

**SCOTTISH FREEDOM OF INFORMATION IMPLEMENTATION
GROUP**

FOURTEENTH MEETING

FRIDAY 10 DECEMBER 2004, DISCOVERY CENTRE, DUNDEE

Present:

Murray Sinclair, Scottish Executive (Chair in place of Michael Lugton)

Jim Clifford, SOLAR

Alastair Graham, Grampian Police,

Margaret Keyse, OSIC (representing Kevin Dunion)

Andrew Mackie, SE Environment and Rural Affairs Department

Alison Mackinnon, SEPA

Margaret Macleod, Universities Scotland

Jane Brown, National Archives of Scotland

Sarah O'Neill, Scottish Consumer Council

Averil MacLachlan, Scottish Enterprise

Cathy Adamson, Fife NHS Board (representing George Brechin)

Diane McGiffen, Audit Scotland

Chris Bartter, UNISON

Derek Manson-Smith, Campaign for FOI in Scotland

(David Thomson, Tayside Police Force also attended as a member of the public).

Secretariat

Jane Mackenzie, Scottish Executive FOI Unit

Karen Martin, Scottish Executive FOI Unit

Item 1: Welcome and Apologies for absence

Murray Sinclair, chairing the meeting in place of Michael Lugton, welcomed group members to the final meeting of the Group before full implementation of FOI(S)A 2002. He also introduced Jane Mackenzie, replacing John McNairney as Secretary to the Group and Karen Martin, minute taker for the meeting.

Apologies for absence had been received from Tim Ellis, Deirdre Watt, Hugh Dignon, Sam Ghibaldan, Geoff Huggins, Huw Williams, Gordon Smith, Lindsey Anderson, Denise Mattison, Andy Smith, Karen Williams, Peter Anderson and George Brechin.

Item 2: Minutes of the Previous Meeting (8 September 2004) and matters arising

The Group reported that they were content with the previous minutes. They would now, therefore, be placed on the Scottish Executive's website.

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

- as requested by the Group the meeting was being held in Dundee. Locations outwith Edinburgh would also be sought for some of the 2005 meetings
- work on the consultation on extension of the Act under Section 5 had been delayed due to other priorities. A draft consultation paper was nearing completion with the intention of issue for consultation by February.
- the section 104 Order, bringing Scotland in line with the rest of the UK on data protection and copyright issues, had been made on 19 November
- an initial draft of the Procurement Guidance had been produced by the Scottish Procurement Directorate and circulated for comment and that it should be available soon on the SE website. (*Post – meeting note: the guidance was made available on the SE website week beginning 20th December*)

Item 3: Recent Developments – Oral Updates

Jane Mackenzie informed the Group that the **Fees Regulations** were now finalised and were available on the HMSO website. Copies were also made available to members at the meeting.

Jane then explained that FOI Unit was working closely with lawyers and the DCA to finalise identification of existing **statutory bars** to the disclosure of information to enable removal in line with action undertaken in the UK. As part of this exercise, she requested that the Group bring to the attention of FOI Unit, any bar that they considered to be particularly problematic.

Jane also reported that recent work of the SE FOI Unit had been focussed on a number of **internal implementation** issues, for example on the process for recording and responding to requests, production of the internal SE guidance on the exemptions in the Act, training and awareness sessions for staff.

At this point, Jim Clifford brought to the Group's attention Lord Falconer's speech of 18 October in which he signalled the UK government's intention to re-imburse local authorities for the resources spent on discharging functions under the FOI regime. Jim queried whether this was being considered in Scotland. The Chair responded that this was not currently under consideration by the Executive but noted that the FOI Unit would investigate further the background and implications of the UK decision and feed this back to the Group. **(ACTION – FOI Unit)**.

Margaret Keyes brought the Group's attention to the recently laid UK order which extends for schools in England and Wales the time limit for responding to requests. Some discussion ensued about the difficulties of applying this sort of exception to one sector and also the difference in Scotland where the Local Authority (Education Department) is the public authority covered by the Act rather than individual schools. The Group agreed to look into the matter, keeping the situation under review. **(ACTION – Group members)**

Item 4: OSIC update

Public Awareness survey

Margaret Keyse reported that the results of the survey to assess public awareness of the Act issued on 1 October were now available. Overall, she reported, there would appear to be a low level of awareness although 12% of those surveyed said that they might use the Act.

Public Authority preparedness

Margaret also reported that 228 responses had been received to the second OSIC survey on the preparedness of local authorities. The full report would be published on 20 December. Overall, the Act was now being viewed positively by Authorities. The primary care/general practitioners grouping seemed to be less prepared than most other authorities. There appeared to remain some issues which are causing concern to authorities namely; retrieval of e-mails relevant to the information requested, release of information around contract procedures and environmental information regulations.

On the issue of GP unpreparedness, Cathy Adamson offered to feed this back to the NHS Boards who have oversight of the GP network with a view to rectifying the situation. **(ACTION – Cathy Adamson)**

OSIC draft strategic plan

Margaret circulated copies of the draft OSIC Strategic Plan and requested that any comments members may have should be forwarded to her by the middle of January. **(ACTION – Group members)**

Annual Report

She also circulated copies of the OSIC Annual Report which was to be formally issued the following week.

Item 5: Reflection on current stage reached.

Members were invited to comment on how implementation of FOI was progressing in their respective organisations or sectors, if they felt able to do so.

