

Scottish Information Commissioner Strategic Plan 2024-28

Supporting, Sustaining and Improving FOI



Scottish Information
Commissioner

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Scottish Information Commissioner

Strategic Plan 2024-28

Commissioner's Introduction

1. This plan is laid before the Scottish Parliament by the Scottish Information Commissioner (the Commissioner) as required by section 46A of the Freedom of Information (Scotland) Act 2002 (FOISA).
2. Having only be in post a few months, this plan has been a welcome opportunity to review, evaluate and build upon the tremendous work of my predecessors. I take on leadership of an organisation that is highly regarded in public life and respected in professional circles.
3. The staff in my office are highly skilled professionals, utterly committed to our mission and common purpose. The past four years have been challenging and the legacy of the COVID-19 pandemic still lingers. I must support them by re-establishing a sustainable operating model. A lack of resources has been their single biggest stressor and complaint.
4. FOI contributes significantly to Scotland's [National Performance Framework \(NPF\)](#). The values and outcomes which underpin the NPF describe a society characterised by openness and transparency, where we can live in communities that are inclusive and empowered.
5. The openness and transparency brought about by FOISA has come a long way but the next chapter requires us to ensure that this is sustained and improved.
6. The next four years will see continued challenges to the regime with reform of some sort inevitable and the extension of legislation to more public bodies a certainty.
7. This report outlines how I currently plan to do that; however, it would be prudent for me to review it fully next year once the FOI landscape and my own organisational change programme are clearer.

David Hamilton
Scottish Information Commissioner

March 2024

The Strategy 2024-28

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 Objectives

8. To realise this vision:

The Commissioner's office will:

1. increase knowledge and understanding of FOI rights
2. enable and develop high standards of FOI law, policy and practice
3. develop Scottish public sector culture and practice where the disclosure of information is routine, valued and increasingly proactive
4. deliver fair defensible decisions in a timely and efficient manner
5. contribute to Scotland being respected as a world-leader in openness and transparency
6. be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent

Context

9. As the Freedom of Information regime approaches its 20th anniversary of operation in Scotland it has become embedded as a key tool of democracy, accountability and transparency across the Scottish public authority landscape. It is well utilised and applied, including by journalists, campaigners and politicians, as a key research instrument.
10. The number of requests to public authorities using FOISA and Environmental Information (Scotland) Regulations 2004 (the EIRs) have soared in this time with 84,000 requests per annum being received in 2022-23.
11. The COVID 19 pandemic has had a lingering and detrimental impact on the FOI regime. Many authorities diverted staff from information management functions, others were technically ill-equipped for working remotely, while others were overwhelmed with requests for information. Recovery has been slow and experienced staff have moved on from many public authorities, which in itself is adding additional pressures on my staff.
12. My office was not immune to these challenges either and the delays in recruiting and establishing a hybrid working operating model in the face of continuing demand, led to large backlog of 324 cases accumulating. A new approach has been implemented to process this

accumulation separately that allows new cases to be processed in a timelier manner. These backlog cases still require to be dealt with and this will take a significant amount of time.

