

Scottish Information Commissioner Strategic Plan 2020-24

Increasing the Impact of FOI



Scottish Information
Commissioner

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Scottish Information Commissioner

Strategic Plan 2020-24

Commissioner's Introduction

1. This plan is laid before the Scottish Parliament by the Scottish Information Commissioner (the Commissioner) as required by section 46A of the Freedom of Information (Scotland) Act 2002 (FOISA).
2. Encompassing the 4-year period from 2020 to 2024, this plan has been developed at a time of change and expansion for Freedom of Information in Scotland. With the extension of FOISA to Registered Social Landlords (RSLs) and their subsidiaries in November 2019, we have seen the most significant use of a Section 5 Order by the Scottish Ministers to date, adding almost 200 new bodies to the list of Scottish public authorities.
3. At the time of writing, the Scottish Parliament is actively conducting post-legislative scrutiny of FOISA which is likely to result in legislative change during the timeframe of the plan, further developing our system of FOI in Scotland. At the same time, the Scottish Ministers have launched a broad and potentially far reaching consultation into the extension of FOISA to contracted-out services which is likely to lead to further consultations and hopefully further Section 5 Orders expanding FOI to yet more bodies carrying out public functions over the next four years.
4. The plan also has regard to developments in other areas which have an impact on FOI, such as Scotland's Open Government Partnership (OGP) commitments and our continued strong involvement in the reinvigorated International Conference of Information Commissioners. We will continue to participate actively in these fora as part of our drive to increase the impact of FOI in Scotland, and the recognition of Scotland as a world-leader in openness and transparency.
5. Through this plan we aim to increase public knowledge and understanding of the right to request and obtain information from Scottish public authorities, enabling people to use the right more effectively to obtain the information that matters to them.
6. We will also help develop public authority FOI practice and culture, both proactively and through our enforcement work, with a focus on the publication of information, allowing them to capitalise on the benefits of FOI, and the transparency and openness it enables. Such openness and transparency are core values in the National Performance Framework, and by enabling them, FOI permeates through and actively contributes to the meeting of the National Outcomes.
7. The role of the Commissioner as the independent regulator of Scotland's FOI system is key to ensuring not only that we have laws that are fit for purpose, but also that they are applied in accordance with legal requirements and best practice.
8. To this end, we will continue to support Scottish public authorities to meet their Freedom of Information obligations through our regular provision of guidance and training, together with interventions to remedy failings in public authority practice. This proactive regulation will

continue to be developed alongside our continuing, reactive duties to determine applications in individual cases.

9. Taken together, these efforts will work to increase the impact of Freedom of Information in Scotland, and the knowledge and ability of people to use their rights to access the information that matters to them.



Daren Fitzhenry
Scottish Information Commissioner

11 March 2020

The Strategy 2020-24

Vision

The impact of Freedom of Information is increased, being recognised and valued as the key enabler of openness and transparency of public functions in Scotland, enhancing people's right to access the information that matters to them

Strategic Objectives

10. To realise this vision:

The Commissioner's office will:

1. increase knowledge and understanding of FOI rights
2. enable and support high standards of FOI policy and practice
3. develop Scottish public sector culture and practice where the proactive disclosure of information is routine and valued
4. influence and support the development and strengthening of Scottish FOI law and practice
5. contribute to Scotland being respected as a world-leader in openness and transparency
6. be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent

Context

11. The right to information is well established in Scotland. In the 15 years since the introduction of FOISA, there has been an exponential increase in the quantity of information available to the public from Scottish public authorities. This increase has been driven by FOISA – together with the Environmental Information (Scotland) Regulations 2004 (EIRs) – both directly and by its underpinning and enabling of several important openness and transparency initiatives. These include international programmes such as the OGP and the Open Contracting Standard, and domestic developments such as Digital Scotland and e-planning.
12. In particular, the statutory entitlement to request and receive information, and the duty on public authorities to proactively publish information in which there is a public interest, have made a distinct and crucial contribution by focusing on the importance of ensuring that what is published and disclosed is what the public actually wants to see, rather than information the public sector thinks the public should see. This, combined with technological advances in the internet and social media, has made that information more available to the public.

