



**The Freedom of Information (Scotland) Act 2002:  
New Modes of Information Management in Scottish Public Bodies?**

*Report to the Scottish Information Commissioner*

*By Eleanor Burt and John Taylor*

28<sup>th</sup> September 2007



University  
of  
St Andrews

  
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Scottish Information  
Commissioner

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<b>Contents</b>	<b>Page</b>
<b>Acknowledgements</b>	3
<b>Executive summary and recommendations</b>	4
<b>1.0 Introduction</b>	10
1.1 Background	10
1.2 Research aims and objectives	10
1.3 Overarching research questions	10
1.4 The context of FOI	11
1.5 The relationship of the research team and the Scottish Information Commissioner	11
<b>2.0 Findings</b>	12
2.1 Introduction	12
2.2 The telephone survey	12
2.3 Population of public bodies surveyed	12
2.4 Organisational arrangements for FOI work	14
2.5 Staffing resources for FOI work	17
2.6 Information systems for FOI work	18
2.7 Perceptions of the impact of FOISA	20
2.8 The case studies	31
<b>3.0 Discussion, further reflections and conclusions</b>	65
3.1 Delivering the aims and objectives of the work	65
3.2 Changes and continuities in information management practices in Scottish public bodies: overview of key findings	67
3.3 Beneficial consequences perceived by public bodies: overview of key findings	71
3.4 Difficulties perceived by public bodies: overview of key findings	73
3.5 Identifying learning opportunities: overview of key findings	76
3.6 Further reflections	77
<b>4.0 Recommendations</b>	82
<b>Annexes</b>	84
1.0 Background to FOISA	85
2.0 Survey questionnaire: Illustrative comments by respondents	90
3.0 Research methodology and methods	105
4.0 Research team profiles	110
<b>Figures</b>	
Figure 1. Sub-sectoral respondents as a proportion of total responses	13
Figure 2. Number of completions by sub-sector	14
Figure 3. Evaluating change drivers in Scottish public bodies	21
Figure 4. Evaluating impediments to change amongst Scottish public bodies	22
<b>References</b>	113

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## **Executive summary and recommendations**

The findings set out in this Report are the result of research sponsored by the Scottish Information Commissioner [SIC] and independently designed and delivered by Dr Eleanor Burt and Professor John Taylor between Thursday 22<sup>nd</sup> February 2007 and Wednesday 1 August 2007.

The research examines the extent to which, and how, the Freedom of Information [Scotland] Act 2002 [FOISA] has impacted upon information management arrangements in Scottish public bodies. The results gathered have enabled reflection on the wider administrative, political and democratic contexts of FOI and the behaviours and expectations that those contexts embody.

The formal aims of the research were:

- 1) to investigate changes and continuities in information management in Scottish public bodies consequent upon the implementation of FOISA;
- 2) to identify whether there have been beneficial consequences for public bodies resulting from FOISA, and if so, what these are;
- 3) where FOISA is problematic for organisations, to understand why this is;
- 4) following 1] – 3] above, to develop learning opportunities deriving from this research for strategic managers in Scottish public bodies, for public policy makers, and for the SIC.

Four key institutional sub-sectors coming within the scope of FOISA formed the sample population for the research. The sub-sectors comprised:

- Scottish Executive departments and agencies;
- Local authorities;
- NHS boards;
- the police forces.

The period from the formal introduction of FOISA in January 2005 through its first implementation phase of the last two and a half years has been characterised by mounting pressure for public service modernisation and change. This agenda for

modernising public service organisations found its way into our research findings *via* the clear importance being attached by public bodies to information resources and 'information policy', causing them to locate FOI as only one of many change issues that they face. Also in the context of government modernisation we found many of our case study respondents lamenting the 'silo' structure that prevails in their organisation with its negative consequences for good information management. The modernisation agenda promotes integration, existing structures promote separation.

### ***Changes and continuities in information management associated with FOI***

There is no settled organisational or systems approach to meeting the requirements of FOISA in evidence. The case studies show a rich diversity of practices with most public bodies responding to FOISA by making their own organisational adjustments and systems changes related to the implementation of the Act within their organisation. As part of their broad information management strategy, most bodies have assigned responsibility for FOISA to a specific individual or newly formed unit and many of these have done so in conjunction with the assignment of responsibility for FOISA to an individual within their operating units also.

All written requests for information received by public bodies are FOI requests and subject to the Act. We found that while respondents were generally aware of this, public bodies were nonetheless distinguishing and categorising 'types' of requests. Requests categorised as 'routine' or 'business-as-usual' and those categorised as 'non-routine' were thereby submitted to different handling protocols and processes.

### ***Beneficial effects of FOI***

The research findings suggest five main beneficial effects to which our respondents perceived FOISA to be contributing. Firstly, benefits were reported in respect of changing organisational culture. Secondly clear majorities of respondents were of the view that their organisation was now more open, both internally and externally. Thirdly, some noted the relationship between increased transparency and the breaking down of organisational 'silos'. Fourthly, we heard that FOI is perceived by some respondents to be contributing to improvements in records management. Finally, we heard that FOI is perceived to be contributing to a 'more professional' approach to the recording of information and its communication.

### ***Problems associated with FOI***

Respondents and interviewees have argued strongly that existing organisational forms, practices, and resource limitations pose great difficulties for delivering the integrated, concerted and timeous responses needed for successful FOI. A second perceived difficulty for public bodies in implementing FOISA is what many refer to as ‘abuse of the Act’, particularly by some journalists. A third difficulty arises from the ‘political environment’ within which responses to FOI requests are managed. Public bodies must serve political masters and they must also be aware that decisions made by them can have political consequences that can go beyond what might initially have been anticipated. For these reasons we have found that all of our case study organisations are making judgments about FOI requests and responses that give consideration to the perceived imperatives of the political environment. Finally, respondents have spoken of the need for strong leadership in creating the climate and conditions for effective implementation of FOISA within public bodies.

### ***Learning opportunities***

The dominant view that has come forward is that FOISA has been implemented by public bodies within a rational-legal frame of reference that stresses the letter rather than the spirit of the law. Many of our interviewees have lamented this reduced vision of the Act, preferring that it be seen as one important aspect of a more open government approach. Here we stress a background factor vital to improvement in the FOI system: leadership towards the broader concept of open government.

Respondents also conveyed the need for forums such as the Scottish local authorities FOI Officers’ Network to be more strongly developed, particularly in their capabilities to support learning and communication of good practice.

We have noted comments from respondents that valuable learning opportunities are delayed due to the time taken by the SIC to issue decisions on appeals. Related comments have focused upon the need for a more proactive and systematic approach to dissemination of key ‘learning points’, including ‘precedents’.

Finally, we have noted that the requirements of the Data Protection Act, the Enterprise Act, and FOISA are felt by some respondents to place contradictory requirements upon public bodies. This is clearly a significant issue for these bodies as these requirements are set in law and have significant implications if they are not met.

### *Further reflections*

We note the juxtaposition in contemporary public administration of attempts to 'modernise' the content and delivery modes of public services, on the one hand, and the institutionalised nature of public service organisations, on the other. FOI raises administrative, political and democratic challenges for public bodies. The dominant logic of responses to FOI amongst the majority of Scottish public bodies is to be found in longstanding administrative rationality. Systems, both ICT and human, have been put in place, responsibilities have been formally assigned and, requests are being handled pragmatically with little if any sense of democratic considerations. Public bodies are seeking ways of managing FOI that enable consistency of response, with most of them segregating requests as either 'routine' or 'non-routine'. By doing so public bodies are seeking to grapple with problems generated by 'administrative incapacity' [inadequate records management systems, incompatible ICT systems, conflicting pressures on resources, lack of awareness of FOI on the part of some staff, lack of leadership from the top of organisations, for example]. Because of administrative incapacity this behaviour need not be viewed as evidence of flouting or undermining the legal requirements of FOISA. We note, however, that it does lay a foundation upon which 'managed responses' to FOISA can more readily be made by public bodies, thus running counter both to the letter and the spirit of the Act.

We wish, too, to emphasise the importance for public bodies of being alert to threats to openness deriving from the 'political rationality' that sits alongside administrative rationality. We urge that acting in the democratic spirit of FOISA should be paramount for all public bodies at all times.

It is our view that the most crucial element in taking forward the potential of FOISA is strong, collective leadership by those in the most senior posts in Scottish public bodies. There is scope for this stronger leadership of FOI that embraces the spirit as well as the letter of FOISA.

‘System learning’ for FOI in Scotland remains, at best, in early development with best practices and innovations not being as widely identified and shared as many would want. Decisions are too slow in coming through to the sector from the SIC; and ways need to be found, too, of improving how these are communicated.

Emergent networks for dialogue about FOI need to be strengthened. We call for a ‘system learning model’ to be pursued for Scottish FOI. This model is both ‘bottom up’, realised through the stimulation of networks such as the new Scottish Public Information Forum, and ‘top down’, realised through the development of strong, democratically inspired leadership of FOI across the Scottish public sector.

### *Recommendations*

#### **Recommendation 1**

**That those responsible for FOI policy development in Scotland, seek ways of improving the top management leadership of FOI throughout Scottish Public Administration so that the democratic rationality behind FOI is both better understood and realised. In particular, the attention that we have drawn to the need to imbue public bodies with the understanding and vision that FOI is an overarching and crucial aspect of democratic society, including good public administration, should be acted upon.**

#### **Recommendation 2**

**That those responsible for FOI policy development in Scotland seek ways of improving opportunities for system learning about FOI and its implementation throughout Scottish Public Administration. This focus on system learning should build upon the role of the Scottish Public Information Forum and should encourage the sharing of process innovation and best practices in records management, for example.**

**Recommendation 3**

**That the SIC responds to requests that have come from throughout the public sector, captured in section 3.5.3, that there should be a more informative and timeous approach to the dissemination of key ‘learning points’ from SIC decisions, including ‘precedents’.**

## **1.0 Introduction**

**1.0.0** The findings set out in this Report are the result of research sponsored by the Scottish Information Commissioner [SIC] and independently designed and delivered by Dr Eleanor Burt and Professor John Taylor between Thursday 22<sup>nd</sup> February 2007 and Wednesday 1 August 2007.

**1.0.1** The research examines the extent to which [and how] the Freedom of Information [Scotland] Act 2002 [FOISA] has impacted upon information management arrangements in Scottish public bodies.

## **1.1 Background**

**1.1.0** The background to FOISA is set out briefly in **Annex 1**. There we also present a synoptic view of the development of FOI legislation in historical and international setting.

## **1.2 Aims and objectives**

**1.2.0** The aims of the research presented here were:

1. to investigate changes and continuities in information management in Scottish public bodies consequent upon the implementation of FOISA;
2. to identify whether there have been beneficial consequences for public bodies resulting from FOISA, and if so, what these are;
3. where FOISA is problematic for organisations, to understand why this is;
4. following 1] – 3] above, to develop learning opportunities deriving from this research for strategic managers in Scottish public bodies, for public policy makers, and for the SIC.

**1.2.1** The overall objective of the research is to enhance understanding of the impacts of FOISA upon organisational arrangements within Scottish public bodies.

## **1.3 Overarching research questions**

**1.3.0** Following from these aims, our research questions are as follows:

1. Has FOISA led to changes in the ways information is managed within Scottish public bodies?

2. What new organisational procedures for information handling in respect of FOISA have been put in place by Scottish public bodies?
3. What new information systems for records management and document handling have been put in place by Scottish public bodies directly as a consequence of the demands of FOISA?
4. In designing these new organisational procedures and systems what have been the key considerations that have shaped the new arrangements?
5. Are the changing information management requirements of FOISA deemed by public bodies to have been beneficial or problematical?

## **1.4 The context of FOI**

**1.4.0** Whilst this report focuses extensively upon the specific aims and objectives set for this work, we also wish to reflect, in keeping with our project proposal, upon the broader contexts within which Scottish public bodies operate so as to position our findings into other, broader debates about FOI. This reflection occurs at **section 3.6** of this report raising questions about the administrative, political and democratic contexts within which FOI occurs and, in particular, the extent to which the democratic context of FOI is less appreciated and less formative than the administrative and political contexts.

## **1.5 The relationship of the Research Team and the Scottish Information Commissioner**

**1.5.0** In undertaking the research, the interactions of the Research Team with the SIC have been conducted so as to ensure the anonymity of the participating public bodies and their representatives and the confidentiality of individual responses.

**1.5.1** More broadly, while the Research Team has engaged in dialogue with the SIC regarding the research aims and objectives, and design and delivery, final decisions on these aspects of the work and the interpretation of findings have rested independently with the research team.

## **2.0 Findings**

### **2.1 Introduction**

**2.1.0** This section of the Report sets out key findings from both the telephone survey and the illustrative case studies.

**2.1.1** Four sub-sectors from within Scottish public administration were selected for the telephone survey and case studies. These sub-sectors were police forces, health boards, local authorities, and Scottish Executive bodies.

**2.1.2** The telephone survey was conducted between 22 February and 9 May 2007 and the case studies were undertaken between 22<sup>nd</sup> May and 24<sup>th</sup> July [**Annex 3**] supports this section of the report, setting out methodological and other issues pertinent to our data gathering for the survey and case studies as well as our analysis of them.

### **2.2 The telephone survey**

**2.2.0** The survey data reported here has been set out below within each of four categories:

- Organisational arrangements for FOI work
- Staffing and resources for FOI work
- Information systems for FOI work
- Perceptions of the impact of FOISA.

**2.2.1** The evidence assembled under each of these categories relates specifically to the research questions set out at **1.3.0** above.

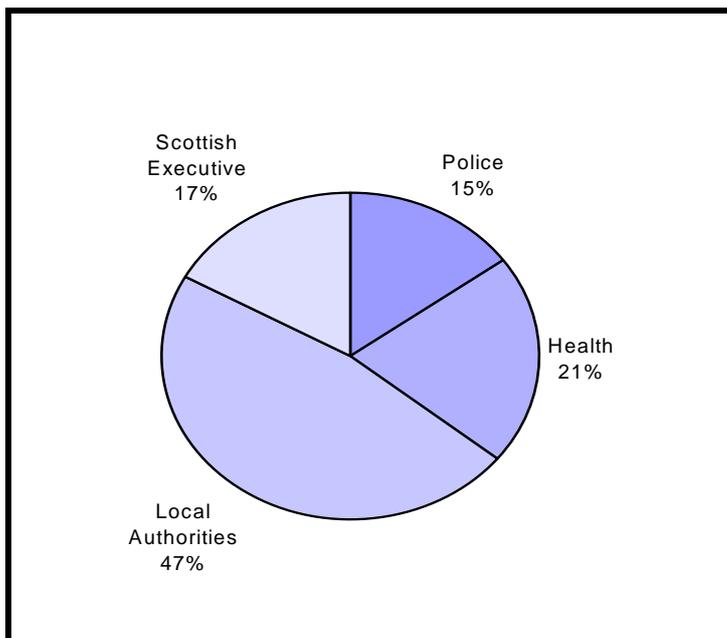
**2.2.2** Before we look at our findings under these four headings we set out the general parameters of the survey in **section 2.3** below.

### **2.3 Population of public bodies surveyed**

**2.3.0** An ambitious aim of this research was to achieve a 100% response rate from the main organisations within each of the sub-sectors chosen. Typically in telephone surveys a high response rate can be anticipated and this has proved to be the case here for three of these sub-sectors. In this case a 65.4% overall response rate was achieved for the survey comprising 53 Scottish public bodies.

**2.3.1** The pie chart below, **Figure 1**, shows the distribution of responses across the whole of the targeted population. Scottish local authorities make up 47% of these 53 respondent bodies; NHS boards, 21%; police forces, 15%. Taken together the Executive departments and agencies account for 17% of our total number of respondents.

**Figure 1. Sub-sectoral respondents as a proportion of total responses**

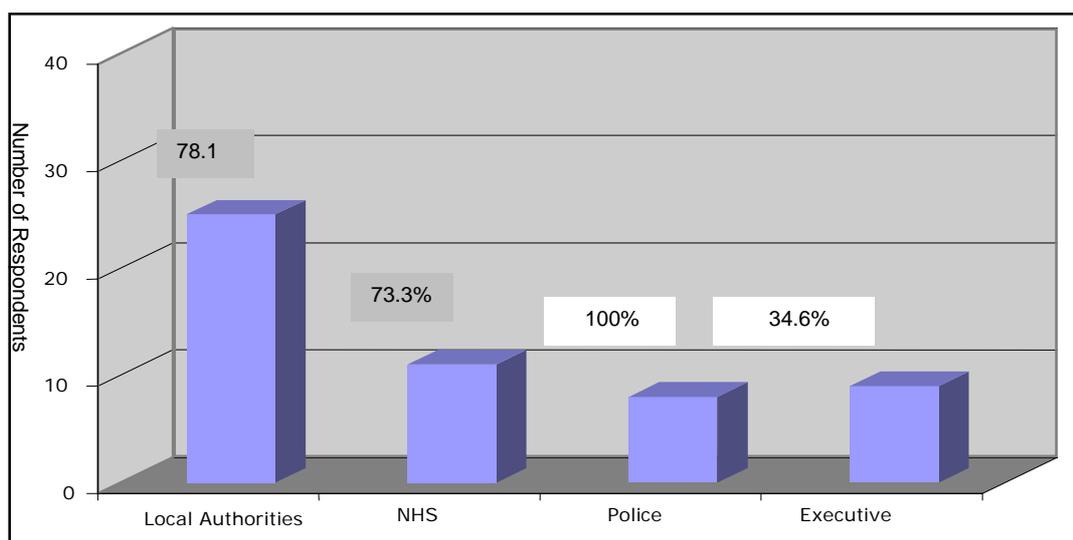


**2.3.2** **Figure 2** below shows the response rate for each of these four sub-sectors. 100% [N = 8] of Police Authorities responded to our survey; 73.3% [N = 15] of NHS boards; 78.1% [N=32] of local authorities; and 34.6% [N=26] of Scottish Executive bodies.

**2.3.3** Not included in these data is a further response, from the Scottish Executive, that of the Executive's FOI central unit. Responses from that central unit have been managed separately from the responses to the survey as a whole and taken into

account in the analytical sections of this report. Our reason for separating out the central unit's response to our survey from those of constituent organisations of the Scottish Executive is that our interest was in FOISA-related activities in organisations with primary responsibility for receiving and handling requests.

**Figure 2. Number of completions by sub-sector**



## 2.4 Organisational arrangements for FOI work

**2.4.0** We sought information from the telephone survey on the extent to which Scottish public bodies had responded to FOISA with new organisational arrangements. Respondents were asked to include in their assessment of changed organisational arrangements:

- new procedures for managing FOI-related information;
- any new unit for managing FOI-related information;
- the development of a dedicated FOI-related response group.

**2.4.1** We also wanted to know to what extent any new formal organisational arrangements had been put in place so as to handle FOI requests, reviews and appeals. To what extent, for example, have new dedicated units been introduced and to what extent is responsibility for FOI distributed throughout the organisation? In short, we were interested in whether new organisational capabilities were being introduced to support these public bodies in responding under the Act.

#### **2.4.2** We found that:

- 96% of public bodies reported that they had introduced some degree of organisational change to support FOI work;
- 58% of public bodies said they had developed some form of specialist capability for managing FOI work;
- 72% have introduced an organisational model best described as ‘hub & spokes’; ie., a model of shared responsibility between departments or units and the central part of the organisation;
- 51% of bodies informed us that they had placed responsibility for FOI work largely in the hands of an existing part of the organisation;
- 15% reported having a wholly decentralised approach to FOI work;
- 13% advised that they are supported externally in respect of FOI work.

