

## Interventions Activity Quarterly Report: 2021-22 Q3 (October to December)

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1. The Commissioner carries out interventions in cases where a Scottish public authority is failing to meet the requirements and standards set out in FOI legislation and Codes of Practice. For more information about our approach to interventions, visit [www.itspublicknowledge.info/interventions](http://www.itspublicknowledge.info/interventions).
2. Reporting on intervention activity is conducted in line with the Commissioner's [Intervention Approach and Procedures](#) and [Enforcement Policy](#). This report provides a summary of intervention activity undertaken during 2021-22 Q3 (October to December 2021). All status updates in this report relate to that period, rather than the date of publication of this report.

### Intervention Caseload

3. As with other reported interventions data, the figures below reflect the interventions that were active at any point during each three-month period (quarter), rather than only those that were opened in that quarter. Therefore, in many cases, the same intervention will be counted in more than one quarter, and the sum of the quarterly totals has no relevance.

Active interventions	Jan to Mar 202	Apr to Jun 2021	Jul to Sep 2021	Oct to Dec 2021
Level 1	17	23	6	<b>11</b>
Level 2	5	5	6	<b>7</b>
Level 3	1	1	2	<b>1</b>
Level 4	0	0	0	<b>1</b>
<b>TOTAL</b>	<b>23</b>	<b>29</b>	<b>14</b>	<b>20</b>

4. Intervention activity increased again in this quarter, due to the opening of 9 new cases, 7 of which related to compliance with timescales.
5. A further 5 new interventions were agreed at the Quarterly Interventions Meeting on 9 December but had not been opened by the end of the quarter.
6. Meanwhile, the Level 3 intervention with Aberdeenshire Council that was opened at the end of September was escalated to Level 4 in early November, when the decision was taken to issue a Practice Recommendation.

### Level 1 interventions

7. *Used for:* Failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and requires remedial action.
8. All but two of the Level 1 interventions open in October to December 2021 were new cases. At the end of December 2021, 8 remained open.

## Compliance with timescales (9)

9. *Authorities:* East Renfrewshire Council, Falkirk Council, Inverclyde Council, Midlothian Council, NHS Highland, NHS Lanarkshire, NHS Shetland, NHS Western Isles, Scottish Prison Service.
10. These interventions have all sought to address high rates of late responses (or failures to respond) to requests, highlighted in our analysis of FOI statistics. Our current approach is to open these at Level 1 to establish any particular (including pandemic-related) causes of the poor performance before deciding whether further intervention action is required.
11. The **NHS Highland** and **NHS Western Isles** interventions were both opened in December 2020, and both authorities identified reallocation of staff and communication issues as key factors contributing to their poor performance. In each case we have monitored statistics and kept in contact with the authority's FOI staff, anticipating an improvement. However, for each authority the proportion of late responses or failures to respond has fluctuated from one quarter to the next during the course of the pandemic.
12. At the Quarterly Interventions Meeting held in December 2021, it was agreed that the NHS Western Isles intervention would remain open but with increased engagement and closer monitoring, and that the NHS Highland intervention would be escalated to Level 2 in response to the continuation of particularly high rates of late responses. These actions were expected to be carried out early in the new year.
13. The **East Renfrewshire Council**, **Midlothian Council**, **NHS Lanarkshire** and **NHS Shetland** interventions were all opened after analysis of statistics up to and including April to June 2021 and discussion at the Quarterly Interventions Meeting held in September 2021, and all remained open at the end of the reporting period.
14. In each of these cases we contacted the authority concerned to note their poor performance, seek an explanation, and highlight resources and support available. We received initial responses and await additional information and more recent statistics before deciding on any further action.
15. The **Falkirk Council** intervention was opened on the same basis, and closed in December 2021 after we received a satisfactory response and evidence of improvement from the authority.
16. The interventions with **Inverclyde Council** and **Scottish Prison Service** were agreed at the Quarterly Interventions Meeting in December 2021; however, although the case files were opened later that month, no contact was made with these authorities in this quarter.

