

## DOCUMENT 1: 20-24/03/20

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**From:** [REDACTED]

**Sent:** 23 March 2020 09:46:47

**To:** Paul Mutch

**Cc:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot); Erin Gray

**Subject:** RE: Note of Quarterly Monitoring Meeting

Hi Paul

Thanks for the response and the clarifications. For completeness I have updated the note to reflect your comments and set it out below.

I will add a note to my calendar to contact you in mid-May so we can assess where we are with the impact of Covid-19.

Meantime I hope you all continue to stay safe and well.

Best,

[REDACTED]

### **Note of Quarterly Monitoring Meeting between [REDACTED] Scottish Government FOI Unit and Paul Mutch, OSIC (by telephone, 19 March 2020)**

The highlight report/milestone planner (provided in advance by email) were briefly discussed and [REDACTED] advised that this summarised what the team had achieved and been working towards before the Covid-19 pandemic. PM noted that fantastic progress had been made, which had continued into the new year with 97% of requests on time. However he agreed that most of the planned activities were not now feasible within the timescales envisaged.

#### **Monitoring and Intervention next steps**

PM advised that OSIC's plan to conduct a small on-site assessment in June/July 2020 as part of the Intervention was also no longer feasible in light of the Covid-19 pressures and said that it would be in everyone's interests to push that back. He added that OSIC would be seeking to continue the Intervention process, but understood that key elements may need to be put "on pause" until things settled.

Monthly statistical returns should continue to be provide where possible, although OSIC appreciates that this may not be achievable in the circumstances. If not possible, a backdated submission should be provided once practicable.

PM indicated that the earliest point that he could envisage an on-site assessment would be August/September 2020.

In terms of the Intervention process in future, the intention is to be understanding of the issues and the impact that the pandemic has had on the organisation, and to take these into account in any next steps.

He added that OSIC would be keen to work towards a resolution of the intervention as soon as possible.

## Communication

[REDACTED] raised the issue of communicating with our internal stakeholders about our ongoing FOI responsibilities, and she noted the recent message issued by OSIC stating that the Commissioner would be sympathetic to the ability of public authorities to respond on time if they were not able to attend work, or were working from home and unable to access information.

PM agreed it was clear that the pandemic would be taken into account, but clarified that it would be done so on a case-by-case basis. Ultimately he emphasised that the statutory responsibilities remain, and in addition, PM and [REDACTED] agreed there would be significant public interest in disclosure of information around the pandemic.

## Conclusions/Actions

In summary, until the Covid pressures ease, SG and OSIC agreed that we should:

- pause elements of the FOI improvement work which cannot be undertaken at the current time;
- delay OSIC's follow-up assessment planned as part of the Level 3 intervention;
- pause, if necessary, SG's monthly returns until the Covid-19 pressures ease, when backdated submissions could be sent to OSIC.

PM and [REDACTED] agreed to discuss the position again in 8 weeks (mid-May 2020).

**From:** Paul Mutch <[pmutch@itspublicknowledge.info](mailto:pmutch@itspublicknowledge.info)>

**Sent:** 20 March 2020 17:04

**To:** [REDACTED]

**Cc:** Hendricks G (Gerry) <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>; Erin Gray <[ergray@itspublicknowledge.info](mailto:ergray@itspublicknowledge.info)>

**Subject:** Re: Note of Quarterly Monitoring Meeting

Hi [REDACTED] - thanks for that - currently going through my own adjustment to remote working, having spent the day at home wrestling with IT set up, power cuts and pet interruptions! Getting there though...

Thank you for sending the note through - a helpful summary of our discussion.

There are a couple of amendments I'd like to suggest - let me know if these don't match with your view of outcomes, and we can discuss further.

The amendments are:

1. "He added that OSIC would be seeking to continue the Intervention process, but put it "on pause" until things settled."

Request amendment to:

"He added that OSIC would be seeking to continue the Intervention process, but understood that key elements may need to be put "on pause" until things settled."

(I'm wary of this being read as the entire Intervention Work should be put on pause. We would be keen to see SG proceed with any activities, etc that could be achieved under the circumstances, but are understanding that there may be significant and severe limitations on this.)

2. "The same would apply to monthly statistical returns, though OSIC would appreciate a backdated submission from SG, once practicable. "

Request amendment to:

"Monthly statistical returns should continue to be provide where possible, although OSIC appreciates that this may not be achievable in the circumstances. If not possible, a backdated submission should be provided once practicable."

3. "PM indicated that the earliest point that he could envisage an on-site assessment would be the Autumn of 2020 "

Propose change to:

"PM indicated that the earliest point that he could envisage an on-site assessment would be August / September 2020"

4. Propose changing final action list to:

- pause elements of the FOI improvement work which cannot be undertaken at the current time
  - delay OSIC's follow-up assessment planned as part of the Level 3 intervention
  - pause, if necessary, SG's monthly returns until the Covid-19 pressures ease, when backdated submissions could be sent to OSIC.

(Have reworded the first bullet point and deleted the second - we'd aim to continue our work in relation to any updates / actions that could be undertaken.)

Hope all this makes sense to you - let me know if there's anything you'd like to discuss. Look forward to catching up again in due course once things settle down. In the meantime, if I can be of any support, please let me know.

Best wishes to all in the team.

Paul

**From:** [REDACTED]  
**Sent:** 20 March 2020 10:49  
**To:** Paul Mutch  
**Cc:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot); Erin Gray  
**Subject:** Note of Quarterly Monitoring Meeting

Hi Paul

Thanks to you and Erin for your patience with the technology yesterday. One of my areas of ongoing adjustment to remote working!

I've drafted a note of what we discussed and the next steps we agreed; please let me know if there's anything that requires clarification – you can call me on [REDACTED] as I am working from home.

Thanks for your help, as ever.

[REDACTED]

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**Note of Quarterly Monitoring Meeting between [REDACTED] Scottish Government FOI Unit and Paul Mutch, OSIC (by telephone, 19 March 2020)**

The highlight report/milestone planner (provided in advance by email) were briefly discussed and [REDACTED] advised that this summarised what the team had achieved and been working towards before the Covid-19 pandemic. PM noted that fantastic progress had been made, which had continued into the new year with 97% of requests on time. However he agreed that most of the planned activities were not now feasible within the timescales envisaged.

**Monitoring and Intervention next steps**

PM advised that OSIC's plan to conduct a small on-site assessment in June/July 2020 as part of the Intervention was also no longer feasible in light of the Covid-19 pressures and said that it would be in everyone's interests to push that back. He added that OSIC would be seeking to continue the Intervention process, but put it "on pause" until things settled. The same would apply to monthly statistical returns, though OSIC would appreciate a backdated submission from SG, once practicable.

In terms of the Intervention process in future, the intention is to be understanding of the issues and the impact that the pandemic has had on the organisation, and to take these into account in any next steps.

PM indicated that the earliest point that he could envisage an on-site assessment would be the Autumn of 2020, with the caveat that this has not yet been discussed with the Commissioner.

He added that OSIC would be keen to work towards a resolution of the intervention as soon as possible.

## Communication

[REDACTED] raised the issue of communicating with our internal stakeholders about our ongoing FOI responsibilities, and she noted the recent message issued by OSIC stating that the Commissioner would be sympathetic to the ability of public authorities to respond on time if they were not able to attend work, or were working from home and unable to access information.

PM agreed it was clear that the pandemic would be taken into account, but clarified that it would be done so on a case-by-case basis. Ultimately he emphasised that the statutory responsibilities remain, and in addition, PM and [REDACTED] agreed there would be significant public interest in disclosure of information around the pandemic.

## Conclusions/Actions

In summary, until the Covid pressures ease, SG and OSIC agreed that we should:

- pause the FOI improvement work by SG FOI Unit
- pause the Level 3 intervention process led by OSIC
- delay OSIC's follow-up assessment planned as part of the Level 3 intervention
- pause, if necessary, SG's monthly returns until the Covid-19 pressures ease, when backdated submissions could be sent to OSIC.

PM and [REDACTED] agreed to discuss the position again in 8 weeks (mid-May 2020).

[REDACTED]

Freedom of Information Unit | Scottish Government

Mobile [REDACTED]

[REDACTED]

*I am working from home – please email, Skype or phone my mobile to contact me.*

## Document 2: 27/04/20

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**From:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot) <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>  
**Sent:** 27 April 2020 10:59  
**To:** Erin Gray <[ergray@itspublicknowledge.info](mailto:ergray@itspublicknowledge.info)>; Margaret Keyse <[mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)>  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** Checking in

Erin, Margaret

I hope you - and everyone else from OSIC - are both well and coming to terms with the current new reality.

You will be aware from the coverage about Scotland (and Wales) potentially adopting different exit strategies from the UK Government that we have published a [paper](#) outlining the principles that will guide Ministers' decisions about transitioning out of the current lockdown arrangements, so while we have some way to go, it is good to know that we are starting to think about some kind of return to normality.

I thought I would also share with you the attached document, which provides a high-level schematic of how we have organised to respond to the pandemic - the blue shapes are internal Scottish Government. The main thing to note on this is the 8 new hubs (the Ministerial and Corporate Groups in the blue rectangle) that have been set up to disseminate, commission and co-ordinate advice and daily updates on the developing situation (both domestically and internationally) and to direct requests for information\* to appropriate policy officials. These hubs operate 7 days a week, typically between 08.00-2200 (though Senior Civil Servants are providing 24hr cover).

Separately, a new Covid-19 Directorate has been established to oversee our policy and the Scottish 'on the ground' response - and work on a number of the key workstreams, such as PPE, testing, transition, are being taken forward by Director-led teams.

Both the hubs and the new Directorates have drawn staff from across SG, including from FOI Unit (eg [REDACTED], [REDACTED] and I are all working part-time in the Government Business & International Hub and [REDACTED] is working full-time to support the new Coronavirus Public Enquiries team manage the thousands of emails being received). This means that staff - including FOI case-handlers - have moved, at short notice, from their normal policy jobs to support our response to the pandemic. We do continue to provide our triage and case-handling advice services (and I will be talking about the need to continue to meet our FOI responsibilities to a meeting of all the hubs on Wednesday).

Please do not hesitate to email or call me if you have any questions or would like to discuss this further.

