

**SCOTTISH FREEDOM OF INFORMATION IMPLEMENTATION
GROUP**

FIFTEENTH MEETING

WEDNESDAY, 16 MARCH 2005, THE CORUS HOTEL, GLASGOW

Present:

Murray Sinclair, Scottish Executive (Chair)

Chris Bartter, UNISON

Tim Ellis, Scottish Executive FOI Unit

David Goldberg, Campaign for FOI in Scotland

Alastair Graham, Grampian Police

Sarah Hutchison, OSIC

Alison Mackinnon, SEPA

Averil MacLachlan, Scottish Enterprise

Clive Matthew, Corporate Learning Services, Scottish Executive

Diane McGiffen, Audit Scotland

Rachel McGregor, Corporate Learning Services, SE (deputy for David Doxford),

Andrew McIntyre, Crown Office (deputy for Lindsey Anderson),

Kenny Meechan, SOLAR (deputy for Jim Clifford)

Sarah O'Neill, Scottish Consumer Council

Garrick Smythe, COSLA

Claire Turnbull, Scottish Parliament

Karen Williams, Association of Chief Police Officers in Scotland

Two members of the public also attended.

Secretariat

Chris Bergin, Scottish Executive FOI Unit

Item 1: Welcome and Apologies for absence

Murray Sinclair welcomed group members to the first meeting of the Group since going live with FOI(S)A on 1st January 2005. He also introduced Chris Bergin, new to the FOI Unit and minute taker for the meeting.

Apologies had been received from Kevin Dunion (Scottish Information Commissioner), Geoff Huggins, Andrew Mackie, Denise Mattison, Deirdre Watt (all Scottish Executive), Peter Anderson (National Archives of Scotland), Margaret Macleod (Universities Scotland), Gordon Smith (CBI)

Item 2: Minutes of previous meeting and matters arising

The group was informed that some amendments to the last minutes had already been received from Alastair Graham (Police representative) and Margaret Macleod (Universities Scotland representative). The amendments concern their sectoral update sections. The Group reported that they were content with the previous minutes which will be amended, re-circulated and the revised set placed on the Executive's website.

On matters arising from the last meeting, Murray Sinclair informed the Group that –

As agreed at the December meeting dates and locations for 2005 had been circulated. However, a major FOI conference in London has been announced for 16th June (FOI Live 2005). The date of the June meeting (planned to take place in Stirling) will therefore be changed. It is likely to take place on 14th June although confirmation and venue details will be sent to members very soon. Other meetings of the group will be 27 September in Dundee, 15 December in Edinburgh as previously notified.

Item 3 of meeting of 10 December (minutes)

Para 1. The Fees Regulations were available towards the end of 2004. Murray explained that the FOI Unit would be interested to receive feedback from the Group (not necessarily by discussion at the group but by email) on any issues arising from the potential application of the regulations. The Unit will be reviewing them at a later stage but in the meantime it would be helpful to know if any further guidance on fees would be useful.

Para. 3. SOLAR queried the plans by the UK to reimburse Local Authorities for the costs of FOI and asked whether the Executive has similar plans. The FOI Unit had agreed to investigate further. Murray informed the group that a recent response from the Deputy Minister for Finance, Public Service Reform and Parliamentary Business to a letter from COSLA had restated the Executive's position that, as FOI is not regarded as an additional burden, there are no plans for reimbursement. The letter, however, also offers the possibility of further discussion on the issue.

SFOIIG Membership

Murray reported that the Unit has considered possibilities for additional members of the group. They have considered approaching the Federation of Small Businesses in Scotland to invite membership to add to the invited representation from the CBI. This would reflect the fact that businesses working with Scottish Public Authorities may be affected by FOI. SFOIIG members were also invited to consider further “user” representation on the group. One possibility would be inviting the National Union of Journalists to provide representation. The group agreed with these two specific suggestions. They also agreed that someone from the UK Commissioner’s Office should be invited onto the group.

Publicising Future SFOIIG Meetings

The group discussed ways of advertising the SFOIIG meetings more widely. The group agreed that advertising through a local paper (based in the region of the forthcoming meeting) had merit. Other suggestions were: using the local library network and the FOI blog spot. Regarding locations for future SFOIIG meetings, it was suggested that the group could use public buildings (e.g. civic centres) for future SFOIIG meetings.

Action: The FOI Unit to examine this possibility of using public buildings to host SFOIIG meetings.

Action: FOI Unit secretariat to send invitation and list of meeting dates to the UK Commissioner’s Office.

Action FOI Unit secretariat to send invitation letter to FSB and NUJ.

Action: Sarah Hutchison to add dates of forthcoming SFOIIG meetings to the OSIC newsletter and to the front page of the OSIC website.

Action: Chris Bartter to seek possibility of disseminating dates of future meetings through UNISON.

Item 3: Scottish Executive – Update on Legislation/Scope of the Act

Murray Sinclair invited Tim Ellis to give an update from the Executive. Tim made the following points:

Statutory Bars

- At the last meeting, members were asked to notify the FOI Unit of any statutory bars to disclosure of information which they were aware of as being problematic. The Unit had not been made aware of anything by Group members.
- DCA have confirmed that they will rectify in their next Order their oversight in not including Scotland in the scope of the Section 75 order they laid towards the end of 2005. They have also confirmed that they will make sure the Executive is included, as appropriate, in consultation on future Orders. There are unlikely to be any more Section 75 Orders until the latter part of 2005.
- Initial internal Executive analysis had highlighted only a handful of possible items for consideration.
- The FOI Unit will be monitoring the use of section 26 and asked OSIC and other organisations to do the same.

Sections 4 and 5 of FOI(S)A

Murray Sinclair invited Tim Ellis to provide an update.

