

REPORT

To: CORPORATE SERVICES COMMITTEE	Subject: SCOTTISH INFORMATION COMMISSIONER - ANNUAL REPORT 2010/2011	
From: EXECUTIVE DIRECTOR OF CORPORATE SERVICES		
Date: 10 January 2012	Ref: CC/AD	

1. Purpose of Report

To set out and comment on the terms of the Scottish Information Commissioner's annual report for 2010/2011, which, following a change in legislation is the first produced for a financial year. The 2010/2011 report supplements the information provided by the Commissioner in his 2010 report and Members are asked to note that the report before them contains elements of both 2010 and 2010/11 annual reports. A copy of both annual reports 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. In this, his final term of office, the Commissioner's 2010/11 report illustrates the range and diversity of his work activities; provides a compendium of data and statistics for the period up to 2010/11 and sets out his operational plan for 2011/12.

3. The 2010/2011 Annual Report

3.1. Between 2005 and 2010, the Commissioner received 2,770 applications appealing the decisions taken by public authorities, of which 68% proceeded to investigation. Notably, the number of new applications he received has not risen. However, the number requiring a formal decision rose from 179 in 2009/10 to 263 in 2010/11.

3.2. The total caseload for the year 2010/11, including brought forward applications, was 592. Of these, 112 were closed without investigation, 99 were closed during investigation, 263 were closed with a decision and 118 were carried forward for deliberation in 2011/12.

3.3. The number of cases closed without a decision - because the applicant did not follow required procedures to allow an investigation, accounted for 39% of all cases in 2010/11 and the Commissioner reminds authorities that they must advise requesters of their rights to request a review.

- 3.4. It is to be noted that an increasing proportion of the applications were made in relation to the Environmental Information (Scotland) Regulations 2004. In 2009/10 and 2010/11 the percentage of EIR cases closed with a decision represented respectively 12% and 17% of all cases closed with a decision.
- 3.5. The Commissioner comments that increasingly the outcome of his decisions neither wholly favours the applicant nor the authority but instead, partially finds in favour of both. The outcome of the Commissioner's decisions on all cases closed in 2008/2009 in comparison with 2010/11 follows:-

	2008-2009	2010-2011
	%	%
For the Applicant	27	24
For the Authority	41	29
Partially Upheld	32	46

- 3.6. The outcome of valid applications for local government from 2005 to 2010 is set out in the Appendix to the report.
- 3.7. The percentage distribution of applicants by sector for the year 2010/2011, in comparison with the year 2009/10 is shown below.

	2009-2010	2010-2011
	%	%
Ministers, the Parliament	23	15
Non-Ministerial office holders	2	5
Local Government	43	42
National Health Service	6	5
Educational Institutions	2	7
Police	9	3
Other public authority	10	16
Publically owned companies	3	5
Other body (covered by EIRs and not FOISA)	2	3

- 3.8. The Commissioner points out that the majority of the applications he receives are from ordinary members of the public and adds that 2010 saw an increase in the number of applications made by commercial organisations, the activities of one company amounting to more than half of the applications made that year.

The percentage distribution of applicants by type for the year 2010/11, in comparison with the year 2009/2011 is shown below.

	2009-2010	2010-2011
	%	%
Adult	70	75
Elected representatives	5	2
Media	14	9
Private/commercial enterprise	6	9
Solicitor	1	1
Voluntary/campaign organisation	2	1
Union	1	1
Community Council	-	1

- 3.9. In terms of investigations performance, the Commissioner advises that in 2010/11 48% of the caseload under investigation closed within 4 months, 15% closed within 6 months, 20% closed within 9 months, 11% closed within 12 months and 6% extended beyond 12 months.
- 3.10. The Commissioner has a duty to promote good FOI practice amongst Scottish public authorities and between 2008 and the end of 2010/11, he undertook 26 practice assessments, 42% of which were local government authorities. A summary of what good practice looks like and some areas of underperformance to be avoided is set out in the report from which the following is noted:-

Good Practice	Poor Practice
Organisational culture	Poor staff awareness
Internal systems	Inadequate knowledge
Organisational Structure/processes	Lack of robust handling systems
Knowledge	Out of date procedures
Communications	Inadequate searches

- 3.11. A plan of action for 2011/12 is set out in the report from which the following activities are noted:-
- 12 Practice Assessments of public authorities will be carried out;
 - Provide information to new and returning MSPs on the use of FOI law in their constituency work;
 - A new model publication scheme will be implemented and publication scheme compliance assessments will be undertaken;
 - Publish Freedom of Information in Scotland Practice Handbook;
 - Contribute view on the FOISA Amendment Bill;
 - Comply with the requirements of the Public Services Reform (Scotland) Act 2010;
 - Financial and resource planning to reflect anticipated reductions.

