



Practitioner Certificate

in

The Freedom of Information (Scotland) Act 2002



Endorsed by



Centre for **Freedom of Information**

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1 OVERVIEW

The Act Now Practitioner Certificate in Freedom of Information (Scotland) is a practical qualification for those who work with Freedom of Information and the Environmental Information Regulations in Scotland. **This certificate is endorsed by the Centre for FOI at the University of Dundee.**



Centre for **Freedom of Information**

Professor Kevin Dunion is Director of the Centre. He was previously the Scottish Information Commissioner. See Page 18 (Quality Assurance).

The course takes place over four days (one day per week) and involves lectures, assessments & exercises. This is followed by some online sessions and a written exam. Candidates are then required to complete a project to achieve the certificate.

Successful candidates will be able to demonstrate that they possess a good knowledge of Freedom of Information and other information laws as they apply in Scotland, as well as an understanding of the practical implications for their organisation.

Our course personnel consist of Ibrahim Hasan, Paul Simpkins and Tim Turner. All have experience of delivering similar courses and have worked extensively in the Freedom of Information sector in Scotland. Act Now was the first company to offer an ISEB FOI qualification in Edinburgh (no longer offered by ISEB).

2 INTENDED AUDIENCE

The course is designed for FOISA practitioners in the public sector as well as solicitors, auditors and others with a role dealing with FOISA and EI(S)R requests, advising on information or records management issues, and anyone else who has responsibility for managing and dealing with public sector information requests in Scotland.

3 AIMS, OBJECTIVES AND LEARNING OUTCOMES OF THE COURSE

The aim of the course is to promote an understanding of how freedom of information works in practice in Scotland and to enable delegates to gain the skills necessary for managing freedom of information within their organisation.

By the end of the course, delegates will have:

- An appreciation of Freedom of Information in its widest context in Scotland.
- An ability to identify information likely to be requested and an understanding of the information likely to be required for publication in a Publication Scheme
- An understanding of the interface between the FOISA with the Data Protection Act 1998 and the Environmental Information (Scotland) Regulations 2004, as well as related legislation e.g. the INSPIRE Regulations.
- An ability to develop procedures for handling a request for information, from receipt of the request through to the disclosure of information or refusal of the request.
- An understanding of the exemptions / exceptions and the public interest test
- An understanding of the enforcement of FOISA and EI(S)R by the Scottish Information Commissioner and the Court of Session.

4 ENTRY REQUIREMENTS

There are no formal entry requirements required for this course. However, it is expected that delegates will be familiar with the Freedom of Information (Scotland) Act 2002 (FOISA) and are currently working within (or advising) the public sector handling requests for information. Newcomers to the sector should undertake a basic FOISA course before attempting this certificated course.

5 COURSE ASSESSMENT

The course is assessed in two ways:

1. A closed book 2 hour exam with a total of 50 available marks in 2 sections
 - Section A - 20 multiple-choice questions to test knowledge of FOISA and EI(S)R (20 marks)
 - Section B - Three longer scenario based questions, with simple, bullet-point answers (10 marks each)

2. A separate open book course project completed by candidates in their own time
 - Two case studies (25 marks each)
 - 20 working days to complete

The pass mark is 50 marks combined from both sections, but candidates must pass both sections order to pass overall. Candidates scoring over 65% will be awarded a Merit and candidates achieving over 80% will be awarded a Distinction.

6 COURSE STRUCTURE

| | |
|--|----------|
| Teaching Time (face to face) | 20 hours |
| Individual Study (homework and revision) | 20 hours |
| Online and Distance Learning | 3 hours |
| Examination | 2 hours |
| Project Time | 15 hours |

As part of the individual study, candidates must complete four short homework tasks for each element of the syllabus detailed below – these do not count towards the exam but develop the candidates' skills in preparation for the exam and Course project.

