

**First Annual Report of the  
Scottish Freedom of Information Implementation Group**

**April 2002**

# CONTENTS

<b><u>Chapter</u></b>	<b><u>Paragraphs</u></b>
<b>Introduction</b>	<b>1.1 – 1.7</b>
<b>Changing Culture</b>	<b>2.1 – 2.7</b>
<b>Infrastructure</b>	<b>3.1 – 3.6</b>
<b>Training</b>	<b>4.1 – 4.6</b>
<b>Records Management</b>	<b>5.1 – 5.2</b>
<b>Next steps</b>	<b>6.1 – 6.3</b>
<b>Annex A    Membership</b>	
<b>Annex B    Work plan 2001/02</b>	

## **Introduction**

1.1 The Scottish Executive is committed to introducing an effective Freedom of Information regime. Following consultation on its proposals ('An Open Scotland', November 1999) and on a draft Bill published in March 2001, the Freedom of Information (Scotland) Bill was introduced in the Scottish Parliament on 27 September 2001.

1.2 As proposed in An Open Scotland, the Deputy First Minister announced on 31 January 2001 that a Working Group was being set up to oversee the work on preparing the way for the successful implementation of the Scottish FOI legislation. At its inaugural meeting in February 2001, it was agreed that the Group should be known as the 'Scottish Freedom of Information Implementation Group' (SFOIIG).

1.3 The Deputy First Minister agreed the following terms of reference for the Group:

- To prepare and oversee a strategy for the successful implementation of the Scottish freedom of information legislation.
- To prepare and oversee a strategy to foster a culture of openness across the Scottish public sector.
- To develop and oversee a strategy for training staff in the Scottish public sector.
- To report to and advise the Deputy First Minister on the above.

The remit of the SFOIIG is likely to evolve in the run up to, and during the period after, implementation of the legislation. The Group will review its terms of reference regularly to ensure that it is positioned to continue to meet the requirements placed upon it.

1.4 The Group's membership is designed to reflect the diverse nature and needs of Scotland's public bodies. Membership is drawn from a range of representative organisations from across the public sector. The current membership is listed in Annex A. The Group will also review membership regularly to ensure that all the appropriate bodies are represented as its work progresses. The Group agreed from the outset that it would place its papers, minutes, etc. on the Scottish Executive web-site.

1.5 The Group has considered it important to learn lessons from others with experience of implementing, or planning the implementation of, statutory FOI regimes. To this end, presentations to the Group have been provided by representatives from the Irish Government's FOI Unit, the Lord Chancellor's Department (in relation to the UK Freedom of Information Act 2000) and the Executive's Environment Strategy Unit (in relation to Environmental Information Regulations).

1.6 The Group maintains an agreed work plan on a rolling basis, which is reviewed at each meeting and adjusted to take account of matters such as the progress of the Bill.

1.7 Through the year the Secretariat has prepared papers for consideration by the Group on a range of issues, including the background to FOI in Scotland and the role of the Group. Certain issues that are key to the successful implementation of FOI were identified for more detailed work (such as infrastructure and training). Details of progress made in these areas follows.

## Changing Culture

### Background

2.1 The Group has considered an overview of how a more open culture across the Scottish public sector can be achieved. The issue of ‘openness’ is wider than simply the manner in which requests for information are handled, and covers matters such as communication, consultation and accountability. It is probably true to say, however, that there is a perception in the public mind that public bodies are sometimes less open than they could or should be.

2.2 While there will be a level of cultural change required to support FOI, this should be neither over- nor under-stated. Various statutory and non-statutory openness regimes have been operated for a number of years by many of Scotland’s public authorities, and the need to engage with the public in an open and accountable way has therefore been recognised for some time. This provides a solid foundation for the implementation of the statutory FOI regime.

2.3 The enactment of the Freedom of Information (Scotland) Bill will bring the issue of openness more fully into focus. One of the major tasks facing the Scottish public sector will be to manage the move towards a culture of openness as the statutory FOI regime is implemented. A variety of measures can be taken to develop this culture, including ensuring that officials have appropriate knowledge, confidence and skills, and support networks, to allow them to operate the FOI regime effectively. In taking this work forward, the Group has taken account of the Home Office Advisory Group on Openness in the Public Sector.

2.4 This Group, which reported to the Home Secretary in December 1999, recommended a staged approach to securing cultural change and the effective implementation of the UK Freedom of Information legislation. The proposed stages include:

- (a) increasing awareness of the need for cultural change and the proposed Freedom of Information legislation;
- (b) increasing knowledge of the Freedom of Information Act, associated subordinate legislation and Codes of Practice; and
- (c) imparting the skills necessary to interpret appropriately and implement the provisions of the Freedom of Information legislation.

The Advisory Group considered that training was essential to securing cultural change and recommended that all staff operating the legislation in the public sector should be provided with appropriate training, guidance and support.

