

## **Response from the Scottish Information Commissioner, submitted to [Covid recovery: public health, services and justice system reforms consultation](#)**

**29 October 2021**

All questions not answered, with exception of the below:

### **Question 14 Freedom of Information: giving notice electronically:**

I think the provisions for Topic P10 **should be extended beyond March 2022 and made permanent.**

If you have any comments on either the provisions for Topic P10 (Freedom of Information: giving notice electronically) or the proposal for permanence, please write them in the box below:

As Scottish Information Commissioner my role is to promote and enforce freedom of information in Scotland, including the Freedom of Information (Scotland) Act 2002 (FOISA).

As noted in paragraph 97 of the consultation document, s74(1)(A) of FOISA provides that formal notices be made by post (whether by the Scottish Information Commissioner or public authorities). In accordance with this provision, prior to April 2020 my office sent all decision notices, information notices, notices regarding abandonment and withdrawal, and enforcement notices via recorded delivery post.

The Coronavirus (Scotland) Act 2020 (the Coronavirus Act) enabled such notices to be issued electronically. In 2020/21, we relied on the provisions in the Coronavirus Act to issue approximately 290 notices by email. Without this provision, these notices would – at the very least – have been delayed. This would have significantly slowed investigations and issuing of decisions, and risked undermining confidence in both the role of the Commissioner and in FOISA.

While the official advice remains that non-essential office premises should remain closed, this provision is significant in enabling both ourselves and other authorities to discharge their statutory duties under FOISA.

I am supportive of the proposal to make this provision permanent, beyond the current restrictions, given:

- The provision would enable more modern, flexible options for issuing notices, which would be available in addition to the existing system of post;
- Public authorities and members of the public making applications to the Commissioner generally communicate with my office by email, and therefore expect decisions and notices to be issued by email (a trend which has been further embedded/developed during the pandemic);
- This would not exclude or prevent notices being sent by post in those circumstances where this may be preferable or required by the requester/applicant, and therefore would not exclude any individuals who may not have access to email (or who may prefer not to use electronic communication systems) from being able to use FOI;
- It would increase the resilience of FOISA, providing a mechanism to ensure notices can continue to be sent without delay in the event of any future restrictions on office working, whether as a result of further Covid-19 issues, or indeed other pandemics or major disruptions;

- Historically, we have received some negative feedback regarding sending by recorded delivery post as default. Some individuals making an application to the Commissioner have suggested the practice risks wasting public money; and some authorities have commented on the comparatively labour-intensive nature of hard copy notices. These do further imply an expectation that electronic notices will be the default.

Should further information be required, my office and I would be happy to provide it.

### **About you**

- Name: **Daren Fitzhenry**
- Email: **enquiries@itspublicknowledge.info**
- Are you responding as an individual or an organisation: **Organisation**
- Organisation: **Scottish Information Commissioner**
- The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference: **Publish response with name**
- We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise? **Yes**
- I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy: **I consent**