

**SCOTTISH FREEDOM OF INFORMATION  
IMPLEMENTATION GROUP**

**SIXTEENTH MEETING**

**TUESDAY, 14 JUNE 2005, THE CASTLE SUITE, FORTHBANK LEISURE  
STADIUM,  
SPRINGKERSE, STIRLING**

**Present:**

Michael Lugton, Scottish Executive (Chair)

Jane Mackenzie, FOI Unit, Scottish Executive

Cathy Adamson, NHS Fife

Lindsey Anderson, Crown Office

Andrew McIntyre, Crown Office

Jim Clifford, SOLAR

Mandy Gallacher, Audit Scotland (deputy for Diane McGiffen)

David Goldberg, Campaign for FOI in Scotland

Andrew Mackie, Environmental Group, Scottish Executive

Alison Mackinnon, SEPA

Margaret Macleod, Universities Scotland

Averil MacLachlan, Scottish Enterprise

Claire Turnbull, Scottish Parliament

**In Attendance**

Sarah Hutchison, Office of the Scottish Information Commissioner

Three members of the public also attended.

**Secretariat**

Chris Bergin, Scottish Executive FOI Unit

**Item 1: Welcome and Apologies for absence**

Michael Lugton welcomed group members to the sixteenth meeting of the Group.

Apologies had been received from Peter Anderson (National Archives of Scotland), Chris Bartter (UNISON), George Brechin (NHS Fife), Hugh Dignon (SEJD), Carol Ewart (Campaign for Freedom of Information in Scotland), Sam Ghibaldan (SE), Alastair Graham (Grampian Police), Geoff Huggins (SEHD), Dianne Millen (SE: Corporate Learning Services, who has replaced David Doxford on the group), Valerie Muir (Fife NHS Board), Sarah O'Neill (Scottish Consumer Council), Andy Smith (SEHD), Gordon Smith (CBI), Deirdre Watt (SEED), Garrick Smythe (COSLA), Karen Williams (Association of Police Officers in Scotland).

David Doxford (SE: Corporate Learning Services), Clive Martlew (SE: Corporate Learning Services) and Lois MacFadyen (SE: Public Service Reform and Efficiency Division) have stood down from the group.

## **Item 2: Minutes of previous meeting 16<sup>th</sup> March 2005 and matters arising**

The group was informed that some amendments to the previous minutes had already been received from Kenny Meechan (SOLAR representative) and Garrick Smyth (COSLA representative). The textual amendments related to their respective sectoral update sections. The minutes had been revised to incorporate the changes and were subsequently published on the Executive's website. The Group confirmed that they were content with the Minutes of the 16<sup>th</sup> March meeting.

Matters arising:

- **SFOIG membership:** The FOI Unit had approached the NUJ and the Federation of Small Businesses in Scotland to invite them to join the group. Both were interested in principle and were considering appropriate representation. The UK Information Commissioner's office had not yet been invited to send a representative to group meetings. The FOI Unit will follow this up but there may be a delay depending on UKIC staffing in Scotland.

[Subsequent to the meeting, the NUJ agreed to provide a representative for the group. The Federation of Small Businesses declined to provide a representative.]

## **Item 3: Scottish Executive Update**

The Chair invited Jane Mackenzie to provide an update. Jane made the following points:

- ***Sections 4 and 5 of FOI(S)A***

There were no developments on this issue from that reported at the March meeting i.e. that Ministers were considering a number of issues around the possibility of extending the scope of the Act but as yet had not reached conclusions. It was confirmed that the group would be notified once a decision has been made. Likewise, the group would be notified if any relevant communication were to emanate from DCA. It was noted that the Executive had recently received a number of SPQs on the subject and there were articles on the issue in the most recent Holyrood magazine FOI supplement.

- ***Statutory Bars to disclosure***

The situation regarding statutory bars had altered slightly since the previous meeting. Recent discussions had indicated that the Scotland Act might allow for more action in this area than previously thought. This would enable the Unit to undertake more action in this area. If this was confirmed to be the case then a priority would be to ensure that the actions effected by Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004 Statutory Instrument 2004 No.3363 were replicated so that they also applied in Scotland. Jane repeated the previous message that members should notify the FOI Unit of any statutory bars to disclosure of information which they were aware of as being problematic.

