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## Glossary and abbreviations

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| Term used       | Explanation   |
|-----------------|---|
| FOI             | Freedom of Information  |
| FOISA           | Freedom of Information (Scotland) Act 2002  |
| EIRs            | Environmental Information (Scotland) Regulations 2004                                       |
| MiCase          | The Scottish Government's new FOI case management system                                    |
| Section 60 Code | Scottish Ministers' Code of Practice on the discharge of functions under FOISA and the EIRs |

# Introduction

One of my first actions as Scottish Information Commissioner was the launch of an intervention into the Scottish Government's freedom of information (FOI) practice. Prior to my appointment, a number of journalists had raised some serious concerns in a letter to the Scottish Parliamentary Corporate Body and these had been the subject of a Scottish Parliament debate on Motion S5M-06126 (as amended) on 21 June 2017.

Following a scoping period, during which additional submissions were sought from signatories to the journalists' letter, I wrote to the Minister for Parliamentary Business in February 2018, advising that my intervention would:

- (i) Assess the Scottish Government's FOI performance in light of serious concerns raised in the letter to the Scottish Parliamentary Corporate Body and in the Scottish Parliament's debate on Motion S5M-06126 (as amended) on 21 June 2017, and
- (ii) Where any of its practices were found to be deficient, require the Scottish Government to:
  - remedy any identified breach of FOI law, and
  - meet the minimum standards of good practice in the Ministers' Section 60 Code of Practice.

In June 2018, I published my report of the assessment stage of the intervention, providing my findings in relation to seven identified areas of concern. I also made seven recommendations to the Scottish Government for changes to its FOI practice. Each of these recommendations sought resolution of an identified and substantive concern requiring a change in practice.

The Minister for Parliamentary Business accepted all my recommendations and provided me with a detailed draft action plan in September 2018. Following a period of refinement and adjustment, I agreed the final version two months later. The action plan is published on the Government's website at <https://www.gov.scot/publications/foi-improvement-project>. The Government has also published two quarterly updates of its progress against the action plan.

In this report I provide my own assessment of the Scottish Government's progress to date in implementing my recommendations. In publishing this report I recognise that this intervention is of significant interest to a range of different stakeholders: Parliamentarians who have asked me (by way of Motion S5M-12861) to "make public the report on the government's implementation of the action plan when approved annually"; the signatories to the journalists' letter who raised the issues in the first place; and, of course, anyone interested in accessing information from the Scottish Government.

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

# Intervention status report

1. Below, I provide a report of progress to date against each of the detailed recommendations in my assessment report of June 2018.

## Recommendation 1: Clearance procedures

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2. I made the following recommendations:

The current procedures for the clearance of information requests are unclear and lacking in detail. This makes the role of those involved opaque when it should be transparent. I therefore recommend the Scottish Government undertake a detailed review of the clearance procedures to address:

- (i) the need for the roles of case-handlers, senior managers, special advisers and Ministers to be clearly set out, unpicking the currently nebulous concept of “clearance.” **Recommendation 1(i)**
- (ii) the formalisation of the system which determines what cases require to be decided by Ministers themselves, so that the system is clear for all, not least the case-handlers. In terms of transparency and increasing public understanding of the process, I recommend that the Scottish Government sets out more clearly the circumstances under which responses require Ministerial clearance as opposed to Ministerial visibility. This should include clear guidance on who the decision-making authority is in the event that the case is not determined by a Minister. **Recommendation 1(ii)**
- (iii) the procedures to be followed by case-handlers on receiving special adviser advice, particularly in the case of disagreement. This is particularly important in relation to the interpretation of a request, the scope of a request or the application of any exemption(s). Where there are such differences, I suggest there could be a role for the FOI Unit [the specialist FOI team within the Scottish Government] to provide advice to Ministers with a view to getting it right first time. **Recommendation 1(iii)**
- (iv) the introduction of clear rules for the recording of decisions in relation to requests for information, setting out the detailed rationale for the decision, showing that they have applied a presumption of disclosure, and providing clear justification and rationale for any departures from specialist advice. **Recommendation 1(iv)**
- (v) the current ambiguous guidance about the role of the Communications Team in the process. **Recommendation 1(v)**
- (vi) the inconsistency of current target timelines with the duty to issue responses promptly. **Recommendation 1(vi)**

