

Scottish Information Commissioner

Section 46 Report 2021-22

Meeting challenges and improving for the future



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
AAB	Advisory Audit Board
ARA	Annual Report and Accounts
BAU	Business as usual
CHP	Complaints Handling Procedures
EIRs	The Environmental Information (Scotland) Regulations 2004
FOI	Freedom of information
FOI Act	The Freedom of Information (Scotland) Act 2002
GA	Governance Arrangements
GRA	Governance Reporting Arrangements
ICIC	International Conference of Information Commissioners
KPI	Key performance indicator, against which our performance in key areas is measured and assessed
MSMTM	Monthly Senior Management Team Meeting
P and QF	The Commissioner's Performance and Quality Framework 2021-22
PSRA	Public Services Reform (Scotland) Act 2010
QSMTM	Quarterly Senior Management Team Meeting
SMT	Senior Management Team
SPCB	Scottish Parliamentary Corporate Body
SPIF	Scottish Public Information Forum
UK GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

SECTION 46 REPORT 2021-22

This Report is laid before the Scottish Parliament in accordance with section 46 of the Freedom of Information (Scotland) Act 2002 (FOI Act). Ordinarily, this Report forms part of the Annual Report and Accounts laid each year before the Parliament by the Scottish Information Commissioner (the Commissioner). However, this year, due to changes in the auditing timetable outwith the Commissioner's control, it has not been possible to lay the Annual Report and Accounts to meet the statutory timeline for the laying of a general report on the exercise of the Commissioner's functions under the FOI Act in accordance with section 46 of that Act. Accordingly, it has been necessary, in order to comply with that statutory timeline, to lay this separate Section 46 Report. A full Annual Report and Accounts for 2021-22, following the usual format, will still be laid before Parliament before the separate statutory deadline of 31 December 2022.

The Annual Report and Accounts will, by necessity, repeat and expand upon the contents of this Section 46 Report, containing as they will, additional reporting sections and requirements, including audited accounts. To avoid undue confusion, the theme, the Commissioner's statement, and much of the content of this Section 46 Report will be retained, with minimal changes, in the Annual Report and Accounts. This Section 46 Report will not, however, include much of the statutory reporting, or any of the financial information which will be contained in the Annual Report and Accounts.

PERFORMANCE OVERVIEW

The Commissioner promotes and enforces the public's right to access the information held by Scottish public authorities.

This performance overview provides information about the Commissioner's organisation, its purpose, the key risks to the achievement of its objectives and how it has performed during 2021-22. The related detail on these matters is set out in the rest of the Section 46 Report.

Commissioner's statement

2021-22: Meeting challenges and improving for the future

One of the most welcome features of 2021-22 was finally seeing promising signs of the beginning of the end of the Covid-19 pandemic. From the roll out of the vaccine programme, to the reopening of schools and the removal of 'stay at home' restrictions, 2021-22 saw significant steps towards the return to a far more normal way of life for many.

However, the 'long tail' of the Covid-19 pandemic continues to be felt in a number of ways, and its impact is likely to last for some time to come.

For my own office, one key impact was a significant rise in number of appeals we received: a pattern familiar to many of my fellow regulators. The appeals received during 2021-22 rose by 29% on the previous year, as those who had used their FOI rights to access information sought certainty on the accuracy of the responses received (or, in some cases, challenged a failure to respond).

In total 626 appeals were received across the year – the highest made since 2005-06. Appeal subjects reflected a wide range of issues of personal and public interest: from discharges from hospitals to care homes to a review of the Curriculum for Excellence; from planning for future Covid-19 waves to neighbourhood noise complaints.

This increased exercise of rights inevitably created challenges for my small team, exacerbated by the high caseload carried forward from the previous, pandemic-disrupted, year. This has unfortunately contributed to some delays being experienced by those who use our service. We have, however, been working hard to manage these delays: keeping applicants informed of the progression of cases - including by increasing the information we publish about our live caseload on our website; working to streamline and improve our processes; and work to recruit new staff.

Across the year my team worked extremely hard in difficult circumstances, closing almost 550 appeal cases: the highest number since 2013-14. While rising case numbers mean that the current financial year will continue to pose challenges, I am confident that the recruitment of new staff and the continued development of our procedures will leave us in a strong position to address these challenges as we move forward.

It has also been extremely important that my team remain proactive and "future-focussed"; not just "fighting the fire" of rising appeals. To this end, our work to improve authority performance through targeted and proportionate interventions has continued; helping to nip problems in the bud, while supporting authorities to implement solutions that benefit all requesters, not just those making single-issue appeals. This year, for example, I reported on the outcomes from a detailed assessment of Scottish Government practice and performance, identifying both significant improvements and further work required. An intervention with the University of Edinburgh also resulted in demonstrable improvement, following engagement with senior management.

2021-22 also saw the development of our new, improved website: a fast, modern, and accessible site for the future, enabling both the public authorities covered by FOI and those who may wish to request information to access timely and clear guidance on FOI rights and responsibilities. This major piece of work which significantly improved our main external communication channel was launched in April 2022.

Other work has included engagement with the Scottish Government and campaigners on potential improvements to FOI legislation, together with a second Special Report on the impact of the

pandemic on FOI in Scotland. We also published research into public awareness of FOI and carried out a survey of FOI practitioners, all of which is set to support and inform our future work.

Internationally, I supported FOI campaigners and regulators in Hungary and the Philippines as they worked to improve their systems, while also learning from their experiences and approaches. I also continued my engagement with the international community of Information Commissioners; sharing resources and contributing to discussions on a wide range of topics, including widening understanding of FOI rights and improving the openness of public bodies.

Further information on all this work (and more) is detailed throughout this report.

Despite the pressures of the past year, I am confident that the work done leaves us in a stronger position to face the challenges of the future. The experience of recent years has only served to underline the vital role that FOI plays in improving the transparency of public bodies and supporting informed participation by individuals. Looking towards future challenges, including the significant challenges posed by the cost of living crisis, it is clear that a strong and effective FOI regime and the openness and transparency it creates remains key in supporting accountability, strengthening participation and building trust in our public services.

A handwritten signature in black ink, appearing to read 'Daren Fitzhenry', with a stylized flourish at the end.

Daren Fitzhenry
Scottish Information Commissioner

Statutory background

The Commissioner's powers and duties are set out in Parts 3 and 4 of the FOI Act. This contains powers and duties to:

- enforce the FOI Act, the Environmental Information (Scotland) Regulations 2004 (the EIRs) and the Codes of Practice which may be issued under sections 60, 61 and 62 of the FOI Act and regulation 18 of the EIRs;
- provide guidance on the FOI Act and the EIRs to the public and promote the following of good practice by Scottish public authorities; and
- give advice to any person on these matters.

The Commissioner's statutory functions include:

- approving Scottish public authorities' publication schemes;
- investigating and deciding applications (appeals) and enforcing decisions in relation to authorities' handling of information requests;
- assessing, promoting and monitoring practice;
- giving advice and assistance about access to information under FOI legislation; and
- investigating and deciding complaints made under the INSPIRE (Scotland) Regulations 2009 involving refusal to grant full public access to a spatial data set or service.

The Coronavirus (Scotland) Act 2020 made temporary amendments to a range of legislation, including the FOI Act. Amongst other things, the Commissioner was given the temporary power to determine that the FOI Act had not been breached if a Scottish public authority failed to respond within the statutory timelines in certain limited circumstances related to the Covid-19 pandemic. On 1 October 2021, the Coronavirus (Extension and Expiry) (Scotland) Act 2021 came into force which, in relation to FOI, had the effect of phasing out the Commissioner's ability to consider the impact of the Covid-19 pandemic when deciding if an authority failed to comply with FOI timescales. This "discretion" could only be applied in relation to FOI requests that were made on or before 30 September 2021.

The Commissioner is also able to continue to issue decisions and other formal notices solely via email (rather than having to post hard copies).

The openness and transparency enabled by FOI are core values in the National Performance Framework. As such, FOI permeates through and actively contributes to the National Outcomes. The Commissioner's office also directly contributes to these outcomes in our work to increase awareness of and improve access to freedom of information. This helps enable empowered individuals and communities and responsive public services.

Organisational structure

During the reporting year, the Commissioner's team of 25 people worked remotely with only essential work taking place in the office premises. The office premises, based in St Andrews, Fife, continued to be temporarily closed in line with Scottish Government guidance and public health advice. The office premises re-opened on 3 May 2022 and a trial period of hybrid working is taking place.

The Senior Management Team (SMT) led by the Commissioner includes the heads of three departments:

Corporate Services	Enforcement	Policy and Information
<ul style="list-style-type: none">• provides a range of corporate services (e.g. finance, HR, IT, records management)• the Head of Corporate Services provides assurance to the Commissioner as Accountable Officer	<ul style="list-style-type: none">• investigates appeals made under FOI law, ensuring that authorities comply• the Head of Enforcement is in-house legal adviser to the Commissioner	<ul style="list-style-type: none">• carries out research and FOI policy development and delivers strategies to improve authorities' FOI practice and promote FOI rights to the public• the Head of Policy and Information has management responsibility for the website

More information is available at: www.itspublicknowledge.info/about-us.

Objectives and strategies

Strategic Plan 2020-24

The Strategic Plan 2020-24 sets out how the Commissioner proposes to perform his functions over this period. Through this plan, the Commissioner aims to increase public knowledge and understanding of the right to request and obtain information from Scottish public authorities, enabling people to use the right more effectively to obtain the information that matters to them.

VISION:

The impact of Freedom of Information is increased, being recognised and valued as the key enabler of openness and transparency of public functions in Scotland, enhancing people's right to access the information that matters to them.

STRATEGIC OBJECTIVE 1: increase knowledge and understanding of FOI rights

STRATEGIC OBJECTIVE 2: enable and support high standards of FOI policy and practice

STRATEGIC OBJECTIVE 3: develop Scottish public sector culture and practice where the proactive disclosure of information is routine and valued

STRATEGIC OBJECTIVE 4: influence and support the development and strengthening of Scottish FOI law and practice

STRATEGIC OBJECTIVE 5: contribute to Scotland being respected as a world-leader in openness and transparency

STRATEGIC OBJECTIVE 6: be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent

The 2020-24 Strategic Plan can be viewed at:

www.itspublicknowledge.info/strategic-and-operational-plans.

