

## Document 1

### Note of telephone all from Scottish Government to SIC (4 March 2020)

**From:** Margaret Keyse  
**Sent:** 04 March 2020 14:29  
**To:** Helen Gardner-Swift; Erin Gray  
**Cc:** Euan McCulloch; Claire Stephen; Policy&Information Team  
**Subject:** Call from Gerry Hendricks

Just to let you know about a call I've just had with Gerry (Head of FOI Unit).

The Scottish Government is starting to put together plans for responding to the coronavirus – there is the possibility of severe disruption.

The UK Government are putting emergency legislation in place to deal with issues which could arise from the disruption – as far as Gerry is aware, FOI is not one of the pieces of legislation being looked at by Westminster. The Scottish Government are looking at whether something similar should happen up here. Gerry asked for my views on the need to extend the deadlines for responding to FOI requests.

Gerry and I agreed that we did not think that extension was necessary at this stage. While the SIC may have to find technical failures (e.g. failure to respond on time), we would be sympathetic to what was going on in wider society and would make that clear in any decision. If it gets to the stage where a lot of the case officers in the Scottish Government end up being off (or working from home with limited access to SG information), then it's likely we'll be in the same position. Therefore, we would be flexible about timescales for submissions, etc. We would take account of any issues with the virus when deciding whether to start, say, an intervention with a public authority.

Another issue is that it would be difficult to bring in the temporary extension – or know when to bring it to an end.

I suspect we may get enquiries, particularly from public authorities, about this – including at sector groups.

M

## Document 2

### Email statement from SIC to FOI contacts at Scottish public authorities (13 March 2020)



# Statement on the impact of the Covid-19 virus on FOI timescales

13 March 2020

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 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, the Commissioner 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 this website as and when necessary.

Further updates on the impact of the Covid-19 virus will be published on our [latest news](#) page.

### **Document 3**

#### **Email from Scottish Government to SIC (23 March 2020)**

**From:** Gerry.Hendricks@gov.scot <Gerry.Hendricks@gov.scot>

**Sent:** 23 March 2020 15:43

**To:** Margaret Keyse; Erin Gray

**Cc:** Graham.Crombie@gov.scot; Jennifer.Veitch@gov.scot

**Subject:** IN CONFIDENCE: Latest news...

Margaret, Erin

Just to make you aware, around the end of last week, we were made aware that several NHS Boards were concerned about their ability to deal with a number of FOI requests they were receiving, while having to respond to the covid emergency. I advised SG Health colleagues of the Commissioner's statement and suggested Boards should look at that and, if necessary contact OSIC to discuss their concerns.

Our Ministers are already considering whether they may need to bring in emergency legislation, dealing with specific devolved matters that are not covered in the UK Bill. Freedom of Information is one of the candidates for inclusion in such legislation and I suspect the concerns of NHS Boards will weigh in favour of its inclusion.

Nothing has been decided yet, though I imagine we would be looking at a reasonably significant extension of deadlines for requests and reviews, presumably on some kind of time-limited basis.

I would be grateful if you could treat this in confidence for now as nothing has, as yet, been brought to Parliament - and I do not know for sure whether FOI will definitely be included.

Happy to discuss.

#### **Gerry Hendricks**

Scottish Government | Head of FOI Unit

☎ +44 (0)131 244 5327 | Mob [REDACTED – S38(1)(b)]

I am currently working from home, but can be contacted by email, Skype, or telephone.

## Document 4

### Email from SIC to Scottish Government (24 March 2020)

**From:** Erin Gray <[egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)>  
**Sent:** 24 March 2020 11:16  
**To:** Hendricks G (Gerry) <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>  
**Cc:** Crombie G (Graham) <[Graham.Crombie@gov.scot](mailto:Graham.Crombie@gov.scot)>; Veitch J (Jennifer) <[Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot)>; Margaret Keyse <[mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)>  
**Subject:** Re: IN CONFIDENCE: Latest news...

Thank you for the update Gerry.

Please let us know if there is information we can provide to inform specifics of potential provisions being considered, and how they might be kept as limited as possible to avoid unduly restricting the public's right to information. As I am sure you appreciate, while there is understandable pressure on some public authorities at this time, equally the importance of and public interest in openness and transparency at such times is significant. We would also hope assurances can be made that any measures which may be taken in the short term will not erode the public's rights to information beyond the timeline of this crisis.

If it is useful to know, on Friday we added the following information to our website for requesters and on social media, setting out what we have sent to public authorities and asking them to be mindful of current circumstances, while still stressing the importance of transparency at this time: <http://itspublicknowledge.info/home/News/20200320b.aspx>

Lastly, yesterday we received an email from John Lamont MP asking us to 'review our decision and relax timescales on FOI'. We will be replying shortly setting out our position and that changing timescales is not within the powers of the Commissioner - we will share a copy of the correspondence for your information once we send our reply, and will be publishing on our website as soon as we are able.

Thank you again and please do keep us informed when you can,

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

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**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road  
St Andrews, KY16 9DS

Tel: 01334 464610  
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Email: [egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)  
Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)  
Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

## Document 5

### Email from Scottish Government to SIC (24 March 2020)

**From:** Gerry.Hendricks@gov.scot <Gerry.Hendricks@gov.scot>  
**Sent:** 24 March 2020 15:02  
**To:** Erin Gray  
**Cc:** Graham.Crombie@gov.scot; Jennifer.Veitch@gov.scot; Margaret Keyse  
**Subject:** RE: IN CONFIDENCE: Latest news...

Erin

Thanks. This is moving incredibly quickly due to the rate of increase in cases and the vast pressure that is putting on authorities, mainly, but not exclusively, in the areas of health, local government and social care. We, in the Scottish Government, are facing significant diversion of resources to support colleagues in areas, such as Health and Resilience, while most of us are working from home, so I can only speculate how difficult it must be for authorities delivering at the front line.

The emergency legislation being introduced will cover a broad range of issues and we are essentially foregoing the normal consultative processes, given its urgency. Our aim in relation to FOI will be to reduce pressure on staff, who are being asked to respond to a situation that is unprecedented in our lifetimes. I can assure you that we do not intend to unduly restrict the right to information and that the measures in the Bill will be temporary. I expect there will be a sunset provision that ensures things revert to normal as soon as practical once the emergency is past.

