



Scottish Information
Commissioner

Freedom of Information Annual Report 2010



INFORMATION
IT'S IN YOUR
HANDS

An enhanced version of this Annual Report,
including video footage, interactive tables, infographic
and supporting statistics, can be viewed online at:

www.itspublicknowledge.info/inyourhands

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2010 – At a glance



- 🕒 **408** applications to the Commissioner were received, from individuals seeking information on a wide range of issues.
- 🕒 We closed **456** cases. 249 were closed with decision, 50% more than in 2009.
- 🕒 We answered **1,733** enquiries, a 12% increase on 2009 and a 38% increase on 2007.
- 🕒 **61%** of the cases we closed in 2010 were closed within 4 months. 88% of cases were closed within 9 months, and 96% within 12 months.
- 🕒 **74%** of applications to the Commissioner were received from members of the public.
- 🕒 **14** assessments of public authority practice were carried out.
- 🕒 **1,625** stakeholders subscribe to our newsletter.
- 🕒 We delivered **33** presentations on Freedom of Information rights, to a wide range of audiences.
- 🕒 We had over **72,500** different visitors to our website, with an average of over 6,000 visitors per month.

Commissioner's 2010 Review



2010 saw the issuing of my 1000th decision; the first formal Practice Recommendation being issued to an authority; and our promotion of the 5th anniversary of the Freedom of Information Act won national awards.

New milestones

In July 2010 a milestone was reached when I issued my 1000th decision, a figure which totalled 1,188 by the end of the year. Perhaps contrary to expectations, the number of cases which required to be closed with a formal decision last year rose to nearly 250, a 50% increase on the previous year, even though the number of applications made to me have not risen.

Given the nature of these contested cases, increasingly the outcome of my decisions neither wholly favours the applicant or the authority but instead, in 41% of cases in 2010, I partially found in favour of both. It is important not to overlook the fact that in 12% of the cases we investigated, a formal determination was not required as my staff negotiated a settlement, often with the authority agreeing to release some or all of the information and, in return, the applicant withdrawing their appeal.

New challenges

Whilst the freedom of information regime in Scotland is clearly maturing, the interpretation of the law continues to be tested. I was concerned at the beginning of 2010 that the Scottish Government and a small number of other authorities were taking a highly restrictive view as to what constituted a valid request for information, with many requests to those authorities being refused simply because the requester had asked for a document or a copy of correspondence. However, in the course of the year my decisions on this issue have not been challenged and, for the most part, applicants are not now being refused information on this basis.

A number of my decisions dealt with prominent matters including: the compassionate release of Abdelbaset Ali Mohmed al-Megrahi; the Edinburgh tram scheme; and exchanges between the First Minister and US Secretary of State Hillary Clinton.

My role as Commissioner is also to promote good practice by authorities and to increase awareness amongst the public of their right to information, and there were notable developments in both areas.



Improving practice

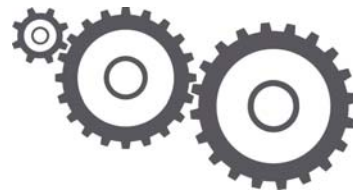
I established a small team of staff to carry out assessments of public authorities' compliance with FOI e.g. making sure that authorities appropriately recognise requests; that they respond on time; that they charge fees appropriately; and that they have sound procedures for finding the information that is requested. In 2010 all 14 authorities selected for assessment cooperated fully and have implemented an agreed voluntary action plan to improve practice. In one case I decided to issue a formal Practice Recommendation and the authority in that case has since gone on to make significant improvements.

Raising awareness

So far as public awareness is concerned we have a very limited budget, but we have made good use of it. Our promotion of the right to know, to mark the 5th anniversary of Freedom of Information in Scotland, was covered extensively on TV and radio news programmes, and national and local newspapers, whilst video clips ran on the The Scotsman website. The campaign won Gold in the Public Sector category in the Chartered Institute of Public Relations annual 'PRide' Awards and took Silver in the overall Best Use of Media Relations category.

Kevin Dunion

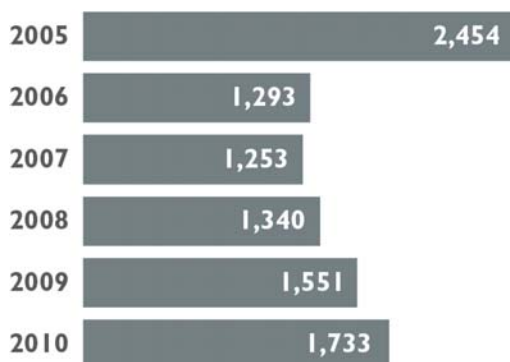
Kevin Dunion
Scottish Information Commissioner



Our Performance - Enquiries

The Commissioner's staff provide advice and guidance to anyone seeking further information on the operation of Scotland's FOI laws – from advising the public on how to make an FOI request, or telling them what to do if information is refused, to supporting public authorities with the appropriate interpretation of the law.

TOTAL ENQUIRIES* BY YEAR 2005-2010



*Excludes information requests to the Commissioner.

Almost 10,000 enquiries have been received since FOI came into force in 2005, with the majority being made by members of the public.

A particularly large number of enquiries were received in 2005, in response to promotional activity announcing the arrival of FOI in Scotland. Following a subsequent drop in numbers, volumes have risen steadily over the last four years, with 2010 seeing a 12% increase on the preceding year, and a 38% increase on 2007.