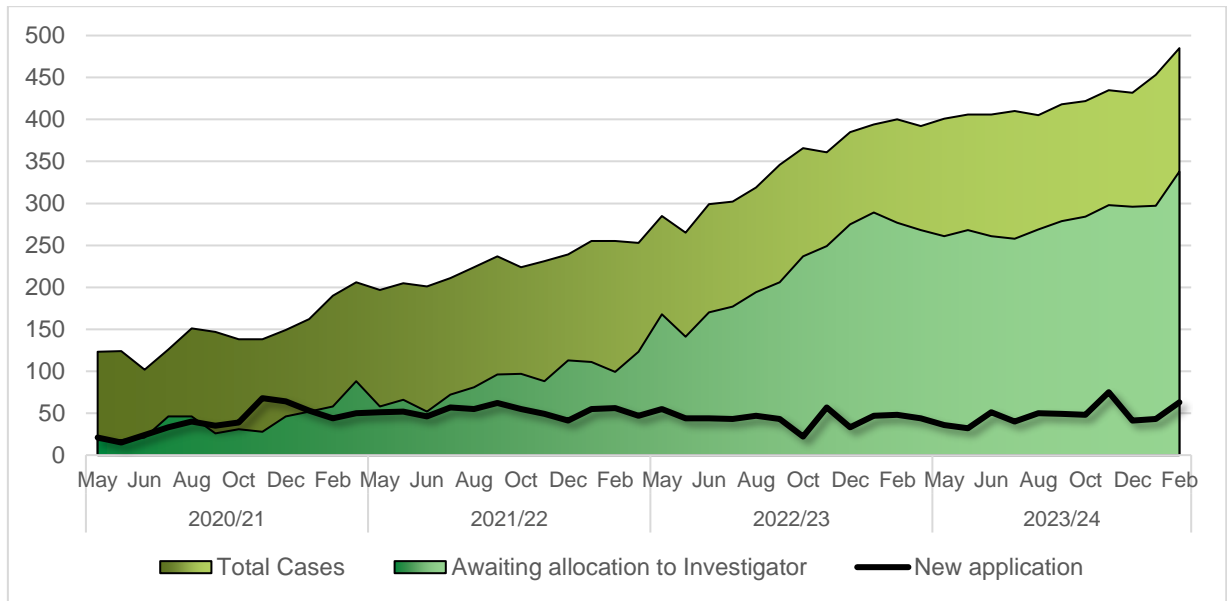


Figure 1: Caseload throughout the last 4-year reporting period

13. Figure 1 clearly shows that the investigative capacity has not been able to keep track with cumulative demand. Investigations have progressed efficiently and effectively but the cases awaiting allocation continue to grow while investigators process manageable workloads.
14. In January 2024, a new approach was introduced to safeguard the integrity and the reputation of the whole system by dealing with the backlog cases (which we refer to as 'blue' cases) as a separate project. These blue cases have had specialist resources applied to try and achieve early resolution but with variable success.
15. All of these outstanding blue cases will be investigated but it is likely that this will take a significant period of time. Contingency Funding equivalent to previous years' underspends has been granted to accelerate this work through temporary resourcing. There will be lead times for recruitment and training so it will likely be Q3 before we start realising full benefits.
16. The success of this project also relies upon my Enforcement Function being adequately resourced to keep ahead of incoming demand and being able to work on the blue cases.

