

# Assessment Report



Scottish Public Authority: University of the Highlands and Islands

Dates of on-site assessment: 21 and 22 February 2012

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## Executive summary

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This report sets out the findings of an assessment of the University of the Highlands and Islands (UHI), carried out by representatives of the Scottish Information Commissioner (the Commissioner).

The assessment considered all aspects of UHI's handling of information requests, in relation to compliance with the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations (the EIRs), and conformance with the associated Codes of Practice.

UHI was selected by the Commissioner partly because she wished to consider practice in the higher education sector in the 2011/12 Assessment Programme year, in light of publication of the report of Sir Muir Russell's Review Team in relation to Climate Change Emails<sup>1</sup>. In addition, the Commissioner considered UHI to be a particularly interesting institution because of its "quasi-federal" character. The Commissioner also recognised that she had not received any applications for a decision involving UHI and consequently did not have a clear picture of UHI's FOI practice.

It became evident to the assessors during the pre-onsite assessment analysis that there were a number of issues surrounding UHI's arrangements for handling of Freedom of Information (FOI) requests. The nature and scope of these issues was clarified to some extent as a result of communications with UHI's Secretary, following which it was decided by the Commissioner that Euan McCulloch, Deputy Head of Enforcement (DHOE), would join the assessors during the onsite visit.

The assessors identified a number of areas of significant concern during the assessment in relation to UHI's compliance with the legislation and conformance with the relevant Codes of Practice. These are discussed in detail within this report. However, it was noted by the assessors that UHI had instigated an internal audit of its FOI practices and procedures prior to notification from the Commissioner that the assessment was to be carried out. The report from this audit identified a number of areas of both concern and non-compliance/conformance in UHI's FOI practice, and UHI provided the assessors with full access to both the report and the internal auditor who conducted the audit as part of the assessment process.

Each area of concern will be addressed in this report. In brief, however, the assessors noted a significant lack of focus on FOI at all levels within the organisation, a failure of the organisation to clearly define relevant roles and responsibilities (at all levels), inadequate systems and procedures for managing requests, and a failure to effectively monitor FOI performance. Of significant concern was UHI's handling of a number of requests it had recently identified as not having been responded to: in a clear breach of its statutory obligations, it decided to respond only to requests made in the current academic year (thus leaving a significant number outstanding).

However, it was also noted by the assessors during discussions that overall UHI acknowledges its failures to comply with the legislation and conform with the various codes of practice. While it is acknowledged that oversight of the FOI function should have been more effective, the problems identified do not appear to stem from more general inadequacies in governance. It was noted that the capacity and desire would appear to be there to effect prompt remedial action.

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<sup>1</sup> <http://www.cce-review.org/pdf/FINAL%REPORT.pdf>



The recommendations following the assessment of UHI are summarised in tabular form in the “Conclusions and summary of recommendations” section at the end of this report.

## Scope and objectives of assessment

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1. This report sets out the findings of an assessment of the University of the Highlands and Islands (UHI) by representatives of the Scottish Information Commissioner (the Commissioner). The purpose of the assessment was to establish whether UHI was complying with good practice in dealing with requests for information in terms of the **Freedom of Information (Scotland) Act 2002 (FOISA)**, the **Environmental Information (Scotland) Regulations 2004 (the EIRs)** and the associated Codes of Practice<sup>2</sup>, and to identify and make recommendations in relation to areas where procedure and practice were not in line with expected good practice.
2. The assessment considered all aspects of the way in which UHI handled information requests. The following areas were identified for particular consideration and discussion following a review of information held by the Commissioner regarding UHI’s practice:
  - The systems used by UHI for logging, tracking and monitoring information requests
  - The lack of any documented FOI policies or procedures
  - The relationship UHI has with its academic partners in relation to FOI
  - Designation of roles and responsibilities for dealing with requests at all levels within the organisation
  - The adequacy of UHI’s arrangements for monitoring FOI performance
  - Staff cover and resilience arrangements
  - The level of training provided to staff at all levels within the organisation
  - UHI’s records management arrangements, in particular its ability to conduct robust searches for information prior to responding to a request
  - UHI’s publication scheme and its conformance with the relevant model publication scheme
  - The arrangements in place to allow the organisation to make the changes it identified in its own internal audit report.
3. In the course of the onsite assessment, it also became apparent that further consideration would require to be given to UHI’s decision not to respond to a number of outstanding requests.

## Assessment process

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<sup>2</sup> The relevant Codes of Practice are the Scottish Ministers’ Code of Practice on the Discharge of Functions by Public Authorities Under the Freedom of Information (Scotland) Act 2002 (referred to in this report as “the section 60 Code of Practice”) and the Code of Practice on the Environmental Information (Scotland) Regulations 2004 for Scottish Public Authorities (referred to in this report as the “section 62 Code of Practice”). It should be noted that the assessment did not assess compliance with the Freedom of Information (Scotland) Act Code of Practice on Records Management (commonly referred to as “the section 61 code”).



