



Scottish Rail Holdings Limited

Freedom of Information and Publication Policy

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Freedom of Information and Publication Policy

1 Policy Statement

1.1. Scottish Rail Holdings (SRH), as a Scottish public authority, must comply with the Freedom of Information (Scotland) Act 2002 (FOISA) and Environmental Information (Scotland) Regulations 2004 (EIR). This legislation provides a general 'right of access' to information held by SRH, in order to ensure openness, transparency and accountability. SRH fully recognises this 'right to access' and will not restrict access to information unless a statutory exemption applies as detailed in Appendix 1.

1.2. The Scottish Information Commissioner is responsible for enforcing FOISA. See: [Scottish Information Commissioner \(itspublicknowledge.info\)](https://itspublicknowledge.info)

1.3. The three main requirements of FOISA with which SRH must comply are:

- Duty to advise and assist,
- Responding to requests for information,
- Maintenance of a Publication Scheme.

1.4. SRH therefore commits to:

- Make publicly available all routinely published information via SRH's Publication Scheme. See SRH Publication Scheme.
- Ensure all requests for information are dealt with in an efficient, timely, and helpful manner, in accordance with the section 60 Code of Practice on the Discharge of Functions which accompanies FOISA and the section 62 Code of Practice on the Discharge of Functions which accompanies EIR. SRH's website has a page on FOI with guidance on how to make requests – [Contact Us - Scottish Rail Holdings](#)
- Apply due consideration as to whether information should be disclosed in those instances where a statutory exemption or exception applies.

2 Scope

2.1 This policy outlines SRH's approach to freedom of information (FOI), documents the roles and responsibilities of all staff within SRH, outlines key aspects of the FOI process and identifies the main reporting procedures.

2.2 This policy applies to all business areas and to all activities undertaken by SRH and third parties acting on behalf of SRH at all times.

3 Approach to Freedom of Information

The following key principles outline SRH's approach to FOI:

3.1 Requests for information

Section 1(1) of FOISA provides a general entitlement that: 'A person who requests information from a Scottish public authority who hold it, is entitled to be given it by the authority'.

3.2 Recognising requests

- 3.2.1 Anyone (anywhere in the world) can make a FOISA request to SRH.
- 3.2.2 A valid request must be in writing or some other form that can be kept for future use (for example, email, audio file) and include the requestor's real name and address (postal or email).
- 3.2.3 The requestor does not need to mention FOISA/freedom of information, they only need to ask for the information.

3.3 Responding to requests

- 3.3.1 All FOISA requests to SRH are dealt with by the Legal Directorate. If anyone in SRH receives a request or is contacted by someone wanting information, they should send the request to correspondence@railholdings.scot. This should be done as quickly as possible.
- 3.3.2 SRH has a **duty of assistance** to those making requests (section 15, FOISA). SRH will, as required, assist those making a request. If a request is not clear we should help the requestor in making their request, or if SRH does not hold the information and another public body does then we should explain this to the requestor.
- 3.3.3 SRH will comply with the FOI principle to treat all requests in an '**applicant blind**' manner. Where the requestor requires information in a particular format, and advises SRH of such, SRH will provide the information in the format requested as far as is reasonable. In deciding what is reasonable, SRH will not discriminate against the requestor due to a disability and will ensure compliance with the Equality Act 2010.
- 3.3.4 On receipt of the request, it will be logged and an **acknowledgement** sent within three working days.
- 3.3.5 SRH must respond to the request within **20 working days** of receipt (section 10, FOISA), unless it has been agreed with the requestor that this timescale can be extended.

3.4 Exemptions

- 3.4.1 There are exemptions to the provision of information requested (listed in Appendix 1 to this policy). Those most commonly applied by SRH are: commercial interests and the economy (section 33, FOISA); personal information (section 38, FOISA) as requestors are not generally entitled to third party information; prejudice to the effective conduct of public affairs (section 30, FOISA); and formulation of policy (section 29, FOISA).
- 3.4.2 There are two types of exemptions (section 2, FOISA):

- (1) **absolute exemptions** (includes section 36(2), section 37 and section 38, FOISA); and

(2) **qualified exemptions** - these can only be applied if the public interest in disclosing the information is not outweighed by that in maintaining the exemption (commonly known as the **public interest test**).

3.4.3 **Vexatious or repeated requests** (section 14, FOISA) - SRH is not obliged to respond to a request if we have previously provided the information to the requestor or if the request is vexatious.

3.5 Reviews

3.5.1 If a requestor is dissatisfied with how SRH has dealt with their request, they can require us to carry out a **review** of our actions and decisions on their request (section 20, FOISA). Review requirements must in be writing or recorded form and provide the requestor's name and contact address and describe why they are dissatisfied with SRH's response.

3.5.2 It is the Legal Directorate team that deals with FOISA reviews. Wherever possible, a member of the team who did not deal with the original request will carry out the review.

3.5.3 Review requirements are logged and acknowledged within three working days. They must be responded to within 20 working days of receipt (section 21, FOISA).

3.5.4 If the requestor is dissatisfied with how SRH has carried out the review and/or its outcome, they can make an application to the Scottish Information Commissioner for a decision - commonly known as an **appeal** (Part 4, FOISA).

3.5.5 If the Scottish Information Commissioner finds that SRH has failed to comply with FOISA, they can issue an enforcement notice on what SRH is required to do to comply.

