

Report to:	Monthly Senior Management Team Meeting
Report by:	Erin Gray (Head of Policy and Information)
Meeting Date:	24 November 2021
Subject/ Title:	Interventions Activity Reporting Q1 (VC 160187)
Attached Papers	Interventions Activity Report Q1 2021-22 (VC 157914)

Purpose of report

- To report on interventions activity by the Scottish Information Commissioner ('the Commissioner') across Q1 (April – June) 2021-22 to the Senior Management Team (SMT), as required by the Commissioner's Governance Reporting Requirements.

Recommendation and actions

- I recommend that the SMT:
 - Note the attached report and activity it sets out
 - Agree that this Committee Report and the attached paper can be published as set out in the publication section below.

Executive summary

Interventions

- The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 both give the Scottish Information Commissioner ("the Commissioner") the power to act where a public authority is not complying with requirements they set out, or with the Scottish Ministers' Codes of Practice. These powers include:
 - promoting good practice
 - assessing whether an authority is following good practice
 - issuing practice recommendations where it appears to the Commissioner that an authority is not complying with the Codes of Practice
 - issuing enforcement notices where the Commissioner is satisfied that a public authority has failed to comply with FOI law.
- An "intervention" is the term used to describe the action which the Commissioner will take proactively to improve the practice of individual authorities more generally, rather than in relation to the outcome of a specific information request via an application investigation. The Commissioner's [Intervention Procedures](#) set out the specific detail of how and when interventions will be conducted.

Reporting on interventions activity

5. In 2020-21 the Commissioner began reporting on intervention activity via a report to the SMT. Initially the report was annual, and from 2021-22 reports will be made quarterly.
6. These reports are provided in line with policy set out in the Commissioner's [Intervention Procedures](#) and [Enforcement Policy](#). Paragraphs 83 – 85 of the Commissioner's Intervention Procedures state:

“The Commissioner’s Annual Report provides information on the intervention caseload for the year, including volume and types of interventions that have been undertaken and may include specific case studies. Reports are also made to the Senior Management Team and these will be published on the Commissioner’s website where appropriate.

“If appropriate, and subject to discussion at the Quarterly Interventions Meeting, summary information about ongoing intervention activity may also be published, for example via the email newsletter or website articles. In addition, with the approval of the intervention manager and/or the Quarterly Interventions Meeting, information about a completed intervention may also be published as above, with a focus on highlighting lessons learned.”

7. Paragraphs 5 and 6 of the Commissioner’s Enforcement Policy states:

“Reporting on enforcement activity, and issues arising from enforcement activity, is an important part of the Commissioner’s policy. The Commissioner will be open in communications, reporting through a variety of means, which include:

- the annual report (under section 46(1) of FOISA, the Commissioner has a duty to lay an annual report; section 46(2) of FOISA sets out what the content must include)
- special reports (under section 46(3) of FOISA, the Commissioner has powers to lay before the Parliament such other reports with respect to functions under FOISA and the EIRs)
- publishing decisions, practice recommendations and enforcement notices
- publicising lessons learned from applications
- sharing of good practice and learning, in particular through briefings and guidance which authorities (and requesters) are encouraged to follow
- publishing information about interventions the Commissioner has carried out
- ad hoc reports, research, consultation, presentations, learning and development materials, and so on.

“The Commissioner’s reports will contain, for example:

- Statistical information from both the Commissioner’s own organisation, and from across Scotland, including analysis of types, sources and outcomes of applications.
- Information about the issuing of information notices, decision notices, enforcement notices and practice recommendations, including frequency, the authorities which have been made subject to them, outcomes and learning points.

- Commentary on public authority practice and on subject areas of note (for example, compliance with timescales, proactive publication and good practice in responding to requests)”

Intervention caseload during Q1 2021-22

8. Intervention activity reached a peak in April to June 2021 as a result of there being 11 new Level 1 interventions addressing publication scheme issues identified in the earlier compliance research. The previous quarter was also slightly busier than normal, as 8 new Level 1 interventions were opened regarding non-submission of statistics (some of which were quickly resolved). This followed a relatively quiet period around the time of the initial Covid-19 pandemic restrictions.

Active interventions	Jul to Sep 2020	Oct to Dec 2020	Jan to Mar 2021	Apr to Jun 2021
Level 1	7	9	17	23
Level 2	3	5	5	5
Level 3	1	1	1	1
Level 4	0	0	0	0
TOTAL	11	15	23	29

9. Please note: these figures reflect the number of interventions that were active at any point during each three-month period (quarter), rather than only those that were opened in that quarter. Therefore, in many cases, the same intervention will be counted in more than one quarter, and the sum of the quarterly totals has no relevance.

Risk impact

- 10. Timely and accurate reporting on enforcement activity is necessary to ensure the Commissioner demonstrates good practice and governance and mitigate strategic risk to the Commissioner’s reputation and public confidence in the role.
- 11. Reporting on interventions also contribute to mitigation of operational risks, including by supporting efforts to ensure the Commissioner demonstrates robust and defensible decisions; ensuring the organisation engages properly with stakeholders; and ensuring we have appropriate and effective policies in place for every aspect of our business.

Equalities impact

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

Privacy impact

13. There is no new direct privacy impact arising from this committee report or attached paper.

Resources impact

14. Interventions are delivered within planned operational resources (though no specific or dedicated resources are provided or allocated for this function). As they are provided within existing resource, then at a time of high applications (as we are currently experiencing) the resource which can be applied to interventions is necessarily more limited. Furthermore, fulfilling the intervention function will necessarily divert resource away from other workstreams, including applications casework.

Operational/ strategic plan impact

15. Reporting on intervention activity is required as set out in the current operational plan, and governance reporting arrangements.
16. Reporting on intervention activity contributes to the following strategic objectives as set out in the Strategic Plan 2020-2024:
- (i) Enable and support high standards of FOI policy and practice (Strategic Aim 2)
 - (ii) Be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent (Strategic Aim 6)

Records management impact (including any key documents actions)

17. None identified – other than any updates required to the Commissioner’s Governance Reporting Arrangements.

Consultation and Communication

18. The report has been prepared in consultation with members of the Quarterly Intervention Meeting.
19. It will be published on the Commissioner’s website and content highlighted in the Commissioner’s newsletter where appropriate.

Publication

20. I recommend that this committee report be published in full, with the attached report to be published alongside the next quarterly report anticipated in December 2021 (in order to provide a more up to date picture of the performance of the organisations listed), and accordingly that document is currently withheld from publication in accordance with section 27 of FOISA (information intended for future publication).