of the operations of a department or other public body or authority, including NHS organisations, or of any regulatory body.

8. *Public employment, public appointments and honours*

- a) Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting.
- b) Information, opinions and assessments given in confidence in relation to public employment and public appointments made by Scottish Ministers, by the Crown on the advice of Ministers, by Ministers in the UK Government or by statutory office holders.
- c) Information, opinions and assessments given in relation to recommendations for honours.

9. *Voluminous or vexatious requests*

Requests for information which are vexatious or manifestly unreasonable or are formulated in too general a manner, or which (because of the amount of information to be processed or the need to retrieve information from files not in current use) would require unreasonable diversion of resources.

10. *Publication and prematurity in relation to publication*

Information which is or will soon be published, or whose disclosure, where the material relates to a planned or potential announcement or publication, could cause harm (for example, of a physical or financial nature).

11. *Research, statistics and analysis*

- a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the holder of priority of publication or commercial value.
- b) Information held only for preparing statistics or carrying out research, or for surveillance for health and safety purposes (including food safety), and which relates to individuals,

companies or products which will not be identified in reports of that research or surveillance, or in published statistics.

12. *Privacy of an individual*

Unwarranted disclosure to a third party of personal information about any person (including a deceased person) or any other disclosure which would constitute or could facilitate an unwarranted invasion of privacy.

13. *Third party's commercial confidences*

Information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.

14. *Information given in confidence*

- a) Information held in consequence of having been supplied in confidence by a person who:
- gave the information under a statutory guarantee that its confidentiality would be protected; or
 - was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure.
- b) Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.
- c) Medical information provided in confidence if disclosure to the subject would harm their physical or mental health, or should only be made by a medical practitioner.

15. *Statutory and other restrictions*

- a) Information whose disclosure is prohibited by or under any enactment, regulation, European Community law or international agreement.
- b) Information whose release would constitute a breach of Parliamentary Privilege.

SCHEDULE 1: SCOPE OF CODE

SCOTTISH EXECUTIVE

Scottish Executive Development Department
Scottish Executive Education Department
Scottish Executive Enterprise and Lifelong Learning Department
Scottish Executive Health Department
Scottish Executive Justice Department
Scottish Executive Rural Affairs Department
Corporate Services
Finance Group
Executive Secretariat
Fisheries Research Service
General Register Office for Scotland
Historic Scotland
National Archives of Scotland
Registers of Scotland
Scottish Agricultural Science Agency
Scottish Courts Administration
Scottish Court Service
Scottish Fisheries Protection Agency
Scottish Office Pensions Agency
Scottish Prison Service
Student Awards Agency for Scotland

OTHER SCOTTISH PUBLIC AUTHORITIES

Accounts Commission for Scotland
Community Learning Scotland
Court of the Lord Lyon
Crofters Commission
Deer Commission for Scotland
General Teaching Council for Scotland
Lands Tribunal for Scotland
Local Government Boundary Commission for Scotland
National Galleries of Scotland
National Library of Scotland
National Museums of Scotland
Parole Board for Scotland
Rent Assessment Committees for Scotland
Royal Botanic Garden, Edinburgh
Royal Commission on the Ancient and Historical Monuments of Scotland
Scottish Agricultural Wages Board
Scottish Arts Council

Scottish Children's Reporter Administration
Scottish Consultative Council on the Curriculum
Scottish Council for Educational Technology
Scottish Environment Protection Agency
Scottish Further Education Funding Council
Scottish Further Education Unit
Scottish Higher Education Funding Council
Scottish Homes
Scottish Land Court
Scottish Legal Aid Board
Scottish Medical Practices Committee
Scottish Natural Heritage
Scottish Qualifications Authority
Scottish Screen
Scottish Sports Council
Scottish Studentship Selection Committee
Scottish Tourist Board
Scottish Water and Sewerage Customer Council