

SCOTTISH FREEDOM OF INFORMATION IMPLEMENTATION GROUP

TWENTY FIRST MEETING

TUESDAY, 29 AUGUST 2006, GENERAL REGISTER HOUSE, EDINBURGH

Present:

Gillian Russell (Chair), Scottish Executive
Alastair Graham, Grampian Police
Karen Williams, Grampian Police
Alison Mackinnon, Scottish Environment Protection Agency
Averil Maclachlan, Scottish Enterprise
Bruno Longmore, National Archives of Scotland
Claire Turnbull, The Scottish Parliament
Derek Manson-Smith, Campaign for Freedom of Information Scotland
Mandy Gallacher, Audit Scotland
Karen Angus, Society of Local Authority Lawyers & Administrators
Andrew Mackie, SE: ERAD: Environmental Futures Division
Margaret Macleod, Universities Scotland
Sarah O'Neill, Scottish Consumer Council
Carol McDivitt, Crown Office

In attendance:

Margaret Keyse, OSIC
Andrew Campbell, OSIC

Secretariat:

Jane MacKenzie, Scottish Executive
Liza McLean, Scottish Executive

The meeting was advertised as a public meeting. 3 members of the public attended.

1. Welcome and apologies for absence

George McKenzie, the Keeper of the Records, welcomed SFOIIG on behalf of the National Archives of Scotland

Gillian Russell welcomed group members to the meeting.

Apologies had been received from David Goldberg (CFOIS), George Brechin & Cathy Adamson (NHS), Denise Mattison (Historic Scotland), Carol Ewart (Campaign for Freedom of Information Scotland) and Angela Farrell (Crown Office).

2. Minutes of previous meeting and matters arising

The Group was advised that the agreed minutes of the last meeting had been published on the Executive's website and that all actions points had been carried out.

3. Freedom of Information Consultation response – summary report

Jane Mackenzie circulated draft copies of the summary report of consultation responses to members. Members were asked to review the draft report in order to provide feedback if they thought it did not reflect the issues which they had noted in the consultation responses which had previously been published on the Executive's website. It was emphasised that this was not an opportunity to feed in new evidence or views, but simply to ensure that the report properly reflected the responses.

ACTION Members were asked to provide comments within 2 weeks.

Jane noted that the outline timescales for the review had changed due to accepting consultation responses past the deadline, thus moving into delays caused by recess and advised that a note to this effect had been put on the website.

ACTION FOI Unit would offer copies of the draft for comment to those Members unable to attend. (*Email sent on 30 August.*)

4. OSIC update

Margaret Keyes provided the Group with an update from OSIC which covered the following points:

- A new Head of Operational Management, David Lowrie has been appointed. With OSIC expanding (the Commissioner now has 20 members of staff instead of 13), David has been taken on to take over responsibility for human resources, information and knowledge management, budgets and finance, risk management and developing the annual operational plan.
- Three new FOI Officers have started, two of whom come from a freedom of information/EIRs background.
- OSIC also now have a Validation Officer, who deals with new applications for a Decision. Roughly 34% of the applications made to OSIC are invalid for various reasons, and it is the role of the Validation Officer to establish whether an application is valid and to give advice to applicants on how to make a valid application.
- The total number of new applications to OSIC remains high.
- OSIC have put in a bid for an increase in funding of 17 – 19% from the Scottish Parliament.
- The commissioner has now issued his 250th decision.

5. Environmental Information update

Andrew Mackie advised that the Code of Practice on The Discharge of Functions by Scottish Public Authorities under the Environmental Information (Scotland) Regulations 2004 had now been finalised and laid in Parliament. Andrew had already emailed members with a link to the Code on the website, and hard copies of the Code were provided for Members.

6. Experiences of FOI 2005 – Sectoral Report

Jane thanked Members for their contributions to the Sectoral report. She advised that a draft of the report had now been circulated.

ACTION Members were asked to provide any comments or amendments within the next 2 weeks.

Members agreed that the report was useful and interesting. It was noted that it may be useful to include more information around timeliness of responses and information being released/published that would not have been published before. Members were asked to include this in their responses where possible. There was discussion concerning the importance of providing ‘health warnings’ about the robustness of the information provided in the report due to the differences between authorities’ monitoring and reporting processes and the general difficulties in monitoring FOI activity when the legislation does i) not require users to cite the Act nor ii) place any requirement for monitoring on the part of authorities. The report is provided as Annexe A to these minutes.

7. FOI Open Learning Workbook – discussion paper

Mandy Gallacher brought forward a discussion paper that had been produced relating to the FOI open learning workbook and linked e-learning package which had been produced pre-2005 during the implementation phase. (Paper attached at Annex B) . Mandy and John Arthur, Fife Council, (who also attended the meeting) had identified a requirement for updating this resource, and gave an overview of their views on the current workbook and on possible ways forward. There was a discussion around training more generally, and suggestions were made that a centralised programme run by the Scottish Executive would be advantageous. However a number of members expressed the view that training is more beneficial when localised and relevant to authority-specific requests and issues.

In conclusion the Group agreed that it would be useful to have a limited-life or even one-off sub-group meeting of SFOIIG to discuss the issues around updating this particular resource and decide a suitable way forward.