Gerry

Mobile: [REDACTED]

\* Note: apart from 'normal' correspondence, we have set up a number of routes/mailboxes to handle coronavirus requests - running into the thousands - that would not be appropriate to be handled as FOIs or PQs eg there is a dedicated mailbox for MSPs to submit urgent enquiries about their constituencies to which we aim to reply within 72 hours.

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### Document 3: 13/05/20

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**From:** Paul Mutch  
**Sent:** 13 May 2020 10:13  
**To:** [REDACTED]; [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)  
**Cc:** Daren Fitzhenry; Erin Gray  
**Subject:** Intervention Progress Meeting

Hi [REDACTED] / Gerry - hope all is good with both of you - I'm amazed at how quickly the time has passed since we last spoke... Hopefully all are safe and well at your end.

I understand we're due to have a catch up next Thursday re. the intervention, so wanted to drop a quick note re. a couple of things in advance of that discussion.

Firstly, re. the meeting, can we propose the following agenda (please let me know if there's anything you'd like to add):

1. SG Overview: **Overview of current status of SG, capacity of FOI Unit and impact of CV-19** (SG)
2. SG Progress Update: **Update on any progress made on action plan** (SG)
3. Intervention next steps: **Update on next steps for intervention** (SIC)
4. On-site assessment: **Discussion of timing / logistics of follow-up assessment** (All)
5. Discussion: **Next meeting** (All)

Please also let me know if you'll be able to share your standard update in advance of this meeting.

#### Monthly Agency Directorate Returns

Thanks to [REDACTED] and the rest of the team for the SG Monthly stats return from February, which was received this morning. Much appreciated - really helpful, and great to see that the 97% response rate was maintained during February.

A couple of queries / requests in relation to future monthly stats returns:

- Timetable - can you provide a timetable for future returns to allow us to schedule planning and reporting at our end? We would be keen, for example, to review stats up to the end of 2019/20 during June in order to inform our next steps - can you confirm when this data will be available?
- Coronavirus Act - in order to allow us to consider the impact of the coronavirus pandemic and the extended timescales in the Coronavirus Act, can we request that relevant future stats submissions provide some additional detail in relation to the impact of the Coronavirus Act? In particular, it would be helpful if you could provide data on:
  - The number of requests / reviews responded to within 20 working days (FOI & EIR)
  - The number of requests / reviews responded to between 21 - 60 working days (FOI only)
  - The number of requests / reviews late, responded (i.e. over 20 working days for EIR, over 60 working days for FOI requests affected by the CV Act)
  - The number of requests / reviews late, in progress (i.e. over 20 working days for EIR, over 60 working days for FOI requests affected by the CV Act)



- Directorates - I have limited access to our files from the Intervention at present so apologies if an explanation for this has been provided in previous communications but, when reviewing the January and February performance data this morning, I noticed that the January return contains a return in relation to 35 Directorates / Agencies, while the February return covers 42. The covering note to both also states that there have been no changes to the corporate structure during the reporting period, so it would be helpful if you could provide a note on this discrepancy? Is it that other Directorates / Agencies reported receiving nil requests for this period? (If so, it would be helpful if this could be detailed in future reports - e.g. through the inclusion of nil returns for Directorate / Agencies).

Many thanks, and look forward to catching up - albeit virtually - next week.

Best,

Paul

#### Document 4: 17/07/20

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**From:** Paul Mutch <[pmutch@itspublicknowledge.info](mailto:pmutch@itspublicknowledge.info)>  
**Sent:** 17 July 2020 17:15  
**To:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot); [REDACTED]  
**Subject:** Intervention Progress Report - information update

Dear Gerry / [REDACTED],

Firstly, apologies for emailing so late on a Friday – I had hoped to get this over to you earlier in the day but, as ever, events somehow managed to conspire against it..

As you know, we're currently preparing a progress report on the intervention, in response to Parliament's request that the Commissioner provide updates on progress. As we near the end of this work, we've identified a couple of areas where it would be helpful if you could provide us with a bit more information. This relates to both the current operational status of government, and to elements of work undertaken over the last year.

Specifically, it would be very helpful if you could confirm the following:

- Whether the work to develop separate and distinct request-handling guidance for case-handlers, Ministers, decision-making officials and reviewers was completed successfully (the March 2020 highlight report sets out that this was in the final stages of preparation at that time). If this work, or elements of this work has not been completed, it would be helpful if you could provide a short note on the reason for this.
- Whether the planned March masterclass for reviewers was completed
- The current status of your 2020 programme of FOI training and events – e.g. with comment on what has been completed, what's on hold, what you still plan to run, any future plans, etc
- The current status of the Scottish Government's internal FOI network
- The current status of your team of core case-handlers, FOI reviewers, official decision-makers and the FOI Unit
- Any available stats / data on the completion of the FOI / EIR e-learning package by staff across the organisation
- Whether content posted on the Scottish Government's internal 'Yammer' site is stored by Government, and whether this is routinely searched, where appropriate, in response to FOI requests
- Please also provide a short note on the current status of the roll-out and implementation of MiCase. In doing so, it would also be helpful if you could comment on its capacity / functionality with regards to the effective storing of case correspondence and decision-making (including e.g. advice from SPADs, rational for Ministerial decisions, determination on disagreements, comments and contributions, etc), and its functionality in relation to the monitoring and tracking of FOI timescales and performance.

Hopefully this will all be fairly straightforward, but please let me know if you have any questions / concerns. Look forward to hearing from you shortly.

Best wishes,

Paul

**Paul Mutch**

**Freedom of Information Officer**

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**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

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## Document 5: 24/07/20

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**From:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot) [<mailto:Gerry.Hendricks@gov.scot>]

**Sent:** 24 July 2020 15:13

**To:** Paul Mutch

**Cc:** [REDACTED]

**Subject:** RE: Intervention Progress Report - information update

Paul

I attach a document that hopefully answers your questions. Please do not hesitate to get in touch if anything is unclear or you need more information.

Regards

Gerry

Mobile: [REDACTED]

## Document 6: 24/07/20

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**Whether the work to develop separate and distinct request-handling guidance for case-handlers, Ministers, decision-making officials and reviewers was completed successfully (the March 2020 highlight report sets out that this was in the final stages of preparation at that time). If this work, or elements of this work has not been completed, it would be helpful if you could provide a short note on the reason for this.**

The note of the 19 March intervention meeting agreed that, until Covid pressures eased, the FOI improvement work would be paused. This remains the position due to the impacts on staff across SG and in the FOI Unit, as set out below.

The highlight report, issued before that meeting noted that Saltire intranet case handler guidance was undergoing user-testing and the reviews guidance was being drafted. Covid pressures mean the user-testing has not been completed (the guidance is sitting on a hidden page on Saltire so we can authorise that when appropriate). [REDACTED] has updated it further and we are considering releasing it without user testing, but seeking feedback via Saltire's 'comment' facility. Some further work on the review guidance has been undertaken, but work pressure has prevented its completion. In the meantime, the Unit are providing bespoke advice to new or inexperienced case-handlers and reviewers, and referring staff to guidance we were able to download from our sharepoint site before it was decommissioned.

The March report does not mention Ministers (and I see nothing in the note of the meeting). However, a resource to assist Ministers in their decision-making, including the Criteria for Decision-Making and a decision tree, providing an overview of the approach, was issued to all Ministers by Mr Dey on 10 December 2019.

**Whether the planned March masterclass for reviewers was completed**

No. We entered lockdown and moved to remote working before that could take place. We had also planned a masterclass on (i) s.30 and (ii) personal data, with Margaret Keyse, on 7 April and this too had to be cancelled.

**The current status of your 2020 programme of FOI training and events – e.g. with comment on what has been completed, what's on hold, what you still plan to run, any future plans, etc**

Events are on hold due to the impact of Covid-19. This is partly because of reduced resource in the unit with several team members redeployed to support our Covid-19 response (see below). It is also partly a reflection of the disruption to the case handling system in place before the lockdown with many of the relevant staff redeployed and the challenge of running events virtually on the Scots network (eg there is currently a limit to video conferencing). Training capacity has been considerably impacted for the above reasons.

However, we have recognised that novice case-handlers may benefit from short, tightly-focused workshops, targeting key business areas or those that are struggling with handling requests. We are developing a short checklist that takes staff through the key steps they need to undertake when responding to an information request. Our first session will be with Health & Social Care Hub staff on 28 July. We will use the Skype 'present' facility to talk participants through the checklist (which will avoid the problems with trying to use video-conferencing) and will provide the checklist as an aide-memoire to participants. We plan to run further events going forward.

This is designed to meet the immediate problem faced by SG of having most of our trained case-handlers working in other roles (see below) and cases being dealt with by untrained staff. Looking further forward, preliminary discussions have taken place with Mr Dey, Senior Managers and the team about the restart of improvement activity. However, we are not clear at present when we are likely to move towards more 'normal' working.

#### **The current status of the Scottish Government's internal FOI network.**

This is on hold due to the impact of Covid-19. The Network has been subject to the changes affecting staff across SG (see below). In addition, much of the benefit of the FOI Network is derived from our meetings, which are strongly interactive. The move to remote working and the limitations of video-conferencing (given the demands on our network, with thousands of staff connecting remotely) has had a significant negative impact.

#### **The current status of your team of core case-handlers, FOI reviewers, official decision-makers and the FOI Unit**

There has been significant change in the structure and governance of SG since Covid-19. As previously advised, DG Health & Social Care reformed its whole operation to focus on our Covid response and it is estimated around 85% of their staff moved to new roles. Business areas, such as Economy, Education and Transport have also been under extreme pressure as the impact of the pandemic has been felt across most areas of SG and teams across the organisation have been repurposed as packages of work, such as key workers, shielding, PPE and the route map, have been established. Our own Directorate has deployed significant resource to lead on both Scottish Coronavirus Acts (and [REDACTED] was heavily involved, given the FOI provisions in each) and on the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations, which are reviewed every 3 weeks.

Pressure on the organisation remains significant, with many roles unfilled, particularly in Health, and this remains a top priority as we focus on avoiding a second wave of coronavirus and begin preparations for winter, when demand for health services is normally greatest. To increase organisational capacity, we are looking to bring in hundreds of new entrants through a variety of external recruitment routes.

Each Directorate designated case-handlers to handle requests on a regular basis and 296 staff undertook the core skills training in 2019. We delivered a couple of mop-up sessions in early 2020, the last one on 12 March, but all subsequent events were halted. The information on trained, designated case-handlers informed allocation of cases by the FOI Unit. However, the disruption to business across SG has impacted directly on the network of case-handlers, many of whom have been redeployed to Covid support roles. The same impacts have been experienced by reviewers and to a lesser extent, by official decision-makers (although they may continue to act as officials of appropriate seniority for their Division/Directorate).

