

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Access to information held by Scottish public authorities

Section 2 – Effect of exemptions

18. This section sets out the circumstances where the general entitlement to obtain information will apply to information which is exempt by virtue of a provision in Part 2. Section 2 deals with the application of the public interest test to such information.
19. The general entitlement to information which is exempt by virtue of any provision of Part 2 applies only to the extent that the provision does not confer absolute exemption and to the extent that, in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption. If the public interest in maintaining the exemption outweighs that in disclosing the information, the information need not be disclosed.
20. Where a provision confers absolute exemption, the public interest in disclosure need not be considered. The provisions in Part 2 conferring absolute exemption are:
 - section 25 (information otherwise accessible)
 - section 26 (prohibitions on disclosure)
 - section 36(2) (information obtained from a person where its disclosure would constitute a breach of confidence actionable by that person)
 - section 37 (court records etc.)
 - section 38(1)(a) (personal data of which the subject is the applicant)
 - section 38(1)(c) (personal census information)
 - section 38(1)(d) (health records of the deceased)
 - section 38(1)(b) (personal data), where the first condition referred to in that paragraph is satisfied by virtue of section 38(2)(a)(i) or 38(2)(b).
21. This ensures that the Act does not interfere with other statutory provisions (such as the Data Protection Act 1998) which allow information to be withheld; and that it does not require the disclosure of information which concerns an ongoing action in court, or of information which is otherwise accessible (and where it would be inappropriate to require the provisions of the Act to apply).