

**Day 4 – Thursday, 29 November 2007**  
**Parallel Sessions – Session 2B 9.00am-10.30am**

Speaker: Kevin Dunion

Position: Scottish Information Commissioner

Organisation: Office of the Scottish Information Commissioner, Scotland

Presentation Title: Freedom of Information and Parliament: The Scottish experience

In Scotland the Freedom of Information laws certainly cover the Scottish Parliament. Indeed the Act leaves no room for doubt by specifically encompassing the Scottish Parliament and the Scottish Parliamentary Corporate Body. The clear intent was to include the legislature - in terms of Parliamentary committees, draft legislation, petitions and so on but also the corporate entity responsible for running Parliament which employs staff, administers the finances etc.

This has led to some prominent freedom of information requests and appeals. The most well known case in Scotland was for details of the expenses of members of the Scottish Parliament (MSPs) which led to the resignation of the Opposition leader.

However some requests have tested the extent to which the Act applies. The first request involving the Parliament was for information held by individual MSPs regarding the amount of work done in support of constituents. Was the designation of Parliament intended to have the effect of requiring that information held by individual MSPs should be disclosed? Do individual MSPs make up the Parliament or does it have an existence separate from its members? What would be the consequence of regarding Parliamentarians as being covered by the Act – would this mean that information which they held in their constituency offices as well as in their Parliamentary rooms was capable of being disclosed? It was eventually - and perhaps pragmatically - concluded that individual MSPs were outside the scope of the Act.

Individual MSPs are regular users of the Act when making requests of Government and other public authorities – but should written questions tabled in Parliament for Ministerial reply be regarded as FOI requests? Such questions fulfil the criteria for an FOI request – the requester provides a name and contact details for a reply, they are made in writing and they are directed at a public authority i.e. the Scottish Administration or the Scottish Parliament – so why should Parliamentary questions not be covered by the FOI laws?

Including the Parliament has the effect of being seen to practise what they preach, but does mean that MSPs collectively and individually can be uncomfortable with the details of the information disclosed, and this in turn can fuel pressure to amend the legislation.