We are exploring one change to FOISA that would not be temporary. In my conversation with Margaret last week, she mentioned that the Commissioner expressed a view that he would welcome a change to s74 of the Act to allow him to issue notices electronically. We are looking to have that included in the Bill, but excluded from the sunset provision.

Finally, thank you for the heads up about Mr Lamont's letter. He has also written to Mr Dey and we will aim to reply promptly. I will keep you informed.

Regards

Gerry

## **Document 6**

### **Email from SIC to Scottish Government (24 March 2020)**

**From:** Erin Gray  
**Sent:** 24 March 2020 15:20  
**To:** Gerry.Hendricks@gov.scot  
**Cc:** Graham.Crombie@gov.scot; Jennifer.Veitch@gov.scot; Margaret Keyse  
**Subject:** Re: IN CONFIDENCE: Latest news...

Thank you Gerry - much appreciated.

Attached is the letter we sent to John Lamont MP<sup>1</sup> earlier this afternoon.

Do let us know if there is anything else we can provide.

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

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### **Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

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Tel: 01334 464610

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Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

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<sup>1</sup> Letter available on the Commissioner's website:  
<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=13515&SID=12459>

## **Document 7**

### **Email from Scottish Government to SIC (24 March 2020)**

**From:** Gerry.Hendricks@gov.scot <Gerry.Hendricks@gov.scot>

**Sent:** 24 March 2020 15:23

**To:** Erin Gray

**Cc:** Graham.Crombie@gov.scot; Jennifer.Veitch@gov.scot; Margaret Keyse

**Subject:** RE: IN CONFIDENCE: Latest news...

Erin

Thanks. We'll keep in touch.

Gerry

## **Document 8**

### **Email from SIC to Scottish Government (24 March 2020)**

**From:** Margaret Keyse <mkeyse@itspublicknowledge.info>  
**Sent:** 24 March 2020 16:01  
**To:** Hendricks G (Gerry) <Gerry.Hendricks@gov.scot>  
**Cc:** Crombie G (Graham) <Graham.Crombie@gov.scot>; Veitch J (Jennifer) <Jennifer.Veitch@gov.scot>; Erin Gray <egray@itspublicknowledge.info>  
**Subject:** Re: IN CONFIDENCE: Latest news...

Thanks from me for the update too, Gerry.

I appreciate that things will be moving exceptionally quickly, but if a change is planned to s74(1)(a), it would be useful if the change could be made for public authorities too. Strictly speaking, as things stand, authorities can't currently issue refusal notices, etc. by email. We all ignore this in practice, but one day it might come up and bite us.

Margaret



## Document 9

### Email from SIC to Scottish Government (24 March 2020)

**From:** Margaret Keyse  
**Sent:** 24 March 2020 16:10  
**To:** Gerry.Hendricks@gov.scot  
**Cc:** Graham.Crombie@gov.scot; Jennifer.Veitch@gov.scot; Erin Gray  
**Subject:** Re: IN CONFIDENCE: Latest news...

This might be the second similar email you've had from me in the last half hour or so. I'm having IT issues.

Thanks from me for the update too, Gerry.

I know things are moving exceptionally quickly, but if changes are going to be made to s74, would it be possible to allow public authorities to issue refusal notices by email too? At the moment, s74(1)(a) doesn't allow for transmission by electronic means. We ignore that in practice, but it might cause problems at some point - and it might be easier to amend than introducing a provision purely for the Commissioner.

Margaret

## **Document 10**

### **Email from Scottish Government to SIC (24 March 2020)**

**From:** Graham.Crombie@gov.scot <Graham.Crombie@gov.scot>

**Sent:** 24 March 2020 16:21

**To:** Margaret Keyse; Gerry.Hendricks@gov.scot

**Cc:** Jennifer.Veitch@gov.scot; Erin Gray

**Subject:** RE: IN CONFIDENCE: Latest news...

Margaret,

An interesting point – I was struggling to reconcile our own practice with the strict letter of what s. 74(1)(a) says when I looked at this yesterday. I wonder if an authority which sought to found on the formal invalidity of a notice issued electronically at a later point might not run into personal bar issues, but that's definitely a problem for another day!

If we can take forward this change (there is a pretty stringent necessity test being applied to provision going into the Bill), it will not be specific to the Commissioner – the intention would be a straightforward modification of s. 74(1)(a) for all purposes. That said, the picture about what can and can't be included is changing very rapidly so we will keep you posted.

Thanks,

Graham

**Graham Crombie | Head of Policy and Casework | Freedom of Information Unit**

M: [REDACTED – S38(1)(b)]

**I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.**

## Document 11

### Email from Scottish Government to SIC (25 March 2020)

**From:** Gerry.Hendricks@gov.scot <Gerry.Hendricks@gov.scot>

**Sent:** 25 March 2020 12:29

**To:** Margaret Keyse; Erin Gray

**Cc:** Jennifer.Veitch@gov.scot; Graham.Crombie@gov.scot

**Subject:** RE: IN CONFIDENCE: Latest news...

Erin, Margaret

Just to keep you updated, we are seeking to include FOI provisions in the Emergency Bill, which would (for the duration of the pandemic):

- extend deadlines for responding to requests and reviews from 20 working days to 60 working days;
- enable authorities, in certain circumstances (eg the volume and complexity of information requested, or the overall volume of requests being dealt with), to extend the period of 60 working days by a further period of 40 working days. Authorities would have to tell requesters why they have extended the deadline; and
- provide that, where an authority responds outwith the relevant timescales, but can demonstrate reasonable cause for doing so, the Commissioner would have discretion to find that, notwithstanding the delay, the authority has complied with Part 1 of FOISA.

We are proposing this approach because so many authorities are already experiencing an unprecedented demand for their services. This will increase significantly as the outbreak progresses and staff will continue to be under significant pressure to respond to requests for information timeously, even when resources have been diverted elsewhere or colleagues are absent in large numbers.

In an earlier conversation, Margaret indicated that the Commissioner was not minded to oppose legislative change to the FOI regime in response to the pandemic. I hope you agree that, given the scale of the emergency facing the country, the proposed changes, while significant, are a proportionate temporary measure.

Finally, I attach a copy of Mr Dey's response to Mr Lamont. In it, we have avoided making a public commitment to legislation in advance of formally informing the Parliament.

