

Interventions Activity Quarterly Report: 2022 - 23 Q1- Q3 (October to December)

1. The Commissioner carries out interventions in cases where a Scottish public authority is failing to meet the requirements and standards set out in FOI legislation and Codes of Practice. For more information about our approach to interventions, visit www.itspublicknowledge.info/interventions.
2. Reporting on intervention activity is conducted in line with the Commissioner's [Intervention Approach and Procedures](#) and [Enforcement Policy](#). This report provides a summary of intervention activity undertaken during 2021-22 Q1 -Q3 (April to December 2022). All status updates in this report relate to that period, rather than the date of publication of this report.

Intervention Caseload

3. Due to resource restrictions, new intervention activity over 2022-23, but work on all open Level 2 and above interventions continue, with Level 1 intervention work continuing in conjunction with appeal or enquiry files.
4. It is anticipated that intervention work will resume to previous levels of activity once staff recruited in 2022-23 are in place.

Level 1 interventions

5. *Used for:* Failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and requires remedial action.
6. **377** non-compliance issues are recorded in WP from 1 April 2022 to 31 December 2022. Of these, **132** resulted in some action by our office to rectify the concern identified. Notable actions by the team are set out below:
 - Vision Express Limited: Alerted that is in, in part, covered by FOISA.
 - Scottish Borders Housing Association Ltd: Information Notice issued to obtain submissions.
 - Clackmannanshire Council: Issues regarding the management and culture of FOI identified during an investigation raised in Decision Notice covering letter. Further issues related to training and awareness of EIRs identified during FTR investigations (further action may be required).
 - Dundee City Council: practice of automatically withholding numbers less than five, raised during an investigation resulting in case resolved and change in practice.
 - Scottish Courts and Tribunal Service: highlighted that certain guidance, only available in hard copy, would benefit from being published on website to allow wider access.
 - Public Health Scotland: alerted to 47 requests caught in a legacy system not identified or responded to in time. We were satisfied that PHS took adequate steps to identify and advise all of those impacted.
 - Fife Council: Advice provided on updating content of template response letters.

- NHS Greater Glasgow and Clyde: Advice provided on the correct calculation of 20 working days to avoid the receipt of invalid appeals.
- Perth and Kinross Council: reminder issued that “business as usual requests” are still valid for the purposes of FOISA.
- Scottish Borders Council: Advice provided to PA on how to provide information in a format to assist Applicant understand the information disclosed to them.
- Moray Council: Requesting the Council to include a suitable email address for the submission of reviews. Asked it to confirm that it was accepting and identifying all reviews received through other means – despite the instructions contained in its template review letter.
- Scottish Enterprise: Requesting changes were made to its online request form to ensure that it was compliant with section 8 to allow a valid request to be made.

Summary of all Level 1 interventions (including non-compliance notes)

Issue	Number
Compliance with timescales – request	114
Compliance with timescales – review	93
Review process	45
Handling of initial request	38
Delay to PA submissions	34
Engaging with SIC	9
Advice and assistance	8
Management of FOI function/culture	7
Delay to withheld information	4
Stats submissions	5
Other	4
Failure to recognise EIR request	2
Searches	2
Information Notice issued	1
Publication scheme	1
Covid-19 related delay	1

Level 2 interventions

7. *Used for:* Practice failure. A member of the Commissioner’s staff raises the issue with the authority, initially at Chief Executive or equivalent, and requires steps to be taken to resolve the issue and achieve a target outcome.
8. Level two interventions:

Public Authority	Issue	Date initiated
Falkirk Council	Compliance with timescales	24 May 2022
Highland Council	Compliance with timescales	30 October 2019
NHS Highland	Compliance with timescales	9 December 202 (escalated to level 2 on 14 March 2022)
NHS Western Isles	Compliance with timescales	9 December 2020 (escalated to level 2 on 14 March 2022)

Scottish Ambulance Service Board	Compliance with timescales	12 October 2020
Scottish Environment Protection Agency	Management of FOI function/culture	10 June 2021
University of Edinburgh	Compliance with timescales	13 October 2020
Midlothian Council	Compliance with timescales	4 November 2021
Scottish Prison Service	Compliance with timescales	17 February 2022
Inverclyde Council	Compliance with timescales	17 February 2022

Compliance with timescales

9. These interventions were opened after analysis of the authorities' FOI statistics showed a long-term trend of high rates of late responses to requests. The interventions have involved:
 - seeking an explanation of the factors that have led to the high late-response rates
 - requesting details of the actions to be taken by the authority to improve performance
 - monitoring and seeking evidence of their progress towards a target outcome.
10. Monitoring of **Highland Council's** performance continues, Q2 2022 statistics show that the Council's performance continues to plateau at approx. 80%. Further analysis of the Council's departmental figures show that particular departments may be having a significant influence over the overall performance figure. Further explanation for the fluctuations in the performance figures have been sought in order to target assistance.
11. **Scottish Ambulance Service Board** continues to submit monthly statistics. Despite showing an improvement at this point last year, performance continues to fluctuate with the last two monthly submissions recording 82% and 85% respectively. Q2 statistics suggest that 81% of requests are responded to within timescales. Q3 statistics to be reviewed to determine next steps.
12. **Falkirk Council** continues to submit monthly monitoring statistics. Latest statistics suggest a performance rate 76% (November 2022). The Council has identified a particular department that is having a significant impact on its overall performance. Performance will continue to be monitored.
13. **NHS Western Isles** submitted that it had experienced a dip in performance due to impact of the covid-19 pandemic and competing priorities with patient facing services. However, there has been a significant sustained improvement since Q4 2021. Latest statistics show that that NHS Western Isles has responded to 95% and 96% of requests on time in Q1 and Q2 of 2022.
14. **NHS Highland** submitted an action plan in August 2022. Actions included reviewing FOI Policy, training FOI Officer, introduction of performance management measures including escalation, implementation of KPIs and awareness raising. Q1 and Q2 statistics suggest that there has since been a significant improvement with 96% (Q1) and 98% (Q2) of requests responded in time.

