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Responding to Re-use Requests: Guidance and Procedures

Scottish Information Commissioner

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Introduction

1. The Scottish Information Commissioner is a “public sector body” for the purposes of the Re-use of Public Sector Information Regulations 2015 (the Regulations) (regulation 3(1)(aa)).
2. This means we must, within 20 working days, respond to requests to re-use our documents:
 - (i) “re-use” means the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body’s public task for which the document was produced
 - (ii) “document” means information (or part of any such information) recorded in any form. The definition does not include computer programs.
3. All of the documents we publish on our website are automatically available for re-use, subject only to the conditions in the Open Government Licence (OGL) – see below.

Re-use requests

General approach

4. The general approach is to:
 - (i) respond to re-use requests following the same procedures as for information requests
 - (ii) respond to complaints about our handling of re-use requests following the same procedures as for reviews

Access or re-use?

5. It is important to distinguish between a request for information under information access legislation (such as FOISA and the EIRs) and a request to re-use information under the Regulations: requests for information concern **access** to information, while re-use requests are for permission to use **already accessible** information for a purpose different to that for which it was created.
6. Re-use requests are different to FOI requests in a number of ways:
 - (i) The requester is seeking permission to re-use specified information contained in a particular document, for a stated reason.
 - (ii) The information must already be accessible to the requester:
 - (a) through our publication scheme
 - (b) disclosed by us in response to an information request
 - (c) disclosed by or accessible publicly from a third-party
 - (iii) If an applicant makes a re-use request for information to which they don’t have access, the access issues (usually under FOI) must be considered first (but see paras 50-56 in relation to timescales).
 - (iv) Where possible and appropriate, we must ensure that procedures for processing requests are capable of being carried out electronically. For us this means, in practice, receiving and responding to requests by email and providing information in

machine readable format. That doesn't preclude us from contact by other methods if appropriate.

Validity

7. A re-use request must (regulation 6):
 - (i) be in writing (as with FOISA, this includes requests transmitted by electronic means, received in legible form and capable of being used for subsequent reference)
 - (ii) state the name of the applicant and an address for correspondence;
 - (iii) specify the document requested; and
 - (iv) state the purpose for which the document is to be re-used

Verbal requests

8. There is no duty to advise and assist as there is in FOISA and the EIRs. If we receive a verbal request to re-use information, treat it as an enquiry and give the applicant advice on what they have to do to make a valid request. We have a [Re-use Request Form](#) on our website which applicants might find useful.

Written requests

9. Follow the same procedures as for information requests up to and including allocation.
10. The request does not have to be on our request form. Whatever form it is in, you need to check it is valid.
 - (i) Name and address for correspondence: this is not specified in the Regulations so take the same approach as you would in relation to an information request (see [Name of requester or applicant](#))
 - (ii) Specifies the document requested. On the face of it this is straightforward, but you need to take care to ensure that you know *exactly* which document (information) it is. For example: version number, date of document, is it a complete version? If there is any doubt, seek clarification from the applicant, particularly if the applicant obtained the information from a third-party.
 - (iii) States the purpose for which the document will be re-used. The purpose does not have to be long or detailed but must be sufficiently clear. For example, if it is "for inclusion in my book", find out more about the book.
11. If any of these provisions are not met, we are under no obligation to respond. Although the Regulations do not specifically require us to provide advice and assistance, we want to provide a consistent, high-quality service, so will take the same approach as we do with information requests.
12. Therefore, if the provisions are not met, then, within **five working days** you should:
 - (i) Contact the applicant to tell them their re-use request is not valid.
 - (ii) Request additional information in writing.
 - (iii) Give appropriate advice and assistance, referring to our guidance [Re-use statement and guidance on making re-use requests and complaints](#):