The majority of the 1,733 enquiries received during 2010 have been from members of the public, seeking advice and guidance on how to use the FOI right effectively.

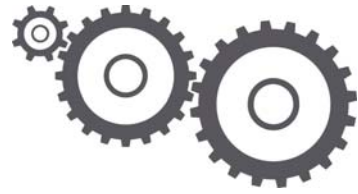
Staff within Scottish public authorities also accounted for one fifth of our enquiries in 2010, commonly seeking guidance on the interpretation and implementation of Scotland's FOI law.

2010 also saw a 62% increase in the number of enquiries received from the voluntary sector, from 50 in 2009 to 81 in 2010. This follows work by the Commissioner's staff to raise awareness of the FOI right within the sector.

TOTAL ENQUIRIES BY TYPE OF ENQUIRER 2010



1 Adult	60%
2 Public authority	20%
3 Media	8%
4 Voluntary/campaign organisation	5%
5 Private/commercial enterprise	4%
6 Solicitor	2%
7 Elected representative	1%



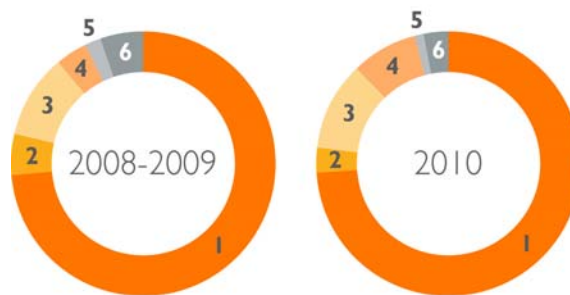
Our Performance - Applicants

The overwhelming majority of the 408 applications received during 2010 were, once again, made by ordinary members of the public, seeking to access information on issues relevant to their daily lives.

2010 also saw a significant increase in the number of applications made by commercial organisations. It is worth noting, however, that this increase was primarily due to the activities of one company, which submitted more than half of the 34 applications made by commercial organisations over the year.

There was also a decline in the proportion of appeals received from elected representatives, down from 5% across 2008/2009 to 3% in 2010.

APPLICANTS BY TYPE 2008-2009 AND 2010

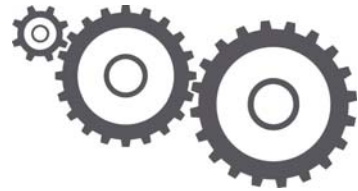


	2008-09	2010
1 Adult	73%	74%
2 Elected representative	5%	3%
3 Media	10%	11%
4 Private/commercial enterprise	4%	8%
5 Solicitor	2%	1%
6 Voluntary/campaign organisation	5%	3%

A broad right

Applications were made in relation to a wide range of subjects during 2010, reflecting the huge range of issues that can lead people to make use of their FOI rights. For more details on the subject matter of the applications received by the Commissioner, or to watch video footage of FOI requesters talking about their experience of using the legislation, visit:

www.itspublicknowledge.info/inyourhands



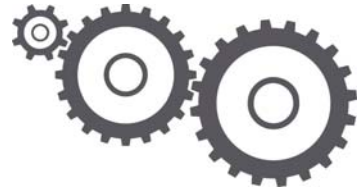
Our Performance – Overview

Case disposal by stage 2008-2010*

	2008	2009	2010
	Number of cases	Number of cases	Number of cases
Brought forward from previous year:	183	130	165**
New applications:	367	421	408
Total caseload:	550	551	573
Cases closed without investigation:			
Frivolous or vexatious	0	0	0
Premature or out of time	17	18	17
Withdrawn or abandoned	19	11	11
Settled	0	0	0
Excluded under s48	10	7	7
Insufficient detail to investigate	20	11	7
Body not covered	18	6	5
No request for review made	34	35	40
No request to public authority	7	28	11
Other deficiency	0	1	0
Sub-Total:	125	117	98
Cases closed during investigation:			
Withdrawn or abandoned	51	59	64
Settled	65	41	44
Frivolous or vexatious	2	1	1
Other	3	2	0
Sub-Total:	121	103	109
Cases closed with decision:			
For applicant	37	55	61
For authority	83	57	85
Partially upheld	54	54	103
Sub-Total:	174	166	249
Total cases closed:	420 (76%)	386 (70%)	456 (80%)
Total cases carried forward to next year:	130 (24%)	165** (30%)	117 (20%)

*This table displays data from 2008-2010. Data from previous years is available in our 2009 Annual Report at www.itspublicknowledge.info/ask.

**Approximately one quarter of the 2009 cases carried forward were done so as a result of cases being set aside pending the outcome of appeals to the Court of Session in 2010.

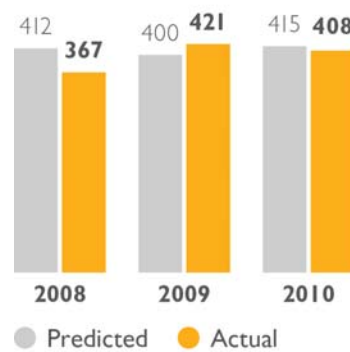


Freedom of information gives you a right to the information held by Scotland's public authorities. If you are unhappy with the way in which an authority deals with your request for information, you can bring an application to the Scottish Information Commissioner.

