

Report to:	Quarterly Senior Management Team Meeting
Report by:	Claire Stephen, Acting Head of Policy and Information
Meeting Date:	29 June 2022
Subject/ Title:	Interventions Activity Reporting 2021-22 (VC 170173)
Attached Papers	Interventions Activity Report 2021-22 (VC 167627)

Purpose of report

- To report on interventions activity by the Scottish Information Commissioner across 2021-22 ('the Commissioner') to the Senior Management Team (SMT), as required by the Commissioner's Governance Reporting Requirements.

Recommendation and actions

- I recommend that the SMT:
 - Note the attached report and activity it sets out
 - Agree that this Committee Report and the attached papers can be published as set out in the publication section below.

Executive summary

Interventions

- The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 both give the Scottish Information Commissioner ("the Commissioner") the power to act where a public authority is not complying with requirements they set out, or with the Scottish Ministers' Codes of Practice. These powers include:
 - promoting good practice
 - assessing whether an authority is following good practice
 - issuing practice recommendations where it appears to the Commissioner that an authority is not complying with the Codes of Practice
 - issuing enforcement notices where the Commissioner is satisfied that a public authority has failed to comply with FOI law.
- An "intervention" is the term used to describe the action which the Commissioner will take proactively to improve the practice of individual authorities more generally, rather than in relation to the outcome of a specific information request via an application investigation. The Commissioner's [Intervention Procedures](#) set out the specific detail of how and when interventions will be conducted.

Reporting on interventions activity

4. Prior to 2019 and the development of the Quarterly Interventions Meeting, interventions activity was primary reported on as part of the Commissioner's annual report.
5. For 2020-21 a new reporting format and draft was produced and discussed with members of the Quarterly Interventions Meeting. This has been used to develop a report for the year 2020-21 for SMT and for public reporting purposes (see VC 147577). Key information from this draft report was also used to populate the Commissioner's performance report in the draft 2020-21 Annual Report.
6. This is in line with policy set out in the Commissioner's [Intervention Procedures](#) and [Enforcement Policy](#). Paragraphs 83 – 85 of the Commissioner's Intervention Procedures state:

“The Commissioner's Annual Report provides information on the intervention caseload for the year, including volume and types of interventions that have been undertaken and may include specific case studies. Reports are also made to the Senior Management Team and these will be published on the Commissioner's website where appropriate.

“If appropriate, and subject to discussion at the Quarterly Interventions Meeting, summary information about ongoing intervention activity may also be published, for example via the email newsletter or website articles. In addition, with the approval of the intervention manager and/or the Quarterly Interventions Meeting, information about a completed intervention may also be published as above, with a focus on highlighting lessons learned.”

7. Paragraphs 5 and 6 of the Commissioner's Enforcement Policy states:

“Reporting on enforcement activity, and issues arising from enforcement activity, is an important part of the Commissioner's policy. The Commissioner will be open in communications, reporting through a variety of means, which include:

- the annual report (under section 46(1) of FOISA, the Commissioner has a duty to lay an annual report; section 46(2) of FOISA sets out what the content must include)
- special reports (under section 46(3) of FOISA, the Commissioner has powers to lay before the Parliament such other reports with respect to functions under FOISA and the EIRs)
- publishing decisions, practice recommendations and enforcement notices
- publicising lessons learned from applications
- sharing of good practice and learning, in particular through briefings and guidance which authorities (and requesters) are encouraged to follow
- publishing information about interventions the Commissioner has carried out
- ad hoc reports, research, consultation, presentations, learning and development materials, and so on.

“The Commissioner's reports will contain, for example:

- Statistical information from both the Commissioner's own organisation, and from across Scotland, including analysis of types, sources and outcomes of applications.
- Information about the issuing of information notices, decision notices, enforcement notices and practice recommendations, including frequency, the authorities which have been made subject to them, outcomes and learning points.

- Commentary on public authority practice and on subject areas of note (for example, compliance with timescales, proactive publication and good practice in responding to requests)”
8. From the start of 2021-22, reporting to SMT and for publication is conducted quarterly, in addition to reporting as part of the Commissioner’s annual report. The Quarterly Interventions Meeting is consulted before production of any report, where necessary/appropriate.

Key intervention activity 2021-22

9. Level one: 37 Interventions were active in 2021-22, **28 of these were new activity** and the other nine carried forward from the previous year. 26 Level 1 interventions were closed during the year, with 11 carried forward into 2022-23.
10. Level one interventions:
- (i) Publication scheme duty failures– many arising from publication scheme research conducted internally
 - (ii) Failure to submit statistics – many resolved quickly
 - (iii) Compliance with timescales – all arising from analysis of statistical submission, with the exception of SEPA. SEPA intervention has now escalated to level two, alongside two NHS boards.
11. Level two interventions:
- (i) Compliance with timescales: **two new interventions** opened in 2021-22, the remaining five were continued from the previous year. Three interventions were closed during the year, four remain ongoing.
 - (ii) Management of FOI function/culture: new intervention opened in 2021-22. Longer term, supportive intervention to assist SEPA rebuild its FOI function following a significant cyber attack.
 - (iii) Searches/records management: new intervention opened in 2021-22. Fife Council, closed in March 2022 after authority took steps to ensure that its searches were adequately scoped and recorded.
 - (iv) Statistics submissions: one continuing intervention from 2020-21 after several consecutive failures to submit stats, escalated in May 2021 after failure to respond to our initial intervention contact. Closed August 2021.
12. Level three intervention: ongoing intervention concerning the Scottish Ministers FOI performance and practice. Third progress report published on 17 May 2022.
13. Level four intervention: Aberdeenshire Council to address significant concerns regarding the failure to handle a request in accordance with ‘applicant blind’ principle. Details of actions undertaken by the Council submitted on 31 March 2022. Commissioner to consider whether actions taken are sufficient to close intervention.

14. Non-compliance notifications decreased in number in this reporting year, returning to volumes seen around 2019-20. Similar to 2020-21, the most common areas of concern raised related to timescales of both request and review and the review process.

Risk impact

15. Timely and accurate reporting on enforcement activity is necessary to ensure the Commissioner demonstrates good practice and governance and mitigate strategic risk to the Commissioner's reputation and public confidence in the role.
16. Reporting on interventions also contribute to mitigation of operational risks, including by supporting efforts to ensure the Commissioner demonstrates robust and defensible decisions; ensuring the organisation engages properly with stakeholders; and ensuring we have appropriate and effective policies in place for every aspect of our business.

Equalities impact

17. There are no direct equalities impacts arising as a result of the recommendations in this report.

Privacy impact

18. There is no new direct privacy impact arising from this committee report or attached paper.

Resources impact

19. Interventions are delivered within planned operational resources (though no specific or dedicated resources are provided or allocated for this function).

Operational/ strategic plan impact

20. Reporting on intervention activity is required as set out in the current operational plan, and governance reporting arrangements.
21. Reporting on intervention activity contributes to the following strategic objectives as set out in the Strategic Plan 2020-2024:
- (i) Enable and support high standards of FOI policy and practice (Strategic Aim 2)
 - (ii) Be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent (Strategic Aim 6)

Records management impact (including any key documents actions)

22. None identified – other than any updates required to the Commissioner's Governance Reporting Arrangements.

Consultation and Communication

23. The report has been prepared in consultation with members of the Quarterly Intervention Meeting.

24. It will be published on the Commissioner's website and content highlighted in the Commissioner's newsletter.

Publication

25. I recommend that this committee report and attached report are published in full.