4. UHI was notified of the Commissioner's intention to conduct an assessment of its practice on 15 March 2011. Alistair Rennie, Elaine Moffat and Euan McCulloch (the assessors) conducted the onsite assessment on behalf of the Commissioner on 21 and 22 February 2012. During the course of the onsite assessment, the assessors conducted a number of interviews and meetings with UHI staff and also examined the systems used to deal with requests for information. During these two days, they met and interviewed the following members of staff:
  - Fiona Larg, UHI Secretary, Principal and Secretary's office
  - Chris Sellers, Head of Human Resources, Principal and Secretary's Office
  - Committee Secretary, Principal and Secretary's Office
  - Internal Auditor, Principal and Secretary's Office
  - Head of Student Records Office, Learning and Information Services
  - Student Support Co-ordinator, Academic Directorate.
5. UHI cooperated fully and openly with the assessment process, providing access to its current arrangements for handling requests and providing the assessors with regular updates on matters which impacted on the Commissioner's assessment process.
6. The assessors noted some specific areas where there was no evidence of practice. For example, from the information reviewed by the assessors and following discussions with staff, UHI has not:
  - Issued a refusal notice in terms of section 18 of FOISA ("Neither confirm nor deny")
  - Issued a fees notice under section 9 of FOISA or regulation 8 of the EIRs
  - Handled a request from someone with special needs or been required to consider alternative response formats depending on the circumstances of a requester
  - Transferred a request under the EIRs
  - Issued a refusal notice in terms of section 27 of FOISA (Information intended for future publication).
7. From the evidence reviewed by the assessors, they were satisfied that UHI complies with the legislation and the associated Codes of Practice in relation to the following matters:
  - Complying with advice and assistance requirements
  - In general the content of refusal notices issued was satisfactory, although it should be noted that the assessors did not have the opportunity to examine any cases where UHI had withheld information under exemptions/exceptions
  - Definition of an FOI request as opposed to a request dealt with as a "business as usual".
8. In conducting the assessment, the assessors worked through a list of interview questions which had been prepared in advance of the on-site assessment, based on the responses received to the pre-assessment Self Evaluation Form (SEF) and the material and updates provided in advance of the assessment.



9. The assessors also made reference to the assessment checklist published within the Commissioner's Investigations and Enforcement Procedures<sup>3</sup>, to ensure that each relevant area of practice had been considered and appropriate evidence gathered
10. At the end of the assessment, a concluding meeting was held with UHI's Secretary and Head of Human Resources. This meeting provided an opportunity to feed back the key findings of the assessment. The feedback provided in that meeting is reflected and expanded upon in the points addressed below.

## Overview

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11. Previously named the UHI Millennium Institute, the University of the Highlands and Islands (UHI), based in Inverness, gained full university status in February 2011. The University provides access to both undergraduate and postgraduate study and research opportunities through an academic partnership with some 13 colleges and research institutions. Each academic partner is a separate legal entity, each varying in size and spread over a wide geographical area spanning from Argyll to Shetland. UHI currently has over 8,000 students and each course belongs to one of two faculties: Arts, Humanities and Business, or Science, Health and Education.

### UHI's request profile

12. UHI provided the assessors with details of the number of requests it had recorded as received since the academic year 2005/06. The table below shows the number of requests recorded for each academic year.

August 2005 – July 2006	14
August 2006 – July 2007	8
August 2007 – July 2008	25
August 2008 – July 2009	25
August 2009 – July 2010	46
August 2010 – July 2011	58

13. It became evident, however, during the course of the assessment that UHI was unable to confirm how robust these numbers are. This is in part because such logging and tracking arrangements as were in place were inadequate and had not been consistently applied. The assessors were also notified during the onsite visit that a total of 50 requests (although it has subsequently transpired that this total is actually 54), had been identified as not having been dealt with from 2010/11. In the circumstances, the assessors were unable to verify the accuracy of the above figures. They are not, therefore, the subject of further analysis in this report, although the underlying issues will be considered in more detail.

<sup>3</sup> Available online at; [http://www.itspublicknowledge.info/web/FILES/publication\\_scheme/Investigations\\_Enforcement\\_Proc\\_v8.pdf](http://www.itspublicknowledge.info/web/FILES/publication_scheme/Investigations_Enforcement_Proc_v8.pdf)



## Detailed outcomes, findings and recommendations

14. The following sections provide details of the main areas of practice assessed and addressed in the assessors' findings, with any associated recommendations.

### UHI internal audit of its own FOI arrangements and practices

15. During preparations for the assessment, UHI brought to the assessors' attention an internal audit report which had been produced following an examination by UHI's internal auditor of its FOI arrangements and practices. During the onsite visit to UHI, the assessors interviewed the internal auditor and it became evident that the audit had been scheduled prior to UHI being notified of the Commissioner's intention to carry out this assessment.
16. In examining the internal audit report, the assessors noted the 15 separate recommendations made and detailed in an action plan, signed off by the senior management team in November 2011. From the report and discussions with the internal auditor, it became evident that the audit had been conducted following the format of the Commissioner's assessment reports and accompanying action plans. The assessors welcomed the audit's comprehensive evaluation of UHI's arrangements and practice and, having considered the audit report's findings and recommendations, broadly endorse them.
17. One area of concern noted by the assessors, however, was direct responsibility for the FOI function was in the course of being reallocated within the University. As a consequence, and given the need to ensure that those acquiring responsibility for the function were suitably equipped in terms of knowledge and expertise, the assessors questioned whether it remained practicable for UHI to address the findings and recommendations of the audit report, as it had agreed earlier, within the agreed timescales.
18. UHI explained that new timescales for completion of the internal audit action plan would be agreed and signed off at the Audit Committee meeting in March 2012. The plan would also be reviewed to reflect changes in roles and responsibilities. These issues, along with others identified in the course of the assessment, are discussed in more detail throughout this report. Broadly speaking, however, the assessors welcomed the approach UHI had taken so far in responding to the internal audit.
19. Conclusions and recommendations: The assessors endorse all of the recommendations contained in the internal audit report, and have, therefore, generally focused on key areas either not identified or fully considered in that report. They believe UHI can address all of the audit recommendations within the usual six month timescale following issue of the Commissioner's final assessment report, even allowing for changes in roles and responsibilities, but also believe it important that the momentum already built up in this area is maintained.
20. The assessors therefore endorse UHI's intention to review its internal FOI audit action plan, to ensure that revised timescales for addressing the recommendations (reflecting changed roles and responsibilities) are set at the Audit Committee meeting in March 2012. Each action point should also be revisited to ensure that responsibility for completion has been allocated to the most appropriate member of staff. Following this, the assessors recommend that UHI fulfils all



the action points contained within the internal audit action plan within six months of the date of this report.

