

Appendix 5: Additional information provided under the FOI duty to advise and assist

Your information request sought **correspondence** between the Scottish Government and the Commissioner on the decision to redeploy Scottish Government FOI staff.

It is important to note, however, that written correspondence has not been the main route of communication between the Commissioner and the Scottish Government in relation to issues around Scottish Government resourcing for FOI during the pandemic. Instead, our office has been holding regular telephone and online meetings with the Scottish Government's FOI Unit as part of our ongoing intervention to improve FOI practice and performance in the Scottish Government, and it is through this route that the majority of our communications with the Scottish Government on this matter have taken place.

As a result, there is information we hold which is related to your interest – the Scottish Government's decision to redeploy FOI Unit staff to Covid critical roles – which does not fall within the scope of your information request (in that it is not contained in correspondence between our office and the Scottish Government).

In order to provide information which is relevant to your interest, however, and with the aim of helping to you understand the steps currently being taken to support improvements in the Scottish Government's FOI performance, I have provided relevant extracts from our notes of meetings with the Scottish Government below. While your request specifically related to the redeployment of staff within the Scottish Government's FOI Unit, I have also included notes which relate to wider staffing of the FOI function across the Scottish Government, for information.

While this additional information does not fall within the scope of your request of 12 February, I am providing it to you as I am sure it will be helpful to you in understanding the range of current measures that are underway to monitor and support improvement in the Scottish Government's FOI performance.

I hope this is clear, but if you have any questions please do not hesitate to contact me.

Relevant information contained in Scottish Information Commissioner meeting notes:

- **04/03/2020 – Telephone call between Margaret Keyse (Head of SIC) and Gerry Hendricks (Head of FOI Unit, Scottish Government)**

Telephone call notified the Commissioner that the Scottish Government was working on plans to respond to the pandemic, and was considering the implementation of emergency legislation. In relation to the potential for staff disruptions, the note states:

"The Scottish Government is starting to put together plans for responding to the coronavirus – there is the possibility of severe disruption."

- **21/05/2020 - SIC Note of Scottish Government Intervention Monitoring Meeting with FOI Unit Staff**

Note from the intervention monitoring meeting held on 21 May 2020. Contains the following information relating to deployment of resources within the FOI Unit, and resourcing more generally across the Scottish Government:

SG Overview: Overview of current status of SG, capacity of FOI Unit and impact of CV-19

- *SG provided an overview of its current status, including details of the impact of Covid-19 response measures on its organisational structure, resource and capacity.*
- *SG stressed that responding to Covid-19 has been extremely challenging for the organisation. Many staff have been pulled away from allocated work areas to work on the Covid-19 response. New Directorates and support hubs have been established to support the response, and staff across the organisation have been redeployed into priority areas. SG reported that there are currently 32 separate workstreams responding to Covid-19.*
- *SG reported a huge impact from these changes, e.g. in terms of workforce redistribution and reallocation. For example, the SG highlighted that 85% of staff in the Health and Social Care Directorate were now working directly on the Covid-19 response.*
- *SG reported that this has caused challenges for FOI through e.g.:*
 - *Staff working remotely / access to systems and records*
 - *Staff being redeployed to areas where they have little background / experience*
 - *FOI Unit Staff being redeployed to other areas*
 - *Difficulty in identifying / locating appropriate staff to contribute to response*
 - *Difficulty in identifying / locating appropriately trained case-handling staff in specific directorates or workstreams.*
- *SG reported that its core remaining FOI team were focussed on triage and case handling, with staff often taking on a case handling role where an appropriate case-handler could not be identified.*
- *SG also reported that many staff were working outside their contracted hours to support the response to the pandemic.*

SG Progress Update: Update on any progress made on action plan

- *SG Reported that, within the FOI Unit, casework progression had been prioritised. SG noted that policy and improvement work were more readily able to be “paused” while the immediate response to the pandemic could be addressed.*
 - *SG noted that improvement work was “in a good place” prior to the start of the pandemic, highlighting various elements of progress detailed in the March highlight report.*
 - *SG noted that a positive culture supporting FOI improvement had been developed and fostered prior to the pandemic.*
 - *SG set out its view that the organisation will be required to stabilise and establish its “new normal” before improvement work can be reactivated.*
- **21/05/2020 – Telephone call between Daren Fitzhenry (Scottish Information Commissioner) and Graeme Dey MSP, Minister for Parliamentary Business and Veterans**

Note of telephone meeting between the Commissioner and the Minister. In relation to the Scottish Government staff redeployments, the note states:

“Advised that I had a useful and candid meeting with FOI team today and got an understanding of the pandemic on Scottish Government business, including FOI. The Minister confirmed that there was a considerable impact, with a number of secondments across government. There is also now the forthcoming further change in the emergency legislation relating to FOI. The Minister acknowledged that the situation is therefore challenging, particularly at a time of a huge increase in correspondence and anticipated increases in requests for information. He wanted to reassure us that he is proud of the improvements made by the SG and although he expects performance to fall back due to the crisis, particularly if there is a big increase in requests, but he wants any fall back in performance to be as limited as possible and sees FOI as a priority. He is working to achieve this within the current constraints.”

