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# **The Freedom of Information (Scotland) Act 2002 Progress towards implementation**

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# FOI – The Global Perspective



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- Over 50 countries around the world now have FOI legislation in place
- Common Features:
  - Provides a right of access to information held by public authorities
  - Applicants not required to justify their request
  - Information can only be withheld if the law permits it
  - Refusals can be challenged

# Who uses FOI laws?



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- Individual members of the public
- Elected representatives/political parties
- Business
- Campaigning organisations
- Journalists
- Researchers/students
- Employees of public authorities

# What do they ask for?



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- Information about arms deals between Switzerland and S Africa during apartheid .
- Details of contracts relating to privatisation of Slovakian state-run industries.
- Financial records submitted to regional government by religious groups in Japan.
- John Lennon's FBI files in the USA.

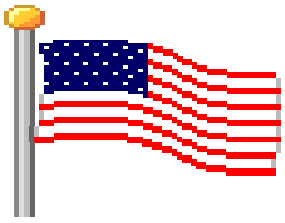


# Speeding in Alberta



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- **Calgary Sun, June 21<sup>st</sup> 2004**
- Requested copies of speed & traffic-light tickets issued to government vehicles in 2002 and 2003
- Children's Services department shown to have had more violations than any other.
- 50% of violations in school/playground zones



# Internet use in New York State



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- Valley News, Schroepfel: 22<sup>nd</sup> May 2004
- Local paper requested details of internet cookies from computers in various council departments.
- Reported on staff using computers for online shopping, gossip sites during work.
- Led to removal of staff computers due to details of misuse.



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# FOI in Scotland

# The path to FOI in Scotland



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- June 1999 – Labour - Lib Dem partnership agreement
- Nov 1999 – Consultation paper, An Open Scotland.
- Sept 2001 – Freedom of Information (Scotland) Bill
- May 2002 – FOI (Scotland) Act receives Royal Assent.
- Feb 2003 – Kevin Dunion is appointed as first Scottish Information Commissioner
- Jan 2005 – Act will come fully into effect





# Freedom of Information (Scotland) Act 2002



## **Freedom of Information (Scotland) Act 2002** Access to Information held by Scottish public authorities *Right to Information*

### **1 General Entitlement**

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

# FOI (Scotland) Act - background



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## WHAT?

The Act creates a right to access any information held by Scottish public authorities

## WHO?

Applies to over 10,000 public authorities, from Scottish Parliament & Executive, down to individual GP's and dentists

## WHEN?

From 1<sup>st</sup> January 2005, but fully retrospective

## WHERE?

Open to anyone, regardless of country of origin or residency

## WHY?

Its aim is to increase openness and transparency in public life

# The aspiration: modern, accountable government



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*“The Act has a unique, distinctive approach that was made in Scotland and specifically tailored to meet the needs of Scotland and the Scottish people. I believe that better openness leads to better scrutiny and better accountability, which, in turn, lead to better government”*

**Jim Wallace QC MSP, 24 April 2001**



# Making a request

## **Formal FOI requests must:**

- Be made in writing, or another recordable form.
  - Include the applicant's name.
  - Include a postal or e-mail address for correspondence
  - Describe the information required.
- 
- **The application need not refer to the Act.**
  - **They need not know the names of specific documents.**
  - **It need not reveal why the information is required.**



# Making a request

## **Information can be requested as:**

- A copy of the information
  - A digest or summary of the information
  - A right to inspect a document
- 
- **Public authority has 20 working days to respond.**
  - **The ‘clock’ may be stopped if e.g.:**
    - Further information is required
    - A fee is required

# Fees for information



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- Charges for information can be made under Fees Regulations
  - First £100 free to applicant
  - Applicant pays 10% of costs between £100 and £600. (Max charge £50).
  - Authority is not obliged to provide information if costs exceed £600.



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# Limits on the right of access

- **Absolute Exemptions** – *limited number*
  - Court records
  - Disclosure is prohibited by law
  
- The **public interest test** *applies to all others*
  - Investigations by Scottish public authorities
  - Formulation of Scottish Administration policy
  
- The **'harm test'** *must also be applied to some*
  - Commercial interests and the economy
  - Law enforcement

# Public interest



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- something which is of **serious concern and benefit** to the public not merely something of individual interest
- “In the interest of the public” not merely “of interest to the public”
- But – No exemption for embarrassment!



# Making a request – refusals and review



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- Information request might be refused if:
  - It is subject to an exemption
  - Cost of compliance is excessive
  - The request is ‘vexatious’ or ‘repeated’
- Public authority must issue a ‘refusal notice’
- Applicant can ask authority to review the decision

# Appeals to the Commissioner



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- If still dissatisfied. Applicant can apply to the Scottish Information Commissioner
- Commissioner can investigate formally or effect a settlement between parties.
- Target is to conclude cases within 4 months.



