

DRAFT

ACCESS TO INFORMATION

Your rights to information under the Data Protection (Scotland) Act 1998 and the Freedom of Information Act (Scotland) 2002

Note: this document is in draft form and likely to be subject to future amendment.

This leaflet explains

- how you can find out what information we hold about you
- how we will treat any information that we hold about you
- how you can get access to other records and official information we keep.

We have to collect and use information about people we deal with so we can carry out our work. These people include

- solicitors, advocates, applicants, assisted persons and opponents and others we communicate with
- current, past and prospective Board members and staff
- people who supply services to us.

By law, we also occasionally have to collect and use information that government departments need.

There are three important laws that govern what we can (or must) do with information:

- The Legal Aid (Scotland) Act 1986 stops us passing on to anyone else the information an applicant for legal aid

has given us, without their agreement. However, there are a few specific situations where the law does allow us to pass on information.

- The Data Protection Act 1998 also means that we have to keep “personal data” we hold about you confidential, and only to use it for the purpose for which you gave it to us. It also says that we must tell you what data we keep on you and, if necessary, to correct it if it is wrong.
- The Freedom of Information Act (Scotland) 2002 means you have the right to get certain information, including all types of ‘recorded’ information of any date, from us, from 1 January 2005, subject to certain conditions.

This leaflet tells you more about what all this means for you, if you think we may hold information about you in connection with an application for legal aid, or if you want information about legal aid or the Board. It also explains more about when the laws do not apply.

INFORMATION WE KEEP ABOUT LEGAL AID APPLICANTS AND APPLICATIONS

Why would the Board have information about you?

We will have information about you if you have applied, through your solicitor, for legal aid or advice and assistance. This will include information about your finances and your case.

We may also have information about you if your opponent in a case has applied civil legal aid

Who can see the information the Board holds on you?

By applying for legal aid, you allow our employees who are working on your case to see and discuss the information you give us. Any researchers or data processors we contract with to carry out work for us may also see some information. However, if we publish research no-one would be able to identify you or your case from this.

We may also have to check some information you give us with other people who do not work for the Board. For example, we may need to check your earnings with your employer or the benefits you are claiming with the Benefits Office.

Occasionally, we may have to pass information to officials at the Scottish Executive or to the Scottish Public Services Ombudsman.

We may also discuss it with your solicitor or other legal representative.

By law, we have to be careful how we use the information. We will only pass on information an applicant give us in connection with their application if the law allows us to do so or we have their permission. And if we pass on information to third parties such as those mentioned above, they are also legally obliged to keep it confidential.

What can the information about you be used for?

It can only be used for the purposes that you gave it to us for, or the law says we can use it for. That means -

- to decide whether you qualify for legal aid or advice and assistance
- to allow us, or other people such as the court or Scottish Executive, to carry out our duties under the Legal Aid (Scotland) Act 1986 - for example, for research
- to help the Law Society or Faculty of Advocates look into complaints against solicitors or advocates
- to help investigate or prosecute any offence
- to help the Scottish Public Services Ombudsman look into complaints.

What records do you have the right to see?

Under the Data Protection Act, you have the right to be told whether we hold any information about you as an individual. If we do, you have the right to be told what we are using it for, and the names and types of

organisations or individuals that we may pass it on to. This includes information about you that we hold on paper files and on computer.

You also have the right, except in the circumstances set out below, to get copies of any information about you, to be told who we got the information from, and how we reached any automated assessment. (At present, we do not carry out any automated assessments.) To get this information, you must write to us.

The exceptions, where we cannot give you information we hold on you, are if:

- the information relates to someone else we hold personal information on
- someone else gave us the information in connection with a legal aid application, and they have not given us permission to pass the information on to you
- the information relates to an investigation we are carrying out into possible fraud or abuse of legal aid.

How do you get to see information about yourself?

You should make a "data subject access request".

You should write to the our Data Protection Officer at the address on the back of this leaflet, marking your letter "Data subject access request". You should give us enough information about yourself so we can easily identify what information we hold about you. If you have applied for legal aid, you should give us

- your name
- your address
- your date of birth

- your legal aid reference number(s)

You must sign the letter, so we know we are not giving information to someone who is not entitled to it.

How much will it cost you?

We do not charge for providing this information.

How long does it take to get a reply?

You will receive a reply as soon as possible and, in any event, within 40 days.

How can you get us to put information right, if you think it is wrong?

We always aim to record the information you or your solicitor gives us accurately, and to keep it up-to-date with any new information you or your solicitor gives us.

If you send us a "data subject access request", and you think the information we send you is wrong, you should write to the Data Protection Officer

- setting out what information you think is wrong
- saying why
- giving us evidence showing what is wrong with it, if possible.

We will look at the information, and decide whether to correct it. If we decide not to, we will tell you why not.