ACTION The FOI Unit to facilitate this and to request Members to volunteer to participate. (*Email sent on 30 August.*)

8. Sharing knowledge and experience – mechanisms for discussing and disseminating good practice

It had been identified that there may be a requirement for a forum in which Members could share knowledge and good practice. The Group agreed that it would be useful to have such a knowledge sharing workshop linked to future meetings. It was suggested that this could possibly be facilitated by allowing time for Members to discuss issues which had been brought forward after each meeting of SFOIIG.

Members had a useful discussion around an issue which provided an example of the type of subject matter which could be covered in future (Issue of disclosure of names of FOI applicants.).

ACTION The FOI Unit agreed to follow this up

9. Any other business

Jane advised Members of a number of items which may be of interest to the Group.

- Establishment of the UK Information Rights User Group
- Scottish Campaign for FOI are running a course on Decisions in November
- DCA/ICO undertaking a Data Protection Simplification project
- [Review of scrutiny of public services](#)
- [JISC Information Governance Gateway](#) project
- UK consultation on Data Protection penalties

10. Next meeting

The date and venue would be notified to members as soon as possible.

*(Post – meeting note. Item 8 reflects discussion which took place at the meeting about a possible requirement for a forum on sharing knowledge and good practice on FOI. This indicated a sense among Group Members that a revised remit for the Group might be required. Subsequent to the meeting the Minister for Parliamentary Business noted that the Group had been set up to support the “implementation” phase. It had then been asked to continue to meet during the first year of FOI(S)A being in force and then during the period of the FOI(S)A review. As the Review is coming towards an end the Minister has asked the FOI Unit to consider options around continuing with an “FOI Group” but with a new name and remit to reflect that the Act has now been in force for almost 2 years. It is likely, therefore, that the next meeting of **SFOIIG** – late 2006 or early 2007 – will be the last meeting of the Group under this title.)*

Freedom of Information in Scotland - the first year

A summary of the experiences of the first year
in some of the main groupings of Scottish public authorities

Compiled from information provided by members of
the Scottish Freedom of Information Implementation Group (SFOIIG)

Health Warning on the information provided in this report!!

While all written or recordable requests for information must be handled in compliance with FOI(SA) and, therefore, can be classed as FOI(S)A requests, public authorities define and record information requests for the purposes of monitoring differently from each other. The detail provided in the sectoral updates, noted in the minutes of SFOIIG, and in this summary is not, therefore, comparable and should not be treated as such.

The information provided in this summary is indicative rather than robust in any statistical sense. It simply provides a snapshot of experience from the perspective of certain Scottish public authorities in the first year of FOI(S)A being in force and should be treated with caution.

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Introduction

The Freedom of Information (Scotland) Act 2002 (FOI(S)A) came into force on 1 January 2005. The Act provides a statutory right of access to information held by Scottish public authorities. These range from national bodies such as the Scottish Parliament, down to individual GPs.

FOI(S)A does not require public authorities to record and monitor requests for information or request handling. However the section 60 Code of Practice, which provides best practice guidance to public authorities on discharging their duties under FOI(S)A, requires authorities to adopt appropriate systems to monitor their performance against the obligations placed upon them.

The Scottish Freedom of Information Implementation Group (SFOIIG) meet quarterly, and its membership is drawn from a range of representative organisations across the Scottish public sector. The group was established in 2001 to prepare and oversee a strategy to successfully implement the legislation. Post implementation, it was agreed that the group should continue to meet to discuss FOI(S)A issues and monitor how FOI(S)A was bedding-in across Scotland. (See <http://www.scotland.gov.uk/Topics/Government/FOI/18022/11344> for SFOIIG minutes.)

During 2005 therefore, the group discussed, among other issues, sectoral updates which were provided by members for each meeting. These updates typically detailed volume of requests; outcome of requests; types of information requested; sources of requests (where known); and any other matters of note. This report presents some of the key points which were provided in the quarterly sectoral updates, and provides brief summary reports on the first year of experience of FOI(S)A from the main groupings of Scottish public authorities: The Environmental Sector; Health; Higher Education; Local Government; Scottish Enterprise Network; Scottish Executive; The Scottish Parliament and the Scottish Parliamentary Corporate Body; and Scottish Police Forces and associated agencies.

Health Warning.

While all written or recordable requests for information must be handled in compliance with FOI(SA) and, therefore, can be classed as FOI(S)A requests, public authorities define and record information requests for the purposes of monitoring differently from each other. The detail provided in the sectoral updates, noted in the minutes of SFOIIG, and in this summary is not, therefore, comparable and should not be treated as such.

The information provided in this summary is indicative rather than robust in any statistical sense. It simply provides a snapshot of experience from the perspective of certain Scottish public authorities in the first year of FOI(S)A being in force and should be treated with caution.

Key points from quarterly sectoral updates during 2005

Sectoral updates were a standing item on the agenda for quarterly meetings of the Scottish Freedom of Information Implementation Group (SFOIIG) during 2005. Listed below are some of the points made in the updates which were provided by sector members and annexed to the minutes of meetings during 2005. Full copies of the minutes of SFOIIG meetings are available on the Scottish Executive website at <http://www.scotland.gov.uk/Topics/Government/FOI/18022/11344>.

Fifteenth Meeting – March 2005

- The Scottish Parliament advised that they had developed a database for handling request and established a network of FOI lead officers.
- Local Government had received approximately 1000 requests, most of which were from the Commercial Sector.
- The Environmental sector reported that there may be some confusion between the Environmental Information (Scotland) Regulations and FOI(S)A.