In respect of the NHS, Cathy Adamson reported that a series of “dry runs” had been completed with some success. The sector felt that, while some records and information management issues still remained problematic, the retrieval process was getting better all the time. She further reported that the SE Health Department had conducted a survey across the NHS and concluded from this that they were as prepared as they could be at this point.

On behalf of SOLAR, Jim Clifford reported that an FOI officers network had been established amongst COSLA members, draft guidance had been issued through the group, issues around the role of councillors had been considered and a very useful workshop had been held on 5 November attended by delegates from CoSLA and SOLAR. He also signalled to the Group that further representations to the Executive were likely to be made in respect of additional funding for local authorities to assist them comply with FOI in particular with regard to developments in records scheduling and management. Jim also noted that COSLA had commissioned North Highland College to produce an online, interactive version of the SE training workbook on FOI.

For the HE sector, Margaret Macleod of Universities Scotland explained that both an FOI Group, comprising both HE and Further Education representation, and a Practitioners self-help Group with representatives from the 21 autonomous bodies which comprise the HE sector had been established. She reported that sectoral guidance on various topics was being developed and there was a strong focus on sharing experience and knowledge across the further and

higher education sectors. Key concerns for the HE sector were around research and contracts.

Alastair Graham of Grampian Police reported that 2 full-time FOI Officers had now been appointed in the force. Nationally 34 trainers had been trained along with 187 decision makers and 14 reviewers at the Scottish Police College, Tulliallan covering all Scottish police forces and agencies. A flexible on-line training package had also been produced. He said that all forces had in fact appointed FOI officers and that records management was improving all the time with all forces adopting retention schedules and many now having records managers in post..

Diane McGiffen of Audit Scotland reported that the Audit and Inspection Agencies Joint Scrutiny Group had established an FOI sub-group which had held 4 meetings. The focus was on learning from each other and sharing good practice. A key concern was inherited records which had caused significant problems and there were also concerns around the information related to sole providers of services..

Alison Mackinnon of SEPA noted that the Environmental Information Regulations were the main focus of SEPA so a lot of her preparation work was about how to align the two regimes to ensure effective implementation in SEPA.

Sarah O'Neill from the Scottish Consumer Council noted SCC's concern that there was low public awareness of the new rights. She also informed the group that SCC were working with OSIC on guidance for the public on FOI.

Chris Bartter from UNISON noted that feedback they had received from Branches indicated that staff in public authorities had been receiving more training and awareness sessions on FOI in recent months. He was also pleased to note that increasingly Union representatives were being included in and consulted on preparations for FOI.

Derek Manson-Smith from the Campaign for FOI in Scotland noted that as the public authority survey indicated there had been a great deal of change during 2004 in terms of public authority awareness and activity related to FOI.

Item 6: Environmental Information Regulations

Andrew Mackie told members that the EIRs had been laid on 2 December and would be available on the HMSO website on 14 December. He explained to the

Group that the delay in finalising the regulations was due to extended work to align them with the FOI(S)A regime and to the technical changes required to reflect comments received on the draft. He also updated members on the release of the Code of Practice under section 62 of the Act. He said that work was progressing on the document and it would be sent to the Commissioner for approval on completion. He also reported that work had begun to better organise the website for environmental information related material.

Jim Clifford pointed out to the Group that he was concerned about the lateness in making authorities aware of the content of the regulations and the effect of the delay on training staff.

Other group members also commented on the need for improved communications on the EIR material. Following discussion, it was agreed that the FOI Unit's Schedule 1 contact list would be used by the Sustainable Development Unit to communicate about EIR developments. **(ACTION – Sustainable Development Directorate)**

Item 7: The future work programme for the group

The group's objectives as noted in the Third Annual Report of the Group, April 2004 were circulated for discussion and re-confirmed. It was noted that Ministerial responsibility for FOI had changed to the Minister for Parliamentary Business. The group suggested that it would be useful to widen the remit of the group to incorporate coverage of EIR issues. As this could require formal changes to the group it was agreed that at a minimum EIRs would be a standing item on the SFOIIG meeting agenda and that Andrew Mackie would be invited to attend future meetings **(ACTION – FOI Unit)**

Murray Sinclair invited the Group to consider which bodies they might wish to include on the group in light of previous agreement made to widen the membership. In discussion, several suggestions emerged:-

- representatives from user groups, such as the Press (NUJ?)
- representatives from the private sector (for example, CBI, the Federation of Small Businesses in Scotland)
- a representative from utilities companies

The group requested that the SE FOI Unit develop proposals and report back to the Group. **(ACTION – FOI Unit)**

Item 8: Date of next meeting

The Group noted that no members of the public had attended today's meeting and discussed ways of better advertising future meetings. This could include advertising in local papers where possible. It was decided that the Group would set dates for its quarterly meetings for 2005 in advance and publicise these dates widely. It was also agreed that the Group would next meet in Glasgow.

FOI Unit would arrange the dates for the 2005 quarterly meetings and circulate these to group members before the end of 2004. The first meeting for 2005 to be in March. **(ACTION –FOI Unit)**

Item 9: Any other business

The Group asked whether they could have sight of the consultation document on the section 5 criteria prior to its release. Following discussion it was agreed that the paper would be issued to group members for consideration as soon as possible, certainly by early January.