From: [redacted]
Sent: 08 June 2018 16:36
To: Minister for Parliamentary Business
Cc: Permanent Secretary; DG Constitution and External Affairs; Thomson KAL (Ken); Rogers DA (David) (Strategy and Constitution Director); Allison B (Barbara); Davidson I (Ian) (CUKR); **[redacted]**; **[redacted]**; **[redacted]**
Subject: RE: Scottish Information Commissioner report into Scottish Government FOI practice

[redacted]

Just to confirm, the report was sent to Sarah Hutchison at the Commissioner's office before the deadline. I also confirmed that we were content the quotes were accurate and properly attributed.

As mentioned to **[redacted]**, having looked at the quotes, I have pointed out that I have a slight concern in relation to quotes in paragraph 189 (which I have not discussed with the SPADs concerned) that refer to requests potentially being malicious or designed to delegitimise government. I have acknowledged that the quotes are accurate, and that I recognise why the Commissioner would wish to highlight them. However, I have said I think the paragraph might reflect the context in which they were given (the massive increase in requests from political researchers, targeting a couple of specific business areas).

Sarah has replied, thanking us for meeting the deadline and advising that they will look at our proposed changes, including paragraph 189 (there is no guarantee it will be changed, of course).

[redacted]

_____

From: [redacted]
Sent: 08 June 2018 13:39
To: Minister for Parliamentary Business
Cc: Permanent Secretary; DG Constitution and External Affairs; Thomson KAL (Ken); Rogers DA (David) (Strategy and Constitution Director); Allison B (Barbara); Davidson I (Ian) (CUKR); **[redacted]**; **[redacted]**; **[redacted]**
Subject: RE: Scottish Information Commissioner report into Scottish Government FOI practice

[redacted]

Just to confirm, I have added our comments. I have also checked the case file in relation to paragraphs 135 and 137 and do not consider there is any reason to suggest a change.

I will send the report back to the Commissioner before his 16.00 deadline.

[redacted]
 << File: Intervention Report 080618.docx >>

_____

From: [redacted]
Sent: 08 June 2018 08:35
To: Minister for Parliamentary Business
Cc: Permanent Secretary; DG Constitution and External Affairs; Thomson KAL (Ken); Rogers DA (David) (Strategy and Constitution Director); Allison B (Barbara); Davidson I (Ian) (CUKR); **[redacted]**; **[redacted]**; **[redacted]**
Subject: RE: Scottish Information Commissioner report into Scottish Government FOI practice

[redacted]

The Commissioner's office has sent me an updated version of their report (attached), which includes an executive summary. We will incorporate SG comments into this version.

It also changes his finding on deliberate delays from having no evidence to there being evidence in one case (paragraphs 135 and 137 provide the detail). While it is disappointing he has reached this conclusion, I can understand how he may have done so, given the evidence he quotes. However, we will check the specific case file today before returning comments.

Happy to discuss.

[redacted]

 << File: Intervention Report 080618.docx >>

[redacted – out of scope]

From: [redacted]
Sent: 13 June 2018 17:16
To: DL Cabinet Secretaries; DL All Scottish Government Ministers
Cc: Executive Team; Directors (SST); Rogers DA (David) (Strategy and Constitution Director); Davidson I (Ian) (CUKR); CUKR : Freedom of Information Unit; Lloyd E (Elizabeth); Nicolson S (Stuart) Special Adviser; McAllister C (Colin); McFarlane J (John); **[redacted]**; Booth J (John); **[redacted]**; Corporate Communications; News Desk
Subject: Scottish Information Commissioner: Intervention Report

For information purposes, please see the attached minute concerning the publication today of the Scottish Information Commissioner's Intervention Report.

