

## Rough Guide to Service Review No. 3

Main points:

1. Access to files
2. Disclosure Scotland
3. Freedom of information
4. Disclosing and seeking information

## ACCESS TO SENSITIVE INFORMATION

This fact sheet seeks to address the sorts of issues that providers may face in preparing for and undertaking a Service Review.

Please note that it should be read in conjunction with the Service Review Guidance rather than in isolation. The Service Review Guidance can be found on the Scottish Executive website at: [www.scotland.gov.uk/library5/housing/spogf2-08.asp](http://www.scotland.gov.uk/library5/housing/spogf2-08.asp)

Service review has raised a number of questions for providers about sharing information with local authorities.

In particular providers have been concerned that complying with requests to inspect files and other documents may result in them breaching codes of practice and/or breaking the law.

### Inspection of Files and other Documents by Local Authorities

Service providers in the voluntary and independent sectors are used to sharing a great deal of information with statutory bodies when working with vulnerable adults. This is essential for the smooth delivery of services in what are often complex circumstances.

Under Supporting People local authorities commission housing support services and must make sure these services are well managed, offer value for money and that they meet the needs of the

people being supported. As part of service review some providers have found that local authorities have asked to inspect files and other documents in order to demonstrate:

- standard of record keeping
- systems in place
- delivery of services tailored to assessed need

In most situations it should be possible to find ways to provide the evidence without infringing Data Protection legislation or Codes of Practice.

This guide has been compiled by the Supporting People Enabling Unit with the assistance of:

The Office of the Scottish Information Commissioner

Disclosure Scotland

March 2006



SCOTTISH EXECUTIVE

The Supporting People Enabling Unit is a partnership initiative between Community Care Providers Scotland (CCPS) and the Scottish Federation of Housing Associations (SFHA), funded by the Scottish Executive.

## Service Users' Files

Some local authorities have asked to view service user files in order to ensure that organisational policies and procedures are adhered to.

This conflicts with data protection legislation where the files include sensitive information and providers should not pass on files or allow inspection of them without a person's consent.

However, it would be possible to produce an anonymised version as an example.

**The main issue with data protection is fair processing. Review teams can request to see information relating to work with clients, staff or other specific information relevant to the review. However, as the service review process is not covered by legislation, consent should be obtained from the data subject before this information is disclosed (as outlined in Schedules 2 and 3 of the Data Protection Act).**

## Housing Support Plans

Local authorities seek to ensure commissioned services are being delivered in line with individual care and support plans. This is outlined in Section 2.10.8 of the Scottish Executive's guidance. However, plans may include personal and sensitive information and if so are subject to data protection legislation so providers must seek service user consent before sharing the information.

For most services this is not a problem and consent can be obtained as a matter of course through the support planning process.

There are some services, however, where gaining such consent might pose a barrier to delivering services e.g. those working with women fleeing domestic violence. In this sort of situation service providers should discuss with their local authority more appropriate ways to monitor housing support planning e.g. anonymised examples.

## Staff Personnel and/or Supervision Files

As commissioners of services, local authorities must be satisfied that providers recruit, train and supervise staff adequately. Local authorities may ask providers to demonstrate their practice. However, it is not appropriate for them to ask to see staff personnel files as these are subject to Data Protection regulations and cannot be inspected or passed on to a third party without consent. Rather than asking to see complete files it may be more appropriate to specify particular types of record or practice for scrutiny and then arrange for anonymous or 'real' examples where consent has been given.

## Disclosure Certificates

Many posts in housing support services are subject to Disclosure Scotland checks and providers must store and handle Disclosure certificates in line with Disclosure Scotland's Code of Conduct.

In the past some local authorities have asked to see the Disclosure certificates obtained by providers. This is not legal without an individual's consent and reference should be made to Section 28 of Disclosure Scotland's Code of Practice Guidance Notes. This outlines what employers can record as evidence that appropriate Disclosure checks have been carried out. The information retained under Section 28 should be sufficient to satisfy local authority commissioners that appropriate Disclosure checks have been carried out and are being used to inform recruitment decisions.

