

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 01 November 2017 13:17  
**To:** [redacted]  
**Subject:** Draft minute of meeting between SIC and Minister

Dear [redacted]

We'd be grateful for comments on the accuracy of the attached draft minute of the meeting.  
It would be extremely helpful if you could please get any comments to us by Monday 6 November.

Best wishes

Sarah

**Sarah Hutchison**  
**Head of Policy and Information**

---

**Scottish Information Commissioner**

Kinburn Castle, Doubledykes Road  
St Andrews, KY16 9DS

Tel: 01334 464621  
Fax: 01334 464611  
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Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)  
Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

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**Minute**  
**Meeting with Minister for Parliamentary Business**  
**Wednesday 25 October 2017**  
**at the Scottish Parliament**

**In attendance:** Joe FitzPatrick, Minister for Parliamentary Business  
Ian Davidson, Deputy Director, Strategy and Constitution Directorate  
**[redacted]**, Head of FOI Unit

Daren Fitzhenry, Scottish Information Commissioner  
Sarah Hutchison, Head of Policy and Information  
Margaret Keyse, Head of Enforcement

**Level 2 Intervention: compliance with timescales**

- [redacted – out of scope]

**Inquiry into Scottish Government approach to FOI**

- The motion passed by the Scottish Parliament, calling for an independent inquiry into the way the SG deals with FOI requests and for post-legislative scrutiny, was discussed.
- SIC noted that the motion does not specify who is to carry out the inquiry or what the inquiry should cover. There was some difference of views among MSPs as to whether the SIC is the right person to carry out the inquiry. However, FOISA gives the SIC the functions and powers to assess whether a public authority is following good practice, etc. and enforcement powers to require compliance.
- The current intervention focusses only on compliance with timescales. It does not cover all of the matters raised in the journalists' letter of 31 May 2017 or the Parliamentary debates.
- One of the points raised in the letter falls outwith the remit of the SIC (practice relating to the recording of meetings is a more appropriate matter for the Ministerial Code).
- There was discussion of a further, wider intervention by SIC . In the absence of any official contrary indication from the Scottish Parliament, the SIC stated that he would explore the carrying out of a further or expanded intervention, under his Enforcement Policy, into the Scottish Government's performance in responding to FOI requests. This would include the quality of responses to requests. There would be an assessment phase and then intervention in relation to any issues noted in the assessment. It was noted that if any other body carried out an investigation into this issue then complex issues regarding jurisdiction and responsibility could arise. Further, it was noted that correspondence between the Standards, Procedures and Public Appointments

Committee, the SPCB and the Minister made reference to the SIC's role in enforcing the legislation.

- Detailed consideration by the SIC of a number of points will be required, including:
  - the scope and methodology of the assessment and intervention (this will include consideration/clarification of the concerns raised in the Parliamentary Debate and a requirement for further meetings with the Scottish Government to discuss its current FOI processes)
  - the reporting of outcomes
  - the costs of this wider action
  - the timing of the work
- SIC noted that such an intervention would require significant resources and that it would be necessary to consider the resources for this work including the possibility of charging under section 43(5) of FOISA.

#### **Post-legislative scrutiny**

- [redacted – out of scope]

#### **Designation of Registered Social Landlords**

- [redacted – out of scope]

#### **Next steps**

- SIC to consider the practical aspects of carrying out the further intervention procedures in more detail and to write to SG in the next few weeks.
- [redacted – out of scope]
- [redacted – out of scope]

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 02 November 2017 16:48  
**To:** [redacted]  
**Subject:** RE: Draft minute of meeting between SIC and Minister

Thanks [redacted], particularly for the speedy response. Your suggested changes look fine to me, but I'll confer with Daren and Margaret.

We'll provide you the final copy - I'm out of the office tomorrow, but will pick this up again on Monday.

Best wishes

Sarah

**From:** [redacted]@gov.scot [[mailto: \[redacted\]@gov.scot](mailto:[redacted]@gov.scot)]  
**Sent:** 02 November 2017 15:53  
**To:** Sarah Hutchison  
**Subject:** RE: Draft minute of meeting between SIC and Minister

Sarah

Thanks for sight of the draft. It does represent an accurate account in my view.

I have suggested a few minor changes. These are tracked and I have also added comments to explain my rationale in two instances.

Please do not hesitate to contact me should you wish to discuss.

[redacted]  
0131 244 [redacted]

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**[redacted]**, Head of FOI Unit

Daren Fitzhenry, Scottish Information Commissioner  
Sarah Hutchison, Head of Policy and Information  
Margaret Keyse, Head of Enforcement

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- [redacted – out of scope]

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#### **Post-legislative scrutiny**

- [redacted – out of scope]

#### **Designation of Registered Social Landlords**

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#### **Next steps**

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- [redacted – out of scope]
- [redacted – out of scope]

**From:** Margaret Keyse [<mailto:mkeyse@itspublicknowledge.info>]  
**Sent:** 08 November 2017 16:09  
**To:** [redacted]  
**Cc:** Sarah Hutchison  
**Subject:** Meeting notes

Dear [redacted]

Thanks for sending us your comments on the draft notes – Sarah's off [redacted] which is why I'm responding instead of her.

We're happy to accept the changes. I've attached a copy of the finalised notes.

Margaret

**Margaret Keyse**  
**Head of Enforcement**

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[redacted], Head of FOI Unit

Daren Fitzhenry, Scottish Information Commissioner  
Sarah Hutchison, Head of Policy and Information  
Margaret Keyse, Head of Enforcement

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### **Next steps**

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- [redacted – out of scope]
- [redacted – out of scope]

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 15 November 2017 12:24  
**To:** Minister for Parliamentary Business  
**Cc:** Davidson I (Ian) (CUKR); [redacted]; [redacted]; Freedom of Information  
**Subject:** Letter from Scottish Information Commissioner

Dear Minister

Please find attached a letter from Daren Fitzhenry, following the meeting on 25 October. We'll post a signed hard copy of the letter to you later today.

For information, we'll share the letter with the Clerks of Standards and PAPLS Committees tomorrow and will publish the letter on our website.

Best wishes

Sarah

**Sarah Hutchison**  
**Head of Policy and Information**

---

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T: 0300 244 4000  
E: scottish.ministers@gov.scot

Daren Fitzhenry  
Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
KY16 9DS

22 November 2017

Dear *Daren*

Thank you for your letter of 15 November following our meeting on 25 October. I very much welcomed this initial opportunity for positive and productive discussion across the range of issues.

Thank you for your comments on the Scottish Government's response to the current intervention, in which you noted the considerable improvement that has been achieved over the last 5 months. I outlined in our discussion some of the measures we have taken and highlighted the commitment across Government to meet the agreed targets and to secure improvement more generally. I look forward to further discussion as you review outcomes at the end of the current monitoring period.