- ***Section 31 certificate***

Since the previous meeting, Section 31(2) had, for the first time, been used to apply a Ministerial certificate for certain categories of G8-related information. The Unit had notified the Scottish Information Commissioner and relevant Scottish public authorities of this development and produced accompanying guidance, which had been published on the Executive website. The FOI Unit would welcome feedback from members of the group on this guidance.

The group had a general discussion on the application of the certificate. It was acknowledged that the power to use S31(2) was utilised sooner than might have been expected at the time the legislation was drafted. Sarah Hutchison confirmed that the Information Commissioner had not issued a public comment on the certificate. OSIC was, however, concerned that the certificate should not be construed as enabling the non-release of information that would otherwise be made available by public authorities. The core message was that the certificate did **not** confer a blanket power of refusal to disclose G8 information, a message which had been misinterpreted in some sections of the media. It was acknowledged that once the G8 Summit was over, there would be an opportunity to take stock and review the application of the certificate. The group requested clarification on the definition of “member “ of the Scottish Executive and Jane undertook to follow this up.

**Action:** Jane Mackenzie to provide definition of “member “ of the Scottish Executive.

- ***Reporting on Executive FOI activity***

Jane Mackenzie informed the group that the FOI Unit has received a number of requests concerning numbers of FOI requests being handled by the Executive etc. In future a standard quarterly report would be produced providing this information. The report would include information on FOI caseload, reviews, appeals, and the basis for non-disclosures. This report would be published on the Executive’s website. Initial data was provided for Item 5 of the meeting on sectoral updates.

#### **Item 4: OSIC update**

Michael Lugton invited Sarah Hutchison to provide an update, based on the overview paper tabled at the meeting.

The OSIC paper is attached at the annex to these minutes.

In addition to the issues covered by the OSIC paper, the following points were made:

- The validation process for appeals was taking longer than had been expected in some cases.
- Identifying what constitutes environmental information has taken up a great deal of time. OSIC is to meet staff from the Information Commissioner’s Office with a view to developing guidance for staff which it hopes will clarify the situation. OSIC is aware of the problems faced by public authorities, some of whom have treated cases under the FOI regime before realising that it would have been more appropriate to

deal with them under the EIR regime. The review process offers an opportunity to remedy this. However, changing between regimes midway through dealing with a request should always be avoided.

- Regarding appeals, OSIC was optimistic that the majority of cases being dealt with by OSIC would be completed within the four month deadline. This could, however, depend on whether the volume of appeal cases peaked again.
- The Commissioner's first decision under the Act had been announced in May (Mr L and the Lothian and Borders Safety Camera Partnership).
- In relation to a new set of regulations based on an EU Directive governing the re-use of public sector information, Sarah explained that discussions had taken place between OSIC and OPSI (The Office of Public Sector Information). It was clear that while FOI covers access to information, the re-use of information was a separate matter taking in considerations and management of copyright. It was acknowledged that there was a clear link but that the new regulations should not impact significantly on the operation of FOI.
- The group noted that clarity was required over how the PSI regulations would apply. Members agreed that it would be useful to extend an invitation to both the Chair of the Advisory Group on PSI and the Scottish representative on the group to a meeting of SFOIIG.

**Action:** FOI Unit/OSIC to consider this suggestion further.

- The group discussed the issue of OSIC organisational contacts for appeal cases. OSIC'S default position is to contact the reviewer in an appeal case but Sarah asked that public authority sectors notify OSIC if they have an alternative contact for OSIC to deal with directly.
- Recent research had indicated greater public awareness of FOI. The OSIC website had been amended to give more prominence to public information. It was also noted that public authorities' promotion of FOI through their sectoral networks might also have contributed to higher awareness.

#### **Item 5: Experience to date of "live running" with FOI(S)A**

The Chair thanked members for providing written updates of their respective sector's experience of FOI and invited members to provide a brief oral summary.

[Written updates from the Scottish Executive, OSIC, Audit Scotland, Historic Scotland, the Scottish Parliament, SEPA, Scottish Enterprise Network, Local Government, the Higher Education sector can be found as annexes to the minutes as agreed at the meeting.]

- Cathy Adamson indicated that a report on the National Health Service's experience of dealing with FOI would be submitted to the group later in the year. She informed the group that the majority of requests to NHS originated from the national media. Requests have centred on such issues as hospital closures (the volume had decreased

lately), tender information relating to contracts (from unsuccessful tender bidders) and statistics on MRSA cases in Wards.

