

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

April 2004

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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 The Group has now been in existence for three years and this is its third report. The second report of the Group set out how it took forward work on training and awareness raising, and developing the codes of practice on records management and functions. The timetable for implementation of the Act was announced by Ministers in May 2003 and this provided the Group with a focus for its work in 2003. 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 four occasions. As in 2002 its work has been dominated by three issues namely training and awareness, the Section 60 Code of Practice on Functions and the Section 61 Code of Practice on Records Management. Much of the work on the development of these two Codes had been carried out by sub groups which had started their work in 2002. A review of the Group's membership and operation was carried out in late 2003 and this is discussed in Chapter 5.

1.4 At its meeting in September 2003 the Scottish Information Commissioner provided the Group with a presentation which outlined the key areas of work his office would concentrate on as implementation of the Act progressed. At the same meeting the Group heard from Bob Turnbull, Assistant UK Information Commissioner for Scotland. Mr Turnbull explained that his role was to concentrate on data protection (which is a reserved matter) and on promotion and enforcement of the UK FOI Act for public authorities operating in Scotland who fall within its scope. Finally at its September 2003 meeting the Group met with David Goldberg and Derek Manson Smith of the Scottish Campaign for Freedom of Information in Scotland who provided their views on how operation of the Group could be improved. Their comments and those of a range of stakeholders were subsequently taken into account in the review process.

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 Previous annual reports of the Group described how it had prepared a strategy for providing training and awareness materials on FOI to Scottish public authorities. This led to the Scottish Executive commissioning from Masons, the Solicitors, the design and development of a flexible core training pack of resources for use across the whole of the Scottish public sector.

Development and publication of core training pack

2.2 During the latter half of 2003 and early 2004 Masons designed and developed core training materials for the use by Scottish public authorities. The materials consisted of a leaflet template, an open learning workbook and a trainers pack. The material was piloted at several workshops held across Scotland and developed with a cross public sector verification group. The leaflet template and open learning workbook were published on the Scottish Executive's web-site. The trainers pack was published in March.

2.3 Whilst copyright of the training materials lies with the Scottish Executive it is open to Scottish public authorities to use and develop the materials as they think fit. The Scottish Executive will however update and revise the core materials as necessary.

FOI awareness raising

2.4 The Group considered the raising of awareness of FOI within Scottish public authorities. The FOI Secretariat provided details of awareness raising initiatives which the Scottish Executive had carried out including:-

- The highlighting of FOI material on the Executive's web pages. This includes information about the Act; related codes of practice; papers related to the work of this Group and FAQs;
- Distributing an overview of the Act and the Implementation Group's Annual Report widely across the public sector;
- Writing to Chief Executives to update them on the progress of procuring the training package and developing the codes of practice; issuing them with copies of the Ministerial annual report and drawing attention to the implementation timetable contained in that. A related ministerial Press Release has also been issued;
- Providing contact details of officers in the Freedom of Information Unit and links to the website. Providing speakers to participate in FOI related seminars and conferences upon request.

2.5 The Group considered that senior managers in the public sector should be targeted to ensure that they are fully aware of the level of work involved in preparing for FOI. Regional/sector specific seminars will be explored as a means of further raising awareness of FOI issues.

Conclusion

2.6 Scottish public authorities have now been provided with the tools with which they can make their staff generally aware of the legislation and also provide in depth training for those staff who require it.

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. A sub group was formed in 2002 to take forward work on the development of the Code. Membership of the sub-group comprised representatives from SOLAR, ACPOS, Universities Scotland, Historic Scotland and Scottish Executive Education Department. Representatives from Scottish Consumer Council and Citizen's Advice Bureaux Scotland were also enlisted to provide a user perspective to development of the Code.

