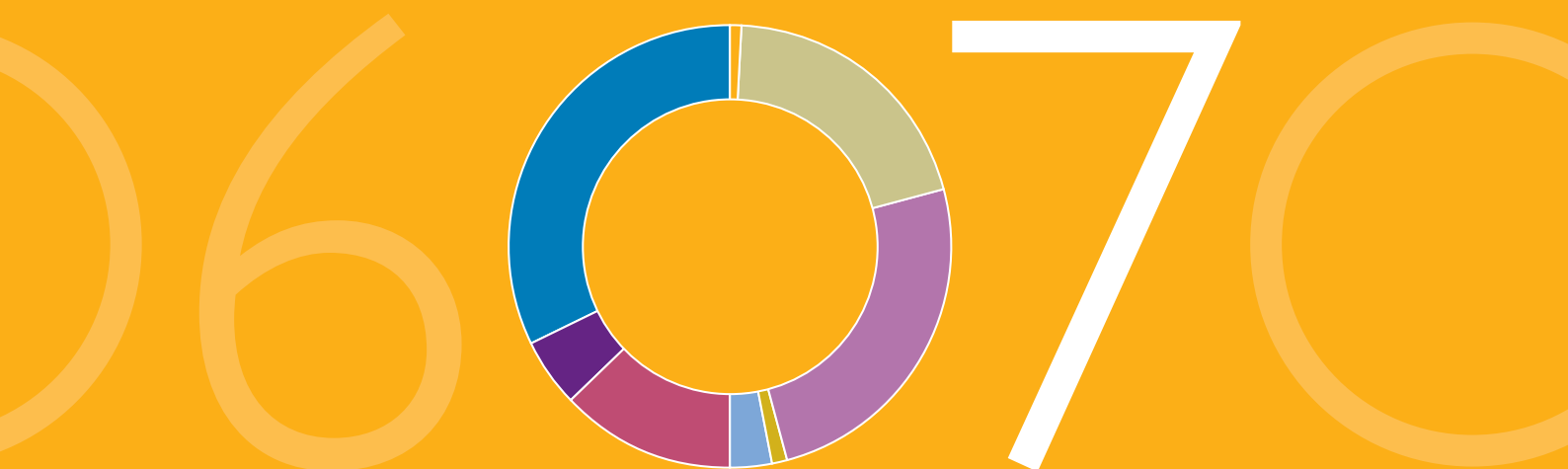




# PAST PRESENT FUTURE



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I am pleased to present my fourth annual report as Scottish Information Commissioner. As always, my report will reflect on the year's progress – but this year I would like to go further.

It is now five years since I became Scotland's first Information Commissioner, and during that time I have been heartened by the determination shown by many – in government, public authorities and the media, as well as by applicants – to make Scotland's new Freedom of Information (FOI) legislation a success. As this report shows, the extent to which the new rights have become embedded in public life and used on a daily basis has undoubtedly contributed to Scotland's reputation as having a progressive and effective FOI regime.

I believe my Office has played a positive role in this, and I would like to pay particular tribute to my staff in St Andrews – their commitment and professionalism has been invaluable in helping me to discharge my duties. They do me great credit.

In my report this year, I look back at where we have come from, and reflect on how we came to be in the strong position we now occupy, a mere three years since FOISA\* fully came into force. I reflect on the successes and experiences of 2007, during which many challenges emerged which tested and deepened our understanding of FOISA. I share with you a rich compendium of data and statistics which give the widest picture of FOI in Scotland today, and which I hope you will retain for reference throughout the year.

Finally, I am delighted to have been nominated by Parliament for a further four year term as Commissioner, and in this report I look forward to the future with hope for even further progress. I believe that if we build on what has been achieved so far, a really open Scotland will emerge.

I commend this report to you.



**Kevin Dunion**  
Scottish Information Commissioner  
March 2008



\* The Freedom of Information (Scotland) Act 2002.

# PAST PRESENT FUTURE

Looking back over the past five years it is safe to conclude that the implementation and application of the Freedom of Information (Scotland) Act 2002 (FOISA) has been a success.

The key indicators of this are:

**Publication schemes for all 10,000 public authorities in Scotland were in place by 1 December 2004**

**FOISA came fully into force on 1 January 2005 as scheduled**

**Public awareness of FOISA has risen to 74%**

**Requests for information from 1 January 2005 have increased**

**Two thirds of appeals to me were from members of the public**

**I have issued more than 550 decisions**

I believe that more information has now been disclosed than would have been the case if FOISA had not come into force.

It is easy to take this for granted, but looking behind these headline achievements, it has not been plain sailing. Prior to FOISA coming into effect there were questions as to whether authorities would be ready to deal with requests; whether the public would be aware of their rights and would use them; and whether my decisions would be accepted or would be regularly challenged.

# Bringing the Act into effect

FOISA was not passed until May 2002, some two years later than the equivalent legislation was passed by Westminster. There was a strong desire in Scotland to have the same start date, but we had the disadvantage of a shorter lead-in time, exacerbated by the delay in the appointment of the Commissioner until the end of February 2003. It is little remembered that Parliament did recognise that it might not be possible to meet the ambitious deadline of 1 January 2005, and had in fact made provision for FOISA to come into effect later than that if I so recommended. However, I shared the wish of Ministers to achieve a start date which matched the rest of the UK.

The main implementation tasks, then, were:

>> **To approve publication schemes for all of Scotland's public authorities**, ranging from the Scottish Parliament through local authorities and health boards, to individual GPs and dentists – some 10,000 bodies in total. Publication schemes set out the types of information which the authority undertakes to publish as a matter of course. This was completed, on schedule, by 1 December 2004.

>> **To train authorities to recognise and respond to FOI requests.** A major programme of training was promoted by the (then) Scottish Executive, my Office and individual authorities. Training manuals were produced; regional training events were held throughout Scotland and an enquiries helpline at my office received hundreds of calls. There were lots of concerns about how authorities would know what information they held; whether frontline staff would recognise a request and whether information would be found and provided within 20 working days.

>> **To increase public awareness.**

The public had been able to request information for several years through voluntary codes of access and even through statutory rights such as the Environmental Information Regulations which had been in place since 1992. However, these rights were little known and little used. I commissioned a national television advertisement based around the simple message that, from 1 January 2005, the public had new rights to information from a wide variety of bodies. I backed that up with literature and a website setting out what these rights were and how they could be used effectively; how to make a request; how to request a review; how to make an appeal and what timescales applied to each of these stages.

A public awareness survey was carried out in October 2004 which showed 44% of the public had heard of FOISA. Following the advertising campaign, this increased to 69% in March 2005, and then to 72% in October 2005. Awareness has remained fairly constant since then, although in the most recent survey in

October 2007, the number of people who had heard of FOISA had increased to 74% – the highest level yet.

## The Act in force

Since FOISA has come into force I have received over 1,500 applications. Some of these were invalid and did not therefore require a formal decision. Applications can come to me prematurely, or relate to organisations not covered by FOISA. In addition, many valid applications will be withdrawn or settled once an investigation is underway because the authority provides the information, or the applicant accepts that it is not held or cannot be released.

Nevertheless I have issued more than 550 decisions. Only 4% of these have been appealed to the Court of Session. Largely, my decisions have been accepted, and I have never had to use my powers to refer an authority to the court for not complying with the requirements of one of my decisions.

Only 4 appeals have actually been heard by the Court of Session to date, and the delay between an appeal being lodged and the Court hearing is frustratingly long – exceeding 15 months.

**Further reading in this report:**

THE STORY SO FAR: A SUMMARY OF KEY MILESTONES pages 4 to 5

STATISTICS ON APPLICATIONS AND INVESTIGATIONS pages 7 to 9

STATISTICS ON OUTCOMES AND DECISIONS page 10

Some of my decisions have been high profile and on matters of sensitivity, e.g.:

- >> releasing surgical mortality statistics for all surgeons in Scotland;
- >> releasing sex offender statistics;
- >> releasing the report of a Chief Constable's investigations into a complaint against another police authority;
- >> releasing an entire PFI/PPP contract.

These decisions overturned the previous norms of non-disclosure. Yet the feared harm from disclosing the information has not resulted and subsequently a more proactive approach to publication of this type of information is being developed.

However, my decisions can also endorse non-disclosure. For example, I have regularly taken the view that witness statements made to the police should not be disclosed, and that legal advice to an authority from its advisers is also exempt from disclosure.

**A success story**

So, freedom of information in Scotland has been a success story. That is not to say that there are not differences of opinion on how the Act should be interpreted, responded to or improved.

However, the legislation is regarded as being strong and progressive.

The new rights have been actively used and have led to the disclosure of information which would not otherwise have been put into the public domain.

There is no doubt that at times the volume and nature of requests has been uncomfortable for public authorities – particularly, it has to be said, those from the media, given the prominence and interpretation afforded to any story which eventually appears.

However, to the great credit of those in government, changes to the legislation have not been brought forward which would hamper requesters or extend the exemptions, for example by charging up-front fees for requests, or creating new absolute exemptions for certain types of information.

Increasingly the Scottish experience is of interest to other countries that are bringing in or reviewing their own FOI legislation, and I am pleased to work with the British Council, the Carter Center in the US and directly with international counterparts, exchanging experience and advice.

In conclusion, we have made a most successful start.

# The story so far...

## A summary of key FOI milestones

### MAY 02

- FOISA\* receives Royal Assent.

### DECEMBER 02

- Nomination of Commissioner by Parliament.

### FEBRUARY 03

- Commissioner takes up post.

### OCTOBER 03

- Commissioner's office in St Andrews is opened.

### DECEMBER 04

- Over 1,500 delegates attend conferences and seminars in the countdown to the Act coming into force.
- Publication schemes for 10,000 public bodies are in place, on schedule.

### JANUARY 05

- FOISA comes into force, on the same day as FOIA\*\* in England and Wales.
- Environmental Information (Scotland) Regulations 2004 come into force.

### FEBRUARY 05

- Major advertising campaign boosts public awareness of FOISA from 44% to 69%.

### APRIL 05

- First and only section 31 certificate is issued by the Scottish Executive, exempting information about G8 Summit in Gleneagles from the Act.

### MAY 05

- Commissioner issues first decision to a public authority, requiring speed camera information to be disclosed.

### JULY 05

- Commissioner finds that the Scottish Executive has taken reasonable steps to open up institutional childcare records.
- Commissioner rules that MSPs are not covered by the Act.

### DECEMBER 05

- Commissioner rules that surgical mortality rates should be released.
- Scottish Executive announces a review of the first year of FOISA.

### JANUARY 06

- In FOISA's first year of operation, 56% of appeals are from members of the public, 7% from journalists, 19% from solicitors.

### FEBRUARY 06

- Scottish Executive published details of agricultural subsidies for the first time.

### SEPTEMBER 06

- 1,000th application to the Commissioner.
- Commissioner orders release of registered sex offender statistics for North and South Lanarkshire.

### DECEMBER 06

- First Court of Session ruling finds in Commissioner's favour and CSA are ordered to release childhood leukaemia data. (Currently under appeal to the House of Lords.)

\* The Freedom of Information (Scotland) Act 2002

\*\* The Freedom of Information Act 2000

## JANUARY 07

- Court of Session agrees with Commissioner's finding that FOISA does not allow creation of a class exemption for information concerning advice/exchange of views. Information content must always be considered.
- Commissioner orders release of a Chief Constable's investigation report into a complaint against another police authority.

## MARCH 07

- The Scottish Executive publishes its review into the first year of FOISA.

## SEPTEMBER 07

- 500th decision issued coinciding with International Right To Know Day – Commissioner orders release of 1912 murder case notes.
- 71% of public authorities report change in culture as a result of FOISA.

## OCTOBER 07

- Commissioner orders release of full PFI contract between NHS Lothian and Consort Healthcare. Other health authorities say they will release PFI contracts.

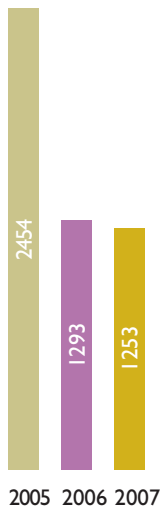
## NOVEMBER 07

- Public awareness of FOISA rises to 74% – the highest level yet. 64% of respondents to public opinion survey believe that public bodies are more open and accountable as a result of FOISA.
- Commissioner addresses the International Conference of Information Commissioners in New Zealand.