Regards

[redacted]
FOI Unit

<< File: FOI Intervention Report - minute.doc >>

First Minister
Deputy First Minister
Cabinet Secretaries
Ministers

INTERVENTION REPORT BY THE SCOTTISH INFORMATION COMMISSIONER

Purpose

1.   For information, you will wish to be aware of the publication earlier today of an Intervention Report by the Scottish Information Commissioner into the Scottish Government's performance and policies for dealing with request for information under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs).

2.   The report contains a series of recommendations, summarised below and contained in full at the **Annex A** of this minute.

3.   The Minister for Parliamentary Business made a statement in the Scottish Parliament earlier today in response to the report.

4.   The news release issued earlier today forms **Annex B**.

Priority

5.   Routine.

Background

6.   On 21st June 2017, Parliament passed a motion that was critical of the Scottish Government's handling of FOI requests. The motion called for an independent inquiry into the way that the Scottish Government deals with requests and for post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002. The Scottish Government supported that motion.

7.   On 11 September, the Standards, Procedures and Public Appointments Committee agreed that the Scottish Information Commissioner, who is independent of government and holds extensive statutory powers of regulation and enforcement, might be an appropriate person to undertake an independent inquiry.

Report findings

8.   While noting the positive improvements in performance in the last year – and the range of measures being put in place aimed at embedding effective FOI performance across the Scottish Government, the Commissioner also raises a number of matters of concern.

9.   These primarily relate to the more involved clearance process generally followed in the handling of requests by the media (as well as political researchers), poor record keeping in respect of how individual requests are dealt with and issues around staff training and knowledge.

10.   The Commissioner recommends that the Scottish Government:

- undertakes a detailed review of its clearance procedures and addresses a number of specific shortcomings in its existing procedures;

- examine the procedures to ensure review cases are analysed to identify any areas where poor initial decisions are being made and there is a system in place to prevent recurrence of failures;

- investigates whether the task of quality assurance of cases not decided by Ministers ought, more appropriately, to be carried out by staff within Directorates or Executive Agencies;

- ends its practice of treating journalists, MSPs and political researchers differently when processing requests for information because of who or what they are;

- takes action to improve the case file record-keeping of case-handlers, so that case files contain a full record of internal correspondence concerning the handling of a request;

- ensures that case-handlers and reviewers have sufficient knowledge and training to enable them to respond to requests appropriately;

- reviews its current procedures for allocating case managers with a view to developing a larger core group of trained and experienced personnel, examining the lessons of successful Directorates and Agencies;

- improves its FOI performance monitoring processes; and

- reappraises its internal review procedures to remove so far as practicable the risk of impartiality caused by the same individuals being involved in both the original decision and the review.

11.   We have accepted the Commissioner's recommendations.

Next Steps

12.   Officials will now give full consideration to the Commissioner's recommendations. However, with immediate effect we have updated guidance on the clearance process to emphasise that consideration of the degree of clearance required should be based on the information that is requested, rather than the identity of the requester. This already starts to address recommendation 3.

13.   The introduction of the MiCase corporate records system anticipated for rollout from August, as well as the upgrade to Objective in the autumn, should in part address recommendations 4 and 6.

14.   We are now required to develop a draft action plan to address the recommendation set out in the Commissioner's report by 13 September. Timescales for compliance with the plan will then be agreed with the Commissioner.

[redacted]
FOI Unit
[redacted]   13 June 2018

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness

Executive Team
Directors (SST)
Rogers DA (David) (Strategy and Constitution Director)
Davidson I (Ian) (CUKR)
CUKR: Freedom of Information Unit
Lloyd E (Elizabeth)
Nicolson S (Stuart) Special Adviser
McAllister C (Colin)
McFarlane J (John)
[redacted]
Booth J (John)
[redacted]
Corporate Communications
News Desk

Scottish Information Commissioner Recommendations

Recommendation 1: Clearance procedures

The current procedures for the clearance of information requests are unclear and lacking in detail. This makes the role of those involved opaque when it should be transparent. I therefore recommend the Scottish Government undertake a detailed review of the clearance procedures to address:

(i)   the need for the roles of case-handlers, senior managers, special advisers and Ministers to be clearly set out, unpicking the currently nebulous concept of "clearance" **Recommendation 1(i)**

(ii)   the formalisation of the system which determines what cases require to be decided by Ministers themselves, so that the system is clear for all, not least the case-handlers. In terms of transparency and increasing public understanding of the process, I recommend that the Scottish Government sets out more clearly the circumstances under which responses require Ministerial clearance as opposed to Ministerial visibility. This should include clear guidance on who the decision-making authority is in the event that the case is not determined by a Minister. **Recommendation 1(ii)**

(iii)   the procedures to be followed by a case-handlers on receiving special adviser advice, particularly in the case of disagreement. This is particularly important in relation to the interpretation of a request, the scope of a request or the application of any exemption(s). Where there are such differences, I suggest there could be a role for the FOI Unit to provide advice to Ministers with a view to getting it right first time. **Recommendation 1(iii)**

(iv)   the introduction of clear rules for the recording of decisions in relation to requests for information, setting out the detailed rationale for the decision, showing that they have applied a presumption of disclosure, and providing clear justification and rationale for any departures from specialist advice. **Recommendation 1(iv)**

(v)   the current ambiguous guidance about the role of the Communications Team in the process. **Recommendation 1(v)**

(vi)   the inconsistency of current target timelines with the duty to issue responses promptly. **Recommendation 1(vi)**

Recommendation 2: Quality assurance

Linked to this, it was apparent from interviews with special advisers, and from the views of case-handlers and other staff, that a key role of special advisers in considering draft responses to information requests is one of quality assurance. As noted elsewhere, paragraph 9.7 of the Section 60 Code states that it is good practice for authorities to check responses for accuracy and quality before they are issued. I question whether such quality assurance needs to be carried out by individuals at the level of special adviser within the Scottish Government for cases which are not decided by Ministers and whether these arrangements are proportionate.

(i)   I recommend that the Scottish Government examines their procedures to ensure there is analysis of review cases to identify any areas where poor initial decisions are being made and, going forward, there is a system in place to prevent recurrence of failures. **Recommendation 2(i)**

(ii)   I recommend that the Scottish Government investigate whether the task of quality assurance of cases not decided by Ministers ought, more appropriately, to be carried out by staff within Directorates or Executive Agencies. **Recommendation 2(ii)**

Recommendation 3: Clearance of media requests

Requests made under FOISA and the EIRs are, generally, "applicant blind" and "purpose blind". It is inherently wrong that a class of requesters is treated differently when processing requests for information solely because of who or what they are. This covers not only journalists, but also MSPs and political researchers.

I strongly recommend that the Scottish Government ends this practice. Of course, this would not prevent a clearance system based on the sensitivity on the information sought and/or the complexity of the case. While such a system may still capture many requests from those groups, it will be based on a consideration of the request and **not** of the person.

Recommendation 4: Case file records management

I recommend that the Scottish Government take action to improve the case file record-keeping of case-handlers, so that case files contain a full record of internal correspondence concerning the handling of a request. This should include a record of searches and decisions made, including the detailed rationale of such decisions. It should also include notes of meetings or correspondence where recommendations were changed or exemptions relied on and advice sought (and received) from other officials and special advisers. It should also, where relevant, and in line with the Section 60 Code (paragraph 6.2.3), record any discussions with applicants and third parties.

Recommendation 5: Case handling

As noted above, the Scottish Government presently utilises over 1,000 staff per annum to respond to information requests. Given the volume of requests received, many of these case-handlers deal with only a handful of cases each year. Issues of knowledge, training and experience were identified throughout the assessment.