13. With the embedding of the objectives of FOISA and the EIRs in Scottish society, there has been a shift in public expectation about what information should be available. FOI laws have empowered people to seek information on topics which matter to them, enabled people to engage meaningfully with decision makers, and provided a clear route via which to challenge non-disclosure. However, it is no longer enough that individuals can ask for information: society wants public services to make information proactively available without having to ask for it.
14. There is also increasing awareness of both FOI itself and of the value of information in citizen participation in both the development and delivery of public sector policy and practice, as emphasised in the latest OGP commitments for Scotland.
15. An impact of this shift in awareness and expectation has been to drive increased numbers of requests for information. At the start of the last Strategic Plan, in 2016/17, 74,213 requests for information¹ were reported as having been made in Scotland; in 2017/18, the figure rose to 77,528; and in 2018/19, 83,963 requests were reported.
16. Our ability to meet both our key performance indicators for applications and conducting proactive interventions is dependent on the number of applications we receive in any year. For example, in 2018/19 we received 560 applications, which was a particularly high number and this had an impact on both these areas.
17. Historically, application numbers have been subject to a degree of annual variance, both throughout the year and between years. Within that context, however, the figures have shown an increase in the number of applications since 2016/17. We also recognise the significant increase in bodies subject to FOISA with the recent addition of RSLs. The rate and level of change is, however, unpredictable.
18. If there is a reduction in any one year (such as occurred in 2016/17) resources will be diverted from reactive statutory duties such as the handling of applications, to proactive activity, such as interventions, aimed at improving practice and efficiency. This will enable vital skills and experience to be retained: essential as it takes many months for a new member of staff to be fully productive.
19. The more likely scenario of a sharp increase in volumes of applications, or a sustained period of high numbers of applications, would have a direct impact on our ability to meet statutory duties to the standard and within the timescales expected by FOISA, and would also reduce our ability to conduct our proactive interventions to improve public authority FOI practice.
20. Interventions are a proportionate and scalable, efficient and effective way of resolving identified FOI practice failures. We have developed our enforcement and intervention procedures to enable a flexible, proactive approach to tackle systemic performance issues in public authorities. The objective of interventions is ultimately the improvement of FOI practice and performance, not just in one case, but across the board. The degree of intervention required to achieve this can vary from a recommendation to improve practice, through to a detailed, evidence-based audit of procedures, practice and culture followed by a substantial monitoring phase. The absence of personnel resource specifically allocated to interventions means that our ability to fully utilise the benefits of this proactive form of regulation is currently restricted by application numbers.

¹ These figures include requests for information made under both FOISA and the EIRs.

Timetable and approach

Timetable

21. Each year we publish an [Operational Plan](#) setting out the Commissioner's planned activities, timetable for delivery, key targets and performance indicators, and how each activity supports the Vision and the Strategic Objectives.

Approach

22. While the detailed approach to each Strategic Objective will be set out in each Operational Plan, the following general approaches will be taken:

Objective 1: increase knowledge and understanding of FOI rights

23. Awareness of FOI in Scotland is at historically high levels, at 91%², but actual understanding of people's rights to ask for information from public bodies is lower, at 71%. There are also demographic variations, with awareness levels among younger people being noticeably lower. We will therefore focus on communication and education to increase not only awareness of FOI, but crucially knowledge and understanding of the right to information and how to use that right, specifically targeting groups, such as young people, who currently have lower levels of FOI awareness.

Objective 2: enable and support high standards of FOI policy and practice

24. We will do this through a combination of proactive as well as reactive regulation, advice and assistance, training, and appropriate collaboration with Scottish public authorities to help them develop and maintain improvements in FOI policy and practice. We will also use our enforcement powers where appropriate both in individual applications and in our proactive interventions.

Objective 3: develop Scottish public sector culture and practice where the proactive disclosure of information is routine and valued

25. Through our training, engagement, collaboration and regulation work, we will help develop public authority FOI practice and culture, with an increased focus on proactive publication of information, allowing public authorities to both recognise and then capitalise on the benefits of FOI, and the transparency and openness it enables. Through our direct engagement as regulators, and our wider work with initiatives such as the OGP, we will show the benefits to authorities of viewing their FOI outputs as a core function, rather than an additional burden. In doing so, we will highlight openness and transparency as core values in the National Performance Framework, and show how, by enabling them, FOI permeates through and actively contributes to the public authorities' meeting of the National Outcomes.

Objective 4: influence and support the development and strengthening of Scottish FOI law and practice

26. We will continue our work in both seeking and contributing to regular reviews to FOI law, and the bodies to which it applies, as well as supporting developments which emerge from such reviews. Where appropriate, we will use our power to submit special reports to Parliament to raise other issues where there is no other more appropriate forum available.

² Scottish Public Opinion Polling on FOI 2019, Scottish Information Commissioner. Available at www.itspublicknowledge.info/research

Objective 5: contribute to Scotland being respected as a world-leader in openness and transparency

27. As an existing member of the Governance Working Group of the International Conference of Information Commissioners, and chair of its Strategic Working Group, we will continue to punch above our weight, ensuring that we influence and inform international discussions, learning from the practice of others, and supporting colleagues in developing their systems.