### Information requests not responded to

21. As indicated above, the assessors were made aware during the assessment that some 54 requests which had been made to UHI in the academic year 2010/11 had not been responded to. It was explained to the assessors that these had formed part of a larger number of requests (made in the 2010/11 and 2011/12 academic years) which had been identified as outstanding. UHI management had decided to respond only to those made in the current academic year.
22. FOISA is, however, quite clear on the right to a response to a request for information. Section 1(1) states that:  
*“A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority”*
23. Section 2 goes on to set out the right to withhold information under exemptions, while section 10 specifies the time within which the authority is required to respond to a request (making separate provision for cases where a fees notice has been issued). Separate provision is also made for dealing with requests which would incur excessive costs (section 12), with vexatious or repeated requests (section 14) or where it does not hold the information requested (section 17), but in each case it is clear from the provisions of Part 1 of FOISA that the requester is entitled to a response meeting the requirements of section 16 or (in the case of information not held) section 17 of FOISA. Here, the time for complying with the outstanding requests has long since passed, but none of the relevant requirements of Part 1 have been met.
24. In respect of environmental information, generally parallel requirements are to be found in the EIRs
25. Consequently, there is no scope within the legislation for an authority to select which valid information requests it responds to. In this case, UHI has not suggested that any of the outstanding requests are other than valid.
26. Although the assessors noted the reasons for UHI taking what it considered to be a pragmatic approach to the outstanding requests, they explained that the continuing failure to respond to these requests was a breach of FOISA, which required to be addressed as a priority.
27. Conclusions and recommendations: It is of significant concern that UHI identified a total of 54 requests which had not been responded to. While the assessors acknowledge UHI’s openness about the situation, they are unable to endorse its decision to address it only in part, by responding to the most recent requests only.
28. Therefore, following discussions with the Secretary and Head of Human Resources, the assessors recommend that UHI writes to each of the 38 requesters who have never received a response to their requests, asking in the first instance if they wish to pursue their request. Where UHI receives notification from a requester that they wish to pursue their request, UHI



should then respond in full and in line with the requirements of FOISA/the EIRs (as appropriate). The assessors note that all 38 requesters had been contacted by the date of this report.

29. The assessors would expect UHI to ensure that initial contact is made with each of these requesters within one month from the date of this report. If this is not achieved, for reasons which are not acceptable to the Commissioner, the Commissioner may be required to consider an Enforcement Notice under section 51 of FOISA.

### **FOI structure, definition and allocation of key FOI responsibilities, and adequacy of administrative arrangements**

30. Strategic responsibility for FOI within UHI lies with the University's Secretary, who reports directly to the University's Principal and Vice Chancellor. Prior to the current (and ongoing) re-organisation of roles and responsibilities in respect of FOI, day-to-day responsibility for handling requests lay with the Compliance and Equality Officer (CEO). The CEO reported to the Head of HR, who in turn reports to the Secretary.
31. UHI intends to maintain a centralised approach to dealing with requests for information. Responsibility for dealing with requests on a day-to-day basis has been allocated (from 7 March 2012) to UHI's Committee Secretary, who reports directly to the Secretary. The Committee Secretary's role is one that includes a number of key responsibilities relating to compliance and governance, and UHI envisaged that the responsibilities involved in dealing with FOI requests will sit well within the Committee Secretary's overall remit.
32. In the lead up to the onsite part of the assessment, the assessors noted that day-to-day responsibility had been allocated to the Head of HR. It was explained to the assessors that initially the Head of HR would provide support to the Committee Secretary to assist with the transition of FOI responsibilities.
33. Other members of staff throughout the organisation will continue to provide specialist knowledge and/or assistance in conducting searches for information, to assist the Committee Secretary respond to requests as and when this is required. However, all responses to requests will be issued by the Committee Secretary, with senior management approval where required.
34. The Committee Secretary will be supported, for example in times of absence or additional workload, by the recently appointed Intranet and Records Officer (IRO). The role of the IRO is discussed in more detail later in this report, but this arrangement should ensure that suitable cover is in place to ensure that UHI is adequately resourced to fulfil its FOI obligations in future.
35. It was noted by the assessors that currently UHI has not specifically identified a member/members of staff to carry out reviews. It was further noted that to date UHI has not formalised its administrative arrangements – in particular, the definition and allocation of roles and responsibilities – associated with dealing with FOI requests.



36. Requests are primarily received by email via UHI's dedicated FOI mailbox, and requesters also have access to an online request form. It was acknowledged, however, that requests for information could be received by individual members of staff and that UHI also receives requests via post. The assessors were informed that UHI had recently reviewed access arrangements to the FOI mailbox, providing access to a wider range of staff currently with FOI responsibilities to ensure that requests are always picked up.
37. Conclusions and recommendations: UHI has made some significant structural changes in the way it deals with its FOI requests. The staff involved in dealing with requests have changed, and consequently the assessors recommend that, as a priority, UHI formalises its administrative arrangements for dealing with FOI requests, and in particular the definition and allocation of key FOI roles and responsibilities within the organisation.
38. Due to the importance of formalising matters in this area, the assessors expect UHI to provide an interim update one month from the date of this report, detailing the progress that has been made in relation to this specific recommendation.