Operational Plan 2021-22

The Commissioner publishes an annual Operational Plan linked to the Strategic Plan, monitoring and publishing progress every two months. Each planned action is cross-referenced to the relevant strategic aims. The section on "Corporate Performance" below provides more detail about the Operational Plan 2021-22.

The Performance and Quality Framework 2021-22 (P and QF) is the performance management system against which we measured, reported on and achieved continuous improvement in the quality of our work and, also, by which we monitored and reported on organisational outcomes. The P and QF is supported by internal systems to ensure we are able to identify and monitor how performance contributes to organisational outputs.

The Performance Analysis section provides commentary on our performance against Key Performance Indicators (KPIs) and the targets for 2021-22.

Operational Performance

Over the past year we have operated as a virtual organisation, with all staff working remotely and only essential work being carried out in the office premises. The wellbeing and safety of our staff has been a priority and we have worked to support all our members of staff in their physical and

mental health and we have ensured that they have been able to do their jobs by assessing their remote working arrangements and providing them with the equipment needed to work safely.

As a large part of our operational output is demand driven, our operational performance has been impacted by the number, complexity and timing of appeals to us. The hard work of my team, combined with improvements to our procedures significantly increased operational output from the reporting previous year, but the sheer quantity of appeals in 2021-22 has increased ongoing caseload which will continue to have an impact on our performance moving forward to the next reporting year.

The Performance Analysis section provides commentary on our operational performance in 2021-22.

Covid-19 pandemic

Our priority as an organisation has been to continue to provide our services and guidance within available resources while safeguarding the health, safety and wellbeing of our members of staff.

During the reporting year, we have maintained operational output and, whilst working remotely, we have ensured that as many of our services as possible can be provided. We have maintained our Covid-19 and FOI Info Hub, responded to requests for information and enquiries (received by email and in writing), provided advice and guidance and decided appeals which have been submitted to us by email, by post and through the online portal. Due to technical issues the online portal was closed in August 2021.

As a regulator, our aim is to be flexible and proportionate while safeguarding the transparency, consistency, quality and integrity of the work we do. Throughout the reporting year we reviewed our work programme to ensure its relevance and continued to develop how we have carried on our regulatory work in the remote working environment. For example, we have continued to use the legal power to issue decisions and other notices electronically, reducing time and staff resource; used Microsoft Teams to conduct our meetings, reaching increased numbers in our public sector network meetings; and used remote training as a provider, participant, and audience.

We have also continued to monitor the impact of the Covid-19 pandemic on FOI in Scotland and our second Special Report relating to this was published in January 2022. This report analysed the key impacts across 2020 and 2021, reflected on the lessons to learn in order to strengthen FOI practice, performance and culture and can be found at:

www.itspublicknowledge.info/covid-19-special-reports.

Key issues and risks

The Commissioner has internal control systems which include embedded arrangements for identifying, assessing, addressing, reviewing and reporting on risk. These systems are integrated into management systems and closely linked to the business planning process.

Risk is actively managed and regularly reviewed through an appropriate and proportionate framework which covers both strategic and operational risks and which identifies the key risks facing the organisation. Operational risks are aligned to our strategic objectives and strategic risks and are assigned to an owner (SMT or head of department) who has responsibility for ensuring that the risk is managed and monitored appropriately.

During 2021-22, risks were regularly reviewed by the Commissioner and the SMT, and the Advisory Audit Board (AAB) carried out its annual review of the strategic risks. Eight strategic risks were identified which covered the following areas:

- the allocation and maintenance of sufficient resources to FOI
- challenges to the economy and public sector funding
- the practice, governance and performance of the office of the Scottish Information Commissioner

When considering both strategic and operational risks in 2021-22, we took account of the impact of the Covid-19 pandemic in our risk assessments, considering and assessing risks in the light of the changing environment. This resulted in the residual risk assessments, relating to both strategic and operational risks, being varied at times. We recognised that the highest operational risks related to:

- ensuring the health and safety of all staff – we mitigated this risk by continuing the temporary closure of the office premises and regularly reviewing the temporary closure taking account of relevant government guidance and public health advice. We had systems in place to enable essential work in the office premises so that the premises continued to be safe and secure. We also took account of health and safety requirements and emergency legislation requirements to ensure that the risk to the members of staff carrying out essential work was assessed and mitigated as far as possible.
- having sufficient resources to enable us to carry out our regulatory role, including physical resources – we mitigated this risk by using the remote working facilities that were put in place in 2020, actively monitoring and managing the volume of cases, revising decision-making levels and procedures.
- having a reliable and up to date website with current and well managed content – we mitigated this by implementing a specific project to provide a new website and the new “live” website was in place in early April 2022.
- having appropriate and relevant governance, including operational governance, human resource governance and information governance – we mitigated this risk by monitoring and regularly reviewing our policies and procedures to ensure that they continued to be relevant and effective.

The section in the Performance Analysis titled “Risk Management” provides a further explanation and more detail on the management of risk in 2021-22.

Performance summary

- We received 626 appeals in 2021-22, a 29% increase on the previous year, and the highest number of appeals received since 2005-06.
- We received 98 appeals in relation to the EIRs (69 in 2020-21), the highest number received to date. Appeals relating to environmental information accounted for 16% of our appeal total.
- We carried out 257 interventions to support improvements in public authority FOI practice. While most were relatively straightforward 'non-compliance' notifications, we also carried out 46 interventions at level one and above – a 48% increase on 2020-21.
- 72% of appeals to the Commissioner were made by members of the public (81% in 2020-21).
- 18% of valid appeals were about an authority's failure to respond (22% in 2020-21).
- 55% of our decisions found wholly or partially in the requesters' favour (65% in 2020-21).
- 52% of cases were closed within 4 months, and the average closure time of all appeals was 4.48 months. Increasing appeal volumes and resource challenges meant that we fell short of our target of closing 70% of cases within 4 months.
- Our 2021-22 communication and engagement activity was measured against our 2015-20 Communications Strategy, the lifespan of this strategy having been extended due to a pandemic-related delay in the development of its successor. We met two of our three active targets, increasing website page views by 59% from our 2015 baseline and increasing subscribers to our email newsletter by 38% over the course of 2021-22. We did not meet our ambitious target to increase our annual Twitter impressions to 450,000, achieving 121,042 impressions during 2021-22. A fourth target, relating to our appeal portal, was discontinued following the deactivation of the portal.
- We responded to 683 enquiries, the majority of which related to requests for advice on making and responding to information requests and requests for review. All our enquiries KPIs were met.
- We received 72 information requests and 9 requests for review. We met our KPIs for requests and review requests.
- We received 23 right to access requests under data protection law and responded to all within the statutory timescale of one month.
- 6 complaints were received, down from 15 in 2020-21. We met our KPI that fewer than 20% of complaints be upheld in part or in full.
- 92 compliments were recorded, mainly relating to case handling and enquiries.
- There were no cases of suspected fraud.
- An approved Operational Plan 2021-22 was monitored every 2 months.
- Of the 42 governance reporting requirements, 39 were met in full, 1 was partially met and 2 were not met
- We met our target of having a compliant publication scheme and Guide to Information and publishing as much information as possible.

PERFORMANCE ANALYSIS

Below we provide a detailed analysis of the Commissioner's performance during 2021-22 which details performance across the following key areas:

- **Enforcement performance**
Including information on our targeted interventions to improve public authority performance, the appeals we receive, our investigation of appeals, and our enforcement performance outcomes.
- **Policy and information performance**
Including information on our collection of public authority FOI statistics, our work to monitor and support public authority practice and our activity to raise awareness of FOI rights.
- **Corporate services performance**
Including information on our performance in relation to enquiries and information requests, our work to improve our environmental performance and our operational performance.

Enforcement Performance

Interventions

The Commissioner and his staff carry out interventions in cases where a Scottish public authority is failing to meet the requirement and standards set out in legislation and the Scottish Ministers' Codes of Practice.

Intervention levels

Level and Issue	Action
Non-compliance notification Minor failure to follow good practice	A member of the Commissioner's staff alerts the authority to the issue and <i>recommends</i> remedial action
Level 1 Failure to follow good practice	A member of the Commissioner's staff alerts the authority to the issue and <i>requires</i> remedial action
Level 2 Practice failure	A member of the Commissioner's staff raises the issue with the authority, initially at Chief Executive level or equivalent, and requires steps to be taken to resolve the issue and achieve a target outcome
Level 3 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
Level 4 Consistent, ongoing failure to comply with FOI law and guidance	The Commissioner uses statutory powers to address the problem, which may include practice recommendations or enforcement action

Intervention caseload

As with interventions data in previous annual reports, the following figures reflect all intervention activity in the year, rather than only those cases 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.

Intervention level	2019-20	2020-21	2021-22
Non-compliance notification	217	229	211
Level 1	16	24	37
Level 2	15	6	7
Level 3	3	1	1
Level 4	0	0	1
TOTAL	251	260	257

Although the total number of intervention actions is similar to 2020-21, we carried out many more interventions at level one and above in 2021-22 than in the previous two years - 46, compared to 31 in 2020-21 and 34 in 2019-20.

The number and proportion of interventions carried out at Level 1 also increased: this was caused by two factors:

- A number of Level 1 interventions being initiated to improve publication scheme compliance following an examination of performance in this area.
- An approach, during the pandemic, of initiating Level 1 interventions following high rates of late responses, in order to establish whether and how particular circumstances had contributed to poor performance.

More information is available at: www.itspublicknowledge.info/interventions-procedures.

Intervention cases

Level 3 intervention: The Scottish Ministers

Our Level 3 intervention to support improvement in the Scottish Government's FOI practice and performance continued during 2021-22. We carried out a second in-depth assessment in order to determine the extent to which the revisions made to organisational systems and procedures were contributing to improvements in day-to-day practice. This work involved the detailed review of case-handling practice within a sample of more than 70 FOI and EIR cases, along with a wider review and analysis of available statistical data.