**2.4.3** A general picture emerging from these data is of the majority of public bodies introducing some new organisational arrangements for FOI work, including 58% of bodies having developed a form of specialist FOI-related capability. 87% of these bodies manage responses to the Act without support from any external body. The remaining 13% of public bodies [n=7] signal that they do occasionally resort to external support in making FOI decisions. Two of three NHS bodies indicate resorting to the ‘central legal office’ in Edinburgh and two also use informal networks, both within the health sector and more widely within the national ‘FOI community’. The police in this cohort draw support from a ‘central referral unit’ in England. The local authority in this group seeks support either from the police service or from the NHS. The two Executive agencies in this group seek support from the Scottish Executive’s central FOI unit.

**2.4.3** This general picture is supplemented by more detailed information that we sought about the general handling of FOI work within public bodies. We asked whether a specific group was charged with responsibilities associated with FOI *requests*. We found that 70% do assign responsibility to such a group. Of that 70%, 68% assign responsibility to the FOI officer or dedicated unit. Many of these 70% also responded [51%] that overarching responsibility lay with a designated group of

senior officials. All police forces assign responsibilities in one or other of these ways; eight from eleven NHS boards do so; and eighteen of twenty five local authorities do so also. Responses from the Scottish Executive departments and agencies are more mixed.

**2.4.4** When asking about handling *reviews* we found that 89% assign responsibility to a special group or individual within the organisation. Of these, 36% place responsibility with a special group of officials and 44% of those same bodies place them into the hands of designated chief officers. The remainder of reviews are handled from the specialist unit or by the FOI officer.

**2.4.5** When asked about the handling of *appeals* 92.5% responded that a special group within the body takes responsibility. In 47% of those bodies, appeals are handled by a special appeals group and in 41% of them appeals are handled by the FOI unit or officer.

**2.4.6** A general pattern emerging here is that as a case moves from *request* to *review* and to *appeal*, so public bodies are more likely to handle them through a specially charged group or unit within the authority.

**2.4.7** When asked about reporting lines from the official with responsibility for FOI compliance to the Chief Executive or equivalent, 55% responded that the FOI officer reported directly to the Chief Executive. Evidence from the sub-sectors was mixed, though it is noteworthy that the incidence of direct reporting to the most senior official occurs least in Scottish police forces where 25% indicated a direct report.

**2.4.8** 81% of Scottish public bodies revealed that strategic responsibility for FOI is clearly a top management matter. Responding in this way were 100% of NHS boards, 80% of local authorities, 75% of police forces and 66% of the Scottish Executive bodies.

## **2.5 Staffing resources for FOI work**

**2.5.0** We sought information from the survey on the extent to which Scottish public bodies had responded to FOISA with new staffing arrangements. Also, we wanted to gauge the extent to which staff training arrangements were being put in place so as to build specialist capabilities for handling responses to FOISA.

**2.5.1** We found that:

- Across the full population of respondents, 47% stated they had added staffing resource so as to handle FOI activities. Our data shows that bodies have invested in new staffing resources for FOI as follows: police forces [50%]; local authorities [52%]; NHS boards [36%]; Executive agencies and departments [33%];
- Of those 47% who have added staff, 48% have added 1 new staff member;
- Eight bodies report having added 2-4 new staff to handle their FOI responsibilities;
- In one local authority a major staffing investment of 5 or more staff has been made;
- When we tested these data further against those bodies that have adopted new information systems to handle FOI work we found no evidence of a ‘substitution effect’ occurring. That is, bodies absorbing FOI related work into their existing staff resource were neither more nor less likely than those taking on new staff to have invested in new information systems;
- 91% of public bodies in the survey run FOI training programme[s] for staff. The main shortfall in this respect lies in local authorities, where 4 bodies report that they do not run a training programme for FOI;
- When asked to whom the training is aimed, the largest response [50%] was that training is aimed at those going through induction. The second largest response [38%] was that they provide regular updating training on FOI.

**2.5.2** A general picture emerging here is that 53% of respondents have absorbed FOI work into their existing staff resource. Police forces and local authorities have invested in new staff to a somewhat greater extent than the other sub-sectors. Secondly, some form of staff training is being provided in over 90% of Scottish public

bodies though, perhaps surprisingly, we have found that only half of these bodies are providing FOI training in their staff induction processes.

## **2.6 Information systems for FOI work**

**2.6.0** We asked a number of questions in the survey aimed at understanding the general ‘informational background’ to FOI.

**2.6.1** First, we asked about the extent to which individual public bodies had developed and adopted an ‘information policy’, that is a more or less comprehensive statement relating to the significance of information as a corporate resource in a number of areas of public service activity.

We found that:

- 72% of Scottish public bodies have adopted a comprehensive information policy. Sub-sectors break down as follows:
  - o 100% of NHS boards;
  - o 87% of Scottish Executive bodies;
  - o 66% of local authorities;
  - o 43% of police forces.
- Four respondents indicated that they have a specific Data Protection Act [DPA]/FOI policy without having a general information policy.
- Of those with an information policy:
  - o 100% reported that the policy placed emphasis upon compliance under both the DPA and FOISA;
  - o 100% responded that their information policy placed strong emphasis upon ‘good information practice’.

**2.6.2** Secondly, we asked about the extent to which Sections 60 and 61 Codes of Practice were proving useful in supporting FOI work within public bodies. The Code of Practice for Section 60 covers general advice to all public bodies so as to secure compliance under the Act. The Code of Practice for Section 61 focuses attention on records management.

We found that:

- 4% [n=2] of bodies found the Codes of Practice to be “extremely helpful”. These are both Scottish Executive bodies;
- 58% of Scottish public bodies found these Codes “moderately helpful”, the majority of these being local governments;
- 28% responded that the codes of practice were “neither helpful nor unhelpful”. Each of the sub-sectors is represented in this group.

**2.6.3** A small number of respondents additionally offered a comment<sup>1</sup> about the usefulness of the Codes. Where this was done the main emphasis of the comment was that the Codes were useful initially as the Act came into force. Two quotations are:

*“The Codes were wonderful as a political tool to get support initially”.*

*“S61, on records management, was helpful at the time. Not so much now”.*

**2.6.4** The responses to these questions conform, in one particular aspect, to responses elsewhere. That is, that Scottish public bodies have generally developed their own ways of handling FOI responses, with external sources of advice, both formal and informal, deemed at best only broadly useful and, so far as the Codes are concerned, their usefulness was felt mainly during the early stages of implementation.

**2.6.5** We sought information from the survey on the extent to which Scottish public bodies had responded to FOISA with new information systems developments. We wanted to gauge the extent to which new information systems developments were being put in place so as to build information capabilities for handling FOI requests, reviews and appeals.

We found that:

- 85% of respondents have either introduced new systems or adapted existing information management systems;
- Of those respondents introducing or adapting new systems, 69% have either introduced or adapted existing document handling or records management systems;

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<sup>1</sup> Comments were called for at a number of points in the survey. We have collected all of these at Annex 2.

- Of those respondents introducing or adapting new IT systems, 97% have either introduced or adapted existing systems that enable the general management, including tracking, of FOI requests;
- When asked the extent to which FOISA has acted as a stimulus to new information systems developments:
  - 42% of respondents declared that FOISA's impact on their information management practices was broadly 'neutral';
  - 38% of respondents declared that FOISA was either extremely or moderately important in promoting new information management practices.
  - 17% of respondents declared that FOISA had been either extremely or moderately unimportant in respect of information management.

It should be noted here that analysis of these responses above by sub-sector does not reveal any significant differences between the sectors.

**2.6.6** The general picture emerging here is that FOISA has been just one of a number of factors focusing attention upon new approaches to information management, hence the figures above indicating little in the way of a direct 'FOISA effect' on systems development. Nonetheless, more than four in five public bodies have introduced new information systems or adapted existing systems that directly support FOISA response effort.

## **2.7 Perceptions of the impact of FOISA**

**2.7.0** This section of this report provides insights into the perceptions that exist across Scottish public bodies about the way in which FOISA is seen as causing change or as contributing to it. Taken as a whole this section allows us to generate a cumulative picture of perceptions of FOISA from a number of points of reference. As such this section becomes a qualitative 'health check' on the taking forward of FOISA in those parts of Scottish public administration examined here.

Specifically, we asked respondents about

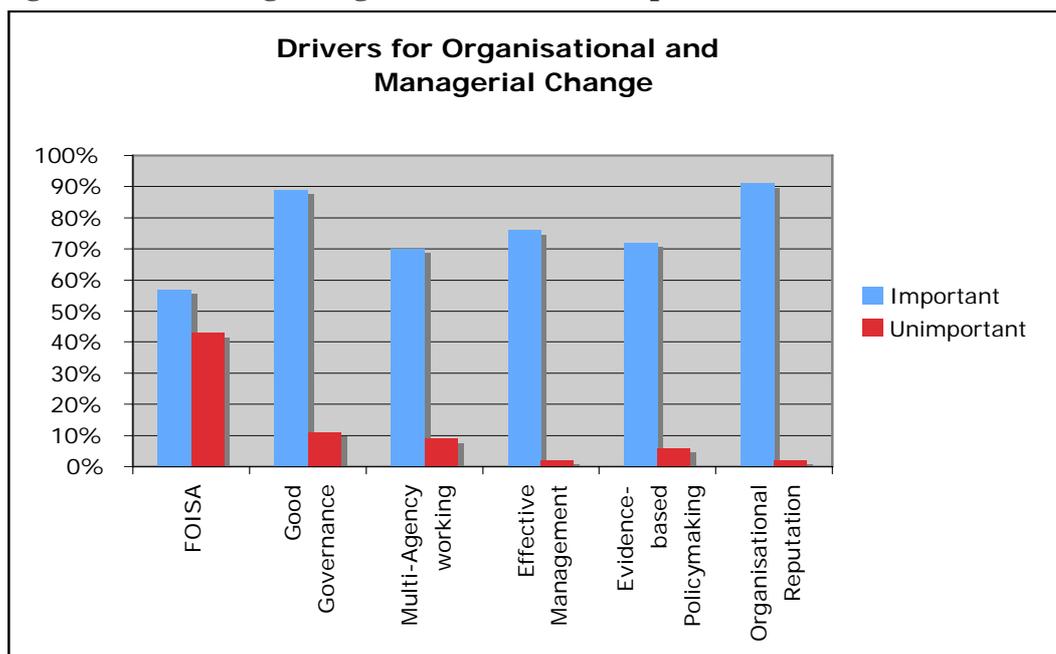
- Drivers for, and impediments to, management and organisational change within their organisations;
- Perceived culture change in their organisation;
- Learning opportunities created by FOISA;
- Their perception of the main benefits and dis-benefits deriving from FOISA, and whether these are growing or reducing.

### 2.7.1 Drivers for and impediments to management and organisational change

**2.7.1.0** We asked public bodies to evaluate the relative importance of different factors in contributing to efforts to create management and organisational change. In so-doing we recognised that the period during FOISA implementation has been one of challenge and change for many public authorities and that many factors are at work in presenting these challenges. We offered respondents a list of ‘change drivers’ from which to choose and also left open the possibility for them to nominate other drivers that they thought important.

**2.7.1.1** Figure 3 below presents a list of the main nominated drivers for change and the number of respondents citing them either as being of importance in driving change or as relatively unimportant. Note that where the rows do not sum to 100% it is because other responses were also received.

**Figure 3. Evaluating change drivers in Scottish public bodies**

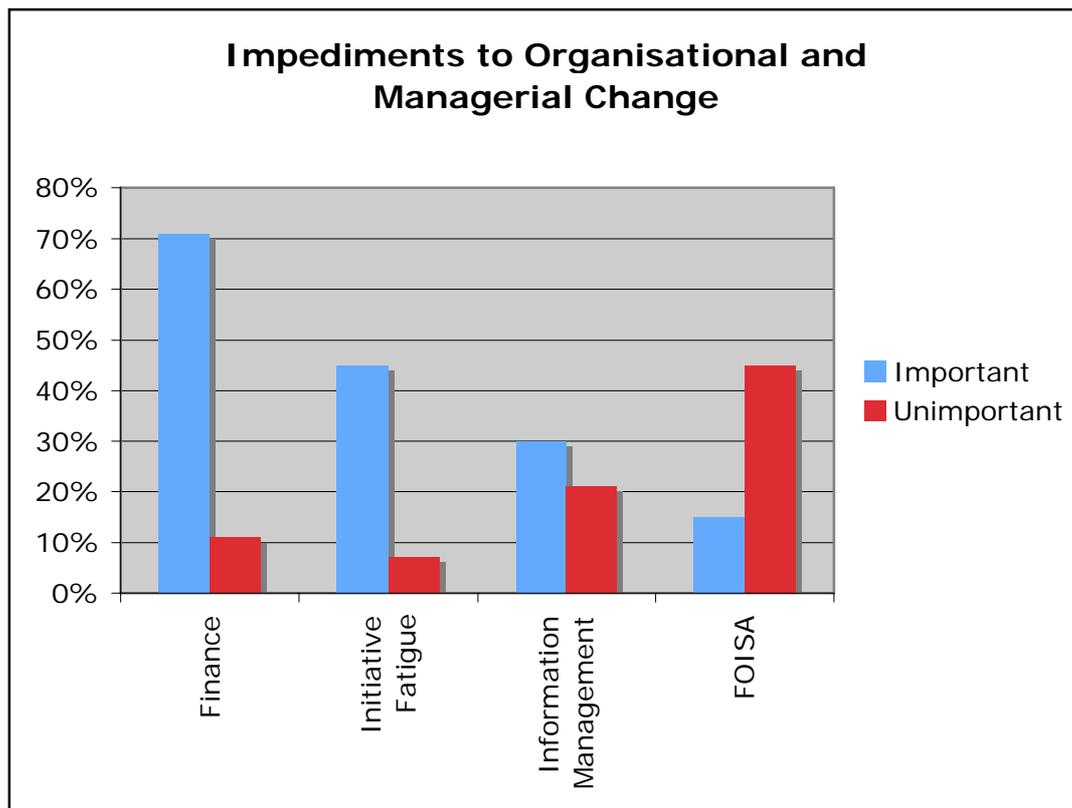


We summarise our interpretation of **Figure 3** at the end of **section 2.7.1.4** below.

**2.7.1.2** We asked respondents what they perceive as the most significant impediments to change to their management and organisation. We offered respondents a list of ‘impediments to change’ from which to choose and also left open the possibility for them to nominate other impediments that they thought important.

**2.7.1.3** **Figure 4** below presents a list of the main impediments to change and the number of respondents citing them either as being of importance as an impediment or as relatively unimportant. Note that where the rows do not sum to 100% it is because other responses were also received.

**Figure 4. Evaluating impediments to change amongst Scottish public bodies**



We summarise our interpretation of **Figure 4** at **section 2.7.1.4** & **2.7.1.5** below.

**2.7.1.4** Three points of significance emerge from **Figures 3** and **4**. First and from **Figure 3**, whilst a majority [57%] of Scottish public bodies perceive FOISA as

driving management and organisational change within their own organisation it was the least cited driver offered by our respondents. All of the other drivers were cited much more frequently than FOISA, with ‘good governance’ [89%] and ‘organisational reputation’ [91%] cited most frequently. It can be argued that compliance with FOISA is a vital element of both good governance and reputation building. Nonetheless, when offered these categories, respondents were much less likely to nominate FOISA as a change agent than they were the pursuit of good governance and enhanced reputation.

**2.7.1.5** Secondly and from **Figure 4**, we see financial constraints offered as the most important impediment to delivering management and organisational change and, by comparison, FOISA is seen as important as an impediment only by 15% of respondent organisations. Thus, for the most part, we might conclude that the work associated with FOISA, together with its opportunity costs, is not on the whole seen as impeding the change processes of the organisation. Breaking these data down by sub-sector we find that Scottish Executive bodies are much less concerned about financial impediments than other sub-sectors and none of the Scottish Executive bodies perceive FOISA as acting as an impediment to change.

**2.7.1.6** Thirdly, we see these survey results fitting into a general pattern of response about FOISA. That is, public bodies in Scotland for the most part see FOI work as an important aspect of their duties, but not as *the* most important. Furthermore, a core issue that they face in meeting the new demands upon them is how they balance FOISA requirements against other considerations that they perceive as more important.

## **2.7.2 Culture change**

**2.7.2.1** We asked respondent organisations about their perceptions of the contribution to culture change that FOISA was making. We approached this question in four different ways:

- through a direct question about culture change;
- through a question about senior level commitment to FOISA;
- through a question about changing transparency levels, internally;

- through a question about changing transparency levels in external relationships.

We look at the results of each of these questions in turn in sections **2.7.2.2** to **2.7.2.6**.

**2.7.2.2** When asked to gauge the extent to which FOISA had contributed to culture change, 72% replied that FOISA was having a positive impact. Only 8% replied that FOISA was having little effect. The most positive respondents about the contribution of FOISA to culture change are the police [87%] and local authorities [76%]. 66% of Scottish Executive bodies who responded were positive about the contribution of FOISA to culture change, as were 55% of the NHS boards.

**2.7.2.3** We asked about the perceived level of commitment to FOI at the most senior levels of organisations. We asked about the extent to which FOI was seen at that level as important to the success of the organisation. We found that:

- 68% of respondents said that senior staff and elected members do not separate out FOISA effect, seeing FOI work as one factor amongst many that contributes to success;
- 9% of our respondents replied that FOI work is seen at senior level as very important to the success of the organisation;
- 23% of respondents told us that FOISA is deemed unimportant to the success of the organisation at senior levels.

There are no differences of significance between sub-sectors on this point.

**2.7.2.4** We asked about the extent to which FOISA is perceived to have contributed to the level of *internal* organisational transparency. Are flows of information now more regular and fulsome than they were and do officials know more about the organisation as a whole than they did before FOISA was introduced?

We found that:

- 62% of respondents argued that their organisation is now more open than it was pre-FOISA, with 12% of those saying that their organisation is now “extremely open” as a consequence of FOISA. Local authorities are most

positive about the benefits of FOISA in this respect [72%] and 54.5% of NHS boards responded similarly. 62.5% of police forces and 44% of Scottish Executive bodies shared this view;

- 36% of respondents do not perceive any FOISA effect in terms of greater or lesser internal openness;
- One respondent said that their organisation is now less open internally as a consequence of FOISA. This response was backed by the following comment:

*“There is now more off the record discussion because there is a fear of documenting discussion”.*

Adding to this point another respondent stated in respect of their organisation that:

*“There’s an improved attitude, but a risk that less is written down”.*

**2.7.2.5** We asked about the extent to which respondents perceived FOISA as having contributed *directly* to the external transparency and openness of the organisation. We found:

- 89% said that their organisation was now more transparent externally as a result of FOISA. This comment was broadly shared throughout the four sub-sectors studied;
- Of those, 13% took the view that their organisation was now extremely open as a consequence of FOISA. One police force, five local authorities and one Scottish Executive body responded in this way;
- 11% did not identify any FOISA effect in terms of external transparency. Two of these respondents came from each of the health, local authority, and Scottish Executive sub-sectors.