The FOI unit currently has three staff members (C1, B2 and B1) redeployed fully to DG Health and Social Care to support Covid-19 response and one B1 in our Organisational Readiness Directorate, which plays a key role in our internal response. In addition, 0.4 of a B3 is supporting the Coronavirus Public Enquiries Team, and 0.2 each of the C2 and another B2 have been supporting the Government Business & International Covid Hub (although these are each reducing to around 0.1). They are all in business critical, Covid-19 support roles.

Finally, when the full impact of the pandemic on SG became apparent, staff recruitment, except into Covid-19 support roles, was suspended. At that time, the Unit was part-way through a recruitment to fill 2 B2 FOI casework adviser vacancies and these remain unfilled (although we understand there may be movement on this soon). In summary, from a normal complement of 15 Staff Units, the FOI Unit is currently running at

around 8.4. We have focused that resource on providing triage support and casework advice, given the number of inexperienced staff dealing with requests, but demand is extremely high.

**Any available stats / data on the completion of the FOI / EIR e-learning package by staff across the organisation**

We 'soft launched' (advertised on Yammer, Saltire and to the FOI Network) the e-learning in December, since when 378 staff have completed it. We planned a more formal launch once reporting was in place, which would allow push notifications to those who had not completed it, and a function to collect user feedback and support further development of the learning. This was the stage where we aimed to start enforcing annual completion of the e-learning. [REDACTED] met (remotely) with the platform owner on 18 March to begin developing these elements but this was then curtailed by Covid. You may recall that, going forward, our e-learning will be incorporated in the new Corporate Digital Learning Platform. A preferred supplier has been identified for that, but given the ongoing pressures, priority discussions are planned between the supplier and our IT and security colleagues to confirm they can resource the work required.

I would note that our main platform for those dealing with FOI requests would be the more formal training packages for case-handlers. We intended the e-learning more as an awareness tool to help staff recognise FOI requests, which they can then ensure are handled appropriately. In the current circumstances, we have referred some staff direct to the e-learning module and will include a reference to it in our 'checklist' training.

**Whether content posted on the Scottish Government's internal 'Yammer' site is stored by Government, and whether this is routinely searched, where appropriate, in response to FOI requests**

Content posted on our Yammer site is stored in the Microsoft Cloud on our behalf, so is subject to FOISA (and our guidance is clear that FOI applies to social media accounts, so that Yammer, WhatsApp, etc should be searched). We have certainly provided specific advice to colleagues in the past about the release of information from Yammer.

However, Digital Directorate recently started a programme to prepare for the rollout across SG of online video conferencing, Microsoft Teams and Office 365. This was accelerated in response to feedback that these facilities were crucial to support core business during the pandemic. Apparently, they all share an underlying platform and due to technical limitations in the current Yammer platform, Yammer was taken down for 8 weeks from 15 July. Microsoft advised that the historical SG Yammer network content could not be retained as a result of the change, and there was no way around this.

Please also provide a short note on the current status of the roll-out and implementation of MiCase. In doing so, it would also be helpful if you could comment on its capacity / functionality with regards to the effective storing of case correspondence and decision-making (including e.g. advice from SPADs, rational for Ministerial decisions, determination on disagreements, comments and contributions, etc), and its functionality in relation to the monitoring and tracking of FOI timescales and performance.

MiCase fully rolled out to the core Scottish Government by the end of December 2019 and to Agencies in the first weeks of 2020.

As staff get used to using MiCase, the effective storing of case correspondence is a mixed picture and there remains room for improvement in relation to record keeping. Some of this is down to the current situation and the 'loss' of trained case-handlers. However, we have identified system limitations, such as in relation to the size of documents that can be attached to cases or the fact that the way MiCase works (for example, documents for release cannot be worked on within the system, and you can only seek comments from one person at a time) means staff often find it

easier to save working documents locally, aiming to upload to eRDM on completion. However, we are currently unable to save anything to the casefile once the response has issued, so there can be gaps.

MiCase was due a suite of updates that aimed to address some of the common issues, including the file size issue and independent access to eRDM to upload case documents. However, the need to maintain stability across our network, while thousands of staff are connecting remotely, means updates have been put on hold. In particular, we are looking to maintain the stability of MiCase while staff process a significant backlog of correspondence (you may be aware that, since March, we have been inundated with correspondence on the pandemic).

In terms of monitoring and tracking of FOI performance, the system does in theory provide the functionality we require, although you may be aware that there have been issues with some reports recently, for example to provide our quarterly stats, which remain unresolved.

The system does include a helpful facility, allowing case-handlers and business managers to see their own cases and those of their team. They can also run wider reports to see all of the new and outstanding cases registered against their business area at Directorate and DG level.

We do continue to have a problem - which is not a MiCase issue - in reconciling Directorate performance, given the number of staff who have moved 'informally' to new roles and who therefore do not sit under the correct business area. This does not, of course, affect our overall performance figure as an authority.



## Document 7: 02/09/20

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**From:** Paul Mutch <[pmutch@itspublicknowledge.info](mailto:pmutch@itspublicknowledge.info)>  
**Sent:** 02 September 2020 11:56  
**To:** [MinisterPBV@gov.scot](mailto:MinisterPBV@gov.scot)  
**Cc:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)  
**Subject:** Scottish Information Commissioner FOI Intervention: Second Progress Report - Draft

Dear Minister,

Please find attached a letter from Scottish Information Commissioner Daren Fitzhenry, regarding the forthcoming publication of the second progress report on his intervention into the Scottish Government's FOI performance (draft copy attached).

Please note that the Commissioner's letter requests that any proposals for factual corrections are provided to his office by noon on Monday 7 September.

A copy of this report has also been shared with Gerry Hendricks of the Scottish Government's FOI Unit.

Regards,

Paul Mutch

**Paul Mutch**

**Freedom of Information Officer**

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### Scottish Information Commissioner

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

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# Scottish Government Intervention

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## Interim Progress Report

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10 September 2020

## Contents

Glossary and abbreviations .....	i
<b>Introduction.....</b>	<b>2</b>
<b>Intervention status report .....</b>	<b>3</b>
Recommendation 1: Clearance procedures.....	4
Recommendation 2: Quality assurance.....	8
Recommendation 3: Clearance of media requests .....	10
Recommendation 4: Case file records management .....	11
Recommendation 5: Case-handling .....	12
Recommendation 6: Monitoring FOI requests.....	14
Recommendation 7: Reviews.....	14
<b>Compliance with timescales .....</b>	<b>16</b>
Requests .....	16
Reviews .....	18
<b>Conclusion / Next steps .....</b>	<b>20</b>

### Glossary and abbreviations

Term used	Explanation
FOI	Freedom of Information
FOISA	Freedom of Information (Scotland) Act 2002
EIRs	Environmental Information (Scotland) Regulations 2004
MiCase	The Scottish Government's new FOI case management system
Section 60 Code	Scottish Ministers' Code of Practice on the discharge of functions under FOISA and the EIRs

# Introduction

This is my second report on the progress made by the Scottish Government in relation to its freedom of information (FOI) improvement action plan<sup>1</sup>, which was prepared in response to the recommendations contained in my Intervention Report of June 2018<sup>2</sup>.

This intervention was launched in November 2017, with the purpose of examining, assessing and improving elements of the Scottish Government's FOI performance. It followed concerns raised by a number of journalists in a May 2017 letter to the Scottish Parliamentary Corporate Body, and by the Scottish Parliament itself in a debate (Motion S5M-06126) on 21 June 2017.

The Scottish Parliament has asked me, via Motion S5M-12861, to publish annually a report on the government's implementation of its FOI improvement action plan. This report responds to that request and provides review and comment relating to progress made in relation to each of the seven recommendations contained in my June 2018 Intervention Report.

This report relates principally to the period between 1 April 2019 and 31 May 2020. This means that, while the main focus of the report is on the period prior to the Covid-19 pandemic, it does also consider the Scottish Government's performance during the first few months following the arrival of Covid-19 in the UK. It should be stressed, however, that this period impacted by the Covid-19 pandemic will be more fully assessed in a future progress report, when a fuller picture becomes available.

In the preparation of this report, I had originally planned to carry out a second on-site assessment of Scottish Government FOI practice, in order to consider in detail the extent to which the measures introduced through the Scottish Government's action plan were influencing real-world improvement in the day-to-day handling of information requests. However, the unprecedented events of recent months - including the closure of premises and the introduction of lockdown measures - has meant this has not been possible.

It is, however, my intention to undertake this work in early 2021, as soon as it is safe and practicable to do so, and when the Scottish Government has had a reasonable period of time to stabilise its processes and practices, enabling a more meaningful analysis. A further progress report will therefore follow this second assessment.

This subsequent report will then inform my decision about whether the intervention can be closed, or whether additional remedial action is required.

**Daren Fitzhenry**  
**Scottish Information Commissioner**  
**10 September 2020**

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<sup>1</sup> Scottish Government FOI Improvement Action Plan: [www.gov.scot/publications/foi-improvement-project](http://www.gov.scot/publications/foi-improvement-project)

<sup>2</sup> [www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=11760&SID=11121](http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=11760&SID=11121)

# Intervention status report

1. The recommendations contained in my Intervention Report of June 2018 can be briefly summarised as follows:
  - (i) **Clearance procedures**  
A detailed review of clearance procedures should be undertaken to formalise and clarify roles and responsibilities, and ensure that reasons for decisions are appropriately recorded.
  - (ii) **Quality assurance**  
Procedures should ensure that poor decisions are identified and recurrences prevented. Consideration should be given as to whether staff within directorates or agencies can carry out quality assurance.
  - (iii) **Clearance of media requests**  
The practice of subjecting requests from the media, MSPs and political researchers to different procedures based on the nature of the requester should be ended.
  - (iv) **Case file records management**  
Record-keeping should be improved to ensure that case files contain a full record of documentation in relation to each request.
  - (v) **Case-handling**  
Systems should be reviewed with a view to developing a core group of trained case-handlers. FOI training should be reassessed, ensuring that accessible training records are maintained.
  - (vi) **Monitoring FOI requests**  
FOI tracking systems should enable the monitoring of clearance timescales, and should support the monitoring of performance. Monitoring should take place at both Executive Team and directorate level.
  - (vii) **Reviews**  
Procedures should be reviewed to remove, as far as practicable, the risk of individual staff members being involved in decision-making at both request and review stage.
2. Below, I provide a report of progress made by the Scottish Government in relation to each of these recommendations.