In the general discussion that followed the oral summaries, the following points were made:

- When asked if the Scottish Executive had an equivalent of the Department of Constitutional Affairs (DCA) Clearing House (whose role is to provide guidance to all Whitehall Department FOI practitioners), Jane Mackenzie said that the Executive's FOI Unit performs a dual role encompassing both advice on casework and policy.
- Regarding the monitoring of FOI cases, Sarah explained that the S60 Code sets out four areas for monitoring. This is intended to be a useful set of data to gather but is also intended as a non-exhaustive, non-prescriptive guide. The group agreed that it would be helpful for OSIC to work with sectors on monitoring and that bilateral discussions could take place to discuss this issue further.
- Jim Clifford asked for clarification on whether fees could be charged for redacting information.

**Action:** Sarah Hutchison to clarify the position on charging for redactions and report back to the group.

*[NB Subsequent to the meeting, Sarah circulated the following paragraph to group members, which will be published on the OSIC website]*

#### ***What can be charged under the fees regulations?***

*The fees regulations allow an authority to charge for 'projected costs', "whether direct or indirect, which a Scottish public authority reasonably estimates ...that it is likely to incur in locating, retrieving and providing such information". Costs which might be charged include estimates of the staff time to collect information from the organisation's archive, the cost of postage to deliver the information to the requester or the cost of photocopying. An authority cannot, however, charge for the time and resources used to determine whether the authority actually holds the information e.g., through searches of catalogues and records holdings. It also cannot charge for any costs incurred in deciding whether the information can be released.*

*An example: An authority receives a request for a copy of a consultation report. The authority decides to remove the names of members of the public who were consulted. The authority cannot charge for the staff time taken to decide which information must be redacted, but it could charge for the estimated staff time to physically blank out the appropriate parts of the document once that decision was made.]*

The Chair thanked members for their oral updates, which had given a flavour of how FOI(S)A was working. He noted that some common themes had emerged, including the following:

- many requests have resulted in new information being released;
- FOI had presented challenges for some public authorities;
- a small proportion of requests are subject to review;
- an even smaller proportion are subject to appeals.

## **Item 6: S62 and Environmental Information Regulations**

The Chair invited Andrew Mackie to provide an update.

Andrew had circulated a copy of the latest version of the EIR guidance to group members before the meeting. His update included the following points:

- The distinction between the FOI and EIR regimes remained a source of difficulty. Requests for information often touched on environmental information. There had been experience of people dealing with different parts of the same requests under separate regimes.
- The guidance document would be produced in hard copy format and also published on the website.
- Andrew pointed out that the guidance had not been revised significantly (except in a presentational sense) and would be finalised before the next SFOIIG meeting.
- The Code of Practice had been circulated in draft form for comment within the Executive. Following this it would go to the Minister and the Information Commissioner for their views, respectively. It was anticipated that this will also be finalised by the time of the next SFOIIG meeting at the end of September.

## **Item 7: Any other business**

The group were reminded of the Campaign for Freedom of Information training course taking place in Glasgow on 27<sup>th</sup> June and were asked to publicise it across their networks.

## **Item 8: Date of next meeting and notify agenda items**

Michael Lugton noted that the next meeting of SFOIIG would take place on 27 September in Dundee – confirmation of the venue will follow soon.

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

Scottish Executive FOI Unit  
July 2005

**ANNEX TO MINUTES OF SCOTTISH FREEDOM OF INFORMATION  
IMPLEMENTATION GROUP SIXTEENTH MEETING**

**ITEM 5: SECTORAL UPDATES**

- 1. SCOTTISH EXECUTIVE**
- 2. SCOTTISH INFORMATION COMMISSIONER**
- 3. AUDIT SCOTLAND**
- 4. CROWN OFFICE AND PROCURATOR FISCAL SERVICE**
- 5. LOCAL GOVERNMENT**
- 6. HISTORIC SCOTLAND**
- 7. SCOTTISH ENTERPRISE NETWORK**
- 8. SCOTTISH PARLIAMENT**
- 9. UNIVERSITIES SCOTLAND (For the higher education sector)**

## **1. SCOTTISH EXECUTIVE**

### **Analysis of Freedom of Information requests received by the Scottish Executive from January – March 2005**

This report provides a brief analysis of the Freedom of Information requests received by the Scottish Executive between 1 January and 1 April 2005, which were notified to the central FOI Unit. During this period, a total of 819 requests were logged by the Unit. Six of these were EIRs and two were data protection requests. To date, we have information on the outcome of 691 (84%) of all requests and we undertake regular checking with branches to enable us to make it more complete.

