

Report to:	Senior Management Team (SMT)
Report by:	Erin Gray (Head of Policy and Information)
Meeting Date:	4 February 2021
Subject/ Title:	Key document review: Intervention Procedures (VC 144093)
Attached Papers	Intervention Procedures v04 DRAFT (VC 129937)

Purpose of report

1. To seek Senior Management Team (SMT) approval following the review of the Scottish Information Commissioner's Intervention Procedures key document.

Recommendation and actions

2. I recommend that the SMT:
 - (i) approve the attached key document
 - (ii) agree that this Committee Report and the attached papers can be published as set out in the publication section of this report.

Executive summary

Interventions

1. The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 both give the Scottish Information Commissioner ("the Commissioner") the power to act where a public authority is not complying with requirements they set out, or with the Scottish Ministers' Codes of Practice. These powers include:
 - (i) promoting good practice
 - (ii) assessing whether an authority is following good practice
 - (iii) issuing practice recommendations where it appears to the Commissioner that an authority is not complying with the Codes of Practice
 - (iv) issuing enforcement notices where the Commissioner is satisfied that a public authority has failed to comply with FOI law.
2. The Commissioner has a duty, on receipt of an application, to investigate whether a public authority has dealt with an information request in accordance with FOI law. That work is subject to separate procedures – see the Investigations Handbook.
3. An "intervention" is the term used to describe the action which the Commissioner will take proactively to improve the practice of individual authorities more generally, rather than in relation to the outcome of a specific information request via an application investigation.

The procedures and this review

4. The Commissioner's Intervention Procedures set out the specific detail of how and when interventions will be conducted.
5. This document is due for review, according to our key document procedures, by March 2021. A substantive review has been undertaken and changes made to:
 - (i) the name of the document (to become "Interventions: our approach and procedures")
 - (ii) introduce a section aimed at external audiences, setting out our approach to interventions in more general terms, before going on to set out procedures designed to guide intervention officers and managers
 - (iii) intervention levels, including:
 - (a) removing the distinction of 'formal' or 'informal' interventions
 - (b) adding a distinction between 'non-compliance observations' (which do not constitute an intervention) and 'non-compliance notifications' (the lowest level of intervention, below Level 1 – recommending - but not requiring - action)
 - (c) adding that Level 1 interventions should require rather than recommend action.
 - (iv) case management and other processes to be followed, including:
 - (a) changing opening case file to be responsibility of intervention officer
 - (b) reference to additional templates available
 - (c) adding requirement to complete a short intervention summary when interventions are closed.
 - (v) external reporting and publication
 - (vi) records management, including taking updates procedures regarding working remotely
 - (vii) whistleblowing, including reference to the Commissioner's new policy.

Risk impact

6. Up to date and effective procedures for interventions are necessary to ensure the Commissioner demonstrates good practice and governance and mitigate strategic risk to the Commissioner's reputation and public confidence in the role.
7. The procedures also contribute to mitigation of operational risks, including by: supporting efforts to ensure the Commissioner demonstrates robust and defensible decisions; ensuring the organisation engages properly with stakeholders and monitors FOI legislation appropriately; and ensuring we have appropriate and effective policies in place for every aspect of our business.

Equalities impact

8. There are no direct equalities impacts arising as a result of the recommendations in this report.

Privacy impact

9. There is no new direct privacy impact arising from this committee report or from the document submitted for approval.
10. The procedures make clear what information should be gathered for interventions and how this should be maintained. There is emphasis on the destruction of samples of information requests provided for the purpose of the intervention and clear instructions about information security in the records management appendix.

Resources impact

11. Interventions are delivered within planned operational resources (though no specific or dedicated resources are provided or allocated for this function).
12. The revised procedures will assist the Enforcement and Policy and Information teams when carrying out relevant interventions.

Operational/ strategic plan impact

13. The procedures support work areas focused on interventions as set out in the current operational plan, and review is required as part of our key document processes.
14. Approving this document review will work towards the following strategic objectives as set out in the Strategic Plan 2020-2024:
 - (i) Enable and support high standards of FOI policy and practice (Strategic Aim 2)
 - (ii) Be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent (Strategic Aim 6)

Records management impact (including any key documents actions)

15. The document submitted for approval is a reviewed version of an existing key document. Once approved, the revised version will be published on our website as part of our Guide to Information. It will be subject to a formal review in three years, but may be updated before that in the light of any changes.
16. I am the responsible manager for the document.

Consultation and Communication

17. The document has been revised in consultation with members of the Policy and Information Team and the SMT.
18. If approved the new version will be communicated to all staff and published on the website. Sessions to familiarise staff with the changes may be arranged later in 2021 if required.

Publication

19. I recommend that this committee report is published in full.
20. I recommend that the attached paper is withheld in full on the basis that it is exempt from disclosure under section 27(1) of FOISA (Information intended for future publication): the paper will be published once the necessary key document actions have taken place and the document is in final form (such as with finalised document control sheet).