There are four teaching days where we cover:

- FOISA Essentials and Process, covering all aspects of handling FOISA requests
- Key Themes – Transparency, Environmental Information, Public Interest, Substantial Prejudice, Data Protection and Confidentiality
- Refusing information under FOISA and the EI(S)R
- Information Management

Online sessions and coursework will support these sessions.

7 COURSE DELIVERY

The course will be delivered through a mixture of methods:

- Four days training face-to-face at an Edinburgh city centre hotel (1 day/week)
- At least one online training sessions (as a revision session)

- An exam
- The course project

NEW - ONLINE RESOURCE AREA

Candidates will receive exclusive access to an online FOISA resource area which contains lots of extra resources to help you pass your course including:

- ✓ Online quizzes
- ✓ Briefing notes on key elements of the syllabus
- ✓ Links to relevant ICO and (other agencies') guides
- ✓ Over 4 hours of revision videos

8 SYLLABUS

The syllabus and the exam are intended to give candidates a balanced view, understanding the legislation itself, how it has been applied and interpreted by the Scottish Information Commissioner and the Court of Session, as well as what both of these mean for the business of receiving and responding to requests, dealing with complaints, and advising colleagues on the application of the law.

- **DAY 1:** FOISA Essentials and Process (5 hours)
- **DAY 2:** Key Themes (5 hours)
- **DAY 3:** Exemptions, Vexatious and Unreasonable Requests (5 hours)
- **Day 4:** Information Management (5 hours)

In drafting the syllabus we have consulted the **Office of the Scottish Information Commissioner** and taken account of their comments and suggestions.

DAY 1: FOISA ESSENTIALS AND PROCESS (5 HOURS OF TEACHING TIME)

Candidates should receive a clear overview of the main provisions of FOISA, and its relationship with the Data Protection Act and EI(S)R. This should include the main provisions of FOISA: access rights, publication schemes and improved records management processes. There should be a brief, factual comparison with the UK FOI Act, and a short consideration of FOISA's creation and passage through the Scottish Parliament. Candidates should understand in principle which organisations are covered by FOISA.

Consideration should be given to the structures and procedures that a public authority needs to deal with FOISA and EI(S)Rs efficiently.

Information

- What is information? – the module must include consideration of the Court of Session decision on the difference between information and documents
- Information held on behalf of the organisation by third parties, information generated outside the workplace in home email accounts or social media – when is this information captured by FOISA and the EI(S)Rs?

Applicants and Requests

- What is a valid request?
- Who is entitled to make requests?
- Using pseudonyms and applying on behalf of others
- When has a requested been received?
- Timescales for response and how they work

Clarifying Requests and Finding Information

- Calculating cost limits, including key Scottish Information Commissioner decisions on how to make an estimate of costs. Candidates should understand the types of activities that can be included in an estimate.
- Clarification – including the s60 Code of Practice view on what it is appropriate to ask applicants, including do / don't examples from the SIC's published decisions
- Advice and assistance – what does the Code of Practice say, and what are some key examples of the SIC's view on the appropriate use of advice and assistance?
- Searching for information – what is an effective and appropriate search, what is the difference between extracting and summarising information and creating new data?
- Consulting third parties – when should this happen, what should third party organisations be told, what should third party organisations be asked to provide, how should public authorities use what they are told.

Responding To Requests and Dealing with Complaints

- Contents of a response, including drafting refusal notices
- Complaints process: conducting an internal review according to the Code of Practice and the SIC's current guidance
- Appeal routes to SIC and Court of Session – the module should include consideration of the SIC's main powers to issue notices and make practice recommendations. Candidates will not require a detailed knowledge of the minutiae of SIC warrants or non-statutory activities

Process Differences between FOISA and EI(S)Rs

- Candidates should understand the key differences between procedural issues in FOISA and the EI(S)Rs on the following issues:
 - Verbal / written requests
 - Cost limits
 - Inspection of information
 - Organisations covered by EI(S)Rs and not FOISA
 - Exemptions vs. exceptions

DAY 2: KEY THEMES (5 HOURS)

Transparency

What are the benefits of transparency, and what are the legitimate limitations on it. Candidates will be expected to be able to make the case for wider transparency, and to be able to explain how openness may come into conflict with other important issues. Some key milestones in the development of FOISA should be included.