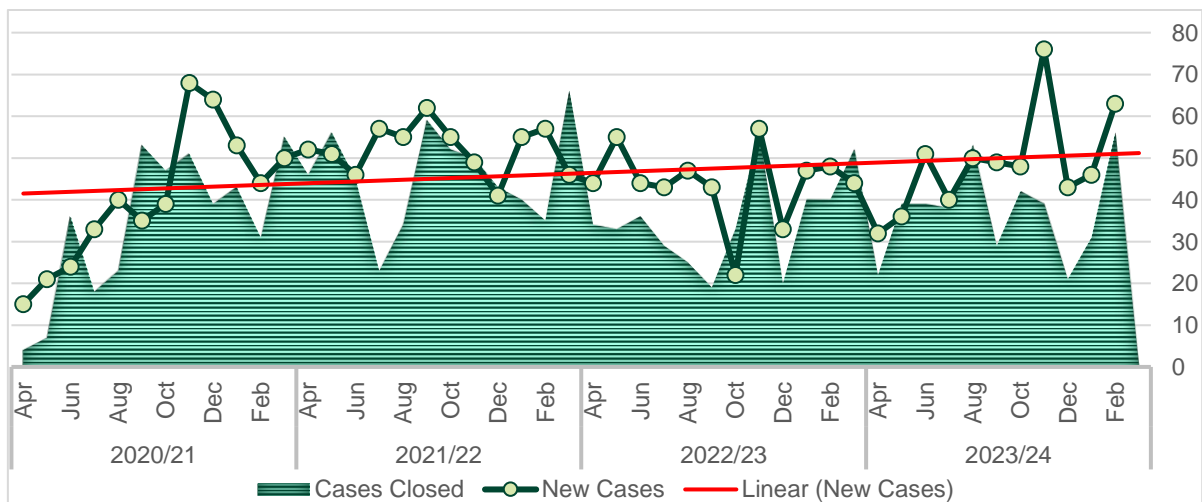


Figure 2: Monthly Closure of cases v Receipt of new cases over last 4 years

17. Figure 2 shows the closure of cases has significantly lagged behind new cases received. Quite simply there has been insufficient investigatory capacity to keep up with accumulating demand.
18. As public finances and services are cut, disenchantment with public authorities is leading to more requests for information and, inevitably, more involvement of my office. Whilst some appeals can be straightforward, many are sensitive, complex and require careful consideration of exemptions used and balancing of the public interest test.
19. It is widely acknowledged across the FOI community (75% in the Scottish Government's own consultation¹) that the current publication scheme requirement (which supports the proactive publication of information by public authorities) is outdated and not fit for purpose. A new scheme should encourage proactive publication and allow for the embracing and leveraging of new technologies such as Artificial Intelligence, information management technologies and Robotic Process Automation. My staff must support stakeholders in their consideration of these new technologies and be informed on the challenges and compliance issues that arise.
20. There have been two consultations on FOI legislative reform in the past 2 years. In both the Scottish Government's consultation² and the Private Member's Bill consultation³, there is evidence of overwhelming demand for changes to FOI law and / or associated guidance, to provide clarity in key areas, address anomalies and expand the applicability of the legislation.
21. Whilst the Scottish Government will not be taking forward primary legislation, the impact of the Private Members Bill and of any changes to the Codes of Practice is unknown. The research, evidence, communication, support, training and monitoring of such changes will fall on my office and whilst something I strongly welcome in principle, presents significant risks to the resource capacity of my office.
22. Alongside my duty to enforce FOI in Scotland, I am also responsible for promoting FOI law, both in terms of promoting good FOI practice by public bodies and, importantly, promoting awareness of FOI rights among the public. There is evidence that awareness of FOI rights is lower among some groups, including young people. I aim to work to raise awareness of FOI within these groups, while ensuring that information about FOI rights generally is presented in as clear, as helpful and as understandable a way as possible by my office, while also supporting and encouraging others to do the same.
23. Interventions remain a very efficient and effective way of resolving identified FOI practice failures. We have developed our enforcement and intervention procedures to enable a flexible, proactive approach to tackle systemic performance issues in public authorities. The objective of interventions is ultimately the improvement of FOI practice and performance, not just in one case, but across the board. The degree of intervention required to achieve this can vary from a recommendation to improve practice, through to a detailed, evidence-based audit of procedures, practice and culture followed by a substantial monitoring phase. The absence of personnel resource specifically allocated to interventions means that our ability to fully utilise the benefits of this proactive form of regulation has been, and remains, very restricted. Investment in this resource does, however, represent best value, as tackling systemic performance impacts exponentially on the experience of requesters and in delays.

¹ <https://www.gov.scot/publications/access-information-rights-scotland-consultation-analysis/pages/5/>

² <https://www.gov.scot/publications/access-information-rights-scotland-consultation-analysis/pages/1/>

³ <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/freedom-of-information-reform-bill--consultation-by-katy-clark-msp.pdf>

Timetable and approach

Timetable

24. Each year we publish an [Operational Plan](#) setting out the planned activities of my office, timetable for delivery, key targets and performance indicators, and how each activity supports the Vision and the Strategic Objectives.

Approach

25. While the detailed approach to each Strategic Objective will be set out in each Operational Plan, the following general approaches will be taken:

Objective 1: increase knowledge and understanding of FOI rights

26. Our 2022 polling shows that people's awareness of FOI had slipped 8 points to 63%⁴. I remain concerned that the use of the legislation by requesters is still quite niche and requires more mainstreaming. There is, for example, evidence to suggest that awareness of FOI rights is lower among some groups, including young people. We will, therefore, continue to collect data to identify common barriers and to engage with target groups such as community councils, young people and campaigners. We will raise awareness of FOI rights, and support and encourage their use, inspiring with practical examples of how FOI and EIR can inform communities, support engagement and, ultimately, improve life in Scotland.
27. My Policy and Information team will continue to communicate about FOI in a clear, understandable and accessible way, enabling FOI rights to be utilised by all groups in society. They will support and encourage organisations that are subject to FOI to do the same.