Our assessment found that, while significant improvement had been made in a number of areas, further work is required if FOI performance is to be raised and sustained. In particular, the assessment found evidence of widespread failures to comply with records management requirements and issues with the organisation's ability to track, monitor and report on key elements of FOI performance.

Our report on the assessment was published during May 2022, and we will continue to support the Scottish Government as it works to improve FOI practice.

Full details of our intervention with the Scottish Ministers can be found at: www.itspublicknowledge.info/scottish-government-intervention.

Level 4 intervention: Aberdeenshire Council

We carried out a Level 4 intervention with Aberdeenshire Council, after concerns were raised about an incident in which the council had failed to handle a request in a way that was 'requester blind' - that is, not influenced by who made the request - and had inappropriately shared a requester's identity with another organisation.

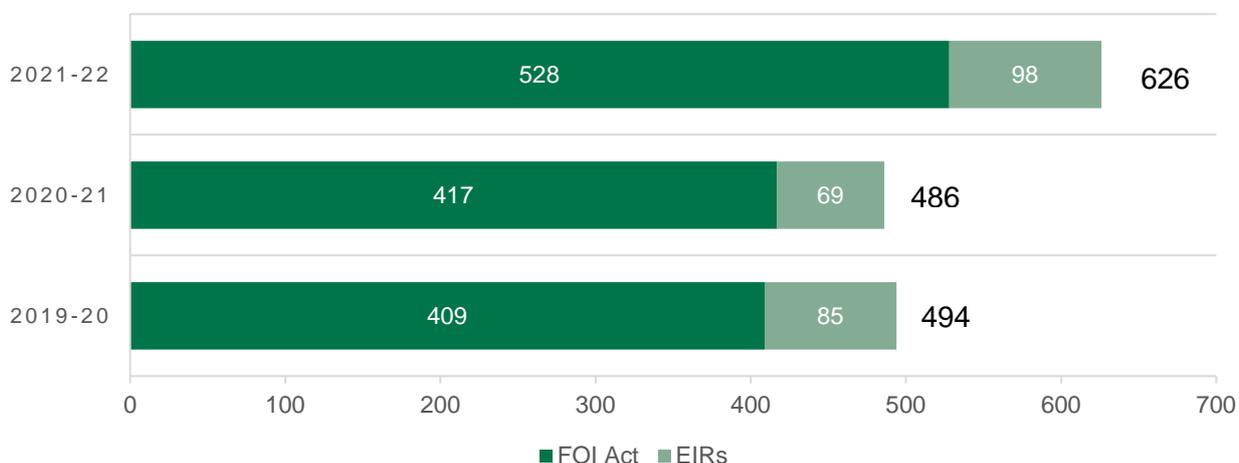
This intervention led to the issuing of a formal Practice Recommendation, only the third to be issued under FOI law. This required the council to ensure that all staff are trained in understanding the 'requester blind' principle, while also emphasising to senior managers the leadership expected of them in all aspects of managing FOI.

Read our Practice Recommendation at: www.itspublicknowledge.info/practice-recommendations.

Appeals received

Anyone who is unhappy with an authority's response to an information request has an enforceable right of appeal to the Commissioner under FOI law.

Number of appeals received



Reason for appeals

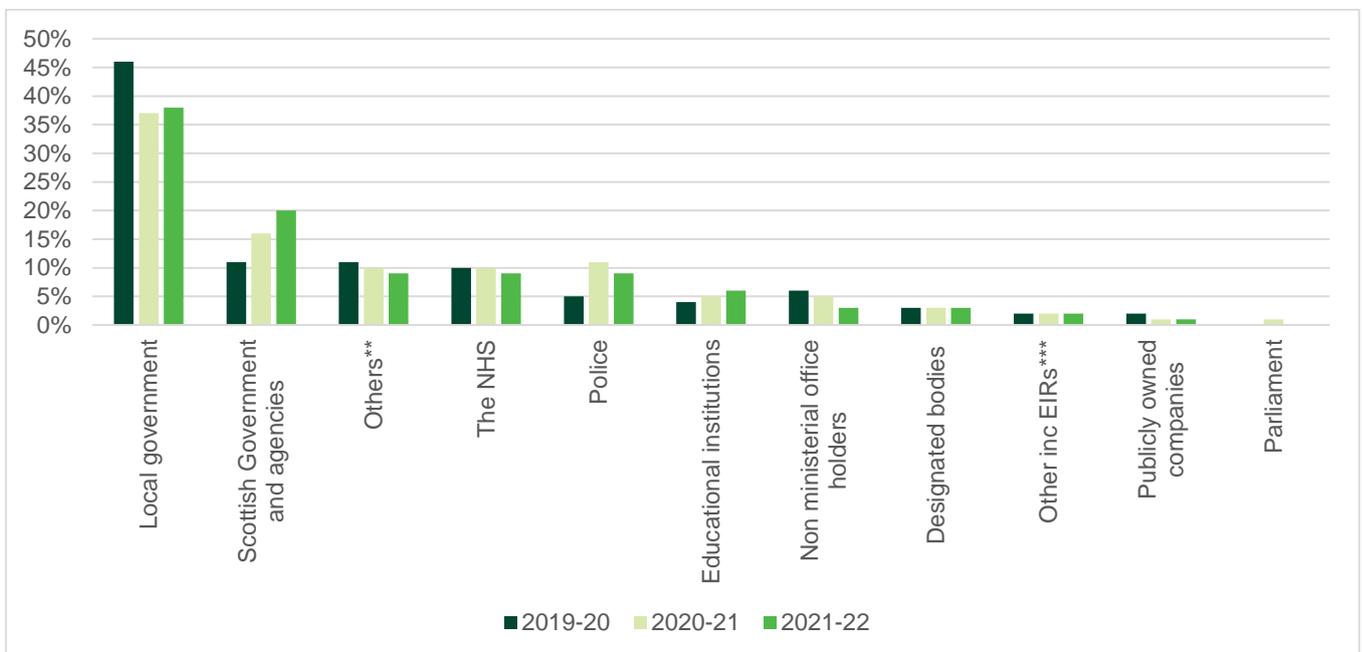
	2019-20 (%)*	2020-21 (%)*	2021-22 (%)*
Information was withheld under an exemption	36%	29%	36%
Failure to respond (no response sent)	23%	23%	24%
“Not held” response disputed	15%	24%	16%
Request not responded to in full	12%	8%	10%
Request refused on grounds of excessive cost	4%	6%	3%
Request deemed “vexatious” or “manifestly unreasonable”	4%	3%	2%
Refusal to confirm or deny whether information was held	1%	2%	2%
Fee or charge disputed	1%	1%	2%
Request deemed “repeated”	1%	2%	1%
Request deemed “invalid”	1%	1%	1%
Publication scheme concern	0%	0%	1%
Inadequate advice and assistance from authority	1%	1%	0%

*Percentages are rounded to whole figures, so do not always total 100%

Who appeals?

	Top three applicant types
2019-20	<ul style="list-style-type: none"> Public and other (75%) Media (15%) Private/commercial enterprise (3%)
2020-21	<ul style="list-style-type: none"> Public and other (81%) Media (8%) Private/commercial enterprise (5%)
2021-22	<ul style="list-style-type: none"> Public and other (72%) Media (12%) Private/commercial enterprise (5%)

Which authority types are the appeals about?*



*Percentages are rounded to whole figures, so do not always total 100%

** "Others" comprises all bodies listed as "Other" bodies in Part 7 of Schedule 1 to the FOI Act

*** "Other inc EIRs" comprises bodies which are subject to the EIRs only, and appeals received in relation to bodies which are not covered by either the FOI Act or the EIRs

Validation

The Commissioner can only investigate appeals that meet specific legal criteria. We refer to the process of checking these criteria as “validation”. Common reasons for appeals being invalid include the appeal not providing the legally required details (e.g. the full name of the requester), a request for review not being made or the timescales for appeals not being met.

Validity of appeals received

	2019-20	2020-21	2021-22
Total appeals received	494	486	626
Invalid appeals	159	118	183
Valid appeals	335	368	443
<i>Failure to respond appeals</i>	<i>70</i>	<i>80</i>	<i>81</i>
<i>Substantive appeals</i>	<i>265</i>	<i>288</i>	<i>362</i>

Assessing validity: our performance

Decision made on validity	Target (%)	Performance* (%)
1 month or less	70%	67% (not met)
2 months or less	90%	96% (met)
3 months or less	97%	99% (met)

Online appeal service closure

Our online appeal service was closed in August 2021 as a result of technical issues. Before the closure, around one-third of our appeals were typically received via the online service. Following closure, appellants were directed towards our other appeal routes, including our downloadable application form. We will be considering a new online appeal service as part of the future development of our new website.

More information on making an appeal is available at: www.itspublicknowledge.info/appeal.

“Failure to respond” appeals

A Scottish public authority must provide a response promptly (as soon as possible) and within no more than 20 working days¹. If an authority fails to respond to a request for review on time - or fails to respond at all - it has broken the law and requesters have a right to appeal to us.

The proportion of “failure to respond” appeals we received fell to the lowest level since 2015-16, with 18% of our appeals relating to this issue, compared to 22% last year and down from a high of 26% in 2018-19. While it is not fully clear whether this decline has arisen from a reduction in public authority “failures to respond” generally, or simply from a reduction in related cases being taken forward for appeal, it should nevertheless be stressed that timely responses to FOI requests are important for all parties: supporting both the prompt disclosure of information to the public and reducing the likelihood of FOI reviews, appeals or wider reputational damage for public authorities.

¹ Response times for requests made under EIRs can be extended to 40 working days in limited circumstances, where the volume and complexity of the information make it impractical to comply with the 20 working day timeline (Regulation 7 of the EIRs).

Investigations and enforcement action

Investigations

If a requester is dissatisfied with the way a Scottish public authority handled their request for review, they can appeal to the Commissioner. In all valid appeals (unless the appeal is frivolous, vexatious, withdrawn or abandoned), the Commissioner must investigate whether the authority complied with the law.