On receipt of a valid application, the Commissioner will investigate, and will require the release of information if he finds that it has been wrongly withheld.

The volume of applications received during 2010 was broadly consistent with our predicted applications over the year, with 98% of forecast applications being received. There was a 3% decrease on 2009, where the actual number of applications significantly exceeded the forecast volume.

**TOTAL NEW APPLICATIONS
2008-2010**



The number of cases closed without investigation continued to decline over the year, with a drop of 16% on 2009 figures. This suggests that there is an increasing awareness among applicants of the FOI appeal process, with fewer applicants making invalid appeals e.g. by failing to fulfil the requirements for an application set out in section 47(2) of the FOI Act.

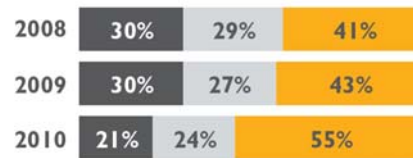
There was also a significant increase in the volume of decisions issued by the Commissioner during 2010, with 50% more decisions issued this year than in 2009. The specific nature of the applications considered by the Commissioner over the year resulted in proportionally fewer cases closing prior to decision.

**% APPLICATIONS
BY LEGISLATION 2008-2010**



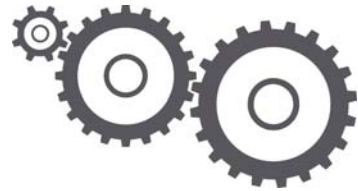
● FOISA ● EIRs

**CASES CLOSED –
% BY OUTCOME 2008-2010**



● Without investigation
● During investigation
● Closed with decision

An increasing proportion of applications in 2010 were made in relation to the Environmental Information (Scotland) Regulations 2004 (the EIRs). The EIRs sit alongside Scotland's FOI Act, and provide similar rights of access to the environmental information held by public authorities and other bodies.



Cases closed without decision

REASONS FOR CLOSURE WITHOUT INVESTIGATION 2008-2009 AND 2010



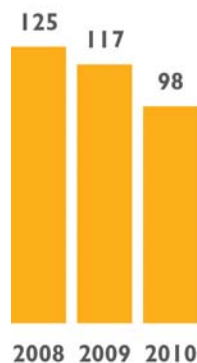
	2008-09	2010
1 Premature or out of time	14%	17%
2 Withdrawn or abandoned	12%	11%
3 Excluded under s48*	7%	7%
4 Insufficient detail to investigate	13%	7%
5 Body not covered	10%	5%
6 No request for review made	29%	41%
7 No request to public authority	14%	11%

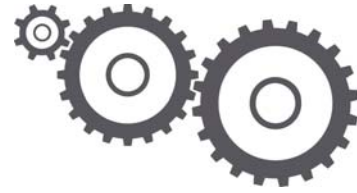
*Section 48 excludes applications being made to the Commissioner in relation to certain bodies, including the Commissioner himself, a procurator fiscal and, in certain circumstances, the Lord Advocate.

The number of cases closed without investigation reduced by 16% compared to 2009 figures. This suggests that there is an increasing awareness among applicants of the FOI appeal process, with fewer applicants making invalid appeals.

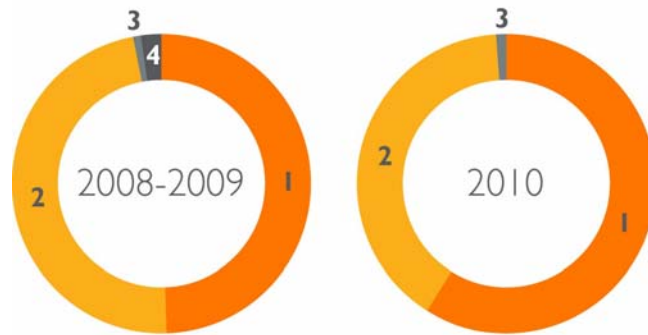
Where cases are closed without investigation the applicant will, in most cases, have failed to fulfil the steps that they are required to take before the Commissioner can investigate. In such cases, the Commissioner's staff will provide the applicant with advice and guidance to help them reach the stage where a valid application can be brought.

NUMBER OF APPLICATIONS CLOSED WITHOUT INVESTIGATION 2008-2010





APPLICATIONS CLOSED DURING INVESTIGATION 2008-2009 AND 2010



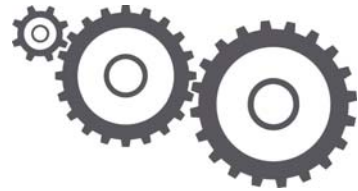
	2008-09	2010
1 Withdrawn or abandoned	49%	59%
2 Settled	47%	40%
3 Frivolous or Vexatious	1%	1%
4 Other	2%	0%

Most cases conclude with the Commissioner issuing a formal decision setting out his ruling on a case.

In some circumstances, however, cases will be closed during an investigation, most commonly because the applicant chooses not to go ahead with the case, and either withdraws or abandons it. Often this will be because the public authority has released the information following an application to the Commissioner.