Respondents were given an opportunity to expand upon their responses to this question. We note some of them below:

*“Public awareness of FOISA promotes openness”.*

*“More information is available, but less is being recorded”.*

*“We’re more aware of questions the public may ask”.*

**2.7.2.6** From these responses we draw out three main conclusions about the impact of FOISA upon culture change in Scottish public bodies. First, we note the general affirmation that FOISA is having a beneficial effect on organisational culture [72%]. Secondly, we note that at senior levels FOI work is balanced off against many other competing success factors with only 9% indicating that FOI work is seen as very important to organisational success. Thirdly, we note the contribution to open government [both internally and externally] that FOISA is perceived as delivering with 62% of respondents saying that their organisation is now more open internally than it was pre-FOISA, and 89% indicating that it is now more open externally. We found one organisation [an NHS board] arguing that FOISA was closing rather than opening the organisation internally. 11% of respondents did not perceive any FOISA effect on external transparency on the grounds that their organisation was already open before the introduction of FOISA.

### **2.7.3 Organisational learning**

**2.7.3.1** We wanted to gauge respondents’ views on the extent to which FOISA was generating opportunities for learning and change within their organisations. We were looking here at *two* areas: learning and change in relation to *organisational arrangements* on the one hand, including adaptation of existing information management systems or attempts to develop specialist support units for FOI work for example; and learning and change in *employees’ understanding of FOISA* itself, including how to interpret exemptions and the public interest test for example. Here, and in contrast to our findings at **2.7.1.4** and **2.7.1.5** we found more muted responses.

**2.7.3.2** On learning and change in respect of *organisational arrangements* we found that:

- 23% responded that organisational learning and change is taking place as a consequence of FOISA. The most significant group responding in this way was the Scottish Executive with 44% saying that there is a learning benefit deriving from the introduction of FOISA.

- 51% of our respondent organisations saw FOISA as neither welcome nor unwelcome in this respect, i.e. there is no perceived learning effect from FOISA amongst a majority of Scottish public bodies. The sub-sector break down on this point is police, 75%; local authorities, 52%; NHS boards, 45% and Executive bodies, 33%.
- When asked whether specific decisions made by the SIC about a case either in their own organisation or in a different organisation had led to change in their organisation, 42% said this had been the case and 49% said it had not. Thus 42% of our sampled population had experienced change made as a consequence of a decision made by the Commissioner. Twelve of these bodies are local authorities, four are NHS boards, with police and Executive bodies accounting for three each.

When asked to explain what precisely had been changed as a consequence of decided cases, responses were few overall but, within the group of bodies that did respond, two main responses were forthcoming. First, some organisations have set up improved activities for monitoring SIC decisions. The figures here are small, but the largest sub-sectoral response is Health with three bodies stating they have improved their monitoring activities relating to SIC decisions. Secondly, some organisations have changed the ways in which they disclose information under FOISA as a consequence of specific decisions made by the Information Commissioner. Again, the numbers here are small and there is no particular sub-sector that stands out in this respect. One respondent provides perhaps the strongest comment on learning in this respect:

*“The main change is having the publications scheme and having it on the website. This got us thinking about what we held and what people would like to see.”*

**2.7.3.3** On learning and change in respect of *employees’ understanding of FOISA* itself respondents indicated the need for greater clarity from the SIC in relation to some of the legal dilemmas generated from the interplay between FOISA, DPA and Enterprise Act considerations. The quotation below is illustrative:

*“There’s conflict between the Enterprise Act and FOISA and section 38 of FOISA and Data Protection”.*

Respondents also indicated that a shorter turnaround on decisions from the SIC would be helpful. The following comment is illustrative:

*“There are many grey areas and it takes a long time for SIC decisions” .*

**2.7.3.4** Concluding from these data on the usefulness of FOISA-related activity for organisational learning, we make three main points. The first of these is to note what appears to be a mixture of indifference and negativity to FOISA as a useful agent of organisational learning amongst a majority of our respondents. More than three-quarters of all public bodies recorded either indifference or negativity about FOISA in this particular respect. Secondly, we show that about 42% of Scottish public bodies report some adaptation and change as a consequence of FOISA. Thus, while 75% of bodies seem indifferent to FOISA nonetheless we have evidence here of more than 40% of organisations introducing some degree of change in their procedures. Thirdly, it is clear that some of our respondent organisations want to learn from SIC decisions and have greater clarity about legal dilemmas and precedent, but *“there is no system for learning lessons”*.

## **2.7.4 Perceptions of the impact of FOISA**

**2.7.4.1** We asked respondents for summary judgments on the working of FOISA. We asked about their perception of the main benefits that had derived from FOISA as well as the main problems [and challenges] that had arisen as a consequence of FOISA. We asked them also to name a maximum of three of these benefits and problems and to indicate whether these were increasing or diminishing in scale. We now turn to the results of these questions.

**2.7.4.2** Two main *benefits* stand out from amongst our responses:

- ‘improved records management’;
- ‘being more open’.

In all 74% of respondents cited the first of these and 49% the second. The quotation below is illustrative of comments made about records management:

*“FOISA has focused employees on the importance of good record keeping practice. It’s a platform...a catalyst...for new processes for document handling. As a driver...it’s moved information management up on the priority list. It provides a standard and opportunity to learn good practices”.*

The quotations below are illustrative of respondents’ views regarding openness:

*“Generally speaking it [FOISA] has helped us to be seen as a more open and transparent organisation”.*

*“There’s more willingness to be open”.*

Other responses were much fewer in number and include references to:

- ‘improved public relationships’ [11%];
- ‘improved accountability’ [13%];
- ‘a more professional approach to information and its communication’ [11%].

Almost all of those respondents who signalled these benefits see them as having increased during the period of the Act’s implementation. These positive perceptions are more or less evenly spread across each of the sectors examined.

**2.7.4.3** Survey responses reveal many *problem* areas attaching to FOISA for these respondent public bodies. Four of these stand out, having attracted a significant number of responses. We set these out below in sections **2.7.4.4** to **2.7.4.9**.

**2.7.4.4** Resourcing FOI work was a frequently cited problem [53%] for three of the sub-sectors that we looked at, namely police [50%], NHS boards [55%] and local authorities [68%]. It was cited by only one body from the Scottish Executive. The quotations below are illustrative:

*“There is an increased volume of silly requests”.*

*“The level of requests has been overwhelming. 60% are from the media. We’re turning into a research department for third parties”.*

**2.7.4.5** The timescale for responses under the Act was problematical for some public bodies [30%]. This problem was cited most by police forces [50%] with each of our other sub-sectors being between 20-30%. Comments illustrative of this issue include:

*“There can be a huge volume of information and it can be widespread if it’s a cross-cutting issue or you have to go out to other organisations”.*

*“Response deadlines cannot be extended beyond twenty days, and it’s hard to meet complex requests in that timescale”.*

**2.7.4.6** “Abuse of the Act” was cited as a problem by some respondents [25%]. This problem was cited most frequently by NHS boards [45%]. 25% of local authorities cited this as a problem. One police force and one Executive body cited this as a problem. One respondent commented that:

*“There is an increase in frivolous requests that we cannot demonstrate are vexatious. And time is wasted by journalists. These sap morale.”*

**2.7.4.7** Developing effective systems for records and information management was problematical for some public bodies [21%]. The following comment is illustrative:

*“Improving records management has been a huge challenge” .*

**2.7.4.8** Other problems cited in smaller numbers which augment responses above include:

- Cost issues mentioned separately from those resourcing issues at the first point above [11%];
- Issues relating to the volume of requests, not specifically about timescale but clearly related to the second point above [11%];

**2.7.4.9** Further issues that were cited, though by very small numbers of respondent bodies, include:

- Issues over legal interpretations [8%];
- Communications issues [6%];

- Issues relating to the move away from a culture of writing to an oral culture [6%];
- Issues about data retention and destruction [6%].

**2.7.4.10** With all of these issues listed above, the aggregate data shows them increasing in significance. Very few respondents stated that they saw these issues either stabilising or reducing.

## **2.8 The Case Studies**

### **2.8.1 Introduction**

Questionnaire-based surveys are limited in the findings that they generate and, therefore, in the conclusions that can be drawn. They provide a useful ‘snapshot’ at a particular point in time but they are limited, in particular, in the depth that they can reveal. For this reason the survey component of the research was supplemented by a series of follow-up interviews with representatives of selected organisations. The intention behind these interviews was to encourage reflection and thereby elicit richer as well as deeper understanding of the information management processes and practices emerging around FOI and their associated benefits and problems. In-house documents were also drawn upon. The interviews supplemented by in-house documentation have been drawn together in the form of ‘case studies’ for ease of reading and analysis.

**2.8.2** The case study component supports the overarching aims of the research, namely:

- 5) to investigate changes and continuities in information management in Scottish public bodies consequent upon the implementation of FOISA;
- 6) to identify whether there have been beneficial consequences for public bodies resulting from FOISA, and if so, what these are;
- 7) where FOISA is problematic for organisations, to understand why this is;
- 8) following 1) – 3) above, to develop learning opportunities for strategic managers in Scottish public bodies, for public policy makers, and for the SIC.

**2.8.3** The organisations selected for follow-up interviews were chosen in part for their considered and reflective responses to the survey questionnaire. (The sampling

methodology for this component of the research is set out in **Annex 3**). They are drawn from each of the sectors sampled in the survey component of the research, and include:

- 2 central government bodies
- 2 local government bodies
- 1 police force
- 1 NHS Board.

**2.8.4** The findings generated from the follow-up interviews are set out below, in the form of six short descriptive ‘case studies’. The case studies are in the form of illustrative narratives. They describe the experiences, perceptions, and practices of interviewees as expressed to us. They are not presented as comprehensive or definitive statements of the arrangements, practices, or issues emerging in these organisational settings.

**2.8.5** Where information has been provided ‘off the record’ by interviewees we have not made reference to it in the case study. It has, however, informed our understanding, analysis, and subsequent conclusions and recommendations, and may be cited ‘out of context’ elsewhere in the report.

**2.8.6** In each of these case study reports there is reference to the ways in which requests for information are handled by the public bodies concerned. Broadly, and by way of explanation, our understanding of these ways of handling requests is as follows:

- The majority of requests for information are treated as ‘business as usual’. These are simple requests that come into a specific Department or Unit of the public body concerned and are dealt with from within that same Department or unit. The information requested in these cases is straightforward and raises no perceived difficulties for the Department or unit involved.
- Where requests for information have been designated by the requestor as FOI requests, or where there is somewhat greater complexity in the request than is

implied in 'business as usual' requests, as above, they will be recorded in a register or database of FOI requests.

- These formally designated FOI requests can be perceived as lying on a continuum, from 'relatively straightforward' to 'highly sensitive', as perceived internally. Those deemed relatively straightforward require, perhaps, only a single administrative response from within one Department. Those deemed highly sensitive will require, perhaps, input from many Departments, and the Press Office and Board members, including politicians, will have been involved in shaping the final response.

**2.8.7** In the interests of confidentiality and anonymity we have withheld the names and employment status of interviewees, together with the dates and times of interviews.

## **2.8.7 Case A**

### **Introduction**

Case A is a business unit within central government, providing advisory and administrative support to Ministers.

### **Defining and counting FOISA requests**

The case study unit received requests for information as part of its normal day-to-day business prior to the implementation of FOISA and many requests that are now legally designated FOI requests under the Act are simply perceived to be ‘business-as-usual’ within the unit. These ‘routine’ requests tend to be relatively straightforward and quickly turned around, with the receipt to response period usually taking one working day. Requests that are complex and, therefore, likely to require investments of time and resources, tend to be designated as ‘FOI’ requests and logged and monitored accordingly. Also falling within the spectrum of what are formally designated FOI requests are those that are judged politically sensitive.

This conceptual distinction between business as usual and FOI requests avoids a requirement to log every request received: a practice which would be neither practical nor feasible particularly for departments and units receiving high volumes of information requests.

### **Organisational arrangements for FOI**

FOI requests arrive into the unit from various routes with some forwarded through a central enquiry unit, some being forwarded from the press office, some being re-directed by other policy departments, and some being mailed directly to the unit by inquirers, for example.

As a receiver of FOI requests the unit becomes engaged in varying levels and forms of interaction with other government departments and units that include, but are not limited to, a central dedicated FOI support unit, media and communications services, and specialist legal advice.

Influencing the nature and extent of the case study unit's engagement with these other bodies are factors that include:

- the unit's existing and accumulating experience, knowledge, and understanding of FOISA;
- whether a response has implications for policy areas extending beyond the unit and its department;
- judgements on the part of the receiving unit about the political sensitivity of a request.

There are formally set down procedures related to logging and notification of requests (and reviews and appeals). Thus, relatively straightforward FOI requests and responses will be logged and notified to the central FOI unit (and where appropriate the Minister's Office and press office) using a dedicated e-referral form, with the request and response being handled substantively within the receiving unit. More complex requests involving exemptions or the public interest test, for example, may necessitate advice from the specialist FOI unit and/or legal team. The Press Office and relevant Ministerial Office(s) may also be advised of these requests. Requests of a sensitive nature, including requests from journalists or political parties, or ones involving internal discussion or advice, for example, are similarly administered. Thus, a spectrum of responses comes into play within the unit upon receipt of an information request. Which response mode is activated is influenced by judgements on the part of officers about the nature of the request, including the extent to which a request is 'routine' or 'non-routine' and, if it is non-routine, the levels of complexity or sensitivity involved.

Responsibility for responding to FOI requests is delegated to staff with expertise in the relevant policy area as they should have both requisite knowledge and understanding and the capability to judge potential political sensitivity.

Various forms of support are available to staff handling complex, sensitive, or other 'non-routine' FOI requests. These include senior management within the unit who must be notified of these requests and who may advise that relevant Ministers and the press office be notified and kept informed. For advice on the interpretation of FOISA

itself, on exemptions, the public interest test, or other technical aspects, staff have access to a centrally located, dedicated FOI unit. The unit also advises on procedural aspects of FOI request handling as set out in its guidance documents, and provides training and regular updates on FOI developments. Specialist legal advice is also available to the receiving unit from in-house solicitors where assistance is required in interpreting aspects of FOISA, for example.

FOI is perceived and implemented as a process that is predominantly administrative in nature, albeit one that is situated within an inherently political context in both the organisational and governmental senses. At one level and in organisational terms, this can mean that there are occasions when senior managers must negotiate ‘ownership’ of an FOI request or its transfer to another department. In the governmental sense this can mean that Ministers and/or press office must at least be advised of the existence of potentially sensitive requests so that they are prepared should the response issued to the inquirer be made public. Some requests deemed to be highly sensitive must be referred to the relevant Minister for decision. This referral ensures that the Minister is comfortable with the substance and accuracy of the response. It would not normally be the case that a Minister would decide upon release and extremely rare that a politician would decide against release. Responses that could attract high media interest are led by the unit with policy responsibility in consultation with the press office.

### **The impact of FOISA**

FOISA is deemed not to have brought about significant or radical culture change in terms of greater public transparency. *“There was already massive culture change within government in relation to information handling and openness pre-FOISA, with the Major Government’s Code of Access to Information a key driver in this. FOI has raised awareness of this new mood and reinforced the move towards more openness on the part of government”* [Interviewee, 2007]. Websites are also assisting in bringing about more public openness. However, *“there is still substantial scope for further proactive release of information into the public domain on a regular basis. This would be beneficial for the organisation overall both in reducing the volume of requests received and in enhancing public perception of its openness”* [Interviewee, 2007]. *“There might have been greater gains had FOI been badged as a culture*

*change programme. But it was badged as a process...A lot of people probably do want to adhere to the spirit of FOI...but realism prevails...They must work to the political context...As it is, the means of FOI have become the ends” [Interviewee, 2007].*

FOI is raising awareness of the need for good information management underpinned by professionalism in the way that information is communicated, improved records management, and greater consistency in handling information requests and related processes, procedures, and decisions. People need to be aware now that if they make a written record or note this may be releasable under FOISA. *“This may mean that people are more cautious about what they record and the tone of recording with the possibility that ‘the mood music’ is lost in future, but this is an intuitive feeling and not from evidence” [Interviewee, 2007].*

In theory FOISA should not have had a significant impact on the way in which requests for information by the media are handled. In practice, there has been change stemming from how journalists as well as key organisational stakeholders have responded to the Act. Initially, this generated a steep learning curve for journalists and organisational stakeholders alike, but there is now some sign that a more settled relationship and understanding is emerging around FOI. For journalists, an unforeseen and unanticipated aspect of FOISA is that, whereas business-as-usual requests submitted prior to the implementation of the Act would have been dealt with quickly, now, due to the organisational processes and procedures in place, FOI requests can be slower to process. This situation has been exacerbated by journalists submitting very open-ended requests and ‘round robins’ in which the same request is forwarded to multiple departments which then have to agree which is the ‘receiving unit’ and ‘owner’ of the request. In one instance, officers received a request containing over one hundred questions. Engaging in dialogue with journalists has eased the situation by encouraging the submission of more focused requests and helping them understand why requests are slower to process under FOISA. It is helped, too, as staff become increasingly able to judge where on the continuum ranging from business-as-usual to extremely politically sensitive a particular request sits, and thereby the extent to which it must be exposed to FOISA processes and procedures.

## **Summary of key points emerging from the case study interviews**

Key points that emerge from this case study are gathered below, under three main headings that conform to the aims and objectives of the work. This summary does not include some of the more nuanced aspects of this case study and should not be read in isolation from it.

### ***Changes and continuities in information management***

- Most information requests continue to be handled as business-as-usual or routine requests, while those designated ‘non-routine’ may be slower to process and involve different handling processes.
- A dedicated FOI unit has been established that provides advice, guidance, training, and other support capabilities to receiving departments and units, including a central point of contact and liaison with SIC in respect of appeals.
- New emphasis is being placed upon good practice in records management and in raising awareness that written records including informal email exchanges for example, may be released into the public domain.
- Responses to information requests may be published on the organisation’s website where the responses are considered to have wider public interest beyond the inquirer.

### ***Cultural change and continuity***

- FOI is reinforcing and furthering existing openness within the unit and the organisation as a whole, but is not perceived by staff to have brought about radical change in itself.
- FOI sits within a predominantly and historically embedded administrative and legalistic culture in which responding to the letter rather than the spirit of the Act is inherently the guiding rationality, underpinned by judgements about the degree of political sensitivity attaching to requests.

### ***Benefits, problems, and challenges***

#### ***Benefits***

- FOI is driving improved records management and information handling.
- FOI is driving a more professional approach to communication and recording.

- FOI takes place within a setting in which judgements concerning the political sensitivity of requests underpin how requests are processed and responses issued.

#### *Problems*

- FOI is “*bureaucratic and burdensome*” [Interviewee, 2007].
- The nature, form of delivery, and volume of requests received from journalists in the early years of FOISA have been problematic and there has been a steep learning curve on the part of journalists as well as organisational stakeholders.
- FOI is being managed as a substantively administrative/legalistic process that gives precedence to the ‘letter of the law’ rather than the ‘spirit of the law’.

## **2.8.8 Case B**

### **Introduction**

Case B is a central government body whose responsibilities include advisory support to Ministers, regulatory oversight, and the provision of public-facing services.

### **Defining and counting FOISA requests**

Case B has received in the region of 80-100 requests, deemed FOI requests, per annum, with the majority received by one key business unit. However, this may be a conservative estimate, as an *“an outstanding issue is whether we get to know all of FOISA requests across the organisation. What we report under FOISA may underestimate the volume that we actually handle”* [Interviewee, 2007].

