

SFOI (2004) (Min 2nd Meeting)

SCOTTISH FREEDOM OF INFORMATION IMPLEMENTATION GROUP
TWELFTH MEETING: FRIDAY 25 JUNE 2004, MERCHANT'S HALL, EDINBURGH.

Those Present

Michael Lugton (Chair)

Lindsey Anderson, Crown Office
Peter Anderson, National Archives of Scotland
George Brechin, Fife NHS Board
Kevin Dunion, Scottish Information Commissioner
Carole Ewart, Campaign for Freedom of Information in Scotland
Alastair Graham, Grampian Police
Sarah Hutchison, Office of the Scottish Information Commissioner
Margaret Keyse, Office of the Scottish Information Commissioner
Alison Mackinnon, SEPA
Averil MacLachlan, Scottish Enterprise
Margaret Macleod, Universities Scotland
Denise Mattison, Historic Scotland
Geoff Owenson, Scottish Parliament
Gordon Smith, CBI Scotland

Secretariat

John McNairney, FOI Unit
Morag Jones, FOI Unit

Item 1: Apologies for absence

Michael Lugton welcomed Gordon Smith of CBI to his first meeting of the Group and Carole Ewart, who took the Campaign for Freedom of Information in Scotland's seat in the Group for this meeting (the Campaign rotates attendance between Carole, David Goldberg and Derek Manson Smith).

He reported apologies for absence from Chris Bartter, Jim Clifford, Tim Ellis, Clive Martlew, Sarah O'Neill, Deirdre Watt, Huw Williams, and Karen Williams.

Item 2: Minutes of Previous Meeting (2 April 2004) and matters arising

Michael Lugton reported that the minutes of the meeting of 2 April 2004 had been published on the FOI Unit's website.

Matters arising from the previous meeting are covered in agenda items 4 (Training – Oral update) and 5 (Consultation on Fees Regulations).

Item 3: Recent Developments – Oral updates

- **Publication of 2nd Ministerial Report on implementation of the Freedom of Information (Scotland) Act 2002**

John McNairney told the Group that the 2nd Ministerial Report on implementation of FOI, which provides an update on work carried out over the past year, including the completion of the establishment of the Office of the Scottish Information Commissioner, the development of the Codes of Practice under S60 & 61 and the revised remit and membership of the Group, had been laid before the Parliament on 27 May 2004 and published on the FOI Unit's website. He told the Group that future work outlined in the report included work on statutory bars to disclosure contained in other legislation and the amendment of Sch.1 to the Act, including a consultation later this year on criteria to be used when considering potential new bodies to be brought within the scope of the Act.

Carole Ewart said that the Campaign for FOI in Scotland felt that as S5 of the Act was clear on the power to designate further public authorities to be covered by the Act, they doubted the need for this consultation on potential additions to Sch.1. John McNairney assured the Group that the consultation was not intended as a delaying tactic, but was necessary to take a systematic and comprehensive approach to bringing new organisations within the Act.

- **Publication of third annual report of Group**

John McNairney reported that the Group's third annual report had been published in April 2004 and made available on the FOI Unit's website.

- **Draft Environmental Information Regulations – Consultation**

John McNairney told the Group that the division within the Executive working on Environmental Information Regulations (EIRs) had consulted over 700 organisations and held bilateral meetings with a range of stakeholders, including Friends of the Earth, Scottish Water and CoSLA. The consultation period ended on 30 June and at the time of the meeting less than 40 responses had been received. Key issues highlighted in the responses received so far included the need for alignment with FOI and issues surrounding staff training and awareness.

Kevin Dunion stated that he would be submitting a response to the consultation. He noted that EIRs have a wider scope than just “environmental” organisations, and that there may be a lack of awareness of how wide the scope of the regulations is. He mentioned the possibility of OSIC holding a conference on EIRs towards the end of the year.

Alison MacKinnon expressed concerns that there may not be high enough levels of awareness in public authorities of the differences between FOI and EIRs.

Carole Ewart suggested that an EIR sub-group be set up to consider these issues.

Action

FOI Unit to discuss the issues raised with colleagues in the division working on EIRs and to consider the possible establishment of an EIR sub-group.

- **Development of Section 60 Code of Practice**

John McNairney told the Group that the finalised S60 Code of Practice would be issued soon. The FOI Unit would formally consult the Commissioner in July and then the Code would go before Ministers for final clearance. He explained that the delay in publishing the Code was due to more detailed guidance than had originally been intended being included, in response to comments received in the consultation on the Code last year.

Item 4: Training – Oral update

John McNairney reported that the training materials commissioned by the Executive had now all been issued – the trainers’ pack and training strategy having been published since the previous meeting in April 2004.