(i)   I recommend that the Scottish Government review its system for allocating case-handlers with a view to developing a larger core group of trained and experienced personnel, examining the lessons of successful Directorates and Agencies. **Recommendation 5(i)**

(ii)   I recommend that the Scottish Government reassess its FOI training system, and ensure that records of the training delivered are kept in an accessible format. **Recommendation 5(ii)**

Recommendation 6: Monitoring FOI requests

(i)   To enable monitoring of clearance timescales, I recommend the inclusion in the FOI tracker system of the date each case is sent for clearance and the date the clearance response is received. **Recommendation 6(i)**

(ii)   The FOI tracking system should capture the necessary information and provide an adequate reporting facility to support the authority to monitor its FOI performance (see paragraphs 2.1 of the Section 60 Code: Recording and reporting statistics). **Recommendation 6(ii)**

(iii)   FOI performance reporting is an important function of the activities of all senior management teams. In an authority the size of the Scottish Government, I recommend there are arrangements for performance monitoring at both Executive Team and Directorate level. **Recommendation 6(iii)**

Recommendation 7: Reviews

It was noted that the current review processes allow for personnel involved in the original decision-making process also to be involved in the review stage. The Section 60 Code of Practice provides that the review process should be fair and impartial (paragraph 10.3.3) and states that it is good practice for the reviewer to be a person who did not respond to or advise on the original request (paragraph 10.3.4).   I recommend that the Scottish Government reappraise its procedures to remove so far as practicable the risk to impartiality caused by the same individuals being involved in both processes.

News release

Scottish Information Commissioner outlines steps to build on 'significant improvements'.

The Scottish Government has welcomed a report by the Scottish Information Commissioner into how it handles Freedom of Information (FOI) requests, and will accept the report's recommendations in full.

Today's report follows a review into the government's approach to handling FOI requests from journalists compared with those from other requestors.

In his report, the Scottish Information Commissioner Daren Fitzhenry, highlights 'significant improvements' to the government's FOI performance and sets out seven recommendations to build on recent progress.

Minister for Parliamentary Business Joe Fitzpatrick said:

"Being open and transparent is a priority set out in our current Programme for Government. We welcomed and cooperated fully with the Scottish Information Commissioner's review and are happy to accept his recommendations in full to support our continued improvement.

"As the report highlights, we have already implemented a number of changes that have resulted in significant improvements to our FOI performance. In the first five months of 2018 we responded to 93% of FOI requests on time, exceeding the 90% target set by the Information Commissioner and a 10% increase on last year. Outside the FOI process, last year the Scottish Government responded to over 5,000 queries from journalists in a matter of hours.

"Whilst the Commissioner makes clear in his assessment that he has found no evidence to substantiate a number of the criticisms that have been made about the Scottish Government's approach we are determined to learn from this review, to further improve our performance and to further enhance our position as an open government. Working with the Commissioner we will produce an action plan to take forward these recommendations."

Permanent Secretary to the Scottish Government Leslie Evans said:

"Our staff recognise the crucial role they have to play to ensure the Scottish Government meets our responsibilities under Freedom of Information legislation.

"During the past year we have taken action to ensure improved performance, including allocating additional resources to our FOI unit, intervening early to ensure effective case management, developing a new tracking system and working across every Directorate to address local action. We publish all FOI responses online.

"I look forward to working with the Office of the Scottish Information Commissioner to build on these achievements in implementing the recommendations in the report."

The Scottish Information Commissioner's report is available here[1]

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[1]

http://www.itspublicknowledge.info/home/AboutSIC/WhatWeDo/Intervention201702016ScottishGovernment.aspx

From:	[redacted]
Sent:	07 June 2018 13:05
To:	[redacted]; Booth J (John); Davidson I (Ian) (CUKR); [redacted]; [redacted]
Cc:	Rogers DA (David) (Strategy and Constitution Director); [redacted]; [redacted]; [redacted]; [redacted]; [redacted]
Subject:	RE: OSIC report - handling plan

Follow Up Flag:	Follow up
Flag Status:	Flagged

All,

Please see the below draft comms handling plan for your thoughts/comment, **ideally by 4pm today, please**, so I can share a final version with the Permanent Secretary and Mr Fitzpatrick by close of play and get on with pulling together proactive materials we need to publish.