Cases can also be ‘settled’ – that is, resolved through a more formal negotiation facilitated by the Commissioner’s staff. More information on settled cases is available on our online Annual Report at:

www.itspublicknowledge.info/inyourhands



Investigations performance

Cases Closed within 4 Months – 2008-2010

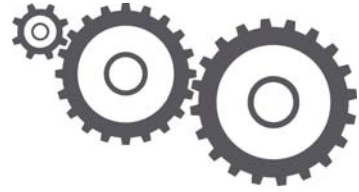
	2008	2009	2010
Cases closed without investigation:			
4 months or less	121	102	95
More than 4 months	4	15	3
Total cases closed	125	117	98
Cases closed during investigation:			
4 months or less	69	78	95
More than 4 months	52	25	14
Total cases closed	121	103	109
Cases closed with decision:			
4 months or less	36	53	87
More than 4 months	138	113	162
Total cases closed	174	166	249

Section 46 of the FOI Act requires that the Commissioner report to the Scottish Parliament on the number of occasions where a decision has not been made within four months.

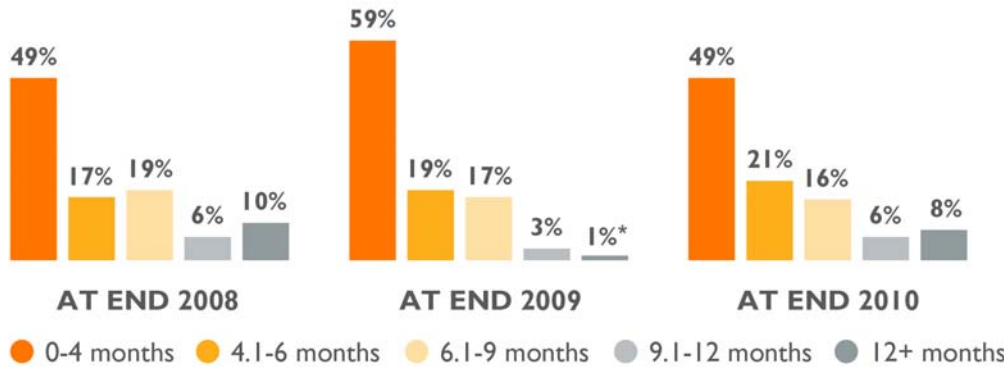
In 2010, 61% of the cases brought to the Commissioner were closed within 4 months, with 73% closing within 6 months and 96% of cases being closed within 12 months.

AGE PROFILE OF CASES CLOSED IN 2010 – % IN EACH AGE RANGE





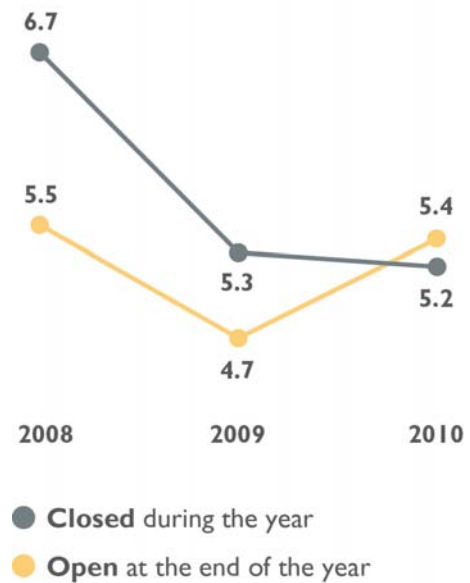
**AGE PROFILE OF CASES UNDER INVESTIGATION –
% IN EACH AGE RANGE 2008-2010**

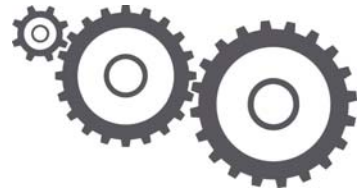


*In 2009 a small number of cases were excluded from this figure, having been set aside pending the outcome of Court Appeals. Cases which have been set aside in similar circumstances are included in the 2010 figure, as a result of a change in reporting practice.

At the end of 2010 there were eight cases under investigation which exceeded the twelve month period. Of these, three had been set aside during the year pending court rulings on related issues, while a further three cases were linked, originating from a single requester and relating to a similar issue.

**AVERAGE AGE (MONTHS) OF
OPEN AND CLOSED CASES
2008-2010**



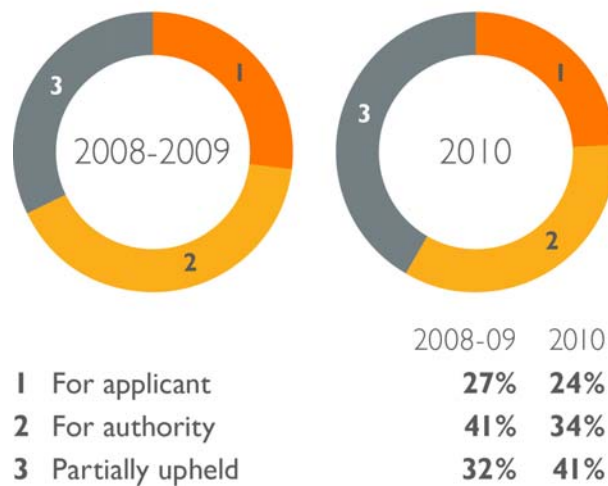


Our Performance - Decisions

In most cases, an investigation will conclude with the Commissioner issuing his formal decision in relation to the case, setting out what, if any, steps the public authority must take to comply with the FOI Act.