Sixteenth Meeting – June 2005

- The Scottish Parliament were frequently being asked for information concerning Members' allowances and the Holyrood building.
- The Health sector reported that the majority of requests received originated from the media, and that requests centred on hospital closure, tendering information and MRSA.
- The Education sector advised that the general conclusion of the Universities Scotland FOI Working Group was that the higher education sector had taken FOI in its stride, mainly due to careful preparation.

Seventeenth Meeting – September 2005

- That majority of requests to Local Government originated from Members of Parliament and the media.
- The Environmental sector advised receipt of an increased number of enquiries, and received successions of requests about particular issues.
- The Police sector reported receipt of approximately 1800 requests, and experience suggested the media were using FOI as a research tool.

Eighteenth Meeting – December 2005

- The Health sector had experience of confusion among the public and staff regarding the Data Protection Act and FOI.
- The Scottish Enterprise Network reported that most requests originated from Companies, legal firms, and students with specific interests.
- Types of information most requested from the Education sector included management and administration, estates and buildings, teaching and assessment.

Freedom of Information in Scotland 2005 – reports on experience across the public sector

Members of SFOIIG agreed that producing and discussing the quarterly sectoral updates had proved interesting and helpful, and at the meeting held in May 2006 it was decided that it would be very useful to produce a full set of brief reports on the "first year of experience of FOI" from the main groupings of Scottish public authorities, based upon these updates.

The following reports were provided by each of the main groupings of Scottish public authorities, and provide brief descriptive summaries of information on requests for information including: volume of requests; outcomes of requests; types of Information requested; and Scottish Information Commissioner decisions affecting their sector.

It may be useful to read these reports in conjunction with the Annual Report from the Scottish Information Commissioner, published in February 2006. See

<http://www.itspublicknowledge.info/aboutus/annualreport2005.htm>

This provides an overview of his work and experience of FOI in Scotland during the first year of operation of the legislation.

REPORT FOR ENVIRONMENTAL SECTOR

Description of sector and evidence base for the report

The sectoral report contains feedback from four organisations which have a strong environmental focus. However, the Forestry Commission is regulated by the Freedom of Information Act 2000 and their input has been included for benchmarking purposes only. The environmental sector will generally apply the Environmental Information (Scotland) Regulation 2004 when handling information requests. Under the Regulations, organisations are not explicitly designated (unless they are listed on Schedule 1 of FOISA). Consequently it is difficult to calculate the size of the environmental sector.

Volume of requests

As a whole the sector logged and responded to in excess of 1000 requests during 2005. Both SEPA and SNH receive information requests which relate to service or routine business. In general, these are not logged as FOISA/EIR requests unless the legislation is cited and the enquirer wishes the legislation to be applied. Existing tracking/casework systems have been used to log the enquiries, with specific modifications to meet legislative timescales. SEPA has received more enquiries (534) partly because of its role as a regulator and has created an Access to Information team to co-ordinate the handling of all logged requests.

Outcomes of requests

Compliance with regulatory timescales is generally high, with Scottish Water reporting 94% compliance and SEPA reporting 97%. SNH indicates that information has not been held in 10-15% of cases. In general, where exemptions have been applied they relate only to parts of the requested information. The most commonly applied exemptions/exceptions have been for personal data; incomplete information; and commercial confidentiality. SEPA has also applied exceptions under EIRs where regulatory enforcement is ongoing at the time of the request. SNH has issued two Fees Notices and SEPA has issued 29 Fees Notices, under the EIRs. SNH conducted three formal reviews and SEPA undertook 13 Reviews during 2005. In 60% of cases SEPA upheld the original release decision and in 30% of cases additional information was released. Two appeals were lodged with OSIC regarding Scottish Water and SEPA is awaiting the outcome of one appeal.

Information on sources of requests

Both SEPA and SNH report that the majority of requests were received from members of the public or bodies directly affected by the organisation's activities in specific geographical locations. Some enquirers had made multiple requests on related topics. SEPA and Scottish Water report that information requests have become enmeshed with service complaints on contentious matters. The media does not make extensive use FOISA/EIRs when seeking information from the sector. Towards the end of the year, there was a noticeable rise in requests from solicitors and consultants.

Types of information requested

SEPA and SNH both report that enquirers are generally seeking information or data on a specific geographical location. However there has been a succession of enquiries to both organisations on proposed wind farm developments. There have also been overlaps in requests between SEPA and Scottish Water relating to sewage treatment. Most environmental organisations are data rich, and there has been a rising trend in the number of requests seeking datasets on a national and site-specific basis. This has necessitated the consideration of and potential application of the Re-use of Public Sector Information Regulations 2005. SEPA released a list of incidents at Dounreay.

SIC Decisions affecting the sector

Scottish Water has been the subject of two decisions mainly relating to technical issues under FOISA. Only one decision was determined under the EIRs during 2005. Therefore there is a lack of existing precedent for public authorities to apply when making release decisions under the EIRs, especially on the application of the public interest test.

REPORT FOR THE HEALTH SECTOR (*Draft - taken from report provided in December 2005*)

Description of sector and evidence base for the report

1. Since the introduction of the SFOI Act in January 2005, each component part of the NHS in Scotland has dealt individually with FOI requests. These component parts are:
 - 15 Health Board areas: 12 mainland (11 from April 2006) and 3 island Boards.
 - 8 Special Health Boards (including State Hospital, Scottish Ambulance Service, NHS Health Scotland, NHS National Services Scotland, etc)
2. Up till now, statistics have not been collected on a Scotland wide basis. A regular trawl, using a template similar to that developed by Local Government, is now being implemented across NHS Boards. This report, however, is based on information supplied in different formats by 8 out of the 23 Boards.

