

Practice Recommendation



Practice recommendation 01/2012

University of the Highlands and Islands

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Background

This Practice Recommendation is given to the University of the Highlands and Islands (UHI) by the Commissioner under section 44(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) following an assessment of UHI's practice in relation to the exercise of its functions under FOISA and the Environmental Information (Scotland) Regulations 2004 (the EIRs), carried out on the Commissioner's behalf under section 43(3) of FOISA on 21 and 22 February 2012. The Practice Recommendation specifies the provisions of the Scottish Ministers' Code of Practice on the discharge of functions by public authorities under FOISA and the EIRs (the Code) with which, in the Commissioner's opinion, UHI does not conform, and the steps the Commissioner considers UHI ought to take in order to conform with these provisions. By virtue of regulation 18(5) and (6) of the EIRs, section 44(1) of FOISA applies to the Code as issued under both section 60 of FOISA and regulation 18 of the EIRs.

In the Commissioner's opinion, UHI's practice does not conform with the provisions of the Code in relation to:

- training
- management and culture
- procedures to be followed in handling information requests
- the review process
- monitoring systems

all as more particularly detailed below. She considers that UHI ought to take the steps detailed below to conform in these areas.

Specific areas of failure to conform

Training

Paragraph 1.1 of Part 2 of the Code states that authorities should provide training to ensure that their staff have sufficient knowledge of the regimes established under FOISA and the EIRs. This should enable staff to:

- explain the procedures the authority has in place for complying with the regimes
- explain the key provisions of the regimes to potential applicants
- provide guidance on access to information for which the authority knows there is particular demand.

Findings

The Commissioner has found that UHI's practice does not conform with the recommended best



practice in this area, in that only the most elementary training on the regimes is provided to staff at present. There is a need for general awareness raising throughout the authority, and for more focused training for those with specific responsibility for dealing with information requests. Particular attention is required in respect of the identification of environmental information and the appropriate handling of requests under the EIRs, while specific training is also required for those officers who may be called upon to carry out reviews.

Steps to be taken

UHI is recommended to secure the provision of:

- general awareness training throughout the authority in relation to its obligations under FOISA, the EIRs and the relevant Codes of Practice, to ensure that all staff can both identify requests and pass them on to the appropriate person to deal with
- in-depth training for those with specific responsibility for dealing with information requests, to impart a working knowledge of the EIRs and a more comprehensive understanding of FOISA
- specific training for those members of staff who may be called upon to carry out reviews, to ensure that they can conduct a robust and independent review in line with the requirements of FOISA, the EIRs and the Code.

All training should be completed within six months from the date of this Practice Recommendation.

Management and culture

Paragraph 1.1 of Part 2 of the Code also states that authorities should establish responsibility at a senior level for ensuring compliance with the regimes established under FOISA and the EIRs, and creating a culture supportive of the public's right to know. The Commissioner considers it central to the establishment of such a culture – and thus a corollary of this element of best practice – that relevant roles and responsibilities (including those for dealing with reviews) are defined clearly.

Findings

The Commissioner has found that UHI's practice does not conform with the recommended best practice in this area, in that to date it has not formalised its administrative arrangements – in particular, the definition and allocation of roles and responsibilities – associated with dealing with information requests. She finds it to be of particular concern that UHI has not identified specific member(s) of staff to carry out reviews.

Steps to be taken

UHI is recommended to take immediate action to ensure that roles and responsibilities for dealing with information requests, including adequate provision for dealing with reviews, are clearly defined within the authority. UHI should be able to demonstrate that this has been done within one month from the date of this Practice Recommendation.



Procedures to be followed in handling information requests

As indicated above, paragraph 1.1 of Part 2 of the Code states that an authority's staff should be able to explain the procedures the authority has in place for complying with the regimes. Paragraph 1.2 states that authorities should publish guidance, the matters to be covered by such guidance including the procedure the authority will follow in handling an information request. Clearly, both of these recommendations presuppose that best practice requires an authority to have such procedures in place.