#### **Request handling practices, logging, tracking and monitoring of requests and performance monitoring arrangements**

39. In its own internal audit report, the organisation was described as having taken an "informal" approach to date in its handling of requests for information. A consequence of this informality has been that UHI has no documented FOI policies or procedures. This is dealt with in more detail later in this report, but a particular area of weakness identified by the assessors (in line with the findings in the internal audit report) was the inadequacy of UHI's systems in place for logging, tracking and monitoring requests and their subsequent progress. Such records as had been maintained were extremely basic and recorded only limited information: it was also questionable whether they were comprehensive. In addition, there was no reliable, coherent system for the retention of documentation relating to individual cases.
40. At the time of the onsite visit to UHI, the assessors were provided with a demonstration of an excel spreadsheet that had been set-up by the Head of HR to log, track and monitor requests for information, since he had taken over responsibility for dealing with requests (and covering current requests only). Although rudimentary, the assessors acknowledged that the new spreadsheet captured the key details and information required to allow UHI to manage requests effectively. It would be helpful, however, for it to be augmented by some form of diary system to provide reminders of key dates.
41. Another key area of weakness identified by the internal audit report and the assessors was the recording and maintenance on file of information pertaining to a request (particularly the key communications between the requester and the authority). It became apparent that the electronic systems currently used to store such information were unstructured and inconsistently used. In the lead up to the assessment, the assessors noted the difficulty UHI had in supplying copies of documentation relating to requests for the purposes of analysis. This issue was emphasised during the onsite visit where, upon examination of the systems used, the assessors were unable to readily locate documentation relating to cases. Documentation relating to cases was not held together and it was not possible to determine final versions of responses issued.



42. Until recently, the only regular FOI performance reporting within UHI was in the form of an annual monitoring report produced by the CEO for the Board of Governors (the University Court). This report provided an update on a number of matters, including FOI, and provided a brief summary of FOI activity for the academic year being reported on. Due to the lack of effective recording and monitoring systems, the accuracy of the information contained within these annual reports was (as UHI acknowledged) difficult to verify. Irregularities were identified in the statistics contained in the December 2010 report, although in future more robust systems should help to address these issues.
43. It was noted by the assessors that recently UHI has incorporated FOI as a standing item at its monthly senior management meetings. Going forward, the Committee Secretary will be also be responsible for producing the FOI update for this meeting. The annual monitoring report to the Board will continue to be produced and again this responsibility will fall to the Committee Secretary.
44. Conclusions and recommendations: Although they acknowledge that this is accepted as a key responsibility of the Committee Secretary in taking the FOI role forward, the assessors recommend that UHI must ensure, as a priority, that it has robust logging, tracking and monitoring systems in place to deal with the FOI requests it receives. It is also vital that an effective system is established for the retention of documentation relating to individual cases, to include copies of the request, the response to the request and all communications both internal and external relevant to the request (including any review requested in relation to that request). It is also essential that final versions of communications issued by UHI can readily be identified.
45. Once again, due to the importance of ensuring suitable systems are in place as a priority, the assessors expect UHI to provide an interim update one month from the date of this report, detailing the progress that has been made in relation to this specific recommendation.

### Training and general awareness of the legislative regimes

46. In assessing staff's general awareness of the legislative regimes and the level of training they had received in equipping them to deal with requests for information effectively, the assessors made reference to paragraph 1.1 of the recently updated section 60 Code of Practice:<sup>4</sup>  
*"Authorities should provide training to ensure that their staff have sufficient knowledge of the regimes and establish responsibility at a senior level for overseeing compliance"*
47. UHI's internal audit report makes a recommendation that training should be provided to ensure that all employees understand their individual responsibilities under FOISA. It was noted that employees are provided with an introduction to FOISA and the EIRs during their induction training course, but that generally no additional training is provided. The assessors endorse this recommendation, but in addressing this issue, UHI needs also to ensure that the EIRs are covered within this awareness training, to ensure that staff at all levels within the organisation are in a position to identify a request for environmental information (which may be made verbally) . It is vital that an organisation puts in place a foundation to ensure that all staff can

<sup>4</sup> <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



identify a FOI request and are fully aware of the procedure that must be followed to ensure that the request is passed to the appropriate member of staff so he/she can respond to the request appropriately, within the required statutory timescales.

