



Scottish Information  
Commissioner

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**Our Ref:** ENQ1

**Your Ref:** JL10755 CB/2003

Sent by email:  
john.lamont.mp@parliament.uk

John Lamont MP  
25 High Street  
Hawick TD9 9BU

24 March 2020

Dear John Lamont MP,

**Re: Scottish Information Commissioner statement on FOI timescales and Covid-19**

Thank you for your letter on 20 March 2020 (enclosed), in which you urged the Commissioner to review the statement issued by his office to public authorities in Scotland on 13 March (available at [www.itspublicknowledge.info/home/News/20200313.aspx](http://www.itspublicknowledge.info/home/News/20200313.aspx)), and to relax the timescales in which public authorities must respond to information requests. I am responding to you as the Commissioner is currently absent from the office.

The 20-day timescale for compliance with requests for information is a statutory limit, set out in s10 of the Freedom of Information (Scotland) Act 2002, and s21 in respect of requests for review. The Act does not provide the Scottish Information Commissioner with powers to alter these timescales. The position with regard to the Environmental Information (Scotland) Regulations 2004 is different, but again, the Commissioner does not have the power to amend these.

However, as set out in the 13 March statement, the Commissioner will be sympathetic to the effects Covid-19 may have on public authorities' abilities to meet current statutory duties when considering appeals made to him. Any unavoidable reasons for delay would be recognised in decisions issued.

Discussions will also continue with the Scottish Government regarding the impact of Covid-19 on freedom of information duties in Scotland. We stand ready to assist the Scottish Government and the Scottish Parliament in any way we are able in relation to whether and/or when it may be appropriate for the Scottish Parliament to enact legislation to change timescales.

In the meantime, in addition to our statement, we have also issued guidance for requesters who are thinking of using their FOI rights at this time, available at [www.itspublicknowledge.info/home/News/20200320b.aspx](http://www.itspublicknowledge.info/home/News/20200320b.aspx)

Lastly, please note that this correspondence (including your original letter) will be published on our website in line with our commitments to proactive publication. If you have queries regarding any element of this response, please do contact me.

Yours sincerely,

**Erin Gray, Head of Policy and Information**  
Enc

Daren Fitzhenry, Scottish Information Commissioner  
Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS

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**20 MARCH 2020: LETTER FROM JOHN LAMONT MP TO SCOTTISH INFORMATION COMMISSIONER**

John Lamont MP



Scottish Information Commissioner

**BY EMAIL: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)**

20 March 2020

**Our Ref: JL10755 CB/2003**

Dear Commissioner

Given the current crisis, I thought your attached statement on the impact of Covid-19 on FOI timescales was astonishing.

I am urging you to review this decision and relax the rules during this very difficult time.

Kind regards.

Yours sincerely

A handwritten signature in black ink that reads "John Lamont".

John Lamont MP  
Berwickshire, Roxburgh & Selkirk

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**13 MARCH 2020: EMAIL STATEMENT FROM SCOTTISH INFORMATION COMMISSIONER TO FREEDOM OF INFORMATION CONTACTS AT SCOTTISH PUBLIC AUTHORITIES**

Statement from the Scottish Information Commissioner on the impact of Covid-19 on FOI timescales

A number of Scottish public authorities have contacted the Scottish Information Commissioner to ask about the requirements to comply with the timescales in the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) given the effect the Covid-19 virus is likely to have on their ability to respond to such requests on time.

In the event that an appeal is made to the Commissioner about a failure by a public authority to respond on time, the Commissioner would, as things stand, have no option but to find that a public authority had failed to respond within the 20 working days set down by FOISA.

However, he will be sympathetic to the effects that Covid-19 had on the public authority's ability to respond to requests timeously in the event that staff are unable to attend work to answer requests or are unable to carry out full searches for information because they are, for example, working from home and are unable to access information. Any (unavoidable) reasons for delay would be recognised in any decision issued by the Commissioner.

Looking forward, discussions have been taking place with the Scottish Government on whether and/or when it would be appropriate for the Scottish Parliament to enact emergency legislation to extend the 20 working day timescales in FOISA. (Given that the EIRs are based on an EU Directive, which, in turn, is based on a UN Convention, the Scottish Parliament would not have the same power to extend the timescales in the EIRs.)

The Commissioner does not believe that extending the timescales is necessary at this stage.

The Commissioner will continue to keep in contact with the Scottish Government and will update his website as and when necessary.

**Scottish Information Commissioner**

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