Development of the draft section 60 Code

3.2 At its meeting in June 2003 the Group endorsed the draft section 60 Code produced by the sub group. The Act stipulates that the Code should provide guidance on:-

- the provision of advice and assistance by the authorities to persons who propose to make, or have made, requests for information;
- the transfer of requests by one of the authorities to another by which the information requested is or may be held;
- consultation with persons to whom information requested relates or with persons whose interests are likely to be affected by the disclosure of such information;
- the inclusion in contracts entered into by the authorities of terms relating to the disclosure of information; and
- the collection and recording by the authorities of statistics as respects the discharge by them of their functions under this Act.

3.3 The draft Code produced by the sub group reflected all of the above. In addition the section 60 draft included guidance on issues such as vexatious or repeated requests, the factors that may inform a decision on the public interest, and the relationship between the functions of the FOI Act and the duties on public authorities arising from the Disability Discrimination Act 1995.

Publication of draft section 60 Code for consultation

3.4 Following the agreement of Ministers the draft Code was published in July 2003 for consultation. A report on the results of the consultation exercise was made to the Group at its meeting in December 2003. Most of the responses received were favourable to the draft Code. Once all responses have been considered and a finalised draft of the code prepared Ministers will issue the code following consultation with the Scottish Information Commissioner.

Conclusion

3.5 The Group has played a large part in the development of one of the tools which underpin the statutory duties that Scottish public authorities are required to fulfil under the Freedom of Information (Scotland) Act 2002.

4. Records Management

Background

4.1 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 (NAS), 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.

4.2 The SFOIIG Records Management Sub-Group Report, was presented to the Group at the meeting on 14 February 2003. Section 7 of the Report made four recommendations supporting the presentation of detailed operational guidance on records management. In particular, the sub-group recommended that the generic version of the Model Action Plan (MAP) be approved and made available by the Scottish Information Commissioner (SIC), and that sector-specific MAPs be subject to approval by the Scottish Information Commissioner or, failing this, the Keeper of the Records of Scotland. These recommendations were agreed by the Implementation Group.

Section 61 Code of Practice

4.3 Following formal consultation with the Scottish Information Commissioner and the Keeper of the Records, as required by section 61 of the Freedom of Information (Scotland) Act 2002, a final version of the Code of Practice on Records Management, incorporating some minor suggested clarifications, received Ministerial approval and was published in October 2003.

The Generic Model Action Plan (MAP)

4.4 At its meeting in September 2003, the Group agreed that it would be more appropriate for the Keeper to publish the generic MAP rather than the Scottish Information Commissioner. This would reflect the fact that the SIC had not been involved in the compilation of the MAP and that the Keeper has a statutory consultative role in the issue of practice recommendations by the SIC in relation to the s61 Code of Practice.

Sector-specific MAPs

4.5 It was reported to the Group at its meeting in September 2003 that, while the Keeper had indicated he would be willing to publish the generic MAP and that the NAS would be happy to provide advice about their MAP to any sector requesting it, he did not feel it would be appropriate for him to endorse sectoral MAPs. Generally, the NAS will not be involved in compiling them and the Keeper's approval might imply a guarantee of compliance with the Act and the Code that he would not be able to provide. Accordingly the Group agreed that the

development of sectoral MAPs should be encouraged where appropriate but that such MAPs would not be given formal approval or endorsement.

Conclusion

4.6 The Group has played a major part in the development of the Code of Practice on Records Management which was published by the Scottish Executive in October 2003. The Group has also developed a generic Model Action Plan which provides Scottish public authorities with detailed operational guidance on records management to assist them in complying with the Code of Practice. The generic MAP was published by the Keeper in November 2003.

Review of membership and operation of Group

Background

5.1 The Group agreed at its meeting in September 2003 that the Secretariat should prepare a paper for the Group setting out issues which needed to be considered in relation to a review of the Group's membership and operation. Much of the technical work required in preparation of FOI had been completed (training strategy, Code of Practice on Records Management etc). Members recognised that there should be a realignment of the Group's structure and the way that it operated. In particular, members considered that the Group should be more external facing and engage with and use the knowledge and expertise of users. Group members therefore agreed to consider afresh whether the current membership and operation of the Group remained appropriate to assist in taking forward implementation of FOI in Scotland.

