

# INFORMATION MANAGEMENT POLICY

## SECTION D: ACCESS TO INFORMATION

The Commission is committing to acting in an open and accountable way and ensuring compliance with its statutory obligations to make information available to individuals and the public at large.

This Policy details the Commission's responsibilities in respect of providing access to personal data, freedom of information and providing access to environmental information.

### 1. GENERAL DATA PROTECTION REGULATION (EU) 2016/679 AND DATA PROTECTION ACT 2018

Under the General Data Protection Regulation (EU) 2016/679 ('GDPR'), individuals (known as 'data subjects') have a general right to find out whether the Commission holds or processes personal data about them, to access that data, and to be given supplementary information. This is known as the right of access, or the right to make a data subject access request. The purpose of the right is to enable the individual to be aware of, and verify, the lawfulness of the processing of personal data that we are undertaking.

Failure to comply with the right of access under the GDPR puts both Commission staff and the Commission at potentially significant risk, and so the Commission takes compliance with this policy very seriously.

Once a data subject access request is received, the Commission must provide the information requested without delay and at the latest within one month of receiving the request. Commission employees should therefore make a note of when request was received and when the time limit will end.

If a data subject access request is complex or the data subject has made numerous requests, the Commission:

- (i) may extend the period of compliance by a further two months; and
- (ii) must inform the individual of the extension within one month of the receipt of the request and explain why the extension is necessary.

#### 1.1 How to recognise a subject access request

A data subject access request is a request from an individual (or from someone acting with the authority of an individual, for example, a parent making a request in relation to information relating to their child):

- (i) for confirmation as to whether we process personal data about him or her and, if so;
- (ii) for access to that personal data; and
- (iii) certain other supplementary information regarding the processing of their personal data.

Data subjects have the following rights in relation to their Personal Data:

- to be informed about how, why and on what basis Personal Data is processed – as contained within the Commission's transparency statements;
- to access their Personal Data – please see the Commission's Access to Information Policy;
- to have Personal Data corrected if it is inaccurate or incomplete – the DPL states that Personal Data is inaccurate if it is incorrect or misleading as to any matter of fact;
- to have Personal Data erased – this right only applies if:
  - the Personal Data is no longer necessary for the purpose for which the Commission originally collected or processed it;
  - the Commission is relying on consent as our lawful basis for holding the Personal Data and the individual withdraws their consent;

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the Commission is relying on legitimate interests as our lawful basis, the individual objects to the processing of their Personal Data, and there is no overriding legitimate interest to continue this processing;

the Commission is processing the Personal Data for direct marketing purposes and the individual objects to that processing;

the Commission has processed the Personal Data unlawfully; or

the Commission has to delete the Personal Data to comply with a legal obligation.

- to restrict the processing of Personal Data – this right only applies where:
  - the accuracy of the Personal Data is contested and the Commission is verifying the accuracy of that data;
  - the processing of the Personal Data is unlawful (but the individual does not want the Personal Data to be erased);
  - the Commission no longer needs the Personal Data but the individual requires the data to establish, exercise or defend a legal claim; or
  - the individual has objected to the Commission processing their Personal Data and the Commission is considering the objection;
- to object to the processing of Personal Data where the Commission carries out the processing for a task carried out in the public interest; to exercise official authority vested in the Commission; or in pursuit of the Commission's or a third party's legitimate interests. The right to object is an absolute right in respect of Personal Data being processed for direct marketing purposes;
- to obtain Personal Data provided to the Commission by the individual for that individual's own reuse, where the Commission processes such Personal Data to perform a contract with that individual or where the individual has given consent and where the processing by the Commission is undertaken by automated means; and
- to object to decisions being taken by automated means which produce legal effects concerning an individual or similarly significantly affect an individual.

Data subjects can seek to exercise the above rights against the Commission in writing, by email or verbally. Such requests do not have to refer to the legislation, 'data protection' or 'personal data' and often requests may cite the incorrect legislation (for example, they may refer to 'freedom of information' where they are seeking access to their own Personal Data). The Commission must ensure that we recognise requests under the DPL so that the Commission complies with the relevant statutory obligations.

On receipt of a request relating to Personal Data, the request must be passed on immediately to the Commission's Data Protection Officer in order that the request can be complied with within the time limit set down in the DPL. Failure to do so may lead to a claim against the Commission. The Commission's Data Protection Officer shall be responsible for responding to all requests relating to Personal Data and Commission employees should not respond to the individual directly unless advised to do so by the Commission's Data Protection Officer.