Many thanks,

[redacted]

[redacted]

Senior Communications Manager | Corporate Communications | 0131 24**4** **[redacted]** | **[redacted]**

Scottish Government | www.gov.scot | Twitter | Facebook

(I work Mon-Thurs)

[redacted]

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

From: [redacted]
Sent: 07 June 2018 16:23
To: [redacted]; [redacted]; [redacted]; [redacted]; Davidson I (Ian) (CUKR); Booth J (John); [redacted]
Cc: Rogers DA (David) (Strategy and Constitution Director); [redacted]; [redacted]; [redacted]
Subject: RE: OSIC report - handling plan

Thanks **[redacted]/[redacted]**. I have provisionally updated the below tactics grid (from 12th to 13th June).

[redacted – out of scope]

[redacted – out of scope]

From: [redacted]
Sent: 07 June 2018 16:06
To: [redacted]; [redacted]; [redacted]; [redacted]; Davidson I (Ian) (CUKR); Booth J (John); [redacted]
Cc: Rogers DA (David) (Strategy and Constitution Director); [redacted]; [redacted]; [redacted]
Subject: RE: OSIC report - handling plan

Thanks all. Below tweaks reflect your comments.

Can you please keep me posted on timings so we can revise our tactics accordingly?

Grateful for final comments by 5pm, please.

[redacted]

[redacted – out of scope]

[redacted – out of scope]

From: [redacted]
Sent: 07 June 2018 14:02
To: [redacted]; Davidson I (Ian) (CUKR); [redacted]; [redacted]; Booth J (John); [redacted]
Cc: Rogers DA (David) (Strategy and Constitution Director); [redacted]; [redacted]; [redacted]; [redacted]
Subject: RE: OSIC report - handling plan

I've just discussed with John. Two things:

- Can we say as our top line that we accept the recommendations in full?

- Can we add in a line to give context to how we deal with journalists every day. Something like "The SG handles XXX non-FOI queries from journalists every year which receive a response in a matter of hours."

[redacted]

[redacted]- | 0131 24**4** **[redacted]** | **[redacted]**

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

From: [redacted]
Sent: 07 June 2018 18:32
To: [redacted]; [redacted]
Cc: [redacted]
Subject: OSIC report - handling plan

[redacted] / **[redacted]**,

The Scottish Information Commissioner will publish a report next week (expected Weds) following a review of our FOI processes.

Will it be possible to have a Carousel link to our Saltire FOI guidance on that day?

Copying **[redacted]** in the FOI Unit who can confirm whether the material on Saltire is in good order.

Thanks,

[redacted]

From: [redacted]
Sent: 13 June 2018 10:10
To: Lloyd E (Elizabeth); **[redacted]**; Davidson I (Ian) (CUKR); Rogers DA (David) (Strategy and Constitution Director); **[redacted]**; **[redacted]**; Communications Economy; **[redacted]**; **[redacted]**; **[redacted]**; **[redacted]**; Booth J (John); **[redacted]**; **[redacted]**; **[redacted]**; DG Constitution and External Affairs; News Desk; Director Communications, Ministerial Support & Facilities; Allison B (Barbara); DG Organisational Development & Operations; **[redacted]**; **[redacted]**; **[redacted]**
Subject: OSIC report - holding line

All,

We have comms colleagues out with Ministers this morning and have been asked for an urgent short holding line on the OSIC report in case Ministers are asked about it.

I'd suggest:

- The Scottish Government has cooperated fully with the Scottish Information Commissioner's review. We will respond to the Commissioner's report once this is published.