Regards

Gerry

**Document 11a**

**Attachment to document 11**

John Lamont MP  
BY EMAIL

Your ref: JL10755 CB/2003

25 March 2020

Dear John,

**STATEMENT FROM THE SCOTTISH INFORMATION COMMISSIONER ON THE  
IMPACT OF COVID-19 ON FOI TIMESCALES**

Thank you for your letter of 20 March, highlighting the Scottish Information Commissioner's statement on the impact of Covid-19 on FOI timescales and requesting that the rules be relaxed.

I am acutely aware that staff in public authorities are dealing with an unprecedented emergency and that their effort must be focused on responding to the Covid situation.

The Commissioner's statement reflects the position that there is no provision in the Freedom of Information (Scotland) Act 2002 to allow a public authority not to comply with statutory timescales in an emergency, nor does it give the Commissioner discretion to take into account such circumstances when considering whether an authority has complied with the Act. The Commissioner's position broadly mirrors that of the UK Information Commissioner, who is similarly constrained by the Freedom of Information Act 2000.

We recognise the considerable public interest in the release of information but at a time when resources are necessarily being diverted to address the current emergency, I can assure you that the Scottish Government is considering urgently how we can alleviate those pressures, including in relation to freedom of information

Yours sincerely,

**Graeme Dey**

[Minister for Parliamentary Business and Veterans](#)

Graeme Dey MSP

T: 0300 244 4000

E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

## Document 12

### Email from SIC to Scottish Government (25 March 2020)

**From:** Erin Gray  
**Sent:** 25 March 2020 16:46  
**To:** Gerry.Hendricks@gov.scot  
**Cc:** Jennifer.Veitch@gov.scot; Graham.Crombie@gov.scot; Margaret Keyse  
**Subject:** Re: IN CONFIDENCE: Latest news...

Hello Gerry –

Thank you for the update. We know you will be operating to very tight time pressure and appreciate the opportunity to comment.

From our initial research, it does not appear at this time that any other national jurisdictions / countries have made alterations of this kind to freedom of information legislation or duties as a result of COVID-19. This may mean Scotland would set an international precedent with such provisions, which may in turn have an impact on perception of Scotland's commitment to freedom of information, transparency and openness (for example in relation to areas of work such as the Open Government Partnership, the National Performance Framework etc).

You rightly comment that the Commissioner indicated earlier that he was not minded to oppose legislative change to the FOI regime in response to the pandemic. You will appreciate that, at that point, we were not aware of the nature or specifics of any changes were planned.

While we are not opposing the legislative changes now (it is not our role to do so), and while it is challenging to comment without sight of the draft provisions themselves, we would like to make the following points (numbered for ease of reference):

- 1. Regarding extending deadlines for responding requests and reviews from 20 to 60 working days:** While we have not seen the draft Bill, we would hope that the requirement to reply "promptly", as set out in section 10(1) and section 21(1) of the Freedom of Information (Scotland) Act 2002 (FOISA), would still remain. Some public authorities will be able to respond to some information requests within the existing timescales and it would be unfair to requesters for responses to be delayed when such delay is unnecessary. It is also critical to recognise the legitimate need to hold public authorities to account in such unprecedented times.
- 2. Regarding enabling authorities to extend the period of 60 days by a further period of 40 working days in certain circumstances:** The provision you reference in the Environmental Information (Scotland) Regulations (EIRs) which allows public authorities to extend the timescale for responding to a request for environmental information which is both complex and voluminous (regulation 7(1)) requires the authority not only to notify the requester that the timescale is being extended, but to give the requester the right to ask the authority to review the extension and to refer the extension to the Commissioner to determine whether such extension is appropriate (regulation 7(3)). We hope that this would also apply for extensions in this case. We would also expect that the circumstances in which this provision would apply would be defined in a clear and specific way which is in line with existing FOISA

policy and practice (sufficient 'overall volume of requests' for example would be particularly challenging to define/clarify).

3. **Regarding the scope of these changes:** It will also be necessary to ensure public authorities are aware that this Bill (so far as we are aware) will only affect information requests made under FOISA. The timescales for requests under the EIRs will remain (again, so far as we are aware) as they are.
4. **Regarding the Commissioner having discretion to find that notwithstanding a delay, an authority complied with Part 1 of FOISA:** As with point 2 above, this will require public authorities to keep records of the reasons for delay. The Commissioner will need to issue guidance on this point to authorities.
5. **Regarding the timeline for these provisions as for 'the duration of the pandemic':** Specific terminology and definition of 'duration of the pandemic' would be essential, to ensure clarity for all on when these provisions will cease, and that they will do so as quickly as possible. Again, in the absence of sight of the draft provisions, it is difficult to comment further.
6. **Regarding capacity of the office of the Scottish Information Commissioner:** We would note that changes of this nature will require preparation of guidance for public authorities, and also that any changes may require significant change to practice within the Commissioner's office in investigating and gathering evidence regarding relevant appeals/applications.

Please let us know if further information on any of the above provisions is required. We would also like to re-state that while pressure on public authorities may well be substantial at this time and in the weeks and months ahead, equally the legitimate public interest in decisions made during this time is significant.

Lastly, as I'm sure you can appreciate, we feel our correspondence on this matter should be proactively published as soon as is possible. We recognise that your initial email was sent in confidence, and so intend to publish this correspondence on our website once the Bill has been introduced (and so the reasons for it to be kept in confidence will have passed). Please do let me know if you wish to discuss this, or any other element of this response.

Best wishes,

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

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**Scottish Information Commissioner**

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## **Document 13**

### **Email from SIC to Scottish Government (26 March 2020)**

**From:** Erin Gray

**Sent:** 26 March 2020 09:39

**To:** Gerry.Hendricks@gov.scot

**Cc:** Jennifer.Veitch@gov.scot; Graham.Crombie@gov.scot; Margaret Keyse

**Subject:** Re: IN CONFIDENCE: Latest news...

Hello Gerry -

Further to yesterday's email - we thought this article might be of some interest:

<https://eyeonglobaltransparency.net/2020/03/25/governments-delaying-access-to-information-because-of-pandemic/>

With thanks

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

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### **Scottish Information Commissioner**

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Twitter: [@FOIScotland](https://twitter.com/FOIScotland)



## **Document 14**

### **Email from Scottish Government to SIC (31 March 2020)**

**From:** Graham.Crombie@gov.scot <Graham.Crombie@gov.scot>

**Sent:** 31 March 2020 17:38

**To:** Erin Gray; Margaret Keyse

**Cc:** Penelope.Curtis@gov.scot; Jennifer.Veitch@gov.scot; [REDACTED – S38(1)(b)]@gov.scot

**Subject:** Coronavirus (Scotland) Bill - relaxation of statutory timescales in FOISA - letter to Scottish Information Commissioner - final

Dear Margaret and Erin,

In the Commissioner's absence, I attach a letter from Penny Curtis to the Commissioner<sup>2</sup> in connection with the emergency Coronavirus (Scotland) Bill. As Gerry discussed with you last week, the Bill contains provisions affecting the Freedom of Information (Scotland) Act 2002.

