FOI: the context

- The basics
- The process
- Exemptions
- Decisions

The basics

- Freedom of Information (Scotland) Act 2002 (FOISA)
- Environmental Information (Scotland) Regulations 2004 (EIRs)
- Both regimes provide statutory right to access information held by Scottish public authorities
- Right extends to anyone, anywhere

The basics

- FOISA applies to any “information recorded in any form”
- EIRs apply only to “environmental information” in any “material form”
- Both apply to all information held - however (un)reliable and no matter how old
- Presumption in favour of disclosure

The basics

- Information request can go through 3 stages:
  - Request
  - Review
  - Appeal to Scottish Information Commissioner (SIC)

- Aim to get it right first time.

The process

- Duty to reply promptly - but within 20 working days
- Information must be released unless an exemption or other reason applies
- If information is not being provided, we must explain why
- Criminal offence to alter, destroy or conceal information to prevent disclosure

The process – case-handler

- Identifies relevant information
- Consults as appropriate
- Considers exemptions and the public interest test
- Drafts a response
- Clears with senior manager
- For sensitive requests
  - seeks advice from SPADS
  - seeks Ministerial decision

Decisions: Ministerial questions

- Has the correct information been identified?
- Does an exemption apply?
- Are the statutory requirements for that exemption met?
- Where appropriate – consider the harm test
- Is there a Public Interest test?

Decisions: Harm test

- Need to show disclosure would cause substantial prejudice to a specified interest
- Real risk of harm or damage – not hypothetical or remote
- Even when harm test is met, public interest test must be applied

Decisions: Public Interest test

- FOISA does not define the public interest
- About serving the interests of the public - not merely of interest to the public
- A ‘balancing exercise’ to determine where the public interest lies
- Is the public interest in disclosure outweighed by that in withholding?

Decisions: what is relevant?

- general interest that information is accessible - improved accountability and participation;
- contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money;
- keeps the public adequately informed of any danger to public health or safety, or to the environment;
- whether disclosure would impact adversely on safeguarding national security or international relations;
- whether disclosure would contribute to a debate on a matter of public interest;
- whether disclosure would prejudice the protection of an individual's right to privacy.

Decisions: what is not?

- Possible embarrassment to the authority or officials
- Possible loss of confidence in the authority
- Risk of information being misinterpreted