Investigations over four months

The FOI Act requires the Commissioner to report the number of cases taking longer than four months. We aim to resolve the majority of our cases within this period, although more complex cases will often take longer.

More information is available at: www.itspublicknowledge.info/operational-performance.

	2019-20	2020-21	2021-22
Cases closed without investigation			
4 months or less	163	117	181
More than 4 months	2	1	4
Subtotal	165	118	185
Cases closed during investigation			
4 months or less	106	89	79
More than 4 months	50	40	68
Subtotal	156	129	147
Cases closed with decision			
4 months or less	64	42	24
More than 4 months	132	118	193
Subtotal	196	160	217
All cases			
Total 4 months or less	333	248	284
Total more than 4 months	184	159	265
Total cases closed	517	407	549

Case closure times

	Target (%)	Performance* (%)
“Failure to respond” appeals		
1.5 months	60%	56% (not met)
4 months or less	100%	91% (not met)
Substantive appeals		
4 months or less	50%	11% (not met)
6 months or less	75%	37% (not met)
12 months or less	95%	89% (not met)
All appeals		
4 months or less	70%	52% (not met)
6 months or less	85%	67% (not met)
12 months or less	97%	94% (not met)

* Percentages have been rounded to the nearest whole number.

The average closure time of all appeals was 4.48 months (2020-21: 4.37 months; 2019-20: 3.37 months).

In last year's annual report, we reported that the Covid-19 pandemic had a greater impact on our investigations work than we would have hoped and that, as a result, we were starting 2021-22 with a particularly large caseload.

In 2021-22, we received 626 new applications, the highest number received since 2005-06 (the first full financial year after the FOI Act and the EIRs came into effect) and a 29% increase on the number received in 2020-21.

The size of our caseload impacted on our ability to meet our KPIs. We were unable to allocate new cases to investigators as quickly as we would have liked and this has adversely affected performance against our KPIs – and, in particular, the “substantive appeals” KPIs as, in many cases, when the case is allocated to an investigator, the 4-month KPI has already been passed.

This was despite the fact that we closed 549 cases in 2021-22, the highest number of cases closed since 2013-14. We continue to find ways of streamlining our procedures in order to ensure that cases are allocated and dealt with as quickly as possible. We are recruiting enforcement team freedom of information officers to assist with the caseload.

Enforcement action

The Commissioner can take action if an authority has not complied with the FOI Act, the EIRs or the Codes of Practice. This includes the power to issue Enforcement Notices, Information Notices and Practice Recommendations.

While we rarely have cause to take direct enforcement action, we did issue one Practice Recommendation during 2021-22. This was only the third to be issued under Scotland's FOI regime, and required Aberdeenshire Council to improve its practice in relation to the FOI Act's 'requester-blind' principle. The issue of this Practice Recommendation is discussed further in the **Interventions** section above.

We also issued six Information Notices during the year. Information Notices impose a legal requirement on public authorities to provide us with information. The notices can be appealed to the Court of Session by the authority. Five of the notices were issued to the Scottish Ministers, the other being served on Scottish Water. All were issued where the authorities were concerned that disclosing information to us in the absence of an Information Notice could constitute either a contempt of court or a criminal offence. In all six cases, the authorities complied in full with the Information Notice.

More information on enforcement action taken by the Commissioner is available at: www.itspublicknowledge.info/enforcement.

Appeals to the courts

The Commissioner's decisions can be appealed to the Court of Session on a point of law. In 2021-22, two appeals were lodged against a decision of the Commissioner, both by the same applicant. Neither case has proceeded to a hearing yet.

Enforcement performance outcomes

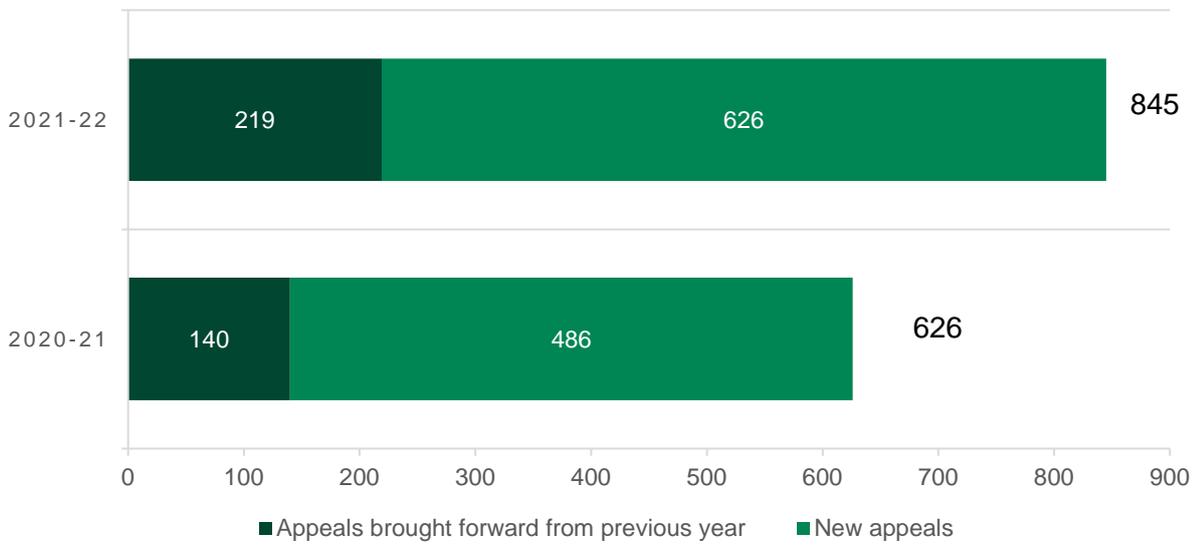
Appeal outcomes

There are three possible points at which appeals to the Commissioner can be closed:

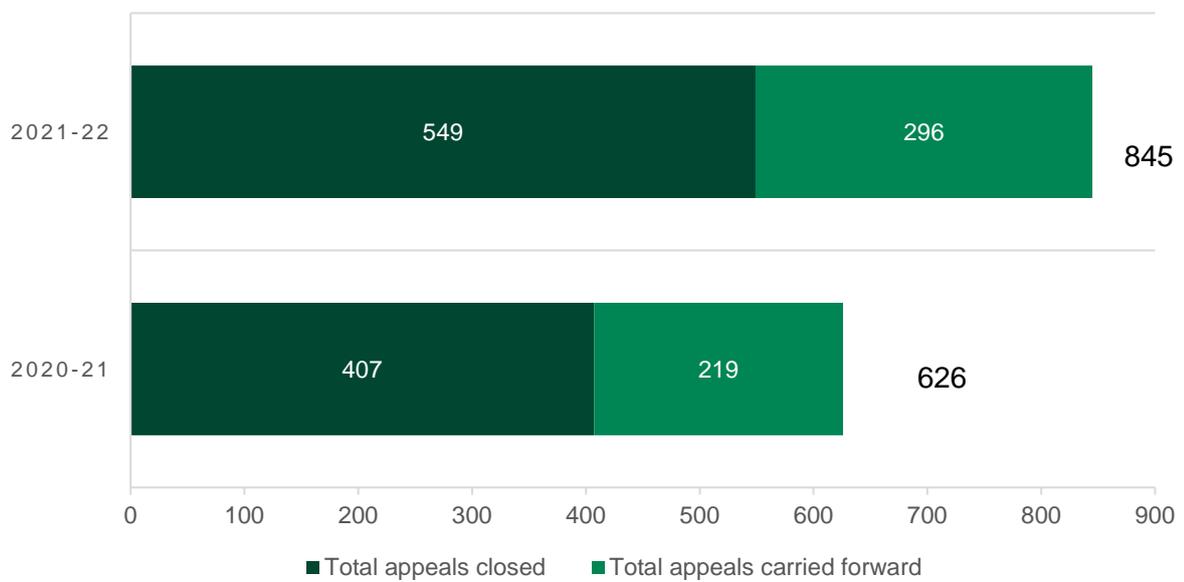
- closure without investigation -for example, where the appeal is not valid
- closure during investigation - for example, where the matter is resolved to the satisfaction of the requester during the investigation
- the Commissioner issues a Decision Notice.

Reason for closure	2019-20	2020-21	2021-22	2021-22 (FOI Act)	2021-22 (EIRs)
Closed without investigation					
Premature or “out of time”	21	16	46	36	10
Withdrawn or abandoned	18	0	6	5	1
Resolved	0	0	2	2	0
Excluded – Lord Advocate or Procurator Fiscal (FOI Act only)	11	9	6	6	0
Format invalid	49	23	46	45	1
Body not subject to FOI	5	6	3	2	1
No request for review made	38	46	41	36	5
No request to public authority	22	5	5	3	2
Frivolous or vexatious	0	0	0	0	0
Other	1	13	30	28	2
Subtotal	165	118	185	163	22
Closed during investigation					
Withdrawn or abandoned	10	8	25	21	4
Resolved	135	121	122	101	21
Frivolous, vexatious or invalid	11	0	0	0	0
Subtotal	156	129	147	122	25
Closed with a Decision Notice					
For requester	70	62	77	57	20
For authority	63	56	98	88	10
Partially upheld	63	42	42	31	11
Subtotal	196	160	217	176	41

New appeals in 2021-22 and appeals brought forward from previous years



Appeals closed in 2021-22 and appeals carried forward into following year



Commissioner's decisions

Anyone who is unhappy with an authority's response to an information request has an enforceable right of appeal to the Commissioner under FOI law.

