

## Interventions Activity Annual Report: 2023-24

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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](http://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 2023-24. 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 2023-24 remained restricted, but work on all open Level 2 and above interventions continued, with some closing, and with Level 1 intervention work continuing in conjunction with appeals or enquiry files.
4. Throughout 2024-25, we plan to capture data to show impact of our intervention activity to help form a business case for dedicated resource.

### 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. **562** non-compliance issues are recorded in WP from 1 April 2023 to 31 March 2024. Of these, **227** resulted in some action by our office to rectify the concern identified. Notable actions by the team are set out below:
  - Requiring amendments were made to a local authority's online FOI request form to align with good practice and the removal of unnecessary fields
  - Requiring a number of public authorities to update their template letters to ensure that the legal rights of appeal were stipulated
  - Providing advice to a public authority on wording within its Guide to Information in relation to the differences in charging between FOISA and the EIRs.
  - Ensuring that two public authorities were not seeking identification from potential requesters without valid basis.

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

Issue	Number
Compliance with timescales – request	163
Compliance with timescales – review	133
Review process	64
Handling of initial request	54
Delay to PA submissions	43
Engaging with SIC	3
Advice and assistance	9
Management of FOI function/culture	4
Delay to withheld information	37
Stats submissions	24

Other	8
Failure to recognise EIR request	2
Searches	8
Information Notice issued	4
Publication scheme	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 or above interventions:

Public Authority	Issue	Date initiated	Current status
Falkirk Council	Compliance with timescales	24 May 2022	Closed
Highland Council	Compliance with timescales	30 October 2019	Closed
NHS Highland	Compliance with timescales	9 December 2020 (escalated to level 2 on 14 March 2022)	Closed
NHS Western Isles	Compliance with timescales	9 December 2020 (escalated to level 2 on 14 March 2022)	Closed
Scottish Ambulance Service Board	Compliance with timescales	12 October 2020	Closed
Scottish Environment Protection Agency	Management of FOI function/culture	10 June 2021	Ongoing
Midlothian Council	Compliance with timescales	4 November 2021	Ongoing
Scottish Ministers	Records Management/Searching	February 2024	Ongoing
Comhairle nan Eilean Siar	Management of FOI	November 2024	Ongoing

## Compliance with timescales

### *Level 2 Intervention: Midlothian Council*

9. We opened a Level 1 intervention in November 2021 in relation to the Council's poor performance in relation to responding to requests within the statutory time periods. Due to a failure to sufficiently demonstrate an improvement in performance, the intervention was escalated to Level 2 in October 2023. The Council was set with a target of responding to 85% of all requests within the statutory timeframe by 31 March 2024. At the time of writing (June 2024) the Council was responding to 97% of requests on time

### *Remaining Level 2 Interventions*

10. 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:

- a. seeking an explanation of the factors that have led to the high late-response rates
- b. requesting details of the actions to be taken by the authority to improve performance
- c. monitoring and seeking evidence of their progress towards a target outcome.

## **Management of FOI**

### *Level 2: Comhairle nan Eilean Siar*

11. In November 2023, Comhairle nan Eilean Siar contacted the Commissioner to notify him that it had suffered a significant cyber incident that was impacting its FOI function. Similar to SEPA, we opened a Level 2 intervention to support the Council rebuild its ATI regime. Having supported SEPA, we were able to put the Council in contact with SEPA to provide the Council with practical and effective advice to help it rebuild its ATI regime. We continued to support the Council at the time of writing.

### *Level 2: SEPA*

12. In June 2021, following its cyber incident in December 2020, we opened a Level 2 Intervention with the Scottish Environmental Protection Agency (SEPA). The intervention's objectives are to improve SEPA's performance in responding to requests within the statutory timescales and supporting it to rebuild its Access to Information (ATI) regime. The Commissioner set a target of responding 80% of requests within statutory timeframes by December 2023, increasing this to 90% in 2024. SEPA achieved this target and continues to respond to over 90% of all requests within the required timeframe. With a starting point of 14% of all requests being responded to on time at the outset of this intervention, SEPA has worked hard to address the significant issues caused by the cyber incident and continues to work closely with the Commissioner to rebuild a sustainable ATI regime. If improvement remains sustained, it is likely that this intervention will close in 2024-25.

## **Level 3 interventions**

13. *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)**

14. Our long-running [intervention with the Scottish Ministers](#) regarding their FOI performance and practice continued.
15. In October 2023 we published a report which examined and assessed the Scottish Minister's progress in relation to our ongoing intervention to improve Scottish Government FOI performance and practice. This intervention, our longest-running, was launched in 2017.
16. The report examined the Scottish Government's FOI performance across two distinct periods of activity.
17. Between July 2022 and March 2023, we found a number of significant performance concerns. This included a deterioration in FOI on-time performance along with the build-up of a significant backlog of overdue cases. Concerns were raised as a matter of urgency with senior staff in the Scottish Government in May 2023. As a result, the Scottish

Government initiated a programme of work to address both the backlog and wider performance issues.

18. The impact of this work was assessed in a second phase of assessment, and the results of both assessments were published in our October 2023 report. This second phase of assessment saw the rapid resolution of the historic backlog, and a significant improvement in on-time request performance, although the report noted the importance of ensuring these improvements were maintained, while also highlighting other areas where issues were outstanding, including standards of compliance with internal records management procedures and degree of FOI knowledge and experience of those involved in request-handling.
19. The October 2023 report therefore concluded that additional action was required to ensure that progress was sustained and outstanding issues addressed.
20. On receipt of this report, the Scottish Government developed a detailed Action Plan, designed to support performance improvements. This Action Plan includes measures to deliver improvements in FOI management, FOI reporting, staff awareness and training and record-keeping,
21. Throughout 2023-24 improvements in compliance with FOI timescales have been sustained, with an average on-time compliance rate of 95% recorded across 2023-24, and no recurrence of a substantial request backlog.
22. Our staff continue to liaise with the Scottish Government as it implements its improvement activity, with a view to carrying out a further assessment in early 2025. Following this assessment, a decision will be taken on whether this intervention can now be concluded.

#### *Scottish Government: non-corporate platforms*

23. In February 2024 the Commissioner launched a new intervention to support improvement's in the Scottish Government's practice with regard to the use of informal communication tools such as WhatsApp, and associated issues relating to the recording, retention and identification of information.
24. The launch of this intervention was informed by the evidence and statements made during Module 2A of the UK Covid-19 Inquiry, which examined pandemic-related decision-making in Scotland. Elements of this evidence raised significant concerns in relation to the Scottish Government's compliance with FOI law with regard to the information created and stored using informal communication tools.
25. We have sought a range of information from the Scottish Ministers to inform our intervention activity, with a report from this intervention, along with any relevant recommendations, to be published in due course.

#### Level 4 interventions

26. *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**

27. 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.

28. 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.<sup>1</sup> 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.
29. The Council has cooperated with the intervention including by sending information and evidence as requested. **This intervention was closed on 11 April 2023 and was reported on in 2022-23 Annual Report.**

### **Section 65/Regulation 19 casework.**

30. There has been a decrease in the number of cases considering section 65/Regulation 19 issues.