We also discussed the Scottish Parliament motion calling for an independent inquiry into how the Scottish Government deals with FOI requests. As you know I made clear to Parliament during the debate on 21 June the Government's view that it is for the Scottish Information Commissioner to undertake such investigation. As you note in your letter, the Standards, Procedures and Public Appointments Committee has also agreed that the Commissioner may be an appropriate independent person to undertake the inquiry.

I look forward to engaging with your office, both as the process of scoping the intervention develops and throughout the intervention itself.

*Yours for Scotland*  
*Joe FitzPatrick*

JOE FITZPATRICK

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 11 December 2017 12:39  
**To:** Davidson I (Ian) (CUKR); [redacted]  
**Subject:** FW: Letter from the Scottish Information Commissioner

Dear Ian and [redacted]

Copy of the letter below for your information.

Best wishes

Sarah

**From:** Sarah Hutchison  
**Sent:** 11 December 2017 12:39  
**To:** 'MinisterPB@gov.scot'  
**Cc:** [redacted]@gov.scot'  
**Subject:** Letter from the Scottish Information Commissioner

Dear Minister

Please find attached a letter from Daren Fitzhenry concerning an invitation to journalists to submit evidence for the intervention.

I will forward a copy of this email to Ian Davidson and [redacted].

Best wishes

Sarah

**Sarah Hutchison**  
**Head of Policy and Information**

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**Scottish Information Commissioner**

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Scottish Information  
Commissioner  
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**Our Ref:** 96500

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

11 December 2017

Dear Minister

**Invitation to journalists to submit information (intervention)**

It was good to see you again at the Holyrood Conference.

As discussed, a more detailed picture of the problems raised by the journalists' letter to the Scottish Parliamentary Corporate Body will assist my intervention into the Scottish Government's FOI performance. I will issue an invitation tomorrow to the signatories to the letter to provide supporting evidence of their concerns.

The invitation includes top level information about the scope and the questions that it will seek to answer. An extract of the scope and questions is attached to this letter. As you will see, both are derived from the journalists' letter and matters considered in the Parliamentary debate of 21 June.

As we discussed in October, there's a strong public interest in the intervention, so I plan to publish as much information about it as I can, starting with the invitation to journalists which will be posted on my website this week.

The Convener of the Public Audit and Post-Legislative Scrutiny Committee has written to me to request more information about the intervention. I will copy you into my response.

Yours sincerely

**[redacted]**

**Daren Fitzhenry**  
**Scottish Information Commissioner**

## Scope of the intervention

1. The Commissioner's intervention will:
  - (i) Assess the Scottish Government's freedom of information (FOI) performance in light of serious concerns raised in the letter to the Scottish Parliamentary Corporate Body and in the Scottish Parliament's debate on Motion S5M-06126 (as amended by Motion S5M-06126) on 21 June 2017, and
  - (ii) Where any of its practices are found to be deficient, require the Scottish Government to:
    - (a) remedy any identified breach of FOI law, and
    - (b) meet the minimum standards of good practice in the Ministers' Section 60 Code of Practice.

## Issues in scope of the intervention

2. Pending further information, the Commissioner expects the assessment phase will focus on the following questions:

### *Treatment of requests from journalists*

- (i) Does the Scottish Government treat and manage requests from journalists differently, compared to requests made by other people?
- (ii) Where there are differences, do they reduce or restrict journalists' entitlement to information, compared to other requesters?

### *Late responses*

- (iii) Is there any evidence of deliberate delays in responses to some information requests e.g., to requests from journalists or requests about internal policy-making?

### *Management of requests*

- (iv) Are internal request handling procedures (particularly those that concern which officials should respond to, or advise on, requests) consistent with FOI law and the Code of Practice?
- (v) What is the role of Special Advisers in the request handling process? Where request handling departs from the Scottish Government's procedures is there any detriment to the requester's entitlement to information?

### *Refusals*

- (vi) Is there evidence of a practice of requests being blocked or refused for tenuous reasons?
- (vii) Specifically, where the requested information is politically sensitive, are requests handled in a different way (not under the usual procedures)? If so, to what extent is this detrimental to the requester's entitlement?

### **Not in scope of the intervention**

3. The Commissioner's intervention *cannot* look at the concerns raised about the Scottish Government's practice in recording information. The Commissioner's powers in an intervention derive from FOI law, which is concerned with access to information that authorities hold, not what they *ought* to hold.

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 11 December 2017 14:42  
**To:** [redacted]  
**Subject:** RE: Letter from the Scottish Information Commissioner

I'll try and give you a call in the afternoon. Margaret is going to respond to you about the email that came with the statistics - so she may be in touch before then.

Best wishes  
Sarah

Sarah Hutchison  
Head of Policy and Information  
Scottish Information Commissioner

---

**From:** [redacted]@gov.scot  
**Sent:** 11/12/2017 14:03  
**To:** [Sarah Hutchison](mailto:Sarah.Hutchison@gov.scot); [Ian.Davidson2@gov.scot](mailto:Ian.Davidson2@gov.scot)  
**Subject:** RE: Letter from the Scottish Information Commissioner

Sarah

Yes, I am free most of Wednesday, except between 10.30 - 12.00.

[redacted]

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 11 December 2017 13:56  
**To:** [redacted]; Davidson I (Ian) (CUKR)  
**Subject:** RE: Letter from the Scottish Information Commissioner

Hello [redacted]

Would there be a time on Wednesday that would suit you for a phone call?

Best wishes

Sarah

**From:** [redacted]@gov.scot [[mailto:\[redacted\]@gov.scot](mailto:[redacted]@gov.scot)]  
**Sent:** 11 December 2017 13:51  
**To:** Sarah Hutchison; [Ian.Davidson2@gov.scot](mailto:Ian.Davidson2@gov.scot)  
**Subject:** RE: Letter from the Scottish Information Commissioner

Sarah

Thanks, useful to see.

As you know from the monthly report [redacted] sent last week, we would welcome an early opportunity to discuss the intervention - and are keen to remain engaged in scoping the intervention.

I wonder if you have capacity to have a short discussion around the margins of the Commissioner's meeting with the Permanent Secretary next Tuesday?

Regards

**[redacted]**

**[redacted]**

Scottish Government | Head of FOI Unit

 +44 (0)131 244 **[redacted]** | Mob **[redacted]**

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 02 February 2018 13:50  
**To:** Minister for Parliamentary Business  
**Cc:** Davidson I (Ian) (CUKR); **[redacted]**  
**Subject:** Letter from Scottish Information Commissioner

Dear Minister

Please find attached a letter from Daren Fitzhenry, in which he confirms the scope of his intervention into the Scottish Government's FOI performance and the methodology required.

As you will see, I have copied Ian Davidson and **[redacted]** in to this email for information.