# Enforcement tools



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- Information notice
- Powers of entry and inspection
- Decision notice
- Enforcement notice
- Remit to Court of Session



# Overruling the Commissioner



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In limited circumstances, the Commissioner's decisions can be overruled

- Appeal to **Court of Session**
- **First Minister's certificate** – applies to Executive information of 'exceptional sensitivity'



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# Working towards implementation

# Publication schemes

- Document listing:
  - classes of information proactively published.
  - Any charges
  - How to access
- Each authority must have an approved scheme in place by end November.
- Schemes approved in 3 waves over 2004.

# Codes of Practice



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- 2 codes of practice sit alongside the Act.
- Issued by Scottish Executive.
- “**section 60 code**” on how to respond to requests.
  - Finalised September 2004
- “**section 61 code**” on records management.
  - Finalised November 2003

# Promoting good practice



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- **Training materials** commissioned by Scottish Executive.
- **Conferences and seminars** for public authority staff.
- **Guidance on publication schemes.** Template and model publication schemes produced by OSIC.
- **Briefing materials** on OSIC website.
- **OSIC enquiry service.**



# Promoting the Act



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- TV Advertising - 3<sup>rd</sup> week Jan 05.
- Advice booklet in conjunction with Scottish Consumer Council.
- Working with likely user groups:
  - media,
  - community councils,
  - advisory organisations.

# Revelations



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THE SUNDAY TIMES

## Revealed: the worst judge in Scotland

LORD DAWSON, the former solicitor general, is today named as Scotland's worst judge in a league table of judicial performances.

The peer, who was appointed to the bench in 1995, has had more convictions overturned than any other High Court judge.

It is the first time that information about the performance of Scottish judges has been published and follows eight months of negotiations between The Sunday Times and the Scottish executive.

It was also the first case to be investigated by Kevin Dunton, the Scottish information commissioner, whose intervention ensured that the material requested was eventually made public.

As a result The Sunday Times has been able, for the first time, to compare the performances of Scottish judges over the past five years.

The previously unpublished figures reveal that between 1995 and 2002 Dawson had nine convictions overturned or altered on appeal — almost twice that of any other judge and four times the average.

Dawson's errors included misdirecting the jury in the trial of Brian Donnelly, who murdered 27-year-old Margo Lafferty, a Glasgow prostitute, in 1998. In the same year he misdirected the jury in another trial, leading to the quashing of a conviction against Brian Silverman, who was jailed for 14 years for his part in a £10m drug smuggling operation. In 1999 two men who were part of a gang that kicked a teenager to death were freed on appeal after it was found that Dawson had misdirected the jury. At a retrial Ryan Renicks, 19, and Martin McGilinchey, 23,

Camillo Fracassini

pleaded guilty to culpable homicide and were sentenced to six years.

In 2002 Dawson handed down a six-year sentence to Craig Hamilton, an Edinburgh oil worker who had raped a mentally handicapped 42-year-old woman. The sentence was raised to 10 years by appeal court judges following a public outcry.

In all, cases tried by 19 judges, 36 sheriffs and two temporary judges led to 85 successful appeals against conviction between 1998 and 2002. Six judges and one sheriff had three or more appeals upheld

In the dock Focus, page 15  
Editorial page 18

over the same period — Dawson, Lord Johnston (five), Lord Philip (four), Lord Cowie (three), Lord Cameron of Lochroom (three), Lord Wheatley (three) and Sheriff Maciver (three).

The figures raise concerns about the lack of scrutiny of judges, who are virtually impossible to discipline or sack. No Court of Session judge has ever been removed from office and only twice in the past 30 years has a sheriff been dismissed.

"Judges should not be immune from scrutiny," said Nicola Sturgeon, the SNP's justice spokeswoman. "One of the ways to scrutinise judges is to monitor successful appeals against them because that will show up a persistent problem with a judge. This kind of information should be public and made available regularly."

The Sunday Times requested information about the performance of judges from the Scottish executive in January. It was referred to the Scottish Court Service, which twice refused to release the statistics, prompting an appeal to the Scottish information commissioner who ruled that information should be handed over under the code of practice on access to Scottish executive information.

"I am pleased to have been able to effect a settlement between The Sunday Times and the Scottish Courts Service," said Dunton. "As a result, information of public interest has been revealed that would have remained undisclosed. Surprisingly, this is the first compliance under the procedures for accessing government information in Scotland."