#### **Key points – General**

- Information was not held (under section 3 or otherwise) by the Executive in 127 cases (19%) of the 683 requests received where the outcome was known.
- The number of total resolvable requests\* stands at 575. Information was granted in full in 170 cases (30%), and also partially disclosed in a further 170 cases (30%).
- Information was fully withheld in 235 cases (41%) of the total resolvable requests.

#### **Key Points - Reviews**

- There have been 155 reviews of original decisions requested. Of these, 129 (83%) are known processed reviews. This works out as 22% of the total resolvable requests. There are 26 reviews with unknown outcomes.
- Of the 129 known processed reviews, the original decision was upheld in 108 cases (84%). In eight cases, the original decision was upheld in part (6%).
- The original decision was overturned in 13 (10%) of the reviews carried out.
- There have been 29 requests that were appealed to the Scottish Information Commissioner (about 22% of known processed reviews). This amounts to 5% of total resolvable requests.

#### **Key Points – FOI Disclosure Log**

- In cases where new information has been released, our policy is to progressively publish this information in the FOI disclosure log on the Scottish Executive website. The FOI Unit actively chases up on all these cases to ensure wider publication of all released information. See publishing policy details overleaf.

\*Excluding requests with unknown outcomes, information not fully held; EIR and Data Protection requests, further clarification sought and unclear responses.

## **Scottish Executive policy on wider dissemination of information which is disclosed in response to FOI requests**

The Executive's policy is that where we release information in response to a FOI request we recognise that it will usually be of interest to the wider public in addition to the original applicant. Executive staff are, therefore, advised to publish information which they have released to an applicant as soon as possible via the Scottish Executive website. The speed with which information released can be made available on the website will vary depending on its quantity and format. Information may not therefore always be added to the website on the same day that it is supplied to an applicant.

The Recently Released Information list does not note all the new information being routinely published on the Executive's website. We believe that generally it is most helpful to put information on the part of the website that deals with the relevant subject matter, on the grounds that most people will be looking for information on a particular topic rather than going specifically through the disclosure log. The Recently Released Information log simply provides an additional index into aspects of Executive information which have been the focus of specific FOI requests. It provides access to the information released in response to FOI requests which have been notified to the central FOI Unit in accordance with staff guidance and where it has been deemed by the policy area and the FOI Unit to be of wider public interest.

Information relating to very specific, individually focussed issues might not warrant wider publication as without understanding the context of the information it would not necessarily be very useful to anyone other than the applicant. However, as previously stated, in practice we regard most information released as being of wider public interest and endeavour to get it published on the website.

## 2. SCOTTISH INFORMATION COMMISSIONER

<b>Office Caseload</b>				
	Appeals	Enquiries	Publication requests	S1 requests
December 2004	0	154	6	4
January 2005	3	321	15	7
February 2005	15	386	4	3
March 2005	62	385	44	8
April 2005	94	212	36	6
May 2005	48	186	20	3

<b>Appeals caseload</b>			
Validation	Investigation	Decision	Total
46	134	1*	181

A list of validated appeals currently under investigation is available on the Commissioner's website.

\*Mr L and the Lothian and Borders Safety Camera Partnership

<b>Appeals not proceeded</b>						
	Jan	Feb	Mar	Apr	May	Total
Application not valid		2	5	9		
Body not covered by FOISA/EIRs	1		2			
Case withdrawn			1			
No request for review made			1	4	2	
Timescales not complied with			1	1		
Applicant withdrew without settlement during investigation				1		
Month totals	1	2	10	15	2	30

<b>Appeals From</b>	<b>%</b>
Members of the public	48%
Solicitors	29%
Private/commercial enterprises	10%
Media	9%
Voluntary/campaign organisations	3%
Elected representatives	1%

- 1 information notice has been issued

- The Commissioner is in the process of agreeing procedures for the handling of appeals against Scottish Executive departments and its agencies. The procedures will include the channelling all formal case working correspondence between the Executive and OSIC through the FOI Unit.
- The Commissioner will publish his report on his examination of the Scottish Executive Education Department's procedures for the identification and provision of access to records related to children's homes and residential schools on 23 June 2005.
- The Court of Session Rules have now been amended to make it clear that when the Commissioner refers a case to the Court it will be dealt with by petition procedure. The rule changes came into force on 1 April 2005.