Volume of requests

3. These vary, mainly in relation to the size of the organisation. A larger mainstream service delivery Board (Lothian) has received 175 requests, a medium sized Board (Fife) 104, a small Board (Orkney) 53.

NHS 24 has received 37 requests.

Information on requesters

4. For all parts of the service, most requests have been received from the media (particularly the Press), averaging 37-38% of requests. NHS Fife has, however, a higher percentage at 53%, with NHS Orkney the highest (43 out of 53 requests, or 81%).
5. Members of the public are the second most common requesters (average 20%), with commercial contractors third (average 16%).
6. A small number of requests have come from MSPs, researchers, solicitors and NHS Staff. (Although some Boards do not count these separately from the public, as staff may not always identify themselves as such).
7. NHS Fife's experience has been that there was a smaller percentage of requests from journalists until recently, when numbers have jumped up. Local press requests have gone down, with requests from national newspaper journalists increasing. Requests in the latter category are increasingly being sent to all Health Boards at the same time.
8. Across the NHS in Scotland, FOI Lead Contacts and Communications Departments are establishing closer links, in the light of this development. In particular, 'follow up' questions tend to be sent to Press offices.

Types of Information requested

9. The requests from the national and local media have tended to be around:
- Negligence claims
 - MRSA rates
 - Patient safety incidents
 - Violence towards staff
 - Expenses claims
10. Requests from the public cover a wide variety of issues including information on doctors, local hospital issues, etc. Commercial contractors and company researchers are mainly requests for contacts to build up databases.
11. A significant issue for the NHS has been the confusion (among the public and also some staff) about the difference between FOI and Data Protection legislation. Much of our training for staff has been focussed on this issue, but a small number of patients continue to ask to see their medical records “under Freedom of Information”. (Of NHS Fife’s 104 requests, 9 came under this category).

SIC Decisions affecting the sector

12. There have to date been 5 published decisions on appeals to the Scottish Information Commissioner resulting from NHS bodies declining to provide information requested. 4 of these have related to the Information Services Division of National Services Scotland (formerly Common Services Agency (CSA)) and one to NHS 24.
13. The SIC decisions are as follows:-
- (a) NHS 24 - technical breach of part 1 on FOISA, but refusal decision upheld.
 - (b) NSS - 1 withholding decision upheld.
- 3 withholding decisions not upheld
14. One of the NSS cases concerns leukaemia rates in Dumfries and Galloway. The issue at stake is the publication of small numbers within an identified geographical area, which might lead to personal identification. The SIC ruling in favour of publication, using a particular tool to disguise the information sufficiently to prevent identification, is now being contested by the NSS through the Court of Session.
15. The other NSS cases both concern publication of individual doctors’ surgical mortality rates. The refusal to issue information relates to exemptions under (a) personal information (Section 38) and (b) effective conduct of public affairs (Section 30). The SIC decision that the information should be published is now being considered by NHS National Services Scotland.

REPORT FOR THE HIGHER EDUCATION SECTOR

Summary

The following report is an indication of Freedom of Information (Fol) request activity and provides a descriptive summary of the higher education sector's experience of the Freedom of Information (Scotland) Act 2002 in 2005. Most of the following information has previously been provided to the Scottish Fol Implementation Group, mainly in graphic format.

Description of sector and evidence base for the report

The Scottish Higher Education Information Practitioners' Group (SHEIP) has monitored the effect of Fol legislation on the higher education sector throughout 2005. Twenty higher education institutions in Scotland are subject to Fol legislation. SHEIP has established a database of recorded requests which has enabled SHEIP to examine trends. This collection of data provides the evidence base for this report. It is stressed that this is not a comprehensive or scientific survey as responses to the survey from higher education institutions were optional; 17 out of the 20 institutions provided data.

Volume of requests

On that basis, the total number of Fol requests received across the sector in 2005 was 1202. This figure includes 17 Environmental Information (Scotland) Regulations requests and 77 Data Protection Act requests. However, the caveats are that: the survey was optional, so institutions could choose to submit data or not (17 institutions submitted data); institutions had discretion over their interpretation of the definition of an Fol request; institutions had discretion over the assignment of requests to categories, so there may be a variety in practice. The data collected indicated a wide variation in the number of requests to individual institutions; the highest number of requests to a higher education institution was between 200 and 250 and the least was in single figures. On average more requests were received in June than any other month and the least were received during July and December.

Outcomes of requests

The number of requests answered fully was 805, with 158 answered partially. For 25 of the requests the deadlines were not met and for six of them charges were applied. For 68 of the requests the information was not held, information was refused for 67 of them and 25 requests were withdrawn. There were 30 reviews requested and five appeals received by the Office of the Scottish Information Commissioner (OSIC) concerning higher education institutions.

Information on sources of requests

From information available, the most common applicants to the higher education sector for information were unknown individuals, followed by journalists and the least common were campaigners.