- **25/09/2020 - SIC Note of Scottish Government Intervention Monitoring Meeting with FOI Unit Staff**

Note from the intervention monitoring meeting held on 25 September 2020. Contains the following information relating to deployment of resources within the FOI Unit, and resourcing more generally across the Scottish Government:

FOI Unit

- *SG reported that it is actively trying to restore resource to the FOI Unit. While several staff have been redeployed to work on Covid-19 related roles, it noted that it was trying to fill two posts currently as priority appointments.*
- *Disruption and redeployment of the SG's network of case handler has meant that the FOI Unit is currently spending a significant amount of time involved in triage, or providing advice on basic request handling.*
- *DF acknowledged the work being done by the FOI Unit in challenging circumstances.*

FOI Case-handler Network

- *SG reported that the disruption to its network of FOI case-handlers was still a significant issue. It noted that, while previous case-handlers typically had past experience of working with FOI, many of the staff working in this area currently had little or no FOI experience. As a result, a greater degree of FOI Unit support was required.*

General

- *SG reported that covid-19 disruption and associated staffing issues were continuing to cause problems across the organisation. In general, however, it was reported that the organisation was responding well to the challenges of the pandemic. It was also reported that areas of the organisation were still in flux, with new teams / directorates being established to support the pandemic response.*

- **07/10/2020 – Telephone call between Daren Fitzhenry (SIC) and Penelope Curtis (Deputy Director Elections and FOI, Scottish Government)**

Catch-up meeting between the Commissioner (DF) and Penelope Curtis (PC). In relation to FOI staffing and resources, the note states:

“Discussing the latest SG intervention report, and noting the terms of the Minister’s response to the report and in particular to the resource for FOI. Noting from PC that performance is about 81% on time again, a slight increase on each month. DF was looking for an improvement in the FOI team resource and trained caseworkers and offered the assistance of his office to look over new procedures if any are to be introduced.

“PC indicated that the SG is prioritising FOI risks alongside other risks and challenges, but that an “audit” of trained FOI caseworkers was being carried out to identify where they are now and see how many can be used in their new roles for FOI. A more in-depth assessment of the intervention will take place next year when it is practicable to do so.”

- **30/10/20 SIC Note of Scottish Government Intervention Monitoring Meeting with FOI Unit Staff**

Note from the intervention monitoring meeting held on 30 October 2020. Contains the following information relating to deployment of resources within the FOI Unit, and resourcing more generally across the Scottish Government:

FOI Unit

- *SG reported that increasing numbers of calls for internal advice and assistance were being received by the Unit, due in part to the numbers of staff who are either new to FOI or new to SG more generally. This, in turn, combined with the increase in case numbers has put pressure on the Unit’s ability to perform its triage function effectively. SG were exploring ways in which its triage function might be streamlined, but that itself will take up resource.*
- *SG nevertheless reported that a degree of staff resource had returned to the Unit, with 3 team members returning from Covid-related work in recent weeks, two of them fully.*
- *Recruitment of 3 new staff members is also progressing, with applications closing on 31 October. It is likely, however, to be 2-3 months before posts will be filled.*
- *The SIC continues to acknowledge the work being done by the FOI Unit in challenging circumstances.*

Case-handler Network

- *DF enquired about progress on an audit of SG case-handlers, which was reported in a separate conversation with SG’s Penelope Curtis.*
- *GH reported that this work was underway and soon to be completed, but there were challenges due to the extent of staff disruption brought about by the pandemic and*

the pressure of competing priorities.

- **23/11/20 SIC Note of Scottish Government Intervention Monitoring Meeting with FOI Unit Staff**

Note from the intervention monitoring meeting held on 23 November 2020. Contains the following information relating to deployment of resources within the FOI Unit, and resourcing more generally across the Scottish Government:

FOI Unit

- *SG continuing with the recruitment of 4 posts to fill vacancies within the Unit. It is hoped that interviews will be completed within the next month.*
- *SG reported that the colleague who had previously led on the development and delivery of the FOI Improvement action plan had accepted another position and would not be returning to post. SG confirmed it plans to recruit a direct replacement at the same grade, which will enable FOI improvement work to continue.*
- *Cases were continuing to be triaged by the FOI Unit, despite current pressures. It was noted that a small number of FOI reviews had also been triaged.*
- *Resource and workload challenges have led to gaps when keeping records of triaged cases.*
- *SG also noted that it planned to kick-start its policy work following much of this activity being put on hold during the pandemic. As part of this, SG will prepare its response to the Public Audit and Post-legislative Scrutiny Committee report on FOI.*

FOI Case-handler Network

- *SG has undertaken an audit of its caseworkers to track their location across the organisation. Many are still working on the covid-19 response, and are unable to be recalled at the moment.*
- *It was noted, however, that relevant directorates are able to call on their expertise for FOI advice and support, where appropriate.*

- **19/01/21 SIC Note of Scottish Government Intervention Monitoring Meeting with FOI Unit Staff**

Note from the intervention monitoring meeting held on 19 January 2021. Contains the following information relating to deployment of resources within the FOI Unit, and resourcing more generally across the Scottish Government:

FOI Unit

- *SG reported that it was recruiting a new staff member for the unit at C1 level. This staff member would take up responsibility for overseeing the SG's FOI improvement programme.*
- *SG also reported that the 3 other vacancies within the unit had been filled, with all staff due to take up post over the course of the next month. It was estimated that it would*

take approximately 2-3 months for new staff to be brought up to speed.

- *FOI Unit welcomed the additional resourcing, noting that the additional resource would enable them to “get closer” to case-handling across the organisation, which in turn would enable the identification of areas where organisation improvement is required.*

FOI Case-handler network

- *SG acknowledged there was a need, once current “third wave” Covid pressures have eased, to identify and confirm FOI case-handler contacts within individual directorates. As noted previously, these have been disrupted as a result of staff reallocation as the organisation responds to the pandemic.*
- *SG also reported that there had been interest in restarting FOI case-handler network meetings, via Microsoft Teams. While this wasn’t imminent due to current pressures, it was being considered.*

I hope the above additional information is of use.