## **Recommendation 1: Clearance procedures**

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3. My June 2018 Intervention Report made a number of recommendations in relation to the clearance of information request responses by the Scottish Government. These were informed by the findings of my first on-site assessment, which found that clearance procedures lacked detail, while also lacking clarity around individual roles and responsibilities.
4. I recommended that the Scottish Government undertake a detailed review of clearance procedures to address a number of concerns. This included six sub-recommendations, which are summarised as follows:
  - (i) The role of all individuals involved in the clearance of information requests should be clarified. (Recommendation 1(i))
  - (ii) The system which determines which cases require clearance, and who is responsible for providing clearance, should be formalised and clarified. (Recommendation 1(ii))
  - (iii) The procedures to be followed when a case-handler receives special adviser advice should be clarified. Should disagreements arise, the Scottish Government's FOI unit should have a role in providing specialist advice. (Recommendation 1(iii))
  - (iv) Clear rules should be introduced for the recording of decisions on information requests, including the detailed rationale for the decision, and clear justification for any departures from specialist advice. (Recommendation 1(iv))
  - (v) The role of the Communications Team should be clarified. (Recommendation 1(v))
  - (vi) The inconsistency between target timelines and the duty to respond promptly should be addressed. (Recommendation 1(vi))

### **Progress on the recommendations**

5. As noted in my July 2019 Progress Report, the Scottish Government prepared an Action Plan in response to my Intervention Report, which contained a range of actions intended to address my recommendations. In relation to Recommendation 1, this included a commitment to bring forward a revised case management process, setting out clearance processes and criteria for decision-making, and specifying the roles of all involved.
6. The Scottish Government published its Criteria for Decision-Making, a key document stemming from the Action Plan, in February 2019. The Criteria for Decision-Making contained a range of measures to address my recommendations, including:
  - (i) Triage and allocation of all information requests by the Scottish Government's FOI Unit according to published criteria.
  - (ii) Decisions to be taken by officials of appropriate seniority, with only requests assessed as sensitive or exceptionally complex decided by Ministers. Variations from this approach to be recorded in the case file.
  - (iii) Requests to be allocated to trained case-handlers, whose responsibilities include identifying information, drafting the response and keeping appropriate records. Responses submitted to an appropriate-level decision-maker for approval.

- (iv) Any communication issues to be managed as a parallel process which does not delay or influence the FOI response.
  - (v) Established processes to resolve disputes between parties involved in case-handling.
7. As my July 2019 Progress Report noted, the request-handling process set out in the Criteria for Decision-Making provided a strong foundation for the fulfilment of my recommendations on clearance.
8. In the period between 1 April 2019 and 31 March 2020, the Scottish Government worked to roll out its new request-handling process. Given the wide-ranging nature of the changes - which introduced new processes, roles and responsibilities for staff across the organisation - the Scottish Government took an incremental approach to this roll-out. It piloted, tested and adjusted elements within individual departments and directorates, before moving on to introduce the refined changes to additional directorates or groups of directorates.
9. Notable progress made over the period included:
- (i) **Triage**
    - (a) A key component of the triage process involves the Scottish Government's FOI Unit assessing requests against a set of published criteria to determine whether the information requested is likely to be sensitive and/or exceptionally complex in nature. Only requests which meet these criteria are decided by Ministers, with all other decisions to be taken by officials of appropriate seniority.
    - (b) Testing of the triage process was initiated in May 2019 within a pilot directorate. By December 2019, triage had been progressively rolled out to all Scottish Government core directorates, with triage support also being provided to a small number of additional Scottish Government agencies in receipt of comparatively high request volumes. Triage processes have been reviewed and refined throughout the roll-out period, informed by developing experience.
    - (c) By March 2020 the impact of these changes could clearly be seen, with an internal Scottish Government report finding that responses to triaged cases were issued on time in 98% of cases where new case-handling models were in place.
  - (ii) **Case-handling**
    - (a) In 2017, when my intervention into Scottish Government FOI performance was launched, more than 1,000 individuals across the Scottish Government were involved in FOI case-handling, with more than half responsible for responding to just one information request a year. This inevitably led to challenges in achieving a consistent and appropriate standard of FOI response across the organisation.
    - (b) Through its new process - and in line with my recommendations - the Scottish Government has moved towards a smaller group of trained and experienced core case-handlers, located within individual directorates and departments.
    - (c) Work began to identify and train this core group in June 2019. My office was consulted on the development of training resources, and training was developed and refined throughout the year, informed by Scottish Government staff surveys, focus groups and interviews. By March 2020, the Scottish Government reported that more than 280 individual case-handlers had been identified and trained in FOI and EIR core skills.

- (d) In March 2020 the Scottish Government also reported that it was in the final stages of preparing new internal guidance for FOI and EIR case-handlers, while separate guidance had either been produced, or was in production, for other groups involved in the request-handling process (recognising the need for specific guidance targeted at individual roles in the FOI process). This included the development of specific guidance for:
- Ministers
  - Officials with FOI decision-making responsibility
  - Officials conducting FOI reviews
  - Designated case-handlers
- (iii) **Improvement workshops**
- (a) In addition to the development of training materials and resources for key staff, the Scottish Government's FOI Unit has developed and held case-handling improvement workshops within individual directorates, designed to inform improvement in response to specific challenges. This approach recognised that FOI challenges may differ from directorate to directorate, influenced by e.g. the volume or nature of the requests received, the manner in which information is held, or the resources available.
- (b) By December 2019, the Scottish Government reported that 36 improvement workshops had been held across the organisation, with directorates in receipt of improvement workshops including Transport Scotland, the Directorate for Economic Development, the Directorate for External Affairs, the Directorate of Agriculture and Rural Economy, along with all directorates named in my July 2019 Progress Report as displaying disappointing or declining performance<sup>3</sup>.
- (iv) **FOI Network**
- (a) Also of note is the Scottish Government's establishment of an internal FOI Network group, building on the successful model of groups currently operating in other areas of the public sector, which are supported by my staff. A key benefit of these groups is that they enable staff working in FOI to discuss experiences, resolve challenges and share good practice, with the aim of improving the FOI performance for the benefit of both requesters and authorities.
- (b) The Scottish Government initiated its own internal FOI Network in February 2019, with more than 50 members of staff from across the organisation participating. A further five Network Group meetings were held across 2019/20, with staff from my office attending meetings to provide updates, direct participants towards appropriate guidance and resources, and provide relevant information and advice.
- (c) Networking amongst case-handlers has been further supported through the use of the social networking service Yammer to support internal FOI networking, and

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<sup>3</sup> See July 2019 Progress Report, paragraphs 61-62



further share good practice and learning<sup>4</sup>. The Scottish Government report that this resource has been actively used, with increases in membership, active users and posted messages across 2019/20.

(v) **Communications Team**

- (a) The role of communications staff in request-handling was referenced in my June 2018 Intervention Report, and recommendation (1)(v) specifically advised that the role of the Communications Team should be clarified. This arose from ambiguities in Scottish Government FOI procedures regarding these roles.
- (b) The Scottish Government's Action Plan and its Criteria for Decision-Making set out to provide this clarification, making clear that the role of communications staff is restricted to acting as the point of contact for communications with journalists, and developing press lines or handling plans in parallel with FOI clearance. It stresses that any parallel communications activity must not be allowed to delay, impede or influence FOI responses.
- (c) This clarification has been actively communicated at a number of FOI awareness events for communications staff.

(vi) **Internal communications**

- (a) Finally, I note that the Scottish Government has prepared and published a range of internal communications regarding its FOI improvement work, with the aim of maintaining and developing staff awareness of, and support for, FOI improvement. This has included regular intranet updates on project messages and developments, communications designed to reduce the risk of timescales being missed due to staff leave or office closure over holiday periods and an organisation-wide campaign promoting the message that FOI is a responsibility that all staff share which launched in February 2020.

10. Having reviewed the work undertaken, it is clear that, between April 2019 and March 2020, the Scottish Government made a significant effort to address the issues highlighted in my June 2018 Intervention Report. I note, for example, the substantial work undertaken by the Scottish Government's FOI Unit, which, alongside the provision of triage and advice, has included the development of procedures, guidance, training materials and resources.
11. I also note that there is evidence of a collaborative effort across the Scottish Government to address issues raised in my June 2018 Intervention Report, not least the inclusion of FOI on the Scottish Government's Corporate Risk Register for the first time, and evidence of proactive engagement at a Ministerial level.
12. There is evidence that, prior to the impact of the Covid-19 pandemic, these measures were beginning to bear fruit. This includes improvement in the Scottish Government's compliance with statutory timescales and reductions in the number of FOI review requests received and appeals made (discussed in later sections of this report).
13. I am aware, however, that differences can exist between process and practice. It will only be through a further on-site assessment involving detailed consideration of individual cases that I will be able to assess whether the various actions have in practice addressed the full range

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<sup>4</sup> Internal Scottish Government guidance makes clear that content posted on this and other social networking sites should be searched, as appropriate, when responding to information requests

of concerns around clearance which informed recommendations 1(i) to 1(vii) of my June 2018 Intervention Report. As noted above, I intend to undertake this assessment early in 2021, when circumstances allow. This assessment will also allow me to consider the extent to which issues arising from the roll-out of the MiCase records management system (discussed further under Recommendation 4 below) are impacting on the ability to record appropriate information on FOI decision-making (Recommendation 1(iv)).