2.5 This Group considers the Advisory Group’s three-part approach sensible and it has refined its own work on infrastructure and training.

## **Conclusion**

2.6 The Group concluded that the development of a culture of greater openness will not be achieved through any single course of action, but rather will be the result of a process involving the raising of awareness, training and the establishment of support networks. In discussion, the Group agreed that while awareness and knowledge of the legislation was important, it would also be important at an early stage to have leadership from the top of all public sector organisations. The Group will look further at how leadership from the top of public sector organisations can in practice engender a meaningful change in the culture of such organisations. Culture change has a sound basis upon which to build due to existing statutory and non-statutory arrangements and this will develop over a period of time.

2.7 In due course it might be appropriate to give thought to the measurement of a culture of greater openness. The Group recognises, however, that 'openness' is not easily measured in a quantitative way and it may be the case that only a subjective assessment will be possible. This may be a role that the Scottish Information Commissioner could best take forward.

## **Infrastructure**

### **Background**

3.1 The Group considers that the successful implementation of the Scottish FOI regime will depend in part on the development of a network of support groups to identify and promote best practice and to share experience of preparing for, and applying, the FOI legislation. In this context the Group considered the FOI infrastructure in Ireland as well as the recommendations of the Advisory Group on Openness in the Public Sector.

3.2 The approach in Ireland, where a phased implementation of its statutory FOI regime began in 1998, has been to develop a comprehensive network of forums, supported by a Freedom of Information Central Policy Unit in the Department of Finance. The key structures established to support the implementation of the Irish FOI legislation were:

- a Central Policy Unit;
- an interdepartmental working group
- a departmental steering group in each government department;
- a local government steering committee; and
- a health board forum.

These key structures are supported in turn by network of FOI practitioners in civil service bodies and a similar network covering bodies outwith the civil service.. These networks promote understanding, and best practice in relation to the provisions of the FOI Act. They also enable FOI practitioners to consider and address practical issues arising from FOI requests.

3.3 The Advisory Group on Openness in the Public Sector took account of the approach adopted in Ireland and recommended that the remit of existing structures across and within Government Departments should be extended. The Advisory Group also recommended that support networks for other parts of the public sector should be developed. A central FOI policy unit (now within the Lord Chancellor's Department) has been retained to prepare for, and oversee the implementation of, the (UK) Freedom of Information Act 2000. A Whitehall-wide senior level group on FOI and Data Protection has been established, and Practitioners' Working Groups on FOI and Data Protection have been established to facilitate cross-Whitehall development of guidance and sharing of experience.

### **Infrastructure Sub-Group**

3.4 A sub-group was established to consider the way forward on establishing an appropriate infrastructure to support the preparation for, and implementation of, the Scottish statutory FOI regime. The sub-group was asked to take account of the infrastructures established in Ireland, and those being established by the UK Government, and recommend an infrastructure appropriate to Scottish needs and circumstances.

3.5 The sub-group recommended that there should be three main components of infrastructure to support FOI. These cover the *internal structure* within each public authority, an *external structure* covering the different sectors and finally a *central policy focus*. The sub-group further defined these components as follows:-

#### *Internal Structures*

This is the part of the structure which can be said to be 'at the coal face'. How each public authority handles FOI requests will be for it to decide and will be dependent upon the structure, size and business of the authority concerned. Small authorities, for example, are less likely to need to have a co-ordinator or focal point, as all requests may be dealt with at one point. From a 'changing the culture' perspective, authorities should consider nominating someone at a senior level within the organisation to be responsible for ensuring that implementation of FOI is being treated seriously and that the authority has the structure required to meet the challenge of FOI and comply with the requirements of the legislation. Again, the extent to which this is appropriate will vary according to the size and business of the authority.

#### *External Structures*

With regard to individual sectors (such as Health, Education or Local Government) the sub-group envisaged that any existing sectoral networks (such as might exist for data protection) could be used to support the establishment of an FOI network within each sector. Third-party organisations, such as COSLA for the local government sector, could play a role in facilitating such networks. It is envisaged that the Scottish Executive would set up a network to include its Executive Agencies, and NDPBs which otherwise would not be included in any sector. The sharing of experiences and information on dealing with FOI requests within sectors should be invaluable, and encouragement would be given to setting up informal practitioner groups within each sector.

To provide a cross-sector network of FOI practitioners, the sub-group recommended that the Implementation Group be re-constituted as a standing body with a new remit. The re-constituted Implementation Group could identify best practice and provide information on the nature and volume of requests being dealt with across the various sectors represented.

#### *Central Policy Focus*

Responsibility for central policy on FOI would remain with the Scottish Executive. This is provided by the FOI Unit.