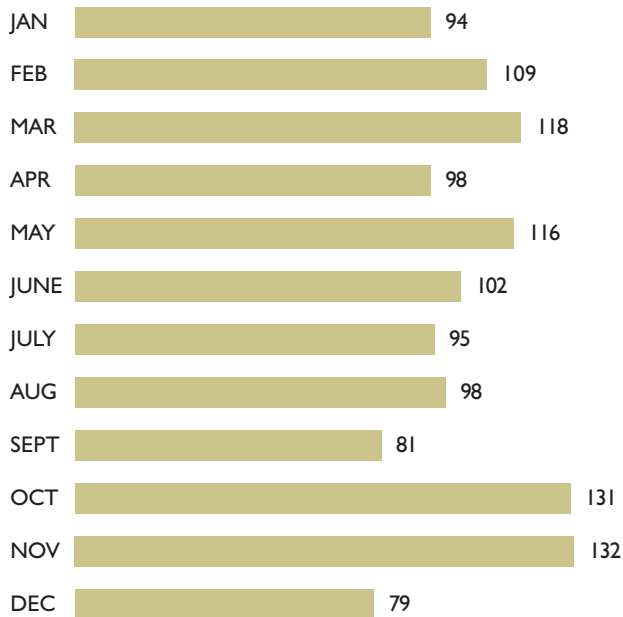
# Enquiries

TOTAL ENQUIRIES\*  
BY YEAR 2005-2007:



\* Excludes complaints and information requests to the Commissioner

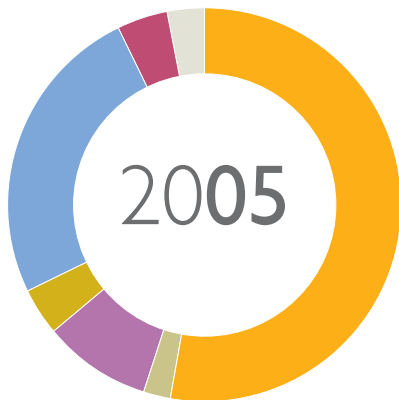
TOTAL ENQUIRIES FOR 2007 BY MONTH:



## Enquiries...

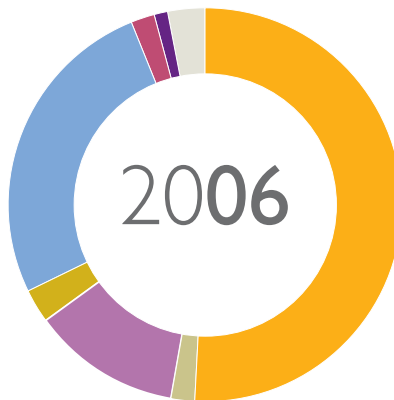
Enquiry levels have remained steady following a high number in the first year of implementation.

Over 80% of enquiries come from the public, or public authorities. Enquiries by journalists and solicitors account for a small proportion of the routine contact with the office.



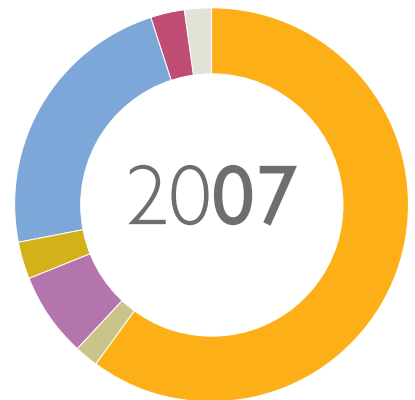
TOTAL ENQUIRIES % BY TYPE  
OF ENQUIRER 2005:

- 53% Adult
- 2% Elected representative (MP, MEP, MSP, councillor)
- 9% Media
- 4% Private enterprise
- 25% Public authority
- 4% Solicitor
- 3% Voluntary/campaign organisation



TOTAL ENQUIRIES % BY TYPE  
OF ENQUIRER 2006:

- 51% Adult
- 2% Elected representative (MP, MEP, MSP, councillor)
- 12% Media
- 3% Private enterprise
- 26% Public authority
- 2% Solicitor
- 1% Union
- 3% Voluntary/campaign organisation



TOTAL ENQUIRIES % BY TYPE  
OF ENQUIRER 2007:

- 60% Adult
- 2% Elected representative (MP, MEP, MSP, councillor)
- 7% Media
- 3% Private enterprise
- 23% Public authority
- 3% Solicitor
- 2% Voluntary/campaign organisation



# Applications overview

CASE DISPOSAL BY STAGE 2005-2007:*	2005		2006			2007		
	No. cases	Total % of Total†	No. cases	Total	% of Total	No. cases	Total	% of Total
Brought forward from previous year:	0		338			299		
New applications	580		512			482		
<b>Total caseload:</b>	<b>580</b>		<b>850</b>			<b>781</b>		
<b>Cases closed without investigation:</b>								
Frivolous or vexatious	1	0%	3		1%	2		0%
Premature or out of time	5	1%	12		1%	43		6%
Withdrawn or abandoned	14	2%	51		7%	54		7%
Settled	0	0%	1		0%	2		0%
Excluded under s48	6	1%	10		1%	7		1%
Format invalid**	46	8%	61		7%	27		3%
Body not covered	7	1%	19		2%	11		1%
Other deficiency	21	4%	63		7%	69		9%
	<b>100</b>		<b>220</b>			<b>215</b>		
<b>Cases closed during investigation:</b>								
Withdrawn or abandoned	12	2%	42		5%	58		7%
Settled	26	4%	36		4%	65		8%
Frivolous or vexatious	0	0%	1		0%	5		1%
Other	6	1%	5		1%	7		1%
	<b>44</b>		<b>84</b>			<b>135</b>		
<b>Cases closed with decision:</b>								
For applicant	33	6%	56		6%	62		8%
For authority	32	5%	104		12%	105		14%
Partially upheld	33	6%	87		10%	82		10%
	<b>98</b>		<b>247</b>			<b>249</b>		
<b>Total cases closed:</b>	<b>242</b>	<b>42%</b>	<b>551</b>		<b>65%</b>	<b>599</b>		<b>77%</b>
<b>Total cases carried forward to next year:***</b>	<b>338</b>	<b>58%</b>	<b>299</b>		<b>35%</b>	<b>182</b>		<b>23%</b>

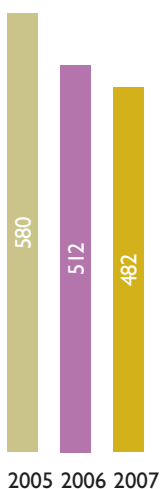
\* 2005 and 2006 figures restated

\*\* Format invalid denotes applications which do not contain all the information necessary to enable investigation

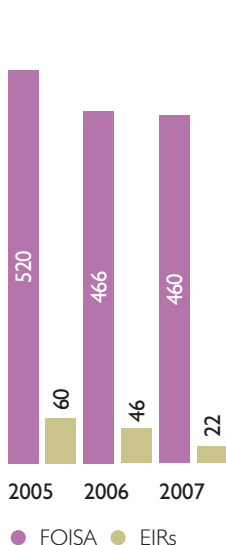
\*\*\* Includes cases under investigation and cases awaiting validation

† Percentages have been rounded to nearest % point for each year.

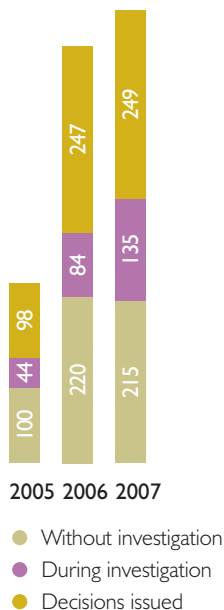
TOTAL NEW APPLICATIONS 2005-2007:



APPLICATIONS BY LEGISLATION 2005-2007:



CASES CLOSED – OUTCOMES 2005-2007:



## Applications...

The rate of applications has levelled over the 3 years since FOISA came into force.

The rate of applications involving use of the EIRs has always been significantly lower than for FOISA, and is declining.

Case closure rates have improved year on year – by the end of 2007 the caseload was reduced to 182 applications.

# Cases closed without decision

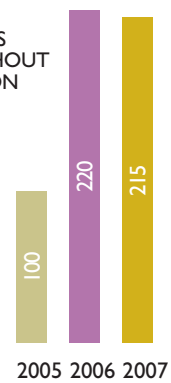
## Closed cases...

Cases may be 'withdrawn' or 'abandoned' without investigation because they are resolved following initial contact with the public authority.

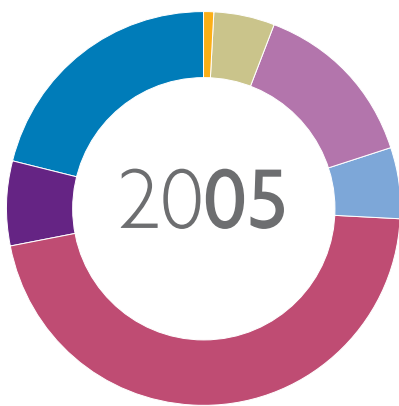
Concern remains about the level of applications which are invalid e.g. received prematurely.

Cases may also be resolved *during* investigation – information may be wholly or partially released, or the applicant may decide not to pursue.

NUMBER OF APPLICATIONS CLOSED WITHOUT INVESTIGATION 2005-2007:

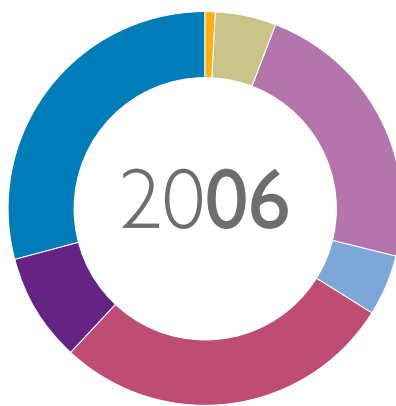


REASONS FOR CLOSURE **WITHOUT** INVESTIGATION 2005-2007:



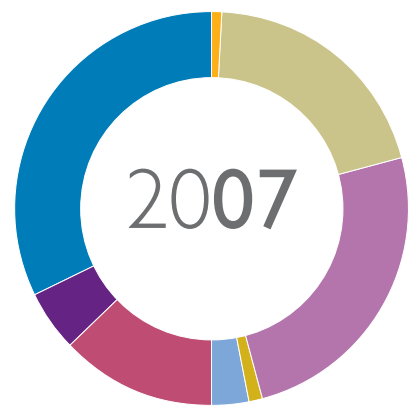
REASONS FOR CLOSURE 2005:

- 1% Frivolous or vexatious
- 5% Premature or out of time
- 14% Withdrawn or abandoned
- 6% Excluded under s48
- 46% Format invalid
- 7% Body not covered
- 21% Other deficiency



REASONS FOR CLOSURE 2006:

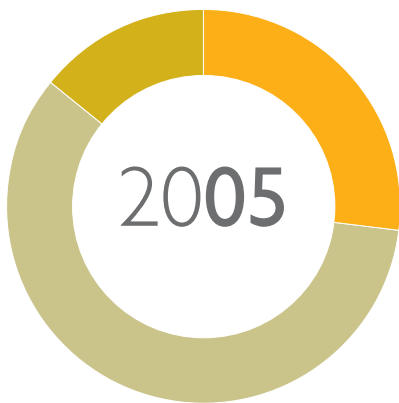
- 1% Frivolous or vexatious
- 5% Premature or out of time
- 23% Withdrawn or abandoned
- 5% Excluded under s48
- 28% Format invalid
- 9% Body not covered
- 29% Other deficiency



REASONS FOR CLOSURE 2007:

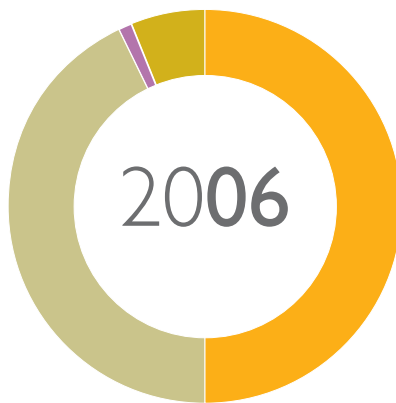
- 1% Frivolous or vexatious
- 20% Premature or out of time
- 25% Withdrawn or abandoned
- 1% Settled
- 3% Excluded under s48
- 13% Format invalid
- 5% Body not covered
- 32% Other deficiency

APPLICATIONS CLOSED **DURING** INVESTIGATION 2005-2007:



