

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

**March 2003**

## CONTENTS

<b>Chapter</b>			<b>Paragraphs</b>
<b>1. Introduction</b>			<b>1.1 &gt; 1.4</b>
<b>2. Training and Awareness</b>			<b>2.1 &gt; 2.6</b>
<b>3. Code of Practice on Functions</b>			<b>3.1 &gt; 3.4</b>
<b>4. Code of Practice on Records Management</b>			<b>4.1 &gt; 4.9</b>
<b>5. Next steps</b>	<b>5.1</b>	<b>&gt;</b>	<b>5.3</b>
<b>Annex A</b>	<b>Work plan for 2002</b>		
<b>Annex B</b>	<b>Work plan for 2003</b>		
<b>Annex C</b>	<b>Membership of Group</b>		

## **1. Introduction**

1.1 The Scottish Freedom of Information Implementation Group was established in January 2001 by the Deputy First Minister with the following terms of reference:

- ◆ 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; and
- ◆ To report to and advise the Deputy First Minister on the above.

1.2 In April 2002 the 1<sup>st</sup> annual report on the work of the Group was published. That report highlighted work carried out by the Group on establishing a suitable infrastructure for the successful implementation of FOI, on training and awareness and on records management. In its second year the Group has concentrated on taking forward work on training and awareness raising, and developing the codes of practice on records management and functions. All papers for and minutes of meetings of the Group continue to be published on the Scottish Executive's web-site (address at <http://www.scotland.gov.uk/government/foi>).

1.3 During the past year the Group has met on three occasions and has set up two sub groups to progress work on the Codes of Practice required by sections 60 and 61 of the Freedom of Information (Scotland) Act 2002. A presentation on the Act was provided to the Group shortly after it received Royal Assent in May. In addition to the passing of the legislation (and the commencement of certain of the provisions of the Act) the past year saw the appointment of Mr Kevin Dunion as Scottish Information Commissioner. Mr Dunion attended a meeting of the Group shortly before he formally started his duties as Scottish Information Commissioner on 24 February 2003. Although Mr Dunion will not be a member of the Group he will be welcome to attend meetings and take part in the discussions of the Group. Membership of the Group is outlined at Annex C.

1.4 The following chapters of this report set out in more detail the work carried out by the Group in the past year.

## **2. Training and Awareness**

### ***Background***

2.1 The 1<sup>st</sup> Annual report of the Group described how it had prepared a strategy for providing training and awareness materials on FOI to Scottish public authorities. The training strategy was published subsequently on the Scottish Executive's web-site and brought to the attention of Scottish public authorities.

### ***Implementation of training and awareness strategy***

2.2 In November, the Scottish Executive issued an Invitation to Tender for training services to support implementation across the public sector of the Scottish FOI Act. The specification was based upon the framework set out in the training strategy and was intended to identify contractors who could provide Scottish public authorities with the different levels of training required and also to provide indications of the costs involved. The training services sought included:

- ◆ The design and development of a flexible core training pack of resources for use across the whole of the public sector. This would incorporate a leaflet template, training materials to deliver seminars, awareness training and practitioner courses, and an open learning workbook;
- ◆ The design, development and delivery of "Train the Trainer" courses;
- ◆ A customised version of the core training pack for the Scottish Executive.

It is expected that the contract for this work will be awarded shortly.

2.3 This core package, the costs of which will be met by the Scottish Executive, will be made available to all Scottish public authorities to allow them to prepare for the necessary training of their staff. The services of the approved training contractor in respect of the delivery of the various training activities covered by the core package will also be available to those public authorities who do not wish to carry out their own training. The costs for this will be required to be met by the public authorities. There will be scope for organising the provision of this training by sector and this may reduce the cost that would fall to individual authorities.

2.4 It is envisaged that the core-training package as designed by the approved training contractor will be made available to Scottish public authorities later this year. The delivery of the various training and awareness raising activities should be delivered over the next 18 months.

### ***Preparation of guidance on the Act for public authorities***

2.5 The Group agreed that it would be useful if the FOI Unit in the Scottish Executive could prepare a general overview of the Freedom of Information (Scotland) Act 2002. This work was completed in January and copies of the overview were distributed to public authorities and also published on the Scottish Executive's web-site. The Group has asked the Secretariat to consider whether there will be a need to provide detailed practitioner guidance to supplement the two Codes of Practice (which are discussed in Chapters 3 and 4) and to

consider with the Scottish Information Commissioner who should issue such guidance.

### ***Conclusion***

2.6 The rolling out of the training strategy necessary for the successful implementation of the Freedom of Information (Scotland) Act 2002 is now underway. It is important that such training would not be carried out too early in advance of implementation of the Act (and of publication of the two Codes of Practice). The current timetable is intended to ensure that the staff of public authorities receives the appropriate training at the appropriate time.