Objective 6: be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent

28. We are proud of our good reputation amongst service-users and stakeholders, and will continue to make ourselves available in providing independent, expert advice to both the public and authorities. We will lead by example in the open and transparent delivery of our statutory functions and will be an efficiently run and effectively governed public sector body, keeping pace with recognised standards and requirements.

Measuring outcomes

29. Targets are set and activity prioritised by balancing required outputs to meet statutory duties, desired quality, levels of risk and available resources.
30. Key performance indicators are based on statutory duties, such as the requirement to report the number of decisions taking longer than four months, monitoring and promotion of FOI, approval of publication schemes and public sector governance requirements. They are published in the Commissioner's [Performance and Quality Framework](#), which is reviewed and republished each year with the operational plan.
31. Achievement against targets and plans will be reported annually in the Commissioner's [Annual Reports and Accounts](#) laid before the Scottish Parliament and published [quarterly](#) on our website.

Resources

The Key Challenge: increase in volumes of applications

32. As set out in the Context section above, application numbers are unpredictable and have been subject to a degree of annual variance, both throughout the year and between years.

Reduction

33. In the event of an annual reduction in application numbers, as stated above, resources will be diverted from reactive statutory duties, to proactive activity aimed at improving practice and efficiency. If there is a sustained reduction, which is very unlikely, the Commissioner will liaise directly with the Scottish Parliamentary Corporate Body (SPCB) about resource levels.

Increase

34. In the more likely scenario of an increase in volumes of applications, or a sustained period of high numbers of applications, the Commissioner will liaise directly with the SPCB about resource levels, having first sought to identify meeting shortfalls through further efficiencies, where possible. We will continue to highlight the benefits of interventions as an efficient and effective way of resolving identified FOI practice failures and the value of establishing a dedicated personnel resource allocated to that role.

Approach

35. We recognise that the next four years will remain challenging for public services. We will continue our approach of:
- (i) seeking core funding to enable us to deliver statutory functions to an acceptable standard and quality, and within the timescales expected of us in FOISA and other legislation. This is predicated on current volumes of applications to the Commissioner and numbers of Scottish public authorities. We recognise we will be required to consider, and consult with the SPCB and others, about the impact of reductions in public sector spending during the period of this plan.
 - (ii) seeking additional, discrete funding from the SPCB Contingency Fund for legal costs to defend appeals against decisions and for one-off high priority purchases relating to replacement equipment, cyber resilience, data protection, health and safety requirements or to respond to unexpected events. We hold no contingency funding ourselves.
 - (iii) seeking contingency funding as appropriate and for specific projects or initiatives, for example a new website. Contingency funding requests will be based on sound business principles and will not impose additional requirements on our core funding. We will work in consultation with the SPCB to ensure that needs, priorities and funding requirements are brought to their attention and supported by sound business reasons, at the earliest feasible opportunity.
36. This strategic plan focuses on core funding requirements: the minimum we need to continue to meet statutory functions. While it is anticipated that our activities will reduce the number of applications we receive in relation to current FOI use and applications, they will also increase as new authorities become subject to FOI and the promotion of FOI alerts under-represented groups to use FOI more. For this reason, we have assumed that there will be no net reduction in application volumes across the period of the plan.

Core funding

37. The following table sets out the estimated required resources based on the current known volumes of applications and anticipated increases in applications. These estimates take into account the matters set out in paragraph 38:

	Baseline £	Indicative £	Indicative £	Indicative £
	2020-21	2021-22	2022-23	2023-24
Total Staff Costs	1,497,816	1,566,569	1,621,799	1,685,049
Staff Related Costs	23,000	23,460	23,929	24,407
Property Costs	119,300	120,606	121,938	124,377
Professional Fees	61,450	62,679	63,933	65,212
Running Costs	167,434	155,483	158,594	161,766
Total Revenue Costs	1,869,000	1,928,797	1,990,193	2,060,811
Capital Expenditure	34,000	34,680	35,400	36,100
Total Capital & Revenue	1,903,000	1,963,477	2,025,593	2,096,911

38. Staff costs account for the majority of resources and are also the least flexible. The indicative figures factor in pay and pension increases and modest increases in professional fees and running and costs, for example, rates and utilities.
39. However, these estimated required resources do not include the impacts of changes to legislation, any recommendations flowing from the current post-legislative scrutiny of FOISA, an increase in the number of public authorities through Section 4 and Section 5 orders³ or primary legislation and new duties imposed collectively on public bodies (such as compliance with the British Sign Language (Scotland) Act 2015). If any such impacts occur, it is likely that we would need to seek additional resources.

³ Section 4 and Section 5 of the Freedom of Information (Scotland) Act 2002 which give Ministers powers to extend the scope of FOI to new authorities

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