5.2. At its meeting in December 2003 it was agreed that the Group membership should be widened to include representatives from user groups. There was also support for a proposal first raised by the Scottish Campaign for Freedom of Information in Scotland that the Group meetings would be held in public. With regard to the remit of the Group it was agreed that in order to encourage ownership of FOI amongst public authorities the preparation of best practice guidance should be the responsibility for specific sectors. The SFOIIG could however provide a forum for the exchange of approaches and experiences and also for the cross fertilisation of ideas.

5.3. The views of stakeholders on the membership and operation of the Group were separately obtained by the Secretariat and these too supported a widening of the membership of the Group. It was subsequently agreed by the Deputy Minister for Finance and Public Services that the membership of the Group should be widened to include the interests of user groups; that meetings of the group be held in public and that the remit of the Group should be as follows :-

- To provide a forum for the exchange of experiences and ideas on freedom of information issues in Scotland;
- To oversee the fostering of a culture of openness across the Scottish public sector;
- To review progress on the above after the Freedom of Information (Scotland) Act 2002 has been in operation for one year; and
- To report and advise the Deputy Minister for Finance and Public Services on the above.

Conclusion

5.4. With much of the early work required for the successful implementation of the Freedom of Information (Scotland) Act 2002 carried out it was an opportune time for the Group to review its membership and terms of operation. The Group are pleased to note that the Deputy Minister for Finance and Public Services has approved the changes.

Next Steps

5.5. The work plan for the Group during 2003 is reproduced at Annex A of this report. The work of the Group in 2004 and beyond will be considered by the revised Group taking into account the remit of the Group as agreed by the Deputy Minister for Finance and Public Services. This will include ways of structuring the Group so that it becomes a forum for receiving and disseminating information on best practice in dealing with FOI issues. The Group will not be the instigator or provider of guidance to Scottish public authorities, this responsibility lies elsewhere, but will be a vehicle for sharing information and ideas. In addition the Group has been tasked with overseeing the fostering of a culture of openness across the Scottish public sector. The Freedom of Information (Scotland) Act 2002 has of course been the catalyst for such a change in culture and the Group will build upon the work already done in this area to ensure that Scottish public authorities fully implement the changes that are required in order to meet the challenges that the Act presents.

ANNEX A

WORK PLAN OF GROUP DURING 2003

FEBRUARY 2003	JUNE 2003	SEPTEMBER 2003	DECEMBER 2003
<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 nd 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 B

MEMBERSHIP OF GROUP

Chair

Michael Lugton, SE: Constitution and Parliamentary Secretariat

Members

Lindsey Anderson, Crown Office
Peter Anderson, National Archives of Scotland
David Bell SE: 21st Century Government
George Brechin: NHS Fife
Hugh Dignon, SE: Justice Department
Tim Ellis, SE: Freedom of Information Unit
Sam Ghibaldan, Special Adviser to the Deputy First Minister
Geoff Huggins, SE: Development Department
Averil Maclachlan, Scottish Enterprise
Alison Mackinnon, Scottish Environment Protection Agency
Margaret Macleod, Universities Scotland
Bill Magee, Audit Scotland
David Mallon, SE: Environment and Rural Affairs Department
Clive Martlew, SE: Corporate Learning Services
Denise Mattison, Historic Scotland
Andy Smith, SE: Health Department
Garrick Smyth, COSLA
Deirdre Watt, SE: Education Department
Huw Williams, Scottish Parliament
Karen Williams, ACPOS

In attendance

Kevin Dunion, Scottish Information Commissioner
Sarah Hutchison, Office of the Scottish Information Commissioner
Margaret Keyse, Office of the Scottish Information Commissioner
Inspector Alastair Graham, Grampian Police

Secretary

John McNairney, SE: Freedom of Information Unit

