

Enclosure	Description	Exemption(s)
1	E-mail on 7 September 2020 from the FOI Unit to the Minister for Parliamentary Business and Veterans, outlining the monthly FOI/EIR performance for June 2020	s.38(1)(b)
2	E-mail on 2 October 2020 from the FOI Unit to the Minister for Parliamentary Business and Veterans, outlining the monthly FOI/EIR performance for July 2020	s.38(1)(b)
3	E-mail on 05 October 2020 from the FOI Unit to the Cabinet Secretary for Constitution, Europe and External Affairs and the Minister for Parliamentary Business and Veterans regarding the reporting requirement of the Coronavirus (Scotland) (No.2) Act 2020.	s.38(1)(b) s.25(1)
3.1	Attachment	s.38(1)(b)
4	E-mail on 12 October 2020 from the FOI Unit to the Minister of Parliamentary Business and Veterans providing a Directorates FOI/EIR performance	s.38(1)(b)

Enclosure 1

From: [Redacted]

Sent: 07 September 2020 16:30

To: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: [Redacted]; Fol SpAds PO <Fol.SpAdsPO@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]

Subject: Monthly Report for June by Directorate - for Scottish Information Commissioner - for clearance by Minister

Minister for Parliamentary Business and Veterans

Apologies for the delay. The overall FOI/EIR performance of the Scottish Government in June was **79%** on time for requests and **78%** for reviews.

Please find below a final version of the June report to the Commissioner on the SG's performance. The **16** Directorates/Agencies who have not achieved the target of 95% for either requests or reviews are highlighted and have provided a narrative by way of explanation.



Monthly FOI
Directorate_Age...

May's performance report for comparison:



Monthly FOI
Directorate_Age...

After the report has been sent to the Commissioner, we will add the performance figures for the SG as a whole to the previously published figures on our website at:

<https://www.gov.scot/publications/freedom-of-information-foi-reporting/>

		No. Requests on time	No. Requests late	Request Performance (%)	No. Reviews on time	No. Reviews late	Review Performance (%)
2020	January	152	5	97	11	0	100
	February	227	6	97	10	0	100
	March	275	14	95	13	2	87
	April	150	17	90	7	4	64
	May	82	60	58	6	8	43
	June	186	48	79	7	2	78

I would be grateful if you would confirm that you are content?

Kind regards

[Redacted]
FOI Unit

[Redacted] | FOI Manager, FOI Unit | Scottish Government | 2W St Andrew's House, Regent Road, Edinburgh EH1 3DG |M: **[Redacted]**

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

Enclosure 2

From: [Redacted]

Sent: 02 October 2020 11:52

To: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: [Redacted]; Fol SpAds PO <Fol.SpAdsPO@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]

Subject: Monthly Report for July by Directorate - for Scottish Information Commissioner - for clearance by Minister

Minister for Parliamentary Business and Veterans

The overall FOI/EIR performance of the Scottish Government in July was **81%** on time for requests and **83%** for reviews.

Please find below a final version of the July report to the Commissioner on the SG's performance. The Directorates/Agencies who have not achieved the target of 95% for either requests or reviews are highlighted and have provided a narrative by way of explanation.



June's performance report for comparison:

[Provided in **Enclosure 1**]

After the report has been sent to the Commissioner, we will add the performance figures for the SG as a whole to the previously published figures on our website at: <https://www.gov.scot/publications/freedom-of-information-foi-reporting/>

		No. Requests on time	No. Requests late	Request Performance (%)	No. Reviews on time	No. Reviews late	Review Performance (%)
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	February	227	6	97	10	0	100
	March	275	14	95	13	2	87
	April	150	17	90	7	4	64
	May	82	60	58	6	8	43
	June	186	48	79	7	2	78
	July	238	55	81	19	4	83

I would be grateful if you would confirm that you are content?

Kind regards

[Redacted]
FOI Unit

[Redacted] | FOI Manager, FOI Unit | Scottish Government | 2W St Andrew's House, Regent Road, Edinburgh EH1 3DG |M: **[Redacted]**

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

Enclosure 3

From: [Redacted]

Sent: 05 October 2020 17:33

To: Cabinet Secretary for Constitution, Europe and External Affairs
<CabSecCEAEA@gov.scot>; Minister for Parliamentary Business and Veterans
<MinisterPBV@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; Hynd JS (James) <James.Hynd@gov.scot>; [Redacted]; Coronavirus Legislation Co-ordination <Covid.Leg@gov.scot>; Beattie C (Caroline) <Caroline.Beattie@gov.scot>; [Redacted]; [Redacted]; Corporate Communications <CorporateCommunications@gov.scot>; Communications Brexit & Constitution <CommunicationsBrexit&Constitution@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Subject: URGENT - Coronavirus (Scotland) (No.2) Act 2020 - FOI reporting requirement - draft No. 2 report and submission

