

Freedom of Information in Scotland. Expectations and the situation one year after the Act came into force in January 2005

by Wendy Axford

There are legislative differences between Scotland and the United Kingdom. The United Kingdom Act covers all legislation relevant to England and Wales and to those remaining aspects of the law (e.g. defence, immigration) not delegated to the Scottish Parliament at Holyrood. The Freedom of Information (Scotland) Act 2002 relates to all specifically Scottish matters and is supplementary to existing U.K. legislation which defines access for the public to information concerning Environmental Issues, Data Protection, Copyright, Designs and Patents. This article will concentrate on the Freedom of Information (Scotland) Act 2002.

Freedom of Information (Scotland) Act 2002

The Deputy First Minister for Scotland introduced the Bill for Freedom of Information (Scotland) to the Scottish Parliament in 1999. During his speech he stated: "Effective freedom of information and openness is as much about culture as it is about legislation."

After numerous consultation expectations were high when the Freedom of Information (Scotland) Act 2002 came into force in January 2005. These expectations are expressed in the first section of the Act itself under the heading *General Entitlement*: „A person who requests information from a Scottish Public Authority which holds it is entitled to receive it."

During a conference held in 2004 to prepare the Act Tavish Scott, Deputy Minister for Finance and Public Service, stated that the government had „an overarching commitment to openness and accountability“ and that there was „continuous and widespread support for Freedom of Information and for its effective delivery“.

Openness is a key aim of Freedom of Information (FOI) and Tavish Scott placed it at the heart by stating five principles:

- openness and transparency in government are central to a modern and democratic society
- openness empowers people
- openness improves government
- access to information facilitates public debate
- openness leads to more effective scrutiny

The Act seemed to be difficult to understand but however the principles would be simple to put into place. But a caveat was that organisations act like ostriches and put their heads in the sand!

At the same conference many implications of the Act were discussed including exemptions. Exemptions under the Act enable information to be refused. Exemptions apply when: disclosure would breach the data protection principles; personal Census Information is requested; a deceased person's health record is requested.

A Swedish viewpoint was that even after over 200 years, openness and transparency were still not instinctive. The Swedes were as nervous as anyone about releasing information. "This is why education and awareness are so important. Every new official needs education. People

should take pride in being of service to the public.” Staff Training, Records Management and Public Awareness were seen as key areas to be addressed by institutions and local authorities. These areas signalled even before the Act was in force are still, 2 years later, areas which require attention and on which the successful functioning of the Act depends. Inadequate records management was seen as the main barrier to the Act’s success. In 2004 it was revealed that only 15 % of the public were aware of the Freedom of Information Act.

There is extensive training material online in the form of summaries and questionnaires and structured group workshops. This material can be easily downloaded in PDF format. There can be no excuse, if these materials are used, for not understanding the application of the Act.

The *Codes of Practice* are important because „they take the legalism out of the process” and concentrate on the effective application of Freedom of Information.

The *Charging Structure* raises many issues in the way an authority determines charges. Any costs over £ 100 should be charged and in Scotland the Act is quite clear – if the authority estimates that the cost of complying with the request for information will exceed £ 600 the authority need not provide it. The main issue was whether the charge should be made for staff time or for services used. The National Library of Scotland developed its own approach described later in this article. In Ireland the reintroduction of charges resulted in a fall in the number of requests. There requests for non-personal information declined by 75 % between 2003 and 2004.

Kevin Dunion, the Scottish Information Commissioner, expressed the view: „There is no doubt the nature and scale of fees can have a significant impact on the extent to which the primary freedom of information legislation is used and information is disclosed.” He felt that it was important to realise what are now classified as Freedom of Information requests are not necessarily „new demands upon an authority”. The Act may also have prompted investment in specialist staff, staff training or investment in software, which has an organisation-wide benefit in terms of doing business in general – not just responding to Freedom of Information requests – through improvements in customer response, document management and information retrieval.” Further Dunion signalled in his report „One year on” the volume of requests for information, requests for review and applications against the decisions of authorities were higher than had been anticipated. This increase is reflected generally in the experience of local authorities. Indications for are the circumstance that authorities are doing well in responding generally within the timescale of 20 days. Public knowledge of the Act has markedly increased with 47 % of the public now aware of it. The Act currently applies to small authorities and organisations including single General Practitioners (Doctors in General Practice). He concluded that there is a need for Performance Indicators, that libraries should do more to fulfil the Freedom of Information requirement of „Duty to assist applicants”. Authorities could also often do more to clarify requests from applicants.

Records Management

There are 30 pages in the Act’s *Code of Practice* Section 61 devoted to Records Management. The *Code of Practice* refers to records in all formats – from parchment to paper to digital. This area has required an audit of records management in many authorities and institutions and new systems are either in place or under consideration.