We would be happy to discuss, as ever – please do not hesitate to contact me.

Kind regards,

Graham

**Graham Crombie | Head of Policy and Casework | Freedom of Information Unit**

**Scottish Government | 2W | St Andrew's House | Regent Road | Edinburgh | EH1 3DG**

M: [REDACTED – S38(1)(b)]

**I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.**

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<sup>2</sup> Letter published on the Commissioner's website:

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=13517&SID=12459>

## **Document 15**

### **Email from SIC to Scottish Government (31 March 2020)**

**From:** Erin Gray

**Sent:** 31 March 2020 18:35

**To:** Graham.Crombie@gov.scot

**Cc:** Jennifer.Veitch@gov.scot; [REDACTED – S38(1)(b)]@gov.scot; Margaret Keyse

**Subject:** Re: Coronavirus (Scotland) Bill - relaxation of statutory timescales in FOISA - letter to Scottish Information Commissioner - final

Hello Graham -

Thank you for your email, and the letter from Penny Curtis.

We will reply more fully shortly - we are working on a briefing note regarding FOI provisions in the Bill currently and will ensure we share it with you as soon as it is complete.

In the meantime, please note that in response to a request from Severin Carrell at the Guardian, we shared the attached response<sup>3</sup> we sent to Gerry and yourselves on 25 March.

With thanks

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

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**Scottish Information Commissioner**

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Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

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<sup>3</sup> See document 12

## Document 16

### Email from SIC to Scottish Government (31 March 2020)

**From:** Erin Gray <[egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)>  
**Sent:** 31 March 2020 19:55  
**To:** Crombie G (Graham) <[Graham.Crombie@gov.scot](mailto:Graham.Crombie@gov.scot)>  
**Cc:** Hendricks G (Gerry) <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>; Veitch J (Jennifer) <[Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot)>; [REDACTED – S38(1)(b)] <[\[REDACTED – S38\(1\)\(b\)\]@gov.scot](mailto:[REDACTED - S38(1)(b)]@gov.scot)>; Curtis PS (Penelope) <[Penelope.Curtis@gov.scot](mailto:Penelope.Curtis@gov.scot)>; Margaret Keyse <[mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)>  
**Subject:** FOR INFO: SIC Briefing note on FOI provisions in Coronavirus (Scotland) Bill

Hello Graham, Penny and team,

Please find attached a briefing note<sup>4</sup> from the office of the **Scottish Information Commissioner** regarding the **Freedom of Information** provisions set out in Schedule 6 Part 2 of the **Coronavirus (Scotland) Bill**.

In it we set out some key areas for comment and concern, and an appendix of other additional suggested specific technical changes. We are circulating to key stakeholders and MSPs this evening in the hope that it will inform discussion tomorrow.

We know Mr Dey will be very busy at this time, and hope that you will be able to forward this for his attention in whatever way you feel is most appropriate.

Please contact us if you require any further information.

With thanks

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

Tel: 01334 464610

Fax: 01334 464611

Email: [egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)

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<sup>4</sup> Briefing published on the Commissioner's website. See: <http://www.itspublicknowledge.info/home/News/20200401.aspx>

Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

## **Document 17**

### **Email from Scottish Government to SIC (1 April 2020)**

**From:** [Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot) <[Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot)>

**Sent:** 01 April 2020 11:43

**To:** Erin Gray; Margaret Keyse

**Cc:** [Penelope.Curtis@gov.scot](mailto:Penelope.Curtis@gov.scot); [Graham.Crombie@gov.scot](mailto:Graham.Crombie@gov.scot); [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot); [REDACTED – S38(1)(b)]

**Subject:** RE: FOR INFO: SIC Briefing note on FOI provisions in Coronavirus (Scotland) Bill

Hi Erin and Margaret

Thank you to you and your teams for coming back to us so quickly yesterday evening about the Coronavirus (Scotland) Bill.

You have no doubt been following the debate in parliament today, but this is a quick note to advise that Ministers intend to lodge amendments at stage 2 to accept your suggestions to remove provisions for public authorities to extend the time period to respond beyond 60 days in certain circumstances; Ministers would have a power to make directions to do so at a later date, if the circumstances require it but with consultation with the Commissioner, and that direction would not apply to the Scottish Ministers.

I hope this is useful and we will keep in touch with you as the Bill progresses.

Kind regards,

Jen

**Jennifer Veitch | Head of Improvement and Engagement**

Freedom of Information Unit | Scottish Government

Mobile [REDACTED – S38(1)(b)]

[Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot)

*I am working from home – please email, Skype or phone my mobile to contact me.*

## **Document 18**

### **Email from SIC to Scottish Government (1 April 2020)**

**From:** Erin Gray <[egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)>  
**Sent:** 01 April 2020 12:01  
**To:** Veitch J (Jennifer) <[Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot)>; Margaret Keyse <[mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)>  
**Cc:** Curtis PS (Penelope) <[Penelope.Curtis@gov.scot](mailto:Penelope.Curtis@gov.scot)>; Crombie G (Graham) <[Graham.Crombie@gov.scot](mailto:Graham.Crombie@gov.scot)>; Hendricks G (Gerry) <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>; REDACTED – S38(1)(b)  
**Subject:** Re: FOR INFO: SIC Briefing note on FOI provisions in Coronavirus (Scotland) Bill

Hello Jennifer –

Thank you for the update, much appreciated.

Is the Parliament Bill page the best place to keep an eye out for amendment text specifics still, or do you know if those put forward by Ministers will be shared elsewhere beforehand?