If the Commission fails to respond to a request from a data subject and is found to be guilty of an offence under the DPA, an investigation will be made as to the reasons for the failure to respond and where appropriate disciplinary action will be taken.

Where any data subject feels that the Commission has:

- misused their Personal Data;
  - refused to allow access to data;
  - refused to amend alleged inaccuracies; or
  - otherwise breached the DPL in relation to their Personal Data or data protection rights,
- they can complain to the Commission. Data subjects may also raise complaints with the ICO.

All data subject access requests should be immediately directed to the Commission's Data Protection Officer in accordance with section 2.5 below.

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Commission employees must adhere to the following procedures when requests are received:

- (i) data subject access requests received by email must immediately be forwarded to the Commission's Data Protection Officer at DPO@watercommission.co.uk;
- (ii) data subject access requests received by letter must be scanned and emailed the Commission's Data Protection Officer at DPO@watercommission.co.uk ;
- (iii) where a data subject access request is received verbally, the employee taking the call must record the name and contact details of the individual and immediately email these details to the Commission's Data Protection Officer at DPO@watercommission.co.uk, the employee should inform the individual that their request will be notified to the Commission's Data Protection Officer.

Commission employees must not take any other action in relation to the data subject access request unless the Commission's Data Protection Officer has given authorisation in advance.

## 1.2 How to locate information

The personal data the Commission needs to provide in response to a data subject access request may be located in several of our electronic and manual filing systems or on those of our processors or other third parties. This is why it is important to identify at the outset the type of information requested so that the search can be focused.

Depending on the type of information requested, we may need to search all or some of the following:

- (i) electronic systems, for example, databases, networked and non-networked computers, servers, customer records, human resources system, email data, back up data, CCTV;
- (ii) manual filing systems in which personal data are accessible according to specific criteria, for example chronologically ordered sets of manual records containing personal data;
- (iii) data systems held externally by our processors;
- (iv) devices used by employees and others under the Commission's IT Security Policy;
- (v) pensions data held by Falkirk Council Local Government Pension Scheme; and
- (vi) data held by any consultants engaged to provide assistance with performance management and/or disciplinary and grievance procedures.

Commission employees should search these systems using the individual's name or other personal identifier as a search determinant.

## 1.3 Information to be provided in response to a request

Individuals are entitled to receive access to the personal data the Commission processes about them and the following information:

- (i) the purposes for which the Commission processes the personal data;
- (ii) the recipients or categories of recipient to whom the personal data has been or will be disclosed, in particular where those recipients are in third countries or international organisations;
- (iii) where possible, the period for which it is envisaged the personal data will be stored, or, if not possible, the criteria used to determine that period;
- (iv) the fact that the individual has the right:
  - a. to request that the Commission rectifies, erases or restricts the processing of his personal data;
  - b. to object to its processing;
  - c. to lodge a complaint with the Information Commissioner's Office;

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- (v) where the personal data has not been collected from the individual, any information available regarding the source of the personal data;
- (vi) any automated decision the Commission taken about him or her, together with meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for him or her.

The information referred to above should be provided:

- (i) in a way that is concise, transparent, easy to understand and easy to access;
- (ii) using clear and plain language, with any technical terms, abbreviations or codes explained;
- (iii) in writing, if the data subject access request was made in writing; and
- (iv) in a commonly-used electronic format, if the data subject access request was made electronically, unless otherwise requested by the individual.

## 1.4 Responsibilities

The Commission's Data Protection Officer is responsible for ensuring:

- (i) that all data subject access requests are dealt with in accordance with the GDPR and other relevant legislation and guidance; and
- (ii) that all Commission employees understand the GDPR and other relevant legislation and guidance in relation to data subject access requests and their personal responsibilities in complying with the relevant aspects of the GDPR and other relevant legislation and guidance.

## 2. FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

The Freedom of Information Scotland Act 2002 ('FOISA') provides individuals the right to request information held by Scottish public authorities. Requests must be made in writing and the information will be provided within 20 working days, subject to exemptions.

The Commission is fully committed to the aims of FOISA and related legislation and make every effort to meet our obligations.

