



Scottish Information  
Commissioner

*It's public knowledge*

Our Ref RFI08

Your Ref

Neil Findlay MSP

By email

30 April 2020

Dear Mr Findlay

### **The Coronavirus (Scotland) Act 2020 Schedule 2 Part 6**

Thank you again for your letter of 20 April 2020, regarding the Coronavirus (Scotland) Act 2020 (the Coronavirus Act). This letter focusses on the information requests made in your letter. The Commissioner has responded separately to the other matters raised in your letter.

As you note, despite the changes made to the Freedom of Information (Scotland) Act 2002 (FOISA) by the Coronavirus Act, information requests must still be answered “promptly.” The Commissioner has adopted a policy for responding to requests made to him while his office is closed as a result of Covid-19 outbreak, which aims to ensure that all requests made to him are responded to promptly. The policy can be read [here](#).

#### *Request 1: discussions with the Scottish Government*

You asked when and how often the Commissioner discussed with the Scottish Government the extension of response times and the dates.

I have set out details of this office's contact with the Government in the appendix attached to this response. The appendix summarises what the contact was about. As you will see, I have interpreted your request widely and have included, for example, simple acknowledgements of emails, correspondence about the Commissioner's plans to publish guidance after the Coronavirus Act came into force and discussions about whether the extended timescales applied to requests made before the Coronavirus Act came into force.

Some of this correspondence has already been published on the Commissioner's website – I have added links in the appendix. We will be publishing other correspondence soon and I will let you know when it is available.

There are 24 records of contact between the Commissioner's office and the Government in relation to the extension of response times in all: 14 before the Coronavirus Act was passed and 10 after.

As you will see from the appendix, the first contact took place on 4 March 2020, when the Scottish Government's FOI Unit contacted me to let me know that the Government was considering the possibility of introducing emergency legislation.

This is not the only telephone call I had with the FOI Unit before the Commissioner's office closed on 24 March 2020. I should be able to access the office for an hour or so next week and will contact you after that to let you know whether a further note exists. I did not want to delay responding to this request until I was able to check whether a further note exists.

Once I have been able to check for additional notes, I will send you a formal response to this particular request.

*Request 2: changes to the Commissioner's view*

You asked the Commissioner to set out the reasons which prompted him to change his view that extending the timescales was necessary, especially as the UK ICO and other Commissioners/Ombudsman had agreed a non-legislative approach.

For the reasons set out below, I am struggling to answer this particular request and would be grateful if you could provide some clarification. In terms of section 1(3) of FOISA, if an authority reasonably requires further information in order to identify and locate information, the authority is not obliged to give the information until clarification has been received.

I initially thought your request was based on the comments made by Mike Russell, Cabinet Secretary for the Constitution, Europe and External Affairs, during the Stage 2 debate and quoted in paragraph 3 of your letter. On one reading, Mr Russell's comments might suggest that the Commissioner initially thought that extension was not necessary, but changed his mind before the Stage 2 debate.

However, as I was preparing a response, it occurred to me that your request might be based on comments made by the Commissioner before the Coronavirus (Scotland) Bill was published (for example [here](#)), that he was not minded to oppose legislative change to FOISA in response to the pandemic, although his office did subsequently question the extensions proposed in the Bill.

I will be able to respond as soon as you clarify the basis of your request.

As noted in our acknowledgement letter last week, the Commissioner's office is committed to being as open and transparent as possible. As such, we will publish this letter on our website in due course.

I look forward to hearing from you.

