

## Scottish Information Commissioner - Freedom of Information(FOI) Update

Posted by RM64 - 09 Jun 2020 10:29

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UPDATE: Our services and the impact of the Covid-19 pandemic

8 June 2020

Like many other Scottish public authorities, the office of the Scottish Information Commissioner has been impacted by the coronavirus Covid-19 pandemic.

However, most of our services are still available.

This article sets out some of the work we are conducting and the Commissioner's expectations for Scottish public authorities.

You can read more about how we are able to help on our contact page.

### Our work

Though our office premises are temporarily closed in line with government guidance, the Commissioner and approximately two thirds of his staff are now working from home using secure remote systems, and we are intending to expand our remote working further. The work we are conducting includes:

- Investigating appeals, conducting interventions and issuing decisions
- Producing new guidance and updating the Covid-19 and FOI info hub
- Monitoring FOI developments

- Responding to enquiries received by email or post
  
- Responding to requests for information and requests for reviews
  
- Managing ongoing projects and contracts
  
- Developing further remote working capability
  
- Managing payroll, budgets, finance, governance, data protection, human resources, statutory reporting, information and risk
  
- Ensuring staff health, safety and wellbeing

The Commissioner's expectations for Scottish public authorities

The Commissioner has stated that, in line with the current provisions of the Coronavirus (Scotland) Act 2020, he will be sympathetic to the effects of coronavirus Covid-19 on public authorities' ability to respond to requests for information during the pandemic.

However, the duty to respond promptly and in no more than 20 working days remains in place and the Commissioner expects authorities to comply with this duty wherever possible, with reasons for any delays being noted in line with the Commissioner's current guidance.

Authorities are also encouraged to publish as much relevant information about their activities as possible during this time.

Proactive publication is more important than ever, as it can support and strengthen public trust, enable people to be as informed as possible about the decisions that are being taken.

It may also help reduce the workload around responding to requests for information on related matters.

Further information

You can read more about the Commissioner's services during the current disruption on our contact us page.

For information about the impact of the pandemic on FOI in Scotland, and the duties placed on Scottish public authorities at this time, visit the Covid-19 and FOI info hub.

[www.itspublicknowledge.info/home/News/Covid-19InfoHub.aspx](http://www.itspublicknowledge.info/home/News/Covid-19InfoHub.aspx)

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## Re: Scottish Information Commissioner - Freedom of Information(FOI) Update

Posted by RM64 - 09 Jun 2020 10:42

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The Herald: Commissioner's article highlights importance of FOI during times of change

8 June 2020

Daren Fitzhenry

Today's Herald features an article written by Daren Fitzhenry, the Scottish Information Commissioner.

In it the Commissioner highlights how important freedom of information (FOI) is during times of uncertainty and change such as the current pandemic.

He stresses the fact that while there have been emergency changes to FOI in recent months, the duties

placed on public authorities to respond to requests for information - and to publish information proactively – still exist.

Read the article in full on The Herald's website >

Opinion: Daren Fitzhenry: In uncertain times, freedom of information is more important than ever

During these uncertain times, public authorities should be adapting their ways of working, writes Daren Fitzhenry

Ultimately, we – citizens, public authorities and regulators – are in this together

LIKE many of us, I've watched more briefings from Downing Street and St Andrew's House in the past 10 weeks than I'd normally expect to across a number of years.

Between the briefings and the vast array of papers, guidance and articles being shared each day, in these strange times we're all learning to engage with the kind of Powerpoint slides and expert insights that would previously have been relegated firmly to the realm of statisticians and academics.

As Scottish Information Commissioner, I am responsible for promoting and enforcing Scotland's freedom of information (FOI) law.

So both in my role as Commissioner and as a member of the public, I've been considering how public authorities have adapted their approach to sharing information of all kinds since the impact of this pandemic began to be felt – and how they will do so in weeks and months ahead.

Inevitably we all have questions about the decisions being made by our leaders and public services, and never more so than at a time when those decisions, sadly, may mean the difference between life and death.

This is why it is so vital that Scotland's law ensures everyone has a right to seek information from public authorities, and – with only very few, limited exceptions – to receive it.

Though temporary emergency changes have been made to FOI law across the past two months, these key rights stand: authorities must still respond to requests they receive for information promptly (meaning without delay), and at most this should be within 20 working days.

For some public authorities, changes brought about by the current disruptions will make this challenging (whether as a result of closure of offices, intense demand for services, or increased absence of staff).

However, not all will be impacted by the pandemic in the same way, and every authority must continue to respond to FOI requests promptly, and in any event within the 20 working day timeline.

The Scottish Parliament has, however, acknowledged the challenges faced by authorities and has accepted that sometimes, even when responding promptly, it will not be possible to meet this timeline.

The current emergency legislation therefore allows me, in certain circumstances relating to the pandemic, to decide that an authority has not breached the law even if it has failed to respond to a request within 20 working days.

I have issued detailed guidance on the emergency changes to FOI law on my website, and will continue to enforce these provisions firmly and fairly.

Crucially, FOI law also places a duty on public authorities to publish information about the work they do, the decisions they take and the services they provide – in a proactive way and not just when requested.

This duty remains unchanged but is more important now than ever.

Since we are all coming to accept that the disruption caused by the pandemic will continue for some time, I hope and expect that public authorities in Scotland will respond by adapting their ways of working, learning from this challenge, and updating their practices to ensure that people can easily access the information that matters to them – during this difficult time and beyond.

