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**Freedom of Information
Standard Operating Procedure**

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2.00	Amendment to reference to Re-use of Public Sector Information Regulations 2015 and process flowchart added at Appendix 'D'	02/10/2015
3.00	Amendment to content of flowchart within Appendix 'D'	07/10/2015
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1. Purpose

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland (hereafter referred to as Police Scotland) Freedom of Information Policy.
- 1.2 The SOP sets out the responsibilities and procedures for meeting the obligations on Police Scotland under the Freedom of Information (Scotland) Act 2002 (FOISA), the Environmental Information (Scotland) Regulations 2004 (EISR) and the Re-use of Public Sector Information Regulations 2015 (RPSI).

2. Obligations under FOISA, EISR and RPSI

- 2.1 The Freedom of Information (Scotland) Act 2002 (FOISA) provides applicants with a right of access to information held by Scottish public authorities, including Police Scotland. A public authority is required to issue a response notice to an applicant as soon as possible and, in any case, within twenty working days. Where the information requested is not being provided, the response must articulate the reason for this with reference to Act.
- 2.2 The Environmental Information (Scotland) Regulations 2004 (EISR) provide a right of access held by Scottish public authorities to environmental information. Whilst the access route provided by the EISR mirrors that in FOISA, there are a number of key differences in terms of the way in which a public authority may respond to a request. It is important therefore to distinguish EISR requests from requests made under FOISA.
- 2.3 Both FOISA and EISR provide that if an applicant is dissatisfied with the response to their request, they have the right within forty days to request an internal review by the Service. If the applicant remains dissatisfied following the internal review, they can appeal within six months to the Office of the Scottish Information Commissioner (OSIC) for an independent decision on the case.
- 2.4 Scottish public authorities are obliged in terms of both FOISA and EISR to make information available proactively. To satisfy this requirement, Police Scotland must adopt and maintain a publication scheme and publish information in accordance with the scheme.
- 2.5 The Re-use of Public Sector Information Regulations 2015 (RPSI) provides a right to use public sector information for a purpose other than the initial public task it was produced for. The right relates to information that has been disclosed or made available proactively in terms of FOISA or EISR. A response to a re-use request must be issued within twenty working days.

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3. Identifying FOISA, EISR or RPSI requests for information

- 3.1 Requests for information in terms of FOISA must be in a recordable format (usually a letter or email), must clearly identify the information requested and must provide the applicant's real name and an address for correspondence. There is no requirement to make reference to FOISA in a request.
- 3.2 Requests for environmental information may be also made verbally as well as in writing. Verbal requests for environmental information made to an officer or staff member should be transcribed and sent by email on the day of receipt, together with the name of the applicant and an address for correspondence to foi@scotland.pnn.police.uk.
- 3.3 Requests for re-use of public sector information must be made in writing and must state the purpose for which the document is to be re-used. Requests under RPSI should be clearly identifiable from the content of the request.
- 3.4 Not all requests for information require to be handled under this procedure. Where a request meets one of the following criteria, it does **not** need to be referred to Information Management (IM) as a request under FOISA or EISR, and can be responded as '**business as usual**' by the relevant business area:
- Complaints about the police, e.g. letters indicating dissatisfaction with Police response times, e.g. why did it take the Police so long to attend? What are the Police doing about a particular standing complaint?
 - Requests for information currently in the public domain, such as local press releases, crime prevention leaflets etc.
 - Routine requests for information readily provided, such as recruiting information.
 - Information requested by partner agencies, in terms of an existing memorandum of understanding, information sharing protocol or similar.
 - Information requested by local authorities and other statutory agencies as part of community partnership arrangements.
 - Information requested by other public authorities relating to the sharing of information on individuals or law enforcement.
 - Information sought by the Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Children's Reporter Administration in relation to the investigation or detection of crime, the apprehension or prosecution of offenders, the investigation of a death and deferred sentence/good behaviour reports.
 - Provision of information to defence solicitors where authorised by COPFS.
 - Complainers or victims of crime seeking information on the progress of the Police investigation.
 - Provision of abstract reports, photographs, plans etc.as detailed within the charging regime. See Abstract of Police Reports SOP.

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- 3.5 The following requests should be considered as a request under FOISA, EISR or RPSI and **must be immediately** forwarded to foi@scotland.pnn.police.uk if received elsewhere in the organisation:
- requests that cite FOISA, EISR or RPSI;
 - requests that cite the United Kingdom equivalent legislation, the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR); and
 - requests for information that should not be disclosed.
- 3.6 The above lists are not exhaustive and it should be borne in mind that a request may be embedded in a piece of wider correspondence such as a letter of complaint. Advice on whether any particular request needs to be referred to IM can be sought from a Disclosure Manager or member of the IM senior management team.

4. Responsibilities for Handling FOISA, EISR or RPSI Requests

- 4.1 The processes for handling requests involve co-operation between IM, the business area(s) holding the relevant information, Corporate Communications and, on occasion, Executive Support.
- 4.2 A flowchart showing the process and associated timescales is provided at Appendix 'D', and the specific responsibilities are set out below.
- 4.3 IM will undertake the following activities:
- log all new requests, reviews and appeals under FOISA, EISR and RPSI on the day of arrival in the Service, and monitor their progress until completion;
 - liaise with applicants, if required, to clarify their name, the information they require and the format in which they require it;
 - identify which requests should be intimated for Executive oversight and/or relationship management expertise;
 - liaise with business areas (via identified single points of contact or, in divisions, via the Superintendent (Support)) to assist in identifying relevant information;
 - assess with the business area any harm in disclosing information, and redacting documents if required;
 - levy any charges for complying with a request, in accordance with the Fee Regulations;
 - prepare response notices that meet the legislative requirements and despatch them to applicants; and
 - prepare submissions required by OSIC in response to an appeal.