Objective 2: enable and develop high standards of FOI law, policy and practice

28. We will continue our work in both seeking and contributing to regular reviews of FOI law, and the bodies to which it applies, as well as supporting implementation of changes which emerge from such reviews.
29. As a minimum, a revision of the Scottish Ministers' Codes of Practice under FOISA are recognised as essential and inevitable and my office will be expected to provide expert advice and opinion on their development. We will work with the Scottish Government and other interested partners to develop a suite of options for change, some of which may yet require primary legislation.
30. Where appropriate, we will use our power to submit Special Reports to Parliament to raise other issues where there is no other more appropriate forum available.

Objective 3: develop Scottish public sector culture and practice where the disclosure of information is routine, valued and increasingly proactive

31. My Policy and Information Team are a conduit for sharing good practice across different sector groups among Scottish public authorities. This sharing of challenges, approach and policy between similar stakeholders is effective and valuable.

⁴ <https://www.itspublicknowledge.info/public-awareness-of-foi>

32. I recognise from feedback that information management functions are under pressure in many public authorities and I am seeking to engage with senior leadership teams on the need and value for their organisations to be more proactive with their FOI information disclosures.
33. Interventions are a key enabler for this approach so without additional resources, this will be difficult to effectively deliver.
34. A new improved platform to assist with statistical returns is being developed. It is envisaged that this platform will proactively publish performance data, allowing authorities to not only benchmark their own performance and tailor performance improvement, but also provide a wide group of stakeholders with accessible performance data. This data is a critical intelligence tool for my office and the public at large to monitor strengths and weaknesses of our FOI regime.

Objective 4: deliver fair defensible decisions in a timely and efficient manner

35. Not only must I deliver decisions that are fair, robust and defensible, but I must also ensure a throughput of cases to ensure decisions are timely and relevant. I am faced with an unwelcome backlog of historical cases and with existing resources, have a challenge to clear these whilst ensuring new cases are dealt with timeously. A project to tackle the backlog is now running and the recruitment of additional temporary staff has just concluded.

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

36. As a respected member of the International Conference of Information Commissioners, my office has continued to influence and inform international discussions, learn from the practice of others, and support colleagues in developing their systems. We will develop further international exposure through collaborations with Higher Education and the third sector and will continue to work closely with the Open Government Partnership.

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

37. We are proud of our good reputation amongst service-users and stakeholders, and will continue to make ourselves available in providing independent, expert advice to both the public and authorities. We will lead by example in the open and transparent delivery of our statutory functions and will be an efficiently run and effectively governed public sector body, keeping pace with recognised standards and requirements. We will adopt new technologies and evolve our working practices and procedure to improve our efficiencies and deliver best value.

Measuring outcomes

38. Key performance indicators are based on statutory duties, such as the requirement to report the number of decisions taking longer than four months, monitoring and promotion of FOI, approval of publication schemes and public sector governance requirements. They are published in the Commissioner's [**Performance and Quality Framework**](#), which is reviewed and republished each year with the operational plan. We will augment these existing KPIs with internal controls to give us early warning of demand issues.

39. Achievement against targets and plans will be reported annually in the Commissioner's [Annual Reports and Accounts](#) laid before the Scottish Parliament and published [quarterly](#) on our website.

Tactical Priorities

40. My tactical priorities for the next four years are:
- a. Eliminating the case backlog and returning the enforcement system to equilibrium, ensuring investigation demand is matched by our investigative resource;
 - b. Supporting and promoting legislative development and extension;
 - c. Building a fulltime Interventions Resource capability.