4. The Council's Experience

- 4.1. Over the period from 1 January 2005 to 31 March 2011, 4,839 applications for information have been processed – most of these containing multiple requests for information on various subjects. In the first full year after the Act came into force, the Council received 563 requests: in the year 2010/11 the number received by the Council had risen to 1,148.
- 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, Unions, and Community Councils' which are included in the "individuals" category.

The percentage distribution of applicants by type for 2009/10 and 2010/11 follows:-

	2009/10	2010/11
	%	%
Individuals	53	63
Solicitors	24	19
Media	17	10
Companies	6	8

- 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 2010/11, an approximate percentage by Service of what applicants are looking for is represented below:-

Service	2010/11
	%
Chief Executive	1.4
Corporate	11
Environmental Services	26.7
Finance and Customer Services	7
Housing and Social Work	11.5
Learning and Leisure	25.4*
Various	17


*exceptionally in October 2010/11 a much higher than normal volume of requests was received related to a single subject and typically the percentage for this Service would be 11.5%.

- 4.4. Of the 4,564 applications for information received by the Council between January 2005 and December 2010, the Commissioner received 56 applications of appeal. Twenty two of these cases were closed by the Commissioner with a decision, 10 of which were in favour of the authority, 7 were in favour of the applicant and 5 were partially in favour of both applicant and the authority. 4 appeals were carried over for determination in 2011/12.

5. The Commissioner expresses in his report his disappointment of the decision by the Scottish Government earlier in 2011 not to use its powers to designate any additional bodies under FOISA. He draws attention to his concern that there are developments in the delivery of public services that mean that FOI rights are being lost, and noted is his proposal to contribute to the consultation on an Amendment Bill to clarify and strengthen FOISA before he leaves office.

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.

APPENDIX

LOCAL GOVERNMENT TABLE: 2005 TO 2010

	Applications Received 2005 to 2010				Cases Closed During Investigation				Cases Closed with Decisions		
	Total	Closed Without Investigation	Proceeding to Investigation	% Cases Proceeding to Investigation	Settled	Withdrawn	Vexatious/ Frivolous	Other	For Applicant	For Authority	Partially Upheld
Aberdeen City Council	31	11	20	65	1	3	0	0	4	7	4
Aberdeenshire Council	33	8	25	76	1	1	0	0	6	9	8
Angus Council	11	3	8	73	2	0	0	0	0	4	2
Argyll and Bute Council	23	8	15	65	2	4	0	0	3	1	5
City of Edinburgh Council	117	39	78	67	12	15	0	1	15	16	14
Clackmannanshire Council	8	3	5	63	0	1	0	0	2	0	1
Cairn nan Eilean Siar	22	8	14	64	4	5	0	0	1	2	1
Dumfries and Galloway Council	41	18	23	56	1	2	2	0	6	6	5
Dundee City Council	63	17	46	73	11	4	0	0	10	8	11
East Ayrshire Council	14	3	11	79	2	0	2	0	0	6	1
East Dunbartonshire Council	38	15	23	61	7	4	0	0	3	6	2
East Lothian Council	42	19	23	55	5	3	0	0	5	2	6
East Renfrewshire Council	20	4	16	80	2	3	0	1	1	6	3
Falkirk Council	36	13	23	64	1	4	1	0	2	7	8
Fife Council	83	27	56	67	10	9	0	1	13	11	5
Glasgow City Council	122	46	76	62	16	8	0	0	10	19	16
Highland Council	44	12	32	73	12	3	0	0	4	8	5

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Inverclyde Council	17	6	11	65	2	3	0	0	1	5	0
Midlothian Council	8	1	7	88	0	2	0	0	1	3	1
Moray Council	13	6	7	54	1	0	0	0	0	5	1
North Ayrshire Council	22	2	20	91	5	5	0	0	1	5	4
North Lanarkshire Council	56	14	42	75	2	14	0	0	7	10	5
Orkney Islands Council	10	1	9	90	2	2	0	0	2	1	2
Perth and Kinross Council	25	2	23	92	3	6	0	0	2	4	6
Renfrewshire Council	25	7	18	72	0	3	0	1	7	6	0
South Ayrshire Council	42	12	30	71	7	0	1	1	6	8	6
Shetland Islands Council	17	4	13	76	1	3	0	0	4	3	1
South Ayrshire Council	21	10	11	52	2	4	0	0	2	2	0
South Lanarkshire Council	74	15	59	80	2	22	0	2	2	18	11
Stirling Council	11	4	7	64	3	1	0	0	0	1	2
West Dunbartonshire Council	25	7	18	72	3	4	0	0	2	4	4
West Lothian Council	46	19	27	59	5	5	0	0	9	5	3