David Goldberg, the co-convenor of the Scottish Campaigns for Freedom of Information, said: "Independence does not mean freedom from accountability. It is one thing to say the judges should be free of political interference — that doesn't mean everything they do should be immune from public scrutiny. Hiding behind principles of independence or privacy is an abuse of those principles."

Dawson, 55, said he tried about 30 cases a year and insisted that his record was sound.

"I would have thought that nine successful appeals over five years is not bad," he said. "As far as sentences are concerned there are a huge number of appeals. Almost everybody has a go at it because there is nothing to lose."

“..this newspaper had to shine a light into some dark places long untroubled by any form of scrutiny.”

The Sunday Times

22 August 2004

“This legislation was never intended to be a charter for tabloid journalism or a state sponsored search engine for journalists.”

Duncan Hamilton, The Scotsman,

23 August 2004



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# Challenges

# Ready or Not?



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- **82%** - FoI will have a positive impact on the organisation
- **15%** - not confident of having systems in place by 1 January 2005
- **22%** - not confident of retrieving information in e-mails within time limit.



# What are the concerns?



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- Records management.
- Retention and disposal of records.
- Staff awareness.
- Tracking requests for information.
- Organisational culture

# The Good

“We should treat greater transparency as an opportunity to become the organisation that people want us to be, rather than threatening the organisation we currently are”

John Elvidge,

Permanent Secretary, Scottish Executive, Sept 04

# The Bad, and The Ugly



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- ‘Fol is a burden and a charter for time wasters’
- ‘Public expectations are being raised but they will be disillusioned’
- ‘There are so many exemptions we will be able to get round all sorts of requests.’
- ‘People have no hope of getting information in 20 days- in the past it has taken us 6 months to find files.’

# Public awareness



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## *Have you ever heard of the Freedom of Information (Scotland) Act?*

<i>Yes definitely</i>	30%
<i>Yes I think so</i>	14%
<i>No, don't think so</i>	9%
<i>No definitely not</i>	47%



# Right to what information?



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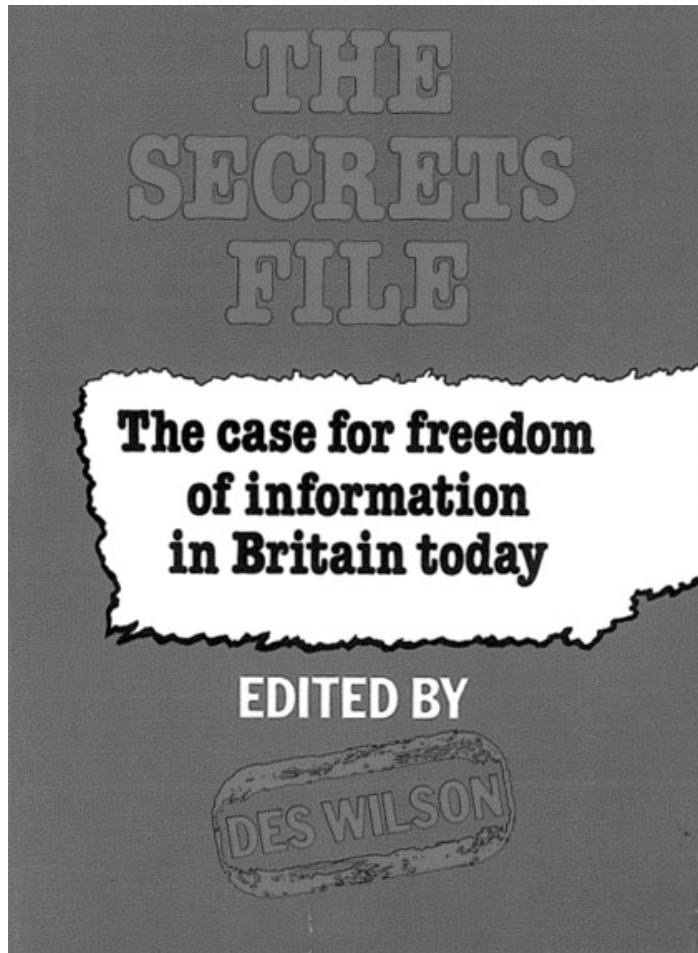
## ***What kind of information does that Act apply to?***

any general information held by a public authority	32%
any personal information a public authority holds about me	42%
any personal information a private company holds about me	24%
any general information held by any private company	7%
information normally kept confidential by public authorities	8%

# A long fuse



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“ The real test of democracy is whether people can influence decisions as they are taken, can know exactly why, and, ideally, find it possible to support decisions and policies on the basis of access to the facts”

David Steel

Foreword to *The Secrets File* , 1984

# How to find out more



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- Email us:  
[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)
- Subscribe to our e-newsletter.
- Telephone - 01334 464610