

FALKIRK COUNCIL

**Subject: INFORMATION GOVERNANCE: FOI PUBLICATION
SCHEME/RE-USE OF PUBLIC SECTOR INFORMATION**
Meeting: EXECUTIVE
Date: 8 October 2013
Author: CHIEF GOVERNANCE OFFICER

1. INTRODUCTION

- 1.1 At a meeting of full Council on 7 January 2013, Council instructed the Chief Governance Officer to “*present a report for Members’ approval that fulfils all of the statutory duties placed upon the Council by The Re-use of Public Sector Information Regulations 2005*”.

2. BACKGROUND

- 2.1 The Re-use of Public Sector Regulations 2005 (**the Re-use Regulations**) provide a framework for the use by a person of a document held by a public sector body for a purpose other than the initial purpose for which the document was produced. Their aim is to encourage the re-use of public sector information by removing obstacles that stand in the way of re-use. The Re-use Regulations have had a very low profile within the Council until recently, due to our first request for re-use (and subsequent complaint to the Office of Public Sector Information) under the Regulations.
- 2.2 In order that the Re-use Regulations can be understood in context, it is useful to know about the Council’s publication scheme under the Freedom of Information (Scotland) Act 2005 (**FOISA**), and the copyright position of information published by Council, whether under that scheme or in response to an FOI request.

3. PUBLICATION SCHEME

- 3.1 FOISA requires Scottish public authorities to produce and maintain a publication scheme. Authorities are under a legal obligation to publish the classes of information that they make routinely available, and tell the public how to access the information and whether information is available free of charge or on payment.
- 3.2 If information is made available under the publication scheme, then requests under FOISA or the Environmental Information (Scotland) Regulations 2004 can be refused on the basis that the information is “otherwise accessible” – in other words, reasonably obtainable by the applicant other than by making a specific request.

- 3.3 The Scottish Information Commissioner has produced a model publication scheme that is suitable for adoption by local authorities, which sets out the classes of information that must be published. The Council has adopted that model scheme as of 31 May 2013. Effectively, the scheme is a “live” document, which founds on the information available on our website (although we also have to make the information available in other ways if requested, eg by inspection or by post or email.)

Copyright

- 3.4 The model scheme requires that the authority provide a copyright statement which applies to all information published in accordance with the scheme. Where we do not hold the copyright in information we publish, this has to be made clear.
- 3.5 The Scottish Information Commissioner recommends the use of the Open Government Licence for this purpose. This has been produced by The National Archives and can be used for all public sector information. This states that information can be used, and re-used, freely and flexibly with only a few conditions, including:
- The source of the information must be acknowledged.
 - The information must not be used in a way that suggests any official status or that the information provider endorses the use of the information.
 - The use of the information must not breach the Data Protection Act 1998.
 - The licence does not cover the use of third party rights that the information provider is not authorised to licence (for example, if someone else holds the copyright.)
 - No warranty is given by the information provider in relation to the information, and it is not liable for any errors or omissions in the information.
- 3.6 In adopting the model scheme the Council has, thus far, agreed to use the Open Government Licence. It is recommended that the Council continues to do so, particularly given that the Licence also covers the re-use of information, as addressed in the next section of this report.

4. RE-USE OF PUBLIC SECTOR REGULATIONS 2005

- 4.1 Where a person wishes to re-use a document which has been provided to him or her by a public authority (and the Re-use Regulations specifically refer to a “document” rather than to “information”), a request for re-use can be submitted to the public sector body (referred to from now on as “the Council”) specifying the purpose for which the document it to be re-used.
- 4.2 The Council has 20 working days to respond to the request, and may permit re-use (but is not obliged to do so) and may impose conditions. There can be a charge imposed for re-use, which shall not exceed the sum of (a) the cost of collection, production, reproduction and dissemination of documents, and (b) a reasonable return on investment.

- 4.3 The Council has to have an internal complaints procedure for determining complaints relating to its actions under the Re-use Regulations and, where that procedure is exhausted, a complainant may refer his complaint to the Office of Public Sector Information (**OPSI**).
- 4.4 The Council has to make the following information available to the public:
- any applicable conditions for re-use;
 - any standard charges for re-use;
 - a list of the main documents available for re-use (known as an asset list); and
 - details of the means of redress available to an applicant relating to any decision or practice affecting him under the Re-use Regulations.
- 4.5 Until recently, the Council relied on wording in its former publication scheme to cover its obligations under the Re-use Regulations, as had almost every other Council in Scotland. However, this proved to be inadequate.
- 4.6 As a result of OPSI's report into the complaint referred to in paragraph 2.1 above, the Council has now published a specific complaints procedure which meets the requirements of the Re-use Regulations. However, OPSI also stated that:
- The Council should publish further information on its policies for re-use, including clarifying the conditions routinely imposed on re-use and identifying the main documents which are available for re-use.*
- 4.7 It is recommended that the Council adopt the Open Government Licence, for the re-use of information, as well as for the use of information. This would cover:
- automatic permission to re-use information obtained via the publication scheme (as the Licence would apply automatically to information obtained under that scheme); and
 - re-use of documents obtained under FOISA or the EIRs.
- 4.8 The advantages of such an approach are:
- simplicity and consistency;
 - easy and cost-effective to manage - no re-use decisions to be made, no individual licences to put in place nor charges to calculate; and
 - the documents available via the publication scheme effectively operate as the Council's assets list.
- 4.9 A new page has been created on the Council's website to give members of the public information about the Re-use Regulations, the Open Government Licence and the Council's asset list. A new guidance note on copyright and re-use of information has been made available to officers and discussed with the FOI liaison officers' group.

5. RECOMMENDATIONS

It is recommended that the Executive:

- 5.1 note that the model publication scheme has been adopted as of 31 May 2013;**
- 5.2 agree that the Open Government Licence be used for the use and re-use of information available under the publication scheme, and for information given out under FOISA or the EIRs;**
- 5.3 note that the documents available through the Council's publication scheme comprise the Council's asset list for the purposes of the Re-use Regulations; and**
- 5.4 note that the Council has published a complaints procedure as required by the Re-use Regulations.**

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CHIEF GOVERNANCE OFFICER

Date: 19 September 2013

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Background paper

Report by OPSI dated 4 March 2013