Local Authorities

As an example, Stirling Council has a clear policy for the retention of records and this is declared on its website¹ recording the the deciding factors for each record:

- if there is any legislation that says we have to keep records for a certain length of time
- if there is any guidance from professional organisations,
- which records staff need to use in their work
- how much room we have to store records
- whether the records are of historical interest and should be sent to Stirling Council Archive for permanent preservation

Once Stirling Council has determined retention periods which will be added to the website. „This will help to explain why in some cases when you make a request under the Freedom of Information Act, some information may not be available.” This is a good example of a proactive policy.

National Library of Scotland

Graeme Hawley, Corporate Information Officer of The National Library of Scotland, kindly sent me some of the information he drafted for a submission to the Scottish Information Commissioner’s consultation on the working of the Act. It represented a basic rethink by the large copyright deposit library of its unique position in Scotland in relation to Freedom of Information. A decision was taken to carry on as if the new Freedom of Information charging structure did not exist and to keep the reprographic charges which were already in place.

Designation of a request as a Freedom of Information request at the National Library was a vital decision. There were often complex requests about family names which could involve hours of staff time. A typical request might be „Does my granny’s name appear in any of the 8.000 manuscripts in (any one of hundreds) collection?” This large National Library is not looking for ways to get out of cataloguing hitherto uncatalogued collections nor of avoiding helping users with their research or interests. „Rather it is to say that the Library and its new strategy, are committed to widening access and making its collections available to all through methods such as collection level cataloguing, web-based inventories, digitisation, and working in partnership with other libraries, and had begun this work long before the Freedom of Information (Scotland) Act legislation.”

With hundreds of requests a day, it is difficult to categorise requests. Most of the National Library’s stock is automatically exempt under section 25, because it is already available to the public. There is a need for the exemption of library stock from the Act and therefore the following recommendation was submitted to the Scottish Information Commissioner: „The Freedom of Information (Scotland) Act should be revised to exclude information held in the collections of libraries and archives where these collections are already available and accessible to the public.”

¹ http://www.forthvalleygis.gov.uk/records_management

Questions as to what defines *accessibility* remain to be answered. For example, is an open collection in Edinburgh to be regarded as *accessible* to an applicant living in the Shetland Islands?

Freedom of Information and the Disadvantaged

There is no specific mention in the UK Act of the rights of disabled people in relation to applying for or receiving the information requested. In comparison, in Scotland, „Equality in delivering Freedom of Information – forget no one” is a slogan spelt out in a workshop from the online Scottish Executive Open Learning Workbook, which does not limit itself to physical disability but concerns itself with: Children, Homeless, Literacy Ability, Disability, Older People, Other Languages and asks students to consider their library’s policy in relation to these groups of people.

A publication by CILIPS² „Freedom of Information (Scotland) Act 2002 – A guide for the Information Professional” highlights differences between the Scottish and UK Acts in the approach to disability. Staff needs to understand that it may not be enough to point to publications on the web. Accessibility issues need to be taken into account, offering alternative formats of publications where possible as standard or on request. The cost of converting the information into an accessible format must be covered by the Public Authority and cannot be passed on to the recipient. Formats mentioned as accessible include print and online versions, audio tape, Large Text Format, Braille/Moon, and alternative languages.

A large authority in the West of Scotland, North Lanarkshire Council, serving a population of nearly 350.000 provides websites with council information in these languages: Cantonese, English, Gaelic (i.e. Scottish Gaelic), Hindi, Punjabi, Urdu. It also states on the web that information about Freedom of Information „is available in large print, Braille, audiotape or in any other language. Information detailed may be available in a range of formats including hardcopy reports and leaflets, web pages and books, electronic documents (i.e. word processor or spreadsheet), and inspection by appointment”. Apart from the languages mentioned there are people from Poland and other Eastern European countries living in the area, whose minimal command of English may require considerate treatment.

The Scottish Act (unlike the UK Act) expressly entitles children to exercise their rights under the Act. This was a late amendment following the wording of the Age of Legal Capacity (Scotland) Act 1991: „Children can consent to certain activities (e.g. medical treatment/instructing solicitor) if there is sufficient understanding.” If they are over 12 years of age there is a presumption that this is the case.

Conclusion

The greatest contribution of the Freedom of Information (Scotland) Act has been to require a reappraisal of existing methods and resources. It has brought out the value of existing systems and resources but it has also initiated the writing of specifications for records systems in some local authorities.

² CILIPS stands for Chartered Institute of Library and Information Professionals

It has furthered collaborative working between sectors of library and information professionals and between professions, which can only be beneficial. It has also enabled rethinking of terms like *access* which now embrace a more proactive approach to the delivery of information.

We are now at the stage of considering whether we provide too much information!

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