As ever, the appeals considered this year covered a wide range of high-profile topics, including:

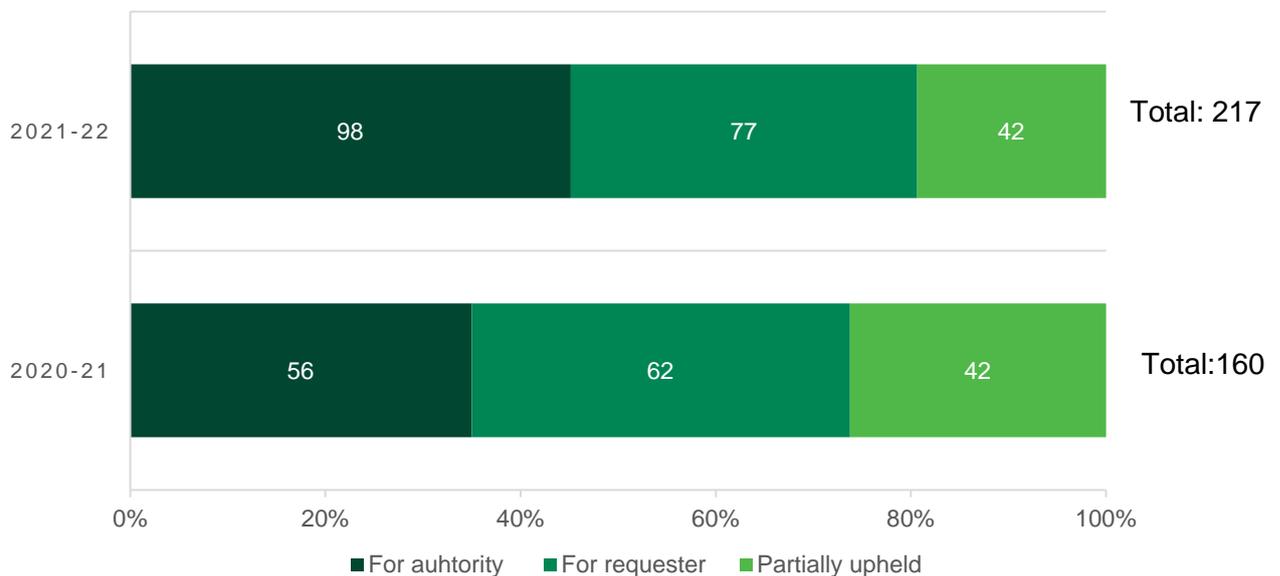
- Discharges from hospitals to care homes (Public Health Scotland: 138/2021)
- Number of deaths in care homes (Registrar of Births, Deaths and Marriages for Scotland: 079/2021)
- Handling of harassment complaints involving current or former ministers (Scottish Ministers: 083/2021)
- Ethnicity of passengers stopped under the Terrorism Act 2000 (Police Scotland: 032/2022)
- Curriculum for Excellence Review 2020/21 (Scottish Ministers: 077/2021)
- Contingencies for a second wave of Covid-19 (City of Edinburgh Council: 094/2021)
- Licences to disturb or injure marine protected species (Scottish Ministers: 176/2021)

These, and the other decisions issued in 2021-22, are available at:

www.itspublicknowledge.info/decisions.

Outcome types

55% of our decisions found wholly or partially in favour of the requester.



Further information on this area of performance can be found in the committee report considered by the SMT on 11 May 2022, available at:

www.itspublicknowledge.info/governance-and-finance.

Policy and Information Performance

Authorities' FOI statistics

Each quarter, around 500 Scottish public authorities submit statistics to the Scottish Information Commissioner detailing the information requests they receive and the responses they issue.

Data submitted provides a valuable insight into how FOI is operating in Scotland, with each submission being subject to detailed analysis; examining trends at a national, sectoral and authority level and informing our work to promote and enforce FOI law.

The collation and publication of this data by the Commissioner is also recognised internationally as a good practice model of FOI regulation².

Data submitted for 2021-22 shows an increase in the number of requests received compared to the previous year - however, the total volume is still some way below the level seen for the two years prior to the Covid-19 pandemic (there were 83,963 requests recorded in 2018-19, compared to 73,983 for the current year).

The number of responses on time as a proportion of requests received rose to 86% after a drop from 88% to 82% between 2019-20 and 2020-21, while the proportion of requests that resulted in full or partial disclosure of information remained at 73% (down from 76% in 2019-20). Our appeal numbers as a proportion of requests increased from 0.7% to 0.8%, but there was a more significant rise in appeals as a proportion of review requests - from 25% to 27%.

² See Parsons, A (2022) *Improving Oversight of Access to Information* mySociety Research: <https://research.mysociety.org/publications/improving-oversight>

Authorities' FOI statistics

	2019-20	2020-21	2021-22
Total requests	81,061	69,519	73,983
- FOI requests	70,829	61,217	64,469
- EIRs requests	10,232	8,302	9,514
- EIRs as a percentage of total requests	13%	12%	13%
Total responses on time	71,155	57,121	63,833
- responses on time as a percentage of total requests	88%	82%	86%
Total late responses	7,035	8,229	7,616
- late responses as a percentage of total requests	9%	12%	10%
Failures to respond	812	1,803	1,657
- failures to respond as a percentage of total requests	1%	3%	2%
Response: full disclosure	45,711	37,021	38,702
Response: partial disclosure	15,749	13,636	15,488
- full/partial disclosure as a percentage of total requests	76%	73%	73%
Response: information withheld	7,269	6,348	7,045
Response: information not held	8,571	7,334	8,484
Refused: excessive cost, or manifestly unreasonable for cost reasons	2,151	1,893	2,030
- cost refusals as a percentage of total requests	3%	3%	3%
Refused: vexatious, repeated, or manifestly unreasonable for non-cost reasons	298	392	377
- vexatious/similar refusals as percentage of total requests	0.4%	0.6%	0.5%
Total review requests	1,960	1,961	2,292
- total review requests as a percentage of total requests	2%	3%	3%
Appeals to the Commissioner	494	486	626
- appeals as a percentage of total requests	0.6%	0.7%	0.8%
- appeals as a percentage of total review requests	25%	25%	27%

During 2021-22 we revised the route through which public authority statistics are gathered; introducing a temporary submission method in advance of the April 2022 launch of our new website. We will be considering the development of a new, improved tool for statistics collection as part of the next phase of our website development.

Monitoring and improving authority practice

The Commissioner provides practical support and learning tools to help authorities improve their FOI practice.

Communications, guidance and briefings to authorities

Communication tool	Description
Website	We worked on the development of a new, improved website, with a more user-friendly layout, easier navigation, more accessible resources and faster performance. The website was developed throughout 2021-22, going live in April 2022.
Newsletter	We issued 9 editions of Open Update, our new email newsletter providing FOI news, advice and guidance to Scotland's FOI community. This included learning on 'hot-topics' arising from our decisions, such as the use of the FOI 'neither confirm nor deny' provision; disclosure in the public interest; and the FOI status of communications made through WhatsApp. We ended the year with more than 500 newsletter subscribers, a 38% increase on the preceding year.
Email	We issued a number of formal communications to authorities. This included updates on the falling away of the changes made to FOI law as a result of the pandemic and changes made to our FOI statistics and FOI appeal portals.
Social media	We tweeted 229 times across the year, providing our 1,120+ followers with updates on key developments, new resources, forthcoming events and FOI rights.
Network meetings	Our staff supported virtual network meetings of staff from across the public sector, including groups of FOI practitioners from the health and local government sectors, along with staff from non-departmental public bodies and regulatory organisations.
Events and conferences	We supported a number of virtual conferences and events, including the annual Centre for FOI Practitioners' Conference and the 2021 Holyrood FOI conference. We also took part in an FOI conference for housing association staff, participated in a series of free UK-wide training events for FOI staff, and delivered regular updates at the Scottish Public Information Forum (SPIF), which brings together a wide range of stakeholders to discuss the development of FOI in Scotland. Our staff also spoke at an event for UK housing associations on the FOI experience of their Scottish counterparts, to inform the development of their own access to information regime.
Surveys	We undertook a survey of FOI practitioners from public bodies across Scotland to gather details of their experience of FOI and help support the development of our tools and resources and inform our future work. The report was published in Summer 2022.
Self-assessment toolkit	We published an updated version of our FOI toolkit to help authorities assess and improve FOI performance. The toolkit was streamlined and simplified to ensure it is as user-friendly as possible.
Reports	We prepared and published our second Special Report exploring the impact of Covid-19 on FOI law and practice. The report made a number of recommendations designed to help authorities learn from the experiences of the pandemic and ensure that FOI services are customer-focussed, effective and resilient.

Communication tool	Description
Comment, guidance and analysis	During 2021-22 we increasingly used our website as a platform for the sharing of comment, guidance, learning and analysis, helping to bring this content to as wide an audience as possible. This included, for example, the sharing of learning from a conference masterclass on avoiding FOI pitfalls; consideration of the future of proactive publication by public bodies; an overview of a SPIF discussion of potential changes to FOI law; and a review of the uses to which Scotland's rights to environmental information have been put in the run up to COP26.
Covid-19 Info Hub	We continued to update our Covid-19 Info Hub with guidance to public authorities and the public on the impact of Covid-19 on FOI. This included regular updates on the falling away of changes made to FOI law by Scotland's emergency coronavirus legislation.
Interventions & enquiries	We provided one-to-one support, guidance and advice to public authority staff through our programme of interventions and our enquiries service.

More information:

Our new website: www.itspublicknowledge.info

News, comment and analysis: www.itspublicknowledge.info/news

Self-assessment toolkit: www.itspublicknowledge.info/self-assessment-toolkit

Briefings and guidance: www.itspublicknowledge.info/briefings-and-guidance

Reports informed by our survey activity: www.itspublicknowledge.info/reports-and-research

Open Update newsletter: www.itspublicknowledge.info/newsletter

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

Publishing information and adoption of a publication scheme

The FOI Act requires authorities to publish information as well as respond to requests. This is called the "publication scheme" duty. They must make information accessible to the public without having to ask for it, and publish a "Guide to Information" to enable people to locate the information. The EIRs also carry a similar duty.

We supported a number of newly-designated organisations across 2021-22 as they worked towards the development of their own publication scheme Guide to Information. This included Consumer Scotland, Redress Scotland, Scotrail Trains Limited, the Scottish Biometrics Commissioner and the Scottish Fuel Poverty Advisory Panel. We also carried out a number of interventions with authorities where we identified issues with publication scheme compliance.

More information on the publication scheme duty is available at:

www.itspublicknowledge.info/publication-schemes.

Raising awareness and improving access to FOI

The Commissioner has a statutory duty to promote freedom of information rights, ensuring people know they have rights and know how to use them to access the information they want to see.