Thanks

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

---

**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

Tel: 01334 464610

Fax: 01334 464611

Email: [egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)

Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

## **Document 19**

### **Email from Scottish Government to SIC (4 April 2020)**

**From:** [REDACTED – S38(1)(b)]

**Sent:** 04 April 2020 18:53

**To:** Erin Gray; Margaret Keyse

**Cc:** [Penelope.Curtis@gov.scot](mailto:Penelope.Curtis@gov.scot); [Graham.Crombie@gov.scot](mailto:Graham.Crombie@gov.scot); [Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot); [Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot)

**Subject:** RE: FOR INFO: SIC Briefing note on FOI provisions in Coronavirus (Scotland) Bill

Erin,

Can you confirm whether OSIC intends to produce further written guidance for public authorities, once the Coronavirus (Scotland) Act 2020 comes into effect? I am helping to work up a very broad brush guidance document for Scottish Government external stakeholders, giving an overview of the provisions of the Act as a whole. In the bit on FOI we are just giving factual information about the changes. However, if you are planning to bring out your own guidance to public authorities, I would like to be able to refer to that fact that this will be forthcoming and that people should keep an eye on your website.

Thanks

[REDACTED – S38(1)(b)]

[REDACTED – S38(1)(b)]

[REDACTED – S38(1)(b)]

Freedom of Information Unit

Scottish Government

2W, St Andrew's House

Mob: [REDACTED – S38(1)(b)]

(Alternative contact: [REDACTED – S38(1)(b)])

*I am currently working from home*

## Document 20

### Email from SIC to Scottish Government (6 April 2020)

**From:** Erin Gray <ergray@itspublicknowledge.info>  
**Sent:** 06 April 2020 09:56  
**To:** [REDACTED – S38(1)(b)]  
**Cc:** Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Crombie G (Graham) <Graham.Crombie@gov.scot>; Hendricks G (Gerry) <Gerry.Hendricks@gov.scot>; Veitch J (Jennifer) <Jennifer.Veitch@gov.scot>; Margaret Keyse <mkeyse@itspublicknowledge.info>  
**Subject:** Re (our Ref ENQ31): guidance for SPAs

Hello [REDACTED – S38(1)(b)] –

Thank you for your email. I hope you and the team managed to have a relaxing weekend as much as possible – I'm sure last week was a busy one for you all.

I have responded to your query below, and beneath have also raised two other matters we had intended to contact you and the team about today.

#### Developing guidance

Yes, I can confirm we are working on a range of guidance which we will publish as soon as possible. Last week we created a [short news item about the changes](#) which covered some key areas and stated our intention to publish detailed guidance. We will shortly launch an 'FOI and Covid-19 Information Hub' on our website, which will be a central point for guidance and information from the Commissioner's office on these matters. It will include both guidance for people wishing to request information from authorities on their rights during this period, and information for public authorities.

The guidance for authorities will cover a range of areas, including what evidence the Commissioner might look for to demonstrate authorities have taken reasonable steps to comply with their duties during this period, what he would take in to account in determining whether a request for information or review was responded to promptly, and in deciding whether there has been a breach of Part 1 of FOISA even if an authority does not comply within the new 60 day timescales. We will also be providing guidance for current applicants to the Commissioner, and for authorities which are currently subject to an investigation.

We are planning to email FOI contacts in public authorities today/tomorrow to alert them to our continued office closure (see below), the change in the law, and that we will be issuing detailed guidance shortly. We will then contact them again (hopefully early next week) when our info hub is live and initial guidance is available. It would be very helpful to see any guidance or information you will be issuing as soon as you are able to share it, if possible - and we will of course share ours with you as soon as it is available.



## **Our office closure**

We have officially extended our temporary period of closure for at least the next four weeks (until 1 May). We will be reviewing and sharing any detail on what this will mean for the operation of our functions in due course, and will inform you and public authorities of any key changes there may be. We will be reviewing our potential office closure beyond this time by 23 April and will keep you informed.

## **Query regarding comments made during stage 3 debate**

During the final stage of discussion about the Bill in Parliament on Wednesday [Mr Russell made some comments](#) regarding the FOI provisions of the Bill, and the ways in which it might be enacted. Could you confirm if there has been any further discussion on this or what was meant? From the context at the time, it seemed there may be some intent to revisit FOI provisions in the next round of emergency legislation – or to make specific plans via non-legislative means. We would be keen to understand what was meant and if there are plans to this effect – do you have any detail you can share?

## **Change in workload/potential resource implications**

We anticipate that the current situation and the changes to FOISA are likely to lead to range of changes in the workload of the Commissioner's office. In particular, we expect an increase in 'Failure to Respond' applications being made. These are likely to be complex and time-consuming to consider, in that we will likely have to examine the reasons for the delay and make a determination on the reasons surrounding the delay/failure to respond. At this stage we are not able to fully anticipate or quantify the extent of the changes (or challenges) that will arise for our office and resources. However, we wanted to alert you now to the fact that additional resources may be required as we move forward.

-

Please do let us know if there is any other information we can share with you which would be useful. Please also note that as mentioned last week, we do intend to proactively publish correspondence on this matter wherever possible and appropriate. If you wish to discuss, please do let me know.

With thanks

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

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**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road  
St Andrews, KY16 9DS

Tel: 01334 464610

Fax: 01334 464611

Email: [egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)

Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

## Document 21

### Email from Scottish Government to SIC (6 April 2020)

**From:** [REDACTED – S38(1)(b)]@gov.scot <[REDACTED – S38(1)(b)]@gov.scot>

**Sent:** 06 April 2020 11:28

**To:** Erin Gray

**Cc:** Penelope.Curtis@gov.scot; Graham.Crombie@gov.scot; Gerry.Hendricks@gov.scot; Jennifer.Veitch@gov.scot; Margaret Keyse

**Subject:** RE: Re (our Ref ENQ31): guidance for SPAs

Thanks Erin. In our own short guidance document I'll reference the fact that your office has undertaken to provide further guidance, and may include a link to that news item.

Graham will get back to you on the more substantive issues about Mr Russell's comments etc.