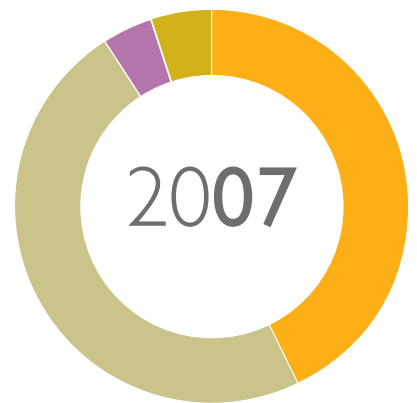
CLOSED APPLICATIONS 2005:

- 27% Withdrawn or abandoned
- 59% Settled
- 14% Other



CLOSED APPLICATIONS 2006:

- 50% Withdrawn or abandoned
- 43% Settled
- 1% Frivolous or vexatious
- 6% Other

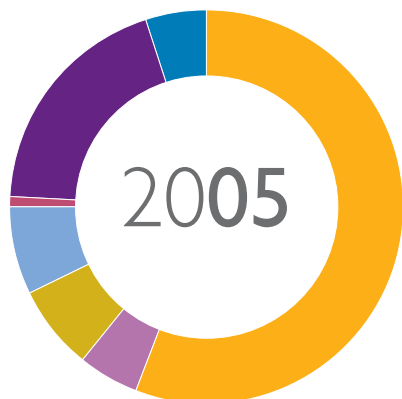


CLOSED APPLICATIONS 2007:

- 43% Withdrawn or abandoned
- 48% Settled
- 4% Frivolous or vexatious
- 5% Other

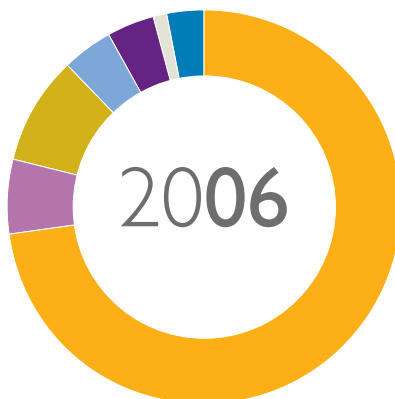
# About applicants

APPLICANTS BY TYPE 2005-2007:



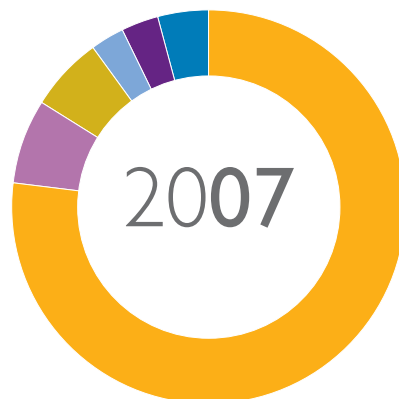
APPLICANTS 2005:

- 56% Adult
- 5% Elected representative (MP, MEP, MSP, councillor)
- 7% Media
- 7% Private/commercial enterprise
- 1% Public authority
- 19% Solicitor
- 5% Voluntary/campaign organisation



APPLICANTS 2006:

- 73% Adult
- 6% Elected representative (MP, MEP, MSP, councillor)
- 9% Media
- 4% Private/commercial enterprise
- 4% Solicitor
- 1% Union
- 3% Voluntary/campaign organisation



APPLICANTS 2007:

- 77% Adult
- 7% Elected representative (MP, MEP, MSP, councillor)
- 6% Media
- 3% Private/commercial enterprise
- 3% Solicitor
- 4% Voluntary/campaign organisation

WHAT OUR APPLICANTS ARE LOOKING FOR 2005-2007:

	% of applicants 2005	% of applicants 2006	% of applicants 2007
Administration and finance	15	13	17
Safety and crime	11	21	10
Commercial activities/contracts	5	2	9
Employment and economy	5	8	9
Planning/property/building control	8	11	6
Education and learning	3	5	5
Care (children and older people)	2	4	4
Environment	3	6	3
Health	7	7	3
Arts, culture and leisure	1	3	2
Housing	3	5	2
Transport and roads	8	6	2
Agriculture and fisheries	0	2	1
Environmental health/trading standards	3	1	1
Grants and funding	3	1	0
Licensing	0	1	0
Other	22	5	26

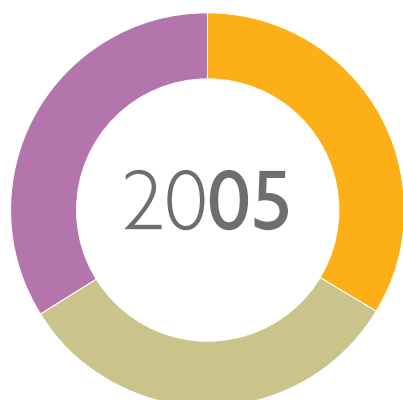
## Applicants...

Over 75% of applications come from members of the general public. The proportion of applications from commercial enterprises and solicitors has declined.

The proportion of applications from the media remains steady at around 7%, and is consistent with the experience of other jurisdictions.

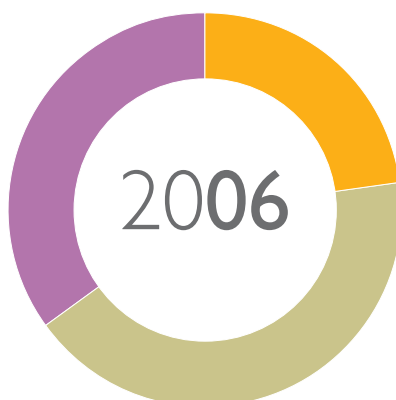
The Commissioner receives few applications from the voluntary sector.

# Decisions



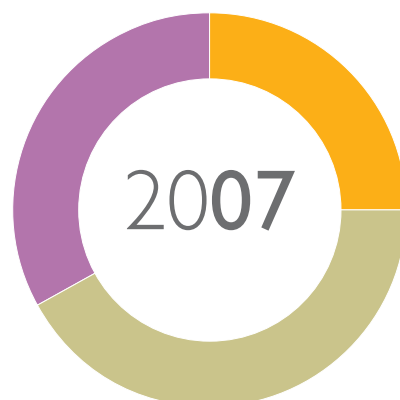
CASES CLOSED WITH DECISION – OUTCOMES 2005:

- 34% For applicant
- 33% For authority
- 34% Partially upheld



CASES CLOSED WITH DECISION – OUTCOMES 2006:

- 23% For applicant
- 42% For authority
- 35% Partially upheld



CASES CLOSED WITH DECISION – OUTCOMES 2007:

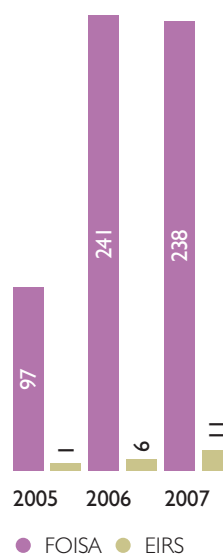
- 25% For applicant
- 42% For authority
- 33% Partially upheld

## Decisions...

The Commissioner has issued nearly 600 decisions over the past 3 years – most of these have been FOISA decisions.

Since the Act came into force, 25% of the Commissioner's decisions have been wholly in favour of the applicant, 41% wholly in favour of the public authority, and the remaining 34% partially upheld.

DECISION NOTICES  
FOISA and EIRS  
2005-2007:



## FOI requests to the Commissioner

INFORMATION REQUESTS TO SCOTTISH INFORMATION COMMISSIONER 2005-2007:			
	2005	2006	2007
Publication scheme enquiry:	236	75	47
Request for information held by Commissioner (FOISA/EIRs):	74	84	48
Information provided in full	38	34	23
Information partially supplied	10	6	6
Information not supplied	3	7	5
Information not held by Commissioner	23	37	14
Request for review:	4	4	1
Request for information held by Commissioner (Data Protection Act):	4	2	1

## FOI requests...

The majority of FOI requests to the Commissioner are for information he holds about applications.

# PAST PRESENT FUTURE

## A report card for 2007

The notable operational aspects of 2007 are:

**The number of applications to my Office has stabilised**

---

**Additional staff resources have come on stream**

---

**Organisational restructuring has led to a better deployment of staff**

---

**Operational information has been improved**

As a consequence we have been able to set achievable performance targets for case closure and have seen a marked reduction in the number of excess cases on hand (i.e. the number of cases under investigation which exceed the *projected level* of cases under investigation).

We aim to eradicate this backlog of cases by April 2008.

# A report card for 2007

**My staff complement is now 24. Staff are clustered in 3 areas of activity.**

## **Investigation and enforcement:**

**Led by Margaret Keyse, Head of Investigations.**

Freedom of Information Officers are responsible for investigating applications, drafting decisions and ensuring compliance. In addition, they prepare briefings on the legislation and respond to enquiries from the public, applicants and public authorities.

Key to our success in progressing more cases this year has been the creation of two investigative teams, each under a Deputy Head of Investigations, with clear individual and team targets for closing cases.

## **Policy and information:**

**Led by Sarah Hutchison, Head of Policy and Information.**

We have created a small team to promote awareness of the Act and to foster improved practice by public authorities. This year the team has overseen the complete redevelopment of our website, which now has a fully searchable database of decisions, and new tools for the public to ensure that requests to authorities and applications to me are valid.

## **Operations:**

**Led by David Lowrie, Head of Operational Management.**

Sound management of staff and resources is essential to enable me to meet my obligations as an employer and as Accountable Officer. Although our budget of £1.45 million is relatively modest, we aim to exhibit good practice as a public authority.

In this past year we have revised our performance management system and we are implementing our records management strategy. Crucial to our success in case management has been our new 'dashboard' which shows, at a glance, key performance indicators on case numbers, throughput and timescales.

## **Interpreting the law**

Early in 2007 the Court of Session issued its judgement on appeals made by the (then) Scottish Executive against three of my decisions. The Court found wholly in my favour, agreeing that when an authority seeks to withhold information which may harm the effective conduct of public affairs, it can only do so by considering the content of the information.

The Freedom of Information (Scotland) Act (FOISA) does not allow any authority to create a class of information concerning advice, or the exchange of views for the purpose of deliberation, and then to conclude that any

information which falls within that class is exempt from disclosure.

This was an important judgement which ensures that where no absolute exemption applies, each case is looked at on its merits.

My decisions requiring NHS Lothian and VisitScotland to release PFI and commercial contracts attracted much attention. The significance of these decisions is that they point up the limits of claims to 'commercial confidentiality'. As I make clear, it is unlikely that a contract which is the product of negotiation can be regarded as information which has been passed in confidence by a third party to an authority. Furthermore, it is the duty of the authority to submit why it believes all or some of the information is confidential.

The Code of Practice which accompanies FOISA recommends that when contracts are drawn up, any information which is genuinely confidential or commercially sensitive should be clearly identified e.g. by being placed in a separate schedule. Wide ranging confidentiality agreements should not be entered into.

Since my decision some other health authorities have said they will release PFI contract information.

Access to environmental information is a right under a European Directive, which has given rise to the

**Further reading in this report:**

FINANCIAL SUMMARY page 15

INVESTIGATIONS PERFORMANCE  
STATISTICS page 16

CASE STUDIES pages 18 to 23

STATISTICS ON PUBLIC AUTHORITY  
CASES pages 24 to 29

THE PUBLIC AUTHORITIES' VIEWS page 30

THE PUBLIC'S VIEW pages 31 and 32

Environmental Information (Scotland) Regulations 2004 (EIRs), for which I also have responsibility. It is sometimes not clear to an authority when dealing with a request that they should have applied the EIRs rather than FOISA. Often this will make no difference to the outcome, but sometimes it can. For instance:

- >> all of the exceptions in the EIRs (except for some personal data exceptions) are subject to the public interest test. This is not the case for FOISA;
- >> where a right to environmental information exists, no other piece of legislation (including FOISA) can prohibit disclosure under the EIRs. This can happen under FOISA; and
- >> there is no cost threshold for providing information under the EIRs (no information need be supplied under FOISA if it would cost more than £600).

In my decision in November 2007 concerning consideration of road building options (Hawkins and the Scottish Government) I have made it clear that requests which involve environmental information *must* be dealt with under the EIRs even if there is no obvious detriment to the applicant. Furthermore, authorities need to be alert to the wide ranging definition of what constitutes environmental information.

**Awareness and practice**

Our latest annual survey of public awareness (October 2007) showed that almost two thirds of respondents believed that: Scottish public authorities are becoming more open and accountable as a result of FOISA; more information is available from public authorities than ever before and Scottish public authorities are more open than their equivalents in the rest of the UK. Nevertheless, more than half those surveyed thought that public authorities would find a way round their FOI responsibilities if they didn't want to provide information. Encouragingly, the study did reveal that three quarters of respondents who reported having made an FOI request to a public authority received all of the information they had asked for.