- (a) If the information is available from our website or through our Guide to Information (GTI), the applicant can simply re-use it subject to the conditions of the **Open Government Licence** (OGL).
 - (b) If we have already provided the information in response to an FOI request, the applicant can re-use it subject to the conditions of the **OGL**, or any restrictions we may have highlighted in relation to the processing of personal data. If either of these applies, the applicant must submit a written request.
 - (c) If the applicant already has the information from a third-party, or access to it via a web link, advise them to submit a written request. It is important they provide the link or a copy/partial copy of the information so that it is clear what the information is.
 - (d) If the applicant is seeking to re-use information for which a third-party holds the intellectual property rights, they should send their request to the third-party. If we know who it is, we should tell them who.
13. Allow the applicant 10 working days to respond. If the applicant asks for an extension of time, use your judgement and/or seek line management advice, bearing in mind that you may still have work to do to assess the application.
14. If additional information/confirmation is not received by day 18 (and there is no contact from the applicant), refuse the re-use request by serving notice on the applicant setting out the reason for refusal and citing the appropriate provision in regulation 6. (See also the section on responding to requests.)

Withdrawn re-use requests

Withdrawn requests

15. The Regulations do not specifically allow applicants to withdraw requests, but there is no practical purpose in continuing with a request if the applicant tells us they do not want to pursue it. In those situations, ensure you write to the applicant acknowledging the position and close the case using the outcome code “request withdrawn”.

Applying exclusions

Introduction

16. Regulation 5 contains a list of “exclusions” from the right to re-use. Some of the exclusions are about the type of information (e.g. applicants don’t have the right to ask to re-use logos). Other exclusions depend on whether the information is accessible to the applicant.

Accessibility exclusions

Applicant does not hold or have access to the document for re-use

17. If information is not accessible, or the applicant does not have it:
- (i) Advise and assist (see para 11).
 - (ii) If there is sufficient information in the re-use request to also make it a valid request under FOISA/the EIRs/the GDPR or the DPA 2018, register it as a new request and process it as normal. Tell the applicant and alert them to whether it is information we are likely to hold and whether we are likely to disclose it.

- (iii) If there isn't sufficient information in the re-use request to also make it a valid request under FOISA/the EIRs/the GDPR or the DPA 2018, suggest to the applicant that they make an information request, alerting them to whether it is information we are likely to hold and whether we are likely to disclose it.

- (a) If a request is received, it should be processed as normal

- (b) If no request is received, issue a refusal notice in terms of regulation 2.

- 18. You must process the re-use request and information request concurrently: the clock does not stop simply because an information request has been made (see paras 50-56).

Information accessible via SIC website/GTI

- 19. All the information we publish through our GTI and on our website is available for re-use subject to the provisions of the **OGL**, but we must be acknowledged as the source.

- 20. The following are excluded for re-use under the OGL so are not automatically available for re-use:

- (i) Personal data in the information (see 47-49).

- (ii) Information that has not been accessed by way of publication or disclosure under information access legislation or with the consent of the Information Provider (see 22-**Error! Reference source not found.**).

- (iii) Departmental or public sector organisation logos, crests and the Royal Arms except where they form an integral part of a document or dataset (see 41-44).

- (iv) Military insignia (see 41-44).

- (v) Third party rights the Information Provider is not authorised to license (see 32-35).

- (vi) Other intellectual property rights (IPR), including patents, trademarks, and design rights (see 32-35).

- 21. If none of the above apply, respond to the request in terms of regulation 8(4)(b), permitting re-use.

Information already disclosed to the applicant under FOI, etc.

Information we disclosed

- 22. Information we have disclosed in response to an information request has the same status as published information in that it is available for re-use subject to the OGL. Responses to information requests make it clear when any third-party intellectual property rights are applicable and inform applicants that they must seek permission to re-use directly from the IPR owner.

- 23. If you receive a re-use request for information which contains IPR, including patents, trademarks, and design rights, see 32-35.

- 24. If you receive a request for information that contains (third-party) personal data see 47-49.

Information disclosed by another public body under FOI

- 25. Disclosure by another Scottish public body under FOI does not automatically confer a right to re-use our information. Consider:

- (i) Is it information we produced as part of our public task (see 40-44)?
- (ii) Have we published the information? If we have, then paras 19-21 apply. If not, do other exclusions apply?
- (iii) Does the information contain personal data (see 47-49)?

