

8) Email containing Finalised Meeting note attachment – 29th July 2022

From: [Redacted]@gov.scot>

Sent: 29 July 2022 18:21

To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>
Subject: Note of Minister for Parliamentary Business Meeting with Commissioner - 27 July 2022

Dear All,

I have now saved a note of the Minister's meeting with the Commissioner on Wednesday in eRDM (attached in Word also):

Minister for Parliamentary Business Meeting with Daren Fitzhenry - 27 July 2022 - Note of Meeting details - Objective ECM (scotland.gov.uk)

Thanks

[Redacted]

[Redacted]

Acting Head of Policy
Freedom of Information Unit
Scottish Government
2W, St Andrew's House

Mob: [Redacted]
(Alternative contact: [Redacted])

Yammer: @FOI - Community

I am currently working from home.

7) Meeting Notes – 27 July 2022

From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>

Sent: 27 July 2022 17:08

To: [Redacted]@gov.scot>

Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>

Subject: RE: Note of Minister for Parliamentary Business Meeting with Scottish Information Commissioner - 13:15-14:00, Wednesday 27 July 2022

Thanks [Redacted], looks good. I think it just needs to be saved in eRDM as the note including who attended.

Penny

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
0131 244 [Redacted] | Mobile [Redacted]

From: [Redacted]@gov.scot>
Sent: 27 July 2022 16:58
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>
Subject: Note of Minister for Parliamentary Business Meeting with Scottish Information Commissioner - 13:15-14:00, Wednesday 27 July 2022

Penny,

Please see below my notes from this afternoon's meeting between the Minister and the Commissioner:

Improvement and Performance

- The Minister explained that he had been keen to have a one to one meeting with the Commissioner, to give him the opportunity to underline the Scottish Government's commitment to FOI improvement and to check in with the Commissioner re his impressions of the actions we are taking in response to his recommendations
- The Commissioner indicated that he was content with the engagement at official level so far.
- The Commissioner indicated that he was content with the 'tweak' to his recommendations in terms of the approach to rebuilding the case handler network, and emphasise that his aim was to help the Scottish Government develop solutions, rather than to impose solutions on us.
- The Commissioner indicated that in his view, the thing of key importance is to get back to a position where cases are handled by case handlers who are experienced and confident in managing the FOI process and can follow the associated procedures with ease.
- The Minister and Head of Elections and FOI Division both highlighted the interest being taken by the Permanent Secretary in the Scottish Government's FOI performance and improvement journey – being actively engaged in these issues.
- It was noted that both the Scottish Government and the Commissioner are continuing to experience high case load, although the Scottish Government caseload has tailed off a little in recent months.

- The Minister acknowledged the recent dip in our FOI performance – in terms of proportion responded to on time – over the past two months. June figures - which should be with the Commissioner shortly – show performance last month similarly to around the mid-80s.
- The dip in SG FOI performance has been largely driven by issues within a couple of areas experiencing particularly high demand (Economic Development and Transport Scotland).
- The Commissioner highlighted the value of proactive publication in helping to manage high interest in particular subject matters.

FoI Policy

- The Minister made clear that he is not, at the current time, persuaded of the case for new primary legislation in relation to FOI.
- The consultation following from the work of the Parliament on post-legislative scrutiny of FOISA will seek to test the case for future legislative change, and we remain open to this in the future. However, it will also seek to explore ways in which the regime can be improved within the existing primary legislative framework (including through the use of secondary legislation). We expect the consultation to launch in autumn.
- The Commissioner expressed disappointment with this position. The Minister sought to reassure the Commissioner that we are committed to looking seriously at how the regime can work better, including in relation to the use of Scottish Ministers powers to extend FOISA and that we are also not seeking to close down the discussion about future primary legislation. This was reinforced in comments by the Head of Elections and FOI Division and Acting Head of FOI Policy.

AOB

- Recent media coverage regarding the level of resource in the FOI Unit was noted. The Minister assured the Commissioner that the Scottish Government remained committed to ensuring the Unit was adequately resourced.

Grateful if you can confirm that you are content with this. Once we're happy, do you think I need to send this up to Mr Adam's office, or is it just a case of us saving in eRDM as a record?

[Redacted]

[Redacted]

Acting Head of Policy
Freedom of Information Unit
Scottish Government
2W, St Andrew's House

Mob: [Redacted]

(Alternative contact: [Redacted])

Yammer: @FOI - Community

I am currently working from home.