### Scottish Government Actions

3. The Government’s action plan includes commitments to bring forward a revised case management process, setting out clearance processes and criteria for decision-making, and specifying the roles of all those involved.
4. Specifically, the new process would set out:
  - (i) the roles of case-handlers, senior managers, special advisers and Ministers

- (ii) when Ministers' clearance of the response is required and, where it is not required, who should take the decision on the response
- (iii) procedures for case-handlers to respond to special advisers' advice, particularly:
  - (a) what they should do when they disagree with the advice, and
  - (b) when they should approach the FOI Unit for advice to Ministers.
- (iv) clear rules for recording decision-making in request files, including the rationale for the decision and any departures from specialist advice
- (v) the role of the Communications Team in information requests
- (vi) a consistent approach to meeting the statutory time for compliance.

### **Progress on the recommendations**

5. In my view, the Scottish Government placed appropriate emphasis on developing its process; many of the future actions depend on ensuring arrangements for internal decision-making are sufficiently clear that they are readily understood.
6. The new Criteria for Decision-Making were published on 8 February 2019, somewhat later than planned, due in part to the scale of the organisational changes and in part to the number of individuals consulted, both internal to the Scottish Government and my office. This necessary engagement has resulted in clarity of process and roles. The new process describes several significant changes in FOI practice:
  - (i) All requests are to be referred to the FOI Unit for triage and allocation.
  - (ii) The FOI Unit will make an objective assessment of the sensitivity or exceptional complexity of each request to determine the appropriate route for deciding the response on each request. This involves evaluating the request against a set of published criteria and may include seeking and receiving comments from special advisers and relevant officials.
  - (iii) Ordinarily, decisions will be taken by officials of appropriate seniority. Only those requests assessed as sensitive or exceptionally complex (against the published criteria) will be decided by Ministers according to an exceptions procedure. Where the status of a request requires reassessment, this will be referred back to the FOI Unit. All variations must be recorded in the case file.
  - (iv) Requests will be allocated to case-handlers who have been designated by Directors as competent to handle responses. Case-handlers will be responsible for:
    - searching for and collating requested information
    - ensuring that all comments and contributions on a request (including any from special advisers) are recorded in the case management system
    - drafting responses to agreed standards (the process includes quality assurance)
    - submitting draft responses to the decision-maker, using a submission template to request and record the decision
    - ensuring the decision on a response is recorded in the same template.

- (v) Communications handling is to be managed as a parallel process which “does not delay or impede or influence a prompt response to the requester.”
  - (vi) Processes are set out to deal with disputes between the case-handler, other officials, special advisers, and the FOI Unit.
7. I am satisfied that the new process provides the foundation to meet my recommendations 1(i) - (vi) above. It describes a new “default” approach where decision-making on responses to requests is usually the responsibility of appropriately trained civil servants. Responses requiring a Ministerial decision will be managed by exception.
  8. The process provides clear definitions of “sensitive” and “exceptionally complex” cases. It explains that communications handling in relation to a request is a parallel process (it must not delay, impede or influence a prompt response). Roles and responsibilities are clearly drawn, with mandatory records management requirements throughout the handling of a request. The timings for case handling and decision-making have been revised to focus on providing responses promptly and within the statutory timescales.
  9. Implementation of these new processes is now underway, with a series of pilots and tests taking place before they are rolled out more widely by the end of this year. While this is very much a work in progress, it is useful to note some key developments.
  10. Testing of the new “triage” procedure by the FOI Unit to determine whether a case is sensitive or exceptionally complex began on 28 May 2019, with the People Directorate, before wider roll-out. The success of this trial will be a key test of the Criteria for Decision-Making.
  11. The identification of core groups of case-handlers has begun in a number of Directorates, with training having commenced in June 2019, and it is anticipated that this will be fully rolled out by the end of autumn 2019. The designation and training of this much smaller and more expert cadre of case-handlers is crucial in the development of widespread and sustained improvement in FOI performance throughout the Scottish Government. In developing training materials, the FOI Unit have sought input from my office, as well as testing the materials with volunteer case-handlers. No doubt they will continue to develop as feedback is received.
  12. An internal Scottish Government FOI Network has also been established to connect and support its FOI practitioners. The first meeting of this Network met on 8 February 2019, and I have assigned one of my Information Officers to liaise with this group, attending meetings, and providing updates about current FOI issues, developments in practice and the work of our office. We provide such support to a number of such Network Groups in sectors across Scotland.
  13. With a more organisational focus, the first of three phases of internal case handling improvement workshops run by the FOI Unit was completed in May 2019. This included workshops with Transport Scotland, Marine Scotland, the Directorate for Economic Development, Social Security Scotland, Disclosure Scotland and Education Scotland. The outcomes of these workshops are intended to help inform local improvement plans. This is an important aspect of the work, as no two Directorates or Agencies are the same and they may face different challenges in improving their FOI performance. Appreciation of this and a more bespoke approach, within the framework of the improvement plan, is welcomed, but, of course, I am keen to see how this translates into practice.