Information otherwise accessible

26. This has the same meaning as FOI. Accessibility does not give an automatic right to re-use. It simply means the information is subject to the right in the Regulations. Consider:

- (i) Is the information otherwise accessible in the same terms of FOI?
- (ii) Is it information we produced as part of our public task (see 27-31)?
- (iii) Have we published the information? If we have, paras 19-21 apply. If not, do other exclusions apply?
- (iv) Does the information contain personal data (see 47-49)?

Exclusions to apply when accessibility is confirmed

Information falls within public task

- 27. Once you are clear what document(s) the applicant is seeking permission to re-use, consider this exclusion first.
- 28. Regulation 5(1)(a) states that the right to re-use does not apply to a document where “the activity of supplying the document is one which falls outside the public task of the public sector body.”
- 29. We publish our Statement of Public Task [here](#), but ask yourself if the information/document is something we produce simply by doing our jobs?
- 30. If re-use permission is sought for documents/information not produced as part of that task, serve notice refusing re-use permission in terms of regulation 5(1)(a).
- 31. It is important to differentiate between information we produce as part of our public function and information we use. For example, we may use information such as other public bodies’ logos or data in reports (either under licence or with permission). If that is the case, those parts of documents are excluded and permission should be refused. (See also paras 32-35 and 41-44.)

Third-party intellectual property rights

- 32. The Regulations do not apply to information where the IPR are owned by a third-party (even if we have used it in a document).
- 33. Re-use permission should be refused for any document/information covered by this exclusion in terms of regulation 5(1)(b).
- 34. If we apply this exclusion, we must tell the applicant who owns the relevant IPR or who we obtained the document from (if we know and if disclosing that information wouldn’t contravene the GDPR/DPA).
- 35. The OGL excludes information the SIC is not authorised to licence. This is slightly different to third-party IPR. In carrying out our public task, we may use information under licence that was produced by another organisation such as another public body as part of their public

task (e.g. information used by us but produced under Crown Copyright). If re-use permission is sought for such information, we should check the terms of that licence and inform the applicant accordingly.

36. If information is covered by this OGL provision, seek HOE advice about which exclusion to apply as it will depend on the specific circumstances of the case.

Person is under a legal obligation to prove an interest

37. The Regulations do not apply if a person is under a legal obligation to prove an interest in order to gain access to documents. For example:
- (i) Access to a deceased person's health records under the Access to Health Records Act 1990: where a patient has died, only the patient's personal representative or someone who may have a claim arising out of the patient's death can access the records. In both cases, they would have to prove an interest (i.e. that they were the representative or had a claim) before being allowed to access the records.
 - (ii) Under the Building (Procedure) (Scotland) Regulations 2004, only certain people can access information about a residential building (owner, occupier, tenant, etc.). These people have to demonstrate that they own, etc. the building before being given access.
38. If you are unsure of whether this applies seek advice from the HOE.
39. If this applies, serve notice refusing re-use permission in terms of regulation 5(5).
40. If this does not apply, consider whether other exclusions apply.

Documents containing logos, crests or insignia

41. The Regulations do not apply to parts of documents containing logos, crests or insignia (including military insignia).
42. It is not only our logos etc. that are covered, but those of other organisations. Our information request template response letters make reference to this.
43. If this applies, serve notice refusing re-use permission in terms of regulation 5(6) and give advice and assistance in line with our guidance on use of our logo.
44. If this does not apply, consider whether other exclusions apply.

Information refused under FOISA/ EIRs, etc.

45. Information refused or withheld under FOI/EIRs, etc. is not covered by the Regulations, so re-use permission should be refused in terms of regulation 5(7)(a).
46. If you are processing an information request and re-use request concurrently, it is a good idea to send out two separate responses as the provisions for serving notice are different.

Personal data

47. Personal data is captured in two ways:
- (i) Withheld under FOISA/EIRs, etc.
 - (ii) Disclosed under FOISA/EIRs, etc.
48. Withheld personal data is covered by paras 45-46.

49. Regulation 5(7)(b)(ii) states that the right to re-use does not apply to information disclosed in response to an information request if “re-use would be incompatible with the law concerning the protection of individuals with regard to the processing of personal data”.