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- 4.4 In order to meet the statutory deadlines, all Police Scotland officers and staff must undertake the following activities:
- provide to IM all of the information requested within five working days, regardless of whether it is considered suitable for public disclosure;
 - where appropriate, provide to IM details of searches carried out to support the use of the information not held provision;
 - where appropriate, provide to IM evidence to support the use of the excessive cost provision (the current limit is £600 - approximately 40 hours work);
 - consider carefully the suitability of the information for disclosure and provide to IM an explanation of any harm that would ensue if all or part of the information were publicly disclosed; and
 - provide to IM any additional contextual information to be included in the response, especially where disclosure might attract reputational damage or adverse media comment if presented in isolation.
- 4.5 Business Leads/ Area Commanders will undertake the following activities:
- review response notices within three working days, highlighting any concerns regarding disclosure and providing further contextual information as appropriate; and
 - where appropriate, liaise with Corporate Communications and any other stakeholders to prepare a communication strategy to complement the disclosure
- 4.6 Executive Support will undertake the following activities:
- Function as the single point of contact for requests relating to information held by the Executive;
 - review all Senior Management Team (SMT) relevant response notices within three working days, highlighting any concerns regarding disclosure and providing further contextual information as appropriate; and
 - where appropriate, liaise with Corporate Communications and any other stakeholders to prepare a communication strategy to complement the disclosure
- 4.7 Corporate Communications will undertake the following activities:
- where requested, assist with the preparation of a communication strategy or media lines to accompany the disclosure of information.

5. Publication of Information under FOISA, EISR or RPSI

- 5.1 Police Scotland has committed to publish information in accordance with the Model Publication Scheme 2017 produced by OSIC.

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5.2 Police Scotland will use the external website, www.scotland.police.uk as the means of publishing information required by the Model Publication Scheme.

6. Responsibilities for Publication of Information

6.1 The processes for publishing information in accordance with the Publication Scheme involve IM, the business area holding the relevant information and Corporate Communications. The specific responsibilities are set out below.

6.2 IM will undertake the following activities:

- prepare and maintain the Guide to Information, which relates information published on the external website to the required classes of information under the Model Publication Scheme;
- provide advice and guidance to business areas on information required for publication and suitable for publication under the Scheme;
- monitor compliance with the Scheme to make sure that departments are publishing required information regularly; and
- liaise with OSIC and the Information Commissioner (ICO) in regard to any queries concerning publication or re-use of information.

6.3 All Police Scotland business areas will undertake the following activities:

- Ensure that information included in the publication scheme for which they are responsible is published to the external website;
- identify information that is requested regularly, and would be in the public interest to publish under the Model Publication Scheme, and secure Executive approval for its publication; and
- forward any information for publication on the external website to Corporate Communications, copied to the Disclosure Manager with responsibility for that business area.

6.4 Corporate Communications will undertake the following activities:

- Publish approved information timeously to the Police Scotland external website.

7. Offences under FOISA and EISR

7.1 It is an offence in terms of Section 65 of FOISA and Regulation 19 of the EISRs to alter, deface, block, erase, destroy or conceal a record or document that has been requested. Any such action may be deemed to be an offence where it takes place after the relevant request has been made with the intention of preventing disclosure of the information. Routine destruction of information by business areas should continue unless notified by IM about a request for relevant information prior to the date of destruction.

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- 7.2 Police Scotland, OSIC and the Crown Office and Procurator Fiscal Service have agreed a framework for the investigation and reporting of offences under FOISA and EISR.
- 7.3 It is agreed that the investigation of relevant offences will be conducted on a joint basis by OSIC and Police Scotland; and that at the conclusion of the investigation, Police Scotland will report the matter to the appropriate procurator fiscal.
- 7.4 Under this framework, should an allegation be made that an offence has been committed, whether alleged against a member of police personnel or involving any other Scottish public authority, then in addition to normal procedures, the matter should also be reported in writing to the Head of Information Management within three working days of the allegation being made known to Police Scotland.

8. Record Retention

- 8.1 All records generated as a result of the activities outlined in the SOP will be managed in accordance with the Record Retention SOP.

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List of Associated Legislation

- The Environmental Information (Scotland) Regulations 2004
- The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004
- The Freedom of Information (Scotland) Act 2002
- The Re-use of Public Sector Information Regulations 2015

List of Associated Reference Documents

Policy

- Freedom of Information Policy

Standard Operating Procedures

- Abstract of Police Reports SOP
- Record Retention SOP

Other

- Scottish Ministers Code of Practice on the Discharge of Functions by Public Authorities Under the Freedom of Information (Scotland) Act 2002
- Memorandum of Understanding between The Scottish Information Commissioner and The Crown Office & Procurator Fiscal Service and the Chief Constable of the Police Service of Scotland in Relation to the Investigation of Criminal Offences

Glossary of Abbreviations

EIR	Environmental Information Regulations 2004
EISR	Environmental Information (Scotland) Regulations 2004
FOIA	Freedom of Information Act 2000
FOISA	Freedom of Information (Scotland) Act 2002
IM	Information Management
RPSI	Re-use of Public Sector Information Regulations 2015
OSIC	Office of the Scottish Information Commissioner

Process Flowchart