14. Given that a number of new processes and procedures will be introduced between now and the end of the year, it is inevitable that they will require some time to bed in. I accordingly recognise that there may be a short term negative impact on the Government's performance in terms of compliance with statutory timescales until the new process becomes a matter of custom and practice. I do, however, expect any such period to be short, particularly given the focus on training. At the end of the action plan implementation period I will allow for such a period of bedding-in, before I conduct a further assessment to establish the extent to which the new process, as used in practice, meets my recommendations.

## **Recommendation 2: Quality assurance**

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15. I made the following recommendations:

Linked to [Recommendation 1], it was apparent from interviews with special advisers, and from the views of case-handlers and other staff, that a key role of special advisers in considering draft responses to information requests is one of quality assurance. As noted elsewhere in my assessment report, paragraph 9.7 of the Section 60 Code states that it is good practice for authorities to check responses for accuracy and quality before they are issued. I question whether such quality assurance needs to be carried out by individuals at the level of special adviser within the Scottish Government for cases which are not decided by Ministers and whether these arrangements are proportionate.

- (i) I recommend that the Scottish Government examines their procedures to ensure there is analysis of review cases to identify any areas where poor initial decisions are being made and, going forward, there is a system in place to prevent recurrence of failures. **Recommendation 2(i)**
- (ii) I recommend that the Scottish Government investigate whether the task of quality assurance of cases not decided by Ministers ought, more appropriately, to be carried out by staff within Directorates or Executive Agencies. **Recommendation 2(ii)**

### **Scottish Government Actions**

16. In response to this recommendation, the Scottish Government committed to taking active steps to improve the quality of its case handling and its replies to FOI requests for information by introducing a quality assurance process to ensure:
- (i) learning from reviews results in action taken to prevent recurrence
- (ii) quality assurance is undertaken at the appropriate level.

### **Progress on the recommendations**

17. Progress on these recommendations is at an early stage.
18. As described in paragraph 6(iv) above, the new Criteria for Decision-Making include a quality assurance process. In response to my questioning of the need for special advisers to carry out quality assurance of cases which do not require ministerial decisions, the Criteria make it clear that for all routine requests for information (i.e. those which are not classified as being sensitive or exceptionally complex) quality assurance should be carried out by officials and not by special advisers. The Criteria specifically state: "Where cases are not assessed as requiring a Ministerial decision, Special Advisers will have no involvement (beyond offering a view during the FOI Unit's triage assessment, or where the FOI Unit reassesses the

sensitivity of the case) unless they are the holders of the information requested or the request relates to them directly”.

19. The Criteria also set out, at paragraph 4, a high-level commitment to quality assurance to check that responses to information requests are accurate, of good quality, and technically competent. This is combined with specific duties relating to quality assurance being placed on different individuals in the process. To achieve such improvement in quality assurance in practice, this must be underpinned by training and support of those responsible for quality assurance, combined with internal assurance that procedures are being followed.
20. My office has also observed early indications of the sharing of learning from experience:
  - (i) Lessons from appeals to the Commissioner were shared and discussed at the May case-handler meeting.
  - (ii) The FOI Unit has developed a new bi-monthly report of learning points which is shared with the internal FOI network and this aims to support case handlers at request stage.

### **Recommendation 3: Clearance of media requests**

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21. I made the following recommendation:

Requests made under FOISA and the EIRs are, generally, “applicant blind” and “purpose blind”. It is inherently wrong that a class of requesters is treated differently when processing requests for information solely because of who or what they are. This covers not only journalists, but also MSPs and political researchers.

I strongly recommend that the Scottish Government ends this practice. Of course, this would not prevent a clearance system based on the sensitivity on the information sought and/or the complexity of the case. While such a system may still capture many requests from those groups, it will be based on a consideration of the request and **not** of the person.