### 2.1 The Commission's freedom of information principles

The Commission:

- Supports FOISA's underpinning principles by encouraging behaviour which is open and transparent.
- Demonstrates commitment to the Freedom of Information by ensuring as much information as possible is published on the Commission's website.
- Supports the effective application of FOISA, by creating and sharing information thoughtfully, deliberately and purposefully.

### 2.2 Purpose of the Freedom of Information Policy

This policy outlines the Commission's approach to responding to requests for information made under FOISA and demonstrates that we fully endorse and adhere to the principles of FOISA, meeting the standards set out in satisfying Scottish public authorities' obligations under FOISA. This policy aims to ensure access to information in order to promote greater openness and to build public trust. The Commission's Publication Scheme includes a more detailed guide to the information that we routinely make available.

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## 2.3 Responsibilities

The roles and responsibilities of each category of employee in the Commission is outlined below:

### Freedom of Information Officer

- Develop, maintain and monitor this policy and procedures.
- Coordinate responses to requests for information in conjunction with Senior Management and Chief Executive.
- Calculate any fees to be charged for FOISA requests, in line with the WICS's Freedom of Information Fees Scheme.
- Provide advice and guidance on this FOISA policy and procedures.
- Identify and communicate any FOISA issues to Senior Management and Chief Executive
- In conjunction with the appropriate Senior Manager, allocate the request for information to relevant member of their staff.
- Ensure that requests for information are handled effectively by logging and co-ordinating requests.

Compliance with this policy will be monitored by the Freedom of Information Officer on an annual basis.

### Senior Management

- Ensure all staff comply with the agreed policy and procedures for FOI.
- As required, appoint a member of their team to assist the Freedom of Information Officer to fulfil requests for information.
- Recognise FOISA issues in service planning and resource allocation.

### All staff

- Be aware of what FOISA means and know how to recognise a request.
- Follow the policy and procedures for handling FOISA requests.
- Deal with all requests promptly and within 20 working days of receipt.
- Provide advice and assistance to requests for information.

## 3. ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

The Environmental Information (Scotland) Regulations 2004 ('EISR') provide individuals the right to request environmental information held by Scottish public authorities. Requests must be made in writing and the information will be provided within 20 working days (which may be extended to 40 working days), subject to exceptions.

The Commission is fully committed to the aims of EISR and related legislation and make every effort to meet our obligations.

### 3.1 The Commission's environmental information regulation principles

The Commission:

- Supports EISR's underpinning principles by encouraging behaviour which is open and transparent.
- Demonstrates commitment to the access to environmental information by ensuring as much information as possible is published on the Commission's website.
- Supports the effective application of EISR, by creating and sharing environmental information thoughtfully, deliberately and purposefully.

### 3.2 Purpose

This policy outlines the Commission's approach to responding to requests for environmental information made under EISR and demonstrates that we fully endorse and adhere to the principles of EISR, meeting the standards set out in satisfying Scottish public authorities' obligations under EISR. This policy aims to ensure access to environmental information in order to promote greater openness and to build public trust. The Commission's Publication Scheme includes a more detailed guide to the information that we routinely make available. This is available on the Commission's website.

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## 3.4 Responsibilities

The roles and responsibilities of each category of employee in the Commission is outlined below:

### Freedom of Information Officer

- Develop, maintain and monitor this policy and procedures.
- Coordinate responses to requests for environmental information in conjunction with Senior Management and Chief Executive.
- Calculate any fees to be charged for EISR requests.
- Provide advice and guidance on this policy and procedures.
- Identify and communicate any EISR issues to Senior Management and Chief Executive.
- In conjunction with the appropriate Senior Management, allocate the request for environmental information to relevant member of their staff.
- Ensure that requests for environmental information are handled effectively by logging and co-ordinating requests.

Compliance with this policy will be monitored by the Freedom of Information Officer on an annual basis.

### Senior Management

- Ensure all staff comply with the agreed policy and procedures for EISR.
- As required, appoint a member of their team to assist the Freedom of Information Officer to fulfil requests for environmental information.
- Recognise EISR issues in service planning and resource allocation.

### All staff

- Be aware of what EISR means and know how to recognise a request.
- Follow the policy and procedures for handling EISR requests.
- Deal with all requests promptly and within 20 or 40 working days of receipt, as applicable.
- Provide advice and assistance to requests for environmental information.