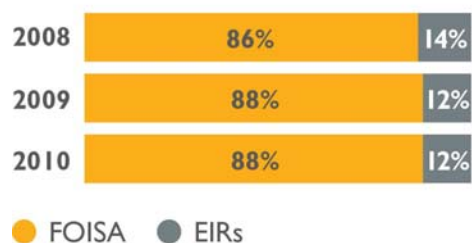
In 2010, the Commissioner closed 249 cases with decision, resulting in 221 formal decisions being issued.

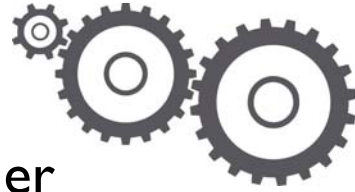
**CASES CLOSED WITH DECISION
- OUTCOMES - 2008-2009 AND 2010**



A greater proportion of appeals in 2010 have been partially upheld by the Commissioner. Partially upheld cases will often result in an authority being required to disclose some, but not all, of the information sought by a requester.

**% CASES CLOSED WITH DECISION
FOISA AND EIRs - 2008-2010**





FOI requests to the Commissioner

Information requests to the Scottish Information Commissioner 2008-2010*

	2008	2009	2010
Publication scheme enquiry	71	40	29
Requests for information held by the Commissioner (FOISA/EIRs)	72	131	157
Information provided in full	26	51	49
Information partially supplied	5	18	20
Information not supplied	6	9	17
Information not held by the Commissioner	35	53	71
Requests for review	2	2**	4
Subject access requests under the Data Protection Act	1	3	5

* This table displays data from 2008-2010. Data from previous years is available in our 2009 Annual Report.
** 2009 figure restated.

Responding to requests

FOI requires that all Scottish public authorities, including the Commissioner, respond to the information requests they receive. As well as an increase in enquiries about using the FOI right, 2010 also saw an increase in the number of people seeking information held by the Commissioner. Requests covered a wide range of issues, often seeking information held in relation to the investigation of cases.

In many cases, we did not hold the information sought. Where the information was held, however, we responded by releasing it in full in 57% of cases, partially releasing information in a further 23%.

Dealing with complaints

On occasion, the Commissioner may also receive complaints in relation to the service provided by his Office or his staff. Every complaint received by the Commissioner is investigated fully by a senior member of the Commissioner's staff.

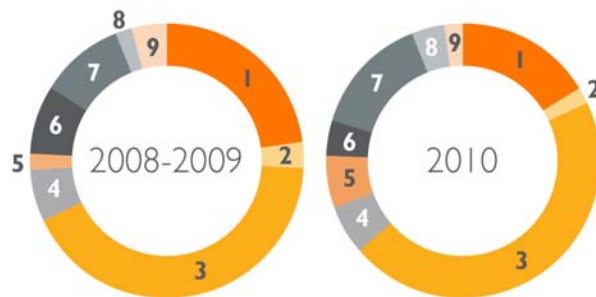
The Commissioner received five complaints during 2010. Of these, two were not upheld following investigation, two were partially upheld, and the last was withdrawn by the complainant.



The authority experience

Applications can be made to the Commissioner where a requester is unhappy with the way that a Scottish public authority has dealt with an information request. Applications can be made in relation to any public authority that is covered by the FOI legislation.

APPLICATIONS TO THE COMMISSIONER BY SECTOR 2008-2009 AND 2010



	2008-09	2010
1 Ministers, the parliament	23%	16%
2 Non-ministerial office holders	3%	2%
3 Local government	42%	45%
4 The National Health Service	6%	6%
5 Educational institutions	2%	6%
6 Police	8%	4%
7 Other public authority	10%	14%
8 Publicly owned companies	2%	4%
9 Other body*	4%	2%

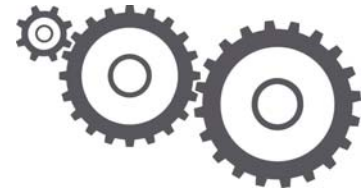
*The 'Other body' classification includes applications made in relation to bodies that are not covered by FOI, along with bodies that do not fall within the scope of the FOI Act, but may be covered by the EIRs.

Applications by sector

Applications relating to local government bodies continued to dominate the Commissioner's caseload.

There was a reduction in the proportion of applications received in relation to central government bodies (i.e. the Scottish Ministers and Scottish Parliament) during 2010, and in relation to Scotland's police forces.

Alongside this, there was a significant rise in the proportion of applications received in relation to educational institutions (higher and further education bodies). This figure rose threefold, with 24 applications received in 2010 compared to eight in 2009.