He also told the Group that the Executive and OSIC were to hold an FOI seminar for organisations listed in P7 of Sch.1 to the Act and publicly-owned companies on 1 July 2004. The seminar was opened by Tavish Scott MSP, Deputy Minister for Finance and Public Services and Parliamentary Business, and included speakers from OSIC and the FOI Unit.

He also told the Group that OSIC and the Executive were organising a programme of regional seminars to be held across Scotland on a range of FOI topics. Sarah Hutchison would issue papers to Group members shortly.

Item 5. Consultation on Fees Regulations – Paper SFOIG (2004)2

John McNairney provided the Group with a summary of the results of the consultation, which ended on 31 May 2004. Over 100 responses had been received and analysed. Responses covered a range of opinions on the charging framework, from those who thought that the limitation on the amounts which could be charged would have too great an impact on authorities resources, to those felt that there should be no fees charged at all. Respondee also varied in their opinions on the hourly staff rate in the draft regulations (£15), with some feeling it should be increased yearly, some asking for a standard rate to provide flexibility and others who felt that £15 was too low.

He told the Group that the Executive had decided not to include the provision for aggregation of costs in the fees regulations.

He then set out the processes and timescales involved in laying the regulations before Parliament. He told the Group that the regulations are unlikely to be laid before Parliament in their final form before the end of October 2004.

Michael Lugton pointed out that the framework set out in the regulations was unlikely to change in their path through the Parliamentary process and that organisations should not wait until they were laid in final form to start to plan how they would implement any charging programme.

Kevin Dunion welcomed the proposed framework and regulations.

Item 6. Suggested date and agenda for next meeting

Michael Lugton suggested that the Group meet again in early September 2004.

Action

FoI Unit to canvass members for suitable dates in early September.

Item 7. Any other business

Margaret Keyse gave the Group an update on the process of publication scheme approval. Progress had been better than expected, with the first tranche of schemes very close to being completely approved. Within the second tranche, 80% of schemes had been approved, including all of the educational sector and model schemes for GPs, opticians and pharmacists. Training and support was being provided to the third tranche, Part 7 bodies and publicly owned companies, including a template for introductory paragraphs of a publication scheme. OSIC have contacted public authorities to ask for details of any companies wholly or jointly owned. Two model schemes for publicly owned companies (for both dormant and live companies) were being prepared.

Michael Lugton asked members for any comments on the venue of the meeting (the first to be held in public and in the Merchant's Hall). Carole Ewart suggested that future meetings might be held outside Edinburgh, perhaps somewhere in the west of Scotland. Michael Lugton proposed that as this was the first meeting to which members of the public had had access, the September meeting should be held in Edinburgh again, but that the Secretariat should consider alternative locations for later meetings.

Action

FOI Unit to consider holding future meetings outside Edinburgh.

Following the closure of the meeting, the Group took the questions from members of the public.

Is there any precedent for central government meetings being held in public?

Michael Lugton – Not that we are aware of.

How was the meeting publicised?

John McNairney – A notice was placed on the FOI Unit website and a press statement issued.

There seems to be a lack of awareness about EIRs – will there be up-to-date guidance or training for public authorities?

John McNairney – The training materials made available to public authorities by the Scottish Executive will be updated to reflect the new regulations.

Will the S60 Code of Practice and the guidance on EIRs be written to be integrated? Clarity is required on the interface between the two regimes for authorities who receive “mixed requests”.

John McNairney – The Executive will aim to integrate the two sets of guidance as far as possible within the timing constraints for publication. The guidance will be made as clear as possible on the interface between the two regimes.

Why isn't the FOI Unit working on EIRs?

Michael Lugton – EIRs implement a European environmental directive and are being taken forward as part of the Executive's wider work on the environment. The FOI Unit work closely with them.

Action

The FOI Unit to consider how colleagues working on EIRs should best be involved in the Group's work and bring proposals to the next Group meeting.

Does the Commissioner have any plans to raise awareness of FOI within the private sector, especially in relation to contracts and commercial sensitivity?

Kevin Dunion – Private sector awareness raising is not in the pipeline, but forthcoming briefings on OSIC's approach to the exemptions will cover issues relating to confidentiality, trade secrets, etc.

Gordon Smith – Large corporations are unlikely to require specific guidance or awareness raising, but smaller companies may need some simple briefing on what FOI is and how it may affect their business. Clarity on issues surrounding contracts and confidentiality is needed as far in advance of implementation as possible.

Action

The FOI Unit to check with colleagues in SE procurement on plans for guidance.