## Statistics submission (2)

17. *Authorities:* Office of the Scottish Charity Regulator, Renfrewshire Integration Joint Board.
18. These interventions were opened because the authorities had failed to submit FOI statistics to the Commissioner for four successive quarters. Both interventions were opened and closed in November 2021.

19. The **Office of the Scottish Charity Regulator** referred to a reorganisation and staff absences as the reasons for the failure to submit, while **East Renfrewshire Integration Joint Board** had not received any requests and was unaware of the need to report this.

## Level 2 interventions

20. *Used for:* Practice failure. A member of the Commissioner's staff raises the issue with the authority, initially at Chief Executive or equivalent, and requires steps to be taken to resolve the issue and achieve a target outcome.
21. All of the Level 2 interventions that were active in October to December 2021 were continued from the previous quarter, five of them remained open at the end of the period.

## Compliance with timescales (4)

22. *Authorities:* Highland Council, Scottish Ambulance Service Board, Scottish Police Authority, University of Edinburgh.
23. These interventions were opened in 2020 after analysis of the authorities' FOI statistics showed a long-term trend of high rates of late responses to requests (since before the Covid-19 pandemic). The interventions have involved:
- seeking an explanation of the factors that have led to the high late-response rates
  - advising the authority to complete a self-assessment and produce an action plan
  - requesting details of the actions to be taken by the authority to improve performance
  - monitoring and seeking evidence of their progress towards a target outcome.
24. Monitoring of **Highland Council's** performance continues, with monthly FOI performance statistics shared with the Commissioner's team after review by senior managers, while the council continues to focus attention on services with the highest late response rates and/or largest request volumes.
25. The latest available statistics (for July to September) show that around 17% of the council's responses were issued late - similar to each of the previous four quarters. This means the authority remains some way off the target level, and in light of this, contact will be made with them in January/February 2022 to explore what other actions can be taken.
26. The **Scottish Ambulance Service Board** has made some significant improvements in recent months, with statistics for July to September 2021 showing just 5% of responses being issued late (compared to more than 20% in the previous two quarters), against a backdrop of increasing request numbers.
27. However, monitoring will continue to establish whether this improvement will be sustained despite ongoing resource reallocation and other pandemic-related challenges. In addition, other measures identified to improve performance, including staff training, new systems and proactive publication, have been hindered as a result of organisational pressures.
28. The **University of Edinburgh** continues to make excellent progress in clearing the large backlog of requests that had built up during 2020. An update submitted during the reporting

period showed a reduction from over 230 to around 20 overdue open requests in the space of just a few months.

29. Although the authority's late response rate remained extremely high in July to September 2021 as a result, the authority now expects to be able to focus on reducing that and we will continue to monitor this closely in the coming months.
30. The intervention with the **Scottish Police Authority** was closed in December 2021 after the authority exceeded its intervention target by responding on time to all FOI requests received in the first 9 months of 2021.
31. This success can be attributed to the following actions:
  - The refreshed approach to FOI implemented by the authority, with a reallocation of responsibilities and more active senior-level oversight of FOI performance.
  - The implementation of new policies and procedures for managing FOI requests, including in relation to collating information internally, consulting third parties where appropriate, and responding promptly as well as within 20 working days.
  - The enhancement of the authority's FOI function, with additional staff recruited or assigned, external training provided to five team members, improved internal communications, and an emphasis on making information available proactively.

#### **Management of FOI function/culture (1)**

32. *Authority:* Scottish Environment Protection Agency.
33. Work continues to support the Scottish Environment Protection Agency (SEPA) to rebuild its FOI performance following the cyber-attack in December 2020, prior to which the authority had recorded high rates of late responses to requests over a sustained period. Meetings were held with the authority on 21 October and 3 December 2021.
34. SEPA is now working on an action plan for FOI which will form the basis of our monitoring through the intervention. However, access to records remains a huge problem for SEPA.
35. Our aim in our interactions with SEPA remains to ensure the authority fulfils its obligations under FOI law - particularly given the passage of time since the cyber-attack - whilst understanding the challenges it continues to face. As well as our intervention, a number of investigations are ongoing in relation to appeals submitted to the Commissioner regarding SEPA, many of which concern its failure to respond to a request.