Financial overview

Financial Overview 2009-2010

Analysis of Expenditure

	Year Ended 31/03/2009 (restated)			Year Ended 31/03/2010		
	£000s	%	% of Total Expenditure	£000s	%	% of Total Expenditure
Staffing Costs	1,111	100%	69%	1,158	100%	68%
<i>Operating Costs</i>						
Administration* (1)	334	21%	21%	377	22%	22%
Travel Expenses	12	2%	1%	14	1%	1%
Property**	74	5%	4%	75	4%	5%
Audit	16	1%	1%	17	1%	1%
Depreciation	43	3%	3%	34	2%	2%
Notional Cost of Capital	9	1%	0%	6	0%	0%
Operating Costs	488	31%	30%	523	31%	31%
* including advertising costs, research, publications and promotion						
** including rent and rates						
Total Operating Expenditure	1,599		99%	1,681		99%
<i>Capital Expenditure</i>						
Fixed Assets:						
IT Systems	13	1%	1%	11	1%	1%
Fixtures & Fittings	0	0%	0%	0	0%	0%
Buildings	7	1%	0%	0	0%	0%
Intangibles:						
Other	3	0%	0%	2	0%	0%
Capital Expenditure	23	2%	1%	13	1%	1%
Total Expenditure	1,622		100%	1,694		100%
<i>Summary</i>						
Staffing Costs	1,111		69%	1158		68%
Operating Costs (1)	488		30%	523		31%
Capital Expenditure	23		1%	13		1%
Total Expenditure	1,622		100%	1,694		100%

(1) Includes legal costs of £128,000 (2009-10: £92,000) incurred in defending Appeals to the Court of Session
Full accounts, audited by Grant Thornton UK LLP, are available at www.itspubliknowledge.info

For more information visit www.itspubliknowledge.info/home/AboutSIC/FinancePerformance.asp



The user experience

The Commissioner closed 249 cases with a decision during 2010. Details of a small selection of these cases are provided in the following pages. More information on particular cases investigated during 2010, along with links to all the decisions issued over the course of the year are available at:

www.itspublicknowledge.info/inyourhands

Complex cases

The Commissioner's caseload involved requests for information on a wide range of issues. Alongside this, there is an enormous range of possible variables in cases: the subject of the information requested; the format in which it was requested; the cost of providing the information; the wording of the request; the number of exemptions that have been cited; where the public interest lies; etc. The more variables involved in a case, the more complex it is likely to be.

2010 saw a number of particularly complex cases reach their conclusion.

...assessing the public interest

Following one of the most extensive investigations to date, the Commissioner issued his decision (Decision 109/2010) on a case brought by the family of Shirley McKie, who were dissatisfied with the response to requests for information made to the Scottish Government. Ms McKie is a former police officer who, as a result of fingerprint evidence, was wrongly accused of perjury. A public inquiry into the case is ongoing at time of publication of this report.

The Commissioner's investigation into this case was particularly complex, involving information contained in over 630 individual documents, and the consideration of ten separate FOI exemptions that had been applied by the authority. Following his investigation, the Commissioner ordered the release of new information from 131 of the documents.

The case involved careful consideration of the public interest arguments around the release of the information. While the balance of the public interest favoured the release of some information, the Commissioner also found that it supported the non-disclosure of information in circumstances where the release may have harmed the administration of justice. The Commissioner noted, however, that, had he found evidence of wrongdoing by the authority, the public interest outcomes in this regard may well have been different.

...the first appeal

The first appeal made to the Commissioner following the introduction of FOI in 2005 has also proved to be the most protracted. The Commissioner issued his first decision on the case - which involved a request for information on the incidence of childhood leukaemia in Dumfries and Galloway - in August 2005. This decision required the Common Services Agency for the Scottish Health Service (the CSA) to release statistical information in a format which disguised the identity of individual children.

The CSA appealed the case to the Court of Session, but the Court did not accept that the statistics could potentially identify individual children and so the Commissioner's decision was upheld. The CSA then made a further appeal to the House of Lords which, in its ruling, remitted the case back to the Commissioner for further investigation.

In his new decision (Decision 021/2005), issued in May 2010, the Commissioner concluded that the statistics requested are sensitive personal data and are exempt from release. He directed the CSA, however, to provide Mr Collie with the statistics in a form that does not lead to identification i.e. aggregated for the whole of Dumfries and Galloway.

...an ongoing release

In some complex cases, the gradual release of information to the requester may also be a feature. One 2010 decision saw this happen in relation to the largest volume of documents considered in a single application. The case, which concerned information held by the Scottish Government relating to sites identified for a potential nuclear waste disposal repository, involved over 1,100 individual documents and, as in the McKie case above, multiple exemptions had been applied.

During the investigation, the Commissioner's staff worked with the requester and the authority to resolve matters informally as far as possible. For example, the volume of documents was reduced by identifying duplicate information. The authority also agreed to the Commissioner sharing summaries of the withheld information with the applicant so he could identify the specific files which were of interest to him, thus further reducing the number of documents under active investigation to 297.

The authority subsequently agreed to the disclosure of a significant volume of this information – in all, 260 previously withheld documents were released during the investigation. At the end of this process, the Commissioner's decision (094/2010) focused on the remaining 30 documents. In the decision, the Commissioner upheld the authority's reliance on exceptions in the Environmental Information (Scotland) Regulations as grounds for withholding the final part of the information.

The media experience

Some authorities, and particularly central government and the police, report that a high proportion of their FOI requests are made by the media. From our own experience, it seems that only a small number of these go on to become applications to the Commissioner. The reasons for this are not known, though the time-pressured environment in which journalists work may well be a factor – the information may be relevant only to a current story.

However, FOI continues to be valuable to journalists, particularly where they need to unlock information to match with research they have already gathered.

Applications from the media represent only a small proportion of the Commissioner's overall caseload, but the FOI experience of the media can often be different to that of other applicants. Media applications, for example, are less likely to 'settle' than other groups – i.e. where the Commissioner's staff succeed in working with both parties to informally resolve a case. 25% of 2005-2010 media applications were resolved in this way, compared to 34% of all applications.