14. I am also extremely mindful of the risk that the progress made through the FOI improvement work to date may be halted or even lost as the Scottish Government responds to the Covid-19 pandemic.
15. As with many organisations, the pandemic has had a significant and substantial impact on the work of the Scottish Government. Towards end of March 2020, the Scottish Government took the decision to prioritise available resource towards its pandemic response. As office closures took hold and staff disruptions were felt, elements of FOI improvement work such as training and the development of resources were paused.
16. Work affected includes:
  - Delay to the issue of guidance for case-handlers and reviewers (although some work on this has been carried out)
  - Significant disruption to the established network of FOI case-handlers and reviewers as a result of emergency changes to Scottish Government structure, and the redeployment of staff across the organisation to Covid-19 support roles
  - The suspension of meetings of the internal FOI Network
  - Delay to the programme of FOI training and events (although, again, some work on this has been carried out).
17. This disruption has had a substantial impact on the progression of FOI improvement work. It is nevertheless recognised that during this period some work has been taken to progress this programme. Alongside ongoing work to triage cases and provide casework advice, this has included further work being done on the development of guidance materials for case-handlers and reviewers, and the piloting of online training workshops for novice case-handlers, with the first of these being held on **28 July 2020**.
18. The Scottish Government has also advised that preliminary discussions have taken place on the restarting of the other elements of FOI improvement activity. While I am mindful of the significant challenges faced by the organisation and note the improvement work that has continued, it is important that this work is given sufficient priority and resource. It is also appreciated that due to the structural changes within the Scottish Government it may be necessary for procedures and training to be altered to reflect those changes. I have indicated that my office will be happy to consider and comment on any such alterations, as we have throughout the work done to date.

**Commented [PM1]:** Can the FOI Unit confirm whether this training workshop took place on the stated date?

## Recommendation 2: Quality assurance

19. My June 2018 Intervention Report queried the extent of the role played by special advisers in checking responses for accuracy and quality before issue, and in particular whether such quality assurance needed to be carried out by special advisers in such a wide range of cases. I recommended that:

- (i) The Scottish Government examine its procedures to ensure there is analysis of review cases to identify any areas where poor initial decisions are being made, and put in place a system which prevents recurrence of such failures. (Recommendation 2(i))
- (ii) The Scottish Government investigate whether the quality assurance of cases not decided by Ministers should be carried out by staff within directorates or executive agencies. (Recommendation 2(ii))

### Progress on the recommendations

- 20. In relation to recommendation 2(i), the Scottish Government's FOI Unit has developed a bi-monthly report on learning points emerging from reviews to ensure relevant actions are taken and lessons learned. Lessons and learning points are also shared with case-handlers during the Scottish Government's FOI Network Group meetings, in order to reduce the likelihood of errors or issues being repeated.
- 21. For recommendation 2(ii), the Scottish Government introduced a quality assurance process as part of its Criteria for Decision-Making. This makes it clear that routine requests for information (i.e. those which are not classed as being sensitive or exceptionally complex) should receive quality assurance from officials, not special advisers. The Criteria state that:  
  
*"Where cases are not assessed as requiring a Ministerial decision, Special Advisers will have no involvement (beyond offering a view during the FOI Unit's triage assessment, or where the FOI Unit reassesses the sensitivity of the case) unless they are the holders of the information requested or the request relates to them directly".*
- 22. This process is reflected and reinforced in the Scottish Government's Triage Process Map, introduced in May 2019. The Triage Process Map underpins the triage work carried out by the FOI Unit. The process map makes clear that, where the sensitivity or complexity of a case is initially unclear (e.g. without consideration of the nature or extent of the information held) case-handlers are required to liaise further with the FOI Unit once information is identified, to support an objective assessment of the case.
- 23. In considering the recommendations made in my June 2018 Intervention Report, the Scottish Government has recognised that too many cases historically have been passed to Ministers for clearance, and that this should correctly be addressed. It has cautioned, however, that staff may initially err on the side of caution when assessing cases as sensitive (or complex) until confidence in the system grows. As a result, it notes that performance improvements emerging from these revised procedures may increase gradually over time, as new processes bed in and confidence in new roles and responsibilities develop.
- 24. While I recognise that there may be a bedding-in period for new processes, I would expect this period to be relatively short, even bearing in mind the impact of the Covid-19 pandemic, not least as a result of the robustness and clarity contained within the Scottish Government's new procedures and the concentration of triage in a small specialist unit. It is, however, important that appropriate targeted training is provided for request-handling at all levels, from Ministers to official decision-makers to case-handlers, and, while the disruption of recent months will inevitably cause challenges, I would hope that the measures introduced to date will support a rapid normalisation of the new procedures.
- 25. In terms of assessing the 'real-world' impact of changes, I would again stress that my 2021 onsite assessment will enable my staff to undertake a detailed analysis of individual cases, in

order to consider the extent to which cases are being effectively triaged, and whether cases are subsequently being quality assured at the appropriate level in the organisation.

26. I also note that one of the recommendations emerging from the Scottish Government's own reporting on the progress of its FOI improvement work includes a recommendation that the Scottish Government's Executive Team should consider whether internal Key Performance Indicators should be introduced in relation to the time taken to respond to both routine and sensitive / exceptionally complex cases. I would urge that the Scottish Government give serious consideration to this recommendation, in order to ensure that a focus on FOI performance is maintained, both in response to the Covid-19 pandemic, and as work moves beyond the initial project phase towards embedding FOI improvement measures as 'normal business'. This is of particular importance given the current range of high profile organisational priorities, not least Covid-19, which may inadvertently lead to Ministerial focus shifting from FOI performance.
27. Transparency, openness and accountability play a significant role in maintaining public trust, and it is essential that benefits arising from improvement work done to date are not lost, e.g. as a result of a perception amongst staff that priorities have changed.

### Recommendation 3: Clearance of media requests

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28. My June 2018 Intervention Report set out that it is wrong for requests from a class of requesters - such as journalists, MSPs or political researchers - to be treated differently solely because of who the requester is. Recommendation 3 called for the ending of this practice. In making this recommendation, I noted that a clearance system based on the sensitivity of information requested and/or the complexity of the case may be appropriate, but that this should always be predicated on the nature of the **request**, rather than the **requester**.

#### Progress on the recommendation

29. In response to this recommendation, the Scottish Government committed to adopt a common process for handling requests, with cases referred for clearance based solely on the sensitivity and/or complexity of the requested information, rather than the occupation of the requester. Indeed, though it is unfortunate that the issue rose at all, it is recognised that the Scottish Government took immediate steps to implement this commitment on receipt of my June 2018 Intervention Report.
30. This principle is embedded throughout the material subsequently produced by the Scottish Government, not least in the Scottish Government's Action Plan, its Criteria for Decision-Making, its Triage Process Map, and the guidance and training materials developed for staff across the organisation. The 'principles underpinning request handling' set out in the Criteria for Decision-Making, for example, state that:  
  
*"We will treat requests equally, regardless of their identity or type – that is, in a way that is 'applicant neutral'"*
31. Ultimately, however, it is only through an assessment of individual cases that the effectiveness of this measure in real-world request-handling can be fully considered and assessed.
32. From the appeals I receive, it can be seen that some issues of concern still arise from time to time in cases involving journalists and political researchers. These include concerns around

late responses to requests, or concerns relating to the quality of the searches undertaken to locate information. However, such concerns also feature on occasion in appeals from other requester categories, and there is currently no clear evidence that any such issues have been unduly influenced by the identity of the requester.

33. Exploring this issue further will be a key focus of my 2021 on-site assessment work.

#### **Recommendation 4: Case file records management**

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34. I recommended that the Scottish Government take action to improve record-keeping, to ensure that case files contain a full record of internal correspondence around the handling of information requests. This should include a record of searches, decisions made, the rationale for decisions, meetings held, advice sought and received, and all relevant correspondence or communications with applicants, officials, special advisers or third parties.

##### **Progress on the recommendation**

35. The Scottish Government committed to address this recommendation through the introduction of a new case management and tracking system (MiCase), and through elements of the actions for Recommendation 1. The aim is to ensure that a full and appropriate record of the handling of each request is properly recorded in the case file.
36. The new MiCase system was designed with the intention of automating record-keeping, enabling relevant documentation to be automatically saved into the case file.
37. In addition, record-management principles are embedded throughout new case-handling procedures, with the Criteria for Decision-Making for example, making clear that that:
- (i) The rationale for seeking Ministerial decisions on disclosure will be recorded in the case file.
  - (ii) FOI/EIR submission templates will be used to seek Ministerial decisions, setting out why it is considered appropriate. FOI advice that has been provided should also be recorded.
  - (iii) Advice from Special Advisers to Ministers must be recorded. All other comment from Special Advisers whether provided to the FOI Unit, case-handlers or officials must be recorded in the case file.
  - (iv) Where Ministers themselves consider they should take the decision on disclosure, the reason should be recorded in the case file. Ministerial decisions should be recorded using the submission template and recorded in the case file.
  - (v) Where there is disagreement on the outcome of a case, determinations must be recorded in the case file, including the reason for any departure from FOI Unit specialist advice.
  - (vi) Case-handlers must record all comments and contributions received in relation to a case, using the MiCase system, along with the rationale for the approach recommended in their draft response
38. The launch of the Criteria for Decision-Making was accompanied by the launch of mandatory templates, to be used when cases are submitted to Ministers for a decision and for the recording of FOI decisions. A Statement of Compliance has also been developed to support appropriate record-keeping.

39. The Scottish Government has provided reassurance that training of case-handlers has been designed to stress the mandatory requirements for good record-keeping at every stage.
40. The roll-out of the MiCase case management system had originally been planned to coincide with the training of case-handlers in Summer 2019, but this was subsequently delayed as technical issues with the system were addressed. The system was fully rolled out to the Scottish Government by the end of December 2019, and to Scottish Government agencies in the first weeks of 2020.
41. It would appear, however, that, in practice, the MiCase system is falling short of the Scottish Government's aspirations in a number of key areas. From a report supplied to my office in July 2020, it would appear that the system currently creates a number of barriers for staff when attempting to follow records management principles contained in the Criteria for Decision-Making. Reported issues include:
- limitations to the size of documents that can be attached to case files
  - system processes which drive staff towards saving working documents locally, outside the MiCase system
  - the inability to add documentation to files once responses have been issued.
42. Issues have been further compounded by the disruption to the core team of trained case-handlers as a result of Covid-19 redeployment. As a result, the Scottish Government acknowledges that gaps may exist in case records. It also reports that, while updates to the system had been scheduled to address some of these issues, these have currently been postponed in order to ease pressure on Scottish Government systems at the current time.
43. It is clear from the information provided by the Scottish Government that it is currently falling short in relation to its progress on Recommendation 4, as a result of the problems identified within the MiCase system. Just how far short it is falling will only become fully apparent to me through an examination of individual case files during my forthcoming on-site assessment, but it is clear that a system which places barriers on what case handlers can store, and how and when they can store it, will inevitably lead to important omissions. These omissions in any particular case may include information relevant to the appropriate consideration of the individual circumstances of that case.
44. While I acknowledge that the Scottish Government is under significant pressures at the current time, it is my view that measures to address the shortcomings of MiCase should be prioritised at the earliest possible opportunity, in order to ensure that important records are not lost.