Communications strategy

Development of the Commissioner's 2021-2024 Communication and Engagement Framework was delayed due to the continued impact of the Covid-19 pandemic. The new Framework was subsequently approved in the final quarter of 2021-22. Given the timing of this approval, measures from the Commissioner's 2015-2020 Communications Strategy were used to assess and guide communications activity across 2021-22.

The Commissioner's main communication tools are the website, social media, events and email communication.

2015-20 strategy measures	2021-22 performance against the measure
A minimum of 40% of all appeals to be received via the online application portal	This measure has been discontinued. The Commissioner's online application portal was deactivated in August 2021 due to technical issues. We will be considering development of a new online portal in the next phase of our website development work. In the meantime, we continue to receive appeals by email or post.
A 20% increase in the number of annual unique website page views (from 54,000 to 64,800)	In 2021-22 there were 86,000 unique visits, a 34% increase on the preceding year, and a 59% increase from the 54,000 baseline.
Increase in the number of subscribers to emails	We ended 2021-22 with 525 subscribers to our 'Open Update' email newsletter, a 38% increase on 2020-21 subscriber numbers.
Increase in number of annual impressions on Twitter (to 450,000 in 2020)	We did not achieve this ambitious measure in 2021-22, during which 121,042 twitter impressions were recorded. While we tweeted more frequently in 2021-22 than over the preceding year - with 229 tweets issued - the continuing impact of the pandemic contributed to a reduced capacity and fewer opportunities to develop innovative content and campaigns. Nevertheless, we grew our twitter following over the year, adding a total of 96 new followers over 2021-22.

The new Communication and Engagement Framework, which aligns with the Commissioner's Strategic Plan 2020-24 and includes a range of new goals and measures, will be implemented in 2022-23. Progress against this framework will be reported in our next report.

Website development

Across 2021-22 we also worked on the development of a new website, designed to replace our outdated and under-performing existing site.

The new website was developed in accordance with the Digital Scotland Service Standard, using elements from the Digital Scotland Design System. The site improves on our old site in a number of ways, including easier navigation, improved accessibility, faster performance and a more user-friendly appearance and layout.

The site was developed, designed and tested across 2021-22, before finally being launched in April 2022.

Explore our new site at: www.itspublicknowledge.info.

Civil society engagement

Our activities to promote FOI rights to civil society groups during 2021-22 continued to face disruption as a result of the pandemic.

We did, however, deliver online training on the practical use of FOI rights to housing association tenants via the Scottish Government's regional tenant network, and discussed information rights at a Centre for Research into Information, Surveillance and Privacy workshop. We were also pleased to be able to attend an in-person event in October 2021 to highlight the importance of FOI for a community group in St Andrews.

We also worked with Young Scot to deliver a campaign to promote FOI rights to young people. Campaign resources included updated website guidance and an interactive quiz, promoted through Young Scot's website and social media channels.

We continued to actively support the Scottish Public Information Forum, a regular forum where campaigners, regulators, authorities and requesters are brought together to explore issues relating to access to information in Scotland and beyond. We also updated our guidance to support Scotland's new MSPs make the most of their information rights following the May 2021 Scottish Parliamentary election.

We continued our active contribution to the work of Scotland's Open Government Partnership as a standing observer in the Steering Group as the new action plan for 2021 to 2025 was developed and published.

Public awareness polling

In February 2022, we commissioned the latest round of our regular opinion polling regarding public awareness of and attitudes towards FOI in Scotland. This research not only indicates how many people have heard of the FOI Act or know about the rights that it provides, but also offers valuable insights on areas such as:

- the perceived value of FOI in informing the public and delivering transparency
- the types of information that are considered important to be published
- what types of organisations or services should be covered by FOI
- people's approaches and expectations when it comes to accessing information.

The results of the survey activity were published in May 2022, finding that 89% of the public had heard of FOI, while 63% were aware that they had a right to ask for information from Scottish public bodies. The survey also found that 80% of respondents felt it was important for privately-run but publicly-funded health and social care services to be subject to FOI law.

The full survey results are available at:

www.itspublicknowledge.info/new-foi-opinion-polling-results-released.

The results will help inform our future activities in relation to civil society engagement.

Policy and legislation highlights

Coronavirus emergency legislation: FOI impact during 2021-22

We continued to update our Covid-19 and FOI Information Hub over the course of the year, providing updates and guidance for public authorities and the public as the temporary changes to FOI law brought about by emergency coronavirus legislation were phased out. (The Information Hub was discontinued following the move to our new website in April 2022, with any remaining relevant guidance being integrated with our wider guidance and communication activity.)

For FOI requests made over the first six months of 2021-22, emergency legislation gave the Commissioner a discretionary power to take the impact of the pandemic into account when deciding whether or not an authority had complied with FOI timescales.

Where an authority failed to meet these timescales but the Commissioner found that the failure was due to the effect of coronavirus and the delay was reasonable in all the circumstances, the Commissioner had the ability to conclude that the FOI Act had not been breached.

This power was phased out by the Coronavirus (Extension and Expiry) (Scotland) Act 2021 (the 2021 Act) which removed this provision for all requests made to public authorities on or after 1 October 2021.

During its lifespan the provision was, however, only used very rarely, even during national lockdowns. Indeed during 2021-22 the provision was considered in only four cases.

The 2021 Act also extended the ability of the Commissioner and public authorities to issue notices electronically until 31 March 2022 (and this provision was subsequently further extended by regulations to 30 September 2022).

The Commissioner made representations to the Scottish Government in support of making the latter provision permanent, to enable a more modern, efficient, flexible and resilient approach to the issue of notices, enabling notices to be issued via either electronic or postal means, as appropriate to individual circumstances.

These provisions were subsequently made permanent through the passing of the Coronavirus (Recovery and Reform) (Scotland) Bill.

Post-legislative scrutiny of the FOI Act

There were no further developments during the year in relation to the report on the Post-legislative Scrutiny of the FOI Act, published in May 2020, and the Scottish Government's subsequent confirmation, in March 2021, that it would implement the report's recommendations to consult on a number of aspects, including:

- which organisations should be subject to the FOI Act
- the definition of 'information'
- the approach to proactive publication
- record-keeping requirements
- fees and charging.

At the time of writing we await the launch of the Scottish Government's consultation, along with the publication of a previously announced discussion paper on the extension of FOI (which itself follows an earlier consultation on this matter in 2019). The Commissioner looks forward to participating in this keenly awaited consultation and discussion process, in order to work towards the shared goal of protecting and strengthening Scotland's FOI rights for the future.

Campaign for FOI in Scotland's draft amendment bill

In February 2022, the Campaign for FOI in Scotland published its own draft FOI Amendment Bill, setting out the changes it would like to see made to FOI law. The draft Bill covered a wide a range of proposals, including the extension of the coverage of FOI, explicit clarification that official information stored on personal devices is covered by FOI, and the application of the "public interest test" to all FOI exemptions.

The Commissioner welcomed the opportunity to discuss and explore the changes proposed by the Campaign at various events, including at a meeting of the Scottish Public Information Forum in February 2022.

International engagement

We continued to contribute actively to the furtherance of international cooperation among information rights regulators, including as a member of the International Conference of Information Commissioners' (ICIC) Governance Working Group (ending our tenure at the 2021 meeting held in June). The Commissioner was also Chair of its Strategic Priorities Working Group until that meeting where the Strategic Priorities developed by the Group were adopted by the ICIC. We also contributed to the ICIC's 2021 resolution and joint statement highlighting the value of proactive publication of information about the Covid-19 pandemic.

We also met with staff from Transparency International Hungary to discuss access to information and related issues, while the Commissioner shared learning from Scotland's experience of FOI as part of a transparency webinar in the Philippines.

Corporate Services Performance

Enquiries

The Commissioner has a power to give advice on the operation of FOI and use this power to provide an enquiries service to the public and public authorities. Anyone with a question about FOI can contact us for advice. Most of our enquiries are from the public and this service is one of the main points of contact with us. Since FOI was introduced in 2005, we have answered more than 26,300 enquiries.

During the temporary closure of the office premises, an interim enquiries procedure was in place which meant that we were still able to continue to consider and respond to enquiries by email and in writing.

The numbers of enquiries received in 2021-22 as a whole, and in each quarter, with comparative figures for 2020-21 and 2019-20, are:

	2019-20	2020-21	2021-22
Q1	341	177	178
Q2	344	317	208
Q3	336	172	137
Q4	262	194	160
Total	1,283	860	683

In 2021-22, the majority of enquiries related to requests for advice on making and responding to information requests and requests for reviews or appeals. We also provided information on the referral of matters to the UK Information Commissioner's Office. Although there were fewer enquiries in 2021-22, the percentages relating to types of enquirer are similar to previous years.

Type of enquirer	%
Public and other ³	65%
Public authority ⁴	22%
Media	5%
Commercial / private enterprise	3%
Voluntary / campaign organisation	2%
Solicitor	1%
Categories <1%	2%

Response times

We recognise the importance of good performance and quality in the delivery of the enquiries service and met both enquiry KPIs that were in place for 2021-22.

³ "Public and other" represents all individual members of the public with no identified affiliation to an organisation or group.

⁴ Includes prospective public authorities falling within the Commissioner's jurisdiction & UK public authorities.

One enquiry was open at the end of 2020-21 and responded to in 2021-22. Of the enquiries closed in 2021-22, 670 were responded to within five working days and 12 were responded to within 20 working days. No responses took longer than 20 working days. Two enquiries were open at the end of 2021-22 and will be included in the enquiry statistics for 2022-23.

We were able to respond to 100% of enquiries within 20 working days.

Performance measure 2021-22	Target (%)	Actual (%)
answered in 5 days	90%	98%
answered in 20 days	95%	100%

More detail on the Commissioner's Enquiries performance in 2021-22 is set out in the committee report considered by the SMT on 11 May 2022, available at:

www.itspublicknowledge.info/governance-and-finance.

The Commissioner's FOI and subject access performance

Information requests

As a Scottish public authority, we are subject to FOI law and must respond to the requests for information we receive. In 2021-22, we received 72 information requests (2020-21: 62) and 9 requests for review (2020-21: 9).