An application from a member of the media is also more likely to result in a decision either in favour of the applicant or partially upheld than an application from any other group. Over the period 2005 to 2010, 26% of media applications resulted in a decision in favour of the public authority, compared with 39% of all applications.

...2010 media cases

Decisions issued in 2010 where the Commissioner has required the release of some, or all, of the information requested to a requester from the media have included:

- Payments to a chauffeur company by the Water Industry Commission
- Board minutes of Transport Scotland
- Travel and accommodation costs for the Council of Economic Advisers
- Information on the Scottish Government's commitment to increasing the number of police officers
- The total amount of money that NHS Lothian was trying to recoup following wrongful payments to dentists

Many of the stories relating to this information have already been published; others may be yet to come.

The appeals to the Commissioner are, however, only a small snapshot of the media's use of FOI. Rarely is there a day that the Scottish press or broadcast news does not feature a story generated by a freedom of information request. Journalists have played a significant role in Scotland's FOI story, not just by using the freedom of information right themselves, but also by demonstrating to the public how they can go on to make use of FOI in their own lives.

Settled cases

A significant proportion of the Commissioner's cases – 24% – are closed during the investigation, meaning that the Commissioner does not go on to issue a decision in relation to the case.

In some cases, an application will be closed because the requester chooses not to proceed with the case, and either withdraws or abandons it. This may, for example, happen if the public authority releases the information to the requester following the application to the Commissioner. There may also be cases where the Commissioner has issued decisions on a substantially similar matter in the past, and the Commissioner's staff are therefore able to discuss the likely outcome of the case with both parties, leading to either the release of the information by the authority, or the requester withdrawing their application.

Cases can also be 'settled' – that is, resolved through a more detailed negotiation between the authority and the requester, facilitated by the Commissioner's staff.

During the investigation of a case, the Commissioner's staff will assess whether settlement is both appropriate and achievable. Settlement will not be appropriate in every case, and a number of factors will be considered, including whether it is likely to lead to a faster resolution for the requester. Where settlement is possible, the outcome will often involve a compromise between the parties, although it will normally result in some sort of positive outcome for the requester. Often, this will be the provision of at least some of the requested information, but this will not be the case in every situation – sometimes a case may be settled through the provision of different information from that originally requested, or an authority might do something other than providing information to alleviate the requester's concerns.

In 2010, 109 cases were closed during the Commissioner's investigation, with 40% of these being formally 'settled'. Examples of 2010 cases closed during investigation include:

- a case where an authority had refused a request on the grounds of excessive cost (FOI allows requests which would cost the authority more than £600 to respond to, to be refused). During the investigation, the Commissioner's staff queried the high costs cited to respond to the request, following which the authority agreed to release the information;
- a case where an information request had been made to a local authority in relation to an ongoing complaint. The Commissioner's staff facilitated a meeting between the requester and the local authority. Following this meeting, relevant information was provided to the requester, who then withdrew the application;
- a case where an authority that had failed to acknowledge or respond to a request subsequently released all the information sought, following notification of the application to the Commissioner;
- a case where an authority had failed to appropriately respond to a request for information on senior staff expenses. The authority had provided some collated information, but this did not fulfil the terms of the request. The Commissioner's staff discussed this matter with the authority, notifying them that, in the particular circumstances, it was likely that the Commissioner's decision would require disclosure. The authority agreed to provide the information in full.



In their hands

Given the nature of the Commissioner's work, most of the FOI requests referred to in this report relate to cases where the requester has had an initial request refused by a public authority, and they have subsequently had to make an application to the Commissioner.

It is important to remember, however, that this is the exception, rather than the rule, and that the overwhelming majority of requests are answered first time, through the provision of information.

Only a small proportion of requests are referred to the Commissioner. The Commissioner is a safeguard, ruling on cases where the requester doesn't think the authority has dealt with their request appropriately. Most people who use FOI, however, receive the information they are looking for without any fuss - information which is then used to answer questions, resolve problems, and help people get to the heart of the issues that matter to them.

The following pages detail a small number of these 'typical' FOI experiences. More examples, along with video case studies of requesters, are available in our online Annual Report at:

www.itspublicknowledge.info/inyourhands

Raising awareness

The Learning Disability Alliance Scotland has been actively using its FOI rights for the past four years, gathering information on a range of topics to help it highlight the concerns of some of Scotland's most vulnerable people.

The Alliance, a coalition of organisations that support people with learning disabilities, was aware anecdotally that some people with learning disabilities were being inappropriately housed in care homes for the elderly - places that will often lack the specific skills or resources required to meet their particular needs.

It decided to conduct its own research on this issue, using FOI to gather data from public authorities to examine the true extent of the problem. The Alliance's subsequent report, 'Stuck', highlighted that over 800 people in Scotland with learning disabilities are being housed in this way. The research also found that over 300 of these people were aged under 65 – and some as young as 19 – while the average age of care home residents was approximately 85 years.

The Alliance has subsequently used the report to bring their concerns to the attention of a wide range of stakeholders, including local authorities, the Scottish Government, and the Care Commission. The group's campaign to end the practice of housing people with learning disabilities in care homes for the elderly continues.