## **Recommendation 5: Case-handling**

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45. My June 2018 Intervention report recommended that the Scottish Government review its system for allocating case-handlers, with a view to developing a core group of trained and experienced personnel responsible for case-handling (Recommendation 5(i)). I also recommended that the Scottish Government reassessed its FOI training system, and ensured that training records are kept in an accessible format (Recommendation 5(ii)).

### **Progress on the recommendations**

46. The Scottish Government committed to revising its case management process in order to ensure that there were sufficient trained and experienced personnel to handle FOI requests.

It also committed to delivering a new programme of FOI training for staff, with improved and accessible record-keeping on the delivery of training.

47. The Scottish Government's Criteria for Decision-Making specifies the roles of officials at all levels of case-handling, setting out clear internal policies for the management of requests.
48. As noted in my comments on recommendation 1 above, the Scottish Government has undertaken significant work to develop a core group of trained case-handlers across the organisation, with more than 280 individual case-handlers having been identified and trained by March 2020.
49. Case-handlers have been supported by a range of additional structures and resources, including the establishment of an internal FOI Network Group. Additional training and guidance has been developed and circulated for staff responsible for various stages of the FOI process, and, as of March 2020, the Scottish Government had planned a comprehensive 2020 programme of training opportunities and events to support the consolidation and development of core skills.
50. The Scottish Government also prioritised evaluation of the experience of staff involved in the FOI change process, in order to track experience and identify areas for improvement. It has reported that, through this monitoring, staff have indicated they felt more supported and more confident when carrying out FOI work. Continued responsive monitoring of this type will play a role in the ongoing development of a confident and empowered FOI workforce.
51. In addition to training for staff directly involved in FOI request-handling, the Scottish Government has also developed an FOI e-learning package to be completed annually by staff across the organisation. The e-learning package was 'soft launched' in December 2019, with the Scottish Government reporting in July 2020 that 378 staff have completed it to date. A more formal launch was planned once reporting was fully operational, with the intention that reporting would allow proactive 'push notifications' to be sent to staff who had not yet completed the training.
52. The pandemic has, however, significantly impacted the Scottish Government's progress in relation to Recommendation 5 in recent months. The redeployment of staff across the organisation to Covid-19 support roles has significantly disrupted the network of FOI case-handlers, many of whom have been redeployed themselves. In addition, the development of the reporting elements of the e-learning package (and the associated monitoring of completion by staff across the organisation) has been postponed, while the extensive programme of FOI training and events has been scaled back. Some training has been possible, with the FOI Unit piloting an online workshop for novice case-handlers on 28 July 2020.
53. While it is clear that significant work had been done to progress this recommendation by March 2020, it is also clear that this work has since been substantially disrupted as a result of the Covid-19 pandemic response.
54. This organisational disruption, alongside the unrelated transition from FOI improvement work being undertaken as a distinct project towards embedding improvement principles into normal business, means that the progress made is currently at a fragile juncture. I would therefore urge Ministers to explore ways of ensuring that the benefits from this progress can be stabilised and maintained, in order to prevent the advantages of this recent investment in FOI staff resource being undermined or lost.

## Recommendation 6: Monitoring FOI requests

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55. My June 2018 Intervention Report recommended that:
- (i) The FOI tracking system record the date cases are both sent for, and receive, clearance, in order to allow for the monitoring of clearance timescales (Recommendation 6(i)).
  - (ii) The FOI tracking system should enable the authority to effectively monitor its FOI performance (Recommendation 6(ii)).
  - (iii) Arrangements are put in place for performance monitoring at both Executive Team and directorate level (Recommendation 6(iii)).

### Progress on the recommendations

56. The MiCase case management system is intended to provide real-time monitoring and tracking information, as well as enabling management reporting to senior staff.
57. The system has been designed to track clearance and comments, providing an appropriate audit trail of relevant information, and enabling the effective monitoring of FOI performance.
58. As noted above in my comments on recommendation 4, the introduction of the MiCase system - and therefore its ability to provide real-time monitoring and tracking information and management reports - was initially delayed. The system was, however, rolled out across the Scottish Government in December 2019 (and to agencies in early 2020).
59. The Scottish Government reports that, while the system does, in principle, provide the required reporting functionality, some issues have arisen with the generation of reports which have yet to be fully resolved. As with my comments elsewhere on the roll-out of the MiCase system, I would urge the Scottish Government to address these issues as a priority, so that FOI performance can be fully and effectively tracked and monitored.
60. I would also reiterate here the point made in paragraph 26 above, which noted an internal Scottish Government recommendation that the government's own Executive Team should consider whether Key Performance Indicators should be introduced in relation to the time taken to respond to both routine and sensitive / exceptionally complex cases. I would again urge the Scottish Government to give serious consideration to this recommendation, to support the fulfilment of recommendation 6(ii) of my June 2018 Intervention Report.

## Recommendation 7: Reviews

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61. I noted that the Scottish Government's review process allowed for staff involved in the original decision to also be involved at review stage, in conflict with the good practice advice contained in the Scottish Ministers' own Section 60 Code of Practice. I recommended that the Scottish Government review its procedures to remove, as far as possible, any related risk to impartiality.

### Progress on the recommendations

62. The Scottish Government's Action Plan contains a clear commitment to ensure that reviews would be carried out on an impartial and objective basis. The Scottish Government also noted that its guidance already stated that reviews should, wherever possible, be carried out by staff not involved in the original decision, and that this guidance was generally followed. It



also committed to review the policy and further promote it to staff, with the aim of ensuring practice conforms with the Section 60 Code.

63. During 2019, the Scottish Government developed additional guidance for FOI reviewers, as part of the development of bespoke guidance for staff involved in different elements of the request-handling process. A version of the guidance for reviewers was launched for testing in December 2019.
64. The Scottish Government has also continued to cascade learning points emerging from internal FOI reviews to relevant staff within the organisation, via a bi-monthly publication and the FOI network.
65. However, the Scottish Government reports that, in common with the experience of FOI case-handlers, its established network of FOI reviewers has been disrupted through staff redeployment caused by the pandemic. In line with comments made elsewhere, I strongly recommend that the Scottish Government to ensure that this resource is restored as soon as possible, in order to ensure full compliance with Ministers' own Section 60 Code of Practice.

## Compliance with timescales

66. In 2017, prior to the journalists' letter and Parliamentary debates, my predecessor as Commissioner initiated an intervention into the Scottish Government's performance against statutory FOI timescales. This intervention followed an extended period where performance fell significantly below the expected standard. In April 2017, for example, only 63% of Scottish Government requests were responded to within the statutory upper limit of 20 working days.
67. As part of this intervention, the Scottish Government agreed to the following targets for responding to requests and reviews over three years:
  - (i) Year 1 (2017): 85% to be issued within the statutory timescales
  - (ii) Year 2 (2018): 90%
  - (iii) Year 3 (2019): 95%
68. These targets were set for performance by the whole authority **and** individual directorates.
69. This intervention was closed in 2018 following significant timescale improvement having been achieved. However, as failure to meet FOI timelines can often be symptomatic of underlying FOI concerns, I nevertheless required the Scottish Government to continue to submit monthly performance data, in order to support ongoing improvement and the wider intervention into Scottish Government FOI performance.
70. Observations on the statistics submitted between 1 April 2019 and 31 May 2020 are provided below.

### Requests

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71. The Scottish Government has made significant progress in its response within statutory timescales over the period of the two interventions. As noted, in April 2017, only 63% of requests were responded to within statutory timescales. By the close of my intervention into response timescales in 2018, this had risen to 91%.
72. In the period between 1 April 2019 and 31 March 2020, FOI performance against timescales continued to improve, suggesting that the work done across the Scottish Government to improve FOI performance had a significant impact on response timescales over that period.
73. Unfortunately, this improvement has, at least in the short term, not survived the internal Scottish Government structural changes made to deal with the Covid-19 pandemic.
74. The table below shows FOI performance across the Scottish Government as a whole during this period:

2019/20	% of request responses issued on time	2020/21	% of request responses issued on time
April	92%	April	90% <sup>5</sup>
May	92%	May	58% <sup>6</sup>
June	90%		
July	94%		
August	96%		
September	95%		
October	98%		
November	94%		
December	97%		
January	97%		
February	97%		
March	95%		
<b>2019/20 Total</b>	<b>95%</b>		

75. As can be seen, performance across 2019/20 as a whole was 95%, meeting the Scottish Government's internal target. I note that performance against timescales was consistently maintained at over 90% across 2019/20, with response rates generally increasing as the measures introduced in response to my June 2018 Intervention Report (and highlighted elsewhere in this progress report) were rolled out across the organisation. Indeed, between August 2019 and March 2020, it is notable that performance dipped below the 95% target on only one occasion.
76. When considering the 2019/20 performance of individual directorates, of the 63 directorates and agencies for whom data was provided, 23 reported a 100% response rate in meeting FOI request timescales across the period. A further 16 directorates reported a response rate of 95% or above, while an additional 11 reported a rate between 85-95%.
77. There were, however, a small number of directorates where performance data during 2019/20 raised specific concerns. These included the Directorate for Early Learning and Childcare Programme (80%), the Directorate for Mental Health (77%) and the Directorate for Social Security (75%). The latter directorate is of particular concern, given that it was named as one of the directorates exhibiting declining performance in my July 2019 Progress Report. While I acknowledge that the directorate has faced certain specific challenges including (as reported to me in July 2019) experiencing a 70% increase in requests at a time when the department had doubled in size, it is nevertheless disappointing to see that, despite improvement measures introduced by the FOI Unit and being an early adopter of triage support, performance within the directorate remains poor.
78. The examination of cases involving under-performing directorates will be a particular area of focus during my 2021 on-site assessment.
79. It is reassuring to note, however, that a number of other directorates named in my July 2019 progress report demonstrated improved performance in 2019/20. Of particular note is Education Scotland, which reported a 100% 'on-time' response rate to requests (and reviews) during that period.

