



## Intervention 201702016: Scottish Government

### Invitation to provide further information: 13 December 2017

1. As you know, I am conducting an intervention, under my [Enforcement Policy](#), into many of the issues about the Scottish Government's freedom of information (FOI)<sup>1</sup> practice raised by your letter of 31 May 2017 to the Scottish Parliamentary Corporate Body and the subsequent Scottish Parliament debate on 21 June 2017.
2. I am writing to you, as a signatory to the letter of 31 May 2017, to invite you to provide further information about the serious concerns you raised.
3. I would be grateful to receive your submissions, at the latest, **by Friday 12 January 2018**.

#### Why invite further information?

4. By its nature, an intervention is focused on assessing and addressing clearly perceived failings. It will consist of two phases: assessment and remedy. The remedy phase will, of course, be determined by the nature and extent of the issues identified in the assessment phase. It is specifically the assessment phase with which I would welcome your help.
5. The concerns you raised in the joint letter to the Scottish Parliamentary Corporate Body are understandably wide, as they reflect the shared experience of several individuals. The issues in the letter are "headlines" and behind them lie unique personal experiences and examples.
6. **I need a more detailed picture of the experiences and examples you outlined in the letter of 31 May** to help me frame accurately the assessment phase to ensure that it focuses on the right things.

#### Scope of the intervention

7. My intervention will:
  - (i) Assess the Scottish Government's freedom of information (FOI) performance in light of serious concerns raised in the letter to the Scottish Parliamentary Corporate Body and in the Scottish Parliament's debate on Motion S5M-06126 (as amended by Motion S5M-06126) on 21 June 2017, and
  - (ii) Where any of its practices are found to be deficient, require the Scottish Government to:
    - (a) remedy any identified breach of FOI law, and

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<sup>1</sup> FOI refers to the Freedom of Information (Scotland) Act 2002 and to the Environmental Information (Scotland) Regulations 2004

- (b) meet the minimum standards of good practice in the Ministers' Section 60 Code of Practice.

## Issues in scope of the intervention

8. Pending your further information, here is a list of the questions I expect the assessment phase will focus on:

### *Treatment of requests from journalists*

- (i) Does the Scottish Government treat and manage requests from journalists differently, compared to requests made by other people?
- (ii) Where there are differences, do they reduce or restrict journalists' entitlement to information, compared to other requesters?

### *Late responses*

- (iii) Is there any evidence of deliberate delays in responses to some information requests e.g., to requests from journalists or requests about internal policy-making?

### *Management of requests*

- (iv) Are internal request handling procedures (particularly those that concern which officials should respond to, or advise on, requests) consistent with FOI law and the Code of Practice?
- (v) What is the role of Special Advisers in the request handling process? Where request handling departs from the Scottish Government's procedures is there any detriment to the requester's entitlement to information?

### *Refusals*

- (vi) Is there evidence of a practice of requests being blocked or refused for tenuous reasons?
- (vii) Specifically, where the requested information is politically sensitive, are requests handled in a different way (not under the usual procedures)? If so, to what extent is this detrimental to the requester's entitlement?

## Not in scope of this intervention

9. My intervention *cannot* look at the concerns you raised about the Scottish Government's practice in recording information. My powers in an intervention derive from FOI law, which is concerned with access to information that authorities hold, not what they *ought* to hold.

## How to provide further information

10. You should be aware that I may want to share information from any submissions in published reports and/or with the Scottish Government as part of the intervention. Please read carefully the Privacy and Transparency sections in Appendix 1.
11. You can respond to this call for further information in any one, or a combination of, the following ways:

### *Information about a specific case*

12. I've provided a form at the end of this document that you can use to give me information about a specific case. You can use the form as many times as you like. If you want to give more information than the form allows, feel free to add to it.

13. I am keen to avoid any potential impact of this process on any future applications for decision (appeals). So if you want me to treat your submission as an appeal, it's important you make this clear at the time of your submission, in which case it will be handled in accordance with the usual procedures. If you don't want to appeal a case just now, but you think you might want to appeal it later<sup>2</sup>, it might be better not to submit information about it until you have decided which way you want to proceed. Of course, any appeals I determine during the intervention may help inform the intervention process.

*A resume of your concerns*

14. You can make a written submission without using the form. If you do, it would help if you frame any written submission in terms of the issues in scope of the intervention (see above) and provide detail about cases where you have experienced the issues.

*Address for correspondence*

15. Email: [sic@itspublicknowledge.info](mailto:sic@itspublicknowledge.info). My postal address is on the back cover.

**What happens next?**

16. I intend to publish as much information about the intervention as possible at [www.itspublicknowledge.info/interventions](http://www.itspublicknowledge.info/interventions). I'll launch the page with this call for evidence, followed as soon as possible by a resume of the evidence provided.
17. There will be at least one further formal report on the intervention.

**And finally**

18. I do hope you will be willing to submit evidence to help me frame the intervention. Your evidence will be extremely important in ensuring that our efforts are focused in the right areas.
19. Thank you in anticipation of your support.

Yours sincerely

**Daren Fitzhenry**  
**Scottish Information Commissioner**

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<sup>2</sup> An appeal generally has to be made to me within six months from the date of the authority's response to the request for review (or from the date by which the authority should have responded to the review).

## Appendix 1: Privacy and Transparency

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### Privacy

21. I will process your personal data to the extent that the processing is necessary for the exercise of the functions conferred on me by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs) (which include the intervention).
22. I will comply with the Data Protection Act 1998 (the DPA) (and subsequent amending legislation) when processing your personal data.
23. A copy of your submission will be held in my case management system. The information will be used only for the purpose of the intervention (see also Transparency section below). I will publish a resume of responses to this invitation, drawing on and quoting from submissions. Contributions in the resume will not be directly attributed to individuals.

### Transparency

24. I am a Scottish public authority for the purposes of FOISA and the EIRs. It is therefore possible that I will receive an information request for your submission.
25. If I do, I will let you know and will give you the opportunity to comment on whether the submission, or any part of it, should be disclosed.
26. If you consider that part or all of your submission should not be:
  - (i) shared with the Scottish Government, or
  - (ii) disclosed in response to an information request

please alert me to this fact when you make your submission and make it clear which part or parts of the submission you do not want to be shared or disclosed. (If you refuse to allow me to share your submission with the Scottish Government, this may reduce the evidential weight I am able to put on your submission.)
27. The final decision as to whether to disclose information under FOISA or the EIRs will be one for me to make, but your views will be taken into account.

## Intervention 201702016: Further Information

Notes: This form is provided to help you make your submission. Please don't be constrained by it: feel free to add any information you think is relevant. You are also welcome to send us copies of correspondence or other material.

### About you

Your name	
Email address	
Phone number	

### Submission

Scottish Government reference number for your request:  
Or who did you send it to? (email address will do):

My request (paste your request below)

Contact with the Scottish Government about my request  
(List the contact you had e.g., email / phone calls (add as many rows as you need)).

Date	Short description
	Request sent
	Response received

I'm unhappy with the Government's handling of my request / response because:  
e.g., I think I got a different answer to the one someone else would have received

It affected me in the following ways:  
e.g. the information arrived too late / I didn't get what I needed for a story, etc.

## **Contact us**

### **Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)