## **Briefings**

12 briefings are now available on the SIC website, including 4 new briefings:

- s31 National security and defence
- s32 International relations
- s34 Investigations by Scottish public authorities
- s41 Communications with Her Majesty, etc and Honours
- The Public interest test

The s30 Prejudice to the Conduct of Public Affairs and s33 Commercial interests and the economy briefings are in development. The s38 briefing has been submitted to the Information Commissioner for comment (his own s40 guidance is currently being updated).

## **Research**

Public awareness research carried out in March and published in May:

- 2/3 Scottish people now aware of the legislation
- 49% of respondents said they had definitely heard of the Act, 20% said they thought they had. When the same question was asked 6 months earlier, before the Act came into force, only 30% said they had definitely heard of the Act, while a further 14% thought they had.
- 1/3 of respondents had seen the Commissioner's TV campaign, or thought they had.

## **Promotional Activity**

- Our website has been extensively reviewed to improve accessibility. New features include a quick find facility, improved site map and a resources section.
- We plan further TV advertising in the Autumn.

## **External Relations**

The Scottish Information Commissioner met the Information Commissioner on 25 May 2005. The two commissioners will hold 6 monthly meetings under their Memorandum of Understanding to share experience and to identify opportunities for joint working. Their offices are in the process of nominating contacts for liaison on cross border issues and staff

training. The May meeting focused on environmental issues and the commissioners agreed to a joint instruction to counsel for an opinion on which bodies are covered by the EIRs. Appropriate staff will meet in July to discuss the working definition of environmental information.

Last week the Office was visited by the John Smith Fellowship Trust. 23 Fellows from Georgia, Armenia, Azerbaijan, Moldova, Ukraine, Kyrgyzstan and Russia participated in a seminar with OSIC staff. The event focussed on sharing the experiences of FOI in different countries, including the balance between privacy and access to information; Scotland's regulatory framework, the impact of access to information on democracy.

### **3. AUDIT SCOTLAND**

#### **Early experiences under the Freedom of Information Act – Audit Scotland**

##### **Volume and type of requests**

We have a decentralised system for handling information requests. As a result, only the particularly difficult or complex requests are referred centrally for consideration by one of our expert panels and only these are recorded as formal FOI requests.

In the first quarter Audit Scotland received seven Freedom of Information requests. Three were from journalists, one from an MSP and two others. The 20 day deadline was met in six cases. In the case which took longer to conclude we provided partial information within the deadline but our substantive response was delayed due to time taken to consult with the originator of the information.

Four requests were for a previously unpublished report which informed the Auditor General's report on the Holyrood building project and in which there has been much public interest.

##### **Exemptions**

In two cases the requested information was provided in full and in the remaining cases partial or redacted information was provided.

Information has been redacted under s.33 commercial interests and the economy exemption and we have cited s.67 which provides protection from actions of defamation. Section 67 offers protection only where the information is released to the applicant therefore we have not been able to make this information generally available.

Information has been withheld under s.36 confidential information because we consider it to be legally privileged.

##### **Issues arising**

- Although the number of recorded requests has been small they have been complex and time consuming.
- Historically, our performance audit work has produced an initial baseline report setting out current performance and identifying scope for improvement and a later report show progress. The initial reports generally have not named audited bodies but as a result of the FOI Act this practice is no longer tenable. For all new studies our approach will be to name audited bodies in initial reports.
- Much of the information we hold originates from audited bodies. Requests for this type of information are particularly challenging in terms of deciding whether an exemption might apply and in concluding consultation with the originating organisation within the 20 day deadline.

#### **4. CROWN OFFICE AND PROCURATOR FISCAL SERVICE**

Since 1 January 2005 COPFS has received 103 requests directly to Crown Office for centrally held information. These can be broken down as follows:

**39** – Requests from Media

**1** - Organisation – (Children are Unbeatable!) regarding prosecution policy

**2** - Solicitors on behalf of clients for civil cases

**44** – Member of public, requesting access to case papers, even when they have no connection to the case.

**2** - Academic about prosecution policy

**1** - Judiciary (JP)

**7** - Bereaved Next of Kin

**3** - Relatives (inc one who wrote through his MSP)

**4** - Prisoner about the case where they were convicted

14 requests for review have been received.

