

Background

1. 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:
 - a. promoting good practice
 - b. assessing whether an authority is following good practice
 - c. issuing practice recommendations where it appears to the Commissioner that an authority is not complying with the Codes of Practice
 - d. issuing enforcement notices where the Commissioner is satisfied that a public authority has failed to comply with FOI law.
2. 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.
3. 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.
4. 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 2024-25. All status updates in this report relate to that period, rather than the date of publication of this report.

Intervention Caseload

5. As an organisation, we continue to focus primarily on reducing the backlog of appeals under section 47. We have no dedicated resource or budget assigned to our Intervention Activity. Enforcement capacity remains restricted, consequently, new intervention activity over 2024-25 remained restricted. Some existing intervention work is subject to delay, again due to resource restrictions.
6. A business case was made to the SPCB for additional resourcing to facilitate our intervention activity. The business case for additional resource was rejected. See VC216388.
7. Ability to progress and open further interventions have been significantly impacted by lack of resource. There a number of authorities performance data which may warrant an intervention, but we are currently lacking capacity to instigate further intervention work.

Level 1 interventions

8. *Used for:* Failure to follow good practice. A member of the Commissioner’s staff alerts the authority to the issue and requires remedial action.

9. **523** non-compliance issues are recorded in WP from 1 April 2024 to 31 March 2025. Of these, **231** resulted in some action by our office to rectify the concern identified. Notable actions by the team are set out below:

- Advice given to British Waterways Board to update its template letters to ensure all appeal rights provided
- East Lothian Council asked to reconsider request and waive fee to view information (202400749)
- General Teaching Council asked to update content of notices (202401327)
- Highland Council asked to make a correction to appeal rights in a review response (202401021)
- Police Scotland asked to review its statistical responses as no request for Environmental information recorded (202500096)
- University of Glasgow asked to review its statement of copyright within FOI response templates (202500089)
- Scottish Court and Tribunal Service – exploring and resolving an issue related to the publication of FAs (202300327)
- Heriot Watt University – opened at level 1 to address a blip in performance (202301328)

Summary of all Level 1 interventions (including non-compliance notes)

Issue	Number
Compliance with timescales – request	138
Compliance with timescales – review	121
Review process	55
Handling of initial request	58
Delay to PA submissions	43
Engaging with SIC	15
Advice and assistance	12
Management of FOI function/culture	10
Delay to withheld information	25
Other	18
Failure to recognise EIR request	5
Searches	12
Information Notice issued	10
Publication scheme	1

Non-compliance by authority (more than 10 issues recorded)

City of Edinburgh Council	23
East Dunbartonshire Council	19
Highland Council	16
NHS Greater Glasgow and Clyde	19
Police Service of Scotland	39
Scottish Environmental Protection Agency	12
Scottish Fire and Rescue Service	23
Scottish Ministers	26

Level 2 interventions

10. *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.
11. Level two or above interventions:

Public Authority	Issue	Date initiated	Current status
Scottish Ambulance Service Board	Compliance with timescales	18 October 2020	Closed 16 April 2024
Scottish Environmental Protection Agency	Management of FOI Function	10 June 2021	Closed – 29 November 2024
Scottish Fire and Rescue Service	Compliance with timescales	23 October 2024	Open
Midlothian Council	Compliance with timescales	4 November 2021	Ongoing
Comhairle nan Eilean Siar	Management of FOI	November 2024	Ongoing

Compliance with timescales

Level 2 Intervention: Midlothian Council

12. We opened a Level 1 intervention in November 2021 in relation to the Council's poor performance in relation to responding to requests within the statutory time periods. Due to a failure to sufficiently demonstrate an improvement in performance, the intervention was escalated to Level 2 in October 2023. The Council was set with a target of responding to 85% of all requests within the statutory timeframe by 31 March 2024. Additional staff recruited in January 2025. At the time of writing (May 2025) the Council was responding to 94-97% of requests on time. Likely to be closed soon.

Level 2 Intervention: Scottish Fire and Rescue Service

13. Scottish Fire and Rescue Service was brought to our attention through both a dip in performance figures, a spike in FTR appeals and concerns raised internally by our Validation Officers. Intervention is ongoing at time of writing. Action plan to be drafted and agreed. Concerns relating to a sustainable model.
- 14.

