



Scottish Information
Commissioner
it's public knowledge

Our Ref: 95474

Joe FitzPatrick MSP
Minister for Parliamentary Business
The Scottish Parliament
Edinburgh
EH99 1SP

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Dear Minister

Thank you for inviting me to meet with you on 25 October. It was very helpful to meet so soon after taking up my new post.

We covered a lot of ground in our discussions, including, of course, the Parliamentary Motion of 21 June.

We reflected on my current intervention into the Scottish Government's compliance with statutory timescales for FOI requests and reviews (delayed responses were also a significant concern raised in both the journalists' letter to the SPCB and in the Parliamentary debate on the Motion). It might be useful to recount that the current intervention began in January 2017 when it was noted that an earlier improvement in the Scottish Government's compliance with statutory timescales had not been sustained. The Scottish Government accepted my predecessor's recommendation that it sign up to performance targets, the first being that from April 2017, 85% of information request responses and review responses were to be issued within statutory timescales. It was also agreed that these targets were to be achieved by each Directorate, not by the Scottish Government as a whole, and that the targets will be raised to 90% next year and 95% the following year. The Scottish Government sends us monthly performance reports, which we continue to monitor.

I noted in relation to the current intervention that the Scottish Government has worked hard to resolve internal delays and its performance in complying with timescales has improved considerably over the past five months. I hope to see this improved performance continue and will review the outcomes at the end of the current monitoring period (December 2017).

We discussed the Scottish Parliament's call for an independent inquiry into how the Scottish Government deals with FOI requests, and how this related to my role as the Scottish Information Commissioner. The Motion itself is silent as to who is to conduct the inquiry, other than to state that it is to be independent. While my existing intervention deals with a number of the concerns raised, it is focused on the Scottish Government's delay in dealing with FOI requests and therefore does not address all of the concerns raised in the Motion. Given my independent role and having regard to my statutory functions and powers I confirmed that I would therefore explore the carrying out of a further intervention into the Scottish Government's wider FOI practice, beyond the specific issue of compliance with timescales. Indeed, I note that following the Motion, the Standards, Procedures and Public Appointments Committee "agreed that the Scottish Information Commissioner may be an appropriate independent person to undertake" the inquiry.

My [Enforcement Policy](#) sets out how the Commissioner uses powers contained in the Freedom of Information (Scotland) Act 2002 (FOISA) to promote the following of good practice by authorities (section 43(1)) and to assess whether an authority is following good practice (section 43(3)). “Good practice” includes any and all aspects of an authority’s compliance with FOISA, with the Environmental Information (Scotland) Regulations 2004 and with the Codes of Practice in handling FOI requests and publication. This can include working with an authority on an informal basis, through to issuing Practice Recommendations where there has been a failure to comply with a Code of Practice.

The Enforcement Policy also sets out how the Commissioner uses other, more formal, powers, (such as Enforcement Notices) where, for example, after informal engagement with an authority, the authority continues to fail to comply with the legislation or with the Codes. Failure to comply with such an Enforcement Notice can be treated as contempt of court.

In order to examine the concerns raised in the Motion this new intervention will include an assessment phase, followed by targeted intervention in relation to any performance or practice issues identified. Given that the intervention follows concerns raised in a Parliamentary Motion, rather than the usual sources of information and data informing a decision to intervene (such as information from non-compliance reports or analysis and benchmarking of statistical data), the precise scope of the intervention is still to be determined. However, in general terms it will include a consideration of the issues of culture and practice raised in the journalists’ letter and the debate on the Parliamentary Motion, such as allegations of deliberate delaying tactics and requests being blocked or refused for tenuous reasons. As with all interventions, it will have a “quality assurance” focus, with the intention being to identify issues and then remedy them.

As I pointed out, such an intervention will require careful scoping, and the publication of information about the assessment and intervention will be important for public reassurance on the robustness of the approach. It should be noted from the outset, however, that my functions and powers do not extend to a consideration or determination of what information Ministers ought to record about meetings with outside interests. That aspect of the Parliamentary debate cannot therefore form part of my intervention.

My office has now started the process of scoping the intervention and determining the methodology to be followed in the assessment phase together with anticipated timelines; and I will, of course, keep you updated.

Other matters discussed by us included the Scottish Parliament’s agreement to undertake post-legislative scrutiny of FOISA. I await the Parliament’s decision on how it intends to take this forward and, of course, stand by to assist Parliament in this process.

We also briefly discussed the potential extension of FOI to registered social landlords. I stressed the importance, if that decision is taken, of providing sufficient time to adequately prepare this large tranche of authorities for their new duties.

Thank you for what I am sure you will agree was a productive meeting.

Yours sincerely



Daren Fitzhenry
Scottish Information Commissioner