All 11 PF Areas within Scotland have received 69 requests in total. Although I don't have a full breakdown available most relate to requests for cases papers, post mortem reports and subject access requests (dealt with under DPA ) from accused persons. Many more requests in the Areas are from solicitors. 2 requests for review have been received.

Because of the nature of the information we hold, there is a great deal of overlap between the FOI legislation and the data Protection Act - police reports (which the courts have always treated, pre FOI, as not in the public interest to disclose) witness statements and forensic reports all contain personal data, and in some cases sensitive personal data, about different living individuals. There is always a delicate balance to be struck between dealing with the requests in the spirit the legislation intended, and protecting the privacy of individuals who may provide background personal information for example in the course of a criminal investigation, which is never aired in the public forum of a court room.

Requests covering case papers tend to be time consuming because of the competing FOI/DPA interests, but we are managing to answer the majority within the 20 day timescale.

## **5. LOCAL GOVERNMENT**

### **FOI – EXPERIENCE IN THE LOCAL GOVERNMENT SECTOR OF “RUNNING LIVE” WITH FOISA**

A meeting of the Cosla FOI Officers’ network took place at the Cosla offices in Edinburgh on Thursday 26 May 2005.

Issues Arising:-

Number of Requests received

See table in Appendix.

Resourcing

This continues to be an issue of concern for Councils (staffing, training, equipment, records management etc), with a considerable amount of officer time being taken up in determining requests. The position is compounded at the review and appeal stages, when more senior officers can be diverted away from other more important work such as Schools PPP Projects to deal with legal aspects of requests.

In February, Councillor Pat Waters, President of Cosla, wrote to Tom McCabe, Minister for Finance, Public Service Reform and Parliamentary Business, about resources for the implementation of FOI and received a reply from the Deputy Minister, Tavish Scott, on 11 March 2005. This confirmed that the Executive was not considering any arrangements for Scotland similar to those south of the border for reimbursing additional costs associated with the implementation of FOI.

The Network felt that the arguments put forward by the Deputy Minister in his letter were weak and would like to know why there is no parity with England when there is so much in common in the approach to the two Acts. They have accordingly asked Cosla to write again to the Minister, seeking an explanation as to why, politically, Scotland is being treated differently on this matter.

Schools

With the school holidays coming up, the Network felt that it was neither appropriate nor feasible to expect requests submitted to schools to be complied with within twenty days in every case (eg rural schools which closed for the summer). They continue to argue that something needs to be done about this issue.

OSIC Issues

#### **(a) Appeals**

It was noted that when dealing with appeals, the Commissioner will wish to look at internal processes and decision-making. However, comment was passed not only about the volume information being sought by the Commissioner in relation to appeals cases, but also the fact that the deadline given for the submission of this information was often extremely short, thereby compounding existing difficulties within Councils.

**(b) EIRs v FOI**

It was noted that very few requests for information under the EIRs had been received and that the bulk of requests related to FOI.

A colleague from one Council has noted that there can be shades of grey between the two and that in one case OSIC decided unilaterally to deal with an appeal under the EIRs rather than FOI. Written clarification from OSIC in relation to this area would therefore be welcome.

**(c) Statistical Monitoring**

In paragraph 62 of the Section 60 Code refers to monitoring activities by public authorities. This highlights a number of activities where monitoring might take place, but specifies that the list is not exhaustive and, with experience, authorities may, in discussion with the Commissioner, agree upon a standard set of statistics which more aptly reflect their compliance.

The view of the Network was that it would be helpful if the Commissioner could give some thought to the statistics that he would like public authorities to gather.

**Retention Scheduling Project**

The Network noted that the estimated cost of setting up a generic retention schedule for local government would be of the order of £36,000. Authorities have been asked to indicate whether they are prepared to contribute towards this.

**Fees Regulations – Aggregation of Costs**

It was highlighted by a colleague in another Council that Section 12(2) says that the fees regulations may provide for the aggregation of two or more requests for information made by one person or different persons apparently acting in concert, for the purposes of estimating costs of compliance. However, it was pointed out that the Regulations in place do not do this (although it was understood that the English equivalent did).

This means that an applicant can break down what is really one request into “bite sized chunks” and avoid a fees notice or refusal on the grounds of excessive cost of compliance.

