

REPORT

To: CORPORATE SERVICES COMMITTEE		Subject: SCOTTISH INFORMATION COMMISSIONER - ANNUAL REPORT 2007	
From: EXECUTIVE DIRECTOR OF CORPORATE SERVICES			
Date: 29 April 2008	Ref: CC/EH		

1. **Purpose of Report**

To set out and comment on the terms of the Scottish Information Commissioner's annual report for 2007. A copy of the annual report is available in the Members' Library.

2. **Introduction**

2.1. Members will recall that the Scottish Information Commissioner, who was appointed by the Scottish Parliament in February 2003, is responsible for enforcing and promoting the right to access information held by public authorities, created by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information Regulations 2004 (EIRs), both of which came into force on 1 January 2005.

The Act and Regulations give the Commissioner a range of powers to support him in fulfilling his role. Thus, for example, he can order a public authority to release information which it has refused to disclose.

2.2. At the end of his first five year term in office and the start of his next - and final - four year term, the Commissioner provides a compendium of data and statistics for the period from 2005 to 2007; reports on the activities of his office during 2007, and sets out his agenda for the next four years.

3. **The 2007 Annual Report**

3.1. Since 1 January 2005 the Scottish Information Commissioner dealt with 1,500 applications for a decision on whether the initial request to the authority had been dealt with in accordance with the legislation. Some of these applications were invalid and did not require a formal decision, others were withdrawn or settled. Of the remainder, 550 decisions have been issued, with 4% of these having been appealed to the Court of Session.

3.2. The Commissioner advises that cases may be withdrawn or abandoned without his investigation because they are resolved following contact with the public authority. Others may be closed during an investigation. Reasons for both types of closure are listed below, with the percentage of those closed during investigation shown in brackets:-

	2005	2006	2007
	%	%	%
Frivolous or Vexatious	1	1 (1)	1 (4)
Premature or Out of Time	5	5	20
Withdrawn or Abandoned	14 (27)	23 (50)	25 (43)
Excluded Under Section 48	6	5	3
Settled	- (59)	- (43)	1 (48)

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	2005	2006	2007
	%	%	%
Format Invalid	46	28	13
Body Not Covered	7	9	5
Other Deficiency	21 (14)	29 (6)	32 (5)

The Commissioner has expressed concern at the level of applications which are invalid, for example those which are received prematurely.

- 3.3. The report lists the percentage distribution of applicants by type for the years 2005, 2006 and 2007 as shown below, and the Commissioner commented that over 75% of applications come from members of the general public; the proportion of applications from commercial enterprises and solicitors has declined; applications from the media remains steady at 7%, and few applications are received from the voluntary sector.

	2005	2006	2007
	%	%	%
Adult	56	73	77
Elected Representatives (MP, MEP, MSP, Councillor)	5	6	7
Media	7	9	6
Private/Commercial Enterprise	7	4	3
Public Authority	1	-	-
Solicitor	19	4	3
Voluntary/Campaign Organisation	5	3	4
Union	1	-	-

- 3.4. The subject matter on and the percentage distribution of what applicants are looking for follows:-

	2005	2006	2007
	%	%	%
Administration and Finance	15	13	17
Safety and Crime	11	21	10
Commercial Activities/Contracts	5	2	9
Employment and Economy	5	8	9
Planning/Property/Building Control	8	11	6
Education and Learning	3	5	5
Care (Children and Older People)	2	4	4
Environment	3	6	3
Health	7	7	3
Arts, Culture and Leisure	1	3	2
Housing	3	5	2
Transport and Roads	8	6	2
Agriculture and Fisheries	0	2	1
Environmental Health/Trading Standards	3	1	1
Grants and Funding	3	1	0
Licensing	0	1	0
Other	22	5	26



- 3.5. The Commissioner comments that over the past three years since the Act came into force, 25% of his decisions have been wholly in favour of the applicant, 41% wholly in favour of the public authority, and the remaining 34% partially upheld. These averages are expressed annually as follows:-

	2005	2006	2007
	%	%	%
For Applicant	34	23	25
For Authority	33	42	42
Partially Upheld	34	35	33

- 3.6. The outcome of valid applications for Local Government is set out in the Appendix to the report.