Best wishes

Sarah

**Sarah Hutchison**  
**Head of Policy and Information**

---

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**From:** [redacted]  
**Sent:** 08 February 2018 12:14  
**To:** Sarah Hutchison; Davidson I (Ian) (CUKR)  
**Subject:** RE: Publication of SIC letter to Minister for Parliamentary Business

Sarah

Thanks. I have let our Comms people know.

[redacted]

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 08 February 2018 12:07  
**To:** [redacted]; Davidson I (Ian) (CUKR)  
**Subject:** Publication of SIC letter to Minister for Parliamentary Business

Dear Ian and [redacted]

We've just published the SIC's letter of 2 February 2018 to the Minister on the [intervention page](#) of our website. I've alerted the signatories to the journalist letter to its publication. You may want to let your press team know in case they get any calls.

Best wishes

Sarah

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**From:** Claire Stephen [<mailto:cstephen@itspublicknowledge.info>]  
**Sent:** 12 February 2018 17:40  
**To:** [redacted]  
**Cc:** Sarah Hutchison  
**Subject:** RE: Intervention : 201702106

[redacted],

Thanks for your email. Electronic format for the documents will be sufficient.

I understand Sarah is in contact with you separately about arranging a meeting with [redacted].

**Claire Stephen**  
**Freedom of Information Officer**

---

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Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)  
Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

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**From:** [redacted]@gov.scot [[mailto:\[redacted\]@gov.scot](mailto:[redacted]@gov.scot)]  
**Sent:** 12 February 2018 16:15  
**To:** Claire Stephen  
**Cc:** Daren Fitzhenry; Sarah Hutchison; [DLCEABCUKRFIU@gov.scot](mailto:DLCEABCUKRFIU@gov.scot)  
**Subject:** RE: Intervention : 201702106

Claire

We will provide the information requested as soon as possible. Half the team are out of the office or on leave just now, so we will assess how long that will take later in the week and will be in touch. Can you confirm whether you want the documentation in electronic format or hard copies?

Happy for you to have a discussion with [redacted] about the monthly reports before he leaves at the end of the month. I will want another couple of the team here involved so we are sure we still understand what is required when [redacted] has left (and to give us some resilience). Let me know some dates and times that would suit and we should be able to sort something.

Regards

[redacted]  
[redacted]

Scottish Government | [redacted]

 +44 (0)131 244 [redacted] | Mob +44 [redacted]

**From:** Claire Stephen [<mailto:cstephen@itspublicknowledge.info>]  
**Sent:** 09 February 2018 16:01  
**To:** [redacted]  
**Cc:** Daren Fitzhenry; Sarah Hutchison  
**Subject:** Intervention : 201702106  
**Importance:** High

[redacted],

**Intervention assessment**  
**Our ref: 201702106**

I refer to the Scottish Information Commissioner's intervention looking into the Scottish Ministers handling of requests. The Commissioner's letter of 2 February 2018, addressed to Mr Joe FitzPatrick MSP, sets out our methodology in relation to this intervention.

At this stage, we ask that the Ministers provide the Commissioner with the following FOI (including EIRs) documentation:

1. All internal request handling procedures and policies.
2. Any policies and procedures which sets out who should respond to, or advise on, requests.
3. Any policies and procedures which relate to the handling of requests received from journalists.
4. Any policies and procedures which reference the role of Special Advisers in request handling processes.
5. Any policies and procedures relating to the handling of politically sensitive requests.

I thank you for your assistance in relation to this and look forward to receiving the information detailed above at your earliest convenience.

In addition, we would welcome the opportunity to discuss how the Ministers' statistics relating to request handling are currently collected, collated, monitored and reported. With this in mind, it would be helpful to have a discussion directly with [redacted] before he leaves post, if at all possible.

Thank you for your help with this.

**Claire Stephen**  
**Freedom of Information Officer**

---

**Scottish Information Commissioner**  
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Mr Daren Fitzhenry  
Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
KY16 9DS

---

Our ref: 2018/0004359  
February 2018

Dear

### **Intervention assessment phase**

Thank you for your letter of 2 February setting out your plans for the next phase of the intervention process.

As you know, I welcome the intervention which I believe will be complementary to improvement work already underway and which has resulted in significant progress in increasing Scottish Government performance rates.

My officials will of course provide all assistance to your staff during the intervention period.

**Joe Fitzpatrick**

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

The Scottish Parliament, Edinburgh EH99 1SP  
[www.gov.scot](http://www.gov.scot)

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 15 February 2018 12:31  
**To:** [redacted]  
**Cc:** Margaret Keyse  
**Subject:** RE: Contact details for our staff

Thanks [redacted], this is really helpful to have. [redacted – out of scope]

Yes, we are intending to come to you on the 21<sup>st</sup>, I'm sorry that I haven't confirmed this with you, I've been waiting to check who would be coming. It looks like it's Daren, Margaret and me, plus two officers (names not yet confirmed) who will be with you for the on-site work. Please let me know if this is a problem for us to have so many people – it would really help us to all have the same starting point.

Thanks for sending on Mr Findlay's Motion, I hadn't seen it yet. Yes, it certainly looks like he thinks our intervention has been completed. It might be there's confusion because we have two interventions, though neither is closed. I'll make sure Daren is aware of it.

Best wishes

Sarah

**From:** [redacted]@gov.scot [[mailto: \[redacted\]@gov.scot](mailto:[redacted]@gov.scot)]  
**Sent:** 15 February 2018 12:12  
**To:** Sarah Hutchison  
**Cc:** Margaret Keyse  
**Subject:** RE: Contact details for our staff

Sarah

Thanks for this. I attach a table showing staff details for the team [redacted – out of scope]

Is 21st definitely the date for your people to come and look at the tracker? I will need to send details (names and arrival time) to our reception in order to allow access to the building.

Finally, we have seen a motion lodged with the Parliament by Neil Findlay (see below). Unless you think differently, it seems to me he may have - rather prematurely - interpreted Mr McEnaney's tweets as representing the Commissioner's findings, rather than his own interpretation of failings in Scottish Government processes. It currently has only 2 supporters, so we are not sure it will be taken forward, but we will obviously watch with interest.

Regards

[redacted]  
[redacted]  
Scottish Government | Head of FOI Unit  
☎ +44 (0)131 244 [redacted] | Mob [redacted]

**Motion S5M-10438:** That the Parliament is deeply concerned with the Scottish Government's approach to Freedom of Information (FOI) requests; acknowledges that, following an investigation by the Scottish Information Commissioner, it was reportedly found that Scottish Government ministers deliberately withheld and delayed specific information while processing FOI requests;

understands that, throughout the investigation, special advisers had a significant role to play in dealing with FOI requests; considers that what it sees as their interference in the FOI process highlights that requests have been subject to partisan scrutiny; acknowledges that FOI requests are essential for democracy, and encourages the Scottish Government to transform the current FOI culture and commit itself to delivering an open and transparent process.