It was therefore suggested that it would be helpful for Section 12(2) to be activated in a review of the Regulations.

## Fees

The Network noted that most authorities applied on-costs when working out fees. It was also understood that redaction costs were chargeable.

<b>Council</b>	<b>No. of Requests</b>	<b>Internal Review</b>	<b>Appeals at OSIC</b>
<b>Aberdeen City</b>	<b>318</b>	<b>8</b>	<b>5</b>
<b>Aberdeenshire</b>	<b>225</b>	<b>12</b>	<b>1</b>
<b>Angus</b>	<b>336</b>	<b>4</b>	<b>2</b>
<b>Argyll and Bute</b>	<b>181</b>	<b>3</b>	<b>3</b>
<b>Clackmannanshire</b>	<b>107</b>	<b>1</b>	<b>0</b>
<b>Dundee</b>	<b>307</b>	<b>7</b>	<b>5</b>
<b>East Ayrshire</b>	<b>129</b>	<b>7</b>	<b>0</b>
<b>East Dunbartonshire</b>	<b>158</b>	<b>7</b>	<b>1</b>
<b>East Renfrewshire</b>	<b>133</b>	<b>15</b>	<b>3</b>
<b>Edinburgh</b>	<b>764</b>	<b>34</b>	<b>5</b>
<b>Glasgow</b>	<b>700</b>	<b>27</b>	<b>7</b>
<b>Highland</b>	<b>204</b>	<b>8</b>	<b>1</b>
<b>Inverclyde</b>		<b>3</b>	<b>2</b>
		1.1	
		B	
		C	
<b>Midlothian</b>	<b>141</b>	<b>18</b>	<b>2</b>
<b>North Ayrshire</b>	<b>96</b>	<b>13</b>	<b>2</b>
<b>North Lanarkshire</b>	<b>140</b>	<b>7</b>	<b>1</b>
<b>Perth &amp; Kinross</b>	<b>329</b>	<b>54</b>	<b>8</b>
<b>Scottish Borders</b>	<b>160</b>	<b>5</b>	<b>1</b>
<b>Shetland Isles</b>	<b>134</b>	<b>0</b>	<b>0</b>
<b>South Lanarkshire</b>	<b>303</b>	<b>7</b>	<b>4</b>
<b>Stirling</b>	<b>190</b>	<b>27</b>	<b>3</b>
<b>West Dunbartonshire</b>	<b>186</b>	<b>7</b>	<b>4</b>

## 6. HISTORIC SCOTLAND

Historic Scotland receives many routine requests for information which we continue to handle as we have always done and so our experience of FoI to date has not been too onerous. We have a network of Lead Officers offering advice and support in each of the 7 groups in HS. They report to me once a month on any non-routine requests for information.

Month	No of Requests	SE FoI Unit Referrals	Outcome	Exemption
January	9	1	Partial response	s33 and s38
February	7	2	1. Information not held	n/a
			2. Partial response – case still live	s30
March	6	2	1. Information not held	n/a
			2. Partial response	s38
April	9	2	1. Information provided with © notice	n/a
			2. Information provided with a charge for electronic CAD drawings as per OQPS	n/a
May	8	3	1. Partial response	s38
			2. Live planning case – awaiting Minister’s response	Possible s30
			3. Listing decision which may go to judicial review – awaiting FoI Unit response	Possible s30

Most of the requests relate to listing buildings, scheduling monuments and associated casework.

The main difficulties to date relate to digitising files for voluminous requests, especially where redaction is required in the application of an exemption. We are in the process of drafting internal guidance to help staff with this.

As a result of FoI requests, we have added a couple of categories of information to the Publication Scheme for which we will charge: Photographic Library images and CAD Drawings (digital and paper formats). The former has been approved by OSIC, the latter is awaiting approval.

We intend to make available information released in response to requests on our website, following the SE’s disclosure log model, as soon as our new web team is in place.

## 7. SCOTTISH ENTERPRISE NETWORK

### Freedom of Information Request Statistics January-May 2005

#### FOI Requests

	Information supplied in full	Information partially withheld	Request refused - exemption	Request refused - cost	Request withdrawn	Information not held	Request still being processed	Total
Scottish Enterprise	16	9	2	1	0	4	1	33
Local Enterprise Companies	55	9	1	1	2	0	2	70
Careers Scotland	4	0	0	0	0	0	0	4
Total	75	18	3	2	2	4	3	107

Four of the above (2 at SE and 2 at LECs) were combined FOI Requests/DPA Subject Access Requests

Cases where names have been redacted but no other information withheld are counted as supplied in full.