All requests for information that come into the organisation from emails to telephone calls are considered FOI requests, though in practice most are handled in the form of ‘business-as-usual’. Indeed, *“FOISA is becoming almost the guideline for handling any information request”* [Interviewee, 2007]. For practical reasons, but also because the organisation has always been the recipient of requests for information, only unusual requests tend to be recorded as FOI requests. No definitive distinction is made between business-as-usual and FOI requests, and *“There are issues with the Act, codes, guidance and not least with what is a FOISA request...How do you define a FOISA request or a business-as-usual request?”* [Interviewee, 2007]. In practice requests considered to be FOI requests are those that give staff some pause for thought because exemptions might apply for example, or if there might be difficulties associated with releasing information. *“We have a type of squaring – when someone has to go and look for a record it is deemed a FOISA request”* [Interviewee, 2007]. Essentially, then, requests that are complex or potentially sensitive, or ones that cannot be responded to quickly and easily, are considered FOI requests for logging and counting purposes.

### **Organisational arrangements for FOISA**

Necessarily dependent upon judgements on the part of staff, FOI is nonetheless seen to be a mainly administrative / technical activity with *“exemptions setting the boundaries”* [Interviewee, 2007] for staff regarding what is releasable information. Arrangements for handling FOI requests are well ordered, with FOI perceived by

senior management to convey important potential benefits for the organisation not least in helping to establish information as a corporate resource on the one hand and in improving its public standing on the other. Ultimately, however, the organisation sits within a complex set of stakeholder relationships and “*there is not always alignment between rulings from SIC, internal advice, and what different internal stakeholders want*” [Interviewee, 2007].

Requests are received into the organisation from various routes that include mailing to named officers within business units or through the organisation’s web-based FOI email box. Requests from journalists tend to be made directly to the media and communications unit, but staff in other business units are aware of that media unit and requests received into other units can be re-routed, or advice sought where necessary and appropriate.

There are lead officers with FOI responsibilities in each of the organisation’s business units, with additional expertise situated within an in-house specialist unit charged with encompassing information governance and management responsibilities. Additional expertise is available to the organisation through the Scottish Executive’s dedicated FOI Unit and, if necessary, its solicitors. If a request is received that could be politically sensitive, whether from a journalist or citizen the organisation will liaise with its own in-house communications and media unit. The Scottish Executive FOI Unit will also be consulted where appropriate on these and other complex non-routine requests. Requests that are refused in part or in full, together with sensitive requests, will be entered into the electronic logging and tracking system so that these are visible to the Scottish Executive FOI Unit. As Ministers have a statutory role in some cases with which the organisation deals, it is felt important that they are not directly involved in FOI decisions, with these being the responsibility of officers. Ministers will be consulted, though, if the organisation is of the view that a decision by the Scottish Information Commissioner should be appealed.

The Scottish Executive FOI Unit is valuable in providing guidance, protocols, in checking understanding of FOISA, and in helping achieve consistency of understanding and practice in respect of FOISA. There is scope, though, for additional

support from the Unit in the form of advice on precedents following decisions by the Scottish Information Commissioner, for example.

One issue that FOI is felt to have raised for the organisation is the need for professional communication on the part of staff, in particular where email is involved.

*“FOI has brought email into the public record. You have to make sure that nothing is open to interpretation. FOISA is creating debate where previously there was none”* [Interviewee, 2007].

More generally, there is on-going awareness training for staff together with a good support network of designated lead officers and other staff with considerable experience of FOI requests who are able to provide advice to less experienced colleagues where necessary. There is also a ‘lessons learned log’ sitting on the organisation’s IT system. Decisions on reviews are placed on the log for circulation to all relevant staff.

### **The impact of FOISA**

FOISA has been instrumental in encouraging better, more reflective and proactive use of the organisation’s public-facing website.

*“[We] have gone to lengths to make information available on the website, so not many requests come in that are not covered by the website”* [Interviewee, 2007].

Relatedly too, it has brought *“the art of communication to the forefront”* [Interviewee, 2007], enabling the finer points of decision to be communicated and inviting reflection on how and what to publish in order to be informative without being overwhelming, for example.

FOISA is also a major driver of information and recording systems and a catalyst, too, for efficiency improvements in information management. It is *“forcing a closer look at records management”* [Interviewee, 2007] which *“is not as good as we thought it was, or as good as it should be”* [Interviewee, 2007] .

*“Generally speaking, FOISA has helped us to be seen as a more open and transparent organisation” [Interviewee, 2007].*

*Internally, “the main change is that we’re no longer a silo organisation with a mentality to match. Now, it’s very much a key management principle that information is a corporate resource, making it easier now to get business through and make progress” [Interviewee, 2007]. “However, FOISA is not the only, or indeed the most, important factor in bringing these changes about. It sits alongside other factors that include Audit Scotland’s ‘best value’ requirement and an accompanying requirement for ‘a good and robust information governance framework’” [Interviewee, 2007]. “Leadership, experience, and vision on the part of the chief executive officer have been particularly significant in enabling a more open climate, with the chief executive using FOISA to help drive through changes” [Interviewee, 2007].*

Data protection issues are considered the most problematic to decide and handle. *“People may be suspicious of the use of exemptions and wonder what’s being kept back, but it may simply be about protecting private individuals” [Interviewee, 2007]. “There are other practical issues, too, though, that can arise here and where practical operational advice from the Scottish Executive FOI Unit would be helpful...things such as handwritten documents could enable someone to be identified even where things like name, address, have been redacted. Not everyone will realise that something like handwriting needs to be anonymised” [Interviewee, 2007].*

### **Summary of key points emerging from the case study interviews**

Key points that emerge from this case study are gathered below, under three main headings that conform to the aims and objectives of the work. This summary does not include some of the more nuanced aspects of this case study and should not be read in isolation from it.

#### ***Changes and continuities in information management***

- FOISA is contributing to changes in information and records management, including more reflective use of the organisation’s public-facing website.

- FOISA is generating a requirement for more professional and precise communication.

### ***Cultural change and continuity***

- FOISA is assisting in bringing about a sense of shared identity and common purpose amongst the organisation's business units.
- FOISA is assisting in generating greater public openness and transparency.

### ***Benefits, problems, and challenges***

#### *Benefits*

- FOISA is supporting more overarching policy and strategic change initiatives being brought through by the organisation's senior management.
- FOISA is encouraging developments in the organisation's records management and IT capabilities, including more reflective use of the public-facing website.

#### *Problems*

- Levels of understanding and expertise about FOISA vary amongst staff.
- *"It is difficult to be aware of precedents coming through the decisions of the Scottish Information Commissioner"* [Interviewee, 2007]. Where these exist, how can they be effectively communicated to specialist FOI support staff and frontline staff?
- A problem for staff lies in understanding how data protection issues sit within FOISA regime.
- A second issue for staff is how to manage FOISA compliance within a complex multi-stakeholder context in which competing demands and priorities are inevitable.

## **2.8.9 Case C**

### **Introduction**

Case C is a large, geographically dispersed NHS Board, covering both urban and rural communities.

### **Defining and counting FOISA requests**

For recording purposes the organisation distinguishes FOI requests from business-as-usual requests, the former being requests that are non-routine, complex, and therefore time-consuming, or if there are potential sensitivities attached to release of information. *“Sensitive requests are not new. We received sensitive requests before FOISA. Requestors may want more information now, more involved information”* [Interviewee, 2007].

Where requests comprise two or more questions the number of questions is counted for monitoring purposes, otherwise the communication is recorded as a single information request.

### **Organisational arrangements for FOISA**

FOI requests enter the organisation through a variety of channels, and in a variety of formats. In the region of 200 requests are received per annum, with almost half of these estimated to go directly to the department dealing with corporate communications. Around ten per cent arrive with the organisation’s ‘information unit’. The remainder are spread throughout the authority, with some being mailed to the Chief Executive’s office, and others being received into frontline medical departments, for example.

The public-facing website hosts a searchable facility through which citizens can search for information sitting within specified classes, subjects, and formats. Using the organisation’s publication scheme members of the public can also electronically hotlink to and download documents of interest to them. The main contacts webpage provides a generic email link for media and FOI enquiries into the department responsible for corporate communications.

Requests received through the generic email link are notified to the manager of the information unit for logging and recording, with the communications officer retaining a copy of the original communication. Requests that go directly to departments may be dealt with independently, with their existence and outcome unknown to either the department handling corporate communications or the information unit. *“One authority area is fairly autonomous. We know very little about what it’s doing with requests. Very few are coming in to the information unit from it”* [Interviewee, 2007].

There is a structured set of arrangements in place for handling FOI requests within this organisation, with support and advice available to staff through the information unit and the department handling corporate communications. The number of staff in this very large organisation means that communication and oversight are challenging to handle. Various channels are employed in an attempt to ease these challenges. These include posting information on the website, use of team briefings, a monthly global email bulletin, and published fact sheets for the guidance of managers and supervisors. *“If everyone works to these we will be compliant as an organisation”* [Interviewee, 2007].

Requests notified to the information unit are logged onto an electronic database. The electronic system is not dedicated to FOI and a manual system is also operated. Once logged by the information unit, the request is returned to the department for corporate communications which issues formal acknowledgement of receipt of the request to the requestor. The information unit then coordinates the response through appropriate departmental heads, ensuring that they are aware of and approve the response. If thought necessary, a draft of the response will also go to the head of the department handling corporate communications. *“In theory, controversial media requests are supposed to go to the Scottish Executive Health Department. In practice this does not always happen”* [Interviewee, 2007].

Responses that go out to journalists or politicians are forwarded to the department handling corporate communications, prior to release. In the majority of cases, no changes will be suggested. However, the department will want to ensure that the response is presented in non-scientific language for example and is therefore comprehensible to most people. They will also want to ensure that people understand

the medical and moral dilemmas surrounding complex issues such as end-of-life decisions for example, or why it is important when comparing performance indicators across NHS Boards to be cognisant of the specific context and conditions influencing their performance. Where more substantive changes are advised these are normally accepted by the responding department, and there is rarely occasion for referral upwards. Most decisions, though, can be resolved in discussion with the relevant department(s) and the information unit.

Managing and responding to FOI requests is predominantly an administrative process within this organisation, though one infused with judgements regarding the sensitivity of requests. However, the organisation operates within a political setting in both the organisational and governmental senses. Communication skills are integral to ensuring that ‘when a story breaks’ the public are sufficiently appreciative of the circumstances and rationales sitting behind policy and operational decisions and actions taken. Highly sensitive requests can lead to “*heated discussion internally*” [Interviewee, 2007] and managed release of information.

As an NHS Board the organisation is also drawn into a wider set of external stakeholder relationships involving other authorities and political relationships with governmental bodies. These can give rise to tensions and difficulties around different stakeholder priorities or interpretations and applications of FOISA’s exemptions or public interest test, for example.

### **The impact of FOISA**

FOISA has led to a more considered and structured approach to records management within the organisation, though it is not only the contributory factor. Caldicott and the Information Governance framework have been significant. “*FOI has generated need for a records management policy. No-one has responsibility for corporate records management currently...We’re currently surveying the organisation to determine what records management is in place. We’re looking to see if there are good practices in place that can be more widely adopted throughout the organisation*” [Interviewee, 2007].

FOISA has also had a part in strengthening “*managerial responsibility and accountability, including greater accountability for senior individuals through sign-off procedures*” [Interviewee, 2007]. Here, too, though, other factors including Caldicott have been instrumental.

*“FOISA hasn’t resulted in any major culture change. On the whole it’s been beneficial, helping address records management issues, and accountability. But, staff feel they have enough to deal with in their everyday jobs without FOISA”* [Interviewee, 2007].

### **Summary of key points emerging from the case study interviews**

Key points that emerge from this case study are gathered below, under three main headings that conform to the aims and objectives of the work. This summary does not include some of the more nuanced aspects of this case study and should not be read in isolation from it.

#### ***Changes and continuities in information management***

- FOI is generating requirements for better handling, recording, and oversight of information requests within the organisation.

#### ***Cultural change and continuity***

- FOISA is one amongst a combination of factors that are judged to be contributing to new awareness of the need for accountability within the organisation together with procedures for ensuring the effective, responsible, and ethical governance of information.

#### ***Benefits, problems, and challenges***

##### ***Benefits***

- The key benefit of FOISA has been to raise the profile of records management within the organisation.

*Problems*

- Ensuring compliance within a large, complex, geographically spread organisation is difficult.
- Ensuring good governance of information within a political setting involving complex judgements and potentially controversial issues is challenging.

## **2.8.10 Case D**

### **Introduction**

Case D is a large police force comprising a number of geographically spread area commands.

### **Defining and counting FOISA requests**

The organisation receives and responds to thousands of requests throughout the year on issues such as traffic incidents, assaults, lost property, and road conditions. These kinds of requests are part of the organisation's normal daily business and are classed as 'business-as-usual' requests, thereby distinguishing them from FOI requests for recording and monitoring purposes. FOI requests tend to be complex, time-consuming or sensitive in some respect.

The organisation currently receives in the region of 1000 FOI requests annually, counted on the number of questions received within any one communication.

### **Organisational arrangements for FOISA**

Requests are received into the organisation through various routes, though contact details for the FOI officer are clearly displayed on the public-facing website. On receipt of an FOI request, the contents are itemised by the receiving officer. The request should then be notified to the FOI officer, located within the organisation's headquarters. In practice this doesn't always happen and there will be some requests that remain outwith the purview of the FOI officer, including some that go directly to the media department or to local officers for example. The FOI officer records the request on an Excel spreadsheet, using a colour-coded system for progress tracking. The spreadsheet is checked daily. Hard copy files for each request are also maintained.

If the request cuts across operational domains it will be disaggregated by the FOI officer upon receipt, and questions will be forwarded to appropriate officers for response. Where the nature of the information request is unclear the officer(s) will contact the requestor and attempt to clarify the enquiry. If the request is difficult to answer, the preferred approach is to speak with the requestor in person so that they can understand better why the request cannot be met. One such example was a request

by a journalist that would have required officers manually to search 2,500 incident reports in order to identify the number of instances that a particular item ['xxxx'] was used as a weapon in assaults. However,

*“If you can phone the requestor, you can explain the problem and explain what you can supply. So, you avoid a negative tone that can be the case if you simply send a formal letter citing exemptions. Contact with the requestor, discussion..is vital”* [Interviewee, 2007].

In the instance of 'xxxx used in assaults' it was explained to the journalist that

*“They do not record the instrument used in assaults as a search category on their database. Therefore, an electronic word search would throw up all instances of the word 'xxxx', not only its use in assaults. However, they could supply the information for one area covered by the Force, as a local officer had actually researched this already”* [Interviewee, 2007].

Completed officers' responses are collated by the FOI officer, for forwarding to the requestor.

The setting-up of a new information unit is intended to help meet the challenges of managing information throughout this large, geographically spread organisation. In particular, the information unit should enable a single corporate response to be made in situations where requestors are asking the same question of different officers. The information unit should also assist in managing issues that cut across potentially conflicting legislation including data protection, part 5 vetting, and FOISA. A key development that the information unit is keen to bring through within the next few years is a detailed electronic database that would assist in managing FOI requests, including better time-management of these. The database would also enable the organisation's business units to identify potentially 'vexatious' requestors.

Managing FOI requests within the organisation is essentially an administrative process; though as in other public bodies that we have looked at, here, too, it is infused by judgements ranging from whether the request is a business-as-usual-

inquiry, to whether and to what extent exemptions apply, to the newsworthiness and sensitivity of released information. Here, though, unlike organisations elsewhere in the public sector, the administrative and judgemental processes sit within a clear command hierarchy in which designated responsibilities and upward accountabilities are well understood.

*“We receive about one sensitive request per week. About ten per cent of requests are potentially politically difficult”* [Interviewee, 2007].

The FOI officer discusses sensitive requests with his counterpart Data Protection officer who also has experience and expertise in FOI, and where appropriate with senior management. Depending upon the focus of the request additional support and advice is available from several sources including FOI-trained Special Branch Officers and Professional Standards Officers or through a specialist Central Referral Unit based in Hampshire. It may be necessary to consult the Scottish Executive and the Home Office in some circumstances.

*“All of this takes time. If the response is to disclose...and the Force didn’t expect this, there is panic. How do you disclose in time!”* [Interviewee, 2007].

Copies of sensitive responses or responses to the media are forwarded to the media department before release. The media department may decide upon a press release in advance of the response going out, *“to kill the story”* [Interviewee, 2007], or they may seek to *“put a positive perspective on release”* [Interviewee, 2007].

Resourcing is a problem currently, with only one FOI officer appointed. There is an FOI monitoring group in place, chaired by a senior member of staff. The group is charged with looking at how to improve the organisation’s handling of, and performance on, FOI, given that operational policing is the overall and clear priority.

As preparation for FOISA every member of staff received training. Currently, all new staff are trained in data protection, security information, and FOI. The FOI monitoring group is considering implementing a regular FOI bulletin for staff.

The organisation is also seeking to develop more proactive use of the public-facing website, with more information being published there on a regular basis. They are also seeking to adopt a more proactive approach with the media.

### **The impact of FOISA**

FOISA is one of the factors behind the development of the information unit and the move to managing information and records more effectively, but other more important contributory factors include the Scottish Intelligence Database and Bichard<sup>2</sup>. However, the size, diversity and dispersed nature of the organisation was also making effective information management challenging to achieve.

*“There has been a subtle change on the media side. This is slowed down by FOI. In the past we’d have answered right away. Now it goes into the FOI process”* [Interviewee, 2007].

The volume of requests has been overwhelming:

*“Last year 60% [of requests] were from the media. We’re turning into a research department for third parties”* [Interviewee, 2007].

### **Summary of key points emerging from the case study interviews**

Key points that emerge from this case study are gathered below, under three main headings that conform to the aims and objectives of the work. This summary does not include some of the more nuanced aspects of this case study and should not be read in isolation from it.

#### ***Changes and continuities in information management***

- The organisation is seeking to develop a more integrated, organisation-wide approach to managing information, supported by new ICT systems and a dedicated unit.

#### ***Cultural change and continuity***

- FOI has not led to significant culture change within the organisation.

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<sup>2</sup> This is a reference to the independent inquiry into, and report upon, the Soham murders, chaired by Sir Michael Bichard (2004).

## ***Benefits, problems, and challenges***

### *Benefits*

- FOI is reinforcing awareness that information and records must be more effectively managed.
- FOI is encouraging a more proactive approach to publishing information on the website, including regular updates.

### *Problems*

- *“Information is being destroyed, so that there is less to capture under FOI. For example, logbooks that are a rich source of historical information for researchers are being destroyed”* [Interviewee, 2007].
- There can be tensions between data protection legislation and FOI.
- Communication, managing information, and achieving consistency of response are considerable challenges for an organisation that is large, diverse, and spatially dispersed.

## **2.8.11 Case E**

### **Introduction**

Case E is one of the smaller Scottish local authorities.

### **Defining and counting FOISA requests**

As is the case with other public bodies that we have looked at, Case E seeks to distinguish ‘business-as usual’ requests and FOI requests for counting and monitoring purposes. Business-as-usual requests are considered straightforward and quick to turnaround, with enquiries about the day-to-day services provided by the authority amongst these. FOI requests tend to be characterised by a degree of complexity or sensitivity, or require a considerable amount of staff time to answer. Some inquiries are identified as FOI requests only because they have been so designated by the requestor. *“If FOI is mentioned in correspondence it is dealt with as FOI. Otherwise it is almost certainly treated as business-as-usual”* [Interviewee, 2007].

### **Organisational arrangements for FOISA**

This local authority adopted a strategic approach at the outset in its preparations for FOISA, drawing together a multi-disciplinary team to look in a systematic way at the operational implications arising from FOISA and at the organisational arrangements required. *“There was a body of reports to the Council assessing the implications of the Act”* [Interviewee, 2007]. This pre-implementation review looked at the publication scheme, records management issues including retention and legitimate clear-out, training, and development of guidance documentation and information systems for managing FOI.