Findings

The Commissioner has found that UHI's practice does not conform with the recommended best practice in this area, in that it has no documented policy or procedures in place for dealing with information requests.

Steps to be taken

UHI is recommended to develop a robust policy and supporting procedures for dealing with requests under FOISA and the EIRs, taking into consideration all the recommendations contained in its own internal audit report on these matters and the Commissioner's assessment report. These should identify clearly the chain of responsibility for dealing with requests at all stages in the process. UHI should be able to demonstrate that they are approved and in operation within six months from the date of this Practice Recommendation.

The review process

Paragraph 5.4 of Part 2 of the Code emphasises the importance of authorities putting in place appropriate and accessible procedures for handling reviews. It goes on to state that these procedures should:

- be fair and impartial
- enable the matter to be considered afresh, allowing different decisions to be taken if appropriate
- be straightforward and capable of producing a determination promptly
- provide for the review to be handled, where practicable, by staff who were not involved in the original decision
- provide for records to be kept of each review carried out, to allow the authority to learn from any good or bad practice identified and take prompt action to prevent the recurrence of any procedural errors.

Findings

The Commissioner has found that UHI's practice does not conform with the recommended best practice in this area, in that it has no documented procedure in place for dealing with reviews.



Steps to be taken

UHI is recommended to develop a documented review procedure, in line with paragraph 5.4. UHI should be able to demonstrate that this is approved and in operation within three months from the date of this Practice Recommendation.

Monitoring systems

Paragraph 6.1 of Part 2 of the Code provides guidance on the information authorities should collect and record on their handling of information requests. While acknowledging that it is for each authority to determine what information it can most usefully record, it is expected that the authority will satisfy itself it is complying with the law (and is able to demonstrate this). It states that monitoring activities should be proportionate to the volume of requests handled by the authority (and it may be disproportionate to monitor all routine requests handled regularly), but should include collecting information about:

- the number of requests received and whether they fall under FOISA or the EIRs
- the proportion of requests handled within statutory timescales (and possibly the length of time taken to respond to overdue requests)
- the number of requests which have been refused and the reasons for refusal
- the number of times a fee has been charged
- the number of reviews carried out and the outcomes of such reviews
- the number of cases appealed to the Commissioner and the outcomes of such appeals.

Finally, the paragraph states that authorities (particularly if they are large or geographically dispersed) should consider developing a tracking system to monitor the progress of current requests, ensure deadlines are met and ensure consistent handling. In the light of experience, it is the Commissioner's view that, with the exception of those dealing with only a negligible number of requests annually, it is not possible for an authority to meet either the expectations of paragraph 6.1, or its statutory obligations for dealing with requests under FOISA and the EIRs, without having robust logging, tracking and monitoring systems in place for this purpose.

Findings

The Commissioner has found that UHI's practice does not conform with the recommended best practice in this area, in that it does not have robust, reliable or coherent systems in place for logging, tracking and monitoring its handling of information requests.

Steps to be taken:

UHI is recommended to put in place robust logging, tracking and monitoring systems to ensure that it can manage and report on its handling of requests for information (including requests for review) effectively. This should include provision for the structured retention of all documentation relating to individual cases, enabling the identification of final versions of any communications issued by UHI,



and should be in place within three months from the date of this Practice Recommendation.

Further action

In order to monitor progress with the steps specified in this Practice Recommendation, the Commissioner requests UHI to provide her with a report within six months from the date of the Practice Recommendation, setting out the measures it has taken in implementation of these steps with evidence to demonstrate improvement in the areas where it has been found not to conform with the Code.

A Practice Recommendation cannot be directly enforced by the Commissioner. However, a failure to take steps specified in a Practice Recommendation may also be failure to comply with a provision of Part 1 of FOISA or with the requirements of the EIRs, which may result in the issuing of an Enforcement Notice under section 51(1) of FOISA. Further, a failure to take steps specified in a Practice Recommendation may lead to a report to the Scottish Parliament by the Commissioner under section 46(3) of FOISA.

Rosemary Agnew
Scottish Information Commissioner
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