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]

**Sent:** 15 February 2018 10:41

**To:** [redacted]

**Cc:** Margaret Keyse

**Subject:** Contact details for our staff

Hello [redacted]

Would it be possible to have an updated contact list for your team please? I'm conscious that you have new starts and there have been some leavers.

For the intervention, our direct contacts are:

Daren Fitzhenry, Scottish Information Commissioner: PA Kim Berry 01334 464613,  
[sic@itspublicknowledge.info](mailto:sic@itspublicknowledge.info)

Margaret Keyse, Head of Enforcement: 01334 464622, [mkeyse@itspublicknowledge.info](mailto:mkeyse@itspublicknowledge.info)

Sarah Hutchison, Head of Policy and Information: 01334 464621,  
[shutchison@itspublicknowledge.info](mailto:shutchison@itspublicknowledge.info)

This list will increase as we agree who is doing what work – I'll keep you updated.

Best wishes

Sarah

**Sarah Hutchison**  
**Head of Policy and Information**

---

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**From:** [redacted]  
**Sent:** 16 February 2018 14:27  
**To:** Sarah Hutchison  
**Cc:** Margaret Keyse; Paul Mutch; George Will  
**Subject:** RE: FOI tracker meeting - Wednesday 21 February

Sarah

You're welcome and thanks for confirming details of the visit.

I know my team will find it useful to talk through interrogating the tracker before [redacted] goes. We can all run some reports (and [redacted] has been working with the team to raise our levels of knowledge), but the demonstration may highlight things that are 'non-standard'. I believe a discussion afterwards will be useful and look forward to that. I will set aside up to 4 hours.

I have mentioned to Mr FitzPatrick's office that Daren will be here on Wednesday and they think the Minister might like to take the opportunity to have a quick catch-up if calendars permit. Our Director, David Rogers, would also like to take the opportunity to introduce himself, which I think should be possible within the course of the visit.

**[redacted – out of scope]**

I will submit requests for unescorted visitor passes to our security people this afternoon. Given you all have security clearance, I assume this should be ok, but I am not sure how much time they need to process this. I will let you know if there are any issues (though I assume it will be fine going forward).

Finally, I am hopeful we may be able to provide the documentation requested in last Friday's request from Claire when you are here on Wednesday - electronically of course. As I think you know, most is held on our sharepoint site, with some also on our intranet. [redacted] from my team has managed to extract quite a bit from the sharepoint site automatically, but there are some parts that may need help from our Digital colleagues.

I look forward to seeing you all on Wednesday.

Regards

**[redacted]**

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 16 February 2018 13:36  
**To:** [redacted]  
**Cc:** Margaret Keyse; Paul Mutch; George Will  
**Subject:** FOI tracker meeting - Wednesday 21 February

Dear [redacted]

Thank you for all your efforts to set up this meeting at short notice.

The people attending from our office are:

Daren Fitzhenry  
Margaret Keyse  
Sarah Hutchison

Paul Mutch  
George Will

We'll arrive at Reception at 10:30 a.m.

As discussed, we expect to be with you for two to three hours maximum, but it would be helpful if you could schedule in an extra hour just in case we need it.

The purpose is to receive a demonstration of the FOI tracker (as you recommended) before **[redacted]** moves to his new post. We're hoping to get an understanding of both what the tracker contains and how it can be interrogated. You have made us aware already of the limitations of the current system, so it's important that we appreciate what can be provided to us for the intervention. We expect there will be discussion of this after the demonstration.

It was good of you to offer to set up other meetings with Daren while he is at the Scottish Government. The purpose of this visit is to view the tracker and look forward to other opportunities for meeting senior officials when we return to carry out the assessment phase.

**[redacted – out of scope]**

Finally, Daren's asked me to sound you out about the possibility of unescorted visitor passes for our team (the five named above) during the period of the intervention. This would save you staff time and effort in escorting us and our time waiting to be collected. All our staff have security clearance.

Please give me a call if you want to discuss any of the above.

Best wishes

Sarah

**Sarah Hutchison**  
**Head of Policy and Information**

---

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**From:** Daren Fitzhenry [<mailto:dfitzhenry@itspublicknowledge.info>]  
**Sent:** 01 March 2018 11:10  
**To:** [redacted]; Sarah Hutchison; Claire Stephen  
**Cc:** CUKR : Freedom of Information Unit; Sarah Hutchison; Margaret Keyse  
**Subject:** RE: Intervention - onsite visit postponed due to adverse weather forecast

Dear [redacted],

As discussed earlier today, we will unfortunately have to delay the visit again. I know that we'd put next week down for the visit anyway, so we will now plan on starting on Tuesday 6 March for the rest of that week.

George, Paul will be there throughout the week and I will be there on Tuesday and Wednesday. Margaret or Sarah may also attend at various points, so can you put us all down as attending throughout the week so there are passes for whoever attends?

Given the need to go through the printouts and have a private space in which to discuss findings it is essential that we have a room for the duration of the visit (although we appreciate that it may be a different room each day). Can you please confirm that this will be available, as I view it as a necessity for the intervention to be conducted properly.

Thanks again for all of your help.

Kind regards  
Daren

Sent from my Windows 10 phone

Daren Fitzhenry  
Scottish Information Commissioner

---

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Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**From:** [redacted]@gov.scot  
**Sent:** 27 February 2018 17:56  
**To:** [Sarah Hutchison](#); [Claire Stephen](#)  
**Cc:** [Daren Fitzhenry](#); [DLCEABCUKRFIU@gov.scot](mailto:DLCEABCUKRFIU@gov.scot)  
**Subject:** Re: Intervention - onsite visit postponed due to adverse weather forecast

Sarah

Thanks. Just let us know if there are gaps. We are working on the other documents.

**[redacted]**

Sent from my BlackBerry - **[redacted]**

**From:** Sarah Hutchison

**Sent:** Tuesday, 27 February 2018 17:26

**To:** **[redacted]**; Claire Stephen

**Cc:** Daren Fitzhenry; CUKR : Freedom of Information Unit

**Subject:** RE: Intervention - onsite visit postponed due to adverse weather forecast

Thanks **[redacted]**,

It looks like your proposal below for the guidance will work. We won't know that for sure until we try it, but it gives us something to work on for now. Thanks to **[redacted]** for her work to get the changed guidance over to us, we look forward to receiving that.

It's been snowing hard here for a little while now.