[REDACTED – S38(1)(b)]

[REDACTED – S38(1)(b)]

[REDACTED – S38(1)(b)]

Freedom of Information Unit

Scottish Government

2W, St Andrew's House

Mob: [REDACTED – S38(1)(b)]

(Alternative contact: [REDACTED – S38(1)(b)])

*I am currently working from home*

## Document 22

### Email from Scottish Government to SIC (6 April 2020)

**From:** Graham.Crombie@gov.scot <Graham.Crombie@gov.scot>

**Sent:** 06 April 2020 17:18

**To:** Erin Gray

**Cc:** Penelope.Curtis@gov.scot; Gerry.Hendricks@gov.scot; Jennifer.Veitch@gov.scot; Margaret Keyse; [REDACTED – S38(1)(b)]@gov.scot

**Subject:** RE: Re (our Ref ENQ31): guidance for SPAs

Dear Erin,

Thank you for your assistance and feedback around the Freedom of Information provisions contained in the Coronavirus (Scotland) Bill as introduced in the Scottish Parliament last week. We have this afternoon been advised that the Bill has received Royal Assent, and so the FOI provisions will come into force tomorrow.

As you will be aware, we accepted your suggestion that it was not necessary at this time to give authorities the ability to extend the upper time limit themselves. We have instead taken powers to introduce that ability for authorities (other than the Scottish Ministers) at a later stage if the situation warrants it, following consultation with the Commissioner. We would of course consult you at the earliest opportunity if it appeared that it might be necessary to exercise those powers.

The FOI Unit has prepared updates for Scottish Government and agency staff, and I attach a copy of interim guidance for case handlers<sup>5</sup>, which will operate only for the duration of the temporary modifications to FOISA (the document entitled “FOI during coronavirus” by our web team). I also attach a copy of (broadly similar) guidance<sup>6</sup> that we propose to publish tomorrow – its principal audience is Scottish public authorities, but it will be publicly available. Both documents are likely to be published tomorrow, but if there is likely to be any delay I will let you know.

Both the guidance, and our message to staff, emphasise our continuing duty to respond promptly to requests and reviews, and stress that requests for information under the Environmental Information (Scotland) Regulations 2004 are unaffected.

Picking up on a number of points from your email:

- We look forward to seeing your guidance when it is ready to be shared, and would be grateful for any comments you have on ours. We envisage that it may well be updated as matters develop, and will take the opportunity to adjust as appropriate
- We note what you say about your continuing office closure, and will await further updates from you
- In relation to the Stage 3 comments that you highlight, we have no plans to legislate further (including by directions to introduce the ability to extend timescales) at this point. In relation to proactive publication (Anas Sarwar MSP’s point), we note that the Scottish Government is proactively publishing information directly relating to the coronavirus pandemic here: <https://www.gov.scot/coronavirus-covid-19/> That information collection is usually updated daily. More generally, proactive publication (including of FOI and EIRs responses) continues to take place, although the redeployment of resources may mean that the pace varies.
- In relation to an influx of failure to respond applications, we would be interested to hear about your experience as matters develop – though we suspect it is likely to be some time before the first such applications come for determination, given the revised timescales that come into force tomorrow.

Please to not hesitate to contact me if you would like to discuss further.

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<sup>5</sup> See document 22a

<sup>6</sup> See document 22b

Kind regards,

Graham

**Graham Crombie | Head of Policy and Casework | Freedom of Information Unit**

M: [REDACTED – S38(1)(b)]

**I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.**

## Document 22a

### Attachment to document 22

#### **Freedom of information (FOI) during coronavirus – guidance for FOI case handlers**

During the coronavirus (COVID-19) outbreak some changes are being made to the Freedom Of Information (FOI) process.

The Coronavirus (Scotland) Act 2020 makes a number of temporary modifications to The Freedom of Information (Scotland) Act 2002 (FOISA). These are designed to give all Scottish public authorities the time they need to respond during the coronavirus outbreak, while ensuring that information rights are protected.

The measures in the Act:

- extend the upper time limit for responding to requests and reviews under FOISA from 20 working days to 60 working days
- enable the Commissioner to take into account the effect of coronavirus on authorities when deciding appeals where authorities have failed to comply with the timescales for responding
- enable authorities and the Commissioner to issue formal notices by electronic means

From 7 April 2020, the temporary upper time limit of 60 working days will apply to all requests and reviews under FOISA including ongoing requests and reviews.

The Act does not amend the duty to continue to respond promptly to requests for information and we should continue to prioritise requests and reviews, responding well in advance of the new deadline.

The longer deadline should be used to give business areas greater flexibility in the handling of FOI requests, particularly where these are complex or where there is severe pressure on resources for the delivery of day to day business.

These temporary measures only apply to FOISA, and the Environmental Information (Scotland) Regulations 2004 (“EIRs”) are unaffected by them.

EIRs requests and reviews should still be dealt with as soon as possible, and no later than 20 working days after receipt with the option to extend to 40 days for large or complex requests.

#### **Micase**

The new deadline will currently not show on MiCase and you should be aware you have up to a further 40 working days in addition to the deadline shown on the system. The FOI team is working with MiCase to develop a way for the system to update the deadline date in line with the temporary changes.

The Freedom of Information unit will amend performance data to take account of the new deadlines until the MiCase system is updated to do so.

**Further support**

For further help or advice contact the [Freedom of Information Unit](#).

## Document 22b

### Attachment to document 22

#### **Amendments to the Freedom of Information (Scotland) Act 2002**

During the passage of the Coronavirus (Scotland) Bill, The Minister for Europe and International Development said:

“The Government recognises that transparency is of paramount importance in the current circumstances.”

The information rights enshrined in the Freedom of Information (Scotland) Act 2002 (“FOISA”) are of the highest importance for ensuring the openness and transparency of public services in Scotland during the present emergency.

However, as the Scottish Information Commissioner (“the Commissioner”) put it in his briefing on the Bill:

“The circumstances that public authorities across Scotland currently face are unprecedented, and we are wholly sympathetic to the pressures that the COVID-19 pandemic will be placing on public institutions, structures, resources and staff. Meeting the current 20 working day FOI timescales in circumstances where premises are closed, where information may be inaccessible, where staff are absent, or where organisations face unprecedented demands for essential services will undoubtedly create significant challenges for many organisations.”

The Coronavirus (Scotland) Act 2020 therefore makes a number of temporary modifications to FOISA which will ‘sunset’ after the Covid-19 emergency period. These are designed to give Scottish public authorities (within the meaning of FOISA) the breathing space that they need to respond to the coronavirus outbreak, while ensuring that information rights are protected.