Tim apologised on behalf of the FOI Unit for not circulating the draft consultation paper. He explained that Ministers were currently considering a number of issues around the possibility of extending the Act but as yet have not reached conclusions. No further commitments regarding timing or content can therefore be given at the present time. He stressed that Ministers did understand the disappointment caused to some in particular by the continuing non-appearance of a paper.

Chris Bartter cited Housing Associations and the Law Society of Scotland as examples of organisations (encompassing private, voluntary and charity sectors) which carry out public functions, but who are not covered by the FOI(S)A. He expressed concern that the uncertainty over the consultation was causing implementation of this section of the Act to be delayed.

Tim Ellis said that the focus thus far had been on national public bodies and asked if there had been any consideration given to local bodies. Garrick Smythe said that COSLA was not aware of any.

When asked if the Executive had plans to follow the DCA in issuing external guidance in relation to exemptions, Tim Ellis said that the Executive has

produced a range of guidance for the Executive and Executive agencies but had no plans to produce guidance for public authorities.

Item 4: OSIC update

Murray Sinclair invited Sarah Hutchison from OSIC to give the update. Sarah Hutchison's summary included the following points:

- OSIC had handled 933 requests for advice since the Act came into force. Approximately 50% of requests came from the public. Only 9% of requesters worked for the media.
- OSIC launched its promotional campaign on 14 February and had produced a joint booklet and leaflet (with Scottish Consumer Council). The booklet has since been reprinted and is available on the OSIC website.
- The website currently receives around 500 hits per day. By the end of the week following the meeting, the advertisement will have been screened 450 times.
- When given sight of a refusal letter, OSIC occasionally picks up on information that should not be contained in such a letter. Where this has happened, OSIC has, on occasion, contacted the relevant public authority to make this point.
- OSIC has dealt with 43 appeals since January. Eight were rejected as invalid, 14 have been accepted for investigation and the remaining 21 are going through the validation process. Appeal information will be published on the OSIC website – i.e. the list of on-going investigations, expected outcome dates and Kevin Dunion's final decisions.
- OSIC plans to revise guidance on exemptions procedures as they gather precedents.

Item 5.: Experience to date of “live running” with FOI(S)A

Murray Sinclair invited members of the group to provide an update on experience with “live running” of FOI(S)A within their organisations/sectors.

Update from COSLA

Garrick Smythe reported that, as at 1 March, Scottish Local Authorities had received in the region of 1000 requests. A significant number of these had come from the commercial sector. He said that the volume of requests and the complexity of some of them had resource implications for local authorities.

The following points were also made:

- Members at the recent COSLA FOI Officers' Network had agreed to start collecting information on the additional burden that FOI requests were placing on local authorities.
- COSLA had responded to OSIC's draft guidance for councillors on FOI. This guidance considers when FOISA may apply to individual councillors.

Update from SEPA

Alison Mackinnon informed the group that SEPA have received 160 EIR requests, 10% of which emanated from the media. Differences between the legislation and the guidance has been a source of confusion for the organisation - a result of the legislation changing and the guidance consequently being out of date.

Action: Alison to meet with Andrew Mackie to discuss how to refresh the guidance so that it aligns with the legislation.

Update from Scottish Enterprise

Scottish Enterprise had experienced a quiet month in terms of requests received in January. Since early February, the volume of requests has increased and the figure currently stands at 55 (25% of requests have come from the media).

Update from The Scottish Parliament

The Scottish Parliament had received 111 FOI requests, seven of which had gone to review. The Parliament has developed a database for handling requests and a network of lead officers.

Update from the Scottish Police Forces

The Scottish Police Forces had not received many FOI requests from the media but there had been more requests from solicitors than expected. The biggest issue had been investigating officer reports. ACPOS has set up a central referring system to deal with FOI requests.

Update from SOLAR

Kenny Meechan tabled a paper recording FOI requests received from 11 Scottish Local Authorities, for the group's consideration. This had been provided by SOLAR members for the period up to 15 March 2005. Additional data encompassed response times for five councils and internal reviews for eight councils.

Update from The Scottish Executive

Tim Ellis explained that the FOI Unit had published a list of FOI requests received by the Executive up to the middle of February. Most disclosures are also published on the disclosure log part of the website. As at 18 February, approximately 600 FOI request had been recorded by the Executive and its agencies and non-Ministerial office holders. The current figure is substantially higher owing to more than 700 requests submitted in one morning by a single applicant. Roughly 70% of requests (excluding the 700+ requests) have come from the media. Key issues for the FOI Unit are the application of exemptions at sections 28, 29 and 30.

The following points were also raised:

- A conference is being organised by the University sector to take place on 21st April to review progress and share good practice in managing FOI.
- The group noted that Pat Watters, COSLA President, had sent a letter to Tom McCabe, Minister for Finance, on the issue of resources. Tavish Scott, Deputy Minister for Finance, had subsequently replied to Mr Watters.
- Murray Sinclair suggested that it would be very helpful if members of the group could in future provide brief written updates on experiences in their sector for the SFOIIG (provided in advance or on the day).

Item 6. S62 and Environmental Information Regulations

The following points were covered:

- It was pointed out that the Section 62 code is still being revised by the Sustainable Development Directorate.
- Andrew Mackie had provided a brief written update for the meeting which was distributed at the meeting.

Item 7: Any other business

None

Date of next meeting and notify agenda items

Murray Sinclair noted that the next meeting is likely to take place on 14th June in Stirling – confirmation of date and venue will follow soon.

Group members were invited to email the FOI Unit with suggested items for the agenda for the June meeting.

[Subsequent to the meeting, the date and venue of the next meeting were confirmed as 14 June at The Castle Suite, Forthbank Leisure Stadium, Springkerse, Stirling]

SE FOI Unit
May 2005