By publishing key information pro-actively, clearly and speedily, authorities can both reduce the time they spend responding to requests for information later, and promote the transparent culture we all want and expect in our public services.

The importance of this point was clearly highlighted by MSPS in the Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee last month, in their report on the current state of FOI law.

Although the Committee's report was agreed before the outbreak of Covid19 in Scotland, many of their recommendations highlight the real opportunities we have not only to maintain, but to improve, access to information for people in Scotland, and I look forward to helping them become a reality.

Ultimately, we – citizens, public authorities and regulators – are in this together.

In the face of all the disruption and uncertainty we are living through, we have a chance to change the way we understand and interact with one another about key decisions and services for the better.

I hope and believe that with some determination, hard work and open dialogue, we can make a real difference.

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## Re: Scottish Information Commissioner - Freedom of Information(FOI) Update

Posted by RM64 - 18 Jun 2020 18:22

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Our Ref: 133432

Your Ref: SP Paper 72

Anas Sarwar MSP

Acting Convener of the Public Audit and Post-legislative Scrutiny Committee

Scottish Parliament

Sent by email to the Committee Clerk

17 June 2020

Dear Acting Convener

Report of the Committee on post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002

I write to express my thanks to the Committee for its work on post legislative scrutiny of the Freedom of Information (Scotland) Act 2002 (FOISA), which culminated in publication of its report on 19 May 2020.

I welcome the report and am pleased to see the Committee's recognition of the

important benefits that FOISA has brought in terms of greater transparency and accountability of public authorities in Scotland, as well as its recommendations for improvements in key areas, such as proactive publication, ensuring the right organisations are covered, confidentiality clauses

between authorities and their contractors, and removing the ministerial veto.

The Committee's recommendations in relation to new and contemporary ways to approach proactive publication are encouraging, and I agree that there needs to be a cultural shift in authorities' approaches to publication. Indeed, in the context of the Coronavirus pandemic, the duty to proactively publish information is arguably more important now than ever.

While there are undoubtedly challenges as we move forward, removing the existing requirement to adopt a publication scheme, and replacing it with a statutory duty to publish information, supported by an agile, legally enforceable Code of Practice, will be a useful step in enabling such a cultural shift to develop and embed within authorities.

I particularly welcome the Committee's clear statement that public sector bodies need to view FOI as an essential element of public service provision and ensure that it is resourced accordingly.

Moving forward, my office will continue to encourage and help authorities to adapt their ways of working and develop their approach to proactive publication.

I am also grateful to the Committee for its regular mention of the importance of intervention work carried out by my office.

As set out in my evidence to the Committee, I am keenly aware of the

benefits that interventions can bring to the FOI community as a whole, both on the authority side and from the perspective of those who use FOI.

While the intervention work of my office has already secured improvements in authorities' performance, there is more that could be achieved; but that greater impact will require an increase in resource.

I note the various places where the Committee comments on opportunities to supplement guidance and/or further promote particular aspects of FOISA, and can confirm that these will be considered in my office's operational planning when prioritising the work that will be carried out within the available resource.

My team and I are ready to play our part in delivering change, and I look forward to engaging in the next part of that process.

Yours sincerely

Daren Fitzhenry

Scottish Information Commissioner

You can read more on the Website here -

[www.itspublicknowledge.info/home/News/Covid-19InfoHub.aspx](http://www.itspublicknowledge.info/home/News/Covid-19InfoHub.aspx)

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**Re: Scottish Information Commissioner - Freedom of Information(FOI)  
Update**

Posted by RM64 - 11 Sep 2020 14:40

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Link to Commissioner Website -



[www.itspublicknowledge.info/home/News/20200910.aspx](http://www.itspublicknowledge.info/home/News/20200910.aspx)

## Commissioner publishes report on Scottish Government's FOI performance

10 September 2020

The Scottish Information Commissioner has published a report on the progress made by the Scottish Government on improving its performance when responding to freedom of information (FOI) requests. The report is published as part of the Commissioner's ongoing intervention, launched in 2017, to improve the Scottish Government's performance in this area.

The Commissioner's report finds that, while the Scottish Government made significant progress towards delivering FOI improvement between April 2019 and March 2020, this progress was not sustained as the Scottish Government responded to the early stages of the Covid-19 pandemic.

Over this period, the proportion of FOI requests responded to within the legal time limit of 20 working days fell from 95% to 58% between March and May 2020. The Commissioner also notes that a range of measures put in place to improve FOI performance have been significantly disrupted as the Scottish Government responded to the pandemic.

Scottish Information Commissioner Daren Fitzhenry said:

"While some disruption from the Covid-19 pandemic is to be expected, the extent and speed of the Scottish Government's recent decline raises real concerns about the long-term sustainability of its FOI improvement work. I would urge Ministers to direct immediate attention towards this work to ensure that the recent improvements are safeguarded and protected.

"Failing to take action at this time will send a dangerous message to staff and the wider public about the perceived importance of openness, transparency and accountability through FOI, at a time when the public benefit arising from these characteristics has never been clearer."

The Commissioner's report recommends that the Scottish Government take a number of steps to protect its FOI function, including restoring trained staff to key FOI roles.

The Commissioner's full Intervention Progress Report is available at

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

[www.itspublicknowledge.info/home/AboutSl...ttishGovernment.aspx](http://www.itspublicknowledge.info/home/AboutSl...ttishGovernment.aspx)

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