### **Scottish Government Actions**

22. In response to this recommendation, the Scottish Government committed to:
  - (i) adopt a common process for handling requests, based solely on sensitivity or complexity, without reference to the nature of the requester
  - (ii) ensure that cases are referred for clearance on the basis of the complexity of the case and/or the sensitivity of the requested information, not because of the personal characteristics of the requester.

### **Progress on the recommendations**

23. The Scottish Government implemented the first commitment immediately on receipt of my recommendation, with guidance being amended in June 2018 to make it clear that the requirement for higher levels of clearance should be based on the sensitivity of the information, or complexity of the case and not the type of requester.
24. The new Criteria for Decision-Making (see Recommendation 1) confirm this practice by setting out a clear process for handling requests from the point of receipt. The initial triage process described includes an objective assessment by the FOI Unit of the sensitivity or complexity of each request at the point of receipt. The process, as described, excludes bias.



As stated above, this triage process is currently being tested before being rolled out across the Scottish Government in a phased programme.

25. My further assessment at the end of the implementation period (see Recommendation 1) will also seek to establish the extent to which the Government has removed bias in handling requests from specific requester types.

## **Recommendation 4: Case file records management**

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26. I made the following recommendation:

I recommend that the Scottish Government take action to improve the case file record-keeping of case-handlers, so that case files contain a full record of internal correspondence concerning the handling of a request. This should include a record of searches and decisions made, including the detailed rationale of such decisions. It should also include notes of meetings or correspondence where recommendations were changed or exemptions relied on and advice sought (and received) from other officials and special advisers. It should also, where relevant, and in line with the Section 60 Code (paragraph 6.2.3), record any discussions with applicants and third parties.

### **Scottish Government Actions**

27. The Scottish Government committed to address all elements of this recommendation by introducing a new case management and tracking system (MiCase), and through elements of the actions for Recommendation 1. These would ensure the handling of each request is properly recorded in the case file, to include:
  - (i) searches carried out
  - (ii) decisions made, including the rationale for the decision
  - (iii) any notes of meetings and internal correspondence where recommendations were changed or exemptions relied on and advice sought from other officials and special advisers
  - (iv) any discussions with applicants and third parties.

### **Progress on the recommendations**

28. At the most recent monitoring meeting with the Scottish Government, I noted the the MiCase system pilot has been extended. It has been piloted in seven business areas and is now expected to be fully functioning by autumn 2019. This is frustrating for the FOI Unit, which had intended to introduce the new case management system with its training. The training of case-handlers will still stress the mandatory requirements for good record-keeping at every stage.
29. I welcome the introduction of new templates for submission of draft responses to requests for Ministerial Decision, an FOI Decision Template and a Statement of Compliance. These templates are important controls to ensure that all aspects of decision-making, including advice from special advisers, will be recorded in future cases.
30. These compulsory elements should have the effect of considerably improving case recording when they are pushed out with the phased introduction of the new system.

31. As for Recommendation 3 above, this is an aspect which will require a further assessment at the end of the action plan to ascertain whether or not the changes have delivered real improvements.

## **Recommendation 5: Case handling**

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32. I made the following recommendations:

...The Scottish Government presently utilises over 1,000 staff per annum to respond to information requests. Given the volume of requests received, many of these case-handlers deal with only a handful of cases each year. Issues of knowledge, training and experience were identified throughout the assessment.

- (i) I recommend that the Scottish Government review its system for allocating case-handlers with a view to developing a larger core group of trained and experienced personnel, examining the lessons of successful Directorates and Agencies.

### **Recommendation 5(i)**

- (ii) I recommend that the Scottish Government reassess its FOI training system, and ensure that records of the training delivered are kept in an accessible format.

### **Recommendation 5(ii)**

## **Scottish Government Actions**

33. In response to this recommendation, the Scottish Government committed to revising its case management process to set out clear roles of all those involved and to delivering a new suite of learning products for staff, including targeted training and improved record-keeping.

34. It will also review:

- (i) the approach to allocating requests to case-handlers to ensure there are sufficient trained and experienced personnel to handle FOI requests, and
- (ii) the FOI training system in the Scottish Government and maintain training records in an accessible format (other than in individual personnel records).