48. As has been noted responsibility for dealing with FOI requests has been transferred to the Committee Secretary. Although the Committee Secretary has a background in compliance and regulatory matters, this individual has not specifically dealt with FOISA or the EIRs before. Consequently there will be a considerable learning curve for the Committee Secretary to go through to ensure that this member of staff is in a position to respond effectively to requests for information in terms of FOISA, the EIRs and the relevant Codes of Practice. It is of crucial importance that UHI allocates adequate time and resources with a view to ensuring that adequate and appropriate training is provided to the Committee Secretary.
49. As part of the new structure, it was explained to the assessors that the position of Intranet and Records Officer (IRO) has been created. This new member of staff took up post early March 2012 and their primary role will be the development of UHI's Records Management policy and supporting arrangements. This is discussed in more detail later in this report. The IRO will also provide support to the Committee Secretary, however, with respect to the day-to-day management of FOI requests and also to provide cover for the Committee Secretary when that individual is not available.
50. With this in mind, the assessors consider it vital that UHI provides the IRO with a suitable level of training to ensure that this individual can fulfil the support role adequately. The training will require to be sufficiently in-depth to allow that individual to be able to respond to any requests that might be received during the Committee Secretary's absence. This could include requests where the consideration of withholding information might be pertinent and therefore a working knowledge of the application of relevant exemptions/exceptions will be required.
51. Following examination of requests, and through discussions with staff, the assessors acknowledge that the in-depth training required for the Committee Secretary and the IRO should focus primarily on FOISA. These officers should, however, also acquire a working knowledge of the EIRs.
52. Conclusions and recommendations: Training is a key area for UHI to address in developing its FOI procedures and processes going forward. Consequently, the assessors recommend that UHI conducts FOI awareness training for all staff within the organisation, to ensure that they can both identify requests and pass them on to the appropriate individual to deal with. This training should also be utilised as an opportunity to provide an overview of both FOISA and the EIRs and additionally an update on the changes to FOI practice being implemented by the University.
53. In-depth training should be provided to the Committee Secretary and the IRO as the members of staff with key responsibility for dealing with FOI requests on a day-to-day basis, to impart a working knowledge of EIRs as well as a more comprehensive understanding of FOISA.
54. Due to the importance of ensuring that suitable training is put in place, the assessors expect UHI to provide an interim update on progress with this item one month from the date of this report, including a plan demonstrating how it intends to implement the training required. This plan should detail what training will be undertaken, who will receive the training, who will



deliver the training and the timescales involved (within the overall timescale of six months for complying with all of the recommendations in this report).

## FOI policies, procedures and other documentation

55. During preparation for the assessment, as noted previously, it became evident to the assessors that UHI did not have a documented FOI policy or procedures in place.
56. In consideration of this issue, the assessors made reference to paragraph 1.1 of the recently updated section 60 Code of Practice which states:  
*“Authorities must ensure that staff in contact with the public can explain the procedures the authority has in place for complying with the regimes or, where an authority has dedicated FOI staff, that enquiries about the regimes are directed to them.”*
57. In the absence of documented policy and procedures, the University is placed at a distinct disadvantage in explaining to requesters how their requests will be dealt with. It is also important that staff have a common understanding of how requests should be dealt with, to ensure that key responsibilities are understood and the legislation and related guidance are applied consistently. Properly focused training, a key requirement at present (as indicated above), requires to be backed up by adequate documented policy and procedures if all staff are to understand their responsibilities fully.
58. UHI currently incorporates a standard contract clause in relation to FOI. This clause makes reference to FOISA but not to the EIRs and the assessors were not satisfied that its text complied fully with the relevant sections of the current Section 60 Code of Practice. In particular, they were concerned (a) that the clause might give the (presumably erroneous) impression that all information received from a prospective contractor would be held in confidence, and (b) that it did not distinguish adequately between material considered confidential and material considered commercially sensitive.
59. The assessors noted that UHI utilises a standard template letter for responding to FOI requests. The assessors welcomed UHI’s decision to introduce a standard template letter, incorporating reference to the requester’s rights to seek a review and apply to the Scottish Information Commissioner. In the absence of relevant evidence or suitable template text, however, they were unable to comment on UHI’s preparedness for cases where information was to be withheld (whether under exemptions/exceptions or other provisions): this is an area which should receive further attention.
60. **Conclusions and recommendations:** UHI’s failure to document its FOI policies and procedures is a significant one. The benefits of having such documents in place are numerous, but in short they allow an organisation to measure its practice against its procedures, ensure consistency of approach and allow staff not normally responsible for dealing with requests to assume responsibility effectively should this be necessary either in the short, medium or long term. Appropriate FOI policies and procedures also act as a source of guidance to staff to allow them to ensure that they are fulfilling their basic FOI obligations, i.e. identification of requests and how to pass such requests to the appropriate member of staff to deal with.



61. The assessors therefore recommend that UHI develops a robust FOI policy and supporting procedures, which should take into consideration all of the recommendations made in its internal audit report and this report. The procedures should provide for dealing with requests for environmental information and should clearly identify the chain of responsibility for dealing with FOI at all stages within the process.
62. The assessors acknowledge that UHI will require six months to develop and implement full and robust documented procedures, taking into consideration the recent changes in structure. However, given the importance of ensuring that early progress is made in this area, the assessors expect UHI to provide an interim update one month from issue of this report, with an overview of the content of the policy and procedures, identifying who will be responsible for their development and implementation and incorporating a timetable for that development and implementation. An indication of how the content of these documents will be disseminated across the organisation should also be included.
63. The assessors also recommend that UHI reviews its current standard contract clause relating to FOI, to ensure that adequate distinction is made between confidentiality (which should not be the subject of an all-embracing undertaking) and commercial sensitivity and that appropriate reference is made to the EIRs. In reviewing its current text, UHI should take account of the relevant sections of the Section 60 Code of Practice.<sup>5</sup>
64. Finally, in relation to UHI's standard template letter for responding to requests, this should be reviewed and updated to reflect changes to UHI's FOI structure and practices. In the longer term, consideration should be given to developing standard text for where requests are not being complied with.