Resources

The Key Challenge: insufficient resources to meet demand

41. As set out in the Context section above, application numbers continue to rise and will only rise further as the scope of the legislation expands and the number of requests made continue on an upwards trajectory.
42. Our Policy and Information Team is at its lowest sustainable resource level and yet the statutory demand on them for training, support and policy development increases.
43. Our Enforcement Teams that deal with appeals are working at capacity and struggling to keep pace with current demand flow, let alone tackle the backlog of cases.
44. Our intervention work, which I consider to be a crucial demand control, has never been financially resourced and has historically been covered as an additional responsibility of either the policy or enforcement functions. With both now working at full capacity I fear having to cut back on the delivery of my other core functions to ensure that the successes of previous interventions are applied to other authorities.

A Future Reduction

45. Given the backlog and current demand forecasting, it is improbable that enforcement demand will reduce in the foreseeable future. As outlined above, the policy team face enormous demand to deliver their statutory roles too and so I have no internal reconfiguration options available.
46. I am keen to explore shared service opportunities with other Scottish Parliamentary Corporate Body (SPCB) funded Officeholders and align more of our corporate policies and resources.

A Future Increase

47. My office faces a daunting level of demand in the coming period, with policy development, support, enforcement and interventions assured to increase. I am grateful for the support of the SPCB in providing additional funding to assist me tackle the backlog. I aspire to see the

benefits of interventions as an efficient and effective way of resolving identified FOI practice failures and, in particular, have a dedicated personnel resource allocated to that role.

Finances

Approach

48. Funding of my office is from the SPCB. For 2024-25 my core budget has been confirmed as £2.413 million. For specific projects I can apply to the Officeholders Contingency Fund if the costs cannot be met from within in the core budget.
49. I recognise that the next four years will remain challenging for public services and to public service finances. I will continue our approach of:
 - (i) seeking core funding to enable me to deliver my statutory functions to an acceptable standard and quality, and within the timescales expected of us in FOISA and other legislation. I recognise I will be required to consider, and consult with the SPCB and others, about the impact of reductions in public sector spending during the period of this plan. I will however flag that I am currently under resourced, cannot deliver best value and intend to apply for an increase to my core budget for additional resources to conduct interventions in future years.
 - (ii) seeking additional, discrete funding from the SPCB Contingency Fund for legal costs to defend appeals against decisions and for one-off high priority purchases relating to replacement equipment, cyber resilience, data protection, health and safety requirements or to respond to unexpected events.
 - (iii) seeking contingency funding as appropriate and for specific projects or initiatives, for example additional temporary resources to deal with our historic backlog. Contingency funding requests will be based on sound business principles and will not impose additional requirements on our core funding. I will work in consultation with the SPCB to ensure that needs, priorities and funding requirements are brought to their attention and supported by sound business reasons, at the earliest feasible opportunity.
50. This strategic plan focuses on core funding requirements: the minimum we need to continue to meet statutory functions. It is however anticipated that the demand on our services will increase through extension of legislation to new bodies, through legislative reform and through increased complexity and volume of appeals as a consequence of general public dissatisfaction in public service cuts.
51. With current economic uncertainty it is difficult to project budgets forward beyond 2025 and an annual budgeting cycle without organisational reserves compounds the situation.
52. There will be a shift from capital to revenue as we adopt cloud solutions and licence rather than purchase software. Our biggest budgetary component, our staff cost, will likely continue increase in accordance with pay awards and employment costs over which I have practically no influence. However, any new duties, or responsibilities will require an uplift in our staff complement too.
53. Table 1 reflects indicative core budget as known at this time. This will be reviewed as part of the budgeting process and in any refreshed strategic plan.

Year	Indicative Budget
2024/25	£2,413,000
2025/26	£2,485,390
2026/27	£2,559,952
2027/28	£2,636,750

Table 1: Indicative Core Budget Request

Medium term Financial Strategy

54. This core budget is insufficient to effectively undertake the intervention work that is required. As the FOI regime grows, maintaining standards and having an early intervention capability will present excellent value and significant system efficiencies. Work is currently focused on stabilising the enforcement function but I aspire to seeking an increase to core funding for interventions in 2025-26.
55. A full transition to hybrid working will likely require contingency funding support in 2024-25 but this should enable my premises at Kinburn Castle to accommodate additional Commissioners' offices and enable the sharing of services and assets at significant saving to the SPCB.

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