6) Emails from 25 July 2022 – Finalised Meeting brief.

From: [Redacted]@gov.scot>
Sent: 25 July 2022 13:01
To: [Redacted]@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>
Subject: FW: Meeting with Scottish Information Commissioner - Wed 27 July 2022 - briefing

Hi [Redacted],

Apologies – I missed you off the copy list below. For awareness, please see the attached briefing which will be discussed at tomorrow’s catch up with Mr Adam.

Thanks,

[Redacted]

From: [Redacted]
Sent: 25 July 2022 12:41
To: Minister for Parliamentary Business <MinisterPB@gov.scot>
Cc: [Redacted]@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Subject: Meeting with Scottish Information Commissioner - Wed 27 July 2022 - briefing

[Redacted], [Redacted],

Please find attached briefing for Mr Adam’s meeting with the Scottish Information Commissioner on Wednesday 27 July.

The agenda has been agreed with the Commissioner’s office.

Do let me know if you require anything else.

Thanks,

[Redacted]

[Redacted] | FOI Manager – Policy (TRS) | Scottish Government | 2W St Andrew’s House, Regent Road, Edinburgh EH1 3DG | Yammer - FOI - Community

5) Draft briefing – 21 July 2022

From: [Redacted]@gov.scot>

Sent: 21 July 2022 16:26

To: [Redacted]@gov.scot>

Cc: [Redacted]@gov.scot>

Subject: RE: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO
Monday 25/07/22

Thanks [Redacted], that's great– I've added the meeting from [Redacted]'s diary now.

[Redacted]

From: [Redacted]@gov.scot>

Sent: 21 July 2022 16:19

To: [Redacted]@gov.scot>

Cc: [Redacted]@gov.scot>

Subject: FW: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO
Monday 25/07/22

[Redacted] – Penny is happy for you to attend to support the briefing of the minister. Can you add the meeting to your diary? As I declined it, it's not in mine, but if you go into [Redacted]'s diary in Outlook you should be able to drag a copy across to your diary (useful to know).

In my absence Penny will lead the meeting and bring you in as necessary. Good luck!

[Redacted]

From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>

Sent: 21 July 2022 15:12

To: [Redacted]@gov.scot>

Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>

Subject: RE: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO
Monday 25/07/22

Thanks [Redacted], we can use the meeting earlier in the week to cover the pre-brief so no need – that will work fine.

Penny

Penny Curtis

Deputy Director Elections and FOI

Directorate for Constitution and Cabinet

Scottish Government

2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG

0131 244 [Redacted] | Mobile [Redacted]

From: [Redacted]@gov.scot>
Sent: 21 July 2022 14:12
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>
Subject: RE: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO
Monday 25/07/22

Thanks Penny.

I have asked OSIC to confirm whether they have anything to add to the proposed agenda – it is very much along the lines of previous meetings, with the addition of the improvement plan discussion.

There is a meeting with some of the FOI Unit and the Minister on Tuesday, however, I don't believe that is a specific pre-meet ahead of Mr Adam's meeting with the Commissioner (correct me if I'm wrong [Redacted]!) – happy to speak to private office regarding this.

[Redacted]

From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Sent: 21 July 2022 14:02
To: [Redacted]@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>
Subject: RE: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO
Monday 25/07/22

Thanks [Redacted]

I've made just a few changes (tracked). I think Mr Adam might want more of a steer on what to say, but that might best be dealt with in a pre-brief. Do we have a pre-brief slot with him?

Penny

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
0131 [Redacted] | Mobile [Redacted]

From: [Redacted]@gov.scot>
Sent: 21 July 2022 12:02
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>
Subject: RE: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO
Monday 25/07/22

Thanks Penny, I've added it here:
<https://erdm.scotland.gov.uk:8443/documents/A39480460/details>.

[Redacted]

From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Sent: 21 July 2022 11:43
To: [Redacted]@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>
Subject: RE: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO Monday 25/07/22

Thanks [Redacted], can you send me the eRDM link? It's easier for me to work on.

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
0131 244 [Redacted] | Mobile [Redacted]

From: [Redacted]@gov.scot>
Sent: 21 July 2022 11:04
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: [Redacted]@gov.scot>; [Redacted]@gov.scot>
Subject: Briefing for OSIC meeting 27 July 2022 - draft for clearance- due with MPO Monday 25/07/22

Hi Penny,

Please find attached briefing for the Minister's meeting with the Commissioner next Wednesday.

