

## Interventions Activity Report 2021-22

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1. The Commissioner carries out interventions in cases where a Scottish public authority is failing to meet the requirements and standards set out in FOI legislation and Codes of Practice. For more information about our approach to interventions, visit [www.ItsPublicKnowledge.info/Interventions](http://www.ItsPublicKnowledge.info/Interventions).
2. This report provides a summary of the intervention activity undertaken during 2021-22, with comparison data from the previous two years.
3. Reporting and communication on intervention activity is conducted in line with the Commissioner's [Intervention Approach and Procedures](#) and [Enforcement Policy](#).

### Intervention Caseload

4. As with interventions data provided in previous annual reports, the following figures reflect intervention activity in the year, rather than only those opened in the year. Therefore, it is possible for a single intervention case (Level 1-4) to be counted in more than one year. Each non-compliance notification is counted only once.

<b>Intervention level</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
Non-compliance	201	217	229	<b>211</b>
Level 1	38	16	24	<b>37</b>
Level 2	10	15	6	<b>7</b>
Level 3	3	3	1	<b>1</b>
Level 4	0	0	0	<b>1</b>
<b>TOTAL</b>	<b>252</b>	<b>251</b>	<b>260</b>	<b>257</b>

5. Although the total number of intervention actions is similar to 2020-21, we carried out many more 'formal' interventions in 2021-22 than in the previous two years - 46, compared to 31 in 2020-21 and 34 in 2019-20.
6. The number and proportion of interventions carried out at Level 1 also increased, quite significantly - this is caused by two factors:
  - a. A number of Level 1 interventions relating to issues with authorities' publication schemes identified during recent research. (Cases arising from similar monitoring was the reason for a similar number of Level 1 cases in 2018-19.)
  - b. Our approach during the pandemic of opening interventions regarding high rates of late responses to requests, at Level 1, in order to establish whether and how the particular circumstances had contributed to the poor performance.
7. This increase in the number of Level 1-4 interventions we have carried out should be seen in the context of a very large investigation caseload and constraints on our resources.

## Non-compliance notifications

8. *Used for: Minor failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and recommends remedial action.*
9. Non-compliance notifications decreased in number in this reporting year compared to the previous year, returning to around the volume seen in 2019-20 (before the pandemic). As with 'formal' interventions, this should be seen in the context of a very large investigation caseload - there were proportionally fewer issues identified this year than before.
10. In 2021-22, the most common areas of concern about which notifications were raised are as follows:

<b>Compliance with timescales - review</b>	<b>65</b>
<b>Compliance with timescales - request</b>	<b>40</b>
<b>Review process</b>	<b>33</b>
Delay to authority submissions	30
Handling of initial request	17
Other	26
<b>TOTAL</b>	<b>211</b>

11. In comparison, the most common areas of concern in 2020-21 were:

<b>Compliance with timescales - review</b>	<b>55</b>
<b>Review process</b>	<b>44</b>
<b>Compliance with timescales - request</b>	<b>35</b>
Handling of initial request	25
Other	70
<b>TOTAL</b>	<b>229</b>

12. We do not report on how many notifications each authority received, as this is strongly influenced by how many of our investigations happen to involve those authorities.
13. In terms of sectors, local government accounted for 38% of notifications, followed by the Scottish Government (18%), police/justice/fire bodies (13%) and NHS boards (9%). For comparison, in 2020-21 local government accounted for 49% of notifications, followed by the Scottish Government (13%), NHS boards (10%), and universities and colleges (7%).

## Level 1 interventions

14. *Used for: Failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and requires remedial action.*
15. Of the 37 Level 1 interventions active in 2021-22, 28 were new cases and the other nine were continued from the previous year. 26 of these cases were closed in the year and 11 were still ongoing at the year end.
16. **Charging for requests:** East Lothian Council.
17. This intervention had been opened in light of analysis of statistics and evidence from our investigations about the authority's use of the charging provisions in the Environmental Information (Scotland) Regulations (EIRs). The intervention sought to understand any reasons for the trend and ensure correct procedures are followed when handling requests.