## **Progress on the recommendations**

35. The Criteria for Decision-Making (see Recommendation 1) specify the roles of all involved in case handling and decision-making. This means that the internal policy and guidance are clear.
36. Directorates have been asked to appoint case-handlers for their business areas. As previously set out in paragraph 11 above, this is ongoing and is expected to be completed by the autumn.
37. The FOI Unit has launched an internal FOI Improvement Project including activities to build skills and knowledge, and to develop a positive FOI culture. There is early evidence that the approach is being well received within the authority, particularly the intention to develop and recognise the specific role of case officer. My office is providing support to the Improvement Project through review of training materials and participation in workshops and other events.
38. As mentioned in paragraph 12 above, the new practitioner network group of case-handlers provides opportunities for learning and development, knowledge and exchange of good practice. The value of such practitioner groups in other public sectors is already well-

established. Other short life groups are considering good practice in proactive publication and responding to requests.

39. The developments listed at paragraph 34 above are expected to be delivered later in the implementation period.

## **Recommendation 6: Monitoring FOI requests**

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40. I made the following recommendations:

- (i) To enable monitoring of clearance timescales, I recommend the inclusion in the FOI tracker system of the date each case is sent for clearance and the date the clearance response is received. **Recommendation 6(i)**
- (ii) The FOI tracking system should capture the necessary information and provide an adequate reporting facility to support the authority to monitor its FOI performance (see paragraph 2.1 of the Section 60 Code: Recording and reporting statistics). **Recommendation 6(ii)**
- (iii) FOI performance reporting is an important function of the activities of all senior management teams. In an authority the size of the Scottish Government, I recommend there are arrangements for performance monitoring at both Executive Team and Directorate level. **Recommendation 6(iii)**

### **Scottish Government Actions**

41. In response to this recommendation, the Scottish Government intends the introduction of the MiCase system to provide real-time monitoring and tracking information, and management information reports to senior staff. It has noted my specific recommendations.

### **Progress on the recommendations**

42. The progress of these actions is dependent on delivery of the new case management system, currently delayed until the autumn (see Recommendation 4). In the meantime, the Scottish Government's existing FOI performance reporting consists of 3-monthly rolling totals for each Director General which are considered at bi-monthly Corporate Board meetings. The latest monthly performance and directorate trends in the last three months are also discussed at quarterly Director General assurance meetings.

## **Recommendation 7: Reviews**

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43. I made the following recommendation:

It was noted that the current review processes allow for personnel involved in the original decision-making process also to be involved in the review stage. The Section 60 Code of Practice provides that the review process should be fair and impartial (paragraph 10.3.3) and states that it is good practice for the reviewer to be a person who did not respond to or advise on the original request (paragraph 10.3.4). I recommend that the Scottish Government reappraise its procedures to remove so far as practicable the risk to impartiality caused by the same individuals being involved in both processes.

## Scottish Government Actions

44. To ensure that reviews are carried out on an impartial and objective basis, the Scottish Government committed to reappraise its review procedures to reduce the risk that reviewers have had involvement in the handling of the original request. Existing internal guidance already states that the reviewer should not be the person involved in the original decision. Therefore the focus of activity is on ensuring compliance with the internal guidance.

## Progress on the recommendations

45. The proposed Statement of Compliance (see Recommendation 4) will provide an important internal control of performance against this recommendation.

# Compliance with statutory timescales

46. In this section, I provide an assessment of the Scottish Government's progress in improving its performance in respect of meeting the statutory timescales for responding to information requests and reviews made under FOISA and the EIRs ("FOI law"):
- (i) Section 10(1) of FOISA requires a Scottish public authority to provide its substantive response to an information request promptly; and in any event no later than within 20 working days after the date of receipt of the request.
  - (ii) Regulation 5(2) of the EIRs requires a Scottish public authority to make environmental information available in response to an information request as soon as possible and in any event no later than 20 working days after the date of receipt of the request. Regulation 7(1) of the EIRs permits an authority to extend this timescale by up to a further 20 working days if the volume and complexity of the information requested makes it impracticable for the authority to comply with the request within the earlier period or to make a decision to refuse to do so.
  - (iii) Section 21 of FOISA and regulation 16 of the EIRs require an authority to comply promptly with a request for review and in any event by no later than the 20th working day after receipt.
47. In early 2017, prior to the journalists' letter and Parliamentary debates, my predecessor, Rosemary Agnew, launched an intervention into the Scottish Government's performance against the above statutory timescales.
48. The Scottish Government agreed to a recommendation to adopt internal performance targets to improve compliance over three years. The following targets were set for performance by the whole authority **and** individual Directorates for responses to requests and reviews:
- (i) Year 1 (2017): 85% to be issued within the statutory timescales
  - (ii) Year 2 (2018): 90%
  - (iii) Year 3 (2019): 95%
49. The Scottish Government has provided monthly performance reports, at the level of individual Directorates and by Director-General responsibility, to my office since April 2017. My office has monitored the reported performance throughout, raising any concerns and offering advice where appropriate.