Management of FOI

Level 2: Comhairle nan Eilean Siar

15. In November 2023, Comhairle nan Eilean Siar contacted the Commissioner to notify him that it had suffered a significant cyber incident that was impacting its FOI function. Similar to SEPA, we opened a Level 2 intervention to support the Council rebuild its ATI regime. Support is ongoing, with the Council being encouraged to meet the publication scheme duties.

Level 3 interventions

16. *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)

17. Our long-running intervention with the **Scottish Ministers** regarding their FOI performance and practice continued.
18. In October 2023 we published a report which examined and assessed the Scottish Minister's progress in relation to our ongoing intervention to improve Scottish Government FOI performance and practice. This intervention, our longest-running, was launched in 2017.
19. The report examined the Scottish Government's FOI performance across two distinct period of activity.
20. Between July 2022 and March 2023, we found a number of significant performance concerns. This included a deterioration in FOI on-time performance along with the build-up of a significant backlog of overdue cases. Concerns were raised as a matter of urgency with senior staff in the Scottish Government in May 2023. As a result, the Scottish Government initiated a programme of work to address both the backlog and wider performance issues.
21. The impact of this work was assessed in a second phase of assessment, and the results of both assessments were published in our October 2023 report. This second phase of assessment saw the rapid resolution of the historic backlog, and a significant improvement in on-time request performance, although the report noted the importance of ensuring these improvements were maintained, while also highlighting other areas where issues were outstanding, including standards of compliance with internal records management procedures and degree of FOI knowledge and experience of those involved in request-handling.
22. The October 2023 report therefore concluded that additional action was required to ensure that progress was sustained and outstanding issues addressed.
23. On receipt of this report, the Scottish Government developed a detailed Action Plan, designed to support performance improvements. This Action Plan includes measures to deliver improvements in FOI management, FOI reporting, staff awareness and training and record-keeping,
24. Throughout 2023-24 improvements in compliance with FOI timescales have been sustained, with an average on-time compliance rate of 95% recorded across 2023-24, and no recurrence of a substantial request backlog.
25. Our last assessment phase of this intervention is currently underway, with a report expected in Summer 2025. It is likely this intervention will close in 2025.

Scottish Government: non-corporate platforms

26. In February 2024 the Commissioner launched a new intervention to support improvement's in the Scottish Government's practice with regard to the use of informal communication

tools such as WhatsApp, and associated issues relating to the recording, retention and identification of information.

27. The launch of this intervention was informed by the evidence and statements made during Module 2A of the UK Covid-19 Inquiry, which examined pandemic-related decision-making in Scotland. Elements of this evidence raised significant concerns in relation to the Scottish Government's compliance with FOI law with regard to the information created and stored using informal communication tools.
28. We have sought a range of information from the Scottish Ministers to inform our intervention activity, with a report from this intervention, along with any relevant recommendations, to be published in due course.
29. Resource constraints have caused this intervention to be delayed.

Clackmannanshire Council

30. This intervention has been opened as a result on concerns consistently highlighted through case handling related to quality of searches undertaken by the Council and other handling issues. This was opened in September 2024 and remains in the implementation phase at the time of writing.

NHS Forth Valley

31. This Level 3 intervention was originally opened at Level 2 in November 2023. Unfortunately, performance did not improve and consequently the decision was taken in June 2024 to raise this to the Level 3 intervention. This intervention is hoping to improve FOI performance, which was at an average of 51% over four quarters. The Commissioner has met with the CE of NHS Forth Valley and our team continue to engage positively to assist in improving performance.

NHS Greater Glasgow and Clyde

32. Similarly, an intervention originally opened at Level 2, in June 2023, insufficient improvements made and intervention escalated to Level 3 in June 2024. Significant resourcing issues discovered. NHSGGC have now taken steps to adequately resource FOI function. Intervention now in monitoring phase.

Level 4 interventions

33. *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.
34. There are no level 4 interventions to report in 2024-25.

Closed Interventions

SEPA

35. Opened in December 2020 following the impact of a significant cyber incident. At the outset, once reporting mechanisms were reestablished, SEPA was only responding 14% of requests within timescale, with a significant backlog developed. By the end of our intervention, SEPA was consistently responding to 90% of requests on time.

Scottish Ambulance Service Board

36. By the end of this intervention, the board achieved an average response rate of 97% on-time over the last three quarters of 2023, and 99% over the first two of 2024. These performance levels exceed the intervention target of 90% on-time over three consecutive quarters and represent a substantial and significant improvement from the response rate of 70% when the intervention was launched.