



FREEDOM OF INFORMATION

A Guide for Customers



What is Freedom of Information

The Freedom of Information (Scotland) Act 2002 came into full force on 1 January 2005. The Act aims to increase openness and accountability in government and across the public sector by ensuring that people have the right to access information held by Scottish public authorities. People are able to see and question how public bodies like Angus Council work and how decisions are made.

Who does it apply to?

The Act applies to practically all public bodies in Scotland, including local authorities, the NHS, Colleges and Universities, the Police, the Scottish Parliament and the Scottish Executive. The Act also applies to companies wholly owned by a public authority and it may even apply to private companies carrying out a function for a public authority, for example under a contract. A full list of the organisations affected is set out in the Act and the Scottish Ministers can add further bodies.

What type of information is covered?

The Act covers any information of any age which is held by the public body and is recorded in a permanent form, such as information recorded in electronic format or on paper.

What does Freedom of Information mean for you?

The Act allows anyone (individual or organisation), anywhere to ask for information from the Council. It does not matter how old the information is or why it was created. If the Council holds the information, then we must give you access to it, unless an exemption applies. The Council has adopted a Publication Scheme so that you can see what sort of information we routinely publish. Where the information you wish to access is not contained in the Publication Scheme, the Council will have to respond to your individual requests for that information.

Making a request for information which is routinely published

All information listed in the Council's Publication Scheme is readily available, so that you can access it without having to make an individual request. The scheme sets out the classes of information the Council publishes or intends to publish, how the information is made available, e.g. on the Council's website or from ACCESSLine on 08452 777 778, and whether there is a fee for the information (most is available free of charge but, in some cases, there will be a charge for printing and postage). The Council's Publication Scheme can be accessed electronically by going to www.angus.gov.uk/foi/pubscheme. The scheme may also be accessed at all Angus libraries and local ACCESS offices.

The scheme has been designed to provide as much information as possible so that the Council has fewer individual requests to deal with.

Section 13 of the Publication Scheme (Classes of Information) provides more details on the information available under the scheme, along with additional guidance, where relevant, on how the information falling within each “class” may be accessed.

Online: Most information listed in our Publication Scheme is available to download from our website.

If no links are provided in Section 13 you can use our website’s “Search” facility at www.angus.gov.uk/ . If you are still having trouble finding any document listed under our scheme, please contact the following person for assistance:

FOI Officer, Law and Administration Division, Corporate Services Department, Angus Council, Angus House, Orchardbank Business Park, Forfar DD8 1AN; Telephone 01307 476261; Fax 01307 476299; Email: LAWADMIN@angus.gov.uk

If the information you seek is listed in our Publication Scheme but is not published on our website, we will usually be able to send the information to you by email. When requesting information from us, please provide a telephone number so that we can contact you to clarify details, if necessary.

By phone: Information can also be requested from us over the telephone. Please call ACCESSLine on 08542 777 778 to request information available under this scheme.

By post: Please address your request to ACCESSLine, Angus House, Orchardbank Business Park, Forfar DD8 1AX.

Making a request for information which is NOT routinely published (individual request)

- Since 1 January 2005, anyone, anywhere can make a request for information and is entitled to receive it, provided no exemptions apply.
- The request can be made by an individual or an organisation and does not have to be made by someone in Scotland.
- If you are requesting information for someone else you need to provide their name.
- You do not have to refer to the Act or say why you want the information.
- Requests must be in writing or in another permanent form (such as a taped phone message), must set out your name and address and describe the information required.
- The Council must provide ‘recorded information’, such as information recorded in electronic format or on paper.
- It does not matter how old the information is.

- The Council may be able to charge a fee for providing the information. The Council has decided that it will not charge for dealing with requests which cost below £400 to process; we can charge 10% of our costs for requests costing between £400-£600 to deal with and we do not have to provide information which would cost us over £600 to deal with.

Whom should you contact to make an individual request?

Online: You can complete the Information Request Form at www.angus.gov.uk/foi/foirequest/default.html . Your request will automatically be directed to the Council's FOI Officer.

Alternatively, you can send an email with your request to LAWADMIN@angus.gov.uk

By post: Please address your request to: Head of Law & Administration, Angus House, Orchardbank Business Park, Forfar DD8 1AN.

How should the Council handle your request?

- The Council must help anyone who wants to make a request for information.
- All requests should be dealt with promptly and in any case within 20 working days of receipt.
- The Council does not have to comply with a request if an exemption applies, if the cost of doing so would exceed the amount set by the Fees Regulations, or if the information is not held by the Council. You must be notified in any of these instances.
- If you are unhappy with the way your request is dealt with, you can ask the Council for a formal review. If following that review you remain unhappy with the outcome, you may appeal to the Scottish Information Commissioner.

Can information always be accessed?

No. There are two types of exemptions: absolute and non-absolute.

If any of the following absolute exemptions apply, the Council does not have to release the information:

- The information is otherwise available, e.g. listed in the Council's Publication Scheme.
- The Council is prohibited from releasing the information, e.g. by statute.
- The information relates to court proceedings, e.g. court records.
- Personal information about an individual.
- Where disclosure of information obtained by the Council from someone else would constitute an actionable breach of confidence.