There is a dedicated Data Protection [DP]/FOI officer in place whose remit includes day-to-day logging and monitoring of FOI requests and provision of specialist support to staff where appropriate. Officers experienced with FOI requests may deal with complex or sensitive requests without recourse to the DP/FOI officer. There are also standard response letters that these officers can use.

The FOI officer sits within an FOI information unit supported by a small cohort of staff and embracing a range of expertise from data protection and FOI, to archiving, and website development. There is also an FOI working group whose membership

includes representatives from service departments, IT, archives, and the DP/FOI officer. The group is charged with monitoring and reviewing internal policy and organisational arrangements. Ultimately, responsibility for, and 'championing of', FOI resides with a senior officer based within the authority's department for legal and administration services.

FOI requests arrive into the authority through a variety of routes, including from politicians. They will be logged onto the authority's dedicated searchable logging and tracking database, by designated officers in service departments or the DP/FOI officer. The database was developed in-house specifically for FOI (and EIR) request handling. It provides a detailed record of requests including enquirer contact details; request details (eg., date received, the twenty day response date, a brief synopsis of the request, details of the responsible responding officer, whether the request is a cross-service enquiry); response details (eg., date answered, days taken to respond, reason time limit exceeded, whether exemptions were applied and reasons why); fee details (ie., estimate of the cost to the authority of responding), review and appeal details. Automatic reminders of due response dates are sent to responding officers at the 5 and 15 day points, with the system calculating the twenty day response date from when the request is logged. The system is dependent upon officers' logging requests.

*"There is a constant paper versus electronic battle"* [Interviewee, 2007]. The longer-term aim is to develop an integrated authority-wide Electronic Records and Data Management System [ERDMS], and there is now funding allocated to this end. Existing systems have developed on an *ad hoc* basis.

*"We want to have as much as possible on the website. This is not necessarily FOI driven. It's driven by IT and information management and information security, and continuity management as well"* [Interviewee, 2007].

*"The publication scheme was a big target and a big task in the early stages. It was also a questionable use of time. People don't look at them"* [Interviewee, 2007].

Cross-departmental requests arriving with the DP/FOI officer are coordinated and responded to by this officer. If the response is to a journalist, the DP/FOI officer may forward it to the relevant head(s) of department to ensure that they are comfortable with it. A copy may be forwarded to the head of public affairs for information in parallel with the response being forwarded to the requestor, *“so that they are aware if it hits the press”* [Interviewee, 2007].

Sensitive requests may involve consultation with senior people in the authority. *“It’s very rare to go to politicians. And when we do, it’s about informing them...forewarning of release and not to ask permission to release”* [Interviewee, 2007]. *“Legal services is very much into promoting this Act...If people come to us asking for a smart legal way out, we have to say this is not appropriate”* [Interviewee, 2007]. It is, though, *“very rare for staff to feel something shouldn’t go out”* [Interviewee, 2007]. *“You have to trust staff to give out information. You can’t oversee this from a central position. Our safeguard is that there are not huge numbers of reviews that would suggest people are not getting responses”* [Interviewee, 2007].

‘Vexatious’ requests are clearly problematic for this public body. Staff may seek legal advice on whether requests that are felt to be ‘vexatious’ can be designated ‘vexatious’ under the Act. These cases will be discussed with the staff member handling the request, the relevant solicitor, and the DP/FOI officer. The approach is that *“you have to go some distance before you can refuse to respond on grounds that it’s a vexatious request”* [Interviewee, 2007]. Furthermore, there is also an issue with ‘lazy journalism’ *“involving irresponsible, silly requests, that waste public money”* [Interviewee, 2007]. There are people who understand how *“to work the system”* [Interviewee, 2007] in the way that they present requests.

There is induction training for new staff and stand-alone courses are also available. *“But there has been no training for some time in a coordinated way. Core staff in each department are fully up-to-speed, though”* [Interviewee, 2007].

## **The impact of FOISA**

*“FOI has been a major driver in website development. The authority’s view is that it needs strong information management on the web”* [Interviewee, 2007]. Relatedly, FOI is also felt to be beneficial in respect of records management. Email is seen as a significant issue here in terms of how it is recorded and archived, but also in terms of peoples’ use of language and in heightening awareness of data protection issues. *“There is no sanitising or modifying of emails, though”* [Interviewee, 2007]. As the authority takes forward its information policy and ICT developments it will be looking at email and internet access policies amongst other issues.

Responding to FOI requests can be an onerous activity for staff, drawing them away from their main activities. *“It does need resourcing”* [Interviewee, 2007]. *“People are too busy to find time for FOI”* [Interviewee, 2007].

There is judged to have been a culture change in the authority. However, *“cultural change was going to happen anyway due to websites, the modernisation agenda, and Best Value”* [Interviewee, 2007], and FOI is one factor amongst a number of others influencing greater public openness and a move towards *“a sense of collective responsibility”* [Interviewee, 2007] within the authority.

## **Summary of key points emerging from the case study interviews**

Key points that emerge from this case study are gathered below, under three main headings that conform to the aims and objectives of the work. This summary does not include some of the more nuanced aspects of this case study and should not be read in isolation from it.

### ***Changes and continuities in information management***

- There are changes occurring in the way that the authority is adopting a strategic approach to information and records management including better integrated ERDMS throughout its business units, for example. However, while FOI is useful in reinforcing these developments it is not the only influential factor.

### ***Cultural change and continuity***

- There are signs that the authority is seeking to embrace both the ‘letter’ and the ‘spirit’ of FOISA. “*They take a pride in their practical approach to FOI*” [Interviewee, 2007], dedicated resources have been put in place and how to administer and manage FOI has been given considerable consideration. There is also ‘championing’ of FOI at senior management levels within the authority, with staff being steered towards openness rather than refusal of response.

### ***Benefits, problems, and challenges***

#### ***Benefits***

- FOISA is useful in supporting strategic changes that the authority’s senior management is seeking to bring forward, including breaking down the ‘silo structure’ within the authority.
- It is one amongst a number of factors that is encouraging the authority to look at developing a corporate information policy and ERDMS.

#### ***Problems***

- FOI requests can be a drain on resources, including drawing staff away from frontline service tasks. Certain types of request are particularly irksome in this respect.
- Even in a relatively small authority there can’t be central oversight of individual staff and their handling of FOI requests, and inevitably there will be some inconsistencies in the handling of requests.
- A key issue is achieving staff ‘buy-in’ to FOI and the ‘integrated authority’.

## **2.8.12 Case F**

### **Introduction**

Case F is one of Scotland's larger local authorities.

### **Defining and counting FOISA requests**

Not surprisingly, perhaps, within a large organisation we found variation in the way that information requests are logged. According to one interviewee all written requests, including routine requests about services, are logged as FOI requests. Another interviewee indicated that while every request is understood to be an FOI request these are only logged as such if they are non-routine or if the requestor has indicated that the request is an FOI enquiry. We heard from another interviewee that some staff consider any request to be an FOI request, including those received by telephone. At the same time we were told that sometimes "*requests can sit on desks, as some staff don't realise that they are FOI requests*" [Interviewee, 2007]. We found further variation from another interviewee who told us that "*it's not always clear if it is a business-as-usual inquiry or a FOISA request. Business-as-usual enquiries tend to be dealt with quickly. FOI requests are slower. Sometimes requestors indicate that it is an FOI request*" [Interviewee, 2007].

Variations in defining FOI requests impact upon how they are counted. How, and by whom they are received into the organisation is also influential, with those that enter through the central 'contact' system automatically logged, for example, while requests mailed directly to individual officers may be subject to a more discretionary process. Further variation may arise too where a communication contains more than one enquiry, "*with judgements being made as to how inter-related a set of questions in any one letter or email is, and counted accordingly*" [Interviewee, 2007].

### **Organisational arrangements for FOISA**

FOI is managed within the authority on a decentralised basis, with no officer or unit having overall responsibility either at strategic or operational level, for this. "*There is general support for FOI in principle, but organisational messiness and the silo culture are in the way. There needs to be senior management buy-in throughout departments and also at the highest corporate level, and an information policy for the Council*" [Interviewee, 2007]. Departments have officers trained in FOISA who

provide advice and support to other colleagues, in some cases in addition to completing their substantive departmental tasks and responsibilities. These officers also have access to the authority's central contact database and are responsible for logging requests received into their departments, unless the officer receiving the request originally has access to the central database. Initially, the authority was able to draw, too, upon the expertise of an in-house lawyer whose interest in FOISA extended beyond his formal remit in overseeing FOI reviews.

Prior to the implementation of FOISA training was delivered to staff. Guidance notes and information updates are available on the authority's intranet and may be supplemented by departmental reports and briefings, for example. However, and as we have indicated above, *"Staff are not as aware as they should be of what is a FOISA request and what to do procedurally. There is a need for on-going training to be prioritised. The guidance also needs to be reviewed two years on"* [Interviewee, 2007]. *"There is also concern about lack of uniformity and consistency in interpretation and understanding of exemptions and what is releasable"* [Interviewee, 2007].

The authority has significantly adapted its online customer relations management system to accommodate FOI, to the extent that it is *"considered a new system"* [Interviewee, 2007]. The 'contact centre' is the official logging point for requests, whether these are received directly from the public or forwarded by departmental receiving officers. Requests come into the contact centre from members of the public in various ways, including completion of a hard copy FOI form, by letter, or through the online FOI form. *"The authority has an online request form that requestors can use if they wish. It's an attempt to be helpful. People like forms. The online form is well used and clearly encourages people to submit requests. [The respondent] felt the need to champion FOISA and to be proactive in encouraging people to make requests"* [Interviewee, 2007]. *"We try to encourage people to go through the contact centre, so that the request can be captured on the system. This ensures there is an audit trail and that the request doesn't get lost. This is the preferred route"* [Interviewee, 2007].

The online database tracks the number of days that a request has been on-going, but does not indicate if the twenty day time limit is over-run. It also provides information about the request, including whether it has received a full or partial response and which exemptions have been applied. Request statistics are also generated through the database.

The process by which requests are handled “*is ad hoc and emerges out of the request, as there is no central department for FOISA. Cases are decided on a case by case basis*” [Interviewee, 2007]. The authority is moving towards a more systematic approach to information and records management, however, and the appointment of a records manager should be facilitative. Email presents a particular problem here. Officers tend to store emails on an *ad hoc* basis on their own PCs, rather than transferring them to a central folder structure within the organisation. This can lead to failure to provide information, due to its existence not being known to other officers. One particular problem for the authority is the ability to demonstrate that they do not have information. Demonstrating to the SIC that they do not hold the information can be onerous and time-consuming, drawing staff away from their main work. “*You would not lightly say that information is not held as SIC asking for an audit trail is more hassle than providing the information in the first place...One audit trail involved [thousands of pieces]of paper*” [Interviewee, 2007].

Requests from politicians or journalists are dealt with in the same way as those received from members of the public. However, “*it may actually take longer to process requests from politicians now, if they ask for information under FOISA. If it’s for their ordinary business and not for public consumption they are better not making it FOISA*” [Interviewee, 2007]. “*Media inquiries tend to be dealt with quickly. FOIs are slower. Sometimes journalists indicate if it is an FOI request. With FOIs more information and documentation is supplied. Also there is no analysis or interpretation offered with FOI responses. These are purely factual, with raw data provided. This is why they are slower*” [Interviewee, 2007]. Sensitive requests may require consultation with staff in the legal team or the press team, and senior managers and politicians may need to be kept informed. “*The press office needs to know what has gone out, so that they can alert politicians that a story may come out and can prepare to handle this. If*

*it's judged that there may be a problem it will be alerted upwards. This is not with a view to stopping the response going out. It is for information"* [Interviewee, 2007].

Requests from journalists do cause frustration amongst staff where they are frivolous or when the journalist fails to use the information supplied. However, as reported by other public bodies that we have looked at, *"personal contact with journalists is useful and can aid understanding and relationships. We can work together to see if there is some other way of framing the request or providing the information, or explain the reason why some information can't be supplied"* [Interviewee, 2007].

Ultimately, the priority for the authority is delivery of frontline services, with FOI seen as secondary to this.

### **The impact of FOISA**

FOISA is reinforcing the need for improved management of information and records within the authority. *"It has also provided an opportunity to reinforce existing openness. We have always been pretty open, but the employer/staff angle is marginally more open. Externally, the authority makes information available now that would not have been available previously"* [Interviewee, 2007]. FOISA is not the only factor influencing change, though.

As has been noted by other case study organisations, FOI has influenced the way that people communicate and record information. *"One thing people don't do now is record personal opinion. This is probably good as it removes potential for prejudicial view"* [Interviewee, 2007]. There has also been occasion when *"an FOI request changed internal policy on language use between staff"* [Interviewee, 2007].

### **Summary of key points emerging from the case study interviews**

Key points that emerge from this case study are gathered below, under three main headings that conform to the aims and objectives of the work. This summary does not include some of the more nuanced aspects of this case study and should not be read in isolation from it.

### ***Changes and continuities in information management***

- FOI is lending new weight to the need for improvements in information and records management within the authority, including a more strategic approach. However, it is not driving radical transformation in and of itself.

### ***Cultural change and continuity***

- FOI is perceived to be extending the organisation's public transparency.
- Internally, FOI is judged to be facilitating movement away from the predominantly silo culture and characterised by departmental isolationism and independence.

### ***Benefits, problems, and challenges***

#### ***Benefits***

- The main benefit of FOI lies in its contribution to better information and records management, and the impetus that it is bringing forward for an integrated corporate ICT system to underpin these.

#### ***Problems***

- Ensuring that staff are aware of FOISA, understand their responsibilities under the Act, and approach the handling of FOI requests in a consistent way is difficult to achieve within a large authority.
- Demonstrating to the SIC that you don't have information is a significant drain on staff time.
- FOI is resource intensive, drawing staff away from frontline service provision.
- Requests from journalists who 'work the system' are a significant drain on resources as well as a source of frustration to staff.
- Not having a fully integrated corporate ICT system for handling FOI requests that is accessible to all staff is problematic, as it makes it difficult to ensure that staff are aware when the twenty day deadline is imminent or passed.
- Notwithstanding the point made above regarding FOI as giving impetus to improved records management, developing a corporate approach to information, records, and communication in which these are seen as shared resources remains a challenging task for the authority.

## **3.0 Discussion, further reflections and conclusions**

### **3.1 Delivering the aims and objectives of the work**

**3.1.0** In **section 1.3.0** of this report we set out those research questions to which answers were crucial if we were to reach our aims and objectives for this work. These questions were designed to alert us to how information is being managed in Scottish public bodies, particularly focusing on both current information management practices and, somewhat retrospectively, their development in the period since 1<sup>st</sup> January, 2005, when FOISA came into force. These questions have focused us too on new procedures and systems, both organisational and ICT-based, introduced in that period, specifically those designed around the requirements of FOISA. Moreover, these questions have allowed us to gain insights into the impact of FOISA upon Scottish public bodies, as subjectively perceived by them, by gathering evidence on what they identify as both the beneficial and negative effects that have flowed from the implementation of this legislation.

**3.1.1** In section 2 of this Report we presented data from the empirical aspects of our work, both descriptively and analytically. In this third section of the report we draw out our main, overarching conclusions based upon the empirical work we have undertaken. The survey findings, reported at **sections 2.4 to 2.7**, provided us with a broad-based data-set supplying many of the answers to the questions that we had set. The case studies undertaken, set out in **section 2.8**, allowed us to go deeper than the survey could permit, thereby enabling a more complete appraisal of the 'FOISA system' as it is developing throughout Scottish public administration. We restrict and organise **sections 3.2-3.5** of the report below by reference to the specific aims of the project [**section 1.2.0**]. Thus we look at:

- changes and continuities in information management;
- at beneficial consequences respondents perceive as arising from FOISA;
- at difficulties respondents perceive as arising from FOISA;
- at learning opportunities associated with FOISA.

**3.1.2** Additionally, at **Section 3.6** of this Report we re-examine these empirical data from our survey and case studies by introducing a number of inter-related themes that help us to situate and explain our findings further. These themes illuminate both the internal and external public sector contexts in which FOI is being implemented in Scotland and in so-doing enable us to raise new questions and offer further analysis of our findings. These inter-related contextual themes against which we situate our further reflections at **Section 3.6** are as follows:

- Administrative rationality (characterised for example by tendencies towards centralisation, standardisation, routinisation, risk aversion, control);
- Political rationality (characterised for example by the interplay of different interests and priorities, the exercise of judgement in decision-making based upon assessment of these various interests, and ‘managed responses’ to external demands);
- Democratic rationality (characterised for example by ideals of openness and transparency, accountability, responsiveness and trust in Government by citizens);
- ‘Institutionalism’ (an overarching theoretical perspective that speaks to continuity and permanence within each of these rationalities set out above, thereby placing emphasis upon the complexity of introducing change into organisations and their operational settings).

These themes are further elucidated at **Section 3.6**.

**3.1.3** In **sections 3.2 to 3.5** below we draw together our empirical findings to provide an overview of them in relation to each of our key research themes: changes and continuities in information management; beneficial consequences arising from FOISA; difficulties arising from FOISA; learning opportunities associated with FOISA. We follow this overview by setting out critical reflections upon these findings and questioning how they might best be interpreted. We conclude, in **section 4.0**, by setting out recommendations. We include in these recommendations the concept of a ‘systems learning’ model, to be viewed as a vehicle for the sharing of ‘good FOI

practice’ and also for the stimulation of the ‘democratic spirit’ by which FOI might better be characterised [sections 3.0 to 3.5 & 3.6.3].

## **3.2 Changes and continuities in information management practices in Scottish public bodies: overview of key findings**

**3.2.0** The period from the formal introduction of FOISA in January 2005 through its early implementation phase of the last two and a half years has been characterised by mounting pressure for public service modernisation and change, pressure that applies equally throughout the four sub-sectors of public administration examined for this work. Public sector modernisation has brought new emphasis upon the benefits to be gained from the acquisition of new information resources and their management, as well as upon new ICT investments and applications. Customer and citizen-centric government, including the prospect of new forms of public service ‘personalisation’ and ‘evidence-based policymaking’, provide examples of how the service modernisation agenda is driving this new interest in the creation, management and application of new information resources. Within this agenda of modernisation, which the UK government has recently termed ‘transformational government’ [Cabinet Office, 2005 and 2006], there is recognition of the need for public bodies to reorganise themselves in ways that permit the prosecution of this new agenda [eg., Varney, 2006].

**3.2.1** This agenda for modernising public service organisations is to be found in our research findings here in three main ways, each of which has a significant bearing upon our core focus on FOI. First, we identified the growing importance of information resources through the adoption of an ‘information policy’ by the majority of Scottish public bodies examined for this work [section 2.6.1]. In a small number of additional cases policies had been adopted specifically relating to FOI and DPA, but in the majority of cases a more full-blown information policy has been adopted. Secondly, and unsurprisingly linked to this point, we have found that, in respect of change at the strategic level, public bodies have wanted to position FOI as one imperative amongst many that they face, rather than giving it primacy as an agency of change. Thus, in seeking to find evidence of a ‘FOISA effect’ on organisations, we found a general reluctance amongst respondents to isolate such an effect on their

activities at this strategic level. To take some examples from our findings, FOISA was the least cited as a ‘driver for change’ amongst the options presented [section 2.7.1.4] [though FOISA was also the least cited ‘impediment to change’ [section 2.7.1.5]]; in only 9% of respondent bodies do senior staff view successful implementation of FOISA as very important to the success of the organisation [section 2.7.2.3]; 42% of public bodies responded that FOISA had a ‘neutral’ impact on their information management practices, whilst 17% of respondents declared FOISA unimportant for changes in information management practices [section 2.6.5]. Thirdly, we found evidence throughout our case study research of the problems for information management deriving from the nature of public service organisation. The modernisation agenda, including improvements in the management of information resources, promotes integration, while existing structures promote separation. Successful implementation of FOISA was seen as contributing to the logic of ‘joined-up government’ though, in most of our case studies, interviewees argued that the silo structure remains the prevalent model. The overriding conclusion on this point, and one that is developed further below, is that FOISA is seen as a significant contributor to the modernisation agenda at strategic level, though it is not seen as the driver of that agenda.