Best wishes

Sarah

**From:** **[redacted]**@gov.scot [mailto:**[redacted]**@gov.scot]

**Sent:** 27 February 2018 15:08

**To:** Claire Stephen

**Cc:** Sarah Hutchison; Daren Fitzhenry; [DLCEABCUKRFIU@gov.scot](mailto:DLCEABCUKRFIU@gov.scot)

**Subject:** RE: Intervention - onsite visit postponed due to adverse weather forecast

Claire

Our IT people have informed us that we cannot automatically rip the full content of our internal sharepoint site, which is where most of our guidance sits. We can download some things, like templates, but for most content we need to print and scan individual pages. I understand the pages were set up like this to dissuade people from downloading hard copies of the guidance and perhaps ending up with out of date versions.

As was mentioned in the meeting with the team last Wednesday, the external and internal sharepoint hold largely the same guidance and **[redacted]** has gone through the 2 to identify where there are differences. The attached document sets these out.

If you agree, I wonder if it would be possible to start the assessment process using the guidance on the external site? In the meantime, **[redacted]**, from my team, is downloading the internal content that is different to send you (though I do not think she will manage to complete this today). This should provide you with a complete set of our internal guidance.

Please do not hesitate to call me should you wish to discuss.

**[redacted]**

**[redacted]**

Scottish Government | Head of FOI Unit

 +44 (0)131 244 **[redacted]** | Mob **[redacted]**

**From:** Claire Stephen [mailto:[cstephen@itspublicknowledge.info](mailto:cstephen@itspublicknowledge.info)]

**Sent:** 27 February 2018 10:35

**To:** **[redacted]**

**Cc:** Sarah Hutchison; Daren Fitzhenry

**Subject:** Intervention - onsite visit postponed due to adverse weather forecast  
**Importance:** High

[redacted],

**Intervention**  
**Our ref: 201702106**

Due to the adverse weather forecast for tomorrow and Thursday, the Commissioner has made the decision to postpone the start date of the onsite assessment until Friday.

Daren, George Will and Paul Mutch will be joining you on Friday, weather allowing.

In the interim, the Commissioner requests that we are provided with the policies and procedures requested on 9 February 2018 by the close of play today. This will allow us to start the assessment process despite not being onsite over the next two days.

Many thanks for your assistance with this.

**Claire Stephen**  
**Freedom of Information Officer**

---

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**From:** [redacted]  
**Sent:** 13 March 2018 13:39  
**To:** Claire Stephen  
**Cc:** Paul Mutch; [redacted]  
**Subject:** RE: FOI Cube database question

Hi Claire

Thanks for this – I've raised the request for the additional information with our IT colleagues and will keep you and Paul posted on progress.

[redacted]

[redacted] | [redacted] | FOI Unit | Scottish Government  
2W St Andrews House | Regent Road | Edinburgh EH1 3DG  
Direct Line 0131 244 [redacted] Mobile [redacted]  
[redacted]@gov.scot

**From:** Claire Stephen [<mailto:cstephen@itspublicknowledge.info>]  
**Sent:** 13 March 2018 13:22  
**To:** [redacted]  
**Cc:** Paul Mutch; [redacted]  
**Subject:** RE: FOI Cube database question

[redacted],

Paul has asked me to contact you; he's onsite with you at the moment but is unable to access his emails.

In order to conduct their analysis they will require at least the following columns to be reinstated into the report:

- Comments
- Requester Organisation
- Summary

In addition, we note that the "Date Responded" field has now excluded all blank cells i.e. where no response date has been provided. We'd be grateful if you could ask whether this information could also be reinstated.

I've just spoken with Paul and he'll hopefully see you again at some point today to pick this up with you.

**Claire Stephen**  
**Freedom of Information Officer**

---

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**From:** [redacted]@gov.scot [mailto:[redacted]@gov.scot]  
**Sent:** 12 March 2018 16:31  
**To:** Paul Mutch  
**Cc:** Claire Stephen; [redacted]@gov.scot  
**Subject:** FW: FOI Cube database question

Paul, Claire  
Please see attached extract from the database, with some explanation of the technical difficulties, happy to discuss in office tomorrow.  
**[redacted]**

Sent with BlackBerry Work ([www.blackberry.com](http://www.blackberry.com))

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[redacted – out of scope]

**From:** George Will [<mailto:gwill@itspublicknowledge.info>]  
**Sent:** 29 March 2018 13:27  
**To:** [redacted]  
**Subject:** RE: St Andrews House visit next week

That's great [redacted]. Have a good weekend.

Thanks, George

**George Will**  
**Freedom of Information Officer**

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Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

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**From:** [redacted]@gov.scot [[mailto:\[redacted\]@gov.scot](mailto:[redacted]@gov.scot)]  
**Sent:** 29 March 2018 12:08  
**To:** George Will  
**Cc:** [redacted]@gov.scot  
**Subject:** RE: St Andrews House visit next week

George

[redacted] has sent an access sheet to our security people, so that should be fine. Ian is on leave, so his room is likely to be free (and if not, I expect there will be others, given the Easter holiday).

Regards

[redacted]  
[redacted]  
Scottish Government | Head of FOI Unit  
 +44 (0)131 244 [redacted] | Mob [redacted]

**From:** George Will [<mailto:gwill@itspublicknowledge.info>]  
**Sent:** 29 March 2018 11:57  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** St Andrews House visit next week

Hi [redacted] – I'm intending coming to SAH next week on Wednesday 4 and Friday 6 April. If you could arrange access and book a room for me that would be great. Paul's on leave next week so won't be down.

Thanks, George

**George Will**  
**Freedom of Information Officer**

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**From:** [redacted]  
**Sent:** 17 April 2018 16:23  
**To:** Sarah Hutchison  
**Subject:** RE: List of interviewees (Intervention 201702106)

Sarah

As discussed, people are coming back to us with their availability and we hope to be able to share this later in the week. In the meantime, I am being asked a few more questions about the nature of the interviews:

- How will the information gathered be used in the preparation of the report? I presume the interviews will not be included in full, but selected quotes/extracts may form part of the narrative (as suggested in your message below)?
- Daren spoke to me last week and confirmed that, while interviews will not be at individual case level, if an interviewee says something that seems to be contradicted by documents from a specific case in which he/she was involved, this might be referred to in the interview. It has been suggested to me that interviewees should therefore be provided with advance details of those cases in which they were involved and which could be raised. The suggestion is that interviewees will be unable to reply in any detail on a case that may date from up to 3 years ago unless they have had the opportunity to refresh their memories.
- I have advised colleagues that OSIC will take notes of the interviews and have been asked about the nature of the note, specifically, whether these will be full transcripts and if so, will they be shared with the Parliament. I have been asked again to reflect our view that interviewees should be able to fact check any interview note or transcript. It has also been suggested that interviewees should be able to record the interviews to help them do so.
- I have been asked if notes/transcripts of interviews will be subject to FOI. I think OSIC had said information provided during the intervention would be taken on a confidential basis – but you would have to consider any subsequent FOI requests and respond appropriately, subject to relevant exemptions?