There are other non-absolute exemptions where the Council will have to apply a public interest test to decide whether to release the information. This means that the Council can only withhold the information if the public interest in withholding it is greater than the public interest in releasing it. The non-absolute exemptions that are likely to be most relevant to the Council are:

- Information intended for future publication within 12 weeks of the request being made.
- Research information due to be published and where prior publication would substantially prejudice the research programme or the interests of the Council.
- Information which is a trade secret
- Commercial interests where disclosure would be likely to prejudice substantially the commercial interests of any person.
- Information held for the purpose of investigations to establish whether an offence has been committed or for proceedings arising out of investigations.
- Law enforcement, where disclosure of information could prejudice substantially the prevention and detection of crime.
- Information relating to confidentiality of communications which could be maintained in legal proceedings, e.g. communications between solicitor and client.
- Health, safety and the environment, where disclosure of information would endanger the health or safety of an individual or if its disclosure is covered by separate Environmental Information Regulations.
- Audit functions, where disclosure would substantially prejudice effective audit. This does not cover internal auditing.
- Where disclosure of information would be likely to substantially prejudice the effective conduct of public affairs.

The Council must disclose information wherever possible. If an exemption applies, you should be given a written refusal notice that explains why the request is being refused. The notice should also advise you of your right to apply for a review of the decision.

Are there other rights to access information?

Some alternative rights to access information exist: for example, people have a statutory right to inspect and take copies of agendas, reports, background information and minutes (except confidential or exempt items) of the Committees and Sub-Committees of the Council.

Special rules apply to requests for environmental information. A request for environmental information does not have to be in writing and can be made orally. In most cases the Council has to respond to the request within 20 working days. A charge can be made for the information.

How does Freedom of Information fit with Data Protection?

The Data Protection Act 1998 aims to secure individuals' rights to privacy by protecting information that is held about them. Any authority that handles personal data must comply with the data protection principles which control how such data is processed. These principles include, amongst others, that personal data should be fairly and lawfully processed. Individuals have the right to ask for a description of the personal data held about them (this is called a subject access request) and to receive a copy of the information.

A request by an individual for personal information about him/herself will be handled under the Data Protection Act. If someone makes a request for information about another living individual, this will be handled under the Freedom of Information (Scotland) Act but the Council will not have to provide the information if the disclosure would breach the Data Protection principles. If the Council decides that it would want to disclose the information, then it should usually notify the individual concerned and take account of their wishes, although the Council does not have to be bound by the views of that individual.

Records Management

Good records management practices are essential for public bodies to meet their duties under the Freedom of Information (Scotland) Act. If records are easy to locate, for example, then requests can be dealt with quickly. There is no "get out" clause for information that is difficult to find. Records management is covered by a Code of Practice. The Code provides guidance on records management policies, records management training and the keeping, management and destruction of records, both paper based and electronic.

The Scottish Information Commissioner

The Act is enforced by the Scottish Information Commissioner who is a fully independent public official. His duties and legal powers ensure that people get the information from Scottish public authorities to which they are entitled. He has a number of responsibilities which include: dealing with complaints, promoting good practice to authorities, informing the public about the Act and enforcing the Act.

What happens if the Council fails to provide information?

If you are not happy with the Council's response to your request for information you can apply to the Council for a review of that decision. The Council's Chief Executive and its Head of Law and Administration will carry out the review.

Complaints concerning requests can only be made to the Scottish Information Commissioner once you have exhausted the Council's review procedure. If you are dissatisfied with the response from the Council, you can take your complaint to the Commissioner. If the Commissioner decides to proceed he will invite comments from

the Council and then decide if the complaint is valid. The Commissioner will notify yourself and the Council of his decision.

Sometimes the Commissioner will need more information before he can make a decision concerning a complaint and in such cases he will issue the Council with an information notice. The Commissioner also has the right to apply for a warrant to enter an authority's premises and seize documents, but such incidents are likely to be very unusual. The Commissioner can be contacted at:

The Office of the Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS

Tel: (01334) 464610

Fax: (01334) 464611

Email: enquiries@itspublicknowledge.info

Enforcement and Prosecution

If the Commissioner becomes aware that an authority is not complying with its duties under the Act, he can issue an enforcement notice, telling the authority which part of the Act it is failing to comply with and what it needs to do to put things right. An authority could be found in contempt of court if it does not comply with a notice issued by the Commissioner.

Although the Commissioner is primarily responsible for overseeing the Act, there are a small number of occasions when the courts may become involved. It is a criminal offence for anyone to destroy or erase information after a request has been received. The authority or its employees can commit this offence. Such cases will be dealt with in the Sheriff Court and the offence carries a fine of up to £5,000.

In most cases the Commissioner will make the final decision regarding the information which should be released, but there is one exception. The First Minister can overrule the Commissioner when the information requested relates to certain decisions taken by the Scottish Administration.

Further information is available at the following websites:

[www.scotland.gov.uk/government/foi-Scottish Executive](http://www.scotland.gov.uk/government/foi-Scottish%20Executive)

www.itspublicknowledge.info-ScottishInformationCommissioner

The content of this publication can be made available on alternative formats or translated into other community languages. Please contact the Council's **ACCESSLine on 08452 777 778** for further information.