If we don't hold information, we will advise the requester and point them to where they might get it (if we know) or tell them about relevant information we do hold.

Covid-19 pandemic

Changes to the FOI Act were made as a result of the Coronavirus Acts. As a regulator, we issued guidance on how FOI duties were impacted by the emergency legislation and the amendments made to it.

Our interim policy "Covid-19: How the Commissioner will respond to FOI requests during the temporary office closure due to the impact of the Covid-19 pandemic" set out how the Commissioner would comply with the FOI Act and EIRs requests and review requests during the temporary closure of the office premises. As the office premises re-opened on 3 May 2022 this guidance is no longer relevant and has been discontinued, however, the guidance was in place during the reporting period.

Requests for information

Received	2019-20	2020-21	2021-22
Brought forward from previous year	3	3	1
Requests received	68	62	72
- FOI requests	67	61	72
- EIRs requests	1	1	0
Request caseload	71	65	73
Closed	2019-20	2020-21	2021-22
Total requests closed	68	64	72
Information provided in full	16	7	13
Information partially supplied	21	14	19
Information not held	18	28	28
Information not supplied	13	15	12
- Clarification not provided	0	2	0
- Request withdrawn	0	5	3
- Exempt	8	5	5
- Neither confirm nor deny	1	0	0
- Excessive costs	0	1	0
- Information request invalid	4	2	2
- Vexatious	0	0	2
Fee charged	0	0	0
Requests open at end of year	3	1	1

Requests for review

Requests for review	2019-20	2020-21	2021-22
Brought forward from previous year	0	0	2
Review requests received	6	9	9
Review caseload	6	9	11
Closed	2019-20	2020-21	2021-22
Total reviews closed	6	7	11
Internal review upholds original decision in full	4	6	7
Internal review partially upholds original decision	0	1	2
Internal review substituted a different decision	0	0	0
Request for review invalid	2	0	1
Request for review withdrawn	0	0	1
Requests for review open at end of year	0	2	0

Response times

The 100% targets for responding to requests for information and requests for review are targets that we aim to meet at all times. We met both KPI targets in responding to information requests and review requests.

Performance measure 2021-22	Target (%)	Actual (%)
% requests answered within 20 working days	100%	100%
% requests for review answered within 20 working days	100%	100%

More detail on the Commissioner's FOI performance in 2021-22 is set out in the committee report considered by the SMT on 11 May 2022, available at: www.itspublicknowledge.info/governance-and-finance.

Subject access

The data protection right of access, commonly referred to as subject access, gives individuals the right to obtain a copy of their personal data as well as other supplementary information. The Commissioner is also subject to data protection law and must respond to subject access requests. This helps individuals understand how and why we are using their data and also enables them to check that we are doing this lawfully. Requests are forwarded, on receipt, to the most appropriate member of staff for a response. We maintain a record of all subject access requests in our case management system.

In 2021-22, we received 23 subject access requests (2020-21: 20).

Response times

We have a target to meet 100% of subject access requests within a calendar month and this target was met in 2021-22.

More detail on the Commissioner's subject access performance in 2021-22 is set out in the committee report considered by the SMT on 11 May 2022, available at: www.itspublicknowledge.info/governance-and-finance.

Service standards

Each financial year we review the way we have provided our service by looking at the compliments received and complaints made and the outcomes of those complaints.

Compliments recorded

In 2021-22, we recorded 92 compliments (2020-21:100).

The majority of compliments came from applicants, enquirers and public authorities and thanked us for helpful advice, support and professional responses.

Compliments were also received relating to events that we have taken part in during the year.

Complaints about our services

Our Complaint Handling Procedures (CHP) set out how we manage and respond to complaints and are based on the Model Complaint Handling Procedures published by the Scottish Public Services Ombudsman (SPSO). The CHP seek to resolve dissatisfaction about any aspect of our service as close as possible to the point at which the complaint arises and, where appropriate, to conduct a thorough, impartial and fair investigation of the complaint so an evidence-based decision on the facts of the case can be made.

In 2021-22:

- we received 6 complaints (2020-21:15), the majority of which related to an aspect of our working practices
- 1 complaint case was open at 31 March 2021 and is included in the number of complaints dealt with in 2021-22
- 5 complaints were either resolved at the frontline or investigated:
 - 4 complaints were closed at Frontline Resolution
 - 1 complaint was closed following an Investigation
- 2 complaint cases were open at 31 March 2022 and will be included in next year's statistics.

Complaint KPIs

In 2021-22 we met our targets for investigating complaints and for upholding, in part or full, less than 20% of those cases. However, the target for the resolution of cases at the frontline was not met due to one case taking longer than 10 days to resolve.

Performance measure	Number	Target (%)	Actual (%)
Complaints closed	5		
Resolved at frontline	4	90% resolved in 5 days 95% resolved in 10 days	Not met - 75% resolved in 5 days Not met - 75% resolved in 10 days
Investigated	1	80% answered in 30 days 85% answered in 40 days	Met - 100% answered in 30 days
Complaints upheld in part or full	1	Fewer than 20%	Met - 14% of complaints upheld in part or full

Environment and sustainable development

The Commissioner aspires to attain high environmental standards, minimising the effects on the environment and where possible making a positive contribution to enhancing the environment. The aim is to continually improve our environmental performance, to protect the environment by reducing pollution and resource consumption and to operate in a manner that supports and encourages the natural diversity of plant and animal life. We have not identified any specific aim or risk relating to climate change. However, improving our environmental performance will contribute towards wider efforts to mitigate climate change.

Environment

The Commissioner's Environmental Policy seeks to address and control any impacts on the environment that are due to our activities and details a number of objectives through which we aim to manage, and where possible reduce, any effects on the environment that are due to our activities. We also continue to be committed to improving efficiency in how we function as an organisation and in how the office is managed. In 2021-22 we reduced our impact on the environment by:

- minimising carbon dioxide and other greenhouse gas emissions
- reducing the impact of travel and transport to and from the office
- recycling as much as possible
- selecting the most environmentally friendly products for cleaning where possible.

We also continued to:

- implement a no-paper policy
- continued our temporary remote working to allow staff to work remotely as they were unable to access the office premises due to the impact of the Covid-19 pandemic
- encourage all meetings to be held via telephone or video conferencing software
- comply with legal and other requirements that relate to the environment.

Our Environmental Policy can be found in Class 5 of our Guide to Information at: www.itspublicknowledge.info/our-guide-to-information.

Sustainability

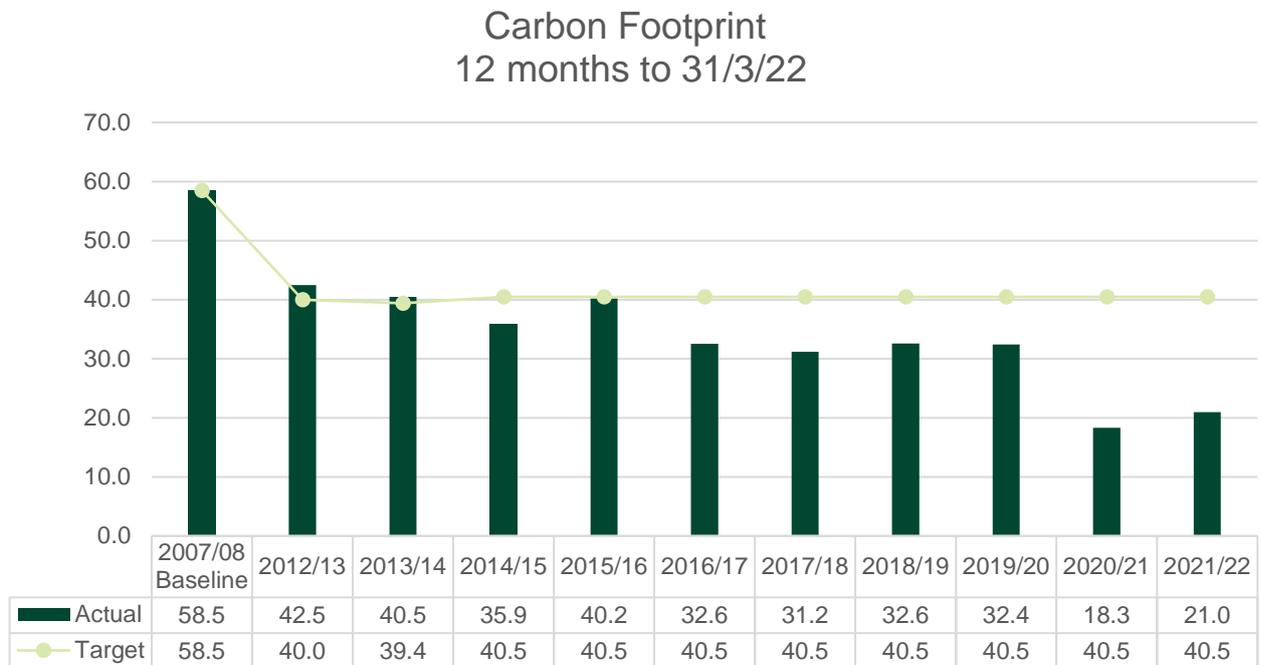
The Commissioner's primary function is to enforce and promote Scotland's freedom of information legislation. Promoting and increasing sustainability is a challenge as we are a small, single site organisation. However, our office can make a direct contribution to sustainability through the management of its carbon footprint. We remain committed to managing and, where possible, reducing further our carbon footprint and will continue to seek ways to do so.

The Commissioner's Statement on Sustainable Growth for 2021-22 has been published and can be found at: www.itspublicknowledge.info/governance-and-finance.

Carbon footprint

For 2021-22, the total organisation CO2e is 21.02 tonnes (2020-21- 18.36 CO2e tonnes) – this is significantly less than our annual target to be below 40.5 tonnes CO2e and can be contributed to the following:

- we followed government guidance to temporarily close the office premises and, throughout the year, only essential work has been allowed to take place, mainly involving a weekly essential visit by members of the Corporate Services Team. This resulted in our electricity and gas usage being considerably lower than in past years
- throughout 2021-22, there were only a few meetings held in person resulting in a 43% reduction in CO2e, in the travel and transport category, from 2020-21
- due to the change in working practices, with all staff working remotely with remote access to our office systems, staff have not needed to use as much paper as in previous years, for example, paper copies of case files have not been needed. As a result of this, our shredding needs have reduced by 91% from previous years.