<sup>5</sup> This figure includes cases where timescales were temporarily extended by the Coronavirus (Scotland) Act 2020

<sup>6</sup> As above

80. In general then, there is strong evidence that the various measures undertaken to improve FOI performance impacted positively on FOI response timescales during 2019/20, and I would urge the Scottish Government to maintain a clear focus on its FOI improvement programme, despite current challenges.
81. These challenges can be seen in the most recent data received from the Scottish Government. This data reveals that that 'on time' responses fell slightly during April 2020, and then significantly during May.
82. In April 2020, the proportion of requests responded to on time across the Scottish Government dropped to 90%. It should be noted that this figure would have been lower were it not for the impact of the extension of FOI timescales introduced by the Coronavirus (Scotland) Act 2020, which came into force on 7 April 2020. Data reported by the Scottish Government shows that this timescale extension was applied in relation to nine cases during April. This extension was available for use by public authorities for a limited time, the provisions having since been repealed by the Scottish Parliament. (As a result, in most cases, requests received on or after 27 May 2020 must again be responded to within 20 working days).
83. Data received for May 2020 reveals that only 58% of requests were responded to on time. May 2020 data also includes 16 cases which would have been classed as late were it not for the timescale extension introduced by the Coronavirus (Scotland) Act.
84. As noted below, responses to review requests have been similarly affected. It is clear, therefore, that the Scottish Government's response to the Covid-19 pandemic has had a significant and severe impact on its performance against FOI timescales.
85. At a time of crisis such as this, the right to information is more important than ever. It is therefore extremely disappointing to see the extent of the drop in FOI performance. It is crucial that the Scottish Government examine the factors which have contributed to this sharp drop in performance and address them as a matter of urgency.

## Reviews

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86. In common with the findings of my July 2019 report, performance when responding to reviews within statutory timescales has been weaker than request performance. While this may in part be due to the comparatively smaller number of review requests received (meaning that individual timescale failures can have a significantly greater impact on overall performance data), it nevertheless continues to highlight a key area where attention is required.
87. The act of submitting an FOI review demonstrates that an individual requester is, for one reason or another, dissatisfied with the Scottish Government's initial response. Failing to respond to that request for review within the statutory timescales will only serve to exacerbate that dissatisfaction, damaging the relationship between the individual and the institution. Such harm can be easily avoided, and I strongly recommend that the Scottish Government focus attention on review performance within directorates.

88. Overall review performance across the Scottish Government over the period was as follows:

2019/20	% of review responses issued on time	2020/21	% of review responses issued on time
April	86%	April	64% <sup>7</sup>
May	89%	May	43% <sup>8</sup>
June	90%		
July	79%		
August	63%		
September	100%		
October	96%		
November	95%		
December	86%		
January	100%		
February	100%		
March	87%		
<b>2019/20 Total</b>	<b>89%</b>		

89. While, at an individual directorate level, review numbers are generally too low to support meaningful analysis, there are nevertheless a number of directorates where data indicated a strong performance in relation to meeting FOI review timescales in 2019/20. These include the Directorate for Communications, Ministerial Support and Facilities, which achieved a 100% response rate over 29 reviews and the Directorate for Environment and Forestry which achieved a 100% response rate over 11 reviews.
90. For the organisation as a whole, however, performance in relation to review timescales remain disappointing, and directorates should note that improvement will only be achieved if all business areas contribute.
91. The recent data received in relation to April and May 2020 further suggests that review performance has been negatively impacted as the Scottish Government responds to the pandemic. Performance in this period fell to 64% of reviews being issued on time during April, and 43% during May. These figures represent a sharp decline from 89% in March 2020, and performance falls significantly short of the 95% target. Indeed, the May 2020 figure is the lowest level reported since May 2017.
92. Progress in relation to FOI reviews will therefore be a key focus of my next onsite assessment.

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<sup>7</sup> This figure includes cases where timescales were temporarily extended by the Coronavirus (Scotland) Act 2020

<sup>8</sup> As above

## Conclusion / Next steps

93. It is clear from the information presented above that the Scottish Government made significant progress in relation to its FOI performance in the period between 1 April 2019 and 31 March 2020. Indeed, the Scottish Government's approach towards improving FOI performance over this period is to be commended.
94. However, it also appears that these changes have not, in the short term at least, enabled FOI performance to be sustained during the first months of the Covid-19 pandemic.
95. The initial impact of the work undertaken delivered clear improvements to the Scottish Government's FOI performance during 2019/20. We saw, for example, a sustained improvement in 'on time' responses to FOI requests, with the performance target of 95% being achieved across that year.
96. There is also evidence that FOI improvement work bore fruit in other areas. The number of requests for reviews reported, for example, fell by 29% over the course of a year, from 492 in 2018, to 367 in 2019.
97. The impact of this work was also evident in the appeals made to me. Indeed, my office received 53 appeals from people dissatisfied with Scottish Government / agency FOI responses in 2019/20. This is the lowest number of Scottish Government appeals since FOI was introduced in 2005, and down from a high of 147 in 2011/12. Likewise, my office only received three valid appeals relating to a Scottish Government 'failure to respond' to an information request in 2019/20. This was again the lowest number since we began to record this data, and down from 47 in 2011/12.
98. Data from 2019/20 also highlighted areas where further attention is required. Review performance continued to fall short of the 95% 'on-time' target, while FOI performance in some directorates clearly fell significantly short of the expected standard. As noted above, the performance of the Directorate for Social Security is particularly concerning in this regard. I will be exploring these issues further during my 2021 on-site assessment.
99. In general, however, the Scottish Government made significant progress towards delivering FOI improvement over the course of 2019/20. Indeed, had this report been completed a short time earlier, I would now be concluding with a broadly positive assessment.
100. However, the early months of the Covid-19 pandemic had a disruptive impact on all areas of our lives and working practices, and it not surprising that the Scottish Government's FOI improvement work has also been impacted. What is surprising, however, is the extent of this disruption, and the speed of the decline in the Scottish Government's FOI performance during the first part of 2020/21. This decline is extremely concerning, and clearly requires immediate attention.
101. Disruption has arisen across almost all areas of the action plan implementation work. As detailed elsewhere in this report, this has included:
  - Disruption to the established network of FOI case-handlers and reviewers through staff redeployment and structural change
  - A reduction in resource within the Scottish Government's FOI Unit
  - The suspension of the internal FOI Network

- Delays to the Scottish Government's programme of training and events
  - The suspension of work to resolve the significant records management issues which have been identified following the roll out of the MiCase system
  - Delays in development work on the organisational-wide e-learning package.
102. As can be seen throughout this report, almost all areas of FOI improvement work have been affected, and the impact of this poses, at present, a significant threat to the success of this project.
103. While it will inevitably be challenging amid current concerns, I urge Ministers to ensure that an increased focus is kept on FOI practice and performance as the organisation moves beyond the first phase of the pandemic response. Significant progress has been made to date as a result of the hard work of staff across the organisation, and there is a genuine concern that the benefits emerging from this work will be largely undone if focus is lost.
104. Progress on FOI performance is at a fragile juncture. While this is principally as a result of the impact of the pandemic and the Scottish Government's response to it, it is also compounded by the current status of the improvement work itself. Prior to the start of the pandemic, the Scottish Government had committed to end the 'project' phase of its FOI improvement work, and move towards establishing new FOI practice models as 'business as usual'. In current circumstances, therefore, it is vital that care is taken in order to ensure that the improvements and procedures put in place to date fully align with the changes which have been made to the structure of the Scottish Government.
105. While challenges undoubtedly exist, it must be acknowledged that it will be far easier for Ministers to divert attention and resources back towards FOI now, rather than attempting to refocus staff at a significantly later date, when momentum has been lost. Failing to do so will also send a dangerous message to staff and the wider public about the perceived importance of openness, transparency and accountability through FOI, at a time when the importance and public benefit arising from such characteristics has never been clearer.
106. Indeed, the importance of doing so was noted by a Scottish Government official during an update meeting with my staff, where it was stressed that: "*cultural change needs to be embedded before we can be confident improvement is sustainable in the long term*". The events of recent months have only served to underline this point.
107. In terms of prioritising attention, and given the issues highlighted in this report, I would urge Ministers to consider directing focus towards the following key areas of concern in the first instance:
- Restore trained FOI staff to key FOI roles
  - Implement urgent improvements to the MiCase case management system to ensure FOI record-keeping is robust, appropriate and effective
  - Ensure that appropriate training, development and support measures are in place for all staff involved in the handling of requests
  - Restore resource within the FOI Unit to ensure that the emerging benefits from new triage, advice and training responsibilities are protected.

108. As noted elsewhere in this report, I would also recommend that Ministers consider whether internal Key Performance Indicators can be introduced in relation to the time taken to respond to both routine and sensitive cases.
109. My office will, of course, be on hand to offer appropriate support and advice as the next phase of FOI improvement work progresses.



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**Our Ref:**

**Your Ref:**

Graeme Dey MSP

Minister for Parliamentary Business and

Veterans By email – [ministerpb@gov.scot](mailto:ministerpb@gov.scot)



Scottish Information  
Commissioner

*it's public knowledge*

2 September 2019

Dear Minister

**Draft Progress Report – Intervention 201702106**

Please find attached a draft copy of my second progress report on the intervention into the Scottish Government's freedom of information practice.

This report has been prepared in response to Scottish Parliamentary Motion S5M-12861 to "make public the report on the government's implementation of the action plan when approved annually". We plan to publish the final report on our website, alerting MSPs to its publication, by Thursday 10 September.

The draft report will also be shared today with the FOI Unit at the Scottish Government for the purpose of checking fact and accuracy. I would be grateful to receive the Scottish Government's factual corrections by noon on Monday 7 September.

Yours sincerely

**Daren Fitzhenry**

**Scottish Information Commissioner**

Daren Fitzhenry, Scottish Information  
Commissioner Kinburn Castle, Doubledykes Road, St  
Andrews, KY16 9DS

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## Document 10: 03/09/20

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**From:** Margaret Keyse  
**Sent:** 03 September 2020 18:01  
**To:** 'Gerry.Hendricks@gov.scot' <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>  
**Cc:** [REDACTED]; Euan McCulloch <[emcculloch@itspublicknowledge.info](mailto:emcculloch@itspublicknowledge.info)>; Claire Stephen <[cstephen@itspublicknowledge.info](mailto:cstephen@itspublicknowledge.info)>; Daren Fitzhenry <[dfitzhenry@itspublicknowledge.info](mailto:dfitzhenry@itspublicknowledge.info)>  
**Subject:** Timescales

Hi, Gerry

Thanks for your email. You won't be surprised to learn that extending timescales was one of the things I discussed with Daren when we got the team back up and running. On balance, we felt we couldn't increase these sort of timescales because we knew that there were bodies who would be able to respond within the two weeks but who, if we extended that timescale, would just use that extra week as a matter of course. As you'll appreciate, our staff themselves are under pressure from applicants waiting for decisions.