## Review process

65. Neither FOISA nor the EIRs are prescriptive about the form of review that should be undertaken following a request for review.<sup>6</sup> Under FOISA, a review may confirm the original decision, with or without modifications, substitute a different decision for it, or reach a decision where none has previously been taken. For environmental information, the authority must review the matter to decide whether it has complied with the EIRs, and where it finds a breach, immediately take steps to remedy this.
66. The updated Section 60 Code of Practice on FOISA and the EIRs provides guidance on the review process. It provides that:
  - authorities should put in place appropriate and accessible procedures for handling reviews, which are fair, impartial and should enable different decisions to be taken if appropriate
  - the procedures should be straightforward and capable of producing a determination of the review promptly, handled by staff that were not involved in the original decision, if possible, and allow the matter to be considered afresh

<sup>5</sup> Section 60 Code of practice Part 2: Recommended good practice 4. The disclosure of information relating to Contracts or Procurement Processes

<sup>6</sup> Section 12 (Review by Scottish public authority) of FOISA and regulation 16(Review by Scottish public authority) of the EIRs



- the reviewer should record the process undertaken when conducting a review and produce a review report in order that the authority can learn from good/bad practice identified.
67. On conclusion of a review,<sup>7</sup> the authority must inform the applicant of what it has done and state its reasons for doing so. This notice must also explain the right of application to the Commissioner and subsequent right to make an appeal against the Commissioner's decision to the Court of Session.<sup>8</sup> The EIRs similarly require the authority to notify an applicant of the outcome of the review. Although there is no equivalent statutory provision requiring notification of the rights of appeal, the updated section 60/62 Code of Practice indicates that it is good practice to do so.
68. The assessors were informed by UHI that it had only received one request for review since FOISA came into effect in 2005. Additionally, UHI does not currently have any documented procedure in place for the conduct of reviews. Indeed, it was noted by the assessors that there was no clear guidance as to who within the organisation has responsibility for carrying out reviews. The assessors noted that the Head of HR carried out UHI's only recorded FOI review to date, at the end of 2011.
69. It was also noted by the assessors that until recently there was no logging, tracking or monitoring system in place in relation to reviews, although a section for reviews was incorporated into the recently set up excel spreadsheet used to log and track requests. There is no standard documentation for responding to a request for review
70. UHI's failure to identify roles and responsibilities with respect to the review process, along with its failure to put in place a documented procedure, were recognised in the internal audit report.
71. Conclusions and recommendations: UHI has little to build on with respect to its arrangements for the conduct of reviews. In the circumstances, the assessors recommend that UHI firstly identifies a member of staff who will be primarily responsible for the conduct of reviews. UHI must ensure, however, that suitable cover is in place to ensure that the review process is not impeded should that member of staff be unavailable or experience a conflict of interest. Designated substitute reviewers will be required.
72. Following identification of a suitable member of staff, appropriate training should be given to that member of staff, to ensure that he/she can conduct a robust and independent review in line with the requirements of the legislation and Section 60 Code of Practice. Appropriate training will also require to be provided to any member of staff with responsibility for substituting for the reviewer.
73. UHI should also develop and implement a documented review procedure, which will assist staff involved in reviews. This procedure could be a stand-alone document, or could be incorporated into the request handling procedures to be developed in line with the previous section of this report. UHI should also ensure that it has a robust and effective logging, tracking and monitoring system in place to ensure that it can manage and report on reviews effectively (again, this could be incorporated within any equivalent procedure developed for managing requests).

<sup>7</sup> Section 21(5) of FOISA

<sup>8</sup> Section 21(10) of FOISA



74. The assessors also recommend that UHI sets up a standard response letter template for reviews. This template should include details of the requester's right to apply to the Scottish Information Commissioner within six months of receipt of the response from the authority, should they be dissatisfied with the outcome of the review. Reference should also be made to the requester's right to appeal to the Court of Session on a point of law only, following a decision from the Scottish Information Commissioner.<sup>9</sup>
75. As with the recommendation relating to the development and implementation of FOI policies and procedures, the assessors expect UHI to provide an interim update one month from issue of this report, identifying who has been allocated responsibility for the conduct of reviews and including an overview of what will be included within the review procedures, who will be responsible for their development and implementation, and the anticipated timescale for that development and implementation.

### Records management and searching

76. It is essential to successful request handling that an authority is able to identify and retrieve the information it holds on receipt of a request. As an organisation, UHI has a variety of systems in place for recording and holding information: although a considerable proportion of information is maintained electronically, it also holds information in paper format. Following various interviews, the assessors were satisfied that UHI has staff in place with the required skills to ensure that adequate searches are being carried out to identify and locate all information which would fall within the scope of a request.
77. Currently, UHI does not have an organisation-wide records management policy or processes in place. Individual departments have responsibility for defining and implementing their own records management arrangements, including records retention schedules. This was identified as a key area of concern in the internal audit report, where it was acknowledged that the current approach UHI takes in relation to records management could have a negative impact on the organisation's ability to efficiently and effectively respond to information requests.
78. It was explained to the assessors that work was under way with a view to addressing these concerns. As has been noted above, UHI has recruited an Intranet and Records Officer (IRO) to take forward the changes it wants to make to its records management arrangements. UHI also confirmed that it is introducing in 2012 a "shared electronic area" into which records should be saved. During the implementation of this new "area", file naming and document retention guidance will also be developed and rolled out across the organisation. The assessors were also advised that UHI is to implement a browser-based collaboration and document management platform, which will assist in the standardisation of records management processes. UHI confirmed that it had been allocated appropriate funding for the implementation of this system in 2012.
79. The role of the IRO was discussed, and the assessors welcomed UHI's commitment to developing its records management policy and processes going forward. It was noted that the IRO's duties would include the following key areas:

<sup>9</sup> Part 4 Enforcement, section 56 of FOISA



- To develop and maintain the executive office records depository file structure
  - To provide guidance and training to staff in the use of the records depository
  - To produce documentation and instructional materials for the use of the records depository
  - To ensure compliance with the agreed protocols and standards that are to be set
  - To consult on potential developments and improvements to the records depository and to produce proposals for future development.
80. Conclusions and recommendations: The move to a more corporate approach to records management should yield a number of benefits to the organisation, and should in particular allow the organisation to deal with requests for information more efficiently and effectively. The recruitment of an individual to take forward these plans is acknowledged by the assessors as a positive first step.
81. The assessors once again endorse the findings and recommendations noted in the internal audit report in this context. The assessors acknowledge that the implementation of all UHI's objectives in relation to records management will take time, but it is important that UHI has, at the end of the compliance period (six months from issue of this report), put in place arrangements to meet certain key requirements of the Scottish Ministers' Code of Practice on Records Management by Scottish Public Authorities under FOISA (the Section 61 Code). These should include, as a minimum, the establishment of adequate organisational arrangements, a full and robust records management policy and current and relevant retention schedules.