15. **Midlothian Council's** performance was impacted by a legacy system. The Council has now moved to a different system for monitoring requests. Q2 2022 statistics show that the Council continue to experience difficulties responding in time with 18% of requests responded to late.
16. The Scottish Prison Service identified two reasons for its dip in performance. This related to resources issue within a particular prison, related to a change in personnel. The other related to a specific directorate within SPS HQ, which was experiencing a number of complex requests combined with a staffing issue. SPS has taken steps to address these issues. Q2 2022 statistics suggest that the SPS are now responding to 91% of requests in time.
17. Following the receipt of our intervention letter, **Inverclyde Council**, explained that it had identified a dip in its performance, but this could be explained by a large number of late requests during a three-month period (associated with staff absence). The Council advised that it has implemented a new monitoring and escalation process. It has also installed a new case management system. Q2 2022 statistics record that the Council is now responding to 90% of requests within statutory timescales.
18. The intervention with the **University of Edinburgh** is completed and due for closure. The University has made significant improvements and has reported a sustained 90% response rate between January and August 2022.
19. This success can be attributed to the following actions:
 - a. Escalation process put into place
 - b. New request management tool
 - c. Additional staff resource
 - d. Mitigations to take account of pandemic

Management of FOI function/culture

20. Work continues to support the **Scottish Environment Protection Agency (SEPA)** to rebuild its FOI performance following the cyber-attack in December 2020, prior to which the authority had recorded high rates of late responses to requests over a sustained period.
21. A significant issue in the implementation of this intervention was access to reliable and comprehensive performance/monitoring data. Significant work has now been undertaken by SEPA, not only to collect the most comprehensive datasets from which FOI performance can be measured, but also a wider project to rebuild its wider access to information regime with a focus on proactively publication. Formal action plan with key milestones was set to be agreed in December 2022, but with the appointment of a new Chief Executive, this has been delayed until late January 2023.
22. We continue to receive failure to respond appeals related to SEPA but have taken steps and offered guidance to ensure compliant responses are issued.

Level 3 interventions

23. *Used for:* Serious systemic practice failure. A member of the Commissioner's Senior Management Team raises the issue with the authority's Chief Executive or equivalent, and

requires a detailed action plan to be put in place to address the failure and achieve a required outcome.

Management of FOI function/culture (1)

24. Our long-running [intervention with the Scottish Ministers](#) regarding their FOI performance and practice continued. Our second detailed assessment report was published in May 2022.
25. We continue to meet on a monthly basis with staff from the Scottish Government's FOI Unit to review progress in the areas covered by the intervention, and review monthly statistical submissions on FOI performance. In doing so, we are principally focussed on monitoring the Scottish Government's progress against its 2022-23 Improvement Plan. This plan was developed in response to the intervention recommendations contained in the Commissioner's May 2022 Intervention Progress Report, and is focussed on resolving the outstanding elements from those identified in the Commissioner's initial intervention report, namely those related to: clearance procedures, case file records management, case handling and the effective monitoring of FOI requests.
26. Following the issues related to data quality highlighted in our May 2022 Report, the Commissioner is seeking information from the Scottish Government on the quality and reliability of data currently available through Scottish Government systems, before making a decision on next steps in relation to the intervention.

Level 4 interventions

27. *Used for:* Consistent, ongoing failure to comply with FOI law and guidance. The Commissioner uses their statutory powers to address the problem, which may include practice recommendations or enforcement action.

Management of FOI function/culture

28. This intervention with **Aberdeenshire Council** was opened at Level 3 in September 2021 after concerns were raised about an instance in which the council appeared not to have handled requests in a way that was 'applicant (or requester) blind' - that is, not influenced by who made the request - and in particular, had inappropriately shared the requester's identity with another organisation.
29. After receiving the council's response to our initial contact regarding the concerns raised, the decision was taken to escalate the intervention to Level 4 and to [issue a formal Practice Recommendation](#) to the authority.¹ The Recommendation requires the council to ensure all staff are trained in understanding the 'applicant blind' principle, to emphasise to senior managers the leadership they are expected to provide in all aspects of managing FOI, and to reported back to the Commissioner with evidence of these actions in February 2022.
30. The Council has cooperated with the intervention including by sending information and evidence as requested. It is anticipated that this intervention will close in 2022-23.