

Report to:	MSMTM
Report by:	Helen Gardner-Swift Head of Corporate Services
Meeting Date:	6 October 2020
Subject/ Title:	Review of Key Document: C2 Covid-19: How the Commissioner will respond to FOI requests during the temporary closure of the office premises due to the Covid-19 pandemic (VC138959)
Attached Papers	Covid-19: How the Commissioner will respond to FOI requests during the temporary closure of the office premises due to the Covid-19 pandemic (VC 138420)

Purpose of report

1. To seek Senior Management Team (SMT) approval for the ad hoc review of the policy “Covid-19: How the Commissioner will respond to FOI requests during the temporary closure of the office premises due to the Covid-19 pandemic”.

Recommendation and actions

1. I recommend that the SMT:
 - (i) approve the changes to the policy “Covid-19: How the Commissioner will respond to FOI requests during the temporary closure of the office premises due to the Covid-19 pandemic”
 - (ii) agree the key documents recommendations in paragraph 13
 - (iii) agree that this Committee Report and the attached paper can be published as set out in paragraph 15.

Executive summary

2. Following government advice on the need to contain the spread the Covid-19 pandemic, the SMT decided to temporarily close the office premises on 23 March 2020. The temporary closure of the office premises is being kept under review. At the time of writing, it is not yet known when the office premises will re-open.

The legislation

3. The Coronavirus (Scotland) Act 2020 came into force on 7 April 2020. Schedule 6 to the Act made temporary changes to the Freedom of Information (Scotland) Act 2002 (FOISA)¹, including:
 - (i) extending the maximum time for responding to a request for information or a request for review from 20 to 60 working days.

¹ The Coronavirus (Scotland) Act 2020 does not amend the Environmental Information (Scotland) Regulations 2004 (the EIRs)

- (ii) allowing the Commissioner to find that, even if an authority failed to respond within 60 working days, this was not a breach of FOISA if the failure was due to the effect of the coronavirus (i.e. the Covid-19 pandemic) and the delay was reasonable in the circumstances.
4. The Coronavirus (Scotland) (No.2) Act came into force on 27 May 2020.
 5. The (No.2) Act removes the 60 working day timescales and requires authorities to respond to requests within the normal 20 working day period. However, it allows the Commissioner to find that, even if an authority fails to respond within 20 working days, the failure does not constitute a breach of Part 1 of FOISA if:
 - (i) the response was late because of the effects of the coronavirus² or because the authority was working to the extended timescales set when the Coronavirus Act first came into force and
 - (ii) the delay was reasonable in the circumstances. In deciding whether the delay was reasonable, the primary consideration for the Commissioner must be the public interest in complying with requests promptly.

Commissioner's policy on responding to requests

6. The Commissioner is a public authority for the purposes of FOISA and, therefore, is required to respond to requests and requests for review within the timescales set down by the legislation. The Key Document C2 Covid-19: How the Commissioner will respond to FOI requests during the temporary closure of the office premises due to the Covid-19 pandemic sets out the Commissioner's policy for responding to requests (including requests under the EIRs) while the office premises are temporarily closed and while the Coronavirus Act, as amended, is in force. The key document has been updated to reflect the position that all members of the Commissioner's staff are working remotely.
7. The policy recognises the importance of FOI rights during this unprecedented time and also recognises that, as the regulator of FOI in Scotland, it is very important that he been seen to be complying with FOI legislation and to be demonstrating good practice.

Risk impact

8. Business continuity procedures have been put in place as far as possible, and these are reflected in the Commissioner's policy on responding to requests for information and requests for review during the temporary closure of our office premises and mitigates the risk of not having effective policies and procedures in place. The Covid-19 pandemic is impacting the work of the public sector and is presenting this sector with significant resourcing challenges. The document "Covid-19: How the Commissioner will respond to FOI requests during the temporary closure of the office premises due to the Covid-19 pandemic" will assist the Commissioner – and the wider public sector – to demonstrate good practice in responding to FOI requests during the pandemic.

Equalities impact

² Also referred to in other Scottish Information Commissioner guidance as "Covid-19".

9. The closure of the office has restricted the ways individuals can make FOI requests to us. This could affect, in particular, individuals with disabilities. The Commissioner's policy on responding to FOI requests explains what arrangements we have put in place to reduce or mitigate any potential adverse or negative impacts.

Privacy impact

10. There is no direct privacy impact arising from this committee report or from the documents submitted for approval. The Commissioner's usual rules regarding compliance with the General Data Protection Regulation and Data Protection Act 2018 remain in place.

Resources impact

11. As noted above, the Covid-19 pandemic is impacting our work and is presenting us with resourcing challenges. This interim policy on responding to information requests will allow us to continue to respond to FOI requests as efficiently and effectively as possible in the light of these challenges.

Operational/ strategic plan impact

12. Approving this revised key document will work towards the following strategic objectives as set out in the Strategic Plan 2020-2024:
- (i) Enable and support high standards of FOI policy and practice (Strategic Aim 2)
 - (ii) Be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent (Strategic Aim 6)

Records management impact (including any key documents actions)

13. The revised key document will be in our Guide to Information (Class C2) and also on the Covid-19 webpage

Consultation and Communication

14. The key document was revised by the HOCS and the SMT was consulted on the draft revised document.

Publication

15. I recommend that this committee report and the attached paper are published in full.