#### **Publication scheme issues (1)**

36. *Authority:* Aberdeen Performing Arts.
37. **Aberdeen Performing Arts (APA)** is one of a number of authorities which had failed to publish a Guide to Information, as required in order to comply with the publication scheme duty in FOI law. The intervention had been escalated to Level 2 in September 2021 after the authority missed the original deadline and didn't respond to reminders.
38. We received a response from APA in October 2021, explaining the specific challenges the authority had faced - including but not only those faced by many similar authorities as a result of the effects of the pandemic - and the actions it had been taking during that time.

39. The response confirmed that a Guide to Information is now published, and will be updated as more information is published on the authority's redeveloped website. The intervention has therefore been closed.

### **Searches/records management (1)**

40. *Authority:* Fife Council.
41. An intervention with **Fife Council** was opened in response to practice issues raised by an applicant in an appeal and related correspondence; those issues related to the quality of searches carried out by the authority, their management of multiple related requests, and their provision of advice and assistance.
42. These concerns were taken up with the council, which had already carried out its own evaluation of its request handling. We were satisfied that the steps the council had taken were largely adequate, but agreed that we would work with them to monitor the quality of their internal reviews for a period of three months.

### **Level 3 interventions**

43. *Used for:* Serious systemic practice failure. A member of the Commissioner's Senior Management Team raises the issue with the authority's Chief Executive or equivalent, and requires a detailed action plan to be put in place to address the failure and achieve a required outcome.

### **Management of FOI function/culture (1)**

44. *Authority:* Scottish Ministers.
45. Our long-running [intervention with the Scottish Ministers](#) regarding their FOI performance and practice continued. Our second detailed assessment made good progress, with the review of case files completed and the preparation of the report underway; this report is expected to be published in early 2022 (within the next reporting period).
46. There have been some delays in the production of monthly statistics as required by the intervention, partly due to staffing issues. However, the routinely-submitted quarterly statistics show 'on-time' rates of 86% for requests and 75% for reviews.
47. In other areas, during this reporting period, it has been noted that the authority was in the process of implementing a new training schedule for case handlers, recruitment was ongoing, and the Minister with responsibility for FOI expressed his support for the Unit's improvement work in a speech to the Holyrood Events FOI Conference in November 2021.

### **Level 4 interventions**

48. *Used for:* Consistent, ongoing failure to comply with FOI law and guidance. The Commissioner uses their statutory powers to address the problem, which may include practice recommendations or enforcement action.

## Management of FOI function/culture (1)

49. *Authority:* Aberdeenshire Council.

50. This intervention with **Aberdeenshire Council** was opened at Level 3 in September 2021 after concerns were raised about an instance in which the council appeared not to have handled requests in a way that was 'applicant (or requester) blind' - that is, not influenced by who made the request - and in particular, had inappropriately shared the requester's identity with another organisation.

51. After receiving the council's response to our initial contact regarding the concerns raised, the decision was taken to escalate the intervention to Level 4 and to [issue a formal Practice Recommendation](#) to the authority.<sup>1</sup> The Recommendation requires the council to ensure all staff are trained in understanding the 'applicant blind' principle, to emphasise to senior managers the leadership they are expected to provide in all aspects of managing FOI, and to report back to the Commissioner with evidence of these actions by 28 February 2022.

52. The council has cooperated with the intervention including by sending information and evidence as requested. We have also kept informed the individual who originally raised the concern.

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<sup>1</sup> The Recommendation was issued in December; the intervention is listed here as it was escalated in early November and was therefore at Level 4 for the majority of the reporting period.