18. The intervention was closed in April 2022 after the authority provided details of its charging policy and related procedures, as well as actions taken in response to Decision 132/2020 issued by the Commissioner, which found that the authority had failed to correctly categorise the environmental and non-environmental information that had been requested.
19. **Compliance with timescales:** Aberdeen City Council, Creative Scotland, East Renfrewshire Council, Falkirk Council, Inverclyde Council, Midlothian Council, NHS Fife, NHS Highland, NHS Lanarkshire, NHS Shetland, NHS Western Isles, Scottish Environment Protection Agency, Scottish Prison Service, University of Dundee.
20. All of these interventions followed analysis of FOI statistics, which showed either a long-term trend of relatively high rates of late responses to requests, or particularly high late-response rates during the Covid-19 pandemic (taking into account the disruption caused). The interventions seek information from the authority about the causes of these statistical trends, and details of actions they are taking to resolve them.
21. The Scottish Environment Protection Agency intervention had been initiated in December 2020 but after being delayed following the cyber-attack on the authority later that month, this case was closed in this quarter, and another intervention opened to address the changed circumstances (see Level 2 below).
22. The interventions with Aberdeen City Council, Creative Scotland and the University of Dundee were also opened in 2020-21 and closed in this reporting year after the authorities fulfilled the requirements of the intervention including achieving the desired improvement.
23. The NHS Highland and NHS Western Isles interventions, both of had also been opened in 2020-21, were escalated to Level 2 in March 2022 after both authorities continued to report notably high rates of late responses to requests (but are reported here as the cases were at Level 1 for most of the reporting year). In each case the escalation involved writing to the authority's Chief Executive and requiring an action plan to be created and implemented.
24. All but one of the other cases remained open at the end of 2021-22, as monitoring of the authorities' FOI performance continued. The exception was the Falkirk Council case, which was closed after the authority provided a satisfactory response. However, the Quarterly Interventions Meeting in March 2022 agreed that a new intervention should be opened at Level 2 (expected early in 2022-23) after a subsequent decline in performance.
25. **Publication scheme:** Aberdeen Performing Arts, Boundaries Scotland, Children's Hearings Scotland, East Ayrshire Leisure, Inverclyde Leisure, National Waiting Times Centre Board, NHS Fife, NHS Grampian, North Ayrshire Leisure, Pickaquoy Centre Trust, Stirling Council.
26. These interventions were opened in April 2022, with all but one arising after our research found the authorities did not have an available 'Guide to Information', as required by the Commissioner's Model Publication Scheme. The exception was Boundaries Scotland, where the same issue was identified through enquiries regarding the authority's renaming (from the Local Government Boundary Commission for Scotland) in May 2021.
27. In almost every case, the authority very promptly uploaded either an existing version of its Guide to Information (which had become unavailable for technical reasons), or an updated version produced in response to the intervention. NHS Fife took a little longer - around 3 months - but still complied with the deadline that we set.

28. The Aberdeen Performing Arts intervention was escalated in September 2021 after the authority missed that deadline and did not respond to reminders. The matter was raised directly with the authority's Chief Executive, and the authority subsequently published a new Guide to Information and provided a detailed explanation of the reasons for non-compliance, in line with a revised October 2021 deadline.
29. **Statistics submission:** Aberdeen City Integration Joint Board, Aspire (Scotland) Limited, Eden Court, Kendoon Housing Association Limited, North Highland College, Office of the Scottish Charity Regulator, Perth and Kinross Sports Council, Regional Board for Glasgow Colleges, Renfrewshire Integration Joint Board, St Mary's Kenmure, Trust Housing Association Limited.
30. Each quarter, we request statistics from all authorities that are listed in schedule 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) or which have been made subject to FOISA by an Order under section 5. These interventions were opened with authorities that failed to submit FOI statistics to the Commissioner on time for four consecutive quarters.
31. These cases are usually resolved fairly quickly with the authority submitting the relevant statistics. The intervention with Perth and Kinross Sports Council was closed when we were satisfied, following further investigation, that the organisation is not subject to FOI under the terms of a 2013 Designation Order. Meanwhile, the Kendoon Housing Association Limited case was closed when it was established that the organisation was no longer trading.

## Level 2 interventions

32. *Used for: Practice failure. A member of the Commissioner's staff raises the issue with the authority, initially at Chief Executive or equivalent, and requires steps to be taken to resolve the issue and achieve a target outcome.*
33. Of the seven Level 2 interventions active in 2021-22, two were new cases and the other five were continued from the previous year. Three of these cases were closed in the year and four were still ongoing at the year end.
34. **Compliance with timescales:** Highland Council, Scottish Ambulance Service Board, Scottish Police Authority, University of Edinburgh.
35. These Level 2 interventions had all been opened in previous years following analysis of authorities' FOI statistics, which showed a significant long-term trend of high rates of late responses to requests (starting before the Covid-19 pandemic).
36. These interventions have involved:
  - a. seeking an explanation of the factors that have led to the high late-response rates
  - b. advising the authority to complete Module 1 of the Commissioner's Self-Assessment Toolkit ("Responding on Time") and complete an action plan based on the findings
  - c. requesting details of the actions to be taken by the authority to improve their FOI performance, such as any revised procedures and management reporting
  - d. monitoring the authority's progress towards a target outcome by viewing monthly performance reports and other evidence such as staff training and communications