These findings are heartening and suggest that awareness of the right to information is becoming embedded in the public consciousness. However, I am concerned that awareness may be lower within those groups who could have most cause to use freedom of information rights - young people, the elderly and those with disabilities. Access to information can be a powerful tool in helping to change an individual's circumstances and we need to ensure that all groups in society are fully aware of their rights.

**New Modes of Information Management in Scottish Public Bodies**

I commissioned academic researchers from the University of St Andrews and Caledonian Business School to consider whether the new FOI laws had made a difference to the way in which public authorities manage their information and what, if any, significant problems they were encountering.

Their report, which was published in September, showed that whilst almost all authorities had made organisational changes to support FOI work, less than 50% had recruited additional staff. Most authorities were positive about the effects of the legislation with almost three quarters saying that it was having a positive impact on culture. More than 40% said that specific decisions made by me had contributed to changes in practice within their organisation.

I followed up the research with a seminar with officials from police, health, education, central and local government to explore further what can be done to promote good practice and culture change in authorities.

# Making the headlines in 2007\*

Campaign group to see  
key bypass documents

Information appeals  
double the English rate

1912 murder notes to be made public

VISITSCOTLAND ORDERED  
TO RELEASE ONLINE  
CONTRACT

Documents into  
dispute over  
waste dump  
are revealed

PAPERS HANDED  
OVER IN FIGHT TO  
SAVE BRAIN UNIT

Watchdog orders NHS to  
release Hepatitis C statistics

**P&J WINS BATTLE  
TO REVEAL NATIONAL  
RESERVE PAYOUTS**

Police told to release sex case figures

Papers reveal why  
Stein not honoured

Secrets of £2.1 billion hospital  
PFI deal to be revealed



# Financial overview<sup>(1)</sup>

## ANALYSIS OF EXPENDITURE:

	Year ended 31/03/2006			Year ended 31/03/2007		
	£000s	%	% of total expenditure	£000s	%	% of total expenditure
<b>Staffing costs</b>	<b>604</b>	<b>100%</b>	<b>52%</b>	<b>804</b>	<b>100%</b>	<b>57%</b>
<b>Operating costs:</b>						
Administration*(2)	365	68%	31%	411	70%	29%
Travel expenses	7	1%	1%	7	1%	0%
Property **	64	12%	5%	70	12%	5%
Audit	15	3%	1%	16	3%	1%
Depreciation	72	13%	6%	72	12%	5%
Notional cost of capital	12	2%	1%	10	2%	1%
<b>Operating costs</b>	<b>535</b>	<b>100%</b>	<b>46%</b>	<b>586</b>	<b>100%</b>	<b>41%</b>
* Including advertising costs, research, publications and promotion ** Including rent and rates						
<b>Total operating expenditure</b>	<b>1 139</b>		<b>98%</b>	<b>1390</b>		<b>98%</b>
<b>Capital expenditure</b>						
<b>Fixed assets:</b>						
IT systems	13	48%	1%	5	17%	0%
Fixtures and fittings	9	33%	1%	7	24%	0%
Buildings	0	0%	0%	0	0%	0%
<b>Intangibles:</b>						
Other	5	19%	0%	17	59%	1%
<b>Capital expenditure</b>	<b>27</b>	<b>100%</b>	<b>2%</b>	<b>29</b>	<b>100%</b>	<b>2%</b>
<b>Total expenditure</b>	<b>1 166</b>		<b>100%</b>	<b>1419</b>		<b>100%</b>
<b>Summary:</b>						
<b>Staffing costs</b>	<b>604</b>		<b>52%</b>	<b>804</b>		<b>57%</b>
<b>Operating costs (2)</b>	<b>535</b>		<b>46%</b>	<b>586</b>		<b>41%</b>
<b>Capital expenditure</b>	<b>27</b>		<b>2%</b>	<b>29</b>		<b>2%</b>
<b>Total expenditure</b>	<b>1 166</b>		<b>100%</b>	<b>1419</b>		<b>100%</b>

(1) Percentages have been rounded to nearest % point for each year.

(2) Includes legal costs of £123,000 (2006: £20,000) incurred in defending Appeals to the Court of Session.

Full accounts, audited by Audit Scotland are available on my website [www.itpublicknowledge.info](http://www.itpublicknowledge.info) or by contacting my Office.

# Investigations performance

**CASES CLOSED WITHIN 4 MONTHS 2005-2007:**

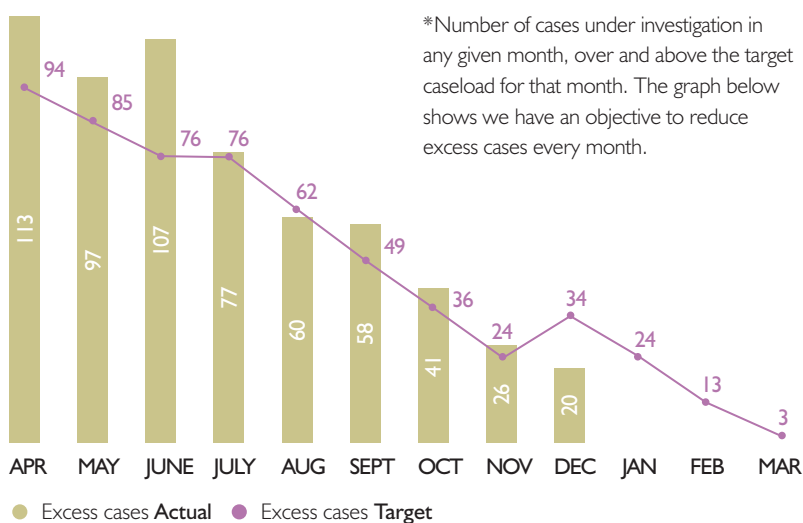
	2005	2006	2007
<b>Case closed without investigation</b>			
4 months or less	98	209	207
More than 4 months	2	11	8
<b>Total cases closed</b>	<b>100</b>	<b>220</b>	<b>215</b>
<b>Case closed during investigation</b>			
4 months or less	37	42	60
More than 4 months	7	42	75
<b>Total cases closed</b>	<b>44</b>	<b>84</b>	<b>135</b>
<b>Case closed with decision</b>			
4 months or less	47	49	44
More than 4 months	51	198	205
<b>Total decision notices</b>	<b>98</b>	<b>247</b>	<b>249</b>

## Investigations...

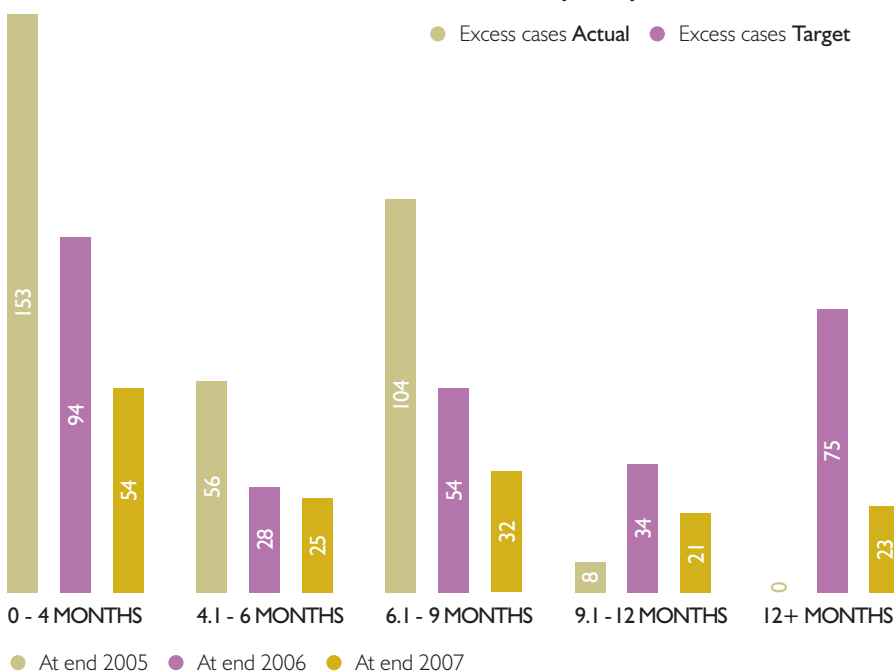
In 2005, applications far exceeded expectation, creating a backlog. By 2007, this was greatly reduced and the target is to close all excess cases by April 2008.

As backlog cases are resolved, the age profile of cases under investigation has greatly reduced.

**EXCESS CASES UNDER INVESTIGATION DURING FINANCIAL YEAR 2007/08\***



**AGE PROFILE OF CASES UNDER INVESTIGATION 2005-2007:**



# REAL CHANGE

Freedom of information is not just about numbers – it affects real people's lives. Since the Act came into force in January 2005, the Commissioner has issued over 550 decisions, many of which have led to real change – both for the individuals concerned, and for society as a whole.

## **CONFIDENTIALITY AND CONTRACTS** CASE STUDY P18

Blanket 'commercial confidentiality' clauses may not provide an exemption to FOISA.

## **ADVICE TO MINISTERS** CASE STUDY P19

There is no 'class-based' exemption for ministerial advice in FOISA.

## **FOISA AND EIRs** CASE STUDY P20

When environmental information is sought the request must always be processed in accordance with the EIRs.

## **PASSAGE OF TIME** CASE STUDY P21

The sensitivity of information will frequently reduce with the passage of time.

## **THE PUBLIC INTEREST** CASE STUDY P22

In most cases, FOISA exemptions must be set aside if release is in the public interest.

## **INFORMATION NOT HELD?** CASE STUDY P23

Authorities must conduct a full search for information when a request is received.

# Confidentiality and contracts

## DECISION 088/2007

### CONTRACTS BETWEEN VISITSCOTLAND AND VISITSCOTLAND.COM (E-TOURISM LTD)

#### MR ALAN KEITH AND VISITSCOTLAND

Mr Keith, from the Association of Dumfries and Galloway Accommodation Providers, requested a copy of the contracts between VisitScotland and the company operating its website and online booking service. His request was refused on the grounds that the information was exempt under FOISA's confidentiality exemption – i.e. that information can be withheld if it has been obtained by the authority from a third party, and release would be an actionable breach of confidence.

However, I concluded that where contracts are the outcome of negotiations between parties (as in this case) it cannot normally be said that the concluded contract has been "obtained" by one party from another. *Crucially, this applies regardless of whether or not the contract contains a confidentiality clause.* The contract for the website did not represent information received by VisitScotland from a third party, and therefore withholding it under the confidentiality exemption in FOISA was not justified.

#### OUTCOME

I ordered VisitScotland to release the full contract to Mr Keith.

## DECISION 190/2007

### COPY OF PFI CONTRACT

#### MS MAY DOCHERTY AND LOTHIAN NHS BOARD

NHS Lothian sought to withhold the full PFI contract covering the building, maintenance and support services of the Edinburgh Royal Infirmary, on the grounds that its private partner (Consort Healthcare) considered the entire contract was exempt under the FOISA confidentiality exemption. During the investigation, however, NHS Lothian neither put forward its own arguments as to why the confidentiality exemption applied, nor did it identify the specific information within the contract which it considered to be exempt – despite two information notices seeking this information. NHS Lothian instead relied largely on the view of its private partner. The public authority receiving the request must make its own case for the application of any exemption.

#### OUTCOME

As NHS Lothian did not present an appropriate case for the application of any FOISA exemption, I ordered release of the full PFI contract.

#### Overview

Blanket 'commercial confidentiality' clauses may not provide an exemption to FOISA.

#### FACT Exemptions...

Authorities must give their own reasons for why an exemption applies.

#### Conclusion

Contract information which is the result of negotiation may not be exempt from release under the FOISA confidentiality exemption.

# Advice to Ministers

## Overview

The Court of Session judgement upheld my view that, where no 'class-based' exemption applies, each case must be looked at on its merits.

## FACT Exemptions...

There is no 'class-based' exemption for ministerial advice in FOISA.

## Conclusion

The content of the information must be considered in determining whether the 'advice to Ministers' exemption applies.