#### *Changes to the law*

The Act does not amend the duty on public authorities continue to respond promptly to requests for information.

The measures in the Act:

- extend the upper time limit for responding to requests and reviews under FOISA from 20 working days to 60 working days;
- enable the Commissioner to take into account the effect of coronavirus on authorities into account when deciding appeals where authorities have failed to comply with the timescales for responding;
- enable authorities and the Commissioner to issue formal notices by electronic means.



Additionally, the Act confers powers on the Scottish Ministers to introduce an ability for authorities to extend deadlines further. These powers may be exercised if the circumstances change and it is necessary to do so. The Ministers must consult with the Commissioner before exercising the powers.

*Do these changes affect the Environmental Information (Scotland) Regulations 2004?*

These temporary measures apply only to FOISA, The Environmental Information (Scotland) Regulations 2004 ("EIRs") are unaffected by them.

Accordingly, EIRs requests and reviews continue to have to be dealt with as soon as possible, and no later than 20 working days after receipt – although it remains possible to extend the deadline for EIRs requests by a further period of up to 20 working days, if the volume and complexity of the information requested makes it impracticable to respond within the original 20 working day period.

*Changes come into effect from Tuesday 7 April*

From Tuesday 7 April, the temporary upper time limit of 60 working days will apply to all requests and reviews under FOISA, including ongoing requests and reviews.

*Actions for Scottish public authorities*

Scottish public authorities will wish to:

- make their FOI case handlers aware of these changes
- update internal systems, templates and guidance accordingly

*Does this mean that all requests and reviews will take longer to answer?*

No. The duty to respond promptly is unaffected by the Act. In many cases, this will mean that authorities continue to respond well in advance of the 60th working day, just as they respond well in advance of the 20th working day at present.

*Further information about what the changes mean for Scottish public authorities*

We understand that the Scottish Information Commissioner is likely to issue guidance to authorities in the near future.

The Scottish Government's Freedom of Information Unit leads on FOI policy issues. For further information about the changes in the Act, **contact:** Graham Crombie, Head of Policy and Casework, Freedom of Information Unit, Scottish Government, Email: [Graham.Crombie@gov.scot](mailto:Graham.Crombie@gov.scot)

## **Document 23**

### **Email from SIC to Scottish Government (7 April 2020)**

**From:** Erin Gray

**Sent:** 07 April 2020 08:32

**To:** Graham.Crombie@gov.scot

**Cc:** Penelope.Curtis@gov.scot; Gerry.Hendricks@gov.scot; Jennifer.Veitch@gov.scot; Margaret Keyse; [REDACTED – S38(1)(b)]@gov.scot

**Subject:** Re: Re (our Ref ENQ31): guidance for SPAs

Hello Graham -

Thank you for the update and guidance - very helpful to see.

We'll be in touch to share our guidance as soon as we can. For now, please see attached email which was sent to FOI contacts at Scottish Public Authorities late yesterday afternoon, as mentioned.<sup>7</sup>

With thanks

Erin

**Erin Gray** (she/her)

**Head of Policy and Information**

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**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

Email: [egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)

Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

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<sup>7</sup> See document 23a.

## Document 23a

### Attachment to document 23

# UPDATE FOR SCOTTISH PUBLIC AUTHORITIES FROM THE OFFICE OF THE SCOTTISH INFORMATION COMMISSIONER

**6 APRIL 2020**

### Changes to FOI duties for Scottish Public Authorities:

Last week the Scottish Parliament passed the Coronavirus (Scotland) Act 2020. It makes a number of temporary amendments to the Freedom of Information (Scotland) Act 2002 (FOISA).

The new Act **comes into effect tomorrow (Tuesday 7 April 2020)**. The key changes it makes are [summarised on our website](#), and we will be publishing detailed guidance shortly.

Please note that:

- While the maximum timescales within which public authorities must respond to requests for information and review will be extended from 20 to 60 working days, authorities will still be required to respond **promptly** to requests they receive.
- The **changes apply only to FOISA** – they do not apply to requests for environmental information which fall under the Environmental Information (Scotland) Regulations 2004.
- The changes the Act implements are **not retrospective**.

During the time that the temporary amendments apply, it will continue to be important for authorities to keep records of their request handling, and reasons for their FOI decisions. This will be both for the purposes of both statistics collection and in case of reviews and appeals to the Commissioner.

### Premises closure extended

The premises of the office of the Scottish Information Commissioner will be closed for a further 4 weeks as a result of the impact of coronavirus Covid-19 – until at least 1 May. We will review the premises closure at the end of April in light of government guidance at that time.

We currently have a small team working from home responding to urgent enquiries and undertaking essential activities. These staff are working remotely, however, so capacity and access to our usual systems is significantly limited. For detail on changes to our services or to contact us with urgent queries, please see: [www.itspublicknowledge.info/contact](http://www.itspublicknowledge.info/contact)

### **Regarding live investigations**

The Commissioner's office currently has around 200 live investigations, though access to our case management system is significantly restricted at present. If your authority has been asked to provide us with information or submissions, but is unable to do so because of the impact of Covid-19, let us know by contacting us at [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info).

Similarly, if the Commissioner has issued a decision requiring your authority to take action, but you are unable to comply because of the impact of Covid-19, please contact us at [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info).

-

We will send a further update once detailed guidance on the changes brought about by the Coronavirus (Scotland) Act 2020 is available on our website. If you have any urgent queries in the meantime, please contact us at [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info).

-

### **Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road

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Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

## **Document 24**

### **Email from SIC to Scottish Government (7 April 2020)**

**From:** Margaret Keyse

**Sent:** 07 April 2020 10:49

**To:** Graham.Crombie@gov.scot; Gerry.Hendricks@gov.scot; Jennifer.Veitch@gov.scot

**Cc:** Erin Gray; Euan McCulloch; Claire Stephen

**Subject:** Re: Re (our Ref ENQ31): guidance for SPAs

Dear Graham

Thank you for sending on the guidance you're proposing to publish today.

We've been taking a different view on whether the extended time limits apply to requests or requests for review made before the Act came into force. We had understood that the presumption was, in the absence of clear words to the contrary, that an Act could not have retrospective effect.

We have therefore been advising public authorities and requesters that the extended timescales will only apply to:

- requests received on or after 7 April
- requests for review received on or after 7 April (including requests for review made in relation to a request received before 7 April).