PS/Cabinet Secretary for Constitution, Europe and External Affairs
PS/Minister for Parliamentary Business and Veterans

I attach a short urgent minute which invites the Cabinet Secretary and the Minister to consider and clear a draft report to be laid before the Parliament under the Coronavirus (Scotland) (No.2) Act 2020. The report concerns the Scottish Ministers' FOI performance for the period from 27 July to 26 September 2020, and is the second such report to be laid.

Unfortunately, the reporting requirement requires that the report be laid within 14 days of the end of the reporting period, so it is due to be laid by **Friday 9 October**. We would therefore be grateful for a response by close tomorrow if at all possible, to allow sufficient time for the report to be prepared by APS for publication before laying.

We apologise for the very limited time available to consider, which arises as a result of the requirement to lay within 14 days. We have also had to undertake significant manual reconciliation work as the initial figures for the backlog of requests appeared unusually high, although the figure has reduced significantly as a result of this exercise.

We would be happy to discuss.

[Redacted]

[Redacted] | Freedom of Information Unit

Scottish Government | 2W | St Andrew's House | Regent Road | Edinburgh | EH1 3DG

M: [Redacted]

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

Enclosure 3.1

[Redacted]
EFD: FOI Unit
5 October 2020

Cabinet Secretary for the Constitution, Europe and External Affairs
Minister for Parliamentary Business and Veterans

CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020 REPORTING REQUIREMENTS SECOND REPORT ON SCOTTISH MINISTERS' FOI PERFORMANCE

Purpose

1. To invite you to agree that the accompanying draft report be laid before the Scottish Parliament on Friday 9 October 2020.

Priority

2. *Urgent.* The draft report must be laid before the Scottish Parliament no later than 14 days after the expiry of the reporting period (which ended on 26 September 2020). We would therefore be grateful for a response by **close on Tuesday 6 October** to allow the report to be prepared for publication by APS before laying.

Background

3. The Coronavirus (Scotland) Act 2020 ("the first Act") temporarily modified the Freedom of Information (Scotland) Act 2002 ("FOISA") by extending the timescales for authorities to respond to requests, conferring discretion on the Scottish Information Commissioner to excuse late compliance in certain circumstances, and permitting notices to be issued electronically.

4. The Coronavirus (Scotland) (No.2) Act 2020 ("the second Act") repealed the provisions in the first Act that extended the timescales, as a result of successful non-Government amendments. Paragraph 12 of schedule 4 to the second Act was also inserted by non-Government amendment. It requires the Scottish Ministers must report to the Scottish Parliament on certain aspects of their responses to requests for information under FOISA.

5. Paragraph 12(2) of schedule 4 to the second Act sets out the matters that must be included in the report as follows:

- (a) backlogs in responding to requests
- (b) how many requests have been responded to
- (c) what was provided in response to requests
- (d) cases which were partially refused
- (e) the number of requests subject to an internal review
- (f) backlogs in the internal review process
- (g) appeals made to the Commissioner in respect of requests

6. The accompanying draft report relates to the second reporting period (from 27 July to 26 September 2020).

Discussion

7. As noted in my minute of 31 July in connection with the first report, the reporting requirement was inserted into the second Act by non-Government amendment at Stage 2. While we, SGLD and PCO were concerned about how the amendment would operate in practice, the decision was taken not to revisit it at Stage 3. Accordingly, the provision is not drafted with the clarity that might be expected from Government legislation, and in particular it mentions (without definition) a number of concepts which are not found in the FOI legislation. For example, “backlog” is not a term used in FOISA.

8. We have therefore had to interpret what the various reporting requirements mean, and we have provided explanations of our approach to assist the reader to understand the report. We have also explained the scope and coverage of the report. The second report takes the same approach as the first one in all respects.