### **Conclusion**

3.6 The Group agreed with the recommendations of the sub-group and asked it to develop further the proposals - in particular how the Implementation Group may be re-constituted, the timing of any such changes and how the interests of "users" may be reflected in the infrastructure. The sub-group will be taking forward this further work during 2002.

## Training

### Background

4.1 In *An Open Scotland*, reference was made to the need for “a dedicated training and awareness programme”, as it was recognised at that early stage that training would be a key component of fostering a culture of greater openness. The Group agreed that further consideration should be given to the development of an appropriate training programme.

4.2 A Training sub-group was established to consider an approach to training which would support the effective implementation of the Scottish FOI legislation; to develop a draft training strategy; and to identify any resource implications.

### Training Sub Group

4.3 The Training sub-group also began by considering the information available on the approach to FOI training adopted in Ireland and the recommendations on training contained in the report of the Advisory Group on Openness in the Public Sector. The approach adopted in Ireland contained three training categories, broadly the same as those proposed by the Advisory Group. In Ireland, *overview and project officer* training is intended to ‘train trainers’ to go back to their own organisations and ‘spread the word’ about FOI. The *decision-makers* and *advanced* courses tackle more complex issues, though participants are not expected to train others on these more complex issues.

4.4 The sub-group identified a wide range of issues relating to the development of a training strategy. To aid development of the training strategy these issues were divided into the four distinct elements of the training cycle:

- Needs: Who needs training, what kind of training, what skills and knowledge should be provided?
- Plan: When should training be provided; What resources will be required; availability of trainers?
- Delivery: Consider delivery options for the various skills and knowledge requirements; and
- Evaluate: Consider options for the evaluation of the training strategy.

The strategy has been developed and presented in terms of the above sections to ensure clarity. It is based upon a series of simple models and matrices to aid in planning and assist bodies identify their particular training needs.

### *Training Strategy Recommendations*

4.5 The draft Training Strategy identifies a number of key points and makes a number of recommendations. These are outlined below:

- The strategy is intended to ensure all Scottish public authorities have the knowledge, skills and commitment required to implement the FOI legislation.

- Timing of training is critical to the success of the strategy and the implementation of the FOI regime. The appropriate timing for the training will become clearer as the implementation programme for the regime is developed.
- All Scottish public authorities should develop a programme of regular internal communication about FOI in the run-up to implementation, to ensure that training is seen in its proper context. FOI implementation should not come as a surprise to staff and managers in any authority.
- The foundation of effective training is clear training objectives. Every authority should set clear objectives for its FOI training and communication programme. Each authority's strategy should deal with knowledge and information, skills and behaviour and organisational culture and commitment to openness as appropriate for that body.
- Each authority should make an assessment of the training needs of its staff in the light of an evaluation of their current preparedness for more open government and of the likely scale of the impact of FOI, given the nature of the authority's business.
- It may be prudent to forewarn the training community in Scotland of forthcoming FOI training needs, e.g. through the Chartered Institute of Personnel and Development. In particular, it may be helpful to indicate the anticipated scale of the training that will be required, the delivery mechanisms that may be available and the broad time scale in which delivery will be expected.
- A core package of training material should be developed and made available to all Scottish public authorities, and a programme of courses should be developed to provide training for FOI specialists, practitioners and trainers.
- Given the statutory requirements FOI will place on public authorities, and that implementation of FOI shall be met from planned resources, consideration should be given to the establishment of a consortium of public authorities to develop and procure core training materials, funded through pooling some of their planned training budgets.
- A consultation exercise on the training strategy should be undertaken with FOI stakeholders, before it is finalised.
- The Executive should commission an evaluation of the FOI training to assess the overall effectiveness of the strategy and to allow analysis of the benefits of a shared framework for training and the role of training in supporting effective implementation of FOI.

## **Conclusion**

4.6 The Group considered that the draft training strategy provided a strong framework from which each public authority could determine its own strategy for FOI training and raising awareness of FOI amongst its own staff. The Group agreed the draft training strategy and, during the coming year, it will consider how it can best be taken forward.

## Records Management

### Background

5.1 It was recognised in *An Open Scotland* that an effective freedom of information regime will need to be supported by reliable record keeping. The importance of records management is reflected in the Freedom of Information (Scotland) Bill, which includes provisions requiring Scottish Ministers to issue a Code of Practice providing guidance to public authorities on the keeping, management and destruction of records.

5.2 A working draft of the Code of Practice was made available by the Scottish Executive, to the Scottish Parliament, to support the scrutiny of the Bill. The Group received a briefing on the draft Code of Practice, and also on a second Code of Practice (on functions under the Act) which has also been made available as a working draft. The draft Code of Practice on Records Management was prepared by the Executive's FOI Unit, in consultation with the Keeper of the Records of Scotland. Although the Codes are not prescriptive, Scottish public authorities will be under a legal obligation to have regard to them.