Yours sincerely



**Margaret Keyse**  
**Head of Enforcement**

Enc: Appendix

## Appendix: Response to request 1

Date	Time	Contact type	Topic
Wednesday 4 March 2020 <b>Scottish Government notifies SIC emergency legislation being considered</b>	Time of call not recorded	Telephone call	Call from Scottish Government Freedom of Information Unit (SG FOI Unit) to Margaret Keyse, Head of Enforcement (SIC) to advise the Scottish Government considering emergency legislation.  (See covering letter re other calls made before the Commissioner's office closed.)
Monday 23 March 2020	15:43	Email	Email from SG FOI Unit to Margaret Keyse and Erin Gray, Head of Policy and Information (SIC) – FOI being considered for inclusion in emergency legislation.
Tuesday 24 March 2020	11:16	Email	Email reply from Erin Gray (SIC) to SG FOI Unit regarding initial proposals to change FOI law and highlighting importance of openness and transparency in the current circumstances.
	15:02	Email	Email reply from SG FOI Unit to Erin Gray (SIC) regarding initial proposals to change FOI law. No intention to unduly restrict right to information – timescale measures will be temporary.
	15:20	Email	Email reply from Erin Gray (SIC) to SG FOI Unit thanking for last email and attaching <a href="#">letter</a> SIC sent to John Lamont MP.
	15:23	Email	Acknowledgement from SG FOI unit to Erin Gray (SIC).
Wednesday 25 March 2020 <b>Scottish Government notifies SIC of potential changes to timescales</b>	12:29	Email	Email from FOI Unit to Erin Gray and Margaret Keyse (SIC) summarising proposed changes to FOI law.
	16:46	Email	<a href="#">Email</a> from Erin Gray (SIC) to SG FOI Unit commenting on proposed changes.

Date	Time	Contact type	Topic
Thursday 26 March 2020	09:39	Email	Email follow up from Erin Gray (SIC) to SG FOI Unit, sending <a href="#">link</a> to Global Transparency article
Tuesday 31 March 2020 <b>Coronavirus (Scotland) Bill published</b>	17:38	Email	Email from SG FOI Unit to Erin Gray and Margaret Keyse (SIC) attaching <a href="#">letter</a> from Penny Curtis, Deputy Director, Elections and Freedom of Information Division (Scottish Government) re introduction of emergency legislation.
	18:35	Email	Email from Erin Gray (SIC) to SG FOI Unit thanking for letter from Penny Curtis and advising that briefing note being prepared.
	19:55	Email	Email from Erin Gray (SIC) to SG FOI Unit, sending SIC <a href="#">briefing</a> on Coronavirus (Scotland) Bill
Wednesday 1 April 2020 <b>Coronavirus (Scotland) Bill debated in Scottish Parliament</b>	11:43	Email	Email from SG FOI Unit to Erin Gray and Margaret Keyse (SIC), advising that Ministers would be lodging amendments at Stage 2 debate to accept SIC suggestions to remove provisions for public authorities to extend time period beyond 60 days.
	12:01	Email	Acknowledgement from Erin Gray (SIC) to SG FOI Unit.
Saturday 4 April 2020	18:53	Email	Email from SG FOI Unit to Erin Gray and Margaret Keyse (SIC) asking about SIC plans to issue further guidance for authorities.
Monday 6 April 2020 <b>Coronavirus (Scotland) Act 2020 receives Royal Assent</b>	09:56	Email	Email reply from Erin Gray (SIC) to SG FOI Unit on SIC's plans to issue guidance
	11:28	Email	Email reply from SG FOI Unit to Erin Gray (SIC) to on plans to issue guidance
	17:18	Email	Email from SG FOI Unit to Erin Gray (SIC) updating on changes made at Stage 2 and notifying of guidance Scottish Government issuing to public authorities and to SG staff.
Tuesday 7 April 2020 <b>Coronavirus (Scotland) Act 2020 comes into force</b>	08:32	Email	Email from Erin Gray (SIC) to SG FOI Unit acknowledging email and sharing <a href="#">email</a> SIC sent to Scottish public authorities on 6 April 2020
	10:49	Email	Email from Margaret Keyse (SIC) to SG FOI Unit re SG guidance on effect of Coronavirus (Scotland) Act on outstanding requests made before Act came into force.

Date	Time	Contact type	Topic
	11:02	Email	Email from SG FOI Unit to Margaret Keyse (SIC) to arrange telephone call.
	Time of call not recorded	Telephone call	Telephone call from SG FOI Unit to Margaret Keyse (SIC) re outstanding requests before Act came into force.
Thursday 16 April 2020	13:19	Email	Email from Erin Gray (SIC) to SG FOI Unit alerting team to SIC's Covid-19 and FOI infohub
	14:59	Email	Acknowledgement from SG FOI Unit to Erin Gray (SIC).