- 3.7. The Commissioner advises that in 2005 the number of applications to his Office exceeded expectation, creating a backlog. In his report on notable operational aspects in 2007 he intimates that:-

- the number of applications to his Office has stabilised;
- additional resources have come on stream;
- organisational restructuring has led to a better deployment of staff, and
- operational information has been improved.

As a consequence of the above measures, the backlog was reduced, and the Commissioner's current target is to close all excess cases by April 2008.

- 3.8. A summary outline of a number of case studies is set out in the report from which it is noted that:-

- blanket "commercial confidentiality" clauses may not provide an exemption to FOISA;
- the sensitivity of information will frequently reduce with the passage of time;
- when environmental information is sought the request must always be processed in accordance with EIRs, and
- in most cases, FOISA exemptions must be set aside if release is in the public interest.

- 3.9. Having focused on implementing the legislation, promoting public awareness of new rights and ensuring compliance by public authorities over his first five years in office, the Commissioner sets out his agenda for the coming four years. This includes:-

- Future research targeted at identifying which sectors need particular advice and support – in particular where current research suggests that awareness and confidence about using FOISA rights is lower amongst young adults and those with disabilities.
- Gaining insight into how rights are being used by those who may be vulnerable, such as the homeless, immigrants or refugees who may be unaware that FOISA rights apply to everyone not just Scottish citizens.



- The promotion of good practice – in particular to promote dialogue between the media and public authorities to explore ways of working which do not compromise rights but address the frustrations often expressed by both sides.
- Relative to the submission of publication schemes by public authorities over the next four years (28/2/09 for local government) - to focus on providing information which helps the understanding of internal guidance on procurement, grants, inspections and enforcement, and also to improve accountability, for example, by publishing contracts and agreements with arms length providers of services, and to focus attention on individual authorities which might require advice on specific aspects of performance.
- Interpretation – to provide detailed guidance on his website on interpreting the body of precedents built up from experience, decisions and court judgements, and to give attention to the requirements and provisions of the Environmental Information (Scotland) Regulations 2004.
- Preserving rights – to address the unintended consequence of removing FOISA rights from people through the transfer of functions, for example from local authorities to housing associations or to culture and leisure trusts which deliver sports, arts, museums and library services.
- Extending the scope of FOISA – to consider the addition to the list of public authorities of bodies which appear to be exercising functions of a public nature as being public authorities covered by FOISA – this could include private companies for some of their activities.
- Speeding up decisions on appeals to the Commissioner to decrease the length of time taken by his Office to complete a decision.
- Settlement – to expect that more cases will be closed not by formal decision, but through settlement, and to learn from experience elsewhere in techniques of mediation.

4. The Council's Experience

- 4.1. Over the period from 1 January 2005 to 31 December 2007, 1,647 applications for information have been processed – many of these containing multiple requests for up to 17 pieces of separate information on various subjects.
- 4.2. The categories of applicant held for statistical purposes is broadly similar to the Commissioner's – with the exceptions of those applications received from Elected Members, Voluntary Organisations and Unions which are included in the "individuals" category.

The percentage distribution of applicants by type follows:-

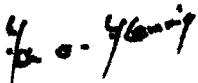
	2005	2006	2007
	%	%	%
Individuals	39	45	51
Solicitors	35	33	31
Media	14	15	11
Companies	12	7	7

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- 4.3. Of the 1,647 applications processed by North Lanarkshire Council, it is to be noted from the attached Appendix, that the Commissioner subsequently received 14 valid applications of appeal, four of which were subsequently withdrawn. Decisions on seven appeals have been issued by the Commissioner.
- 4.4. Of six of the Commissioner's decisions, two were technical breaches for failure to respond within statutory timescales and one required the intimation to the applicant that the information requested was not held. One decision was in favour of the authority, and the remaining two appeal applications were partially upheld, involving in both cases the release of routine documents initially withheld.
- 4.5. The Commissioner's conclusion on the seventh application - which attracted a Decision Notice - was related to a decision issued to a number of other authorities, subsequently appealed by a number of these to the Court of Session who found that there was a prohibition on disclosure by enactment. As a result, the Commissioner did not enforce his decision. However, there is no mechanism under FOISA to withdraw a Notice once issued, and while the decision has been removed from the Commissioner's website, the statistic stands.