### **3. Code of Practice on Functions**

#### ***Background***

3.1 Under section 60 of the Freedom of Information (Scotland) Act 2002 a Code of Practice which provides guidance to Scottish public authorities on discharging their functions under the Act must be issued by the Scottish Ministers. The Code will include guidance on: -

- ◆ how authorities should provide advice and assistance to people who wish to make or have made requests for information;
- ◆ the transfer of requests by one authority to another;
- ◆ consultation with third parties on disclosure of information;
- ◆ the inclusion in contracts entered into by authorities of terms relating to the disclosure of information;
- ◆ the adoption by authorities of procedures for dealing with complaints about the handling of requests; and
- ◆ the collection and recording of relevant statistics by public authorities.

#### ***Formation of sub-group***

3.2 The Freedom of Information Implementation Group agreed that a sub-group should be established to take work forward on the development of the Code and this sub-group has now met on three occasions. The minutes of sub-group meetings are placed on the Executive's web-site. In addition to a number of members from the Implementation Group, the sub-group includes representation from the Scottish Consumer Council and Citizens Advice Scotland. The contributions from their representatives have been constructive and welcome.

3.3 Following commitments made during the passage of the Bill, officials from the Freedom of Information Unit have met with a number of equality groups to consider their views on further development of the code. The Disability Rights Commission has also agreed to draft a summary of authorities' responsibilities under the Disability Discrimination Act 1995. This will be included in the code as an Annex.

#### ***Conclusion***

3.4 The development of a Code of Practice on functions is inclusive and is work in progress. The sub-group will shortly finalise its deliberations and its recommendations for a draft Code will be put to the Group for consideration at its meeting in June.

## **4. Records Management**

### ***Background and formation of sub-group***

4.1 The Group recognised that successful implementation of FOI would depend, in part, on sound records management practice and authorities' ability to retrieve information. Accordingly, in June 2002 the Group agreed to the formation of a records management sub-group, chaired by Dr Peter Anderson, Deputy Keeper, National Archives of Scotland, to consider the specific operational issues associated with records management pursuant to the section 61 Code of Practice. In particular, the sub-group was asked to recommend what guidance might be offered to public authorities.

### ***Code of Practice on Records Management***

4.2 The Code of Practice on Records Management ("the Section 61 Code"), to be published under section 61 of the Freedom of Information (Scotland) Act 2002, must set out the practices which, in the opinion of the Scottish Ministers, it would be desirable to follow in connection with the keeping, management and destruction of public authorities' records. The sub-group recognised that the s61 Code would provide the focus for identifying the specific records management issues to be considered by public authorities and form the basis upon which detailed operational guidance could be developed. It was, therefore, important from the outset that the sub-group was aware of the s61 Code, in order to undertake the key tasks of identifying and developing operational guidance for public authorities. The sub-group provided comments on the s61 Code, which informed further revisions. The sub-group then endorsed a revised draft, which took account of their comments.

4.3 In reporting back to the Group, the sub-group made clear that they considered the s61 Code to be a powerful tool to assist in setting out the requirements for sound records management practices, and drawing these to the attention of senior managers across Scottish public authorities. They thought it was particularly valuable in drawing attention to the need for authorities to develop a clear records management policy and to review existing practice. The unanimous opinion of the sub-group was that "the Code provided, for the first time in Scotland, an over-arching guide to good records management practice which was equally appropriate to a public authority's functions and duties under other legislation such as Data Protection."

### ***Model Action Plans***

4.4 In addition to their support of the s61 Code, the sub-group was unanimous in concluding that detailed operational guidance would greatly assist public authorities, not only in their duties under FOI, but also in their operations and functions or duties under other legislation, e.g. the Data Protection Act. The sub-group report made four recommendations, which support the presentation of detailed operational guidance in the form of a generic Model Action Plan (MAP).

4.5 The MAP sets out detailed steps and an action plan which, in the opinion of the sub-group, constitute good records management practices compliant with the section 61 Code of Practice. The sub-group recognised that the various sectors, such as local government or health, would have different records management requirements. The sub-group accordingly developed a *generic* MAP which identified common practice for use by all public authorities, but which could be used as the basis for sector-specific MAPs.

4.6 To ensure that MAPs have the authority to aid compliance with FOI obligations and drive up records management standards across public authorities, the sub-group recommended that the generic version be approved and made available by the Scottish Information Commissioner (SIC), and that sector-specific MAPs be subject to approval by the Commissioner.

4.7 The specific recommendations made by the sub-group were that:

- ◆ the generic Model Action Plan, setting out common principles for achieving good records management practice, be made available to all Scottish public authorities as soon as possible to assist them in complying with the Code and the Act;
- ◆ the generic MAP be approved and made available to all public authorities by the Scottish Information Commissioner;
- ◆ sector specific MAPs be developed by appropriate representative groups as soon as possible after the SIC approves the generic MAP; and
- ◆ sector specific MAPs be subject to approval by the SIC.