# DECISION 089/2007

## ADVICE TO MINISTERS

### MR JAMES CANNELL AND HISTORIC SCOTLAND

Mr Cannell asked Historic Scotland, a Scottish Government agency, for a copy of advice given to a Minister about a listed building appeal. The Government refused, arguing this would harm the 'effective conduct of public affairs', i.e. discourage officials from giving advice to Ministers if they thought it would be made public. It went on to argue that it is in the public interest for officials to communicate with Ministers in a secure environment, and releasing their advice would harm that.

I did not accept that *all* internal communications expressing opinions should *automatically* be exempt. The main consideration should not be whether the information is classed as advice, but whether release of *this particular information* would deter officials from giving frank advice in future. Neither did I accept that it is reasonable to *presume* that harm will occur – information will not automatically be contentious.

### OUTCOME

I decided that releasing this information would not prevent officials from providing advice in future, and so I required Historic Scotland to release it.

# DECISION 060/2005

## APPEAL TO THE COURT OF SESSION

### MR DAVID ELSTONE AND THE SCOTTISH MINISTERS, AND MR MARTIN WILLIAMS OF THE SUNDAY HERALD AND THE SCOTTISH MINISTERS

The applicants asked Ministers for correspondence surrounding their decision not to 'call in' a planning application for an Ayrshire quarry. Ministers argued that revealing the advice of officials involved in the decision would prevent them from giving effective advice in future – thus reducing the effectiveness of government. They also argued that the release of this type of information *in general* would be harmful to government.

It is my view, however, that information requests should be considered on a case by case basis, and that the effect of the release of information should always be considered with *reference to the specific information in question*. When considered in this light, I found that some information did not fall within the scope of the exemptions put forward by the Government. Furthermore, even where the information had been appropriately exempted, I found one case where the public interest nevertheless favoured disclosure.

Ministers appealed my decision to the Court of Session.

### OUTCOME

In January 2007, the Court upheld the decision I had issued in 2005, questioning Ministers' treatment of advice as an exempt 'class' of information.



# FOISA and EIRs

## DECISION 218/2007

### THE ABERDEEN WESTERN PERIPHERAL ROUTE

#### PROFESSOR A D HAWKINS AND TRANSPORT SCOTLAND

Professor Hawkins requested documents relating to the decision on the route for the Aberdeen Western Peripheral Route. Transport Scotland (a Scottish Government agency) withheld some information, citing FOISA exemptions.

In my view the withheld information was environmental, and I therefore asked Ministers to consider the Professor's request under the Environmental Information (Scotland) Regulations (EIRs). They argued that the information was only partly environmental and referred me to their own guidance, which suggests that authorities can choose which access regime to apply.

The EIRs state that "a Scottish public authority which holds environmental information will make it available when asked to do so" – meaning environmental information must always be considered under the EIRs.

While FOISA provides access to any recorded information – including environmental information – there is an exemption in FOISA for environmental information (section 39(2)). This ensures that authorities do not have to consider requests for such information under both FOISA and the EIRs. Authorities cannot, however, choose to apply FOISA *instead* of the EIRs, when faced with such requests.

#### OUTCOME

I disagreed that the Government was entitled to choose to consider this request under FOISA alone, and ruled that as they had not claimed the exemption in section 39(2), they should have fully applied both the EIRs and FOISA to Professor Hawkins' request. I required the information to be disclosed.

#### Overview

Authorities cannot elect to apply FOISA instead of the EIRs.

#### FACT Environmental...

8% of applications to the Commissioner since the Act came into force have concerned requests for environmental information.

#### Conclusion

When environmental information is sought the request must *always* be processed in accordance with the EIRs.



# The passage of time

## Overview

The passage of time is a factor when considering information requests.

## FACT Entitlement...

FOISA provides a general entitlement to request information of any age held by an authority.

## Conclusion

The sensitivity of information will frequently reduce with the passage of time.

## DECISION 143/2007

### THE SEWEL CONVENTION

#### MR BARRY WINETROBE AND THE SCOTTISH MINISTERS

Many of my 2007 decisions have considered the effect of time on information, and I have frequently found that the passage of time has led to the sensitivity of information diminishing significantly. As a result, I have decided that information, ranging from various items of commercial information to a police investigation report into a 1912 murder case, should be released.

In Decision 143/2007, Mr Winetrobe had requested information relating to the Sewel Convention – the constitutional convention established in 1999 which permits Westminster to legislate on devolved matters with the consent of the Scottish Parliament.

I found that while some of the information had been appropriately withheld, much could now be released. The passage of time was a significant factor in reducing any potential impact of disclosure and was also relevant when considering whether the public interest favoured disclosure.

#### OUTCOME

I found that, while some of the requested information had been appropriately withheld by the Ministers, a substantial amount should now be released.

# The public interest

## DECISION 151/2007

### RADIONUCLEIDES IN DRINKING WATER SYSTEMS

#### MR ROB EDWARDS AND THE SCOTTISH MINISTERS

Mr Edwards requested copies of documents held in a file entitled "Release of Radionucleides in Drinking Water Systems". While some information was released, the majority was withheld on the grounds of several exemptions. Ministers argued, for example, that release would breach anti-terror laws, harm national security, and potentially lead to the information being used in a way which was lethal to the public.

I decided that these claims could not be justified. I did, however, agree with Ministers that the withheld information related to the formulation of government policy, and that such information was exempt under section 29(1) of FOISA.

This exemption requires consideration of whether release would, nevertheless, be in the public interest. I found that there was some public interest in release of the information, but also that *there was little public interest in withholding the information*, and therefore I ordered release.

#### OUTCOME

I found that Ministers had incorrectly withheld information contained within the relevant file, and that, on balance, the public interest favoured release.

#### Overview

The public interest sits at the heart of Scotland's freedom of information legislation.

#### FACT Public interest...

'Public interest' refers to what is in the interests of the public (as opposed to what the public may find interesting).

#### Conclusion

In most cases, FOISA exemptions must be set aside if release is in the public interest.





# Information not held ?

## Overview

Investigations will rigorously explore any claims that information is not held.

## FACT

### Applications...

65% of all applications involve a claim by authorities that information is not held.

## Conclusion

Authorities must conduct full and appropriate searches for relevant information when an information request is received.

## DECISION 230/2007

### COMMUNICATIONS WITH EAST RENFREWSHIRE COUNCIL

#### MR GORDON WATSON AND SCOTTISH WATER

Mr Watson asked for copies of correspondence relating to Scottish Water's works at a local site. Scottish Water told Mr Watson that it held no information falling within the scope of his request. It also confirmed it did not hold the information when Mr Watson appealed to me.

During my investigation, however, I discovered that a substantial amount of relevant information was indeed held by Scottish Water, and that this information fell within the scope of Mr Watson's request. Scottish Water subsequently acknowledged to my Office that mistakes had been made in its handling of this request.

The information which was identified was environmental in nature, and therefore the case was considered under the EIRs.

#### OUTCOME

I required relevant information to be provided in full to Mr Watson.

# Public authorities tables: 2005 to 2007

Public authorities	Applications received 2005 to 2007				Information notices served*	Outcome of (valid) applications						Decisions			Appeals made	
	Total	Invalid	Valid	% Applications which were valid		Settled	Withdrawn	Vexatious/frivolous	Other	Decision issued	Cases under investigation	For applicant	For authority	Partially upheld	By authority	By applicant
<b>Ministers, the Parliament</b>																
Communities Scotland	10	2	8	80%	0	0	0	0	4	4	0	2	2	0	0	
Fisheries Research Service	2	0	2	100%	0	1	0	0	1	0	1	0	0	0	0	
Historic Scotland	4	1	3	75%	0	1	0	0	2	0	1	1	0	0	0	
Office of the Accountant in Bankruptcy	1	0	1	100%	0	0	0	1	0	0	0	0	0	0	0	
Scottish Building Standards Agency	4	3	1	25%	0	0	1	0	0	0	0	0	0	0	0	
Scottish Court Service	9	3	6	67%	0	0	1	0	4	1	0	1	3	0	0	
Scottish Criminal Record Office	4	4	0	0%	0	0	0	0	0	0	0	0	0	0	0	
Scottish Drug Enforcement Agency	2	0	2	100%	0	0	0	0	2	0	0	2	0	0	0	
Scottish Ministers (Scottish Executive/Government)	267	71	196	73%	10	22	18	0	3	115	38	35	32	48	7	0
Scottish Parliamentary Corporate Body	26	7	19	73%	1	1	0	0	14	4	2	5	7	0	0	
Scottish Prison Service	33	9	24	73%	0	4	2	0	16	2	0	4	12	0	0	
Scottish Public Pension Agency	4	2	2	50%	0	0	0	0	2	0	0	1	1	0	0	
Student Awards Agency for Scotland	1	0	1	100%	0	0	0	0	1	0	0	1	0	0	0	
Transport Scotland	4	2	2	50%	0	0	0	0	2	0	1	0	1	0	0	
	<b>371</b>	<b>104</b>	<b>267</b>	<b>72%</b>	<b>11</b>	<b>29</b>	<b>21</b>	<b>1</b>	<b>4</b>	<b>163</b>	<b>49</b>	<b>40</b>	<b>49</b>	<b>74</b>	<b>7</b>	<b>0</b>
<b>Non-ministerial office holders in the Scottish Administration</b>																
Crown Office and Procurator Fiscal**	28	26	2	7%	0	0	0	1	1	0	0	0	1	0	0	
Her Majesty's Chief Inspector of Constabulary	1	0	1	100%	0	0	0	0	0	1	0	0	0	0	0	
Her Majesty's Chief Inspector of Fire and Rescue Services	1	0	1	100%	0	0	0	0	1	0	0	1	0	0	0	
HM Inspectorate of Education	1	0	1	100%	0	0	1	0	0	0	0	0	0	0	0	
Keeper of the Records of Scotland	1	0	1	100%	0	0	0	0	1	0	1	0	0	0	0	
Keeper of the Registers of Scotland	6	1	5	83%	0	1	0	0	4	0	0	4	0	0	0	
Registrar General of Births, Deaths and Marriages for Scotland	1	0	1	100%	0	0	1	0	0	0	0	0	0	0	0	
	<b>39</b>	<b>27</b>	<b>12</b>	<b>31%</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>7</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>0</b>	
<b>Local Government</b>																
Aberdeen City Council	20	7	13	65%	2	0	2	0	8	3	1	5	2	0	0	
Aberdeenshire Council	22	6	16	73%	1	0	0	0	13	3	5	5	3	3	0	
Angus Council	6	2	4	67%	1	0	0	0	4	0	0	4	0	0	0	
Argyll and Bute Council	17	5	12	71%	0	1	3	0	7	1	2	1	4	0	0	
Central Scotland Fire Board	1	0	1	100%	0	0	0	0	1	0	0	1	0	0	1	
City of Edinburgh Council	60	21	39	65%	2	4	5	0	19	10	7	10	2	0	0	
Clackmannanshire Council	3	2	1	33%	0	0	0	0	1	0	0	0	1	0	0	
Comhairle nan Eilean Siar	14	7	7	50%	2	3	2	0	2	0	1	1	0	0	0	
Dumfries and Galloway Council	31	16	15	48%	1	0	0	2	12	1	5	4	3	1	0	
Dundee City Council	32	7	25	78%	12	4	2	0	11	8	3	7	1	2	0	
East Ayrshire Council	10	3	7	70%	1	1	0	2	3	1	0	3	0	0	0	
East Dunbartonshire Council	18	6	12	67%	2	2	1	0	8	1	2	5	1	1	0	
East Lothian Council	29	16	13	45%	0	3	3	0	6	1	1	2	3	0	0	
East Renfrewshire Council	16	5	11	69%	1	1	2	0	5	2	0	3	2	0	0	
East Renfrewshire Licensing Board	1	0	1	100%	0	0	0	0	1	0	1	0	0	0	0	
Falkirk Council	20	9	11	55%	1	0	1	0	9	1	1	4	4	1	0	
Fife Council	34	14	20	59%	2	3	3	0	12	1	6	4	2	1	1	
Forth Estuary Transport Authority	1	1	0	0%	0	0	0	0	0	0	0	0	0	0	0	
Glasgow City Council	68	30	38	56%	4	7	3	0	18	10	4	10	4	1	0	
Highland and Islands Fire Board	1	1	0	0%	0	0	0	0	0	0	0	0	0	0	0	
Highland Council	23	6	17	74%	1	6	0	0	8	3	1	5	2	0	0	
Inverclyde Council	16	7	9	56%	0	2	2	0	5	0	0	5	0	0	0	
Midlothian Council	5	1	4	80%	1	0	0	0	4	0	0	3	1	0	0	
Moray Council	10	4	6	60%	0	1	0	0	4	1	0	3	1	0	0	
North Ayrshire Council	15	2	13	87%	0	3	2	0	8	0	1	4	3	0	0	
North Lanarkshire Council	23	9	14	61%	1	0	4	0	6	4	3	1	2	0	0	
Orkney Islands Council	7	1	6	86%	2	2	0	0	4	0	2	1	1	0	0	

\* Information notices are used to require public authorities to supply information, although in some circumstances can be used to expedite cases.

