

## REPORT

To: CORPORATE SERVICES COMMITTEE	Subject: SCOTTISH INFORMATION COMMISSIONER - ANNUAL REPORT 2008	
From: EXECUTIVE DIRECTOR OF CORPORATE SERVICES		
Date: 27 April 2009	Ref: CC/RM	

### 1. Purpose of Report

To set out and comment on the terms of the Scottish Information Commissioner's annual report for 2008. 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. Having been re-appointed in January 2008 for a second and final term, the Commissioner's 2008 report illustrates the range and diversity of his work activities in 2008; provides a compendium of data and statistics for the period from 2005 to 2008, and sets out his vision and strategy for the future.

### 3. The 2008 Annual Report

3.1. Between 2005 and 2008, the Commissioner received 1,941 applications appealing the decisions taken by public authorities, of which 65% proceeded to investigation. Notably, the number of new applications he received fell from 482 in 2007 to 367 in 2008. The Commissioner surmises that authorities may be providing information more readily, or applicants may be using their rights more judiciously.

3.2. The total caseload for the year, including brought forward applications, was 550. Of these, 127 were closed without investigation, 121 were closed during investigation, 174 were closed with a decision and 128 were carried forward for deliberation in 2009.

3.3. The percentage of cases closed without a decision - because the application did not contain sufficient information to allow an investigation - has decreased significantly, and the Commissioner suggests that applicants may be benefiting from guidance from his website, or advice from public authorities.

3.4. The share of cases being closed during investigations has increased, as the Commissioner's staff work with applicants and authorities to negotiate a mutually satisfactory outcome without the need for a formal decision.

- 3.5. Of the cases closed with decisions a larger share has been found in favour of the public authority than in the previous three years. The outcome of the Commissioner's decisions on the cases closed in 2008 in comparison with the years from 2005 to 2007 follows:-

	<b>2005-2007</b>	<b>2008</b>
	%	%
For the Applicant	25	21
For the Authority	41	48
Partially Upheld	34	31

- 3.6. The outcome of valid applications for local government is set out in the Appendix to the report.
- 3.7. The percentage distribution of applicants by type for the year 2008, in comparison with the years from 2005 to 2007 is shown below.

	<b>2005-2007</b>	<b>2008</b>
	%	%
Adult	68	73
Elected Representatives (MP, MEP, MSP, Councillor)	6	6
Media	7	7
Private/Commercial Enterprise	5	4
Solicitor	9	3
Trades Union	1	0
Voluntary/Campaign Organisation	4	7

- 3.8. The subject matter on the distribution of what applicants are looking for is shown below, and the Commissioner has commented that the percentage of applicants looking for information in 2008 on administration and finance matters has shown a marked increase over previous years.

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
	%	%	%	%
Administration and Finance	15	13	17	24
Safety and Crime	11	21	10	13
Employment and Economy	5	8	9	9
Planning/Property/Building Control	8	11	6	9
Education and Learning	3	5	5	4
Environment	3	6	3	4
Health	7	7	3	4
Transport and Roads	8	6	2	3
Care (Children and Older People)	2	4	4	2
Commercial Activities/Contracts	5	2	9	2
Housing	3	5	2	2
Agriculture and Fisheries	0	2	1	1
Arts, Culture and Leisure	1	3	2	1
Environmental Health/Trading Standards	3	1	1	1
Grants and Funding	3	1	0	0

	2005	2006	2007	2008
	%	%	%	%
Licensing	0	1	0	0
Other	22	5	26	20

- 3.9. In terms of investigations performance, the Commissioner advises that by the end of 2008, 10% of the caseload had been under investigation for over 12 months compared to 12% at the end of 2007 and 29% at the end of 2006.
- 3.10. A summary outline of case studies is set out in the report from which it is noted that:-
- Legal professional privilege can be waived, if, for example, the content of the advice has been disclosed to a significant extent. Having concluded that legal advice had been referred to, to a significant extent at a public meeting, the first decision to release that legal advice was ordered by the Commissioner.
  - In some circumstances a conclusion may be reached, not by formal decision, but through settlement where all parties can reach a mutual agreement.
  - Tender information will not be automatically exempt under the Act, although genuinely commercially sensitive information will be protected.
- 3.11. The Commissioner reports that awareness of the Freedom of Information legislation may be lower in some groups. In particular, those with disabilities, the elderly and for people aged 18-24. In a joint initiative between his office and the University of Strathclyde, a three year research programme, supported by the Economic and Social Research Council, will investigate the extent to which community and campaign organisations are making use of their FOI rights.
- 3.12. In his sixth annual conference the Commissioner expressed concerns about the risk posed by changes in the way in which public services are delivered, and welcomed the Government's discussion paper in November 2008, seeking views on the extension of the Act to include housing associations, bodies set up by local authorities, for example, Trusts, and contractors delivering public authority services.
- 3.13. "A Really Open Scotland" sets out the Commissioner's strategic plan for 2008-2012 in six key themes – Case Closure; Compliance; Development; Practice; Awareness and Reference. In particular the Commissioner intends to shift the focus of his role and devote more resources to assessing whether public authorities are generally meeting their obligations.