Environmental information

Candidates will be expected to be able to distinguish between a request for information made under FOISA and one made under the EI(S)Rs. They should have an up-to-date understanding of how the definition is being interpreted in Scotland.

Public interest

How is the public interest test carried out? What are the relevant public interest factors in favour of disclosure or withholding information? Candidates should be able to cite some real-life examples of how the public interest test has been found to work

in favour of and against disclosure in Scotland. This section will include the new aggregated public interest test for the EI(S)Rs.

Prejudice

What does substantial prejudice mean? How does the public authority establish that substantial prejudice would or would be likely to occur? Candidates should be able to cite some real-life examples of how the substantial prejudice test has resulted in information being withheld or disclosed.

Data Protection & Privacy

Candidates should understand the main relevant provisions of the Data Protection Act and Article 8 of the Human Rights Act. This includes the DPA principles, Sections 7 – 14 of the DPA. They should be able to tell the difference between a Data Protection Subject Access request and a FOISA / EI(S)Rs request, and be able to explain the process for determining whether a disclosure of third party personal data breaches the DPA. This section will include the relationship between DP and statistics / anonymised information.

Confidentiality

Candidates should understand the common law duty of confidentiality, including key court decisions that developed it. They should in particular understand the implications of confidentiality on professional relationships, commercial negotiations and contracts.

DAY 3: EXEMPTIONS, VEXATIOUS AND UNREASONABLE REQUESTS (5 HOURS)

This section should focus on the nature of each exemption / exception in FOISA and the EI(S)Rs, and ensure that candidates understand what each exemption / exception is designed to protect, including the tests that are applied before an exemption is valid. Candidates can expect multiple-choice questions on the text of any exemption / exception. Case studies on the exam will focus on the core exemptions / exceptions outlined below:

FOISA Exemptions

25. Information otherwise accessible
26. Prohibitions on disclosure
27. Information intended for future publication
29. Formulation of Scottish Administration policy etc.
30. Prejudice to effective conduct of public affairs
33. Commercial interests and the economy
34. Investigations by Scottish public authorities & proceedings arising out of such investigations
35. Law enforcement
36. Confidentiality
38. Personal information
39. Health, safety and the environment

EIR(S) Exceptions

- 10(4)(b) the request for information is manifestly unreasonable;
- 10(4)(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- 10(4)(e) the request involves making available internal communications.
- 10(5)(b) the course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature;
- 10(5)(d) the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law;
- 10(5)(e) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest;
- 10(5)(g) the protection of the environment to which the information relates.

Candidates must have an understanding of key SIC / Court of Session decisions for each of the core exemptions / exceptions. This module also includes the following issues

- Redacting and editing – including the practicalities of removing information from copies of documents, summarising, extracting and re-typing of information
- Confirming or denying – how this works in practice including key SIC decisions on when it is appropriate to refuse to confirm or deny

DAY 4: INFORMATION MANAGEMENT (5 HOURS)

Candidates should have a clear understanding of how information should be organised and managed within organisation.

- **Wider process and procedure issues:** developing an FOISA procedure within an organisation, writing policies, key personnel who should be involved in the FOISA process, out of office messages, standard texts and template letters
- **Publication schemes, proactive publication & disclosure logs** – what are the requirements for a publication scheme, how does an organisation determine what information it might public in order to address the wider need for transparency, what is meant by ‘published’?
- **Records management and public records** – candidates should understand what practical steps a Scottish Public Authority has to take in order to implement the Section 61 Code on Records Management and to comply with the Public Records (Scotland) Act 2011), especially around active records management, disposal and the transfer of records to the National Archives of Scotland
- **Copyright and re-use** – candidates should be able to explain what copyright means, and what restrictions an organisation can legitimately place on a third party when information is disclosed under FOISA and the EI(S)Rs. Courses should also include the likely conditions and charging arrangements that the Re-Use of Public Sector Information Regulations allow a public authority to put in place.