## Publication scheme

82. Section 23 of FOISA provides that a Scottish public authority must adopt and maintain a publication scheme which is approved by the Commissioner. UHI adopted the Universities Scotland Model Publication Scheme (MPS), adapting it to its own specific requirements. The Commissioner approved UHI's publication scheme in March 2009 and it is due for renewal in June 2013.
83. In consultation with the Commissioner's Policy and Information Team (P&I Team), the assessors noted a number of fundamental areas of concern with the current publication scheme (and particularly the extent to which it reflected the model it purported to adopt) and it was further noted that UHI's own internal audit had identified a number of these areas.
84. Conclusions and recommendations: Due to the number of areas of concern identified, and with a view to assisting UHI in reviewing its current publication scheme effectively, the Commissioner's Head of Policy and Information will write to UHI outlining the issues identified with its publication scheme in detail. UHI will be asked to review the scheme and ensure that it is brought into line with the requirements of the MPS.
85. The assessors recommend that UHI undertakes a thorough review of its publication scheme. In the light of that review, UHI should revise its scheme to ensure consistency with the Universities Scotland Model Publication Scheme that it has adopted. The revised scheme should be submitted to the Head of Policy and Information for verification that all outstanding issues have been addressed.

## UHI and its relationship with its academic partners



86. As noted elsewhere, UHI comprises 13 colleges and research institutions stretching across the Highlands and Islands of Scotland. Each academic partner is a separate legal entity and each has in place its own separate FOI arrangements. Discussions with UHI revealed that currently there is no central collection of FOI data and there are no formal arrangements in place with respect to the sharing of good practice.
87. While there are no documented arrangements in place, UHI's understanding is that requesters seeking information it does not hold, but which it believes is held by one of its partners, are advised to submit a fresh request to the relevant partner. No evidence of this was identified in the course of the assessment, however, and it does not appear to be UHI's practice to check whether the information is in fact held by the relevant partner. There was no clear understanding of what would happen should one of the academic partners receive a request more properly directed to UHI. Given the close formal and working relationships among UHI and its partners, this degree of lack of clarity or common understanding did not appear helpful, leading to questions as to whether UHI and the partners were adequately fulfilling their responsibilities under section 15 of FOISA (duty to provide advice and assistance).
88. The assessors highlighted to UHI the benefits that could be achieved through greater communication between it and its academic partners in relation to FOI. Currently, each relevant academic partner has a key FOI contact. Informal discussions between these individuals appear to take place from time to time, but more regular, structured liaison would allow for the sharing of good practice, which should (for example) lead to a more consistent approach to dealing with requests across UHI and its "extended family" of partners.
89. Conclusions and recommendations: The assessors recommend improved liaison on FOI matters between the University and its academic partners, both to allow active knowledge sharing to take place and to ensure that a common approach is taken to requests which require redirection as highlighted above. Written agreement should be pursued among the partners, in respect of the latter point at least, to include provision for formal transfer of requests should the EIRs be engaged.

## Conclusions and summary of recommendations

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90. In conducting this assessment, the assessors have noted a number of areas of concern in relation to UHI's arrangements for dealing with requests for information. However, it was also evident to the assessors in the lead up to the assessment and during meetings and interviews with key staff that there is both an acknowledgment of the issues and a desire to put measures in place to rectify any shortcomings in practice.
91. The assessors noted that there had been a significant lack of focus on adequate FOI performance at all levels within the organisation. This, coupled with the failure of the organisation to clearly define and allocate roles and responsibilities, and its failure to implement robust monitoring and performance management processes, has effectively hindered UHI's ability to manage its FOI obligations corporately.



92. The assessors acknowledge UHI’s decision to carry out an internal audit of its FOI arrangements prior to notification of the Commissioner’s intention to conduct an assessment. As has been noted in this report, the assessors endorse the findings and recommendations contained within the internal audit report. The focus of the Commissioner’s assessment report, therefore, is on additional areas of concern identified in the course of this assessment, along with additional comment on address matters of particular concern, rather than simply revisiting the areas covered by the internal audit report. Given the importance attached to some of the recommendations contained in this report, UHI has been requested to provide the Commissioner with an interim update, one month from issue of this report, detailing the progress made with respect to these key areas of concern.
93. Comprehensive details of the recommendations made are to be found in the body of this report. Where recommendations have been made (these are summarised in the table below), it is recommended that UHI develops an action plan to address these areas. This action plan should be implemented in conjunction with UHI’s own internal audit action plan as referred to in this report.