Responding to re-use requests

Timescales

50. The timescales provisions are similar to FOISA: we must respond promptly and in any event by the end of the 20th working day. Days are calculated in the same way. The clock starts the day after we receive a written request.
51. The Regulations are silent on clarification, so we must assume that either we must have:
- (i) clarified it within the timescales, or
 - (ii) have refused it within the timescales.
- See also paragraphs 52 to 56.
52. If the documents for which re-use permission is being sought are extensive in quantity, or the request raises complex issues, we can extend the timescales as is “reasonable in the circumstances”.
53. If you think timescales should be extended, seek DHOE/SMT permission and agree a timescale with them. Note this on the WorkPro file.
54. If we decide to extend the timescales, notify the applicant in writing as soon as possible and in any event before the end of the 20th working day.
55. The notification must state:
- (i) that no decision on re-use has been reached, and
 - (ii) the estimated response date.
56. **Important!** If an information request is also made, we are still obliged to respond to the re-use request in 20 days. This means in practice that the re-use request and information request must be considered concurrently.

Outcomes

57. There are three possible outcomes to a re-use request:
- (i) refusing the request
 - (ii) making the requested document available to the applicant for re-use (i.e. granting re-use permission)
 - (iii) where conditions are to be imposed under regulation 12, finalising the offer to the application of the conditions on which re-use will be permitted.
58. Remember that, if we agree a request, we don’t automatically have to send the applicant the document or information. If we publish the information and (insofar as possible) it is in the format requested, it is sufficient to send a response granting (or confirming) re-use permission with a web link is sufficient.

Charging

- 59. We are permitted to charge for re-use, but this is restricted to marginal costs in respect of the “reproduction, provision and dissemination of documents”.
- 60. We cannot charge for direct costs or indirect and overhead costs.
- 61. It is unlikely we will impose charges very often, so refer to our [Charging for Information Policy](#).

Responding to re-use requests

Refusing to allow re-use

- 62. If we refuse to allow the applicant to re-use information, we must notify them in writing and state the reasons why.
- 63. The notice must tell the applicant of their right to make a complaint to the SIC and how.
- 64. If we refuse permission because a third party owns the IPR in the document, we must, if known, tell the applicant:
 - (i) who owns the relevant IPR, or
 - (ii) from whom we obtained the documentunless identifying the person/organisation would be a breach of the GDPR/DPA 2018.

Permitting re-use

- 65. The Regulations do not specify what “permission” should contain, but focuses more on the format of the information, see paras 67-68.
- 66. Although there is no requirement to do so, include the following when permitting re-use:
 - (i) a reference to our complaints procedure. R17 makes it clear that we should have an internal complaints procedure
 - (ii) the purpose for which permission has been granted.

Format of documents

- 67. The expectation is that we will make documents available electronically:
 - (i) in the format and language in which it is held on the date of the re-use request
 - (ii) where **possible and appropriate** in open format and machine-readable format together with metadata
 - (iii) metadata should comply with formal open standards insofar as possible.
- 68. In practice, this means we should be providing information in, e.g.:
 - (i) machine readable pdfs
 - (ii) csv format for spreadsheets
 - (iii) MS applications
- 69. We should avoid scanned pdf documents that are not machine readable.

70. If the document for which we are permitting re-use is published on our website, providing the link is sufficient.
71. We are not required to create or adapt a document, or provide an extract for re-use in order to comply with the Regulations, if it would involve disproportionate effort. Nor are we required to continue to produce or store documents simply for the purposes of re-use by another person.
72. However, we should be as helpful as we can be in the circumstances. If document is not published and/or not in machine readable format, seek CST help about how to make it machine readable.
73. If you change a document format to facilitate re-use, let the HoD/owner of the document know so that we can consider whether to change the format in which we hold or publish it in the future.

Complaints procedure

74. If an applicant believes we have failed to comply with the Regulations, they have a right to complain to us. The complaint must be in writing.
75. Re-use complaints will be handled in the same way as requests for review. The main difference between re-use complaints and requests for review is that there is a right of review to the ICO.
76. Responses to complaints:
 - (i) must be in writing
 - (ii) give reasons for our determination
 - (iii) inform applicants of their right of appeal to the ICO.

Right of appeal

77. If we receive notification from the ICO of an appeal, refer the case to the Commissioner immediately.

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