9 READING LIST

Freedom of Information in Scotland in Practice, 1st Edition, October 2011 by Kevin Dunion. Published by Dundee University Press. ISBN 1845861221

Scottish Ministers' Code of Practice on the Discharge of Functions under the Act - Section 60

Scottish Ministers' Code of Practice on Records Management - Section 61

Guidance from the Scottish Information Commissioner:

- Fees and Excessive Cost of Compliance - Sections 9,12 &13; Regulation 8
- The Public Interest Test
- Vexatious or Repeated Requests - Section 14
- Guidance on validity of requests following Court of Session Opinion ('True applicant' and requests for 'documents')
- Exemption briefings
- Environmental Information Guidance
- Differences between EIRs and FOISA
- The Commissioner's Investigations: A Guide for Scottish Public Authorities
- Assessing and Improving Practice (web pages)

Available from www.itspublicknowledge.info/briefings

10 QUALITY ASSURANCE



Centre for Freedom of Information

This course is endorsed by the Centre for Freedom of Information. Professor Kevin Dunion, formerly Scottish Information Commissioner and now Director of the Centre for FOI, is the Chair of our Course Exam Board.



“On behalf of the Centre for Freedom of Information, I am pleased to endorse Act Now Training’s Practitioner Certificate in Freedom (Scotland). In my view it is important that the skills which our FOI practitioners have built up should be formally recognised through a certificated qualification. The training approach and course documentation reflect the distinctiveness of our Scottish FOI regime. I am confident that Scottish FOI(S)A practitioners will find this course invaluable in acquiring a greater understanding of all aspects of information rights legislation which impacts on Scotland. In particular the practical elements of the course will improve delegates’ ability to deal with the increasingly complex information requests received by Scottish public authorities.”

In drafting the syllabus we have consulted the **Office of the Scottish Information Commissioner** and taken account of their comments and suggestions.

Exam Board

We have recognised experts from across the Scottish public sector who sit on our Exam Board. The Board acts as our “critical friend” to ensure that our syllabus reflects the needs of the Scottish public sector, to suggest improvements to our course and to ensure that delegate feedback is taken on board by the course tutors.

Our exam board consist of

- Professor Kevin Dunion (Centre for FOI)
- Doreen Broom (Data Compliance Officer, Scottish Borders Council)
- Alan Graham (Retired Information Compliance Officer now serving as an Elected Member for Northlanarkshire Council)
- Teresa Maley (Data Compliance Officer, Scottish Borders Council)
- Rhoda Davidson (Information Management Unit, Scottish Natural Heritage)
- David Goldberg (co-Convener of the Campaign for FOI in Scotland)

Other Quality Checks

We also working to have it accredited by the Information and Records Management Society (IRMS). We will constantly update and improve this course through:

- Consultation with FOISA practitioners via the Exam Board
- Feedback from tutors
- Feedback from delegates

Feedback from Recent Delegates (February 2013)

“Tim Turner is an excellent trainer who has such a wealth of knowledge and experience of the subject, an infectious enthusiasm for FOISA and a passion for training. We were given every help and assistance Tim could provide, given that there is an exam to sit and the guidance can't be too prescriptive.

JC, Police Complaints Commissioner for Scotland

Tim is a very good trainer, clear and insightful.

CF, Golden Jubilee National Hospital

Clarity and enthusiasm of trainer (useful).

AR, Abertay University

Excellent course, well structured and delivered.

JW, St Andrews University

More Information

Website: <http://www.actnow.org.uk/foisa>

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If you would like to speak to a course tutor or course director please feel free to give us a call.