### Recommendations

Priority	Immediate action required (within one month)
Recommendation Number	
1 (paragraphs 28 and 29)	<p>That UHI writes to each of the requesters from the academic year 2010/11 who have never received a response to their request, asking in the first instance if they wish to pursue their request. Where UHI receives notification from a requester that they wish to pursue their request, UHI should then respond in full and in line with the requirements of FOISA/the EIRs.</p> <p>UHI should provide an interim update one month from the date of this report, confirming initial contact has been made or explaining why not.</p>
2 (paragraph 20)	<p>That UHI review its internal FOI audit action plan to ensure that revised timescales for completion are set at the Audit Committee meeting in March 2012. Each action point should also be revisited to ensure that responsibility for completion has been allocated to the most appropriate member of staff.</p>
3 (paragraphs 37 and 38)	<p>That UHI formalises its administrative arrangements for dealing with FOI requests, and in particular the definition and allocation of key FOI roles and responsibilities within the organisation.</p> <p>UHI should provide an interim update one month from the date of this report, detailing the progress that has been made in relation to this specific recommendation.</p>
4 (paragraph 64)	<p>That UHI reviews and updates its standard template letter for responding to requests to reflect the changes to its FOI arrangements.</p>



Priority	Medium term action to be completed within three months
Recommendation Number	
5 (paragraphs 44 and 45)	<p>That UHI puts in place robust logging, tracking and monitoring systems to deal with the FOI requests, with an effective system for the retention of all documentation relating to individual cases (enabling the identification of final versions of any communications issued by UHI).</p> <p>UHI should provide an interim update one month from the date of this report, detailing the progress that has been made in relation to this specific recommendation.</p>
6 (paragraph 63)	<p>That UHI review its current standard contract clause in relation to FOI, in line with paragraph 63 of this report.</p>
7 (paragraphs 71 – 75 inclusive)	<p>That UHI identifies a member of staff who will be primarily responsible for the conduct of reviews, along with suitable cover to ensure that the review process is not impeded should that member of staff be unavailable or experience a conflict of interest.</p> <p>That appropriate training is given to all designated reviewers and substitutes, to ensure that they can conduct a robust and independent review in line with the requirements of the legislation and Section 60 Code of Practice.</p> <p>That UHI develops a documented review procedure, with a robust and effective logging, tracking and monitoring system to ensure that it can manage and report on reviews effectively.</p> <p>That UHI develops a standard response template for reviews, which details all the relevant rights afforded to requesters under the legislation.</p> <p>UHI should provide an interim update one month from the date of this report, outlining who will be responsible for the conduct of reviews, an overview of what will be included within the review procedures, who will be responsible for their development and implementation and the anticipated timescale for that development and implementation.</p>

Priority	Action to be completed within six months
Recommendation Number	
8 (paragraph 20)	<p>That UHI fulfills all the recommendations contained within the internal audit action plan within six months from the date of this report.</p>
9 (paragraphs 52 – 54 inclusive)	<p>That UHI conducts FOI awareness training for all staff within the organisation, to ensure that they can both identify requests and pass them on to the appropriate individual to deal with. This training should also provide an overview of both</p>



	<p>FOISA and the EIRs, and additionally an update on the changes to FOI practice being implemented by the University.</p> <p>In-depth training should be provided to the Committee Secretary and Intranet and Records Officer, as the members of staff with key responsibility for dealing with FOI requests on a day-to-day basis, to impart a working knowledge of the EIRs as well as a more comprehensive understanding of FOISA.</p> <p>UHI should provide an interim update on progress with this recommendation, one month from the date of this report. This should demonstrate how UHI intends to implement the required training, and in particular should provide an overview of what training will be undertaken, who will receive the training, who will deliver the training and the timescales involved.</p>
10 (paragraphs 61 and 62)	<p>That UHI develops a robust FOI policy and supporting procedures, which should take into consideration all the recommendations made in its internal audit report and this report. The procedures should provide for dealing with requests for environmental information and should clearly identify the chain of responsibility for dealing with FOI at all stages within the process.</p> <p>UHI should provide an interim update one month from the date of this report, with an overview of the content of the policy and procedures, who will be responsible for their development and implementation, the anticipated timescale for that development and implementation and how they will be disseminated across the organisation.</p>
11 (paragraph 81)	<p>That UHI puts in place, as a minimum, adequate organisational arrangements for records management, a full and robust records management policy, and current and relevant retention schedules.</p>
12 (paragraph 85)	<p>That UHI undertakes a thorough review of its publication scheme. In the light of that review, UHI should revise its scheme to ensure consistency with the Universities Scotland Model Publication Scheme that it has adopted. The revised scheme should be submitted to the Head of Policy and Information for verification that all outstanding issues have been addressed.</p>
13 (paragraph 89)	<p>That UHI instigates improved liaison on FOI matters with its academic partners, both to allow active knowledge sharing and to ensure that a common approach is taken to requests which require redirection as highlighted above (with written agreement on the latter point).</p>

94. The assessors consider that all steps which require to be taken in relation to these recommendations can reasonably be completed within a period of six months, and they are aware that UHI has already taken steps to address some of the recommendations.
95. A copy of the action plan prepared by UHI, setting out the actions it has taken and intends to take to satisfy the recommendations in this report is attached at Appendix 1.



96. At the end of the six month period (from the date of publication of this assessment) the Commissioner will ask the UHI to submit a report to him explaining the measures put in place to address the issues identified in the assessment and the outcomes of the action plan. Following receipt of this report, the Commissioner may seek a follow-up meeting with the UHI to discuss progress and any outstanding issues.

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**Alistair Rennie**  
**Freedom of Information Officer**

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**Elaine Moffat**  
**Freedom of Information Officer**

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**Euan McCulloch**  
**Deputy Head of Enforcement**

Report approved by:

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**Rosemary Agnew**  
**Scottish Information Commissioner**

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