#### 4. The Council's Experience

- 4.1. Over the period from 1 January 2005 to 31 December 2008, 2,490 applications for information have been processed – most of these containing multiple requests for information on various subjects. The numbers received in each year are 2005 - 458; 2006 – 616; 2007 – 573 and 2008 - 843.
- 4.2. The categories of applicant held for statistical purposes is broadly similar to the Commissioner's – with the exception 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	2008
	%	%	%	%
Individuals	39	45	51	52
Solicitors	35	33	31	26
Media	14	15	11	15.4
Companies	12	7	7	6.6

- 4.3. The information sought by applicants is diverse, and one application can include a request for information involving all service areas. Of the applications received in 2008, an approximate percentage by service area of what applicants are looking for is represented below:-

Service	2008%
Chief Executive	1.9
Corporate	19.7
Environmental Services	30.8
Finance and Customer Services	5.8
Housing and Social Work	10.3
Learning and Leisure	13.9
Various	17.6

- 4.4. Of the 2,490 applications for information received by the Council since 2005, the Commissioner received 36 applications of appeal. Twenty one of these cases were closed by the Commissioner without a decision and 15 proceeded to an investigation, four of which remain to be determined.

Of the five appeals determined in 2008 by the Commissioner, four of these were in favour of the Council and one was in favour of the applicant.

5. The Commissioner concludes his report by intimating that his Investigations Team was renamed the Enforcement Team on 1 January 2009 and reflects the changing focus of their work to cover compliance and good practice as well as investigations.
6. **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, Corporate Freedom of Information Officer, on extension 2241.

**LOCAL GOVERNMENT TABLE: 2005 TO 2008**

	Applications Received 2005 to 2008			Cases Closed During Investigation				Cases Closed with Decision			
	Total	Cases Closed Without Investigation	% Cases Proceeding to Investigation	Settled	Withdrawn/ Abandoned	Vexatious/ Frivolous	Other	For Applicant	For Authority	Partially Upheld	Total
Aberdeen City Council	20	6	70	1	2	0	0	2	7	2	11
Aberdeenshire Council	23	6	74	0	1	0	0	5	5	5	15
Angus Council	11	4	64	0	0	0	0	0	4	0	4
Argyll and Bute Council	19	5	74	2	3	0	0	3	1	4	8
City of Edinburgh Council	71	27	62	6	6	0	1	8	12	7	27
Clackmannanshire Council	3	2	33	0	0	0	0	0	0	1	1
Comhairle nan Eilean Siar	15	8	47	3	2	0	0	1	1	0	2
Dumfries and Galloway Council	35	16	54	0	1	2	0	6	5	3	14
Dundee City Council	41	11	73	7	2	0	0	6	7	2	15
East Ayrshire Council	13	3	77	1	0	2	0	0	5	1	6
East Dunbartonshire Council	22	8	64	3	1	0	0	2	6	1	9
East Lothian Council	34	18	47	4	3	0	0	1	2	5	8
East Renfrewshire Council	18	4	78	2	3	0	1	1	3	3	7
Falkirk Council	29	10	66	1	2	1	0	2	6	4	12
Fife Council	48	21	56	7	6	0	1	7	4	2	13
Glasgow City Council	84	36	57	10	3	0	0	8	13	8	29

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	Total	Cases Closed Without Investigation	% Cases Proceeding to Investigation	Settled	Withdrawn/ Abandoned	Vexatious/ Frivolous	Other	For Applicant	For Authority	Partially Upheld	Total
Highland Council	30	8	73	9	1	0	0	1	5	4	10
Inverclyde Council	16	6	63	2	3	0	0	0	5	0	5
Midlothian Council	5	1	80	0	0	0	0	0	3	1	4
Moray Council	11	5	55	1	0	0	0	0	4	1	5
North Ayrshire Council	19	1	95	3	5	0	0	1	5	3	9
North Lanarkshire Council	36	11	69	1	9	0	0	4	5	2	11
Orkney Islands Council	9	1	89	2	1	0	0	2	1	1	4
Perth and Kinross Council	21	2	90	3	5	0	0	2	4	5	11
Renfrewshire Council	20	4	80	0	2	0	1	7	2	0	9
Scottish Borders Council	30	8	73	3	0	0	1	5	7	5	17
Shetland Islands Council	15	4	73	1	3	0	0	4	2	1	7
South Ayrshire Council	16	8	50	2	3	0	0	2	1	0	3
South Lanarkshire Council	42	13	69	1	5	0	2	1	8	9	18
Stirling Council	9	3	67	3	0	0	0	0	1	2	3
West Dunbartonshire Council	20	6	70	3	2	0	0	2	3	3	8
West Lothian Council	30	13	57	4	1	0	0	6	4	1	11