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| Report to: | MSMTM |
| Report by: | Margaret Keyse, Head of Enforcement |
| Meeting Date: | 29 March 2022 |
| Subject/ Title: (and VC no) | Recruitment of Freedom of Information Officers (Enforcement) VC166394 |
| Attached Papers (title and VC no) | None |

Purpose of report

1. The purpose of this Committee Report (CR) is to seek agreement from the Senior Management Team (SMT) regarding the recruitment of two Freedom of Information Officers (Enforcement) (FOIO(E)s).

Recommendation and actions

2. I recommend that the SMT:
 - approve the business case for two full-time, permanent FOIO(E)s.
 - agree the Selection Panel shall be made up of the Head of Enforcement (HOE) and a Deputy Head of Enforcement (DHOE).
3. I recommend that this report is published as set out in paragraph 27.

Executive summary

Business case for recruitment of FOIO(E)s

Reasons for recruitment

4. The Commissioner is required to investigate applications for decision made to him under FOI law (i.e. the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004 and the INSPIRE (Scotland) Regulations 2009). This work is carried out by the Commissioner's Enforcement Team.
5. FOI law expects the Commissioner to come to a decision within four months, or within such other period as is reasonable in the circumstances (section 49(3)(b) of FOISA). The Commissioner has also adopted a number of Key Performance Indicators (KPIs) for investigations on which he reports publicly each quarter.
6. The Enforcement Team is struggling to keep pace with the case work demand placed on it. The Commissioner is on target to receive around 620 applications by the end of this financial year, a 30% increase on the number of applications received in the previous two years.
7. I have reported to the SMT on the effect the high number of applications has had on our KPIs in 2021-22. See, for example:
 - VC162785 – Investigations Performance Q3 2021-22;
 - VC158659 – Investigations Performance Q2 2021-22

- VC153881 – Investigations Performance Q1 2021-22.
8. Unfortunately, the high number of applications received in 2020-21 and 2021-22 was on top of a backlog in 2020-21 which built up shortly after Scotland went into lockdown as a result of the Covid-19 pandemic in March 2020. For the majority of Q1 of 2020-21, the Enforcement Team had no access to our case management system, so the work we were able to carry out on existing cases was limited and only limited numbers of the Enforcement Team were able to work remotely. It was only in August 2020 that the team was fully back up and running.
9. As the CRs referenced in paragraph 6 highlight, the Enforcement Team continues to streamline the investigation procedures – see C2 Investigations Handbook. For example:
- A review was carried out of which members of the Enforcement Team were authorised to carry out certain functions – this has led to the DHOE(s), FOIO(E)s and the Validation Officers all being given additional powers with the aim of speeding up the process
 - We have removed the need for “triage” to be carried out for each valid application
 - Review of covering letters – these letters were previously time consuming to draft, review and approve and are now very straight forward; in turn, this has allowed us to speed up the process around the issuing of decisions
 - We have reduced duplication wherever possible – for example, the forms to be prepared after a decision has been issued have been merged to cut down on administrative work
 - With the aim of reducing the need for applicants to ask us for updates on their cases, we publish more information about the status of cases (validation checks being carried out; decision submitted for first level approval, etc.)
10. We are continuing to work on other ways of streamlining investigations. However, the work carried out on streamlining our procedures has not resulted in the vacant posts no longer being required. It should also be noted that, given that all our decisions can be appealed to the Inner House of the Court of Session by either party, it is important that the quality of our investigations remains high.
11. It is also important to note that the Commissioner must, in terms of FOI law, carry out investigations except in very limited circumstances – i.e. where an application is vexatious or frivolous, withdrawn or abandoned. This means that, while the Enforcement Team has control over how cases should be investigated, it has very little control over whether each application should be investigated and even less control over the number of applications made to the Commissioner.

Recruitment for FOIO(E)s

12. I consider that it would be appropriate to recruit two FOIO(E)s for the following reasons:
- The current staff complement for the Enforcement Team provides for nine FTE FOIO(E)s. There are currently two vacant posts as a result of the following:
 - one member of staff retired at the end of September 2021

- as a result of reduced hours approved for other members of staff during 2020-21 and in recent years under flexible working arrangements, there is one FTE FOIO(E) post also available.
 - Although the investigations procedures have been streamlined, this has not resulted in the vacant posts no longer being needed.
 - Given the increase in the caseload, and for the reasons set out above, I consider that both vacant FTE FOIO(E) posts should be recruited to so as to provide additional case work capability and resilience in the Enforcement Team.
13. If the recruitment is agreed, and in line with our usual practice, and if selection is successful, each post will generally be appointed at the start of the Grade 4 pay scale level.

External recruitment

14. The post will be advertised internally and externally.

Application and Selection Process

Application process

15. The procedures set out in the C5 Recruitment and Selection Procedures will be followed.

Selection panel

16. The Selection Panel should consist of the HOE and a DHOE with the HOCS/FAM providing HR support.

Risk impact

17. As noted above, the number of applications received by the SIC remains very high. There is nothing to suggest that this number will decrease. Failure to fill the posts will have a negative impact on both strategic and operational risk and may lead to external criticism.
18. Recruitment should be a considered and planned process, carried out in accordance with approved policy and procedures, and there is a potential governance risk if this is not done.

Equalities impact

19. In carrying out any recruitment, we need to comply with the Equality Act 2010, relevant equality policies and relevant employment legislation. The C5 Recruitment and Selection Policy and the C5 Recruitment and Selection Procedures help us to do this and should be followed in this recruitment. If the policy and procedures are followed there should be no equality impact arising from this recruitment.
20. Given the operational need for two FTE FOIO(E)s, the posts will be full time but be open to flexible working arrangements, including job share in line with the Commissioner's employment policies.

Privacy impact

21. There will be no direct impact. We have policies and procedures in place to ensure that personal information related to employment and selection and appointment processes is held in a fair and proper way and processed appropriately

Resources impact

22. The two FTE FOIO(E) posts fall within the current staff complement and can therefore be met from within current resources.
23. The recruitment exercise itself will have an impact on the work of both the Enforcement and Corporate Services Teams. However, as regards the Enforcement Team this will be short term although there will also be an impact from the induction and training that will need to take place following selection and appointment. Failing to proceed with the recruitment going forward will have a greater impact on the regulatory work of the Commissioner overall, in particular in relation to complying with our statutory responsibilities and with operational plans and the Strategic Plan 2020-2024.
24. As regards the Corporate Services Team (CST), the HOCS has advised:
- If the recruitment is agreed, the recruitment processes will not be able to be started until after the office premises have re-opened (gradual re-opening is due to commence from 12 April 2022) and the CST is able to resource this
 - recruitment, particularly external recruitment, should be a considered and planned process, carried out in accordance with approved policies and procedures, and there is a potential governance risk if this is not done
 - there will be an additional impact on CST resource during the recruitment and selection exercise and, also, once the vacant posts are recruited to – for example, IT, HR, records management, induction
 - there will be an additional financial resource impact, for example, recruitment costs, IT licences, equipment, etc and these costs will be met this from current resources, if possible.

Operational/ strategic plan impact

25. Failure to recruit to the FOIO(E) posts would affect our ability to deliver commitments in the Strategic Plan 2020-24 and the Operational Plans 2022-23.

Records management impact (including any key documents actions)

26. None

Consultation and Communication

27. Consultation has taken place with the Commissioner and the HOCS.

Publication

28. I recommend that this committee report is published in full.