\*\* Excluded under Section 48 of FOISA

# Public authorities tables: 2005 to 2007

Public authorities	Applications received 2005 to 2007				Information notices served*	Outcome of (valid) applications						Decisions			Appeals made	
	Total	Invalid	Valid	% Applications which were valid		Settled	Withdrawn	Vexatious/frivolous	Other	Decision	Cases under investigation	For applicant	For authority	Partially upheld	By authority	By applicant
Perth and Kinross Council	18	2	16	89%	2	2	4	0	0	9	1	2	2	5	0	0
Renfrewshire Council	16	3	13	81%	0	0	2	0	1	8	2	7	1	0	0	0
Scottish Borders Council	25	6	19	76%	3	2	0	0	1	15	1	4	6	5	0	0
Shetland Islands Council	12	4	8	67%	0	0	2	0	0	5	1	2	2	1	0	0
South Ayrshire Council	15	8	7	47%	2	1	3	0	0	3	0	2	1	0	1	0
South Lanarkshire Council	32	12	20	63%	0	1	3	0	2	13	1	1	3	9	0	0
Stirling Council	9	3	6	67%	0	3	0	0	0	3	0	0	1	2	0	0
Strathclyde Fire Board	4	3	1	25%	0	0	0	0	0	1	0	0	0	1	0	0
Strathclyde Partnership for Transport	4	1	3	75%	0	1	2	0	0	0	0	0	0	0	0	0
Tayside Fire and Rescue Board	1	0	1	100%	0	1	0	0	0	0	0	0	0	0	0	0
Tayside Joint Valuation Board	1	0	1	100%	0	0	0	0	1	0	0	0	1	0	0	0
West Dunbartonshire Council	16	5	11	69%	2	2	1	0	0	8	0	2	3	3	0	0
West Lothian Council	21	11	10	48%	2	1	0	0	0	7	2	4	2	1	1	0
<b>677</b>	<b>246</b>	<b>431</b>	<b>64%</b>	<b>48</b>		<b>57</b>	<b>52</b>	<b>4</b>	<b>7</b>	<b>252</b>	<b>59</b>	<b>70</b>	<b>113</b>	<b>69</b>	<b>12</b>	<b>2</b>
<b>The National Health Service</b>																
Argyle and Clyde Health Board**	2	2	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
Ayrshire and Arran NHS Board	3	1	2	67%	0	1	0	0	1	0	0	1	0	0	0	0
Borders NHS Board	1	0	1	100%	0	0	0	0	1	0	0	0	0	1	0	0
Common Services Agency	15	6	9	60%	0	1	1	0	0	7	0	3	0	4	3	0
Dumfries and Galloway NHS Board	2	1	1	50%	0	1	0	0	0	0	0	0	0	0	0	0
Forth Valley NHS Board	2	0	2	100%	0	0	0	0	0	0	2	0	0	0	0	0
Grampian NHS Board	13	6	7	54%	0	1	1	0	0	3	2	0	0	3	0	0
Greater Glasgow NHS Board	17	6	11	65%	0	3	1	0	0	6	1	0	4	2	0	0
Highland NHS Board	5	3	2	40%	0	1	1	0	0	0	0	0	0	0	0	0
Lanarkshire NHS Board	7	3	4	57%	0	0	1	0	0	0	3	0	0	0	0	0
Lothian NHS Board	7	2	5	71%	2	1	2	0	0	2	0	1	0	1	0	0
NHS 24	1	0	1	100%	0	0	0	0	1	0	0	0	1	0	0	0
Orkney NHS Board	1	0	1	100%	0	0	1	0	0	0	0	0	0	0	0	0
Scottish Ambulance Service Board	9	2	7	78%	0	3	1	0	0	1	2	0	0	1	0	0
Shetland NHS Board	3	1	2	67%	0	0	0	0	0	2	0	0	2	0	0	0
Tayside NHS Board	3	2	1	33%	0	1	0	0	0	0	0	0	0	0	0	0
Western Isles NHS Board	1	0	1	100%	0	0	0	0	1	0	0	1	0	0	0	0
Individual medical practitioners/practices	9	6	3	33%	0	1	1	0	0	1	0	1	0	0	0	0
<b>101</b>	<b>41</b>	<b>60</b>	<b>59%</b>	<b>2</b>		<b>14</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>26</b>	<b>10</b>	<b>7</b>	<b>7</b>	<b>12</b>	<b>3</b>	<b>0</b>
<b>Educational Institutions</b>																
Carnegie College	1	0	1	0%	0	0	0	0	0	0	1	0	0	0	0	0
Glasgow Caledonian University	1	0	1	100%	0	0	0	0	1	0	0	1	0	0	0	0
Glasgow Metropolitan College	1	1	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
James Watt College of Further and Higher Education	2	0	2	100%	0	1	0	0	0	1	0	0	0	1	0	0
Motherwell College	4	2	2	50%	1	0	0	0	0	1	1	1	0	0	0	0
Queen Margaret University	3	1	2	67%	0	0	0	0	0	2	0	0	1	1	0	0
Scottish Agricultural College	5	2	3	60%	0	0	1	1	0	1	0	0	0	1	0	0
University of Aberdeen	3	1	2	67%	0	1	0	0	0	1	0	1	0	0	0	0
University of Abertay Dundee	1	1	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
University of Edinburgh	3	0	3	100%	0	0	0	0	0	2	1	1	0	1	0	0
University of Glasgow	8	4	4	50%	0	0	0	0	0	2	2	0	1	1	0	0
University of Paisley/University of the West of Scotland	8	3	5	63%	0	0	1	0	1	3	0	1	1	1	0	0
University of St Andrews	2	0	2	100%	0	0	0	0	0	0	0	0	0	0	0	0
University of Stirling	1	0	1	100%	1	0	0	0	0	1	0	0	1	0	0	0
University of Strathclyde	2	1	1	50%	0	0	1	0	0	0	0	0	0	0	0	0
UHI Millenium Institute	1	1	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
<b>46</b>	<b>17</b>	<b>29</b>	<b>63%</b>	<b>2</b>		<b>2</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>15</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>6</b>	<b>0</b>	<b>0</b>

\*\* Ceased to exist on 1 April 2006

# Public authorities tables: 2005 to 2007

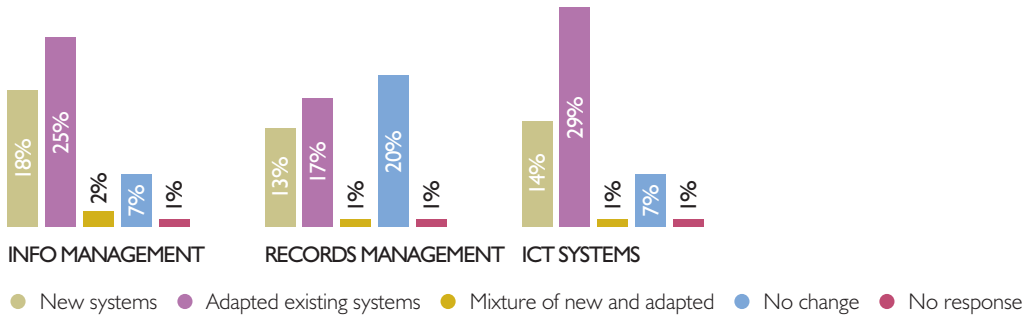
Public authorities	Applications received 2005 to 2007				Information notices served*	Outcome of (valid) applications						Decisions			Appeals made	
	Total	Invalid	Valid	% Applications which were valid		Settled	Withdrawn	Vexatious/frivolous	Other	Decision	Cases under investigation	For applicant	For authority	Partially upheld	By authority	By authority
<b>Police</b>																
Central Scotland Police	29	12	17	59%	0	1	4	0	1	11	0	0	9	2	0	0
Dumfries and Galloway Constabulary	7	2	5	71%	0	1	0	0	0	4	0	1	1	2	0	0
Fife Constabulary	7	2	5	71%	0	1	1	0	0	3	0	1	0	2	0	0
Grampian Police	21	3	18	86%	0	1	2	0	0	14	1	1	8	5	0	1
Lothian and Borders Police	11	4	7	64%	0	1	1	0	0	5	0	2	2	1	0	0
Northern Constabulary	14	3	11	79%	1	0	1	0	1	7	2	2	3	2	0	0
Northern Joint Police Board	2	0	2	100%	0	0	0	0	0	1	1	0	0	1	0	0
Strathclyde Police	50	5	45	90%	4	7	4	0	1	25	8	3	20	2	0	0
Tayside Police	29	9	20	69%	2	1	1	0	0	18	0	5	6	7	0	0
	<b>170</b>	<b>40</b>	<b>130</b>	<b>76%</b>	<b>7</b>	<b>13</b>	<b>14</b>	<b>0</b>	<b>3</b>	<b>88</b>	<b>12</b>	<b>15</b>	<b>49</b>	<b>24</b>	<b>0</b>	<b>1</b>
<b>Others</b>																
Audit Scotland	2	1	1	50%	0	0	0	0	0	1	0	0	0	1	0	0
Cairngorms National Park Authority	1	1	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
General Teaching Council for Scotland	1	0	1	100%	0	0	0	0	0	1	0	0	0	1	0	0
Highlands and Islands Enterprise	2	2	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
Loch Lomond and the Trossachs National Park Authority	2	1	1	50%	0	0	0	0	0	1	0	0	0	1	0	0
Mental Welfare Commission for Scotland	3	2	1	33%	0	0	0	0	0	1	0	0	1	0	0	0
Scottish Arts Council	1	0	1	100%	0	0	0	0	0	0	1	0	0	0	0	0
Scottish Children's Reporter Administration	4	0	4	100%	0	0	2	0	0	2	0	0	0	2	0	0
Scottish Commission for the Regulation of Care (Care Commission)	5	1	4	80%	1	0	1	0	0	1	2	0	1	0	0	0
Scottish Criminal Cases Review Commission	2	1	1	50%	0	0	0	0	0	1	0	0	1	0	0	0
Scottish Enterprise	6	3	3	50%	0	1	1	0	0	0	1	0	0	0	0	0
Scottish Environment Protection Agency	12	4	8	67%	0	3	1	0	0	2	2	0	1	1	0	0
Scottish Legal Aid Board	9	2	7	78%	1	0	0	0	0	5	2	1	4	0	0	0
Scottish Natural Heritage	1	0	1	100%	0	0	0	0	0	0	1	0	0	0	0	0
Scottish Prison Complaints Commission	1	0	1	100%	0	0	0	0	0	1	0	0	0	1	0	0
Scottish Public Services Ombudsman	10	3	7	70%	0	0	1	0	0	4	2	1	2	1	0	0
Scottish Qualifications Authority	5	3	2	40%	0	0	2	0	0	0	0	0	0	0	0	0
Scottish Social Services Council	1	0	1	100%	0	0	0	0	0	1	0	0	1	0	0	0
Scottish Sports Council	2	2	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
Scottish Tourist Board/VisitScotland	4	0	4	100%	0	1	0	0	0	3	0	2	0	1	0	0
Scottish Water	20	8	12	60%	3	2	0	0	0	6	4	5	0	1	0	0
Standards Commission for Scotland	1	1	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
Waterwatch Scotland	1	0	1	100%	0	1	0	0	0	0	0	0	0	0	0	0
	<b>96</b>	<b>35</b>	<b>61</b>	<b>64%</b>	<b>5</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>30</b>	<b>15</b>	<b>9</b>	<b>11</b>	<b>10</b>	<b>0</b>	<b>0</b>
<b>Publicly Owned Companies</b>																
Caledonian MacBrayne Ltd	11	2	9	82%	1	2	0	0	0	7	0	1	2	4	0	0
City Building (Glasgow) LLP	4	0	4	100%	0	0	0	0	0	2	2	2	0	0	0	0
Glasgow Cultural Enterprises Ltd	1	0	1	100%	0	0	0	0	0	1	0	0	1	0	0	0
Investors in People Scotland	2	1	1	50%	0	0	0	0	0	1	0	0	0	1	0	0
Kirkintilloch's Initiative Ltd	1	0	1	100%	0	1	0	0	0	0	0	0	0	0	0	0
Scottish Enterprise Grampian Ltd	2	0	2	100%	0	0	0	0	0	1	1	0	0	1	0	0
Scottish Further Education Unit Ltd	2	1	1	50%	0	0	0	0	0	0	1	0	0	0	0	0
Scottish University for Industry	1	0	1	100%	0	0	0	0	0	1	0	1	0	0	0	0
Transport Initiatives Edinburgh	3	1	2	67%	0	0	2	0	0	0	0	0	0	0	0	0
	<b>27</b>	<b>5</b>	<b>22</b>	<b>81%</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>0</b>	<b>0</b>
<b>Other e.g.</b>																
Body not covered	47	47	0	0%	0	0	0	0	0	0	0	0	0	0	0	0
	<b>1,574</b>	<b>562**</b>	<b>1,012</b>	<b>64%</b>	<b>76</b>	<b>127</b>	<b>112</b>	<b>6</b>	<b>18</b>	<b>594</b>	<b>155</b>	<b>151</b>	<b>241</b>	<b>202</b>	<b>22</b>	<b>3</b>

\* Information notices are used to require public authorities to supply information, although in some circumstances can be used to expedite cases.

