

Note of Information Quadrilateral Meeting

29 January 2004

Office of the Scottish Information Commissioner, St Andrews

Present:

Richard Thomas, Information Commissioner
Bob Turnbull, Assistant Information Commissioner (Scotland)
Kevin Dunion, Scottish Information Commissioner
Michael Lugton, Head of Constitution and Parliamentary Secretariat,
Scottish Executive
Tim Ellis, Head of FoI Unit, Scottish Executive
Sarah Hutchison, Head of Policy and Information, Office of the Scottish
Information Commissioner

Apologies:

Jon Hoare, Policy Adviser, Department for Constitutional Affairs
Katherine Fox, Policy Adviser, Department for Constitutional Affairs
Paul Boyle, Temporary Head of Division, Department for Constitutional
Affairs
Graham Smith, Deputy Information Commissioner

1. Key areas of work for each organisation in the next 11 months

Scottish Information Commissioner

Kevin Dunion presented his draft Operational Plan, highlighting the following activities:

- Promoting FOI(S)A to public bodies throughout 2004 and a public promotion campaign Autumn 2004 – Spring 2005
- Approving publication schemes is underway. A few submissions have already been received, although the first tranche of schemes is not due until the end of February.
- Developing the Office procedures to support openness and transparency
- Developing enforcement procedures.

Sarah Hutchison presented draft findings of research (commissioned from Craigforth Research) of public authorities' preparedness for implementation of the FOI(S)A. It was noted that the research indicates positive attitudes to FOI among most public authorities, with concerns about their own records management capability. Most authorities plan to train their staff at all organisational levels, yet few appear to have made firm plans for this. It was agreed that, if possible, publication of the research and the Scottish Executive's promotion of the Masons training pack should coincide.

Information Commissioner

Richard Thomas made a verbal presentation of his strategy which has been developed following an extensive organisational review. He described the mission statement to promote public access to information and protect personal information. Top level priorities for the year ahead include the implementation of FoI and promoting good data protection practice.

It was noted that:

- Publication schemes have generally been submitted on time, although an enforcement notice was served on one local authority. Health bodies have all “signed up”. All independent contractors are assumed to have signed up to a model scheme (the OIC has written to them all). Education schemes will be submitted in the next tranche.
- An extensive software programme is currently being installed in the OIC.
- OIC salary levels are the subject of review which will include comparison with levels in other organisations, including OSIC.
- The IC is working with the DCA to develop guidance on exemptions
- Research of Whitehall departments and chief executives of public authorities indicates that central government departments are generally on track for compliance, although there are some differences in preparedness.
- The IC continues to promote the FOIA to public authorities. A promotion strategy for the public is planned for November and December 2004.

Bob Turnbull reported that he has secured office premises at 28 Thistle St, Edinburgh and that he will shortly be recruiting staff. His role will include dealing with DPA compliance issues where the data controller is registered to a Scottish address. He will have one member of staff to work on FOI issues with UK bodies in Scotland and liaise with the SIC. Bob continues to undertake a range of “ambassadorial” presentations, mainly to public authorities.

Scottish Executive

Tim Ellis presented the FoI Unit Implementation Strategy Document. It was noted that the Section 60 Guidance and the training package for public authorities would be published towards the end of February. The draft fee regulations will go out for consultation, also in February.

The FoI Unit’s role in leading FOI implementation in the Scottish Executive, is broadly similar to the role of the DCA within Whitehall. A clear infrastructure for achieving compliance is now in place and has been agreed at senior level.

2. Cross-Cutting Issues

Discussion on the work plans identified the following issues:

Publication schemes

The IC committed significant staff resources to the development of best practice model publication schemes. Different sectors responded more positively than others to their obligation to produce a scheme.

Monitoring and measuring information requests

There appeared to be different approaches in the UK and Scotland to requirements to monitor and measure information requests. There was consensus that monitoring the number of individual requests would be difficult, especially as neither FOIA nor FOI(S)A requires the requester to quote the legislation. Authorities would therefore have to distinguish information requests from other contacts such as service requests, comments, complaints and suggestions. There is also no requirement under either Act to record the number of information requests, although there is guidance on monitoring reviews, exemptions and requests not responded to within the timeframe. It was noted, however, that the DCA has produced a paper evaluating different software available in response to demand from public authorities.

Fees regulations

The fees regulations for FOIA are almost complete and those for FOI(S)A will shortly be put out for consultation. Kevin Dunion advised of some concerns with the Scottish regulations, particularly in relation to excessive cost of compliance and reimbursement.

Guidance and briefings on exemptions

IC and DCA plan to produce *guidance* on the exemptions in FOIA this year. SIC proposes to produce *briefings* on the exemptions in FOI(S)A. It was noted that the IC commissioned a study from the Constitution Unit (published in 2003) on the public interest test and how it has been applied in other jurisdictions. The Office of the Information Commissioner in Ireland use an internal database library of decisions (Ireland and other jurisdictions) and legal opinion to inform their case work.

Seminars

SIC and the Fol Unit plan to run joint seminars for public authorities this year.

3. Specific Areas of Work

Extended definition of data

Bob Turnbull presented a paper entitled "Extended Definition of Data". He proposed that the DCA take forward subordinate legislation under S104 of the Scotland Act 1998 to ensure that the Data Protection Act

definition of data applies to all public authorities in the UK by 1 January 2005. The proposal was agreed.

Durrant

It was noted that Richard Thomas is working on the outcomes of the Durrant v FSA case and that guidance will be issued shortly. He hoped that the case would encourage authorities to take a rounded view of the personal information.

Intra UK Relations exemption

It was noted that Bob Turnbull and John McNairney of the FOI Unit will participate in the DCA working group to produce guidance on the Intra UK Relations exemption.

4. Further Action

It was agreed that the IC and the SIC should develop a Memorandum of Understanding by the end of 2004 in relation to deciding in which jurisdiction an appeal lies, information sharing and referral. Richard Thomas undertook to draft initial principles for discussion. He intends to develop a similar Memorandum with the Information and Data Protection Commissioners in Ireland.

It was agreed that there should be collaboration between the IC, DCA and SIC in promoting the new right to information to the public. Sarah Hutchison should contact Helen Corkery in the OIC and identify an appropriate contact in the DCA. Promotion will be an agenda item for the SIC's visit to the OIC in February.

5. Future Meetings

It was agreed that this meeting had been useful and that a further 2 meetings should be organised in 2004 in the run up to implementation. It was further agreed that the host organisation should provide the secretariat for the meeting. Richard Thomas undertook to organise and host the next meeting in London in May 2004.