5. Recommendation

That the Committee note the terms of the report.



Executive Director of Corporate Services

Members seeking further information on the contents of this report are asked to contact Carol Cluggie on extension 2241.

LOCAL GOVERNMENT TABLE: 2005 TO 2007

	Applications Received 2005 to 2007				Information notices served*	Outcome of (valid) Applications						Decisions		
	Total	Invalid	Valid	% Applications Which were valid		Settled	Withdrawn	Vexatious/ Frivolous	Other	Decision Issued	Cases Under Investigation	For Applicant	For Authority	Partially Upheld
Aberdeen City Council	20	7	13	65	2	0	2	0	0	8	3	1	5	2
Aberdeenshire Council	22	6	16	73	1	0	0	0	0	13	3	5	5	3
Angus Council	6	2	4	67	1	0	0	0	0	4	0	0	4	0
Argyll and Bute Council	17	5	12	71	0	1	3	0	0	7	1	2	1	4
City of Edinburgh Council	60	21	39	65	2	4	5	0	1	19	10	7	10	2
Clackmannanshire Council	3	2	1	33	0	0	0	0	0	1	0	0	0	1
Comhairle nan Eilean Siar	14	7	7	50	2	3	2	0	0	2	0	1	1	0
Dumfries and Galloway Council	31	16	15	48	1	0	0	2	0	12	1	5	4	3
Dundee City Council	32	7	25	78	12	4	2	0	0	11	8	3	7	1
East Ayrshire Council	10	3	7	70	1	1	0	2	0	3	1	0	3	0
East Dunbartonshire Council	18	6	12	67	2	2	1	0	0	8	1	2	5	1
East Lothian Council	29	16	13	45	0	3	3	0	0	6	1	1	2	3
East Renfrewshire Council	16	5	11	69	1	1	2	0	1	5	2	0	3	2
Falkirk Council	20	9	11	55	1	0	1	0	0	9	1	1	4	4
Fife Council	34	14	20	59	2	3	3	0	1	12	1	6	4	2
Glasgow City Council	68	30	38	56	4	7	3	0	0	18	10	4	10	4
Highland Council	23	6	17	74	1	6	0	0	0	8	3	1	5	2
Inverclyde Council	16	7	9	56	0	2	2	0	0	5	0	0	5	0
Midlothian Council	5	1	4	80	1	0	0	0	0	4	0	0	3	1
Moray Council	10	4	6	60	0	1	0	0	0	4	1	0	3	1
North Ayrshire Council	15	2	13	87	0	3	2	0	0	8	0	1	4	3

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	Total	Invalid	Valid	% Applications Which were valid		Settled	Withdrawn	Vexatious/ Frivolous	Other	Decision Issued	Cases Under Investigation	For Applicant	For Authority	Partially Upheld
North Lanarkshire Council	23	9	14	61	1	0	4	0	0	6	4	3	1	2
Orkney Islands Council	7	1	6	86	2	2	0	0	0	4	0	2	1	1
Perth and Kinross Council	18	2	16	89	2	2	4	0	0	9	1	2	2	5
Renfrewshire Council	16	3	13	81	0	0	2	0	1	8	2	7	1	0
Scottish Borders Council	25	6	19	76	3	2	0	0	1	15	1	4	6	5
Shetland Islands Council	12	4	8	67	0	0	2	0	0	5	1	2	2	1
South Ayrshire Council	15	8	7	47	2	1	3	0	0	3	0	2	1	0
South Lanarkshire Council	32	12	20	63	0	1	3	0	2	13	1	1	3	9
Stirling Council	9	3	6	67	0	3	0	0	0	3	0	0	1	2
West Dunbartonshire Council	16	5	11	69	2	2	1	0	0	8	0	2	3	3
West Lothian Council	21	11	10	48	2	1	0	0	0	7	2	4	2	1

* Information notices are used to require public authorities to supply information, although in some circumstances can be used to expedite cases