50. From experience, poor compliance with statutory timescales can often be a symptom of wider performance concerns and it is therefore a useful “warning” indicator.
51. In my assessment of the Scottish Government’s wider FOI practice for the second intervention (the subject of this report), it was apparent that a number of the practices of which I was critical were also significant factors in creating delays in responding to requests.
52. For example:
  - (i) Internal guidance advised officials to allow two weeks (half of the statutory compliance period) for consideration of cases by special advisers and Ministers. It appeared this was viewed by many as a “target” timeline to issue responses on the 20<sup>th</sup> working day (rather than the statutory deadline that it is).
  - (ii) A memorandum to Directors had reminded staff that initial responses to requests should be drafted within five working days of receipt (a timeline unachievable for all but the simplest of requests) to allow more time for review and clearance.
53. I expect that many of the process improvements detailed in the Scottish Government’s action plan will impact positively on its ability to comply with timescales. While the full benefits of this cannot be expected until the completion of the action plan implementation, some of the work carried out to date, such as improvement workshops, may be expected to have a positive impact on performance.
54. It was clear, by the end of 2018, that significant improvement had been achieved, allowing me to close the 2017 intervention. However, I remained sufficiently concerned about the sustainability of that improvement to continue to request monthly reports as part of the current intervention.
55. The Scottish Government publishes the summary of the monthly submissions it makes to the Commissioner at <https://www.gov.scot/publications/freedom-of-information-foi-reporting/>.
56. Looking at the monitoring information submitted to me over the 26 months from April 2017 to May 2019, there are some points worthy of comment.

## Requests

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57. In terms of overall Scottish Government performance, the picture has been positive, moving from just 63% of cases being responded to within the statutory timeframe in April 2017 to a 91% performance in 2018. The degree of improvement is, however, slowing, with current performance in 2019 to May remaining at 91%
58. I am aware that this improving picture to date has been the result of considerable personal efforts by the Ministers for Parliamentary Business, the Executive Team, staff in the FOI Unit and individuals within several business areas. Looking closer at the Scottish Government’s performance, one can see that there has not been a uniform improvement across all its Directorates and Agencies. It is not always easy to accurately monitor the performance of all of these business areas to account for requests in progress and organisational changes taking place. However, we can see that in the first five months of 2019, just over half (27) of Scottish Government Directorates and Agencies have responded to between 95 and 100% of requests within the statutory timescales. They are all to be congratulated on the success of the various initiatives underway to improve performance.

59. While the Scottish Government's performance against the statutory timescales has improved, problems continue in some business areas, and these must be addressed if further improvement is to be achieved.
60. In some of these cases, the number of requests received by a business area is very low and it would therefore be unfair to draw a negative conclusion from the data. For example, one business area issued a late response for the first time in the 26 month period and this must be viewed in context of otherwise excellent performance.
61. However, in other cases I have noted declining performance in some business areas following earlier strong compliance. Examples of this include the Directorate for Social Security and Education Scotland.
62. There are also some business areas in which there has been uneven or generally disappointing progress. Examples of this include: Marine Scotland, the Directorate for Safer Communities, the Directorate for Learning, and Social Security Scotland.
63. The Scottish Government's internal target for 2019 is to achieve 95% compliance with the statutory timescales. Whether the target can be achieved is dependent on all business areas.

## Reviews

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64. In terms of overall Scottish Government performance in dealing with reviews within the statutory timescales, performance has not been as strong as that in responding to requests. Moving from just 65% of reviews being responded to within the statutory timeframe in April 2017, there was a marked improvement to a 84% performance in 2018. The degree of improvement for reviews is, however, also slowing, with current performance in 2019 to May being 83%. The difference in the performance of individual business areas is also more pronounced for reviews than for requests between those business areas achieving 100% performance and those which are not, the best of which have achieved 80%.
65. The small number of requests for review, compared to requests, inhibits meaningful analysis, but the overall finding is the same: the desired improvement in the Scottish Government's FOI compliance with statutory timescales will only be achieved if all business areas contribute.