Types of information requested

The most common subject matters relate to aspects of 'management and administration' within the institution and to human resource issues. The main types of information requested generally fell in to one of the following categories all of which received more than ten requests:

- Estates and building matters
- Admissions
- Teaching and assessment
- Research
- Dissertations and theses
- Finance/investments
- Strategy/corporate planning
- Court/Senate/other management committee business
- Other aspects of management and administration of the institution
- Human resource issues

SIC Decisions affecting the sector

OSIC received five appeals concerning higher education institutions in 2005. OSIC recently clarified that two are still under investigation, two have resulted in a decision and one has been withdrawn following settlement. Information on appeals to, and decisions of, OSIC in respect of all Scottish public authorities is in the public domain and is available on the OSIC website at:

<http://www.itspublicknowledge.info/appealsdecisions/index.htm>

No decisions have been made under appeal to the Court of Session relating to the higher education sector.

Any other general points/issues specific to the sector

Although the survey indicates a relatively low number of FoI requests to the higher education sector in 2005 compared to what is already known for other sectors, Scottish higher education institutions have nevertheless incurred, in addition to the costs of providing information for individual FoI requests, additional staffing costs to support FoI compliance and records management. This has had resource implications for their educational responsibilities.

REPORT FOR LOCAL GOVERNMENT

21 Councils provided figures in response to a request for the information from SOLAR. These 21 councils had collectively received 11,533 requests for information in the first year of the Act, representing an average of 594 each. The local government sector as a whole is therefore estimated to have received a total of approximately 19,000 requests under the legislation.

Based on the only pre-commencement estimate available, the number of requests received was slightly more than double the number predicted.

The analysis below is based on figures from 11 councils which provided the level of detail requested. Accurate management information of this type does, however, appear to remain problematic for many councils. These 11 received 7,624 requests and responded to 7,049; the percentages are therefore based on this smaller sample.

Requests

Total FOI requests received	7264 (11 Councils)
Requests responded to	7049 (97%)
Requests completely complied with (i.e. all information requested was provided)	4632 (65% of requests responded to)
Requests partly complied with, partly withheld due to exemptions	490 (7%)
Requests partly complied with, partly not complied with due to fees/not all information held	189 (2.7%)
Requests completely refused due to application of exemptions	685 (9.7%)
Of these, how many were "technical refusals" where the applicant could get the information in other ways?	277(3.9%)
Requests completely refused due to the cost threshold being exceeded	91 (1.3%)
Requests where information not held	433 (6.1%)
Requests refused as vexatious	3 (0.04%)
Requests refused as being repeat requests	13 (0.18%)
Requests where a fees notice issued	33 (0.4%)
Of these, how many were issued on a voluntary basis as the costs exceeded £600?	None advised
Requests where fees paid	4
Requests responded to within 20 working days	6187 (88%)
Number of internal reviews requested	404 (5.5% of requests received)
Number of internal reviews completed	394 (79.5% of reviews received)
Number of reviews fully upheld (i.e. original decision overturned)	37 (9%)

Number of reviews partly upheld (i.e. original decision partly overturned)	45 (11%)
Number of reviews refused (i.e. original decision fully upheld)	276 (63%)
Number of reviews completed within twenty working days	237 (59%)
Number of appeals to OSIC	61 (0.8% of requests received)
Number of decisions reached on appeal	23 (38% of appeals received)
Number of cases where OSIC have upheld a decision to withhold information	15 (24.6%)
Number of cases where OSIC have found technical breaches of the FOIS Act	15 (24.6%)
Number of information notices served on your authority	6

Exemptions

Exemptions in question:	Number of refusals/ partial refusals citing exemption:
Information otherwise accessible. (Section 25)	309
Prohibited by legislation. (Section 26)	50
Intended for future publication. (Section 27)	30
Relationships within UK. (Section 28)	1
Formulation of Scottish Executive policy. (Section 29)	1
Prejudice to conduct of public affairs. (Section 30)	137
National security and defence. (Section 31)	3
International relations. (Section 32)	0
Commercial interests (Section 33)	154
Investigations by Public Authorities. (Section 34)	11
Law enforcement. (Section 35)	18
Confidentiality (Section 36) (see note)	39
Court records. (Section 37)	8
Personal information. (Section 39)	302
Health & Safety and the environment. (Section 39)	4
Audit functions. (Section 40)	0
Royal communications. (Section 41)	0

Sources of requests

Councils were asked for a breakdown of requestors by type (private individual, lobby groups, journalists, commercial concerns etc.) but there were insufficient returns to merit inclusion indicating that this data is not routinely captured. Most of those who responded indicated that ordinary members of the public made up the majority of requestors; for the few councils where they were not, they were still the largest single group.

Costs

Again, Councils were asked to provide figures for both set-up costs and annual running costs but were mostly unable to supply this information.

Trends

Analysis of the three questionnaires collated by SOLAR over the first year of FOI indicates that usage of the legislation has been slowly but steadily increasing over the course of the year and shows no signs of decreasing.

Notes:

As previously, figures reported are for “requests for information” and do not differentiate between FOI and EIR requests. The percentage of EIR requests, where indicated at all, was very low (in the region of 1 to 3 per cent).

Requests included in the figures are those:

- Explicitly quoting FOI
- Made to a dedicated FOI route (e.g. an FOI email address or web form)
- Where some information was exempt
- Where the information would not have been released under “business as normal” pre-FOI practices

The figures on the use of the section 36 exemptions may be inaccurate as this question was omitted from the circulated questionnaire by mistake. However, some respondents volunteered the information anyway; but it is not known whether those who did not provide a figure had used section 36 or not.