**3.2.2** The evidence that we have gathered for this work shows no settled organisational or systems approach to meeting the requirements of FOISA. The case studies presented here at section 2.8 show a rich diversity of practices in these respects. What we have seen, however, is that most public bodies have responded to FOISA by making their own organisational adjustments and systems changes related to the implementation of the Act within their organisation. As part of their broad information management strategy, most bodies have assigned responsibility for FOI to a specific individual or newly formed unit and many of these have done so in conjunction with the assignment of responsibility for FOI to an individual within their operating units also [section 2.4.2]. This is especially so in the Scottish Executive with its central unit for FOI [dealing with policy as well as implementation issues] and designated FOI specialists in each of its constituent departments and agencies. One case study provides an interesting example of a developing internal FOI network, with an FOI officer appointed who has an organisation-wide remit, with each department having an official charged as lead officer. One case study is establishing

an organisation-wide ‘information management unit’ designed to meet the challenges of information management that a large and complex organisation faces. Almost half of the respondent organisations have found resources to employ at least one new member of staff for FOI work. Overall, these findings broadly compare with those of Craigforth Consultancy and Research [2004] when they found that 96% of Scottish public bodies had appointed responsibility for FOI to a nominated person within their organisations. More than 90% are undertaking some form of FOI-related staff training, though only half of these have introduced FOI into their induction training for all staff [section 2.5.1]. This level of training contrasts starkly to earlier findings [Craigforth, 2004] where only 30% of survey respondents were reported to have delivered FOI-related staff training. Most Scottish public bodies have either adapted existing information systems that help in their management of FOI-related activities or have introduced new systems that assist in this respect [section 2.6.5]. Where introduced, these new systems are building improved document handling and records management as well as [often coincidentally] enabling the tracking of FOISA requests, reviews and appeals [section 2.6.5]. Our data show [section 2.7.4.2] that almost three quarters of respondents saw improved records management as one of the main operational-level benefits deriving from FOISA a finding in stark contrast to Holsen’s study [2006] of English local authorities. Holsen showed that in the first year of implementation of the FOIA around twenty-seven per cent of respondents perceived it to have contributed to improved records management. Moreover, in a separate study undertaken by The Constitution Unit at University College London, only 22% of respondents perceived FOI to be contributing to improvements in records management [The Constitution Unit, 2007]. Thus, we can conclude that at operational-level the contribution of FOI to records management is much more positively judged in Scotland than it has been to date in England. Our case studies also broadly confirm this positive effect of FOI on operational records management.

**3.2.3** All written requests for information received by public bodies are FOI requests and subject to the Act. We found, however, that while respondents were generally aware of this, public bodies were nonetheless distinguishing and categorising ‘types’ of requests. Those requests judged ‘routine’ or ‘business-as-usual’ were differently managed from those classified as ‘non-routine’ and typically referred to as ‘FOI requests’. There was, though, no absolute distinction between routine and non-routine

requests in use throughout the public bodies at which we looked. Some ‘traits’ were fairly consistently identifiable in their categorisations however. Thus, typically, routine requests tended to be deemed politically non-sensitive and straightforward, and amenable to quick response. Non-routine requests [designated FOI requests by our respondents] were deemed potentially politically sensitive, and at the very least requiring notification to more senior staff, with the possibility of consultation being required with senior executive staff, press office staff, and in some cases politicians. We are aware of at least one instance where requests were deemed non-routine if the requestors fell into certain specified groups that included journalists and political parties. In another case study a further variant arose: that requests were recorded as FOI requests only where the requestor declared the request to be an FOI request. Clearly, within a Governmental setting and given the need, too, to consider whether exemptions allowable under FOISA apply to particular requests, and in some instances to consider whether and how the ‘public interest’ and ‘harm’ tests apply, procedures for identifying where consultations with relevant senior officers and politicians should occur may be both legitimate and necessary. However, such segmentation of requests can enable public bodies to ‘manage responses’ in a variety of ways that may be neither legitimate or necessary. We heard, for example, that an FOI designation has been used to slow or ‘stall’ media requests. Another case study referred to how the media department may be able to ‘kill’ a story by putting a positive perspective upon what might otherwise be thought of as a negative story. Another, reason given to us for the involvement of press officers, however, was that they are able to render ‘scientific’ or ‘technical’ information in language more comprehensible to the general public.

**3.2.4** In conclusion, we have found that approaches to formal information management practices in respect of FOI are many and varied both within and between the sub-sectors studied in this work. Public bodies have been concerned to bring forward mechanisms that allow them to satisfy the requirements of FOI. However, we also see from these data in this section how institutionalised practices and structures are inhibiting the development of improved information management, with many respondents referring to the persistence of the silo structure within their organisations, with information locked into those silos, making coherent and timely responses under the Act difficult in some cases. We see little evidence either of

strong, democratically inspired, administrative leadership in respect of FOI coming through these data at this section. Few senior officials are perceived by survey respondents or interviewees from our case studies as identifying FOI as crucial to their effectiveness as public bodies, a surprising finding given the deficits in trust and democracy that we discuss above [sections 3.1.2 and 3.6.3]. At an operational level in public bodies a newly appointed cadre of FOI officials is emerging, however, one that we will argue should be developed so as to help ‘carry’ the FOI agenda more systematically and openly throughout Scottish public bodies. We see, too, a process whereby requests are categorised as routine or non-routine and are thereby submitted to different handling protocols and processes [section 3.2.3]. While this may be highly effective administratively, there may be instances where it facilitates types of ‘managed response’ to information requests by some public bodies, thereby apparently confounding both the letter and the spirit of the Act. Many of these points are further reflected upon in paragraphs under **Section 3.6** below.

### **3.3 Beneficial consequences perceived by public bodies: overview of key findings**

**3.3.0** The research findings reported here suggest a number of beneficial effects on public bodies to which FOISA is contributing. At the most general level we found respondents reporting benefits in respect of changing organisational culture to which the implementation of FOISA is contributing [section 2.7.2.2]. Secondly, and supporting this general benefit of culture change we found clear majorities of respondents taking the view that their organisation was now more open, both internally and externally than before the Act came into force [sections 2.7.2.4 – 2.7.2.6]. This view was echoed in many of the case studies. For example an interviewee in one case study argued that “*Generally speaking FOISA has helped us to be seen as a more open and transparent organisation*”. Furthermore on this same point of organisational transparency, a number of case study interviewees pointed to the development of their websites as tools for open government. One in particular now proactively develops its website to encourage and facilitate submission of FOI requests. Our findings here are mirrored by those of Holsen [2006], whose study of English local authorities revealed that almost 30% perceived FOI to have contributed to a more open culture in the first year of implementation of the FOIA, and by The

Constitution Unit (2007) whose survey reports that 87% of respondents believed FOI has led to increased transparency within their own organisations. Thirdly, that same interviewee from the case study quoted above in this paragraph went on to make a link from enhanced transparency to the beneficial effects of FOISA on joining up government, on breaking down the silos. That interviewee said:

*“The main change is that we’re no longer a silo organisation with a mentality to match. Now, it’s very much a key management principle that information is a corporate resource.”*

Fourthly, and as we have previously stated in **section 3.2.2** above, our data show [section 2.7.4.2] that almost three quarters of survey respondents saw improved records management as one of the main operational level benefits deriving from FOISA, with three of our case studies taking the same view.

Fifthly, we heard, too, from some respondents that FOI is generating a more professional approach to the recording of information and its communication. Here, it was felt that it serves to remove what one interviewee called the ‘mood music’ that may subjectively influence judgements and policy decisions. We were also told that it encourages officers to adopt a clearer, more precise, and more formal approach in their communications.

**3.3.1** This section has drawn out evidence, based on respondents’ perceptions, of beneficial effects from FOI that include culture change and greater openness and transparency within public bodies and between them and their external environment. In one case in particular it was argued that institutionalist structures appear to be breaking down in part because of the pressures to join-up information practices in keeping with effective responses to FOISA. As with our previous remarks elsewhere in this Report we see the need for better understanding throughout the Scottish public sector of these benefits, actual and potential. We see the need for strategic and operational staff to be fully engaged in the delivery of these benefits and thereby for the system learning model set out in our recommendations below to be moved forward. We have seen too, in this section that FOISA is perceived as contributing to improvements in records management on the part of public bodies at operational

level. FOISA is also felt by some respondents to be encouraging a more ‘professional’ approach to communication. These points are reflected further in **Sections 3.5.0 to 3.5.5** below and in **Section 3.6.5]**

### **3.4 Difficulties perceived by public bodies: overview of key findings**

**3.4.0** Whilst, as we have seen immediately above, FOI is seen as contributing to greater openness in Scottish public administration, respondents and interviewees have also argued strongly to us that existing organisational forms, practices, and resource limitations pose great difficulties for delivering the integrated, concerted and timeous responses needed for successful FOI. The specific problem of timeousness of response is reported here as a finding from the survey [**section 2.7.4.5**]. Many requests are complex, requiring an integrated response from an organisation that historically is characterised by departmental separations. Interviewees in one case study spoke cogently about this point, arguing that, even in a modestly sized local authority, consistency in FOI request handling represents a significant problem. In another case study a particular problem arises over the perceived separation and relative autonomy of one geographical area of the authority, leading both to issues of consistency in responses to FOI requests and responding within the scheduled time period. In another case study, covering a wide geographical area, there have also been problems of achieving necessary levels of consistency in request handling. In one of our other case studies the problem of organisational silos was perhaps expressed most strongly, once more giving rise to issues of timeous responding under the Act and consistency of procedure. We have heard, too, from survey respondents and from case studies that FOI requests can place considerable burdens on individual staff and can cause staff to be drawn away from provision of frontline services.

**3.4.1** A second perceived difficulty for public bodies in implementing FOI is what many refer to as ‘abuse of the Act’, particularly by some journalists. Where this occurs it is seen as adding to the workload and complexity issues referred to immediately above. This abuse of the Act is referred to above [**section 2.7.4.6**] as an outcome of our survey. It is a point supplemented by examples from our case studies. In one case study, for example, interviewees referred to the difficulties they face with ‘round robin’ requests for information that may be valuable methods of inquiry for

journalists, but pose handling problems for public bodies; and, like others, they spoke too of the problem of a single requestor including as many as 100 requests in one approach for information. Interviewees for another case study referred to 'lazy journalism' "*involving irresponsible, silly requests that waste public money*" and the same case study refers to the difficulties faced with 'vexatious' requests, reporting the time-consuming procedures that prevail before a request can be designated 'vexatious' and thereby refused. It is noteworthy that perceived benefits from encouraging better personal contacts with journalists were found in two case study organisations. As one interviewee stated,

*"Personal contact with journalists is useful and can aid understanding and relationships. We can work together to see if there is some other way of framing the request or providing the information, or explain the reason why some information can't be supplied."*

Clearly, high quality, responsible journalism both exists and is crucial in a democratic society. The question that arises here is whether gains are to be had for public bodies and journalists alike from more personal engagement of the sort referred to above.

**3.4.2** A third difficulty arising for public bodies responsible for the implementation of FOI arises from what we term the 'political environment' within which responses to FOI requests are managed. Public bodies must serve political masters and they must also be aware that decisions made by them can have political consequences that can go beyond what might initially have been anticipated. For these reasons we have found that all of our case study organisations are making judgments about FOI requests and responses that give consideration to the perceived imperatives of the political environment. This point was expressed to us variously during interviews, including 'judging the correct balance between the preferences of government and the spirit of the Act', and as to do with 'the management of compliance around a complex multi-stakeholder network'. For this latter point, for example, one case study was clear that its responses under the Act can have a significant impact upon other bodies within its sub-sector and must be handled with sensitivity, therefore. Linked here is a further point regarding cautiousness about records that FOI may be inducing. Two of the case studies pointed to there being 'less information to capture', as the extent of

recorded information reduces. This issue was echoed too in the evidence of one MSP to the Official Report of The Scottish Parliament [2 November, 2005, Columns 20214 & 20216]. This MSP commented that no formal record of particular meetings held between senior officials of the Scottish Parliament and senior officials of the Scottish Executive was captured in respect of the G8 summit, not even, he added, on 'post-it' notes.

**3.4.3** A fourth difficulty associated with the implementation of FOISA that was drawn to our attention was the importance of leadership and 'championing' of FOI from the top of the organisation [see also section 3.5.1 below]. Two of our case studies spoke strongly to us of the championing of 'open Government' and FOI by senior management and how this enabled the driving through of necessary organisational change. Another of our case studies spoke equally forcefully of the lack of such leadership being a crucial impediment to transforming their records management and information systems in ways that would support FOI.

**3.4.4** In conclusion of this section of the report, our research has identified a number of significant difficulties associated with the implementation of FOI, as perceived by respondents. These include, firstly, the capacity of public bodies to deal timeously with some requests, particularly where these involve staff delivering frontline services or where information is disaggregated across geographically dispersed organisations. Secondly, we have heard of FOI diverting officers from frontline service provision, though as we have argued elsewhere in this Report, in a democratic society it is crucial that FOI is itself perceived to be an ineluctable aspect of 'frontline services'. We have seen, too, that there is a strong perception on the part of some respondents that journalists are not always employing FOISA responsibly. Equally, we have heard from other respondents that more positive relationships are possible and desirable. We have heard that there are particular challenges associated with the political environment within which FOI is delivered, with the heavy reliance upon judgement that this imposes upon officers and politicians alike. Finally here, we have heard of the crucial role of top-level leadership in creating the climate and conditions for effective implementation of FOI within public bodies.

### **3.5 Identifying learning opportunities: overview of key findings**

**3.5.0.** The ‘FOI system’ is in its infancy. As with any early and developing system there is clearly scope for learning to occur amongst the stakeholders with a view to system improvement. Each of the case studies, set out in some detail at **section 2.8**, provides many illustrations of practice that could be learned from across Scottish public administration.

**3.5.1** We have stressed above how FOI is positioned by Scottish public bodies as only one aspect of the change processes that they face. Here we stress a background factor vital to improvement in the FOI system; this is leadership towards the broader concept of open government. We have noted during this research a number of responses both from the survey, but particularly from the case studies, that differentiate the letter of FOISA from its spirit. The dominant view that has come forward is that FOISA has been implemented by public bodies within a rational-legal frame of reference that stresses the letter rather than the spirit of the law. Many of our interviewees have lamented this reduced vision of the Act, preferring that it be seen as one important aspect of a more open government approach. Public bodies vary in this respect. In one case study for example, interviewees spoke very positively about a new leadership style within the organisation that was democratically inspired and that sought new forms of openness of practice.

**3.5.2.** We have noted comments at various points of this research about an embryonic Scottish forum for taking forward support for FOI, post-implementation. This new forum, the Scottish Public Information Forum, which replaces the Scottish Freedom of Information Implementation Group (SFOIIG), will embrace FOI-related learning as a key part of its remit and seek to encourage related information sharing and good practice throughout Scottish public bodies. We found this forum and others such as the Scottish local authorities’ FOI Officers Network to be valued by our research participants. However, participants also conveyed the need for these forums to be more strongly developed, particularly in their capabilities to support learning and communication of good practice.

**3.5.3** Elsewhere in the report [**2.7.3.3**] we have noted comments from participants that valuable learning opportunities are delayed due to the time taken by the SIC to issue

decisions on appeals. Other comments have focused upon the need for the SIC to adopt a more proactive and systematic approach [beyond the web-based ‘briefings’] to dissemination of key ‘learning points’, including ‘precedents’.

**3.5.4** We have noted [2.7.3.3] that the requirements of the DPA, the Enterprise Act, and FOISA are perceived by some respondents to place contradictory requirements upon public bodies. This is clearly a significant issue for these bodies as these requirements are set in law and have significant implications if they are not met. We further note here that these matters are currently under legal review. In the case of the relationship between the Enterprise Act and FOISA, various appeals are currently with the Court of Session. In the case of the relationship between FOISA and the DPA, an appeal is currently with the House of Lords.

**3.5.5** This section has highlighted the need to develop learning opportunities that will support the effective delivery of FOI. We have noted in particular the need for top-down democratically inspired leadership. We have also noted the significant potential contribution to ‘bottom up’ learning of infrastructural bodies such as the Scottish Public Information Forum.

## **3.6 Further reflections**

**3.6.0** To this point we have presented findings and analysis that derive directly from what has been said to us by our survey respondents and case study participants. Here, in **section 3.6** we go further in presenting our own reflective comments. We structure this reflective discussion by reference to the three rationalities (administrative, political, and democratic) and the institutionalist perspective to which we referred in **Section 3.1.2.** above.

**3.6.1** The first of these themes at **3.1.2** concerns the embeddedness within public bodies of an ‘administrative rationality’ whose core characteristics include a tendency towards continuity rather than change; the routinisation and standardisation of procedures; strong historically arrived at departmental structures [silos]; and centralisation built around hierarchies of responsibility, command, and control. The embedded nature of these characteristics has implications in respect of the imperatives

of FOI. In particular, the embeddedness of its procedures, structures and systems make the achievement of deep, meaningful and sustainable change difficult to achieve in the short to medium term.

**3.6.2** The second of these themes concerns ‘political rationality’ made manifest by the exercise of judgement in decision-making that is inherent (and inevitable) within organisations *per se* and governmental settings, in particular. Within all organisations, but most particularly those supporting governmental activities, judgements will necessarily be made about the sensitivity of information, the timing of release, how released information will be received, the implications of release, the implications of non-release, and who within the hierarchy of command and control must be involved and the proper nature of that involvement. Where information is to be shared or communicated to others political rationality will tend towards ‘managed release’ with careful appraisal of content and timing of release being examples of this process in practice. Tensions will be generated by multi-stakeholder environments imbued with different and competing interests, priorities, values and philosophies in which political rationality is played out. The inevitability of the existence of this political rationality, whatever its form, is significant, for it means that the implementation of FOISA cannot be separated from this context. There will be dynamic tension between the legal formalism of the Act itself and the political rationality of the setting in which it was brought into enactment and within which it is implemented.

**3.6.3** The third theme that we turn to here is that of ‘democratic rationality’. We use this concept to convey the ideals and intentions underlying the enactment of FOISA. The significant aspiration for FOI is that it contributes to the revitalisation of democracy through enhanced transparency and ‘open government’. Bringing greater accountability to public services, and to Government more generally, are also aspirations and, anticipated as deriving from these, as is increasing trust in Government and by citizens. One crucial tension here concerns how this aspiration for democratic enhancement can be achieved when it contends with the competing perspectives of administrative and political rationalities. A further issue lies in imbuing public bodies with the understanding and vision that FOI is not simply an adjunct to Government and its public services, but an overarching and crucial aspect of democratic society including good public administration.