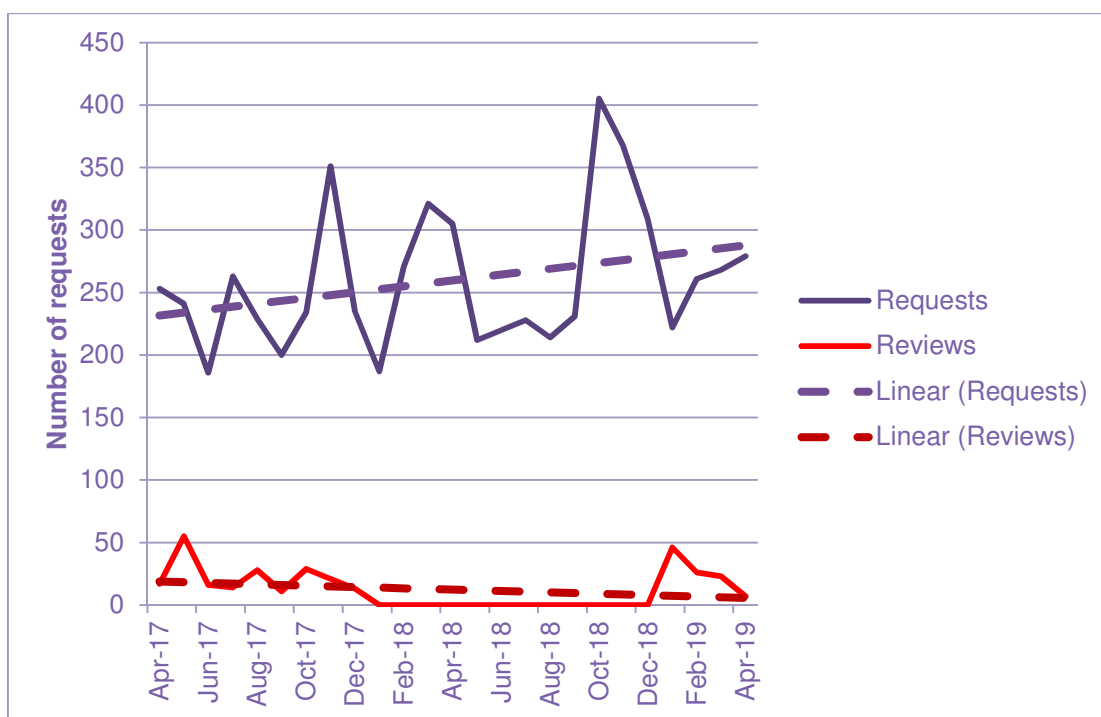
## Additional observations

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66. I would like to end this report with an additional note about some trends observed in the Scottish Government's monitoring data.
67. The first trend is already familiar to the Scottish Government: increasing request volumes. During the period of this intervention, requests to the Scottish Government have increased year on year. This presents a challenge because change is always more difficult in the context of busy workloads.
68. The second trend is also unlikely to be a surprise: request volumes vary throughout the year. The Scottish Government received its highest ever number of requests in the autumn of 2018. Fluctuations in workload present additional challenges.
69. The final trend is, however, reassuring: as the table below shows, while request volumes have increased significantly, the number of requests for review has remained static. Ordinarily it would be expected that review volumes would vary proportionate to the volume

of requests received, but this is not the case here. While improved performance against the statutory timescales will reduce reviews concerning failure to respond, efficiency also impacts positively on requesters' perceptions of the response they receive.

Volume of requests and reviews received by Scottish Government April 17 – April 19



## Next steps

70. I anticipate that the Scottish Government's implementation of its action plan will be complete by the end of the current calendar year (31 December 2019). Thereafter, the new processes will require time to "bed-in" before I would expect to see noticeable benefit from the changes. I have advised the Minister for Parliamentary Business and Veterans that I will undertake a further on-site assessment following implementation of the action plan to assess the extent to which the Scottish Government has met my recommendations. I currently anticipate that this will take place in the Summer of 2020, although this may change depending on when the action plan is fully implemented. This assessment will include, for example, an examination of case records to ensure that the new Criteria for Decision-Making have been effective in achieving a clear understanding of when a Ministerial decision is required and whether case records are adequate. That assessment will inform a decision about whether the intervention can be closed or further action is required.
71. I will publish a further progress report on the intervention following that assessment.