What if you are unhappy with the response you get from us?

If you are unhappy with the information you get from the Data Protection Officer and wish to complain you should write to the Director Legal Services and Applications at the address given at the end of this leaflet. If having done that, you are still unhappy with our response, you can write to the Chief Executive of the Board, also at the address given at the end of this leaflet.

If you are still unhappy with that response, or need further information about data protection, you contact the Information Commissioner whose contact details are:

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone: 01625 545700
Fax: 01625 524510
E-Mail: mail@ico.gsi.gov.uk
Website:
www.informationcommissioner.gov.uk

FREEDOM OF INFORMATION

What is the Freedom of Information Act?

The Freedom of Information Act (Scotland) 2002 comes into effect on 1 January 2005 and aims to increase openness and accountability in government and the public sector. It will ensure that people have the right to get access to information held by Scottish public authorities, including the Board, and will enable them to see and question how such bodies work and how they make their decisions.

This legal right of access includes all types of "recorded" information we hold, from any date. This might include computer documents, handwritten notes, plans, videos and tape recordings and photographs.

Under the terms of the Act, we must respond to a request for information within 20 working days.

How do you know what information the Board holds, and what you have the right to see?

We have a publication scheme so the public can easily find out what information we hold. This is so you can get access to the information without having to make an individual request. It sets out what classes of information we publish or intend to publish, how we make the information available, and whether you have to pay to get it. You can see the publication scheme on our website or by contacting the Board's Communications Office at the address on the back of this leaflet.

Where the publication scheme does not show the information is available, we will consider and respond to specific requests for information.

There are 17 categories of exempt information covering areas such as law enforcement, national security and defence, and commercial interests. Some of the exemptions are known as "non-absolute" which means that even if one applies, we still have to consider whether to release the information in the public interest.

People entrust sensitive personal information and details about cases to us. The law therefore says we may not supply information given to us without the consent of the person who supplied it, subject to limited exceptions. Where the law forbids us from passing on information, the Freedom of Information Act will not affect this.

Other information may be exempt because it is already published and therefore easily accessible.

How do you ask for information?

You must write to us, or contact us in another way that we can use for further reference - for example, by e-mail or fax.

An individual or an organisation can make the request, and you do not have to be in Scotland. You do not have to quote the Act or explain why you are asking for the information. It will help us, however, if you mark your letter "Freedom of Information".

How long does it take to get a reply?

You will receive a reply as soon as possible and, in any event, within 20 working days.

How much will it cost?

If it is a simple request, we will not charge you anything. However, if we are likely to have to spend much time or money putting together the information, we may have to charge you. If so, we will tell you so before we do the work and you will be able to decide whether or not you wish to proceed with the request.

What if we refuse to give you information?

If you are dissatisfied with the way in which we have handled your request for information, you may ask us to review our decision. A request that we review our decision should be made in writing within 40 days of the matter or letter you are complaining about. We will review our decision and tell you the outcome within 20 working days of receiving your request.

If, having done so, you remain dissatisfied, you may ask the Scottish Information Commissioner to review our decision. You must submit your complaint in writing to the Commissioner within 6 months of first receiving notice about the matter you are complaining about.

The Commissioner will not deal with an application unless the Board's review process has been used and exhausted - in other words, until you have asked us to review our decision and you are not satisfied with our response or have not received one and the 20 day time limit has been exhausted.

The Commissioner's contact details are:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
Website www.itspublicknowledge.info
E-mail:

enquiries@itspublicknowledge.info

Who enforces the Act?

The Scottish Information Commissioner promotes and enforces the Act. He is an independent enforcer of freedom of information with legal powers to ensure the public's right of freedom to information is upheld.

Who do I contact at the Board?

Data Protection

Alex MacRitchie
Data Protection Officer
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh
EH3 7SW
Tel: 0131 226 7061 Ext 674 (alternatively direct dial 0131 240 2074)
Fax: 0131 225 3705
E-mail: macritchieal@slab.org.uk

Freedom of Information

Janet Nixon
Freedom of Information Project Manager
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh EH3 7SW
Tel: 0131 226 7061 Ext 632 (alternatively direct
dial 0131 240 2032)
Fax: 0131 220 4878
E-mail: foi@slab.org.uk

Publication scheme

Communications Department
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh EH3 7SW
Tel: 0131 226 7061
Fax: 0131 220 4878
E-mail: general@slab.org.uk

You can get this leaflet in some other languages, or in Braille, large print or audio tape by contacting the Scottish Legal Aid Board at the address below.

The Board's address is:
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

Our telephone number is **0131 226 7061**. Calls by BT Text Direct are welcome.
Our web site address is www.slab.org.uk
Our email address is general@slab.org.uk

We are open from 9am to 5pm on weekdays and you can phone us from 8.30am.

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