37. The Scottish Police Authority intervention was closed in December 2021 after the authority recorded 100% of responses on time in three consecutive quarters (exceeding the target of 90% in the same period).
38. The other three authorities have all improved their performance and are working towards the same target outcome as that achieved by the Scottish Police Authority. Regular contact is maintained with each authority, and progress is reported to the Commissioner's Quarterly Interventions Meeting, which may decide actions including escalation or closure.
39. **Management of FOI function/culture:** Scottish Environment Protection Agency (SEPA).
40. As noted above, a Level 1 intervention had previously been opened with SEPA regarding consistently high rates of late responses to requests. That action was delayed and later closed following the cyber-attack on the authority in December 2020 and a new intervention was opened in June 2021 with the aim of supporting SEPA in restoring its FOI function.
41. As part of this intervention, meetings have been held between the Commissioner and SEPA's Chief Executive, and the authority has been working to implement an action plan covering aspects such as FOI staffing, training, procedures and publication.
42. **Searches / records management:** Fife Council.
43. This intervention was opened in August 2021 in response to practice issues raised by an applicant regarding the quality of searches carried out by the authority, their management of multiple related requests, and their provision of advice and assistance.
44. The intervention was closed in March 2022 after the authority took steps to ensure its searches are adequately scoped and recorded; that any reviews appropriately challenge and/or supplement those searches; that related requests are handled consistently; and that it is made clear what is recorded information and what is additional advice and assistance.
45. **Statistics submission:** Argyll College.
46. This case had been opened at Level 1 in March 2021 following several consecutive quarters of non-submission of statistics, and was escalated in May 2021 after the authority failed to respond to our initial intervention contact. The intervention was then closed in August 2021 after the authority submitted the missing statistics.

### Level 3 interventions

47. *Used for: Serious systemic practice failure. A member of the Commissioner's Senior Management Team raises the issue with the authority's Chief Executive or equivalent, and requires a detailed action plan to be put in place to address the failure and achieve a required outcome.*
48. Two interventions were active at Level 3 during 2021-22 - our ongoing intervention with the Scottish Ministers regarding their FOI performance and practice, and a new intervention with Aberdeenshire Council. However, the latter case was escalated to Level 4 and was at the higher level for longer, so it is reported here as a Level 4 intervention.
49. Throughout this reporting year we have been carrying out a second detailed assessment of the Ministers' FOI procedures and actions, which has included selecting and reviewing a representative sample of requests using information extracted from the authority's case

management system, as well as conducting interviews with authority staff members. Our report on the assessment is expected to be published early in 2022-23.

50. Quarterly data provided by the authority during 2021-22 shows that between 75% and 86% of responses to requests or requests for review were issued on time - this falls short of the 95% target, but represents a steady improvement after widespread disruption in the early stages of the pandemic and is in the context of exceptionally high numbers of requests.
51. Communication with the authority's FOI Unit has continued throughout the year, including regular virtual meetings and written updates or submissions. These updates have included details of a number of staffing changes within the Unit as well as an ongoing process of increasing capacity and restructuring duties, in order to build operational resilience.
52. Full details of our intervention with the Scottish Ministers can be found at [www.ItsPublicKnowledge.info/Scottish-Government-Intervention](http://www.ItsPublicKnowledge.info/Scottish-Government-Intervention).

#### **Level 4 interventions**

53. *Used for: Consistent, ongoing failure to comply with FOI law and guidance.*
54. *The Commissioner uses their statutory powers to address the problem, which may include practice recommendations or enforcement action.*
55. This intervention, concerning Aberdeenshire Council, was opened, initially at Level 3 as explained above, after a concern was raised about an instance in which it appeared the authority had failed to handle a request in a way that was 'applicant/requester blind' - that is, not influenced by who made the request - and had inappropriately shared a requester's identity with another organisation.
56. After receiving the authority's response to our initial contact regarding these concerns, the decision was taken to escalate the intervention to Level 4 and to [issue a formal Practice Recommendation](#), which required the authority to:
  - a. ensure all staff are trained in understanding the 'applicant blind' principle,
  - b. emphasise to senior managers the leadership they are expected to provide in all aspects of managing FOI, and
  - c. report to the Commissioner with evidence of these actions by 28 February 2022.
57. In March 2022, the authority confirmed that training had been provided to its Corporate Leadership Group and cascaded to Data Protection and Freedom of Information Group, consisting of service representatives from across the authority. The authority's online training module had been updated to take account of FOI and the 'applicant blind' principle. The Commissioner is considering the actions taken by the authority.