REPORT FOR THE SCOTTISH ENTERPRISE NETWORK

Description of sector and evidence base for the report

1. The Scottish Enterprise Network is responsible for economic development in Scotland excluding the Highlands and Islands, which are covered by the separate Highlands and Islands Enterprise Network.
2. The SE Network consists of Scottish Enterprise, a non-departmental public body, and 12 Local Enterprise Companies (LECs) which are wholly owned subsidiaries of SE and are covered by FOISA as publicly owned companies. The network also includes a further 25 live and 20 dormant publicly owned companies, which are either SE or LEC subsidiaries or companies jointly owned by SE and Highlands and Islands Enterprise.
3. The network also includes Careers Scotland, which is responsible for all age careers guidance. It has a separate operating identity, but is not a separate legal entity.
4. Standard procedures for handling FOI requests apply across SE, the LECs and Careers Scotland and we aim to take a consistent approach as far as possible within the context of the LECs having obligations to comply in their own right.
5. Throughout 2005 statistics were compiled on a regular basis from SE, the LECs and Careers Scotland. Subsidiaries were not included in the regular information gathering, but where SE was aware of requests directed to subsidiaries (because they had sought advice on handling) these were included in the reports.

Volume of requests

6. The network operates to a standard definition of a formal request which should be logged:
 - The request is received in writing or other permanent form e.g. e-mail
 - *Or* the request is received orally/by telephone and is for environmental information
 - *and* the request requires information to be retrieved from paper and/or electronic files
 - *and/or* the request needs to be referred to another part of the network
7. However in practice there are variations between business units in the extent to which routine requests where information is provided in full are logged and included in monitoring returns. In additional definitional problems have been encountered in relation to letters or e-mails containing multiple bullet points – sometimes on clearly separate subject matter but on other occasions apparently split arbitrarily to avoid cost thresholds. In most cases such communications have been counted as single requests.

8. During the year a total of 194 requests were logged – 67 at SE, 118 at LECs, 6 at Careers Scotland and 3 at subsidiaries. Request levels at individual LECs ranged from 2 to 16. The variance does not relate to size – a small LEC, SE Borders, and 3 medium sized ones, SE Ayrshire, SE Tayside and SE Grampian have been among those receiving higher volumes, while SE Edinburgh and Lothian, one of the largest LECs, had very few.

Outcomes of requests

9. Information was supplied in full in response to 133 requests (68%) and supplied in part in a further 32 (16%). 6 requests (3%) were refused on grounds of an exemption and 4 (2%) on cost grounds. 3 requests were withdrawn and no information was held in respect of 16 requests.
10. In compiling the statistics cases where names or personal contact details were redacted but no other information withheld have been counted as supplied in full, and cases where some of the requested information was not held have been classified according to the treatment of the information which was held.
11. Where information has been withheld in full or in part, the exemptions most commonly used have been Section 38 Personal Information, Section 33 Commercial Interests and the Economy and Section 30 Prejudice to the Effective Conduct of Public Affairs. Section 36 Confidentiality, Section 41 Communications with Her Majesty and Honours, Section 25 Information Otherwise Accessible, Section 27 Information Intended for Future Publication and Section 32 International Relations have also been used occasionally.
12. The 20 day statutory timescale was met in all cases.
13. A total of 9 requests went to internal review, with the original decision being upheld in relation to 4 and some further information released in relation to the other 5. One of these has subsequently been appealed to the Scottish Information Commissioner and a decision is still awaited. This relates to a case where all information was released but the applicant believes further information is held.

Information on sources of requests

14. Information about the type of requester is not routinely recorded, but where it is known, the media featured prominently in the first 3 months, and companies or legal firms acting on behalf of companies were the major sources in the remainder of the year. There were also a few from students and from individual customers of the network. The number of requests from members of the public who do not have an existing customer relationship with us was very low.

Types of information requested

15. The majority of requests related to the specific interests of the requester rather than matters of general public interest, e.g. unsuccessful tenderers seeking information about the award of contracts, and companies seeking information

about assistance given to their competitors. Some requests appeared to be aimed at obtaining information which could help companies to pitch for future business.

16. Media requests either focussed on payments made to specific types of recipient e.g. celebrities used to host events, or were very general e.g. all correspondence with the Scottish Executive.
17. Requests which do have wider public interest have related to information about specific major projects, and to our equal opportunities policies.
18. Because so few requests related to matters of general public interest SE has not established a disclosure log. This decision may be reviewed in the light of a different request pattern in 2006.

SIC Decisions affecting the sector

19. There were no SIC decisions relating to the network in 2005. A decision published in 2006 in relation to a request in 2005 to IIP Scotland Ltd, a company jointly owned by SE and HIE, upheld the use of Section 38 in relation to the record of an interview conducted as part of an assessment for Investors in People status.

REPORT FOR THE SCOTTISH EXECUTIVE

Description of sector and evidence base for the report

The Scottish Executive is the devolved government for Scotland. It is responsible for most of the issues of day-to-day concern to the people of Scotland, including health, education, justice, rural affairs, and transport. The provisions of FOI(S)A apply to all valid requests for information made to the Scottish Executive. Receiving and responding to requests for information is part of the normal business of the Scottish Executive and thousands of communications are received each year. Most requests for information are, therefore, handled routinely and not recorded or counted centrally.