4 Publication Scheme

4.1 SRH must (section 23(1), FOISA):

"(a) adopt and maintain a Publication Scheme which relates to the publication of information by the authority and is approved by the Scottish Information Commissioner,

b) publish information in accordance with that scheme."

4.2 SRH must consider the public interest in (section 23(3), FOISA):

"(a) allowing public access to information held by it:

(i) which relates to the provision of services by it, the cost to it of providing them, or the standards attained by services so provided; or

(ii) which consists of facts, or analysis, on the basis of which decisions of importance to the public have been made by it."

4.3 The purpose of a Publication Scheme is to demonstrate that a public body is acting in the public interest in the decisions it makes and how it delivers its services. Aside from it being a legal requirement, it provides SRH with an important means to show that we are open and accountable. It also has an additional advantage in that if

information is published, there is no requirement to provide it in response to requests (section 25, FOISA).

4.4 SRH's Publication Scheme is available on SRH's website – see: (insert link to SRH publication scheme on website). SRH has adopted the Model Publication Scheme, which has been approved by the Scottish Information Commissioner.

4.5 The SRH Publication Scheme contains the following classes of information:

- About SRH
- How SRH delivers its functions and services
- How SRH takes decisions and what it has decided
- What SRH spends and how it spends it
- How SRH manages its human, physical and information resources
- How SRH procures goods and services from external providers
- How SRH is performing
- Our commercial publications
- Our Open Data

4.6 Although it is in SRH's interests to maintain an up to date SRH Publication Scheme, it should also be borne in mind that the information is **published** and is fully in the public domain. The exemptions under FOISA therefore apply to determining which information is included in the Publication Scheme. Exemptions are detailed in Appendix 1 to this policy.

4.7 The SRH Publication Scheme is maintained by the Legal Directorate team. Prior to publication, all content is reviewed to check that exempt information has been removed. The documents are then uploaded on SRH's website by the Legal Directorate team.

5 Roles and Responsibilities

5.1 SRH has a responsibility to implement the provisions of FOISA and EIR. SRH must therefore maintain a general 'right of access' to the information it holds and proactively publish information via its Publication Scheme.

5.2 The **Legal Directorate** team has overall responsibility and acts as the central point of contact for enquiries, it also has responsibility for:

- The management of, and response to, all FOI requests made to SRH.
- The development of guidance and training for staff on FOI and EIR issues.
- The development and maintenance of SRH's Publication Scheme.
- The provision of the administrative structure for all Requests for Review received by SRH under FOISA and EIR.
- The co-ordination of contact between SRH and the Scottish Information Commissioner.

5.3 The **Board** of SRH has collective responsibility to ensure compliance with this policy and each Director is accountable for ensuring their Directorate supports its delivery

by responding to requests for information from the Legal Directorate Team within required timescales.

5.4 All members of staff (including contractors) within SRH are responsible for:

- Familiarising themselves with this policy and associated guidance.
- Providing general advice and assistance to those requesting information.
- Seeking advice from, and liaising with, the Legal Directorate Team as soon as possible after a request is received.
- Managing documents and records in accordance with SRH procedures.
- Responding to requests for information from the Legal Directorate Team within the required timescales.
- Ensuring they use the 'out of office' facility on email, notifying sender that the email has not been read and requesting sender resends any FOI queries to correspondence@railholdings.scot

6 Review and amendment

6.1 This policy will be reviewed every two years or sooner if there is a change in the applicable law.

6.2 SRH may amend this policy at any time and may vary it as appropriate to a particular case.

7 Related documents

The following SRH policies, and further policies and procedures referred to in them, are relevant to the interpretation and application of this policy:

- Publication Scheme;
- Data Protection Policy; and
- Records Management Policy

Appendix 1

Exempt information (Part 2, FOISA)

- Information otherwise accessible (s25).
- Prohibition on disclosure (s26).
- Information intended for future publication (s27).
- Relations within the United Kingdom (s28).
- Formulation of Scottish Administration policy etc. (29).
- Prejudice to effective conduct of public affairs (s30).
- National security and defence (s31).
- International relations (s32).
- Commercial interests and the economy (s33).
- Investigations by Scottish public authorities and proceedings arising out of such investigations (s34).
- Law enforcement (s35).
- Confidentiality (s36).
- Court records etc. (s37).
- Personal information (s38).
- Health, safety and the environment (s39).
- Audit functions (s40).
- Communications with Her Majesty etc. and honours (s41).

In addition, requests can be refused, or information withheld for the following reasons:

- Excessive cost of compliance (s12).
- Vexatious or repeated requests (s14).

EIR exceptions (Reg 10 EIR)

- Class exceptions – based on the type of information held or the nature of the request rather than on the content of the information:
 - **Reg 10(4)(a)** – information not held
 - **Reg 10(4)(b)** – manifestly unreasonable requests
 - **Reg 10(4)(c)** – formulated in too general a manner
 - **Reg 10(4)(d)** – material in the course of completion, etc
 - **Reg 10(4)(e)** – internal communications
- Substantial prejudice exceptions – can only be applied where disclosure would, or would be likely to, cause substantial prejudice:
 - **Reg 10(5)(a)** – international relations, defence, etc
 - **Reg 10(5)(b)** – the course of justice, etc

- **Reg 10(5)(c)** – intellectual property rights
- **Reg 10(5)(d)** – confidentiality of proceedings
- **Reg 10(5)(e)** – confidentiality of commercial or industrial information
- **Reg 10(5)(f)** – third party interests
- **Reg 10(5)(g)** – protection of the environment