To hear members of the Learning Disability Alliance Scotland talk about their experiences using FOI, visit:

www.itspublicknowledge.info/inyourhands

Campaigning for change

The A82 Partnership is an informal group of community members, local businesses, individuals and others, campaigning for the upgrading of the A82. The road is the main route connecting the West Highlands to the central belt, and is described by the group as the 'economic and social lifeline of the west of Scotland'.

The group were aware from personal experience that the road was frequently closed, causing significant disruption to those who rely on it. What they lacked, however, was factual information to support their case, and provide hard evidence of this disruption. That was where FOI came in.

Using their FOI rights, the group were able to discover that the A82 was closed at some point in one day out of every three, illustrating the negative impact on the individuals and businesses that rely on it.

The group found FOI easy to use, and were able to quickly access relevant, comprehensive and accurate information. This information has subsequently been put to use in their lobbying and campaign activity, and has been presented by the group to the Scottish Government.

The group have since gone on to have a number of successes, including having the road included in the list of transport projects to which the Government is committed in coming years.

To see footage of the A82 Partnership talking about their experiences, visit:

www.itspublicknowledge.info/inyourhands

Ensuring accountability

Alan Simpson made use of FOI following damage to his car as a result of potholes on a council-maintained road. When he lodged a complaint with his local council, he was informed that the road had recently been inspected, but that no defects had been found, and that no other complaints or claims in relation to the road in question had been received. The council informed him that it could not, therefore, be held responsible.

Alan questioned this response, and submitted an FOI request for details of inspections undertaken on the road. A response was received quickly, revealing that an inspection had, in fact, been carried out just prior to Alan's incident. This inspection had highlighted significant defects. In addition, the response to Alan's request also revealed that six reports of potholes on the road had been received by other members of the public in the weeks leading up to his incident.

Alan used this information to challenge the council's refusal to accept liability, and the council subsequently reversed its decision. It has since reimbursed Alan in full for the damage to his car.

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The Year Ahead

As I enter my last 12 months as Scottish Information Commissioner, many challenges remain.

It is important that the freedom of information regime meets its original aspirations and keeps up with international developments. Principal amongst these is ensuring that the right to know is protected and extended in those areas where public services are being delivered by different means. One of my statutory functions is to make proposals to Ministers for designation, so I was very disappointed when the Scottish Government announced in January 2011 that it would not, in this Parliament, bring within the scope of FOI those bodies which it had been minded to designate. These had included private prisons, local authority leisure trusts and the Association of Chief Police Officers in Scotland. The fact the powers to designate additional bodies have not yet been used runs contrary to the assurances which were given in the Scottish Parliament when the original legislation was passed nearly 9 years ago. The right to know is being eroded as public services are delivered by arms length bodies and, instead of leading the way on FOI, we are in danger of falling behind.

The Government has signalled its intention to bring forward an Amendment Bill to remedy some of the deficiencies which have become apparent such as the restricted timescale in which to bring prosecutions where an offence of altering or destroying a record to prevent disclosure occurs. It is also an opportunity to make welcome changes proposed by the Government such as reducing the period after which a record becomes a historical record to 15 years.

I will be contributing to the consultation, but am mindful that, if the Bill becomes a complete overhaul of the FOI regime, not only will necessary changes be delayed but less beneficial measures may also be proposed.

For my own part, I will carry into effect initiatives which are intended to reduce the burden of FOI compliance and speed up investigations. A single model publication scheme is being piloted, capable of being adopted by all authorities. This will remove the need for hundreds of bespoke schemes to be approved, and promote high common standards for the proactive publication of information.



Changes to our investigation procedures have also been signalled to all public authorities. These set out that my decisions will, in most cases, be taken on the basis of the initial submission that the authority makes to me. Authorities are therefore expected to make their case in full at the first time of asking. Where the authority claims that disclosure will be harmful, or will not be in the public interest, then the basis of that claim needs to be fully set out in their submission. This will reduce the time taken to investigate cases, and get information into the hands of requesters even more quickly where their appeal is upheld.

The Centre for Freedom of Information, our initiative with the University of Dundee Law School, has proven to be a valuable forum for professional deliberation of FOI law in practice, and new developments this year will include academic courses aimed at FOI practitioners. In addition, I will be publishing a handbook of Freedom of Information in Scotland through the auspices of Dundee University Press.

Kevin Dunion
Scottish Information Commissioner



The organisation

The Commissioner is supported by 23 staff members. The diagram below shows the composition of his team at the end of 2010.

Organisational structure

Scottish Information Commissioner Kevin Dunion		
Head of Enforcement Margaret Keyse	Head of Policy and Information Sarah Hutchison	Head of Operational Management David Lowrie
Deputy Heads of Enforcement Euan McCulloch Claire Sigsworth	FOI Officers (Policy and Information) Susan Gray Paul Mutch	Finance and Administration Manager Jann Wallace Administrators Kim Berry Liz Brown
FOI Officers (Enforcement) Alison Davies Julie Frew John Kelly Colin MacFadyen Avril Mills Elaine Moffat Andrew Phillips Alistair Rennie Jennifer Ross Claire Stephen Donald Thomson (Until December 2010) Jill Walker George Will		
Validation Officer Pauline Keith		

Scottish Information Commissioner

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