Please do not hesitate to call me should you wish to discuss.

Regards

[redacted]  
0131 244 [redacted]

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 11 April 2018 14:20  
**To:** [redacted]  
**Subject:** RE: List of interviewees (Intervention 201702106)

Hello [redacted]

We expect the report will name the Ministers, Special Advisers and Directors / Deputy Directors we interview. For more junior officials, we'll describe their function generally.

Likewise, we won't attribute comments from junior officials, but we may attribute comments from the more senior people if we feel it's important to the report.

I hope this helps.

Best wishes

Sarah

**From:** [redacted]@gov.scot [mailto: [redacted]@gov.scot]  
**Sent:** 11 April 2018 11:47  
**To:** Sarah Hutchison  
**Subject:** RE: List of interviewees (Intervention 201702106)

Sarah

Another question...

I have been asked whether the names of interviewees will be placed in the public domain (eg in the report on the intervention). As you know, our general presumption to date in relation to FOI is that junior staff are not named (although with GDPR implementation and the stronger role of consent, we may need to consider how that applies even to senior staff).

I suspect the answer may be no, given the focus on process rather than individual cases, but I thought I should check with you before answering.

Regards

[redacted]

**From:** [redacted]  
**Sent:** 11 April 2018 08:17  
**To:** 'Sarah Hutchison'  
**Subject:** RE: List of interviewees (Intervention 201702106)

Sarah

Thanks. I will be in touch and look forward to seeing you in the coming weeks.

[redacted]

**From:** Sarah Hutchison [mailto:[shutchison@itspublicknowledge.info](mailto:shutchison@itspublicknowledge.info)]  
**Sent:** 11 April 2018 08:11  
**To:** [redacted]  
**Subject:** RE: List of interviewees (Intervention 201702106)

Hello [redacted]

Yes, time is indeed very tight – I wish it wasn't so.

About quizzing people about cases, I dealt with that very clumsily yesterday. The interviews will not be at individual case level. We're absolutely not expecting interviewees to bone up on all their old cases. There is the possibility that individuals in the group interviews may reference specific cases

(rather than talking about them in the generality). If that happens, we'll of course listen, but we're not going to discuss specific cases in a group context.

Yes we will be taking a note of interviews. I'll come back to you about the fact checking point – I need to discuss the logistics of that because we haven't factored it in.

Thanks for letting me know about the representation issue.

Sarah

**From:** [redacted]@gov.scot [mailto: [redacted]@gov.scot]

**Sent:** 10 April 2018 17:11

**To:** Sarah Hutchison

**Subject:** RE: List of interviewees (Intervention 201702106)

Sarah

Thanks this is helpful and we will engage with those identified to try to make the process as smooth as possible. I should point out that our Mayday holiday is on Monday 7 May, so that day is probably out of the reckoning.

A couple of thoughts have occurred to me following our chat:

- You mentioned that you were unlikely to quiz people about individual cases, but if this did take place, it would be in private interviews. Does this mean Ministers, SPADs, individual Directors and DDs are likely to be asked about such cases? I am not suggesting they should be prepped to answer questions, but I think they will have little or no recollection of cases they dealt with over the course of the last two or three years, so if this is the intention, it might be useful to let us know in advance which cases might be raised with whom.
- I presume George/Paul will take a note of the interviews? I do not envisage FOI Unit staff taking notes, but I assume we (or interviewees) will have the opportunity to consider the note before it is finalised?
- As I mentioned, we have been asked whether staff should have the opportunity to have additional representation in the interviews. Our position is that FOI Unit (perhaps David or Ian for senior people) should be the only other SG presence. I think that has been broadly accepted, but I will let you know if anyone suggests he/she needs additional support.

I hope to be able to start coming back with potential dates in the next few days. Daren and I discussed briefly and he felt it would be useful, if possible, for the Ministerial interviews to be further towards the end of the process than the others, so I will try to go forward on that basis.

Regards

[redacted]

[redacted]

Scottish Government | Head of FOI Unit

☎ +44 (0)131 244 [redacted] | Mob [redacted]

**From:** Sarah Hutchison [mailto:[shutchison@itspublicknowledge.info](mailto:shutchison@itspublicknowledge.info)]

**Sent:** 10 April 2018 11:59

**To:** [redacted]

**Subject:** List of interviewees (Intervention 201702106)

Dear [redacted]

Thank you for our phone call this morning. As you know, we hope to conclude the assessment phase of the intervention by the end of May if at all possible. We're now ready to give you the interview schedule. I appreciate that diaries are already very busy and it is going to be challenging to fit everything in. I've attached a **rough** outline of our availability over the next month to assist you and colleagues.

We'd be grateful if you could arrange a 45 minute interview for Daren with each of the following people please:

John Swinney, MSP	Deputy First Minister and Cabinet Secretary for Education and Skills
Shona Robison, MSP	Cabinet Secretary for Health and Sport
Fiona Hyslop, MSP	Cabinet Secretary for Culture, Tourism and External Affairs
Keith Brown, MSP	Cabinet Secretary for the Economy, Jobs and Fair Work
Liz Lloyd	First Minister's Chief of Staff
Davie Hutchison	Special Adviser
Colin McAllister	Special Adviser
Stewart Maxwell	Special Adviser
Stuart Nicolson	Special Adviser
<b>[redacted]</b>	Special Advisers' Office

Daren will be accompanied by George Will or Paul Mutch and he would be pleased if someone from the FOI Unit is in attendance.

Margaret and I will conduct additional interviews.

We'd both like to interview you and **[redacted]** together. I suggest we allow two hours for this as I expect we'll have a lot to talk about.

I plan to interview a number of officials (Margaret will help out where I can't):

- **[redacted]**, in his capacity as a former member of the FOI Unit (for one hour).
- individual Directors or Deputy Directors (names to be confirmed, 45 minutes for each interview)
- a small group of case handlers (names to be confirmed, one hour)
- a small group of reviewers (names to be confirmed, one hour)

I'll be accompanied by a colleague. In all cases, I'd be pleased if someone from the FOI Unit is in attendance.

I hope your meetings with Daren go well today and look forward to catching up soon.

Best wishes

Sarah

**Sarah Hutchison**  
**Head of Policy and Information**

---

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Tel: 01334 464610 Fax: 01334 464611

**From:** [redacted]  
**Sent:** 20 April 2018 16:41  
**To:** Sarah Hutchison  
**Cc:** CUKR : Freedom of Information Unit  
**Subject:** RE: List of interviewees (Intervention 201702106)

Sarah

Thanks for this. We'll get onto it early next week and be in touch.