Grateful if you can let me know whether you are content with this?

This is due with MPO by **13:00 on Monday 25 July**.

Many thanks,

[Redacted]

[Redacted] | FOI Manager – Policy (TRS) | Scottish Government | 2W St Andrew's House, Regent Road, Edinburgh EH1 3DG | Yammer - FOI - Community

5) Briefing drafting 21 July 2022

From: [Redacted]@gov.scot>
Sent: 21 July 2022 10:35
To: [Redacted]@gov.scot>
Subject: RE: Briefing for OSIC meeting 27 July 2022 - draft for review- due with MPO Monday 25/07/22

Thanks [Redacted] – this is looking good. I've made a few edits just to clarify things and address your questions.

Once you are happy with it, it can go to Penny. BTW Penny is on leave tomorrow, so you might want to turn it around quite quickly.

[Redacted]

From: [Redacted]@gov.scot>
Sent: 21 July 2022 08:53
To: [Redacted]@gov.scot>
Subject: Briefing for OSIC meeting 27 July 2022 - draft for review- due with MPO Monday 25/07/22

Hi [Redacted],

Grateful if you can take a look at my draft briefing for the Minister's meeting with the Commissioner next week.

I have added the more general information relating to OSIC's workload, appeals etc. at the end but it is perhaps better worked in elsewhere.

This is due with private office by **13:00 on Monday 25 July**.

Thanks,

[Redacted]

4) Following from email on 15th July 2022

From: [Redacted]@itspublicknowledge.info>
Sent: 21 July 2022 16:33
To: [Redacted]@gov.scot>
Subject: RE: Meeting - Minister for Parliamentary Business - proposed agenda

Good afternoon [Redacted]

Thank you for your email with the proposed agenda. Daren is happy with the proposal and has nothing further to add.

Kind regards

[Redacted]

[Redacted] **Finance and Administration Manager**

Scottish Information Commissioner

Kinburn Castle, Doubledykes Road

St Andrews, KY16 9DS

Email: [Redacted]@itspublicknowledge.info

Web: www.itspublicknowledge.info

Twitter: @FOIScotland



From: [Redacted]@gov.scot

Sent: 21 July 2022 13:45

To: [Redacted]@itspublicknowledge.info>

Subject: FW: Meeting - Minister for Parliamentary Business - proposed agenda

Good afternoon [Redacted],

We are considering the agenda for the Commissioner's meeting with Mr Adam next week and are proposing discussion along the lines of these broad agenda points:

1. Scottish Information Commissioner Intervention update (including Improvement Plan)
2. FOI policy update
3. Transparency & FOI
4. AOB

Can you please let me know if the Commissioner is content with this or if he has anything further to add?

Many thanks,

[Redacted]

[Redacted] | FOI Manager – Policy (TRS) | Scottish Government | 2W St Andrew's House, Regent Road, Edinburgh EH1 3DG

3) 19th July

From: [Redacted]@gov.scot>
Sent: 19 July 2022 14:36
To: [Redacted]@gov.scot>
Subject: FW: Official support - meeting with Mr Fitzhenry

[Redacted] – as I'm sure you are aware, you'll need to take the notes at this one.

Best wishes

[Redacted]

From: [Redacted]
Sent: 19 July 2022 14:35
To: Minister for Parliamentary Business (MinisterPB@gov.scot) <MinisterPB@gov.scot>
Cc: [Redacted]@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>;
[Redacted]@gov.scot>
Subject: Official support - meeting with Mr Fitzhenry

[Redacted]

As I am on leave next week, official support for Mr Adam's meeting with the Commissioner on Weds 27 will be Penny Curtis and [Redacted]. I have forwarded the invitation to Penny.

The briefing is underway and will be with you by the deadline on Monday.

Kind regards,

[Redacted]

[Redacted] | Interim Head of FOI Unit

[Redacted] | [Yammer: @FOI - Community](#)

My working days are Tues-Fri

3) - 13 July to 15 July 2022

From: [Redacted]@gov.scot>
Sent: 15 July 2022 15:58
To: [Redacted]@gov.scot>
Subject: FW: Meeting - Minister for Parliamentary Business

[Redacted] – please can you have a look at this next week, getting a draft to me by Weds?