Community, social and human rights

We remain committed to conducting our work to the highest standards and building positive relationships with communities across Scotland. There is an established connection between the right to access to information and equality and human rights. People often use their FOI rights to access information to help them participate in social and community engagement, particularly with the public sector. Where they are dissatisfied with the response to an information request they may appeal the case to the Commissioner.

We regularly see social and community engagement issues in appeals and enquiries to our office. We monitor public awareness of the right to information and promote effective use of FOI rights to the public and civil society organisations.

We do not have a corporate charity and, in 2021-22, were unable to support our staff's charitable activities in the usual way as a result of the temporary closure of our office premises.

Payment to suppliers

We are committed to the CBI Prompt Payment Code for the payment of invoices for goods and services. This Code is a voluntary initiative to improve performance and support businesses, the aim of which is to ensure suppliers are paid within 10 days of the receipt of the invoice received.

We have KPI performance measures for payment to suppliers and met these in 2021-22:

Performance Measure	Target (%)	Actual (%)
Settled undisputed targets within 10 days	95%	99.05% (exceeded)
Settled undisputed invoices within 30 days	100%	100% (met)

Further information on this area of performance can be found in the committee report considered by the SMT on 29 June 2022, available at:

www.itspublicknowledge.info/governance-and-finance.

Corporate performance

An operational plan is approved for each financial year and an Operational Plan (linked to the Strategic Plan 2020-24) was agreed for 2021-22 and published on our website. More information is available at www.itspublicknowledge.info/strategic-and-operational-plans.

The Operational Plan 2021-22 was set out as a programme of actions listed under types of operational activity, with cross references to the strategic aims supported by the action. The actions listed were business as usual (BAU) and projects.

In general, BAU was managed and monitored in line with set targets, performance indicators (as set out in the Performance and Quality Framework 2021-22, established reporting structures and approved policy). Projects were managed according to project management principles and practice, applied as appropriate.

The Operational Plan 2021-22 Monitoring Report was used as a working document to form the basis of on-going monitoring and progress against the plan (BAU and projects) was reviewed every two months by the SMT. The Operational Plan 2021-22 Monitoring Report was then updated and published.

Governance

The Key Document C1 Governance Arrangements (GA) sets out the Commissioner's governance arrangements and monitoring and reporting systems that are in place to ensure that strategic objectives are delivered and that there is an appropriate level of accountability and control. More information is available on the Commissioner's website at

www.itspublicknowledge.info/governance-and-finance.

Further information on the governance structures that are in place is also set out in the Accountability Report section of this ARA 2021-22.

Governance reporting

The current Governance Reporting Arrangements (GRA) include 42 reporting measures and more information is available at www.itspublicknowledge.info/governance-and-finance.

In 2021-22, out of the 42 GRA reporting measures, 39 were met in full, one was partially met as the related reporting mechanisms are currently under review and two were not met.

More information on this can be found in the related committee report submitted to the SMT on 14 July 2022, available at www.itspublicknowledge.info/governance-and-finance.

Risk management

The Commissioner actively manages risk through an appropriate and proportionate framework which identifies, assesses, addresses, reviews and reports on risk, in the context of its risk appetite and environment. The aim of the framework is to:

- provide the Commissioner and others with assurance that threats are constrained and managed and that opportunities are appropriately exploited to the benefit of the organisation
- enable the organisation to take informed decisions across all its functions
- give confidence to those that scrutinise the organisation in the robustness of corporate governance arrangements.

In 2021-22:

- the Commissioner ensured that risk management was embedded into corporate decision-making processes so that the impact of policy decisions on risk was considered when a strategic or operationally significant decision was taken or policy and procedures were approved
- the SMT reviewed and approved the [Risk Management Policy 2021-22](#)
- the Head of Corporate Services provided assurance that risk was, and continued to be, managed effectively.

Strategic risk

- the Commissioner defined strategic risks as those which relate to the organisation's ability to deliver long-term and strategic aims and which derive from the relationship with the external environment and legislative context
- the strategic risk register was considered and reviewed by the SMT at the Quarterly Senior Management Team Meeting (QSMTM)
- the strategic risk register was submitted to the Advisory Audit Board (AAB) for comment and advice.

Operational risk

- the Commissioner defined operational risks as those relating to issues which impacted directly on day-to-day activity and which impacted on the operational delivery of the annual operational plan
- the operational risk register was considered every 2 months
- individual risks were owned by Heads of Department.

Risk appetite, tolerance, risk control and risk score

Our Risk Management Policy 2021-22 sets out how risk appetite, tolerance, control and scoring were managed within the Commissioner's risk framework.

Risk profile

In 2021-22, the risk profile of the organisation, that is the risks we faced, how the risks affected the achievement of objectives, how the risks were mitigated and how this affects future plans and performance, changed throughout the course of the year.

In 2021-22, eight strategic risks were identified which covered the following areas:

- the allocation and maintenance of sufficient resources to FOI
- continued utility of, awareness of, and support for FOI
- challenges to the economy and public sector funding
- the practice, governance and performance of the office of the Scottish Information Commissioner.

When considering both strategic and operational risks in 2021-22, we took account of the impact of the Covid-19 pandemic and this initially resulted in the residual risk assessments, relating to both strategic and operational risks, being increased.

We recognised that the highest operational risks related to:

- ensuring the health and safety of all staff – this risk was treated as a threat and we constrained the risk by implementing business continuity plans and limiting the possible exposure of our staff to Covid-19 in the office premises
 - we mitigated this risk by continuing the temporary closure of the office premises and regularly reviewing the temporary closure taking account of relevant government guidance and public health advice. We had systems in place to enable essential work in the office premises so that the premises continued to be safe and secure. We also took account of health and safety requirements and emergency legislation requirements to ensure that that the risk to the members of staff carrying out essential work was assessed and mitigated as far as possible.
- The closely related risks of having sufficient resources to enable us to carry out our regulatory role, including physical resources, and our appeal caseload and case journey times - we could not transfer these risks to another body or organisation and managed these risks as threats that were tolerable in the shorter term but became less tolerable as case numbers rose

- we mitigated these risks by using the remote working facilities that were put in place in 2020, reviewing working practices and revising decision making levels
- we further streamlined our enforcement procedures and actively managed case allocation to address the significant increase in caseload affecting our performance
- the risk was partially treated but still remains in 2022-23.
- having a reliable and up to date website with current and managed content – we treated this risk as a threat in that not having this could result in us not implementing our Communications Strategy and failing to meeting our statutory duties
 - we mitigated this risk by implementing a specific project to provide a new website, carrying out a compliant procurement exercise to appoint a developer to provide a website within set timescales (and in accordance with a detailed and relevant specification) and ensuring that there was a project lead in place to work with the website developer
 - the risk was mainly treated and the new “live” website was in place in April 2022.
- having appropriate and relevant governance, including operational governance, human resource governance and information governance – this risk was treated as a threat as, although the expansion of remote working was measured and stepped, this provided a novel way of working for the organisation
 - we mitigated this risk by monitoring and reviewing our policies and procedures to ensure that they continued to be relevant and effective and, as we progressed through the year, this risk was treated and became less significant. However, as we move to hybrid working in 2022-23 we will need to ensure that all relevant governance is in place (see below Future Plans and Performance).

Future plans and performance

Looking forward, the SMT have taken account of the following matters when preparing and approving the Operational Plan 2022-23:

- how we can achieve strategic priorities in 2022-23 - what can we achieve, how can we deliver strategic priorities in a potentially difficult operating environment
- the continuing impact of the Covid-19 pandemic on our office, with an emphasis on planning for and delivering on recovery
- workforce capacity, planning, deployment and wellbeing as we re-open the office premises and explore issues surrounding hybrid working
- quality, efficiency, effectiveness and response/s to changing demands
- our resources - workforce, property and digital
- how do we ensure sustainability is taken into account in our operational work
- how we can support initiatives to improve FOI law.

Information and records management

The Commissioner recognises and promotes good records management. The efficient and secure management of information is an ongoing priority. During 2021-22, we:

- submitted an updated Records Management Plan to the Keeper of the Records of Scotland
- managed records effectively in line with our Information and Records Management Policy and Information and Records Management Handbook
- updated guidance to staff working remotely covering:
 - information security, including data protection
 - records management
 - data incident procedures
 - using Microsoft Teams
- updated our procedures to ensure that our data handling is compliant with the UK General Data Protection Regulation and the Data Protection Act 2018
- enhanced the security of our information
- met our target to maintain a compliant publication scheme and Guide to Information – we ensured that we published and made accessible as much information as possible and in addition to the agendas and minutes of the SMT meetings we also published the committee reports (and related papers) where we did not need to withhold information on the basis of the relevant exemptions either in the FOI Act or the EIRs.

Our internal auditor reviewed the effectiveness of our UK GDPR compliance and concluded that the Commissioner's procedures reflect good practice in a number of areas and that no high-risk, significant or reportable weaknesses were identified.

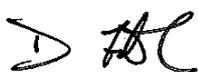
More information is available in the related committee report submitted to the SMT on 25 May 2022, available at www.itspublicknowledge.info/governance-and-finance.

Re-use of public sector information

The Commissioner continues to comply with the Re-use of Public Sector Information Regulations 2015 by:

- publishing our public task statement
- publishing our re-use statement
- making all of the information published on the Commissioner's website subject to the Open Government Licence, which gives the right to re-use the information subject to conditions
- issuing guidance on how to make re-use requests and complaints
- publishing our information asset register.

We received no re-use requests in 2021-22.



Daren Fitzhenry Scottish Information Commissioner

Date: 26 October 2022

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Laid before the Scottish Parliament in 27 October 2022 in pursuance of section 46 of the Freedom of Information (Scotland) Act 2002

SG laying number: SG/2022/194