[redacted]

**From:** Sarah Hutchison [<mailto:shutchison@itspublicknowledge.info>]  
**Sent:** 20 April 2018 16:07  
**To:** [redacted]  
**Subject:** RE: List of interviewees (Intervention 201702106)

Dear [redacted]

Thank you for bearing with me while I discussed your queries with colleagues. To answer each of the questions in turn:

**How will the information gathered be used in the preparation of the report?**

We don't plan to publish individual interviews. The report will draw from interviews where relevant.

**Reference to specific cases in interviews**

Following the review, it's now clear we will have to discuss some individual cases with some people. Taking on board the concern about preparation, where it's relevant we'll let the interviewee know before the interview which case(s) we'd like to discuss. We won't raise individual cases in group interviews.

**Recording interviews**

We'll record interviews in note form, not full transcripts. We'll give interviewees the opportunity to suggest amendments to our notes. We hope to do this during interviews, so the notes are finalised at that time. This may mean the interviews have to be a little longer than originally envisaged, but hopefully this will provide the reassurance that your colleagues seek. There will be no audio recording of interviews, by anyone present. We've no plans to share our notes with the Scottish Parliament.

For the group interviews, as might be expected, the notes will be more general in nature, to set out the key points raised in discussion. As such, we won't provide copies of the notes or seek agreement of their precise terms, but will recap the main points noted at the end of the session, offering participants to suggest amendments or additions then.

**Whether the notes will be subject to FOI**

Yes, because as for your own authority, any information we hold can be the subject of an FOI request. For the avoidance of doubt, the information provided during the intervention will not be taken on a confidential basis – it is intended that the report will draw from interviews where relevant and this may include selected quotes or extracts. Disclosure of any information in response to any requests will be subject to the application of appropriate exemptions and there will be consultation with interviewees. We hope to provide more information about this in advance of the interviews.

I think your reference to a confidential basis for the intervention may be to the different issue of the application of section 45 of FOISA, following from Daren's letter of 2 February 2018 to the Minister: *"As you know, I am making this intervention under my Enforcement Policy, which sets out how I use my powers, as Scottish Information Commissioner. In this case, the relevant power to examine the Scottish Government's FOI performance is section 43(3) of the Freedom of Information (Scotland) Act 2002. You may be reassured that I consider section 45 (confidentiality of information obtained by or furnished to Commissioner) applies in this case."*

A big thank you to all of the FOI Unit who are setting up the interviews on our behalf. I know how trying it can be to co-ordinate a lot of people and find meeting rooms in suitable locations and at appropriate times.

I need to ask you for some further help. Could you please identify and book:

- A group meeting with five or six people who have handled **reviews** for a range of different business areas. Two possible people for that meeting are **[redacted]**, Directorate for Learning and **[redacted]** in Procurement and Commercial Directorate, but if you could suggest others, it would be really helpful.
- Additional Directors / Deputy Directors: I think I've already mentioned that we'd like to interview Ian Davidson and I'd now like to add John Booth, Head of Communications. We'd also like to interview an official at Director or Deputy Director level from each of Health Performance and Delivery, Transport Scotland and Marine Scotland.
- A senior media team contact – ideally a person who has regular contact with your team.

Have a wonderful weekend when it comes.

Best wishes

Sarah

**From:** [redacted]  
**Sent:** 23 April 2018 16:06  
**To:** Sarah Hutchison  
**Subject:** RE: List of interviewees (Intervention 201702106)

Sarah

Thanks. This is useful.

Given where we are in terms of timing of interviews, how far in advance are you likely to be able to let interviewees know which case(s) you would like to discuss. Given the amount of correspondence passing over the desks of interviewees, I do think they need a reasonable amount of notice.

I hope to have some names for you to consider in the next day or so.

**[redacted]**

**From:** Daren Fitzhenry [<mailto:dfitzhenry@itspublicknowledge.info>]  
**Sent:** 30 April 2018 15:56  
**To:** [redacted]  
**Subject:** 20180430: Note of Perm Sec meeting with Scottish Information Commissioner 10 April 2018

[redacted],

This is what happens when my PA is on leave!

Kind Regards

Daren

**Daren Fitzhenry**  
**Scottish Information Commissioner**

---

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**From:** [redacted]@gov.scot [[mailto: \[redacted\]@gov.scot](mailto:[redacted]@gov.scot)]  
**Sent:** 30 April 2018 14:53  
**To:** Daren Fitzhenry  
**Subject:** RE: 20180430: Note of Perm Sec meeting with Scottish Information Commissioner 10 April 2018

Daren

I cannot see the attachment.

Best

[redacted]  
[redacted]  
Scottish Government | Head of FOI Unit  
 +44 (0)131 244 [redacted] | Mob [redacted]

**From:** Daren Fitzhenry [<mailto:dfitzhenry@itspublicknowledge.info>]  
**Sent:** 30 April 2018 14:48  
**To:** [redacted]  
**Subject:** 20180430: Note of Perm Sec meeting with Scottish Information Commissioner 10 April 2018

**[redacted]**,

Many thanks for this – please find attached my suggested changes. Can you please confirm whether this can now be agreed so I can save the final version in our records?

Kind Regards

Daren

**Daren Fitzhenry**  
**Scottish Information Commissioner**

---

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**From:** **[redacted]**@gov.scot [mailto:**[redacted]**@gov.scot]

**Sent:** 24 April 2018 10:46

**To:** Daren Fitzhenry

**Subject:** Note of Perm Sec meeting with Scottish Information Commissioner 10 April 2018

Daren

With apologies for the delay, I attach a draft note of the meeting with the Permanent Secretary for your consideration.

Grateful for any comments.

Regards

**[redacted]**

## MEETING BETWEEN THE PERMANENT SECRETARY AND THE SCOTTISH INFORMATION COMMISSIONER, 10 APRIL 2018

### Note of discussion

**Present:** Leslie Evans (LE), Permanent Secretary  
Daren Fitzhenry (DF), Scottish Information Commissioner  
David Rogers (DR), Director of Strategy and Constitution  
[redacted] ([redacted]), [redacted]