However, we did change our Investigations Handbook – new text highlighted in yellow:

*The PA should be given 10 working days to provide formal submissions. IOs may extend this period to 15 working days where the case is considered complex and/or voluminous. It is possible that an authority may ask for additional time to respond because of the effects of the coronavirus. Where this is the case, the IO should discuss any extension with HOE/DHOE.*

So, while we don't feel we can automatically extend the timescale for bodies, or agree specific timescales with specific bodies, the investigators know that we will give (and have given) extra leeway where the delay is caused by or related to covid.

I'm aware this isn't the answer you were hoping for, but do let us know when responding in two weeks isn't going to be possible. Clearly, the more live appeal cases you have, the more difficult this will be (it won't be the first time this has happened), so I'll make the team aware of this issue.

I'm (literally) about to finish up and won't be back until a week on Tuesday. I think it would be helpful to circulate your email to the Enforcement Team so that everyone understands the pressure the FOI Unit is under, but I didn't want to do that without checking with you first. If you're happy for the email to be circulated, could you let Euan know and he'll send it on to the team in my absence?

Margaret

**Margaret Keyse**

**Head of Enforcement**

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**Scottish Information Commissioner**

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**From:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot) [<mailto:Gerry.Hendricks@gov.scot>]

**Sent:** 03 September 2020 14:41

**To:** Margaret Keyse

**Cc:** [REDACTED]

**Subject:** RE: Scottish Information Commissioner: Decision 102/2020

Margaret

On the back of this appeal, I thought I would make my own appeal back to you...

As you know, the Scottish Government's staffing structure is significantly disrupted, both generally, with staff across the organisation, including many of our trained case-handlers, having been moved into new roles and, specifically in relation to FOI Unit, which has lost 5 full staff members to areas supporting our covid response. This has placed pressure on the organisation to maintain our FOI performance, though we are looking at ways in which we can support staff, with the Unit focusing on providing triage and casework advice and developing a new training module that we can deliver remotely.

One area with which we are struggling just now is appeals. We would normally expect to deal with about 50 appeals a year and these are handled by [REDACTED] and [REDACTED] (and sometimes [REDACTED], of course). However, the recent increase in OSIC's capacity to operate remotely while the office is closed appears to have led to a spike in appeal activity in a compressed period. At present, therefore we have 13 cases under consideration (2 decisions, 8 Stage 2, 2 Stage 1, and 1 request for supplementary answers), which places a considerable administrative burden on [REDACTED] and [REDACTED].

It appears that we are generally being given normal deadlines (around 2 weeks) to respond to appeal requests - and I recognise that OSIC must continue to process appeals timeously. However, we have been struggling to meet these deadlines, partly because of the other pressures on our team (in particular [REDACTED] and [REDACTED] are also having to provide a lot of casework advice), but also because in some cases, the original case-handlers and/or reviewers have moved to other roles, which means those left in the business area may need to get up to speed with the details of the request in order to inform their input.

I have to say, your FOI officers are generally very understanding when we ask for an extension, and this is much appreciated. However, I wonder if there may be any scope, while the disruption remains so significant, for us to be given a longer initial timescale, which would serve to reduce pressure - in no small part, psychological - on the Unit.

Please do not hesitate to contact me should you wish to discuss.

Regards

Gerry

Mobile: [REDACTED]

**[ADDITIONAL EMAILS IN THIS STRING HAVE BEEN REDACTED – THESE RELATE SOLELY TO A SPECIFIC CASE AND ARE OUT OF SCOPE OF THE REQUEST]**

## Document 11: 09/09/29

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**From:** Paul Mutch

**Sent:** 09 September 2020 14:54

**To:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)

**Subject:** Intervention Progress Report - Final Version

Dear Gerry – please find attached the final version of the Intervention Progress Report.

Please note that there have been two small amendments to the report – these are:

- Paragraph 70: an addition has been made to clarify that data analysis was based on the most recent data available at the time of writing (in light of this afternoon's publication of data for June 2020)
- Paragraph 98: a reference to the Directorate for Social Security has been removed from this paragraph, given the contextual information previously provided.
- 

The report will be published on our website at approximately 9am tomorrow morning.

Regards,

Paul

**Paul Mutch**

**Freedom of Information Officer**

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### Scottish Information Commissioner

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## **Document 12: 09/00/20**

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Document 12, the Commissioner's Interim Progress Report of 10 September 2020, is provided as a separate attachment, and is also available to download at:

[www.itspublicknowledge.info/SGIntervention](http://www.itspublicknowledge.info/SGIntervention)

## Document 13: 10/09/20

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Minister for Parliamentary Business and Veterans  
Graeme Dey MSP

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Daren Fitzhenry  
Scottish Information Commissioner  
By email: [dfitzhenry@itspublicknowledge.info](mailto:dfitzhenry@itspublicknowledge.info)

10 September 2020

Dear Daren,

Thank you for sight of your second progress report on the intervention into the Scottish Government's freedom of information performance and practice.

As you know, I am fully committed to delivering and maintaining the improvements agreed in our 2018 Action Plan and I consider that those parts of your report concerned with our progress in 2019-20 to be fair and well-balanced. Indeed, I am pleased that you explicitly commend our approach towards improving FOI performance over this period and acknowledge the hard work of staff across the organisation.

I do have some concerns about the conclusions drawn in relation to the impact of the pandemic on our performance and how we respond to that. I recognise the danger of a loss of momentum and I am committed to getting our improvement work back on course as soon as is practicable.

However, as you are aware, the impact on the government of resourcing our response to the ongoing emergency, particularly in the early months, has been enormous, with large numbers of staff being redeployed and having to work extremely long hours. While the virus remains active, and in the absence of a vaccine, our priority must be to focus our resources on suppressing the virus.

Nevertheless, I can assure you that, even in the current circumstances, we continue to take our FOI responsibilities seriously. As you know, our performance in June recovered significantly, with 79% of requests and 78% of reviews being replied to on time. I expect this to provide a strong base on which to build going forward. The FOI Unit continues to actively promote compliance with the Action Plan.



They are considering how we can strengthen support for case-handling during the current disruption and I welcome the offer in your conclusions that your office will offer appropriate support and advice going forward.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Graeme Dey', with a stylized flourish at the end.

**Graeme Dey**

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

## Document 14: 27/10/20

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**From:** Paul Mutch  
**Sent:** 27 October 2020 18:17  
**To:** 'Gerry.Hendricks@gov.scot' <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>; [REDACTED];  
[Penelope.Curtis@gov.scot](mailto:Penelope.Curtis@gov.scot)  
**Cc:** Daren Fitzhenry <[dfitzhenry@itspublicknowledge.info](mailto:dfitzhenry@itspublicknowledge.info)>; Erin Gray  
<[ergray@itspublicknowledge.info](mailto:ergray@itspublicknowledge.info)>  
**Subject:** Intervention Monitoring Meeting - 29 October 2020

Dear Gerry – can I suggest the following agenda for our forthcoming monitoring meeting on Thursday 29 October. Please let me know if there's anything you'd like to be added.

I understand that the participant dial in details are as follows, but please also let me know if this has changed:

[REDACTED: TELEPHONE MEETING DIAL-IN DETAILS - OUT OF SCOPE]

### **Intervention Monitoring Meeting 29 October**

14:00-15:00

#### **Agenda**

1. SG Status Update: **Update on current FOI status of SG** – to include update on capacity of FOI Unit, FOI caseworker resource, MiCase, performance on timescales and training / development (**SG**)
2. Intervention next steps: **Discussion of next steps for intervention** - including potential opening of SG offices / remote assessment (**SIC/All**)
3. Next Meeting: **Discussion** (All)

**Paul Mutch**

**Freedom of Information Officer**

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## Document 15: 20/11/20

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**From:** Paul Mutch  
**Sent:** 20 November 2020 13:48  
**To:** [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot); [REDACTED]; [Penelope.Curtis@gov.scot](mailto:Penelope.Curtis@gov.scot)  
**Cc:** Daren Fitzhenry <[dfitzhenry@itspublicknowledge.info](mailto:dfitzhenry@itspublicknowledge.info)>; Erin Gray <[egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)>  
**Subject:** Intervention Monthly Monitoring Meeting - Monday 23 November

Hi all – can I propose the following agenda for the Monitoring Meeting scheduled for Monday.

1. SG Status Update: **Update on current FOI status of SG – to include capacity of FOI Unit, FOI caseworker resource, MiCase update, training update & progress made on action plan** (SG)
2. Remote Assessment: **Update and discussion on potential for remote assessment of FOI practice** (SG / All)
3. Next Meeting: **Discussion** (All)

If there's anything anyone would like to add at this point, please let me know.

Gerry – you were also going to explore hosting this meeting on Teams – are you able to do so?

Many thanks,

Paul

**Paul Mutch**

**Freedom of Information Officer**

---

### Scottish Information Commissioner

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## Document 16: 14/01/20

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**From:** Paul Mutch  
**Sent:** 14 January 2021 13:14  
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**Subject:** Scottish Government Intervention - Monitoring Meeting January 2021

Dear all,

I hope you're all well and managed to get some downtime over the festive season. I've attached below a draft agenda for our monitoring update on Tuesday 19 January. Let me know if you have any additions, etc.

Gerry – can I ask that you set this up in Teams as per our previous meeting?

Many thanks,

Paul

### Agenda

1. **SG Status Update (SG)**  
Update on current FOI status of SG – to include FOI caseworker resource, MiCase update, capacity of FOI Unit, training update & progress made on action plan.
2. **Update on clearance performance (SG)**  
Update on performance against timescales of sensitive / complex cases which require Ministerial / special adviser clearance, compared to performance against timescales of cases resolved by officials.
3. **Follow-up assessment (SG/ALL)**  
Update on data available to support the follow-up assessment of FOI practice. To include update on the full range of data fields extractable from MiCase to support of the assessment. Discussion re. approach to second assessment.
4. **AOB**
5. **Date of next meeting**

Paul Mutch

Freedom of Information Officer

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