For monitoring purposes, in line with the FOI(S)A Section 60 Code, certain requests are notified by recipients to, and logged by, the Executive's FOI Unit. This report is based on this subset of the information requests received by the Executive. This includes requests for information where, in the main, the requested information would not have been routinely provided prior to the coming into force of FOI(S)A. Request handling is not undertaken centrally which means that data may not all be complete. The report, therefore, simply provides a snapshot of the Executive's approach to FOI request handling in the first year of compliance.

Volume of requests

During the year 1800 requests for information were logged by the FOI Unit. This report is based in the main on an analysis of 1492 of the requests received - 83% of the cases in this central record of requests. (NB Some of the analysis is based on smaller numbers of requests. In some instances this is the 1345 requests remaining after invalid or withdrawn cases or cases handled by Executive agencies have been excluded. In other instances it is the 1087 resolvable requests for which the information requested is held by the Executive and it was considered for release.) The numbers of requests received and centrally recorded in the second 6-month period were significantly lower than in the first 6-month period - 592 compared with 1208.

Outcomes of requests

Of 1345 requests, 1015 (75%) of the Executive responses were sent within the 20 working-day required deadline. Of the 330 responses which were sent after the 20 day deadline, 188 (57%) were sent out under 10 days late. This means that 142 (10%) of the requests received during 2005 were subject to a significant delay in response time (more than 10 days late).

Of the 1492 requests analysed, 185 (12%) requests were for information which either the Executive does not hold or does not hold for the purposes of the Act as determined by Section 3(2) of the Act. 74 (5%) requests were refused on the grounds that to comply with the requests would be in excess of the prescribed amount (£600). A number of the requests recorded were withdrawn or still await further clarification from the applicant.

For the 1087 resolvable requests for which the information requested is held by the Executive and it was considered for release, 745 (69%) of the requests resulted in new information being released with full disclosure occurring in 389 (36%) cases.

Information on sources of requests

Most requests received by the Executive and recorded by the FOI Unit were from the media, averaging out at around 50% of requests the received over 2005, followed by MSPs and private organisations.

Types of information requested

Due to the wide range of information held by the Executive, requests have covered an extensive variety of topics. Ministerial engagements, travel, and expenses have proved to be a notable focus for a number of requests as has the operation of FOI by the Executive. Major policy and delivery areas have also been the subject of requests, for example – agricultural grants and subsidies, free personal care, the Holyrood Building project, the Cultural Commission.

In cases where new information has been released, this information is progressively being collated and published on the Executive's website and listed in the disclosure log.

See : <http://www.scotland.gov.uk/Topics/Government/FOI/Disclosures>

SIC Decisions affecting the sector

By the end of 2005, 79 Executive request responses had been appealed to the Scottish Information Commissioner. It appears that approximately a third of the cases where a review was requested have subsequently been appealed to the Commissioner. As applicants have six months from receipt of the response to their review request in which to make an appeal to the Information Commissioner, it is difficult to be precise with this figure. Appeals on some 2005 cases could potentially still be made during 2006. .

Overall, of the 1492 requests which were received by end December 2005 and where outcomes have been analysed, approximately 5% have gone to appeal. To end of December 2005 the SIC had made decisions in 25 of these appeal cases.

REPORT FOR THE SCOTTISH PARLIAMENT AND THE SCOTTISH PARLIAMENTARY CORPORATE BODY

Description of sector and evidence base for the report

The Scottish Parliament has always believed in the principles of openness and transparency, so the implementation of the Freedom Of Information (Scotland) Act 2005 provided a further opportunity for these principles to be followed. During 2004, the Scottish Parliament and Scottish Parliamentary Corporate Body prepared a comprehensive Publication Scheme which is available via the Scottish Parliament website and which continues to provide a description of the categories of information published on our website.

We have interpreted FOI requests as requests which seek information which we hold which is not already published. During 2005, we handled 327 such requests (on average about 25 requests per month), although of course we handled many more enquiries for general information via our Public Information Service and the Scottish Parliament Information Centre.

In order to track FOI requests in an effective way, we have developed an FOI database as a satellite to an existing information management system which records information about each request, the requester details, the reply, any review and appeal details and all associated documents relating to each request.

During 2004 we carried out extensive training for all SPCB staff on our FOI handling processes and we continue to provide FOI training for staff. During 2005 we refined several of our FOI handling processes in the light of experience and we continue to do so. These refinements included adding further details about requests to the FOI database and the creation of an FOI Steering Group which currently meets every two weeks to consider strategic matters relating to FOI.

During 2004 we developed a network of FOI Action Officers and Decision Takers who record and progress FOI requests. Most offices have an FOI Action Officer, who is responsible for logging the request and any related information and a Decision Taker who is responsible for preparing the reply to requests. All offices are assisted by the Information Access Team which provides support, training and assistance on FOI handling and by the Directorate of Legal Services which provides legal advice. The Information Access Team is responsible for developing and enhancing skills and experience within these networks and also for ensuring that requirements following decisions from the Office of The Scottish Information Commissioner (OSIC) are implemented in terms of future requests. During 2005, the guidance developed for FOI Action Officers and Decision Takers was reviewed and refocused.

Outcome of requests

Once information is disclosed, it is added to our disclosure log – another significant development made during 2005.

During 2005, we developed a network of reviewers to undertake review meetings. Review panel members are mostly office heads and each panel is chaired by a member of our Senior Management Team. During 2005, 28 review panels met (representing 8.5% of the total number of requests received).