### ***Conclusion***

4.8 The Group endorsed these recommendations and shared the sub-group's opinion that the adoption of these would:

- ◆ Greatly assist in raising standards in records management across all public authorities in Scotland;
- ◆ Provide practical operational guidance to public authorities and their records managers which will assist the operational efficiency of authorities;
- ◆ Provide guidance which is recognised by archivists and records managers and which is accepted as good practice by the Scottish Information Commissioner;
- ◆ Help public authorities meet their duties under the Freedom of Information (Scotland) Act 2002 and comply with the section 61 Code of Practice;
- ◆ Help public authorities meet their responsibilities under other legislation, e.g. the Data Protection Act; and
- ◆ Assist public authorities in meeting their commitments under Central initiatives such as 21st Century Government, Modernising Government, implementation of the National Cultural Strategy and social justice, etc.

4.9 The Group also agreed that the draft Code of Practice on Records Management and the draft generic Model Action Plan should be made available to Scottish public authorities without prejudice to the formal process of finalising these documents. Accordingly, these draft documents are now available on the Scottish Executive web-site at: <http://www.scotland.gov.uk/government/foi/>.

## **5. Next Steps**

5.1 During 2002 the Group has taken forward its work on implementation of the Freedom of Information (Scotland) Act 2002. It has started work on drafting Codes of Practice on Functions and Records Management. This work will continue during 2003 leading to the finalisation of the Codes following wider consultation. Training and awareness of FOI will also feature strongly in the Group's work overall next year, and will include implementation of the training strategy. Consideration will be given to further guidance, which might usefully be provided to Scottish public authorities as they prepare for FOI.

5.2 In taking forward its work the Group will want to hear of UK experiences and the views of consumer bodies. The Group will also liaise closely with the Scottish Information Commissioner, who will have his own perspective on the implementation of the Act. A further review of the Group's membership and terms of reference will be carried out towards the end of the year. The emphasis over the coming year will be on ensuring there is a firm foundation for detailed implementation of FOI by individual authorities across Scotland.

5.3 Attached at Annex A is the Group's work plan for 2002 and, at Annex B, a plan of the Group's work in the coming year.

**ANNEX A**

**SCOTTISH FOI IMPLEMENTATION GROUP - WORK PLAN FOR 2002**

	<b>FEBRUARY 2002</b>	<b>JUNE 2002</b>	<b>OCTOBER 2002</b>
<b><u>TOPICS</u></b>			
<b>Membership</b>			Discuss membership and structure of group
<b>Presentation</b>	Presentation: UK FOI Implementation by Lee Hughes, Lord Chancellor's Dept	Presentation by FOI Unit on FOI (Scotland) Act	
<b>Infrastructure</b>	Oral report by sub-group chairman		
<b>Training</b>	Consider draft strategy	Consider delivery detail	Discussion on guidance
<b>Records Management</b>	Code of Practice on Records Management –report on progress	Oral update on records management	Records management - update on sub-group
<b>Implementation</b>	Code of Practice on discharge of functions-report on progress	Consider paper on publication schemes	Development of Code of Practice on Functions
<b>Report to DFM</b>	Consider structure and drafting of 1 <sup>st</sup> report to DFM		

## ANNEX B

### SCOTTISH FOI IMPLEMENTATION GROUP - WORK PLAN FOR 2003

<b>FEBRUARY 2003</b>	<b>JUNE 2003</b>	<b>SEPTEMBER 2003</b>	<b>DECEMBER 2003</b>
<u>Core Topics</u>			
Recent Developments	Recent Developments	Recent Developments	Recent Developments
Records Management	Records Management	Records Management	Records Management
S60 Code	S60 Code	S60 Code	S60 Code
Training	Training	Training	Training
<u>Additional Topics</u>			
Preparation of 2 <sup>nd</sup> Annual Report	View from Scottish Information Commissioner	user interest or UK experience	View from user interest or UK experience
	Ministerial Report on Implementation	Access to Environmental Information	Implementation infrastructure, and remit and membership of the Group
		Publication Schemes	

## ANNEX C

The current membership of the Group is as follows:

### **Chair**

Michael Lugton, SE: Legal and Parliamentary Services

### **Members**

Lindsey Anderson, Crown Office  
Peter Anderson, National Archives of Scotland  
Graham Atherton, COSLA  
David Bell, SE: 21<sup>st</sup> Century Government Unit  
Dr Ann Bisset, SE: Health Department  
George Brechin, Chief Executive, Fife NHS Board  
David Caldwell, Universities Scotland  
Patrick Connor, Historic Scotland  
Hugh Dignon, SE: Justice Department  
Tim Ellis, SE: FOI Unit  
Sam Ghibaldan, Special Adviser to the Deputy First Minister  
Geoff Huggins, SE: Development Department  
Frank Jensen, COSLA  
Averil MacLachlan, Scottish Enterprise  
Murdo MacLennan, Chief Executive, Western Isles NHS Board  
Clive Martlew, SE: Corporate Learning Services  
David Mallon, SE: Environmental and Rural Affairs Department  
Fergus Millan, SE: Education Department  
Bob Sargent, SEPA  
Huw Williams, Scottish Parliamentary Corporate Body  
Karen Williams, ACPOS

### **Secretary**

John McNairney, SE: FOI Unit

The Group reviewed its membership in line with its remit and decided that for the time being the membership should remain on broadly the same lines.