5.3 The Group will be kept apprised of the further development of the Codes of Practice.

## Next Steps

6.1 During its first year, the Group has identified and taken forward the key issues associated with implementing a statutory FOI scheme. In taking forward its work during 2002, the Group will take account of the legislation as passed by Parliament and of the issues that have arisen during the Bill's Parliamentary passage. The Group will build on the progress made during its first year, and the training strategy in particular which will underpin much of its future work. The Group has also set out the basis of an infrastructure necessary not only to support the implementation of a statutory FOI regime but also to assist Scottish public authorities when they have to comply with the obligations that the legislation will place upon them. Work on these two important areas will continue in the coming year, together with other aspects of implementation planning. The Group will also consider how it can best interface with the Scottish Information Commissioner whom it is expected will be in post by the Autumn of 2002.

6.2 Since its inception, the Group has met roughly quarterly and sub-groups have considered particular matters in detail and reported back to the main Group. This has been an efficient and effective way of taking work forward and it is intended to follow this pattern in the coming year. As implementation draws nearer, however, more frequent meetings of the Group may be required. This will be kept under review.

6.3 Attached at Annex B is the Group's Work Plan for the calendar years 2001 and 2002. The Group will continue to report annually to the Deputy First Minister.

## Annex A – Membership

<b>Chair:</b>	
Michael Lugton	SE: Constitution and Parliamentary Secretariat
<b>Members:</b>	
Sheenagh Adams	SE: Development Department
Lindsey Anderson	Crown Office
Peter Anderson	National Archives of Scotland
George Brechin	NHS Trust Chief Executive's Group
David Caldwell	Universities Scotland
Keith Connal	SE: Freedom of Information Unit
Pat Connor	Historic Scotland
Hugh Dignon	SE: Justice Department
Sam Ghibaldan	SE: Deputy Principal Special Adviser
Brian Jamieson	Scottish Enterprise
Gregor Lindsay	SE: Health Department
David Mallon	SE: Environment and Rural Affairs Department
Clive Martlew	SE: Corporate Development Unit
Iain Matheson	COSLA
Lorna McGregor	COSLA
Fergus Millan	SE: Education Department
Murdo MacLennan	Health Board Chief Executive Group
Bob Sargent	Scottish Environment Protection Agency
Deirdre Watt	SE: 21 <sup>st</sup> Century Government Unit
Huw Williams	Scottish Parliamentary Corporate Body
Karen Williams	Association of Chief Police Officers in Scotland
<b>Secretariat:</b>	
Mike Neale	SE: Freedom of Information Unit
Gail Fraser	SE: Freedom of Information Unit

**Annex B – Work Plan 2001/2002**

	<b>FEBRUARY 2001</b> <i>1<sup>st</sup> Meeting</i>	<b>JUNE 2001</b> <i>2<sup>nd</sup> Meeting</i>	<b>SEPTEMBER 2001</b> <i>3<sup>rd</sup> Meeting</i>	<b>FEBRUARY 2002</b> <i>4<sup>th</sup> Meeting</i>	<b>JUNE 2002</b>	<b>OCTOBER 2002</b>
<b>TOPICS</b>						
<b>Aims/Terms of Reference</b>	Agree aims/terms of ref					
<b>Membership</b>						
<b>Work Plan</b>	Agree Work Plan 2001.	Agree Work Plan 2001.	Review Work Plan 2001.	Work Plan 2002.		
<b>Public Image of Group</b>	Agree openness of Group's activities.					
<b>Consultation</b>	Presentation by Keith Connal, Head of FOI Unit.	Presentation by Kevin Cardiff of Irish FOI Unit.	Presentation: Relationship EIR: FOI legislation. Tim Simons	Presentation: UK FOI Implementation by Lee Hughes, Lord Chancellor's Dept	Presentation by FOI Unit on FOI (Scotland) Act 2002 (subject to Parliamentary passage)	Scottish Information Commissioner. TBA
<b>Culture Change</b>	Consider main issues.	Discuss issues relating to how a culture of openness might be fostered.				
<b>Infrastructure</b>		Discuss issues relating to establishing an infrastructure to support FOL.	Review sub-group paper; and actions.	Oral report by sub-group chairman		Consider in light of implementation options
<b>Training</b>	Consider main issues.	Discuss issues relating to training	Review sub-group paper; and actions.	Consider draft strategy	Consider delivery detail	Consider in light of implementation options
<b>Records Management</b>	Consider main issues.	Note paper on records management.	See under consultation above. Consider issues for report to DFM	Code of Practice on Records Management – report on progress		Report on records management
<b>Implementation</b>				Code of Practice on discharge of functions- report on progress		Consider paper on implementation strategy
<b>Publication Schemes</b>					Initial paper outlining issues	
<b>Report to DFM</b>				Structure and drafting of report to DFM.		