Mr A will not need a detailed brief as he knows the Commissioner already, but he will benefit from an overview of current policy issues and tricky cases already with OSIC. Give

me a shout when convenient next week and I will tip out what is in my head re improvement plan, tricky cases at appeal etc.

In [Redacted]'s absence we'll need to pull this together ourselves. My last day before leave is Friday, 22.

Thanks,

[Redacted]

From: [Redacted]@gov.scot> **On Behalf Of** Minister for Parliamentary Business

Sent: 15 July 2022 15:36

To: [Redacted]@gov.scot>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: RE: Meeting - Minister for Parliamentary Business

Thanks for flagging, [Redacted]. I'd be grateful for briefing by 13:00 on Monday 25 July please. I'll confirm to you once I've heard back from Commissioner's office.

Have a fab weekend!

[Redacted]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [Redacted] E: MinisterPB@gov.scot

The Scottish Government | St Andrew's House, Regent Road, EDINBURGH EH1 3DG

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From: [Redacted]@gov.scot>

Sent: 15 July 2022 15:32

To: Minister for Parliamentary Business <MinisterPB@gov.scot>

Subject: RE: Meeting - Minister for Parliamentary Business

[Redacted], just to flag that I will be on holiday that week, and [Redacted] just back. If you can let me know any briefing requirements at an early stage I can get them in process before I go off.

Kind regards,

[Redacted]

From: [Redacted]@gov.scot> **On Behalf Of** Minister for Parliamentary Business
Sent: 15 July 2022 11:05
To: [Redacted]@gov.scot>
Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>
Subject: RE: Meeting - Minister for Parliamentary Business

Many thanks [Redacted]! I can go back to [Redacted] directly for ease.

[Redacted]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [Redacted] E: MinisterPB@gov.scot

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From: [Redacted]@gov.scot>
Sent: 15 July 2022 11:00
To: Minister for Parliamentary Business <MinisterPB@gov.scot>
Subject: FW: Meeting - Minister for Parliamentary Business

PO

Please find below the potential slots for Mr Adam to meet Daren Fitzhenry later this month.

Kind regards,

[Redacted]

From: [Redacted]@itspublicknowledge.info>
Sent: 15 July 2022 10:47
To: [Redacted]@gov.scot>
Subject: FW: Meeting - Minister for Parliamentary Business

Good morning [Redacted]

Thank you for your email to Daren regarding a meeting with Mr Adam.

Daren could meet in person on Tuesday 26 July or virtually via MS Teams on Wednesday 27 July from 1pm onwards. Please let me know what is the most suitable date and time for Mr Adam.

I look forward to hearing from you.

Kind regards

[Redacted]

[Redacted]

PA to Daren Fitzhenry, Scottish Information Commissioner

Scottish Information Commissioner

Kinburn Castle, Doubledykes Road
St Andrews, KY16 9DS

Email: [Redacted]@itspublicknowledge.info

Web: www.itspublicknowledge.info

Twitter: @FOIScotland



From: [Redacted]@gov.scot

Date: 13 Jul 2022 09:00

Subject: Meeting - Minister for Parliamentary Business

To: Daren Fitzhenry <[Redacted]@itspublicknowledge.info>

Cc:

Daren

You'll be aware that Mr Adam appreciates his periodic meetings with you in connection with the Scottish Government intervention. His office is wondering if you might be available for such a meeting later this month, on the afternoon of either 26 or 27 July?

Best wishes

[Redacted]

[Redacted] | Interim Head of FOI Unit

[Redacted] | **Yammer:** @FOI - Community

My working days are Tues-Fri

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2) 12 July email: follow up from 5th July.

From: [Redacted]@gov.scot> **On Behalf Of** Minister for Parliamentary Business
Sent: 12 July 2022 18:24
To: [Redacted]@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>
Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot> [Redacted]@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>
Subject: RE: Mr Adam's Recess Engagements - FOI Unit

Hi [Redacted]

I'd be grateful if you could check with the Commissioner if he is available for a meeting with Mr Adam on the afternoon of either 26 or 27 July please. A couple of other engagements going into those days so if a meeting is possible then I'll confirm a slot asap.

Thanks!
[Redacted]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [Redacted] E: MinisterPB@gov.scot

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1) Emails from 1 July to 5 July.