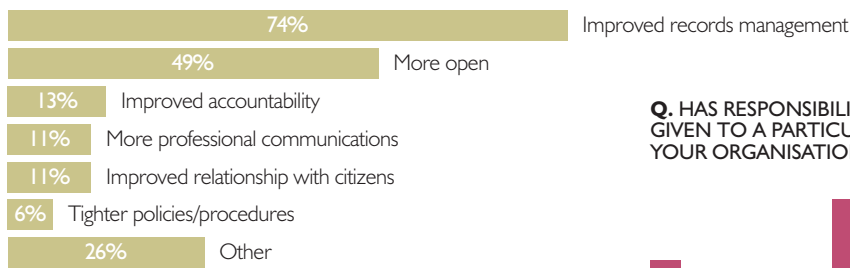
\*\* Includes 27 cases awaiting validation.

# The public authorities' views

PERCENTAGE OF RESPONDENTS WHO MADE ORGANISATIONAL CHANGES TO SUPPORT FOISA:



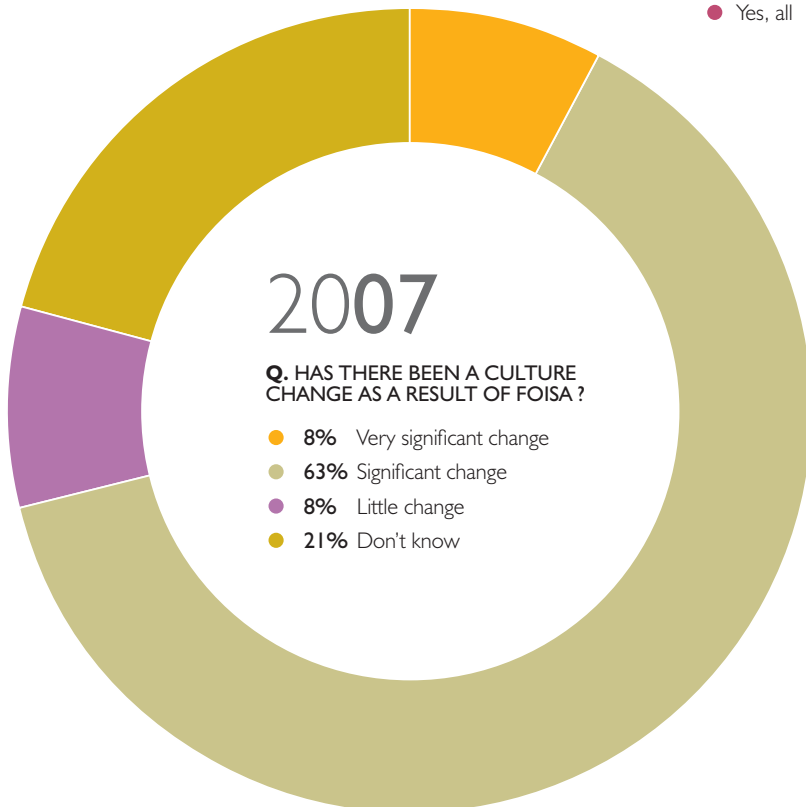
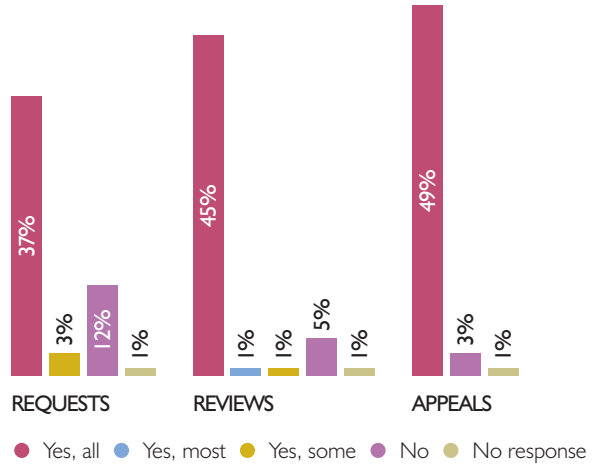
BENEFITS DERIVING FROM FOISA:



## Research...

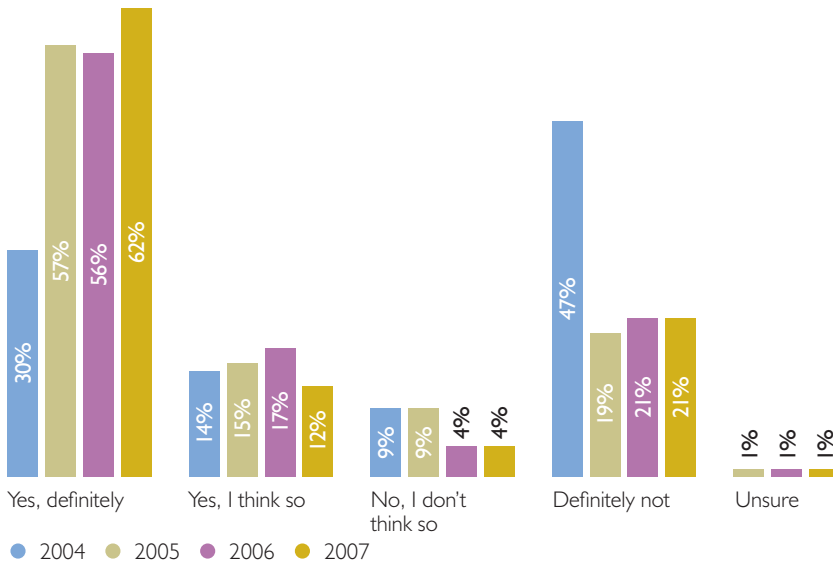
“The Freedom of Information (Scotland) Act 2002: New Modes of Information Management in Scottish Public Bodies?” was conducted by Dr Eleanor Burt of St Andrews University and Professor John Taylor of Caledonian Business School. The report was published in September 2007.

Q. HAS RESPONSIBILITY FOR FOISA BEEN GIVEN TO A PARTICULAR GROUP IN YOUR ORGANISATION ?

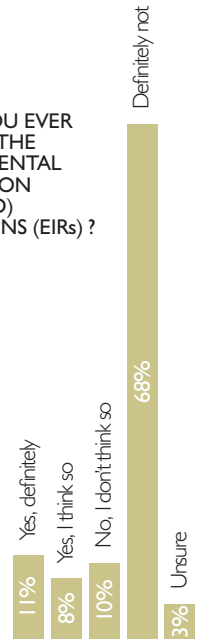


# The public's view\*

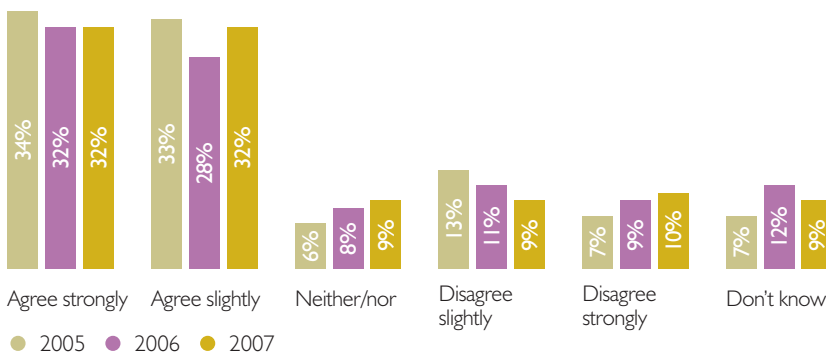
Q. HAVE YOU EVER HEARD OF FOISA ?



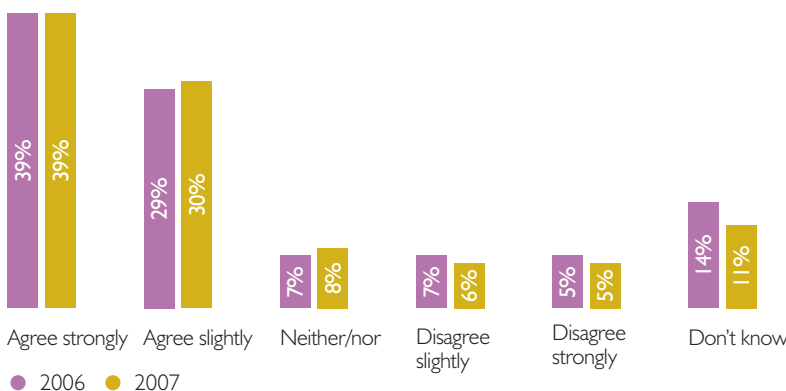
Q. HAVE YOU EVER HEARD OF THE ENVIRONMENTAL INFORMATION REGULATIONS (EIRs) ?



AS A RESULT OF FOISA, PUBLIC AUTHORITIES ARE BECOMING MORE OPEN AND ACCOUNTABLE:



AS A RESULT OF FOISA, MORE PUBLIC AUTHORITY INFORMATION IS AVAILABLE NOW THAN EVER BEFORE:



## Public opinion...

Awareness of FOISA remains consistently high, and is much higher than awareness of the EIRs, which was measured for the first time in 2007.

While 89% of authorities think they have become more open since FOISA, 64% of the public think they are now more open and accountable.

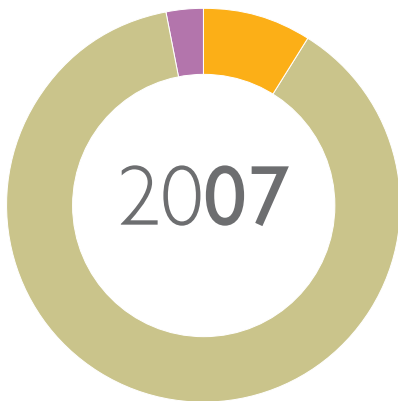
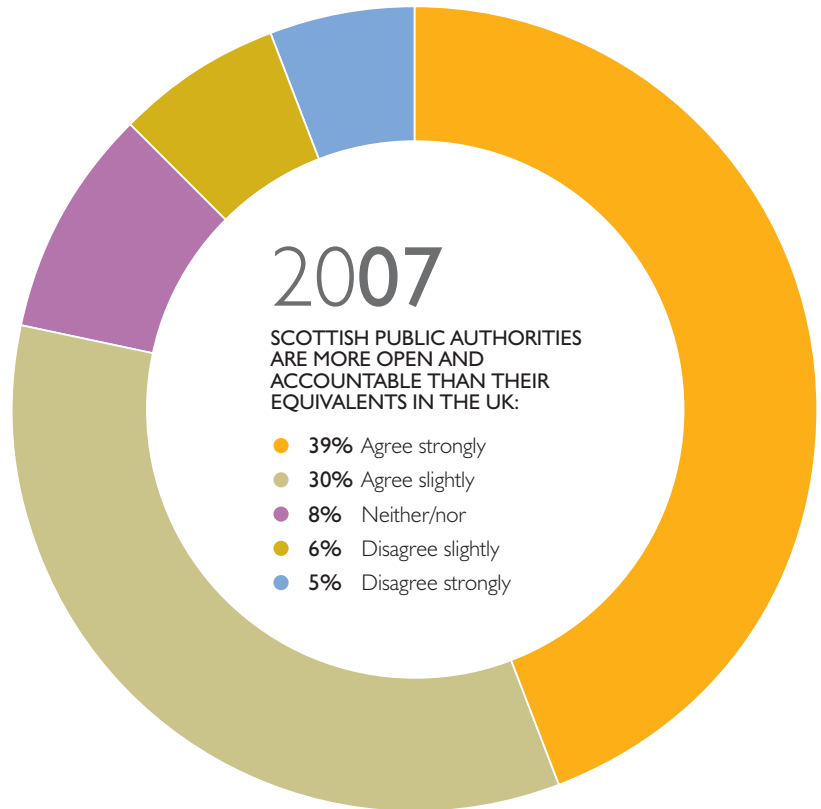
\*The Commissioner has run a public opinion survey each year since 2004.

