

PO80 FREEDOM OF INFORMATION POLICY AND PROCEDURE

Policy

Introduction

The Freedom of Information (Scotland) Act 2002 (The Act) came into full force on January 1st 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 will be able to see and question how such bodies function and how decisions are made.

CVS Falkirk is obligated to provide information regarding funding received from any Public Bodies only. All other company information is exempt from The Freedom of Information (Scotland) Act 2002.

CVS Falkirk will make required information available on request in a timely manner and ensure accuracy and compliance.

Every request for information is potentially a request under the Act, so anybody receiving such a request must pass it immediately to the CEO for a decision and appropriate action.

Anyone, anywhere can make a request for information and will be 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. CVS Falkirk are only obliged to provide recorded information, such as computer documents, handwritten notes and videos. It does not matter how old the information is.

Guidance

Procedure

Requests must be in writing or in another permanent form. Requests must state the name and address of the applicant and describe what information is required. There is no need to cite the Act or explain why information is being asked for.

CVS Falkirk can ask for more details in order to identify the information requested. We are not obliged to comply with a request if an exemption applies, the cost of doing so would exceed the amount set by the Fees Regulations, or the information is not held by the organisation. In any of these instances, it must notify the applicant. If an applicant is dissatisfied with the way their request is dealt with, they can ask for a formal review. If following that review the applicant remains dissatisfied they may appeal to the Scottish Information Commissioner.

Where the law forbids the disclosure of information this will not be affected by the Act.

Responses to requests for information must be made in writing, and a fee of £25 is attributable in normal circumstance. Where there is likely to be a considerable amount of effort and/or data handling to respond properly to a request, reference should be made to the Board for an additional charge to be levied to cover costs, or to decline to provide an answer.

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If the company is unable to comply with the request, because the information required is outside of the scope of the Act, a written reply should be sent immediately to the requestor giving the reasons.

If the company is unable to comply with the request in a timely manner (defined in the Act as 20 days), because the information required is not immediately available, a written reply should be sent immediately to the requestor giving the reasons, and a proposed response date.

Good records management practices will assist the Company to meet our duties under the Act. If records are easy to locate, for example, then requests can be dealt with quickly, so principles of data management defined in related Policies must be adhered to.

Exemptions

There are exemptions in the Scottish Act but most of these are not designed to be applied on a blanket basis. There are two types of exemptions: absolute and non-absolute.

If an absolute exemption applies, the Company will not have to release the information. Some absolute exemptions apply to areas that you would expect, such as national security or confidential material. Other absolute exemptions apply to information which is available via another route.

If a non-absolute exemption applies then the Company will have to apply a public interest test to establish whether the information should be released. There are 17 categories of exempt information covering areas such as government interests and relations, public sector administration, national security and defence, law enforcement and commercial interests.

CVS Falkirk will favour disclosure wherever possible and this is where the balance should lie. If an exemption applies, the applicant should be given a written refusal notice which explains why the request is being refused. The notice should also inform the applicant of their right to apply for a review of the decision by Appeal to the Scottish Information Commissioner.

Compatibility 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 known as a subject access request, and to receive a copy of the information.

Under the Freedom of Information (Scotland) Act, a request by an individual for information about themselves will be exempt under freedom of information and will continue to be handled under data protection.

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If someone makes a request for information about another living individual, this will be handled under the Freedom of Information (Scotland) Act, but certain data protection considerations will still apply, for example the organisation will not have to provide the information if the disclosure would breach the data protection principles. If the organisation decides that it may wish to disclose the information, then it should usually notify the individual and take account of their wishes, although, the organisation does not have to be bound by the views of the individual.

Complaints and enforcement

If an applicant is dissatisfied with the response from the organisation, they can take their complaint to the Scottish Information Commissioner. If the Commissioner decides to proceed he will invite comments from the organisation and then decide if the complaint is valid. The Commissioner will notify both the applicant and the organisation of his decision.

On occasions the Commissioner will require more information before he can make a decision concerning a complaint and so he will issue the organisation with an information notice. The Commissioner also has the right to apply for a warrant to enter an organisations premises and seize documents, but such incidents are likely to be very unusual.

If the Commissioner becomes aware that the organisation is not complying with its duties under the Act he can issue an enforcement notice, informing the organisation which part of the Act it is failing to comply with and what it needs to do to put things right.

Although the Information 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. This offence can be committed by the organisation or its employees. Such cases will be dealt with in the Sheriff court and the offence carries a fine of up to £5000.

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

Responsibilities

CVS Falkirk has deemed that compliance under the Act rests with the Board, however it is the responsibility of everyone within the organisation to identify and act quickly on any request that may be deemed to fall within the auspices of the Act, and to maintain clear and accurate records.

Related Policies:	PO43 Data Protection
Related Documents:	none
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