Comparison between first and second reports

9. The change in figures between the first and second reports is summarised in the table below:

<u>Reporting requirement</u>	<u>First report</u>	<u>Second report</u>
(a) backlogs in responding to requests	87	93
(b) how many requests have been responded to	457	477
(c) what was provided in response to requests	n/a	n/a
(d) cases which were partially refused	93	72
(e) the number of requests subject to an internal review	47	63
(f) backlogs in the internal review process	10	15
(g) appeals made to the Commissioner in respect of requests	4	14

10. The broad picture is that there have been increases in relation to all of the reporting requirements, apart from the number of partial refusals. This should however be seen in the context of:

- (a) ongoing improvements in our monthly FOI performance
- (b) an increase in numbers of overall FOI requests received
- (c) answering more requests in the second reporting period than the first

11. The report only captures the final one of these points, and so to some extent paints a partial picture.

Monthly FOI performance improvements

12. In relation to monthly FOI performance, the draft report notes that we report monthly to the Commissioner on our FOI performance, and we have done so since 2017. Those figures are published on the Scottish Government website, with our July figures due for publication soon. Prior to the coronavirus outbreak, we had consistently attained the 95% target for requests (the far smaller number of reviews means that the review percentage is more volatile, with one or two late reviews potentially being enough to see the target being missed). The 2020 figures are as follows:

<u>Month</u>	<u>Requests</u>	<u>Reviews</u>
January	97%	100%
February	97%	100%
March	95%	87%
April	90%	64%
May	58%	43%
June	79%	78%
July	81%	83%

13. As the extended timescales were in force for part of April and May, we think that this had the effect of improving April's figures (because cases answered between 20 and 60 working days were recorded as being on time) and depressing May's figures (because the reversion to 20 working days meant that cases became late when the law changed).

14. We would be wary of putting too much weight on the figures for June and July until we see whether the improvement is sustained into the autumn, but the initial indication is that there was a significant recovery in June and this appears to have been maintained (and slightly improved) in July.

Increase in number of FOI requests received

15. While the number of FOI requests received each month fell at the start of the coronavirus outbreak, they have risen steadily in recent months, as follows:

<u>Month</u>	<u>Requests received</u>
January	125
February	225
March	151
April	120
May	178
June	253
July	273
August	244
September	362

16. Records for previous years show that August is usually quieter than the surrounding months, but the number of requests received in September is exceptionally high. It should be borne in mind that this figure excludes requests under the EIRs, so casehandlers and the FOI Unit are dealing with unusually high workloads at present.

Other factors

17. Another factor in the apparent increase between the first and second reports is that the “backlog” figures are to some extent cumulative, so the second report is likely to include some cases that were also included in the first report if they remained outstanding. We are concerned by the size of the backlog of requests and reviews, and so the FOI Unit plans to undertake a targeted programme of engagement at Directorate level to see what additional support we can offer to get cases completed and reduce the backlog.

Communications and handling

18. We have made Communications colleagues aware of the draft report and will work with them on lines, which will be shared with you for approval in the usual way. We will explore with them how we can present as effectively as possible the performance information which is not captured by this reporting process.

19. We are aware that the report is due to be laid immediately before recess. We do not think that anything in the report would call for a Ministerial statement in connection with its laying, but we would be grateful for your views.

Recommendation

20. You are invited to indicate:

- (a) whether you are content that this report be laid before the Scottish Parliament on Friday 9 October 2020;
- (b) your views on handling, and in particular whether you wish anything to be done beyond i) laying the report and ii) preparing media lines against enquiry.

[Redacted]
FOI Unit
[Redacted]

5 October 2020

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

Permanent Secretary
 Ken Thomson
 David Rogers
 Penny Curtis
[Redacted]
[Redacted]
[Redacted]
 James Hynd
[Redacted]
 Coronavirus Legislation Coordination (Reporting) Team
 Caroline Beattie
[Redacted]
[Redacted]
 Corporate Communications
 Communications Brexit and Constitution
 Ewan Crawford

Enclosure 5

From: [Redacted]

Sent: 12 October 2020 17:38

To: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [Redacted]

Cc: [Redacted]; Fol SpAds PO <Fol.SpAdsPO@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; [Redacted]

Subject: RE: Monthly Report for July by Directorate - for Scottish Information Commissioner - for clearance by Minister

[Redacted]

Figures for MS, as Mr Dey requested.

[Redacted]

Marine Scotland performance 2020

Month	Requests On Time	Requests Late, Responded	Request Late, In Progress	% Requests On Time	Reviews On Time	Reviews Late, Responded	Reviews Late, In Progress	% Reviews On Time
July	6	6	0	50%	n/a	n/a	n/a	n/a
June	5	2	0	71%	0	1	0	0%
May	5	1	0	83%	0	1	0	0%
April	9	1	0	90%	0	2	0	0%
March	11	4	0	73%	0	1	0	0%
February	7	0	0	100%	n/a	n/a	n/a	n/a
January	12	0	0	100%	n/a	n/a	n/a	n/a
Total	55	14	0	80%	0	5	0	0%