From: [Redacted]@gov.scot>

Sent: 05 July 2022 12:14

To: Minister for Parliamentary Business <MinisterPB@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>

Cc: McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [Redacted]@gov.scot>

Subject: RE: Mr Adam's Recess Engagements - FOI Unit

[Redacted]

We have had a quick chat and it really is just the Commissioner and his team at this stage. We would suggest that Mr Fitzhenry may wish to include Margaret Keyes who is Head of Enforcement and Claire Stephen, Head of Policy and Information. Both are key contacts with different interests in the work of the FOI Unit, however Mr Fitzhenry is best placed to decide who – if anyone – he wishes to join him.

Regards,

[Redacted]

From: [Redacted]@gov.scot> **On Behalf Of** Minister for Parliamentary Business

Sent: 01 July 2022 13:28

To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>

Cc: Minister for Parliamentary Business <MinisterPB@gov.scot>; McFarlane J (John) (Special Adviser) <John.McFarlane@gov.scot>; [Redacted]@gov.scot>

Subject: Mr Adam's Recess Engagements - FOI Unit

Hi All

Mr Adam will be undertaking four Ministerial days over recess – two in July and two in August. As such, I'd be grateful if you could let me know if there are any stakeholders from your area that the Minister should meet over these days please. We previously discussed setting up regular meetings with Daren Fitzhenry so grateful if he could be included in the return please, and then we can start meeting regularly with the Commissioner from then.

Grateful for responses by 16:00 on Friday 8 July please.

Many thanks!

[Redacted]

[REDACTED]

Deputy Private Secretary to Minister for Parliamentary Business

M: [Redacted] E: MinisterPB@gov.scot

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MINISTER FOR PARLIAMENTARY BUSINESS
Meeting/Event Briefing

What	<i>Meeting with the Scottish Information Commissioner</i>
Who	<ul style="list-style-type: none"> • <i>George Adam MSP, Minister for Parliamentary Business</i> • <i>Daren Fitzhenry, Scottish Information Commissioner</i>
When	<ul style="list-style-type: none"> • <i>Wednesday 27 July 2022, 13.15 – 14.00</i>
Where	<i>MS Teams: Click here to join the meeting</i>

Official support	<ul style="list-style-type: none"> • <i>Penny Curtis, Head of Elections and Freedom of Information Division, 07827232493</i> • <i>[Redacted] Head of Policy, FOI Unit, [Redacted]</i>
Comm/ Media	<i>N/A</i>

Intended outcome	<i>This is an opportunity for the Minister to meet with the Commissioner following the publication of his latest intervention report in May 2022 and the subsequent publication of the Scottish Government's improvement plan 2022-23 in July 2022.</i>
Key message	The Scottish Government is committed to working with the Commissioner in the intervention process and is progressing the actions outlined in the Improvement Plan.
Sensitivities	<i>NA</i>

Agenda/ Running Order (agreed with participants)	<p>Agenda</p> <ol style="list-style-type: none"> 1. Scottish Information Commissioner Intervention update 2. FOI policy update 3. Transparency & FOI 4. AOB
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**Briefing
Contents**

- 1. Scottish Information Commissioner Intervention update*
- 2. FOI Policy*
- 3. Issues of transparency & FOI*
- 4. Further background information on recent engagement with the Commissioner*

1. Scottish Information Commissioner Intervention update

Key messages:

- **The Scottish Government is committed to supporting the Commissioner in the intervention process and is working to progress the actions outlined in the Improvement Plan.**
- **Some of these actions have early deadlines, including reintroducing learning from FOI reviews and appeals (July), and introducing communications and guidance to support improved records management in casefiles (September). The FOI Unit is working to progress the actions due for completion over the summer as a priority and will keep the Commissioner informed.**
- **The Scottish Government is committed to improving its FOI response time performance and returning to the 95% response target agreed with the Commissioner.**
- **The FOI Unit is engaging with the business areas facing specific challenges to ensure efforts are made to clear backlogs in issuing responses.**

Background:

Improvement Plan

- Following the May 2022 publication of the Scottish Information Commissioner's third progress report on the Intervention into the Scottish Government's FOI performance, the Minister wrote to the Commissioner indicating that the Scottish Government formally accepted the report's recommendations. This was subject to one minor caveat, the Improvement Plan action to explore potential resourcing models for re-establishing a network of skilled case-handlers.
- The Improvement Plan was published on the Scottish Government website on 1 July 2022: [Freedom of information \(FOI\) improvement plan 2022-23 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/freedom-of-information-foi-improvement-plan-2022-23/pages/2.aspx).
- The plan is structured around the six areas for further improvement identified by the Commissioner: clearance procedures, quality assurance, case file records management, case handling, monitoring FOI requests and compliance with timescales.
- The Commissioner will use the Improvement Plan for monitoring progress on a monthly basis between now and his next review of the Scottish Government's performance in spring/summer 2023.

