



Abertay University

Freedom of Information (Scotland) Act 2002: University Procedure for Undertaking a Review

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Approved 1.0	Changes incorporated following review and feedback from Director of Communications	Information Manager	16/01/08
Approved 1.1	Amended to include procedure for recording how information was retrieved where an enquirer contests that information is not held. Minor typographical errors corrected.	Information Manager	09/04/09
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1.3	Update of procedure	Corporate Governance, Academic Registry	08/12/14
1.4	Renewal of procedure	Corporate Governance, Academic Registry	22/06/2016

Overview: requirement for a review

1. The Freedom of Information (Scotland) Act 2002, requires that responses to information enquiries are made within 20 working days.
2. In responding Scottish public authorities should either provide the information requested, or notify the enquirer in writing where and why it has not been possible to respond in full.
3. An enquirer can (within 40 working days of receiving a response to their enquiry) ask a Scottish public authority to hold a review, typically where they are:
 - Unhappy with how the authority has dealt with the information request e.g. where a response was received outwith the 20 working day time limit.
 - Questioning a decision to withhold information requested (either in part or in its entirety), with the authority being asked to reconsider an earlier decision with a view to releasing in full the information requested.
4. On receiving a request for a Review, the University has 20 working days in which to hold the review. Within this period the University must reach a determination and respond to the enquirer. Where the Review has found that information previously withheld should be released, this necessary information must also be supplied to the appellant within the prescribed time period (20 days).
5. These procedures provide the University with a framework for handling reviews. The procedures draw upon the Freedom of Information (Scotland) Act 2002 and the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities Under the Freedom of Information (Scotland) Act 2002, commonly referred to as the s.60 Code of Practice.

Guiding principles: requirement for review

6. Guidance from Scottish Ministers states that is clear, the review procedure should:
 - Be fair and impartial.
 - Enable decisions to be reversed or changed if appropriate.
 - Fully address the access needs of disabled applicants.
 - Be straightforward and capable of producing a determination of the review promptly, and in any event within 20 working days of receipt of the request for the review.

Procedures for undertaking a review: is the requirement for review valid?

7. Requests for review are normally received by the University Secretary, who will consider or delegate them as appropriate.
8. A preliminary review will be undertaken, (normally involving the University Secretary or her nominee, consulting staff with expertise in Freedom of Information legislation as appropriate) to establish whether there are any grounds for refusing a review. *“An authority is not obliged to comply with a request for a review if the request is considered to be vexatious or the original request for information was vexatious or repeated – i.e. identical or substantially similar.”*¹²

9. Should the University determine that it is not obliged to comply with a request for a review, the University Secretary (or her nominee) will write to the applicant to that effect. This notice must also detail how the applicant can seek a right of appeal from the Office of the Scottish Information Commissioner.

Procedures for undertaking a review: preliminary stages

10. Where the University has determined that a requirement for a review is valid the following steps are to be taken:
- The University to write to the appellant acknowledging the request for review, confirming that a review will be held within the prescribed time limit;
 - The appellant to receive a copy of the University's procedures for undertaking a review;
 - Where it is contested that the information requested of the University is not held, or where it is necessary to assess whether the initial search for the information requested was lacking – information will be sought from the School or Service which carried out the search(es) and consideration will be given to whether any further searches are required. The methodology applied to undertake the subsequent search(es) and the results should be recorded where appropriate. Where possible and appropriate, the search should be undertaken by a person not directly connected to the initial enquiry. Details of the search process and the results will be made available to the Review;
 - The University Secretary (or her nominee) will establish a review panel if this is considered appropriate, or she may delegate consideration of the issues raised as appropriate to a reviewer. The review panel's membership (or the reviewer) will normally be drawn from the University's Senior Management Group or staff of equivalent seniority, who will consult a member of staff with responsibility for managing and advising on freedom of information legislation. The composition of the review panel, or the identity of the reviewer, should allow the University's initial decision to be considered afresh, allowing for a different decision to be reached if appropriate. A formal review meeting will not always be required: a 'desktop' or email-based internal review are alternatives. However, in those cases where a formal meeting of the review panel is appropriate, its procedure is set out below.
11. Prior to the meeting of the review panel, the panel will receive:
- Briefing paper(s) or enclosures summarising the initial management of the enquiry, and the rationale underpinning the University's initial response. This will include copies of relevant Decision notices issued by the Office of the Scottish Information Commissioner and accompanying briefing materials where external precedent was used to help the University produce its initial determination.
 - Copies of all relevant documentation (as per the case file).
 - Where appropriate, relevant guidance from the Office of the Scottish Information Commissioner or from other sources with specific reference to the *public interest test* and exemption(s) where applied by the University.

- Where appropriate, copies of relevant decision notices issued by the Office of the Scottish Information Commissioner (or any other relevant body) or summaries thereof, which may assist the Review to consider the University's initial decision and to assess whether a different course of action may be appropriate.

Procedures for undertaking a review: the review meeting

12. The review panel is to be Chaired by the University Secretary or her nominee.
13. Panel members are to be briefed on the requirements for undertaking a review.
14. The panel will be given an opportunity to seek clarification etc. concerning the materials issued prior to the review meeting.
15. Panel members will be briefed on the nature of the general entitlement to information as provided for in section 1(1) FOISA and on other technical matters as appropriate.
16. The panel will agree how the review meeting will be structured and the questions to be put by the panel in undertaking the review.
17. A minute of the review meeting will be taken where appropriate.
18. The outcome of the review (whether determined by a formal meeting or otherwise as set out above) will be communicated to the applicant by the University Secretary or her nominee.
19. The outcome of the review will either require the University to provide to the appellant within the prescribed time limit:
 - All of the information requested if appropriate.
 - Some of the information requested if appropriate, with an explanation as to why the University has withheld other information.
 - A notice from the University confirming that the University still intends to apply its original decision without modification with an explanation as to how that decision was reached.
 - A notice informing the applicant of their right of appeal to the Office of the Scottish Information Commissioner, and ultimately to the Court of Session on a point of law.
 - The University's decision about the level of fee to be charged, if the reason for requesting the review was on the basis of a fees notice being unacceptable to the applicant.
 - An apology if the review finds that the University had mismanaged the information request by not following the technical requirements of the Act.

Procedures for undertaking a review: communicating the decision

The outcome of the review will normally be issued from the office of the University Secretary or by her nominee.

Procedures for undertaking a review: documentation

20. The minute of the Review where appropriate, briefing papers produced for the Panel and a copy of the communication issued to the applicant will be placed in the case file, and the file closed.
21. Case files to be retained for six years and a day, following the last action on the file.
22. Retention periods governing the management (destruction or archival) of the information requested by the appellant **will be temporarily suspended** until such times as it becomes clear that the University will not be required to release the information on the instruction of the Office of the Scottish Information Commissioner, should a subsequent appeal to this Office be made.

Corporate Governance
Secretariat

¹ s.60 Code of Practice, Part III, para.67

² Freedom of Information (Scotland) Act 2002 Section 21(8)