Thanks

[redacted]

[redacted]

Senior Communications Manager | Corporate Communications | 0131 24**4 [redacted]** | **[redacted]**

Scottish Government | www.gov.scot | Twitter | Facebook

(I work Mon-Thurs

From: [redacted]
Sent: 13 June 2018 11:56
To: Rogers DA (David) (Strategy and Constitution Director); **[redacted]**
Cc: Booth J (John); **[redacted]**; Director Communications, Ministerial Support & Facilities;
[redacted]; Permanent Secretary; Davidson I (Ian) (CUKR); **[redacted]**; **[redacted]**; **[redacted]**;
[redacted]; **[redacted]**
Subject: RE: Perm Sec tweet

All,

To confirm I'll tweet the following from Perm Sec's twitter account once the news
release goes live.

"Important report from the @FOIScotland today on @scotgov approach to
#FOI. Read more here: <mark>INSERT LINK TO NEWS RELEASE</mark>

Thanks,
[redacted]

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

All,

To advise the Permanent Secretary has cleared the below all staff message for issue after the Minister has given his statement to Parliament this afternoon. (We will insert the missing links once we have them).

Thanks,

[redacted]

MESSAGE FROM THE PERMANENT SECRETARY: FREEDOM OF INFORMATION

Today saw the publication of a report [link] by the Scottish Information Commissioner into the Scottish Government's handling of Freedom of Information (FOI) requests. The report sets out a series of recommendations which the Government has accepted in full. You can read the Scottish Government's response here [link].

I would like to thank all those who have been involved in the exercise. I would also like to recognise the efforts of everyone across the organisation who has contributed to a significant improvement in our FOI performance over the past year; in the first five months of 2018 we responded to 93% of FOI requests on time, exceeding the 90% target set by the Information Commissioner and a 10% increase on last year.

But it is important that we learn from this review and we continue to improve. I ask each of you to consider what more you can do to demonstrate our commitment to openness and transparency. The way we handle FOI requests is not simply an administrative process, but it speaks to the wider values of our organisation and our relationship with the public and civic society.

Leslie Evans

For further information please contact the FOI Unit

From: [redacted]
Sent: 13 June 2018 12:27
To: [redacted]; Lloyd E (Elizabeth)
Cc: [redacted]; [redacted]; [redacted]
Subject: RE: FOR CLEARANCE - OSIC report - news release

For awareness - I've tweeted from @PermSecScot account.

https://twitter.com/PermSecScot/status/1006857955051008005

From: [redacted]
Sent: 13 June 2018 12:25
To: Lloyd E (Elizabeth)
Cc: [redacted]; [redacted]; [redacted]; [redacted]
Subject: RE: FOR CLEARANCE - OSIC report - news release

Hi Liz,

In a meeting but **[redacted]** is sorting a tweet from Perm Sec account and **[redacted]** is speaking to Mr Fitzpatrick's office about a tweet from him.

Copying **[redacted]** and **[redacted]** - who can hopefully organise a tweet from @scotgov as I'm in a meeting for the next half hour.

Thanks,

[redacted]

Sent with BlackBerry Work (www.blackberry.com)

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

[redacted – out of scope]

Did you guys manage to get the statement checked? I can send him the release.

[redacted]

_____

Hi,

[redacted]@bbc.co.uk looking for SG line so FOI for BBC newsdrive.

I've added to the note - hope that's ok!

Ta

[redacted] | Newsdesk
Scottish Government
0131 244 **[redacted]** | **[redacted]**

From: [redacted]
Sent: 14 June 2018 12:16
To: [redacted]; [redacted]
Cc: [redacted]; Booth J (John)
Subject: FW: Perm Sec tweet

[redacted]/ **[redacted]** - to see re Twitter on Wed.

We should switch the text in the grid/handling plan and use David's suggestion below.

[redacted] - I can update you from discussions on Friday - give me a call when you've got a moment - **[redacted]**

[redacted]

Sent with BlackBerry Work (www.blackberry.com)

[redacted -- out of scope]

[redacted -- out of scope]

[redacted -- out of scope]

[redacted -- out of scope]