

Failure to respond to information requests threatens to undermine Scotland's FOI regime

For immediate use

Rosemary Agnew, Scottish Information Commissioner, is today laying a report before the Scottish Parliament to draw attention to the extent of failures to respond to freedom of information (FOI) requests. Almost a quarter of all the valid appeals she receives are about a Scottish public authority's failure to respond to requests, at all, or on time). Yet FOI law requires authorities to provide a full response within 20 working days - effectively a month.

Said Rosemary Agnew, "People ask for information when they need it. FOI law is designed to get them the information they are entitled to promptly. When authorities don't respond to requests they are effectively denying an individual's rights. This is not only stressful and damaging to requesters; it damages public confidence in authorities and the FOI regime itself. This is why I've laid today's report to draw the Scottish Parliament's attention to the issues and extent of a problem which, left unchecked, could undermine the high regard in which our FOI regime is held."

The problem is not typical of all authorities. Most authorities do well. Just 34 Scottish public authorities were the subject of appeals about failure to respond last year and only five authorities accounted for 50% of those appeals. There is no evidence of any connection between failures to respond and the size of an authority, nor the volumes of requests it receives. The Commissioner's experience suggests that where the problem of failure to respond appeals is most acute, the issue may not be just about FOI, but about a relationship issue between authorities and requesters - or types of requesters - or a single issue which is driving request volumes. Many authorities respond on time to large volumes of requests by and putting in place effective FOI practices.

Said Rosemary Agnew "Every failure to respond is a denial of someone's statutory right to information. Every failure to respond is a failure by a Scottish public authority to meet its statutory duty."

Ends

Notes to Editors:

The Commissioner's report

1. ***Special Report: Failure to Respond to FOI requests: extent, impact and remedy*** will be available on the Commissioner's website at [insert link] from 10:30 hours on Thursday 7 August.
2. The Commissioner asks the Scottish Parliament to consider the report and to promote debate about the impact of failure to respond to FOI requests and its contribution to transparency and accountability of Scottish public authorities.

About failure to respond

3. Under FOI law¹ authorities are obliged to respond to a request for information within 20 working days². If the authority does not respond, or responds late, the requester can ask the authority to review its handling of the request. The authority is, in all circumstances, obliged to respond to a request for review within 20 working days. If the authority does not respond to the request for review or provides a late response, this is grounds for an appeal to the Commissioner.
4. Where a valid appeal is made about a failure to respond, the Commissioner invariably finds that there has been a breach of the statutory duty to respond or to respond on time to a request or a request for review. In some cases the Commissioner finds that an authority failed to respond to **both** request and request for review.
5. The Commissioner's report highlights the substantial delays and significant impact failure to respond can have on requesters. Where the Commissioner finds that an authority has failed to respond, she issues a legally enforceable Decision Notice, ordering the authority to comply with the request or request for review. If the requester is dissatisfied with the response eventually received from the authority, they can make a fresh appeal to the Commissioner. In one case (highlighted on page 10 of the report) Severin Carrell waited 471 days from making his request to receiving the information.

Statistics

6. The Commissioner's report provides figures and trends from her caseload about the incidence and impact of failure to respond. She provides some general observations on the data, but avoids drawing conclusions about the specific causes of failure to respond in individual authorities.
7. Over the last three years (from 2011/12 to 2013/14) the Commissioner received 1,695 appeals for decision. Of these, 1,183 were accepted as valid for investigation. The proportion of those valid appeals specifically about failure to respond was 26%.
8. In 2013/14:
 - Just 34 authorities were the subject of valid appeals about failure to respond.
 - 10 authorities were the subject of three or more failure to respond appeals.
 - Five authorities accounted for 50% of all failure to respond appeals.

¹ Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs).

² Under the EIRs an authority can extend the timescale to 40 working days, but only when the information requested is both voluminous and complex. This provision is rarely used.

“Top ten” failure to respond authorities (two years’ data)

2013/14, Failure to Respond Appeals from top 10 Authorities	Number of FTR appeals to the SIC	%age of all valid appeals to the SIC	Cumulative %age of all valid appeals to the SIC	%age valid FTR appeals to the SIC	Cumulative %age of all valid FTR appeals to the SIC
Public Authority					
Scottish Government	25	6.5%	6.5%	26.9%	26.9%
East Dunbartonshire Council	6	1.6%	8.1%	6.5%	33.3%
NHS Highland	6	1.6%	9.6%	6.5%	39.8%
Highland Council	5	1.3%	10.9%	5.4%	45.2%
Scottish Prison Service	5	1.3%	12.2%	5.4%	50.5%
Stirling Council	5	1.3%	13.5%	5.4%	55.9%
Transport Scotland	5	1.3%	14.8%	5.4%	61.3%
Comhairle nan Eilean Siar	4	1.0%	15.9%	4.3%	65.6%
NHS Western Isles	3	0.8%	16.7%	3.2%	68.8%
Scottish Borders Council	3	0.8%	17.4%	3.2%	72.0%

2012/13, Failure to Respond Appeals from top 10 Authorities	Number of FTR appeals to the SIC	%age of all valid appeals to the SIC	Cumulative %age of all valid appeals to the SIC	%age valid FTR appeals to the SIC	Cumulative %age of all valid FTR appeals to the SIC
Public Authority					
Scottish Government	32	7.8%	7.8%	29.4%	29.4%
City of Edinburgh Council	18	4.4%	12.2%	16.5%	45.9%
NHS Highland	8	2.0%	14.2%	7.3%	53.2%
Dundee City Council	4	1.0%	15.2%	3.7%	56.9%
Glasgow City Council	4	1.0%	16.1%	3.7%	60.6%
Scottish Prison Service	4	1.0%	17.1%	3.7%	64.2%
Stirling Council	4	1.0%	18.1%	3.7%	67.9%
Tayside Fire and Rescue Board (Inactive)	3	0.7%	18.8%	2.8%	70.6%
West Dunbartonshire Council	3	0.7%	19.6%	2.8%	73.4%

Why is there a difference between these tables?

- Individual volumes are small, so a change by one or two appeals can have a significant impact. Both City of Edinburgh Council and Dundee City Councils took steps to address timescale issues and this appears to have reduced the number of appeals to the Commissioner.

Correlation between authorities and requesters

- The Commissioner’s report observes a correlation between failure to respond appeals against named authorities and the people making those appeals. While the report does not explain the reasons behind this correlation, the Commissioner observes that it suggests that the issues these authorities have in relation to the specific requesters / types of requesters are not just about FOI, but are as much about the relationship between them, or a specific single issue.
 - In 2012/13, seven individuals made three or more appeals about failure to respond and, between them, accounted for 37% of all such appeals.
 - In 2013/14, six individuals made three or more appeals about failure to respond and, between them, accounted for 36% of all such appeals. All of the appeals about NHS Highland came from one person. 17 of the 25 about the Scottish Government came from the media (two journalists).

About the Scottish Information Commissioner

11. The Scottish Information Commissioner is a public official appointed by Her Majesty the Queen on the nomination of the Scottish Parliament.
12. The Commissioner is responsible for promoting and enforcing Scotland's freedom of information laws.
13. The Commissioner: investigates applications and issues legally enforceable decisions; promotes good practice amongst public authorities; and provides the public with information on their rights.
14. The current Scottish Information Commissioner is Rosemary Agnew.