More information is available from the Disclosure Scotland website on [www.disclosurescotland.co.uk/PDF/CODE%20OF%20PRACTICE.pdf](http://www.disclosurescotland.co.uk/PDF/CODE%20OF%20PRACTICE.pdf)

# Freedom of Information (Scotland) Act

The Freedom of Information (Scotland) Act 2002 came into force in January 2005. The Act gives the public new legal rights to see information held by Scottish public authorities. The Act is designed to allow the public greater information on how public authorities spend money and how decisions are made.

## The Act and Local Government

Under the Freedom of Information (Scotland) Act members of the public have the right to request information from Scottish public authorities.

All Scottish local authorities are considered to be public authorities. This means local authorities have a legal duty to provide information upon request and must have a publication scheme. These schemes describe the information that the authority publishes, in what form it is published, and details of any charges for providing the information.

Local authorities, as public bodies, must adhere to the principles of Freedom of Information (FOI) and Section 15 of the SP model contracting framework reflects this.

Any information kept by the local authority on a service they commission may be passed on to a member of the public if requested (unless the information is exempt).

Authorities are not required to contact providers if they receive a request for information related to them, but it is considered good practice to do so.

To keep track of FOI requests it is a good idea to write to the local authority and let them know you want to be informed if a request for information might result in information about your service being made public.

## Exempted Information

Some information is exempt from the Freedom of Information Act for example, personal information which is covered by the Data Protection Act.

Other categories of information may be exempt in certain circumstances where the authority can prove there would be real and significant damage to the authority or to other people if the information were made public.

If the public authority decides not to release a piece of information it has to issue a refusal notice which cites the exemption in the Act which is claimed to allow them to withhold the information. If the person requesting information is not satisfied with these reasons they can ask again.

If the requester has exhausted both steps of making a request and subsequently, if dissatisfied, requesting again s/he can appeal to Scottish Information Commissioner who will investigate the issue and decide whether or not the information should be released. The Your Rights section on their website explains the process and calls it the 3 As approach  
**A s k , A s k a g a i n a n d A p p e a l**  
[www.itspublicknowledge.info/yourrights/index.htm](http://www.itspublicknowledge.info/yourrights/index.htm)

All judgements and pending cases are listed on the Commission's website on  
[www.itspublicknowledge.info/appealsdecisions/index.htm](http://www.itspublicknowledge.info/appealsdecisions/index.htm)

## Testing If Information Is Exempt

Freedom of Information is new to Scotland and many of the issues around what is considered exempt information are still to be tested.

Some providers have concerns about releasing commercially sensitive information and believe it should be exempt. If you have concerns about this ask to see your local authority's policy on Freedom of Information as this should give some guidance as to what is considered exempt. In addition, when passing information to local authorities you must indicate where you believe it should be exempt under the Act.

If you have any concerns about providing what is asked for you can ask why it is needed and then try to agree a way forward (although the ultimate decision about whether or not information can be withheld rests with the Scottish Information Commissioner).

Greater access to information held by public bodies may be helpful to providers interested in viewing the contracting arrangements of

organisations similar to their own. In particular providers may be interested in the unit costs of local authority directly managed services and finding out about other funding sources being used to fund housing support.

Glasgow City Council is currently awaiting the outcome of a case put to the Scottish Information Commissioner whereby a private sector catering company wished to block the release by GCC of its contract price and breakdown. This case is of particular interest because when it has been adjudicated on it will help clarify the extent to which contract price may be regarded as sensitive information and exempt under the Freedom of Information Act.

The Scottish Information Commissioner has an enquiry service. If you have questions contact 01334 464610 or [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info).

To keep updated on judgements made by the Scottish Information Commissioner see: [www.itspublicknowledge.info/appealsdecisions/index.htm](http://www.itspublicknowledge.info/appealsdecisions/index.htm)

### Useful websites:

Freedom of Information: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Disclosure Scotland: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

Data Protection: [www.informationcommissioner.gov.uk/eventual.aspx?id=34](http://www.informationcommissioner.gov.uk/eventual.aspx?id=34)

The Supporting People Enabling Unit assists and supports independent service providers in the implementation of the Supporting People Programme. The Unit is hosted by Community Care Providers Scotland and by the Scottish Federation of Housing Associations and is funded mainly by the Scottish Executive.

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