Monthly performance statistics

- It is disappointing that the response rate for answering FOI requests on time has dropped to 84% in the most recent reporting period. However, there are a number

of business areas within the Scottish Government which are currently facing practical challenges in completing requests on time.

Transport Scotland and the Directorate for Economic Development are experiencing high volumes of complex FOI requests [Redacted] - section 29(1)(a) Prejudice to effective conduct of public affairs

- [Redacted] - section 29(1)(a) Prejudice to effective conduct of public affairs
- Recent changes to internal monthly reporting of FOI performance will provide greater visibility of Directorate statistics as well as clearer trend analysis across the Scottish Ministers public authority.

2. FOI Policy update

Key Messages:

- **The FOI Unit continues to progress its policy agenda, with a policy plan in development and additional staff resource in place from within the Unit. Given the challenges it faces, the Unit is continuing to focus its finite resources strategically.**
- **Consultation will be launched in the autumn.**

Background:

Public Consultation on future legislative change to FOISA

- The Scottish Government has an outstanding commitment to hold a public consultation on possible future legislative change of FOISA following the publication of the 2020 report *Post-legislative scrutiny: Freedom of Information (Scotland) Act 2002* by the Public Audit and Post-legislative Scrutiny Committee.
- The former Minister for Parliamentary Business and Veterans provided the Scottish Government's formal response to the Committee's report on 25 February 2021.
- The Scottish Government accepted the Committee's central recommendation that it should consult on possible future changes to FOISA, taking the Committee's report as its starting point.
- The purpose of the consultation is to gather the views of stakeholders in order to test the case for future legislative change but also to explore other ways in which the current statutory regime might be made to work better
- A draft version of the consultation document, titled 'The Future of Access to Information Rights in Scotland', has now been commented on by SGLD and the Special Adviser with responsibility for this area. Work is ongoing to develop the consultation with an ambition to launch this in autumn 2022.

Extension of FOISA to further entities (section 4 and 5 powers)

- Following the Scottish Government's 2019 consultation on the future use of Scottish Ministers' powers under section 5 to extend coverage of the Act, a commitment is still outstanding to publish a policy paper setting out an overall approach to future use of section 4 and 5 powers.
- In his response to our 2019 consultation, the Commissioner identified the following four areas as priorities for consideration:
 - Health and social care services provided under contract to Scottish public authorities
 - Services provided under Private Finance Initiative (PFI) / Public Private Partnership (PPP) / Non-Profit Distributing (NPD) contract arrangements
 - HubCos and services provided under contract through the hubCo model
 - Transport services provided on behalf of Scottish public authorities.
- There is cross-party interest in the potential extension of FOISA within the social care sector in particular, especially in light of the creation of a new National Care Service. This topic is also a high priority for a number of stakeholders including the Campaign for Freedom of Information in Scotland (CFoIS).
- [Redacted] - section 29(1)(a) Prejudice to effective conduct of public affairs.

3. Scottish Government Transparency & FOI

Key messages:

- **The Scottish Government is committed to openness and transparency and we strive to ensure that every area of the organisation is accessible to the public.**
- **A key element of the Improvement Plan is to undertake a project to improve FOI record-keeping practices across the Scottish Government.**

Background:

- Scotland has been a member of the Open Government Partnership since 2016, which brings together government reformers and civil society to make governments more inclusive, responsive, and accountable.
- The Commissioner is a strong supporter of Scotland's involvement in Open Government. He regularly attends steering group meetings as an observer and has come to Open Government Partnership events.
- The Scottish Government is currently delivering Scotland's third Open Government National Action Plan in partnership with civil society.
- The Permanent Secretary has expressed his commitment to good governance and developing the civil service in Scotland in line with the values of integrity, honesty, objectivity and impartiality.
- The Permanent Secretary has recently publically committed to regular meetings with the Scottish Information Commissioner.
- The Permanent Secretary has outlined key actions he is taking forward on Scottish Government record keeping: Data on Parliamentary Questions and FOI performance

will now be reviewed regularly at the Permanent Secretary's Corporate Board, improving current rates of transparency and accountability.