#### Internal Reviews

	Original Decision Upheld	Original Decision Reversed	Some Additional Information Supplied	Total
Scottish Enterprise	2	0	2	4
Local Enterprise Companies	0	0	2	2
Careers Scotland	0	0	0	0
Total	2	0	4	6

Information about the source of requests is not recorded as a matter of course, but of 47 cases where this information is known, the breakdown is as follows:

Customers: 16 (9 from same individual)

Media: 13

Suppliers/prospective suppliers: 11

Former employees: 3

Councillor/MSP: 2

Student: 1

Solicitor: 1

## **8. SCOTTISH PARLIAMENT**

At the time of the meeting we had received 111 requests for information under FOI and we had received 14 requests for review which had been considered by review panels. At that stage we also had three appeals with the SIC's Office. We have put in place a network of FOI Action Officers and Decision Makers within our organisation and we are recording the progress of FOI requests and reviews on an FOI database.

In terms of the sorts of information requested, we are most frequently asked for information relating to Members allowances and we have also received a number of requests relating to the Holyrood Building. In terms of requesters, the majority of the requests for information are coming from members of the public and from journalists.

## **9. UNIVERSITIES SCOTLAND**

### **Experience of FOI implementation in the higher education sector**

(Report for Scottish Freedom of Information Implementation Group (SFOIIG) meeting 14 June 2005.)

The Universities Scotland Freedom of Information Working Group (the Working Group), was established in order to offer advice to institutions and to establish operational procedures for ongoing coordination of work across the sector. The Working Group invited the Association of Scottish Colleges to join so this has been a successful example of the higher and further education sectors in Scotland working together towards a common aim. Its Convener is Dr Peter Kemp, Director of Information Services at the University of Stirling. One of its major tasks was to develop a Model Publication Scheme (MPS) for use in both the higher and further education sectors and complete the process of gaining approval from the Scottish Information Commissioner.

Dr Kemp's conclusion, on behalf of the Working Group, is that the higher education sector has largely taken FoI in its stride. His view is that this has been mainly due to the careful preparation, involving a great deal of work, by the individuals who served on the implementation groups established by most higher education institutions (HEIs) and by the many people who have helped the Working Group since it was established in 2003. It has also been due to the leadership of Principals and University Secretaries, all of whom recognised the need to establish procedures and commit resources in their institutions.

A useful workshop was held in April 2005, attended by representatives of nearly all Scottish HEIs and from further education. Sessions provided an overview of FOI and Environmental Information Regulations activity in a number of sectors, including the Scottish Executive, Scottish Enterprise, Grampian Police and SEPA as well as higher education institutions. From this it is clear that the higher education sector is receiving a relatively low number of enquiries and is handling them well. There is experience with the application of exemptions and of successfully carrying out reviews of charging and of refusals. So far there have been no appeals involving a higher education institution to the Scottish Information Commissioner, so this is the one part of the process in which there is no experience in the sector.

Some care is needed with the statement that the sector is receiving relatively few requests. The correct statement is that the sector is recording relatively few requests. Most HEIs have taken the view that most enquiries should be handled locally in the departments in which they arise, so that only those coming directly to central units or referred there by departmental staff are recorded centrally. The true figure for requests is therefore significantly higher than the recorded figure. The initial phase of FoI implementation is thus complete. The sector has established procedures and standards, and has cooperated in the delivery of training to all staff in HEIs.

A practitioners' group (the Scottish Higher Education Information Practitioners – SHEIP) was also established on which all HEIs are represented. SHEIP is chaired by Ms Susan Graham, Records Manager at the University of Edinburgh.

The Working Group arranged for the production of a number of information notes and approved their publication on behalf of Universities Scotland. Most of these were produced by SHEIP, although a number were produced by ad hoc groups of experts.

SHEIP has monitored the effect of FoI legislation during the first few months of full implementation and has established a database of recorded requests and this will enable the sector to examine trends. The results are appended at the end of this sectoral overview. It is stressed that this is not a comprehensive or scientific survey. Responses were optional and it has been left to the discretion of institutions to decide what is or is not a freedom of information request and also to decide in which categories requests fall.

**Enquiries**

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