**3.6.4** The fourth theme against which our analysis is situated is that of ‘institutionalism’. Institutionalism speaks to the embeddedness of routines, norms, and values, and to strong centripetal forces towards the status quo [North, 1990; Bellamy & Taylor, 1998; Scott, 2001]. Moreover, institutionalism infuses administrative, political, and democratic rationalities, making deep change possible in the immediate term only if there is a shockwave of sufficient magnitude to ‘punctuate the equilibrium’ that otherwise characterises these settings [Baumgartner and Jones, 2002; Jones and Baumgartner, 2005]. In the absence of any such shockwave, momentum inevitably is towards the continuing persistence of administrative, political, and democratic rationalities in more or less their current forms.

**3.6.5** As we have noted above [section 3.2.0], the period from the formal introduction of FOISA in January 2005 through its early implementation phase of the last two and a half years has been characterised by mounting pressure for public service modernisation and change, pressure that applies equally throughout the four sub-sectors of public administration examined for this work. Public sector modernisation has brought new emphasis upon the benefits to be gained from the acquisition of new information resources and their management, as well as upon new ICT investments and applications. Customer and citizen-centric government, including the prospect of new forms of public service ‘personalisation’ and ‘evidence-based policymaking’, provide examples of how the service modernisation agenda is driving this new interest in the creation, management and application of new information resources. We see FOISA as another element within this agenda of modernisation with its potential to further challenge historically embedded administrative, political, and democratic rationalities through the transformation of information practices in ways that could generate greater transparency on the part of Government and public sector bodies and enable more empowered citizens. We do not see FOISA as the only driver of transformation or, indeed, as having generated a ‘shockwave’ of sufficient magnitude [Baumgartner and Jones, 2002; Jones & Baumgartner, 2005] to bring about radical transformation. Our respondents have reported some improvements in records management practices and we have seen, too, that many perceive their organisations to be more open and transparent, with FOI contributing to these changes [sections

**2.7.2.4 to 2.7.2.6 & 3.3.0**]. However, we have also seen that participants in our research do not perceive radical change to have occurred in the information processes and practices within their organisations and the dominant perception is that the change-inhibiting silos of departmentalism largely prevail [**section 3.2.1**]. Our conclusion is that FOISA is contributing to change, but in the deeply institutionalised world of Government, and in the absence of any ‘shockwave’ effect, changes occurring will be the outcome of a number of inter-related factors, of which FOI will be one. Moreover, it can be anticipated that these changes will be relatively slow to occur.

**3.6.6** The dominant logic of responses to FOI amongst the majority of bodies that we have studied is to be found in the administrative rationality to which we refer above [**section 3.6.1**]. Systems, both ICT and human, have been put in place, responsibilities have been formally assigned and, requests are being handled pragmatically with little if any sense of the democratic considerations discussed above [**section 3.6.3**]. We have seen that some public bodies are seeking ways of managing FOI in ways that enable consistency of response. We have seen the segregation of requests as ‘routine’ and ‘non-routine’. This more than any other administrative behaviour conveys potential for the sorts of administrative ‘challenges’ to FOI noted by Roberts in his study of FOI in Canadian Government [1998, 2000, 2006] as it can be seen as the first step towards the illegitimate management of FOI responses. Despite this classification of certain requests as ‘non-routine’, with the implication that these are potentially problematic, with responses managed differently from routine requests, [**section 3.2.3**], we are not persuaded that these administrative behaviours are evidence of any widespread attempt on the part of Scottish public bodies deliberately to undermine or flout FOISA, Rather, our view is that by making this distinction public bodies are largely seeking to grapple with problems generated by ‘administrative incapacity’ [inadequate records management systems, incompatible ICT systems, conflicting pressures on resources, lack of awareness of FOI on the part of some staff, lack of leadership from the top of organisations, for example] [see Roberts, 1998]. Whilst we do not take the view that this particular administrative behaviour is evidence of flouting or undermining the legal requirements of FOISA *per se* we do suggest that classification of requests can lay a foundation upon which ‘managed responses’ to

FOISA can more readily be made by public bodies, thus running counter both to the letter and the spirit of the Act.

**3.6.7** Our concluding point immediately above suggests clearly that FOI also needs to be understood within the context of political rationality [**section 3.62**]. Here, we are aware that tensions arise, when responding under FOISA, from the competing interests, priorities, and values of different stakeholders. We note here the pragmatic words of Robert Hazell when he declared that “no government is ever likely voluntarily to publish information that undermines its case” [Hazell, 1999]. In keeping with these words we have heard from respondents of instances of what we term ‘managed response’ [**3.2.3**]. One example here includes press offices acting in ways designed to ‘stall’ or ‘kill’ articles by journalists. Another example of ‘managed response’ includes attempts to interpret exemptions under FOISA so as to enable limited release of information. Further examples given to us include changes in information recording practices in ways that reduce the evidence base available to requestors, and the selective presentation of information to a requestor in ways that reduce the potential for organisational or even sectoral damage. Though there are clearly instances of managed responses, similar perhaps to those Roberts [1998; 2005] found in Canada, we are not persuaded that there is evidence here of any widespread or systematic attempt on the part of public bodies deliberately to undermine or flout FOISA. Mainly, we have found a rationality here based on judgements about certain requests by officers and politicians, many of which are straightforward; some of which are not. We wish to emphasise here the importance for public bodies to be alert to threats to openness deriving from this ‘political rationality’. These threats can clearly undermine FOI and we urge that, notwithstanding the *realpolitik*’ of Hazell, cited above, acting in the democratic spirit of FOISA should be paramount for all public bodies at all times.

**3.6.8** We note at various points in this Report the endemic administrative and political rationalities that have thus far tended to dominate public sector reactions to FOI in Scotland. As we have noted above, FOISA is an important aspect of the overarching modernisation agenda [**3.2.0**] and potentially of great significance in strengthening open government and the empowerment of citizens and thereby sustaining a new democratic rationality. It is our view that the most crucial element in taking forward

the potential of FOISA is strong, collective leadership by those in the most senior posts in Scottish public bodies. Clearly there is scope for this stronger leadership of FOI, leadership that embraces the spirit as well as the letter of FOISA. Furthermore, we note that ‘system learning’ for FOI in Scotland remains, at best, in early development. Best practices and innovations, for example, are not being as widely identified and shared as many would want. Decisions are too slow in coming through to the sector from the SIC; and ways need to be found, too, of improving how these are communicated, including through the identification of precedent, where appropriate. We further argue that the emergent networks for dialogue about FOI need to be strengthened. Thus, we call for an energetic ‘system learning model’ to be pursued for Scottish FOI. This model is both ‘bottom up’, realised through the stimulation of networks such as the new Scottish Public Information Forum, and ‘top down’, realised through the development of strong, democratically inspired leadership of FOI across the Scottish public sector.

## **4.0 Recommendations**

The first two recommendations that we offer here are of a general and overarching nature and should be seen as embracing many points of detail to be found throughout this third section of our Report. These points of detail are crucial as the ‘FOI system’ moves forward, but we take the view that they will be best realised through the adoption of the general recommendations that we offer below.

### **Recommendation 1**

**That those responsible for FOI policy development in Scotland, seek ways of improving the top management leadership of FOI throughout Scottish Public Administration so that the democratic rationality behind FOI is both better understood and realised. In particular, the attention that we have drawn to the need to imbue public bodies with the understanding and vision that FOI is an overarching and crucial aspect of democratic society, including good public administration, should be acted upon.**

## **Recommendation 2**

**That those responsible for FOI policy development in Scotland seek ways of improving opportunities for system learning about FOI and its implementation throughout Scottish Public Administration. This focus on system learning should build upon the role of the Scottish Public Information Forum and should encourage the sharing of process innovation and best practices in records management, for example.**

**Recommendation 3 That the SIC responds to requests that have come from throughout the public sector, captured in section 3.5.3, that there should be a more informative and timeous approach to the dissemination of key ‘learning points’ from SIC decisions, including ‘precedents’.**

## **Annexes**

## **Annex 1.0 Background to FOISA**

### ***Introduction***

FOISA received Royal Assent on 28 May 2002 and came into force in Scotland on 1 January 2005 [Scottish Executive, 2003]. It “provides a public right of access to information held by Scottish public authorities and some other organisations” [SIC, n.d. p.2]. It also allows for information to be fully or partially withheld from public access under certain circumstances, including where it can be demonstrated that there would be ‘substantial prejudice’ or ‘harm’ to the public body or other parties following disclosure unless the benefit to the public of disclosure would outweigh the harm [Carter and Bouris, 2006]. In its emphasis upon ‘substantial’ prejudice the Scottish Act is stronger than the English Freedom of Information Act [2000] and conveys the potential for greater release of information [Carter and Bouris, 2006]. Under the Act it is permissible to charge applicants a fee [subject to an upper limit] for information and to withhold the information if payment is not received. The Act also requires that responses to information requests [and decisions on reviews where applicants request these] are completed by the public body within a specified timescale, normally of twenty days.

Promotion and enforcement of the Act and associated good practice is the responsibility of the Scottish Information Commissioner, “an independent public official, appointed by Her Majesty the Queen on the nomination of the Scottish Parliament” [SIC, n.d., p.2]. The Commissioner has been granted a number of powers of enforcement under the Act. He can receive appeals from persons who have requested reviews, the outcomes of which are not deemed satisfactory by the person concerned. The Commissioner can also investigate a public body where he has reason to believe that the body is failing to comply with the legislation or its associated Codes of Practice. Upon conclusion of his investigation, if it is the judgment of the Commissioner that the public body has not acted in accordance with the legislation, power is invested in his Office to issue an “enforcement notice” to the public body. This details the steps that must be taken by the public authority in order to comply with the Act, and specifies a time limit for compliance [SIC, n.d., pp.2 and 3]. If a public body subsequently fails to comply this may be treated as a contempt of court by the Court of Session, in which event fines or imprisonment may be imposed.

Public bodies may appeal decisions by the Commissioner to the Court of Session, on a point of law. Applicants may also appeal the Commissioner's decisions to the Court of Session.

In certain particular and limited circumstances the First Minister is empowered to over-ride a decision of the Commissioner through the issue of a 'Ministerial Certificate'.

In the region of 10,000 public bodies are currently subject to the Act. These include The Scottish Parliament and officer holders in the Scottish Administration, bodies within the National Health Service, educational bodies, the police, other bodies such as Audit Scotland and the Board of Trustees for the National Galleries of Scotland, through to individuals such as GPs and Dental Practitioners [Freedom of Information [Scotland] Act, 2002].

#### ***Historical and international context.***

The first freedom of information law originated in Sweden in 1766, the inspiration for the Swedish law lying in China's Ch'ing Dynasty [Ackerman and Sandoval-Ballesteros, [2006]. Today the concept and principle of freedom of information is increasingly recognised in international law, and conventions, treaties, agreements, and declarations such as Article 19 of the United Nations Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights are encouraging or obliging its adoption by national governments [Banisar, 2006].

By 2006, almost seventy countries covering every continent had embraced freedom of information in some form and to varying degrees, with another fifty in the process of adoption [Banisar, 2006]. Twenty-six countries have enacted laws granting public access to government information in the decade to 2002 [Blanton, 2002]. The majority of freedom of information laws are concentrated in the 'developed' and 'developing' worlds; with around 38% in Western Europe, the United States, Canada, Japan, New Zealand, and Israel, while in the 'developing' countries around 49% of growth has been concentrated in Central and Eastern Europe [Ackerman and Sandoval-Ballesteros, 2006].

Pragmatic concerns have underpinned the enactment and implementation of freedom of information laws internationally, with freedom of information believed to have beneficial consequences for economy, politics, and public administration and government [Michael, 2006; Ackerman and Sandoval-Ballesteros, 2006; Blanton, 2002]. Within the UK these concerns have been particularly manifest in relation to evidence of falling trust in Government and governmental institutions and the need to re-engage citizens and re-establish public confidence in the institutions and processes of governance; in concerns with efficiency and effectiveness in public administration and the delivery of services including through 'e-government'; and in improved policy and decision-making on the part of Government and public bodies [James, 2006]. As government grows increasingly complex in its arrangements, concerns about organisational transparency, public accountability, and the 'ownership' and 'stewardship' of information are also relevant. More broadly, there has been a view expressed in the early years of the Blair Government that freedom of information legislation would help break down the traditionally 'secretive' culture, assisting the move towards more open government within the UK [Blair, 1997; Straw, 1999].

As concept, practice, and legislation evolve there is increasing emphasis upon oversight in the shape of Information Commissioners, with these being deemed the most effective form of oversight and enforcement [Banisar, 2006]. Harm and public interest tests with the emphasis upon weighing the harm of withholding information against the public benefit of disclosure are also increasingly in evidence. The range of bodies that fall within the scope of the laws is extending too beyond public bodies, with South Africa the commonly cited example of a country that allows limited retrieval of information from private bodies within certain circumstances. Increasingly evident, too, are prohibitions upon withholding certain information [Banisar, 2006]. While access to information is commonly restricted to written records, Denmark goes beyond this in allowing access to oral communications where these have been influential in decision-making. New Zealand allows access to information known to the organisation, though not yet formally recorded. India allows information to include materials such as samples of materials used in making roads [Banisar, 2006].

Information that is commonly exempted from disclosure falls within the categories of national security, international relations, personal privacy, commercial confidentiality, law enforcement, and advice and discussion associated with matters of public policy and government [Goodhart, 2006; Banisar, 2006].

Internationally there are considerable variations in the ways in which freedom of information is understood and practiced, with significant differentials identifiable in relation to reach into government, scope and form of exemptions, forms of enforcement, and accessibility [Blanton, 2002; Ackerman and Sandoval-Ballesteros, 2006].

### ***UK context***

Prior to the election of the Blair Government in 1997 there was some emerging movement already underway towards more openness in accessing government and personal information. Thus, there was some limited access in respect of personal records for example under data protection legislation, the Access to Personal Files Act [1987], and in respect of medical records [The Campaign for Freedom of Information, 2007; Glover, Holsen, MacDonald, Rahman, and Simpson, 2006]. In 1984 The Local Government [Access to Information] Act brought wider public access to council meetings and documents [Hunt, 2006]. In 1996 a Select Committee recommendation that freedom of information legislation be enacted was rejected by the then Conservative Government. However, while the Conservative Government was reluctant to move towards this more fulsome embracing of freedom of information they had already implemented a non-statutory Code on Open Government. Following election in 1997, the Blair Government published a White Paper setting out its proposals for freedom of information legislation. Following revisions that saw the number of exemptions considerably expanded and a lessening in significance of the 'harm' test [Glover, Holsen, MacDonald, Rahman, and Simpon, 2006] the UK Freedom of Information Act was passed in 2000 and implemented on 1 January 2005.

### ***Scotland***

In Scotland, The Freedom of Information [Scotland] Act 2002 was preceded in 1999 by the non-statutory Code of Practice on Access to Scottish Executive Information. One of the key aims of the Code, which encompassed a range of Scottish public

bodies together with the Scottish Executive, was the enhancement of policy-making and democratic process through the better release of information [Scottish Executive, 1999]. The Code, and FOISA subsequently, also reflected the new Scottish Parliament's commitment to the principle that it should be publicly "accountable, accessible, open and responsive" [CSG, 1998].

The Freedom of Information Act [Scotland] 2002 is administered, implemented, and enforced under Scottish jurisdiction and is entirely separate and independent of its UK counterpart the Freedom of Information Act 2005, with the exception that it must take account of overarching UK legislation including Data Protection legislation.

While it is similar to the Freedom of Information Act 2005, FOISA is also distinctive in important respects. These include the stricter time limits pertaining to the various aspects of FOISA, from initial responses to applicants' requests for information through the various elements involved in compliance and [where necessary] enforcement. The emphasis upon 'substantial' prejudice in weighing harm to public bodies and other interested parties against the public benefits accruing to disclosure is, as we have noted above, a significant difference. The position of the Scottish Information Commissioner is also different in that his Office though funded by the Scottish Parliament operates independently and autonomously in key respects and is not directly subject to Scottish Executive or Parliamentary oversight, direction, or control.

## **Annex 2.0 Survey Questionnaire: Illustrative Comments by Respondents**

In **Annex 2** we present illustrative responses to questions 4a, 11, 12, 14, 18 and 20 of the telephone questionnaire.

### **Q 4a. To what extent have FOISA s60 and s61 guidance codes been useful for your organisation?**

Helpful initially.

S60, very very good.

S61, could take the guidance further on retention.

Helpful, but out of date.

The Codes were wonderful as a political tool to get support initially.

S61, on records management, was helpful at the time. Not so much now.

### **Q. 11 Would you say that your organisation has become less or more open/transparent internally as a direct result of FOISA?**

There is now more off the record discussion, because there is a fear of documenting discussion.

There's an improved attitude, but a risk that less is written down.

### **Q. 12 Would you say that your organisation has become less or more open/transparent externally as a direct result of FOISA?**

Public awareness of FOISA promotes openness.

More information is available, but less is recorded.

The publications scheme is more proactive. Ministers, historically, have not liked releasing information. But it makes your job easier to release it.

We're more aware of questions the public may ask.

**Q.14 Have there been instances where a decision from the Scottish Information commissioner either about a case in your authority or the wider policy community has led to a change in your own organisation?**

The Commissioner has overturned some of their decisions relating to definitions of personal data.

It has affected the creation of information.

General policy.

We've been caught out 'technically' for small items.

Trading standards issues. We had a request about complaints against electrical suppliers. The Enterprise Act bars the release of details of complaints, but not the numbers.

Change of policy in releasing expenses sheets.

There was public interest in releasing information withheld under section 38 exemption.

Disclosure of contracts that the Council is a party to. It has to be the exception not the rule, not to release this.

Policy on release of elected members' expenses.

There's conflict between the Enterprise Act and FOISA. And section 38 of FOISA and DP.

Potentially, depending on a decision regarding the Enterprise Act and FOISA.

They are now sending out 'not held' notices for everything.

They have dealt with information held by a joint body to which they were a member, but did not hold information for.

There is no system for learning lessons.

We were not logging general service calls.

Issues relating to The Enterprise Act depending upon a SIC decision.

Not yet. There is a current case, though, where there are anonymity issues about a small number of cancer cases.

Anonymity of patients when dealing with release of data for very small groups. Because of a decision they now release this information.

Release data on surgical mortality in PFI hospitals.

We won all the appeals. We learn from new decisions. Check the SIC website daily. Proactive approach.

Guided by decisions generally.

There's been a subtle change on the media side. It's been slowed down by FOI. In the past we'd have answered right away. Now it all goes in the FOI process.

We provide the service history of cars we sell.

How we record and disclose data has changed. For example, we disclose officers' names now in all cases as the result of a SIC ruling.

Practice around marking documents as 'restricted'.

The main change is having the publications scheme and having it on the website. This got us thinking about what we held and what people would like to see.

## **Illustrative Comments by Respondents in Response to Questions 18 and 20.**

The responses set out below have been grouped under themed headings for easier accessibility. There is a small number of comments that could have been listed under more than one heading.

### **Q.18 What have been the most important benefits that FOISA has brought to your organisation?**

#### **Requests**

No comments were made on this theme.

#### **Openness**

We're a bit more open.

We're more open and transparent.

There's public transparency, locally.

There's a culture change amongst employees regarding information disclosure. It's more open.

There's increased openness.

It's created more openness.

There's greater openness.

Openness and cultural change in respect of the citizen's right to information.

We're more open and transparent.

Transparency, openness, accountability and reflection of what should be in the public domain.

More transparency.

Openness and transparency. There's greater confidence in giving out information, reduced defensiveness.

Openness has increased.

Greater transparency.

More information is available internally and externally.

It's instilled openness throughout the organisation.

Openness has increased.

We'll be more open to the public eventually.

It's informed employees about the public's right to information.

