

EDINBURGH NAPIER UNIVERSITY

THE INTERACTION BETWEEN:

DATA PROTECTION LEGISLATION & FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

Introduction

Data Protection Legislation (Data Protection Act 2018 and the GDPR) and the Freedom of Information (Scotland) Act 2002 (FOISA) are both concerned with information but they have different, and at times conflicting purposes. Data Protection Legislation protects individuals' rights to privacy and fair processing of their personal data, whilst FOISA promotes a culture of openness and accountability amongst public sector bodies, by providing rights of access to the information held by them, subject to certain exemptions. Data Protection Legislation and FOISA operate alongside each other therefore but their interaction can be potentially complex when a request for disclosure of personal information is received.

What are the purposes of the two Acts?

The table below sets out a summary comparison of the DPA 2018 and FOISA*

	DATA PROTECTION ACT 2018	FOI (SCOTLAND) ACT 2002
Geographical coverage	UK	Scotland
Applies to	All organisations	Scottish public authorities only – estimated to be >10,000
Scope	<ul style="list-style-type: none"> Covers the processing by the University of personal data about living individuals Individuals have the right to request access to their own personal data held by the University 	<ul style="list-style-type: none"> Covers information we hold i.e. created or received in our activities as a public sector body Individuals or organisations have a general right of access to information from public bodies - including data about another individual
	Both Acts are retrospective and apply to any relevant data held in both structured & unstructured formats including e.g. a post-it note/piece of paper	
Format	<ul style="list-style-type: none"> Has to be received in writing, preferably by completing the University's form which should be sent to the Information Governance Manager Evidence of identity must be provided where required 	<ul style="list-style-type: none"> Has to be in recorded form i.e. writing, email, fax or voicemail The Act need not be specifically mentioned Charges may be payable Can be received by anyone anywhere in the University
Who can make a request?	Only the individual or his/her representative has the right to request the individual's personal data	Anyone over the age of 12, from anywhere in the world
Deadlines	One month from receipt of form & proof of identity	20 working days from receipt of enquiry
Overseen by	UK Information Commissioner	Scottish Information Commissioner

*Edinburgh Napier gratefully acknowledges assistance from the University of Glasgow in preparing this table

How should requests for personal information be dealt with?

1. If an individual requests copies of their own personal data, this is processed under the DPA, which provides the right of access to personal data.
2. If an individual makes a request for his/her data but cites the FOISA, this must still be processed under the DPA, since this request for personal data is exempt from FOISA.
3. An individual who makes a request as detailed in either 1) or 2) above should be directed to this University guidance: [Access to Personal Information](#)
4. Where a third party individual or organisation asks for someone else's personal data this will be handled as a FOISA request and should be sent/forwarded to: foi@napier.ac.uk

What personal data would be released under FOISA?

Requests dealt with under FOISA would be subject to an absolute exemption if release of the personal data would breach the DPA. However, both the UK and Scottish Information Commissioners recognise the distinction between an individual's private and public lives and where information concerns an individual in their official or work role, there would be an expectation that data would be released.

Who should deal with a request for someone else's data under FOISA?

As such a request needs careful consideration and exemptions may apply, this would be handled centrally by the Governance Adviser (Freedom of Information) in consultation with the Information Governance Manager. Relevant considerations would include the fairness and lawfulness of a disclosure and the individual's role/seniority. Legal advice may also be sought when necessary.

Advice and guidance

DPA: Information Governance Manager
☎: 0131 455 6257
✉: dataprotection@napier.ac.uk

FOISA: Governance Adviser (Freedom of Information)
☎: 0131 455 6255
✉: FOI@napier.ac.uk

Further Information

- The University's [Data Protection Code of Practice](#)
- The University's website on [Freedom of Information](#)
- The UK Information Commissioner: www.ico.org.uk
- The Scottish Information Commissioner: www.itspublicknowledge.info