We may have missed something - it's not been easy to keep on top of everything working from home. Could you let us know the basis for concluding that the timescales will work retrospectively? It would be best to agree a way forward before we publish contradictory guidance. The "retrospection" point is probably the one we've been asked about most.

Thanks

Margaret

Margaret Keyse

Head of Enforcement

Scottish Information Commissioner

**Document 25**

**Email from Scottish Government to SIC (7 April 2020)**

**From:** Graham.Crombie@gov.scot <Graham.Crombie@gov.scot>

**Sent:** 07 April 2020 11:02

**To:** Margaret Keyse; Gerry.Hendricks@gov.scot; Jennifer.Veitch@gov.scot

**Cc:** Erin Gray; Euan McCulloch; Claire Stephen

**Subject:** RE: Re (our Ref ENQ31): guidance for SPAs

Dear Margaret,

I'd be happy to go through our reasoning for this – it might be easier to have a chat in the first place though, if you're available today? I have a call from 11.30 until 12, but otherwise should be free.

Thanks,

Graham

## Document 26

### Email from SIC to Anderson Strathern, Solicitors (7 April 2020)<sup>8</sup>

**From:** Margaret Keyse  
**Sent:** 07 April 2020 14:06  
**To:** Fiona Killen  
**Cc:** Fionnlagh Blair  
**Subject:** Coronavirus (Scotland) Act 2020 - retrospective effect?

Dear Fiona

I'd welcome some advice on you on one aspect of the Coronavirus (Scotland) Act 2020.

As you know, the Act, which comes into effect today, extends the 20 working day period for responding to requests made under the Freedom of Information (Scotland) Act 2002 to 60 working days. The same will apply to requests for review - Part 2 of Schedule 6 to the Act.

We've received a number of enquiries from authorities and requesters asking whether the Act applies to request and requests for review made before the Act came into force.

The view we had taken was that, in the absence of clear words to the contrary, the presumption was that the Act did not have retrospective effect. This meant that the Act would only apply to FOISA requests received on or after today.

In the meantime, the Scottish Government has published guidance saying that the Act will apply to all live FOISA requests and requests for review, even if they were made before the Act came into force.

I spoke to a Scottish Government solicitor this afternoon. He accepted the basic principle (i.e. that in the absence of clear words to the contrary, an Act would not be retrospective). However, in his view, the Act is not retrospective as it does not change the law as it applied in the past. The law is not being changed - it's just that, from today, the timescales change.

He commented that the Act is designed to help public authorities deal with existing cases and that, without this interpretation, the legislation wouldn't have the effect it was designed to.

In his view, while unusual, this was not unprecedented and there is a policy justification for this.

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<sup>8</sup> Although not direct contact with the Scottish Government, this reflects a telephone call between SIC and the Scottish Government. The advice subsequently received by SIC, which agrees that the Coronavirus (Scotland) Act 2020 will apply to pending information request made before the Act came into force has been published by the Commissioner:

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=13533&SID=12459>.

He noted that it was unusual that there were no transitional provisions in the Act - but agreed there would have to be transitional provisions towards the end of the lifetime of the Act.

We've already issued guidance stating that the 2020 Act is not retrospective - but haven't yet published our more detailed guidance on the effects of the Act. Needless to say, we're now getting questions from people about the Scottish Government guidance.

Could you let us have your view, please? I appreciate you're busy at the moment, but would really appreciate it if you could let me have your advice by tomorrow. (If that's not going to be possible, please let me know.) It's obviously important that we're clear on which requests the Act works - whatever the answer is!

If you need anything else from me, let me know.

Thanks

Margaret



## **Document 27**

### **Email from SIC to Scottish Government (16 April 2020)**

**From:** Erin Gray <[egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)>  
**Sent:** 16 April 2020 13:19  
**To:** Hendricks G (Gerry) <[Gerry.Hendricks@gov.scot](mailto:Gerry.Hendricks@gov.scot)>  
**Cc:** Crombie G (Graham) <[Graham.Crombie@gov.scot](mailto:Graham.Crombie@gov.scot)>; [REDACTED – S38(1)(b)]<[\[REDACTED – S38\(1\)\(b\)\]@gov.scot](mailto:[REDACTED – S38(1)(b)]@gov.scot)>;  
Veitch J (Jennifer) <[Jennifer.Veitch@gov.scot](mailto:Jennifer.Veitch@gov.scot)>; Margaret Keyse <[mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)>  
**Subject:** FOI and Covid-19 infohub launched

Hello Gerry and team -

I hope you are all doing well.

This afternoon we have just made our new infohub on FOI during the pandemic live:  
[www.itspublicknowledge.info/covid-19](http://www.itspublicknowledge.info/covid-19)

It includes information for authorities and people wishing to request information. We will be making improvements and adding information to it as we are able, but hope that [guidance](#) page, [guidance document](#) and [FAQs](#) for authorities in particular will be useful. The hub also highlights our own page listing the information and correspondence we publish proactively.

We will be emailing authorities with the link this afternoon.

Please do let us know if you have any comments or queries.

With thanks

Erin

**Erin Gray** (she/her)  
**Head of Policy and Information**

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### **Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road  
St Andrews, KY16 9DS

Email: [egray@itspublicknowledge.info](mailto:egray@itspublicknowledge.info)

Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

## **Document 28**

### **Email from Scottish Government to SIC (16 April 2020)**

**From:** Gerry.Hendricks@gov.scot <Gerry.Hendricks@gov.scot>

**Sent:** 16 April 2020 14:59

**To:** Erin Gray

**Cc:** Graham.Crombie@gov.scot; [REDACTED – S38(1)(b)]@gov.scot; Jennifer.Veitch@gov.scot; Margaret Keyse

**Subject:** RE: FOI and Covid-19 infohub launched

Erin

I think we are all coping as well as can be expected (it is strange having little direct interaction with colleagues). I hope everything is fine with everyone in OSIC.

Thanks for this. It looks very comprehensive and should be very helpful for both requesters and authorities.

Regards

#### **Gerry Hendricks**

Scottish Government | Head of FOI Unit

☎ +44 (0)131 244 5327 | Mob [REDACTED – S38(1)(b)]

I am currently working from home, but can be contacted by email, Skype, or telephone.