- All recommendations in the Scottish Government's Review of Corporate Information Management (published June 2021) are being taken forward to improve the robustness of document management storage and retrieval processes.
- Three leadership and operational oversight groups have been established to ensure delivery of all the aspects of the Scottish Government's Information Management Strategy.
- A project to improve FOI record-keeping within casefiles is a key element of the Improvement Plan and liaison between the FOI Unit and records management colleagues is underway with an aim of sharing materials and learning.

4. Further Background Information on Recent Engagement with the Commissioner

- The Commissioner's office is currently experiencing high volumes of appeal applications in relation to all public authorities. Anecdotally the Commissioner has told officials that appeal numbers have increased by 30%.
- This has resulted in resourcing challenges, and they will introduce a new workflow to the appeals process from August which aims to take a more focused approach. The FOI Unit are watching this development with interest as it may impact workload in the appeals team as it will require more work to be completed at an earlier stage.
- The Commissioner's office has been understanding and supportive of the Scottish Government's own staffing challenges, for example, providing extensions to appeals deadlines where appropriate.
- The Scottish Government has 56 live appeals in progress. One business area, the Directorate for Economic Development, currently has 30 live appeals, and discussions are scheduled between OSIC and FOIU officials to discuss the handling of these.
- The Commissioner issued Information Notices in April, conducted a viewing of evidence in April, and one online follow-up interview in mid-July. We now await his decision on the five cases.

Minister for Parliamentary Business Meeting with Daren Fitzhenry, Scottish Information Commissioner - 13:15-14:00, Wednesday 27 July 2022 (MS Teams)

Present: George Adam MSP (Minister for Parliamentary Business), Daren Fitzhenry (Scottish Information Commissioner), Penelope Curtis (Head of Elections and FOI Division), [Redacted] (Acting Head of FOI Policy)

Note of Meeting:

Improvement and Performance

- The Minister explained that he had been keen to have a one to one meeting with the Commissioner, to give him the opportunity to underline the Scottish Government's commitment to FOI improvement and to check in with the Commissioner re his impressions of the actions we are taking in response to his recommendations
- The Commissioner indicated that he was content with the engagement at official level so far.
- The Commissioner indicated that he was content with the 'tweak' to his recommendations in terms of the approach to rebuilding the case handler network, and emphasise that his aim was to help the Scottish Government develop solutions, rather than to impose solutions on us.
- The Commissioner indicated that in his view, the thing of key importance is to get back to a position where cases are handled by case handlers who are experienced and confident in managing the FOI process and can follow the associated procedures with ease.
- The Minister and Head of Elections and FOI Division both highlighted the interest being taken by the Permanent Secretary in the Scottish Government's FOI performance and improvement journey – being actively engaged in these issues.
- It was noted that both the Scottish Government and the Commissioner are continuing to experience high case load, although the Scottish Government caseload has tailed off a little in recent months.
- The Minister acknowledged the recent dip in our FOI performance – in terms of proportion responded to on time – over the past two months. June figures - which should be with the Commissioner shortly – show performance last month similarly to around the mid-80s.
- The dip in SG FOI performance has been largely driven by issues within a couple of areas experiencing particularly high demand (Economic Development and Transport Scotland).
- The Commissioner highlighted the value of proactive publication in helping to manage high interest in particular subject matters.

FoI Policy

- The Minister made clear that he is not, at the current time, persuaded of the case for new primary legislation in relation to FOI.
- The consultation following from the work of the Parliament on post-legislative scrutiny of FOISA will seek to test the case for future legislative change, and we

remain open to this in the future. However, it will also seek to explore ways in which the regime can be improved within the existing primary legislative framework (including through the use of secondary legislation). We expect the consultation to launch in autumn.

- The Commissioner expressed disappointment with this position. The Minister sought to reassure the Commissioner that we are committed to looking seriously at how the regime can work better, including in relation to the use of Scottish Ministers powers to extend FOISA and that we are also not seeking to close down the discussion about future primary legislation. This was reinforced in comments by the Head of Elections and FOI Division and Acting Head of FOI Policy.

AOB

- Recent media coverage regarding the level of resource in the FOI Unit was noted. The Minister assured the Commissioner that the Scottish Government remained committed to ensuring the Unit was adequately resourced.