It has made [us] more open with information.

The police are not working in isolation. The internal mindset is changing.

We're more open to the public.

There's more willingness to be open.

Transparency.

There is more transparency internally as a result of FOISA.

There is a culture of openness and general awareness of this.

Generally speaking it [FOISA] has helped us to be seen as a more open and transparent organisation.

## **Recording / Communication**

We're more efficient in responding to requests.

We need to provide evidence of decision /evidence based policy-making.

Inter-departmental communication has increased.

It sharpens peoples' thinking about what is recorded and about accountability.

There is a clear structure for dealing with information requests.

Staff are more aware of formal recording.

There is a more cautious, professional approach to email and other written forms of communication.

Increased awareness amongst staff of professional communication.

There's better presentation of information to the public. We're more proactive in presenting figures on a quarterly basis.

It makes employees think before they record information.

There is better understanding of accountability for information.

There is greater professionalism and attention in what is recorded.

It is brought clarity, discipline, and professionalism to email communications. Email is part of the official record. There is greater awareness of where information goes.

It's improved the quality of correspondence as legislation requires consideration of exemptions et cetera.

## **Records management**

It's brought a re-examination of our information policy.

It's a catalyst for better records management.

It's a driver for records management.

There's improvement in records management.

There's awareness of records management. Efficient record keeping and retention.

It drives information management.

It's one driver for better records management.

We're applying better information management practices.

The need for proper information management has been key.

It's provided a focus for improving records management.

It's opened eyes to information we don't have. We're more aware of retention and destruction. There's more opportunity [for the respondent] to raise the subject of information management.

There is focus on records management.

The value [placed] on records management.

Allows scope for improving records management.

It's made us focus on records management.

We think more about information management systems and how we handle documents. That doesn't mean things change, though, in practice.

It's provided more structure and awareness of records management.

It's boosted proactivity and acted as reminder of existing information policies and procedures. We're continuing to improve our document handling.

Records management has improved.

FOISA has focused employees on the importance of good record keeping practice. It's a platform...a catalyst...for new processes for document handling. As a driver...it's moved information management up on the priority list. It provides a standard and opportunity to learn good practices.

Improving records management. The availability of information has increased.

Staff are more aware of good records management, and there is more openness and transparency as a result. Staff are less afraid to release information.

It's getting document management in order.

We've got rid of a lot of unnecessary confidential information. It's been a driver for records management.

It's a driver for records management. Improvements have been made.

Proper, effective records management strategy and practice is important.

We have better practice in records management.

We're more aware of information recording, structuring of documents, et cetera.

There is awareness of good records management.

We have better records management.

We've brought the right people in to do information management.

Improvements in information systems and protocols. Improved records management.

Filing systems have improved.

There is greater consideration of records management.

Consistency of information management and structure brought to records management.

Information management has been challenging, where previously bad information management has made a response difficult to draft or do on time because you can't find the information.

It has raised awareness of the importance of good information and records management.

### **Privacy**

It's highlighted data protection issues.

There is greater awareness of personal data and the need for rigour. There is greater awareness of the importance of information management in this respect.

### **Attitudes by staff**

There is a collective sense of responsibility.

It's a catalyst for changing defensive attitudes.

It puts focus on managerial responsibility.

There is significant support from top levels [of the organisation].

Generally staff are more aware of their actions and able to justify these better. It's made staff more aware of the need for good information management practices.

### **Timescales**

No comments were made on this theme.

### **Resourcing issues / staffing**

No comments were made on this theme.

**Public perception**

Its improved public confidence and perceptions of the Council.

Greater confidence in public authorities.

The public are less suspicious because they have more information about Council activity.

Public appreciation.

Public perception of existing openness within the organisation.

We can show the public that we give good value for money.

There is greater public confidence related to openness.

**Collaborative working**

It's breaking barriers amongst departments.

Inter-departmental thinking.

Information is being shared. Departments are being brought together in a shared Council identity.

Better collaborative working amongst departments.

Improved inter-departmental collaboration and communication.

There is recognition of the fact that information is not ours personally, but the organisation's and it is to be shared.

**Guidance**

No comments were made on this theme.

**SIC issues**

No comments were made on this theme.

**Other**

There's increased accountability for information produced.

There's clarity about making information public..

There is enhanced public oversight of Council activity. Accountability.

It provides an avenue for complaints.

There is greater accountability of senior individuals through sign-off procedures higher-up.

It's tightened policies and procedures.

**Q.20 What have been the problems or challenges associated with FOISA that your organisation has faced?**

**Requests**

There can be huge flux in requests. It's not stable. It's difficult to manage flow.

Frustration that it's being misused by media, companies for sales, et cetera.

There is an increase in frivolous requests that we cannot demonstrate are vexatious. And time is wasted by journalists. These sap morale.

The number of press enquiries.

Excessive, unreasonable requests.

Vexatious requests cause such a waste of time.

The volume of requests.

Volume of requests.

'Nutters' using FOI, sending massive requests on the same subject.

It's not possible to capture every request. They are buried in letters and finding all requests is difficult.

The wrong people are using it. Media abuse creates backlogs. It feels unfair, as though we're under attack.

Abuse of FOI by complainers, demanding information that doesn't exist.

The general public are not using FOISA. 70-80% of requests are from reporters.

The volume of requests is a problem.

Feels helpless [respondent] against continual follow-up requests. And frustrated with journalists on 'fishing expeditions'. There can be daily requests from the same person. The vexatious requests definition is too limited. The purpose is openness, not 'gotcha'. Fixed response timelines regardless of the volume of requests are a problem.

The level of requests has been overwhelming. 60% are from the media. We're turning into a research department for third parties.

We are a free research tool for journalists.

The size of requests is a problem.

Finding material for vague or broad requests.

There is an increased volume of silly requests.

People think we're more conspiratorial than we are.

### **Openness**

We're more interested in managing the release of information, than just releasing it.

Dealing with commercial companies in relation to contracts and bids could be open.

### **Recording / Communication**

People are less likely to write things down.

Lack of management email.

Developing workflow for requests.

It inhibits strategic thinking. We're nervous of written records.

Communication in a huge, geographically spread organisation.

Communications for collecting all information for requests are difficult amongst different and disparate employees. Where does the information reside?

Impressing on people the importance of accuracy of information.

Establishing consistency in how meetings are recorded. Can they use Chatham House rules?.

It has scared people into not writing things down.

We're still largely paper based.

### **Records management**

Archives. Historical data retention.

Finding requested information is difficult. Records management.

Recognising how far they need to go on records management.

Record keeping on cross-service responses is a problem.

Improving records management has been a huge challenge.

The diversity of recording practices amongst departments.

Getting a focused structure for responses/records management.

In a very large jurisdiction organisation, having all the documents that might be requested is a problem.

The availability of information in the right format is a problem.

We're cleaning out historical information, destroying archives.

It identifies problems in records management.

The main problem is that our records management is not as good as we thought it was or as it should be.

### **Privacy**

There is conflict with Data protection.

Dealing with personal data.

### **Attitudes by staff**

It's difficult to get employees to respond to the deadline.

Changing the internal culture is difficult.

Getting senior management buy-in.

Getting people to change the police culture.

There is defensiveness amongst staff.

### **Timescales**

Meeting deadlines for reviews, specifically.

Timescales are tight, especially with cross-departmental requests.

Timescales are tight.

The twenty day time limit on cross-departmental requests. y.

Meeting the timescales.

Timescales are difficult because of staffing constraints. Fees structures and costings.

Getting all employees to provide answers on time.

The response timescale is difficult to meet.

The timescale for responding is a problem.

Deadlines are a challenge.

Impressing the importance of deadlines, on people.

Deadlines cause problems. They're difficult to meet.

Response deadlines cannot be extended beyond twenty days, and it's hard to meet complex requests in that timescale.

There can be a huge volume of information and it can be widespread if it's a cross-cutting issue or you have to go out to other organisations.

FOISA has not led to an overall increase in the volume of correspondence, but it is more complex and challenging.

The twenty working day timescale is difficult to meet.

### **Resourcing issues / staffing**

People are too busy to find time for FOI.

It's draining on staff time.

It costs too much...money and staff time.

Time and money haven't been set aside for FOISA.

Staff workload.

Demands on time and resources.

It has increased workloads and sapped morale.

Lack of resources. It takes up staff time.

Resources are limited.

Lack of funding.

It's an additional administrative burden. There is a lack of resources.

It's a drain on staff time.

Lack of staff resources.

Resources are limited.

Lack of / stress on resources.

Workload and resources.

Resources.

Responding to complex requests without additional resources.

Resources and workload.

People need to be taken away from their regular duties to respond to FOISA, that is doctors and nurses.

Limited resources [available] to comply with FOISA.

Doing the work without additional resources.

Stress on time and resources. You're not just passing along information. You're required to put together responses to requests.

Staff resources, for complex requests.

Staff time and resources.

There is pressure on existing staff, unrelenting pressure.

Information management is limited by lack of finance and IT.

Resources are a problem, especially for complex requests.

Lack of resources.

It's a strain on resources.

Finance, EDRMS costs.

Resources. It's not a cost free service.

### **Public perception**

No comments were made on this theme.

### **Collaborative working**

There is greater awareness of stakeholders' needs and rights.

**Guidance**

The lack of regulations that were to come in behind the Act and regulate its use is a problem.

Fees structures and costings, exemptions, are confusing.

The legislation can be overly complex with exemptions.

Developing policies for certain issues, such as Executive privacy.

Making sure there is a consistent understanding of how to apply FOISA. The learning curve from SIC decisions.

Understanding FOISA legislation. It's highly complex. The real meaning of 'public interest' for example.

**SIC issues**

Dealing with the SIC is difficult. By the time it gets to the Commission it's a complex inquiry. We must then report within fourteen days [two sets of rules].

Having up-to-date guidance. SIC decisions come too slowly.

The time lags on SIC decisions are too slow.

We have twenty days to respond to a request [on a sensitive issue]. The SIC has taken almost two years with the appeal decision so far. We're held to deadlines that the SIC isn't held to.

There are many grey areas and it takes a long time for SIC decisions.

Adapting to SIC decisions.

**Other**

Sheer culture change.

There are staff awareness and training problems.

There is reluctance to change.

Too much time is spent on the literal [application] rather than the intent of the legislation.

Trying to raise awareness amongst staff.

Getting all employees to understand their responsibility..

Impressing on people that it is, in fact, legislation.

You are only allowed to charge minimal fees, that don't cover the costs of larger requests..

It is burdensome and bureaucratic.

Getting expert knowledge of FOISA into all of [our] business units is difficult. Some people are very good, others are less expert.

## **Annex 3.0 Research methodology and methods**

### **Introduction**

The research methodology comprised a range of methods including literature reviews, a telephone questionnaire survey, and case studies.

### **The Literature reviews**

Literature reviews were a major component of the research. They were on-going throughout the period of the research. The four main sets of literatures drawn upon comprised:

- FOI- related academic literatures;
- major reports and analyses of FOI in international and historical context;
- reports and analyses of FOI in UK context and other related documents;
- FOISA-related documentation, including The Act, supporting documentation including the Section 60 and 61 Guidance Codes, other related documentation published through the Scottish Executive and Scottish Parliament, SIC reports and in-house documents.

### **The telephone survey**

The telephone questionnaire survey [TQS] was a major component of the research and comprised the first main fieldwork stage of the study.

#### ***Purpose.***

The purpose of the TQS was two-fold:

- to examine the implementation of FOISA in Scottish public bodies and to identify emerging patterns where these existed;
- to provide information and data enabling the selection of public bodies for in-depth case study as the second major component of the study.

#### ***Sampling***

Four key institutional sub-sectors coming within the scope of FOISA formed the sample population for the TQS. The sub-sectors comprised:

- Scottish Executive departments and agencies;

- Local authorities;
- NHS boards;
- the police forces.

The intention was to undertake a census of each sub-sector, enabling 100% coverage of the sample population.

### *Identifying and approaching respondents*

The SIC provided the research team with contact details for the public bodies to be included in the TQS. In most, though not all cases, the contact details included the names of persons with formal responsibility for FOISA. In a number of cases these details were found to be in need of updating, due mainly to staffing changes.

The SIC informed the public bodies of the research prior to its commencement and advised that the research team would be contacting them with a view to inviting their participation in the study.

In some cases the researcher had to speak with one or more persons within a public body before the person best-placed to respond to the TQS was identified.

Prior to completing the questionnaire the researcher explained the purpose of the research. The researcher also explained how respondent confidentiality and anonymity would be managed. A written synopsis of the research was available where requested.

### *Questionnaire*

The telephone questionnaire was designed to allow delivery and completion by the researcher on behalf of the respondent.

The questionnaire comprised both quantitative and qualitative questions. These were designed to elicit the following types of information:

- factual information about changes that have occurred within public bodies, and the extent to which FOISA was a generator or inhibitor of these;

- more evaluative judgements of the impact of FOISA, including benefits and problems associated with its implementation.

The questionnaire required around 30 minutes to complete on average.

The TQS was mainly delivered by one member of the research team to ensure high consistency of approach and information and data recording. A small number of questionnaires was delivered by one of the lead investigators. This provided independent verification of how the questionnaire design and delivery worked in practice and on how these were received by respondents.

### ***Data handling***

The information and data generated from the TQS was entered into SPSS.

For consistency, the data handling [pre-coding, entry, cleaning, and verification] was undertaken by the same member of the research team who led on completion of the telephone questionnaires. The exception to this involved the post-coding of the qualitative responses. The post-coding was undertaken by the lead researchers in consultation with their colleague, ensuring that their understanding of responses was checked and verified.

### ***Data generation and analysis***

Percentages generated from the survey data were rounded up or down as appropriate.

## **The case studies**

The case studies formed the second major fieldwork component of the research.

### ***Purpose***

The purpose of the case studies was to elicit richer as well as deeper understanding of the extent to which FOISA has generated or inhibited new organisational arrangements within public bodies, with particular focus upon information management processes and practices. Case studies also enable richer understanding of the benefits and problems associated with FOISA.

### ***Case study selection***

Six case studies were selected primarily on the basis of the survey findings using key variables associated with levels of culture change and attitudes to FOISA. The research team also had access to FOISA request ‘monitoring’ data generated by Scottish public bodies and gathered independently by the SIC.

Further selections were then made on the following grounds where appropriate:

- sub-sector;
- political status;
- size of authority;
- geographical area.

### ***Inviting participation***

Respondents to the survey questionnaire were the first point of contact in setting up the case studies. Further key contacts were identified through the first and subsequent interviews.

### ***Methods of inquiry***

The methods of inquiry involved:

- semi-structured interviews;
- analysis of in-house documents.

In the interests of frankness and openness the interviews were not taped. One member of the research team led on interviewing. The second member of the research team recorded detailed notes.

### ***Case design***

The case studies were designed to enable deeper investigation of the following key themes:

- understandings of what constitutes a FOISA request;
- recording and counting FOISA requests;
- organisational arrangements for FOISA;

- systems for handling the demands of FOISA;
- perceptions and evidence of the impact of FOISA;
- opportunities and issues in FOISA-related learning.

Understanding of the organisational arrangements and systems in place for handling the demands of FOISA was enhanced in each case by inviting interviewees to identify two complex FOISA requests handled by their organisation, and then to set out stepwise the processes followed from initial receipt of the information request to closure.

## Annex 4.0 Research team profiles

### Professor John Taylor



John Taylor is Professor of Government & Information Management at Caledonian Business School, Glasgow and Research Associate, Oxford Internet Institute, University of Oxford.

His undergraduate and postgraduate study was undertaken at the London School of Economics. He took a prize winning BSc [Econ], specialising in Government, and a distinction in his MSc [Econ] in Public Policy.

He has undertaken many research and consultancy projects since beginning his academic career in 1978. He has focussed mainly on the public sector, though more recently has undertaken work on the voluntary sector too. His work has been on aspects of organisational & strategic managerial change, particularly as they relate to the uptake of new information and communications technologies. His most recent project for the UK's Economic and Social Research Council, finishing in 2007, has looked at systems of citizen identification in varied agencies of public administration.

He has published in many scientific and professional journals including *Public Administration*; *Policy & Politics*; *Information Polity: the International Journal of Government and Democracy in the Information Age*; *Nonprofit Management and Leadership*, *Public Money and Management*, *NCVO News*, and *Holyrood News*. He is currently a member of the CISCO Connected Government Think Tank and the ICT Foresight Panel of the National Council for Voluntary Organisations. He has taken part in a House of Commons Information Select Committee discussion forum and has given evidence this year to the House of Lords Committee on the Constitution. He has made presentations in Whitehall also, including to the Better Regulation Task Force and the Regulatory Impact Unit at the Cabinet Office.

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## **Dr Eleanor Burt**



Dr Burt is a Senior Lecturer with The School of Management, University of St Andrews.

She holds a BA [Hons] First Class [1989] and PhD from Strathclyde University [1994]. She also holds the certificate of the Association of Management Education and Training [Scotland] Doctoral Programme in research methods awarded by Glasgow University [1992].

Her research and consultancy engages with the voluntary and public sectors, where her interests mainly centre upon information management, government-voluntary sector relationships, and strategic management in voluntary organisations. She has been lead investigator on a research project that delivered the first largescale mapping of the uptake and application of information and communication technologies within the UK voluntary sector under the Economic and Social Research Council's Virtual Society? Programme. Policy-related research has included delivering the Scottish component of the National Council for Voluntary Organisations / Centre for Civil Society, London School of Economics collaborative report *Next Steps in Voluntary Action: An Analysis of Five Years of Developments in England, Northern Ireland, Scotland, and Wales*.

She has publications in academic, public policy, and professional journals, including *Information Polity: the International Journal of Government and Democracy in the Information Age*, *Nonprofit Management and Leadership*, *Voluntas*, *Public Money and Management*, *NCVO News*, and *Holyrood News*. She is currently a member of the ICT Foresight Panel of the National Council for Voluntary Organisations. Other engagements have included presentations to the Better Regulation Task Force and the Regulatory Impact Unit at the Cabinet Office.

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## Ryan Parks



Ryan received his undergraduate degree Political Science from the University of Western Ontario in London, Ontario, Canada. He was elected and served two years as a member of the University's Board of Governors. In his final year of studies, he was elected by the undergraduate student body to serve as President of the University Students' Council. As a student leader, Ryan lobbied the Canadian Government on post-secondary education issues as a Regional Director of the Canadian Alliance of Student Associations [CASA].

In 1998, Ryan attended the University of St Andrews and received his Masters degree in Management, Economics and International Relations. Upon graduation, Ryan returned to Toronto to become Executive Director of the Ontario Undergraduate Student Alliance [OUSA] and chief spokesman for 160,000 Ontario undergraduates. During his tenure, the Alliance was successful in persuading Government to implement a five-year tuition freeze, improve student assistance programmes and create tax credits for family education savings.

Upon the completion of his term at OUSA, Ryan moved to the Ontario Restaurant Hotel and Motel Association [ORHMA], the industry association for Ontario's hospitality sector. As Manager of Government Relations, Ryan's work involved advocacy, public policy development and media and public relations on a diverse set of issues that included tax policy, employment standards, public health regulation, environmental policy and freedom of information legislation.

In 2004, Ryan returned to St Andrews to pursue a PhD Management. With considerable work experience in public policy and a keen interest in politics, Ryan's doctoral research focuses on the public inquiry process in general and the Report of the 9/11 Commission in particular. Other research interests include risk, global energy policy and the relationship between the political and business spheres.

Ryan is also a Teaching Fellow within the School of Management at St Andrews.

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