# The public's view continued

## Public opinion...

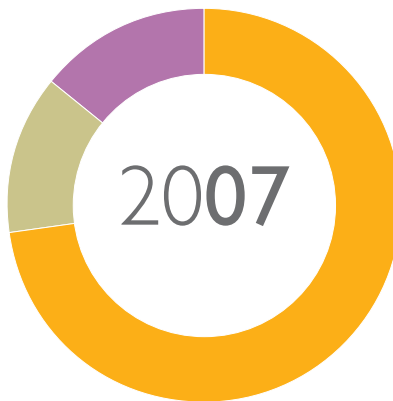
Nearly 1 in 10 respondents to the public opinion survey in 2007 has made a written request to a public authority. 86% of these received all or some of the information they asked for.

Only 6% of those respondents who did not make a request did not know that they could.



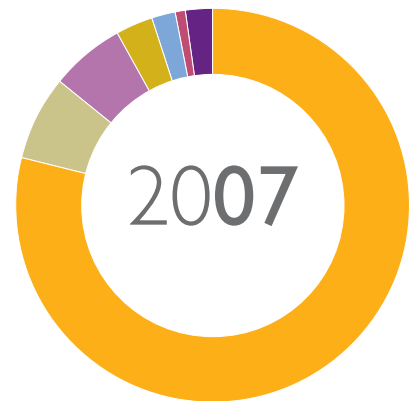
**Q. HAVE YOU EVER MADE A WRITTEN INFORMATION REQUEST TO A SCOTTISH PUBLIC AUTHORITY ?**

- 9% Yes
- 88% No
- 3% Unsure



**Q. IF YES – DID YOU GET THE INFORMATION THAT YOU ASKED FOR ?**

- 73% Yes, all the information
- 13% Yes, I received some of the information I asked for
- 14% None received



**Q. IF NO – WHY HAVE YOU NEVER MADE A REQUEST ?**

- 79% I have never had any reason to seek information
- 7% I wasn't sure how to ask for information
- 6% I didn't know I could ask for information
- 3% I didn't think the organisation would have the information
- 2% I didn't think the organisation would allow me access to the information
- 1% Other
- 2% Unsure

# PAST PRESENT FUTURE

## The next four years

The first five years have been focused on implementing the legislation, promoting public awareness of new rights and ensuring compliance by public authorities. As this report has shown, we can be pleased with the achievements so far.

We need, however, to bear in mind the scale of the challenge posed by the Freedom of Information (Scotland) Act 2002 (FOISA), which is clearly intended to bring about a culture change in Scottish society. At its heart is a commitment to providing people with the information necessary for them to understand what is being done by public authorities, to help them participate in future decisions and to hold those same authorities to account for their decisions.

To do this, people need to be aware of their rights and those rights may need to be safeguarded and extended. Below, I set out how I see freedom of information in Scotland developing and maturing, and the role of the Scottish Information Commissioner in achieving this. I am looking forward, over the coming four years, to taking this agenda forward.



# The next four years

## Awareness

Although in Scotland general public awareness of freedom of information rights stands at over 70%, we should not be complacent. Firstly, it is clear from research that there needs to be a better understanding of how the law works. Currently too many appeals to me are invalid because of technical deficiencies. My website is the primary source of information for those who want to understand and make use of their rights in Scotland. We have to build on this, giving people practical advice on how to make a request (and how this can be done in a way which helps the authority to find and provide the requested information) and how to use the appeals process.

Secondly, we also need to understand how much particular sections of our society know about their rights. Our current research\* suggests that awareness and confidence about using FOI rights are lower amongst young adults and those with disabilities. We have little insight into how rights are being used by those who may be vulnerable, such as the homeless. Immigrants or refugees may be unaware that FOI rights apply to everyone, not just Scottish citizens. Future research has to be targeted at identifying which sectors need particular advice and support.

## Good practice

Our research and experience shows that Scottish public authorities have risen to the challenge of FOI by releasing more information than previously, and usually within the 20 day timescale laid down in law. Many have devoted additional resources to the task of managing records or processing requests. The vast majority regard freedom of information as having a positive impact on their organisational culture.

We should aim to deepen that attitude. Freedom of information is now part of the landscape for every Scottish public authority. Having coped with the immediate challenge of compliance, we should share experience and examine ways of doing things differently to make more information available proactively, and to manage affairs so that individual requests can be dealt with more efficiently and positively.

The research which I commissioned with the University of St Andrews and Caledonian Business School honestly pointed out where the areas of friction lie, not least in how authorities respond to requests from the media. I think it would be fruitful to promote dialogue between the media and public authorities to explore whether there can be ways of working which do not compromise rights, but address the frustrations often expressed by both sides.

Over the next four years all Scottish public authorities will be submitting revised publication schemes for approval. This is the opportunity to focus on providing information which helps people to understand decisions such as internal guidance on procurement, grants, inspection or enforcement, and also to improve accountability e.g. publishing contracts and agreements with arms-length providers of services.

As well as promoting good practice across sectors, it will be important to focus attention on individual authorities which might require advice on specific aspects of performance e.g. recognising and responding to freedom of information requests; recovering information; calculating fees etc. Practice recommendations will be issued in cases where it would be helpful to set out specific changes which would benefit the public and the authority.

## Interpretation

Through a combination of experience, decisions and court judgements, we are building up a strong body of precedent which will be translated into detailed guidance on interpreting the legislation, available through my publications and website.

Attention needs also to be given to recognising the requirements and provisions of the Environmental Information (Scotland) Regulations 2004 and ensuring that authorities

\* Public Opinion Survey October 2007

use the correct access to information regime when dealing with requests. Information materials, seminars and conferences will help authorities make the right choice first time.

#### Preserving rights

Changes in the way public services are delivered in Scotland may have the unintended consequence of removing FOI rights from people. The transfer of functions, e.g. from local authorities to housing associations or to culture and leisure trusts (which deliver sports, arts, museums and library services) may, at a stroke, remove freedom of information rights where these bodies are not covered by the legislation. While some information may be passed to and retained by the parent authority, the reality is that much of the day to day operational information will be held only by the new body – users, employees, and tax payers have no right in law to that information.

We need to examine firstly whether such rights need be lost – some bodies are being set up as wholly publicly owned companies and so remain within the freedom of information regime; others are not. Secondly, the issue of whether some of those bodies should come within the scope of FOISA is worthy of re-examination.

#### Extending the scope of FOISA

Scottish Ministers may add any body to the list of public authorities covered by FOISA or may designate organisations which appear to be exercising functions of a public nature as being public authorities covered by FOISA – this could include private companies for some of their activities. No designations or any additions have been made since this part of the Act came into force in 2002 (except for a very small number of new public authorities established by other primary legislation). However, the legislation provides that I can, from time to time, make proposals to Scottish Ministers and I am now engaged in dialogue with the Scottish Government on this issue.

#### Speeding up decisions on appeals to the Commissioner

The key purpose of the legislation is to get information into the hands of the public as quickly as possible. To that end, a swift appeals process is extremely important. With the backlog now markedly reduced, I want to decrease the length of time taken by my Office to complete a decision. Taking advantage of the stabilisation in the number of applications, the precedent set by earlier decisions and the confidence and experience built up by my staff, new targets will progressively reduce the time from receiving an application to the issuing of a decision.

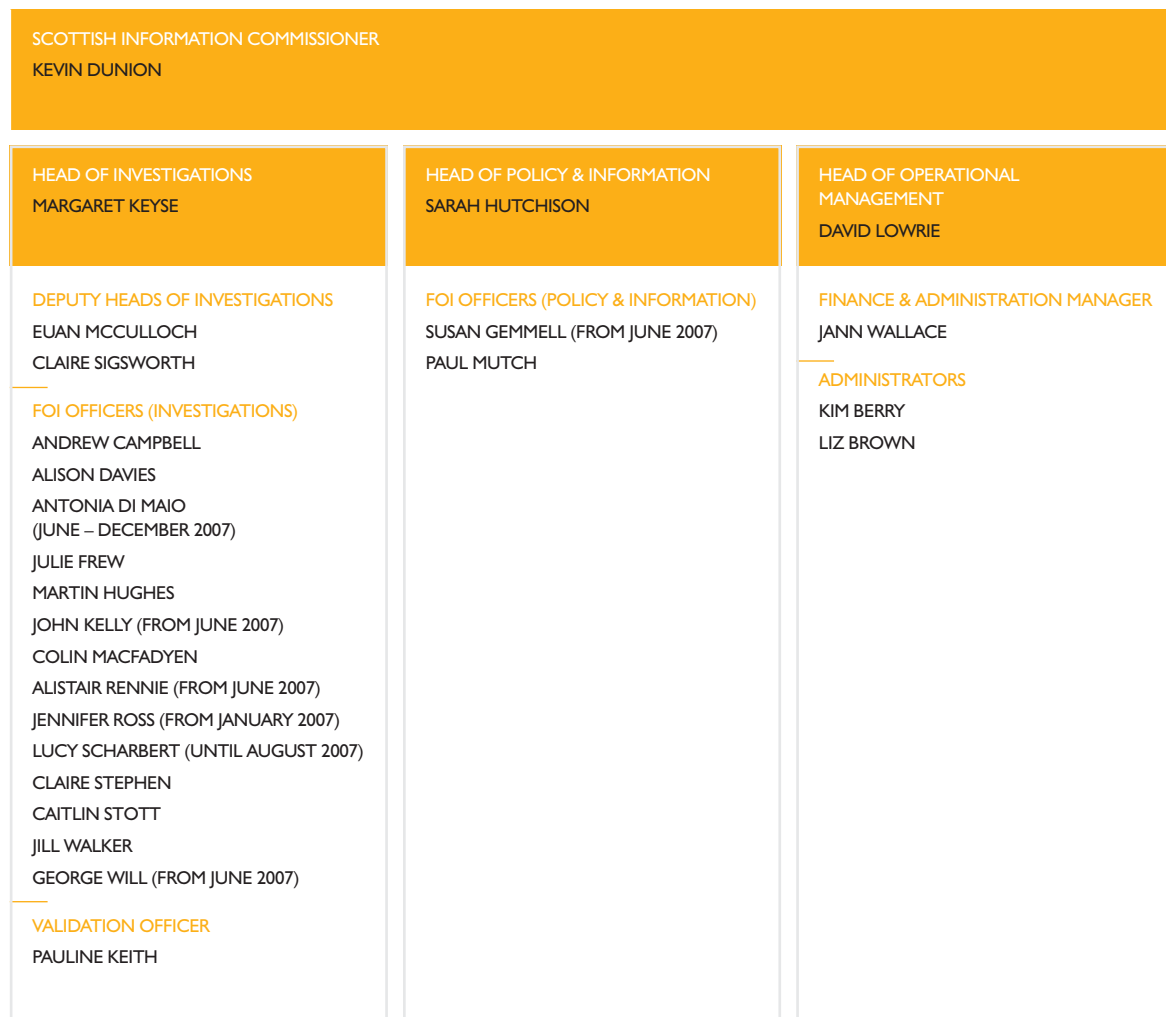
A small number of decisions are appealed to the Court of Session. When this happens, a considerable time can elapse before the hearing takes place – this can be as much as 18 months. In these cases, I am concerned that any information which is eventually released may have lost its value to the applicant.

#### Settlement

However, we can also expect that many more cases will be closed, not by formal decision, but through settlement. Experience world-wide suggests that, as legislation matures, the role of the Commissioner is often to secure a settlement between the applicant and the authority so that additional information is released, whilst addressing specific concerns of the authority. We can learn from experience elsewhere in techniques of mediation. We should be clear, however, that settlement should not be used to diminish the rights of the public, but to secure an acceptable and usually speedier outcome for all parties.

# The organisation

24 people support the work of the Scottish Information Commissioner.  
The diagram below shows the composition of the staff at the end of 2007.





**Scottish Information Commissioner**

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