1. LE congratulated DF on his appointment and welcomed the timing of their meeting, taking place during the assessment phase of the intervention into the Scottish Government's culture and practice in dealing with FOI requests.
2. She noted the government has a commitment to openness and transparency and that, while the Scottish Government (SG) does some things well, it recognises the need for improvement. She confirmed that SG will continue to co-operate fully with the intervention and will use the findings constructively.
3. DF outlined his role in making interventions to remedy concerns about public authorities' FOI practice. He emphasised that the aim of an intervention is to work closely with an authority to identify what may have gone wrong, why it has gone wrong and how to make it better. He said that he planned to report on the intervention by the end of May and his team were halfway through the assessment phase. They had been looking at specific cases and would begin to conduct interviews in the near future. He stressed it was an iterative process, aimed at delivering sustainable improvement.
4. While it was too early to draw final conclusions, some high-level themes are emerging that may need further clarification:
  - Do all staff dealing with cases have appropriate understanding of FOI?
  - Does the clearance process/structure contribute to delays?
  - Is there sufficient clarity about the roles of individuals in the process?
  - Do staff understand that FOI decisions should be based strictly on consideration of FOI legislation and exemptions rather than wider policy or presentational matters, [and do policies aid or hinder this?](#)
5. LE noted in the context of the fourth point that the SG approach to responding to FOI requests was based on the case-handling by officials in the relevant policy area as they are best placed to identify information is relevant to a request. DR asked whether DF felt there any areas had been identified already where we might identify changes now to improve our performance. DF explained that, until the intervention was complete, he would not wish to recommend specific areas for action. Assessment was continuing and the interviews may mean the emerging themes change.
6. DR asked about the publication of the Commissioner's recommendations and timescales for compliance. DF confirmed he was working to publish the report, which would include any recommendations, at the end of May. The government would have an opportunity to comment on the draft report and correct factual inaccuracies before publication. Once finalised, DF would write to Mr FitzPatrick setting out his conclusions and recommendations for implementation and ongoing monitoring. This would be published on the Commissioner's website.

7. LE noted that the government has been taking steps to encourage proactive publication, including publishing the information released in response to FOI requests. DF said that while proactive publication was not directly linked to the intervention, it was to be encouraged.

8. LE asked whether there were lessons we could learn from any other UK administrations. DF said he was not aware of any specific areas from which SG could benefit. He did note that the [public](#) profile of FOI is [noticeably significantly](#) higher in Scotland than in the rest of the UK and that that was a positive factor in the FOI regime here.

9. LE thanked DF for his openness and wished him well for the rest of the intervention and in his post.

**From:** [redacted]  
**Sent:** 25 April 2018 10:06  
**To:** Sarah Hutchison  
**Subject:** RE: List of interviewees (Intervention 201702106)

Sarah

Ian Davidson and John Booth should be ok and [redacted] is following up with Health Performance and Delivery, Transport Scotland and Marine Scotland.

On reviewers, both [redacted] and [redacted] are still in SG. We have come up with some names (again on the basis that if we start with 11, we should be able to get the 5 or 6 required):

- [redacted]- Trade Policy, Food and Drink
  - [redacted]- International Futures
  - [redacted]- Defence, Security and Cyber Resilience
  - [redacted]- Office of the Chief Social Work Adviser
  - [redacted]- Education Analytical Services
  - [redacted]- Curriculum, Qualifications and Gaelic
  - [redacted]- NHSScotland Resilience And Business Management
  - [redacted]- Police Division
  - [redacted] - International Futures (formerly FM's Private Office)
- [redacted]

**From:** [redacted]

**Sent:** 01 May 2018 16:48

**To:** Daren Fitzhenry

**Subject:** RE: 20180430: Note of Perm Sec meeting with Scottish Information Commissioner 10 April 2018

Daren

We are happy with your suggestions.

Perm Sec has suggested one change to paragraph 2 to more accurately reflect her vision for improvement in the Scottish Government. If you are content with that change, the note can be considered finalised.

Best regards

[redacted]

[redacted]

Scottish Government | Head of FOI Unit

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## MEETING BETWEEN THE PERMANENT SECRETARY AND THE SCOTTISH INFORMATION COMMISSIONER, 10 APRIL 2018

### Note of discussion

**Present:** Leslie Evans (LE), Permanent Secretary  
Daren Fitzhenry (DF), Scottish Information Commissioner  
David Rogers (DR), Director of Strategy and Constitution  
[redacted] ([redacted]), [redacted]

1. LE congratulated DF on his appointment and welcomed the timing of their meeting, taking place during the assessment phase of the intervention into the Scottish Government's culture and practice in dealing with FOI requests.

2. LE highlighted the government's commitment to openness and transparency and to applying learning and improving our performance where that is required. She noted the government has a commitment to openness and transparency and that, while the Scottish Government (SG) does some things well, it recognises the need for improvement. She confirmed that SG will continue to co-operate fully with the intervention and will use the findings constructively.

3. DF outlined his role in making interventions to remedy concerns about public authorities' FOI practice. He emphasised that the aim of an intervention is to work closely with an authority to identify what may have gone wrong, why it has gone wrong and how to make it better. He said that he planned to report on the intervention by the end of May and his team were halfway through the assessment phase. They had been looking at specific cases and would begin to conduct interviews in the near future. He stressed it was an iterative process, aimed at delivering sustainable improvement.

4. While it was too early to draw final conclusions, some high-level themes are emerging that may need further clarification:

- Do all staff dealing with cases have appropriate understanding of FOI?
- Does the clearance process/structure contribute to delays?
- Is there sufficient clarity about the roles of individuals in the process?
- Do staff understand that FOI decisions should be based strictly on consideration of FOI legislation and exemptions rather than wider policy or presentational matters, and do policies aid or hinder this?

5. LE noted in the context of the fourth point that the SG approach to responding to FOI requests was based on the case-handling by officials in the relevant policy area as they are best placed to identify information is relevant to a request. DR asked whether DF felt there any areas had been identified already where we might identify changes now to improve our performance. DF explained that, until the intervention was complete, he would not wish to recommend specific areas for action. Assessment was continuing and the interviews may mean the emerging themes change.

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9. LE thanked DF for his openness and wished him well for the rest of the intervention and in his post.

**From:** Paul Mutch <[pmutch@itspublicknowledge.info](mailto:pmutch@itspublicknowledge.info)>  
**Sent:** Friday, 4 May 2018 10:17  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** Interview Timetable

Hi [redacted],

Daren has requested that I seek an update on where we are in relation to the scheduling of staff interviews for the intervention. He is growing a little concerned around the lack of confirmed dates, and the impact that this may have on the delivery of the report.

Could you let me have an update on where we are with this so I can keep him informed?

Many thanks,

Paul

**Paul Mutch**  
**Freedom of Information Officer**

---

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Tel: 01334 464610 Fax: 01334 464611

**From:** [redacted]

**Sent:** 04 May 2018 16:03

**To:** 'pmutch@itspublicknowledge.info'

**Cc:** [redacted]; Rogers DA (David) (Strategy and Constitution Director); [redacted]

**Subject:** RE: Interview Timetable

Paul,

I'm picking this up in [redacted]'s absence today. We have been liaising extensively with Ministers and colleagues to schedule these interviews and we are close to being able to share the proposed arrangements with you. Our Director, David Rogers, would like to have a call with the Commissioner early next week about the practical arrangements for the interviews before they begin. His office will be in touch to agree a time that would be convenient for the Commissioner.

Kind regards,

[redacted]

[redacted] | Head of Policy | Freedom of Information Unit

T: (0131) 244 [redacted] | M: [redacted]