Information on sources of requests

The vast majority of our requesters during 2005 were resident in Scotland and of these requesters, most were either members of the public (43%) and journalists (39%). In 211 cases the information requested was disclosed either fully or in part.

Types of information requested

During 2005, the most popular subject requested related to the expenses claimed by individual MSPs. During 2005 we published comprehensive information relating to the expenses claimed by MSPs and recently we launched the Allowances Search, a new facility on our website that enables searches for particular expenses details relating to individual MSPs. As far as we are aware, we are the first organisation to make this sort of information transparent to the public.

REPORT FOR THE SCOTTISH POLICE FORCES AND ASSOCIATED AGENCIES

Description of sector and evidence base for the report

This report reflects the experiences of the eight Scottish Police Forces and associated agencies including SDEA, SCRO, SPIS and SPC. The evidence is drawn from feedback provided through the Police Service Central Referral Process and the ACPOS FoI Practitioners Group.

Volume of requests

The following table contains statistics relating to the number of requests received during 2005. It should be noted that for statistical purposes 'a request' is regarded as a single question or closely linked set of questions seeking information on a particular topic. One letter could, therefore, contain a number of 'requests'.

Force	Applicants	Requests
Central Scotland	348	890
Dumfries and Galloway	176	504
Fife	244	616
Grampian	284	971
Lothian and Borders	509	1385
Northern	279	599
Strathclyde	753	2055
Tayside	256	655
SCRO	71	166
SPIS	14	14
SDEA	10	58
SPC	23	37
Total	2967	7950

The Police Service in the United Kingdom has created a Central Referral Process (CRP) as a monitoring process for requests across the sector and to assist in the provision of advice and guidance. CRP is based in Hampshire Constabulary and requests from or affecting Scottish Forces and agencies are routed via ACPOS Secretariat. CRP seek the assistance of subject or business leads to consider issues relating to the harm and public interest tests ensuring that there is a national as well as a local perspective provided during these processes. In addition, CRP assist in the provision of evidence to support submissions to the Commissioner when he is carrying out a review of a decision and act as a central point of contact for applicants seeking information from the service.

Information on sources of requests

While it is not always possible to identify the source of a request, approximately 60% of requests received during 2005 came from the media. This is in stark contrast to the experience of English and Welsh Forces where approximately 25% of requests were received from the media. There does not appear to be any straightforward explanation for this difference, although it has been suggested in some quarters that Scottish Forces receive requests from both Scottish and UK media sources while English and Welsh colleagues do not, in general, receive requests from Scottish media sources.

Types of information requested

In general, media requests are linked in some way to ongoing newsworthy topics. It would be fair to say, given the timescales involved, requests generally fall into the category of investigative journalism rather than real time news reporting. Journalists continue to use the services of media departments for real time news stories. Requests cover a very broad spectrum of policing activity from accountability for public funds - several requests relating to Chief Constables expenses - to localised crime statistics. A number of media requests, throughout the year, related to the provision of statistical information relating to sex offenders which mirror ongoing public debate on this subject.

A number of requests for financial information relating to procurement processes have been received from commercial organisations and research organisations.

Finally, it will come as no surprise that there have been many requests seeking access to ongoing or closed criminal investigations, internal investigations and crime statistics.

SIC Decisions affecting the sector

There have been a small number of decisions involving the Police in Scotland in 2005. In general, these decisions have found in favour of the Chief Constable and none of the decisions have been challenged by the Police. However, one dissatisfied applicant has intimated an appeal to the Court of Session over a decision by the Scottish Information Commissioner to uphold Grampian Police's stand not to release information.

ANNEXE B

Discussion paper – Freedom of Information (Scotland) Act 2002: Open Learning Workbook

Introduction

The FOI Open Learning workbook, which was commissioned by the Scottish Executive to assist Scottish Public authorities in preparing for the introduction of FOI, is a key resource for raising awareness of FOI legislation among existing and new staff across the public sector.

It is now some 18 months since the workbook, and an associated e-learning package which was developed separately, were rolled out to public bodies in Scotland. The workbook reflected the position at that point in time, and some of the content is now in need of updating.

It has been highlighted by some public authorities that there is still a need for the workbook and e-learning package, and that it would be preferable for the content to be reviewed.

It would therefore be useful to identify and explore the demand and requirement for these resources, and options for updating the content to ensure it is current.

Background to the e-learning package

A consortium of 15 local authorities, NHS Fife, Audit Scotland and NES contributed to the development of an e-learning package and through NES, all Health Boards also have access to it.

The e-learning package mirrors the content of the FOI workbook commissioned by the Scottish Executive.

The package was produced by North Highland College and an estimate has been obtained for updating it based on:

- 30% technical rework.
- updates to around 30% of the content (assuming that the content changes will be provided to them).

Content in need of updating

- References to the Environmental Information Regulations
- Reference to Section 60 Code
- Reference to fees Regulations
- It may also be useful to add some examples based on case law (the Campaign for Freedom of Information have done some excellent work on this).

Possible options for discussion

1. Obtain estimates from the original authors to update the workbook content.
2. Utilise the expertise of FOI practitioners in Scotland and update the content through the auspices of the FOI Implementation Group.
3. Agree a mechanism and schedule for future updating of the workbook and training materials.

Mandy Gallacher, Audit Scotland