

Interventions Activity Quarterly Report: 2021-22 Q1 (April to June)

1. 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, visit www.itspublicknowledge.info/interventions.
2. Reporting and communication on intervention activity is conducted in line with the Commissioner's [Intervention Approach and Procedures](#) and [Enforcement Policy](#). This report provides a summary of the intervention activity undertaken during 2021-22 Q1 (April to June 2021). All status updates in this report relate to this period, rather than the date of publication of this report.

Intervention Caseload

3. As with other reported interventions data, the following figures reflect the number of interventions that were active at any point during each three-month period (quarter), rather than only those that were opened in that quarter. Therefore, in many cases, the same intervention will be counted in more than one quarter, and the sum of the quarterly totals has no relevance.

Active interventions	Jul to Sep 2020	Oct to Dec 2020	Jan to Mar 2021	Apr to Jun 2021
Level 1	7	9	17	23
Level 2	3	5	5	5
Level 3	1	1	1	1
Level 4	0	0	0	0
TOTAL	11	15	23	29

4. Intervention activity reached a peak in April to June 2021 as a result of there being 11 new Level 1 interventions addressing publication scheme issues identified in the earlier compliance research. The previous quarter was also slightly busier than normal, as 8 new Level 1 interventions were opened regarding non-submission of statistics (some of which were quickly resolved). This followed a relatively quiet period around the time of the initial Covid-19 pandemic restrictions.

Level 1 interventions

5. *Used for:* Failure to follow good practice. A member of the Commissioner's staff alerts the authority to the issue and requires remedial action.
6. Of the 23 Level 1 interventions active in April to June 2021, 13 were continued from the previous quarter and 10 were newly opened. At the end of June, 18 had been closed and 5 remained open.

Publication scheme issues (11)

7. *Authorities:* Aberdeen Performing Arts, Boundaries Scotland, Children's Hearings Scotland, East Ayrshire Leisure, Inverclyde Leisure, National Waiting Times Centre Board, NHS Fife, NHS Grampian, North Ayrshire Leisure, Pickaquoy Centre Trust, Stirling Council.

8. All of these interventions were raised after our research found the authorities did not have an available 'Guide to Information', as required by the Model Publication Scheme.
9. Nine of the interventions were closed within the quarter when the authorities published a Guide to Information as required. The two that remained open were **NHS Fife** and **Aberdeen Performing Arts**, but it should be noted that in each case, the deadline set was after the end of this reporting period, so the authorities had not failed to meet the requirements of the intervention.
10. Previous experience has shown that our monitoring and enforcement of the publication scheme duty is a strong incentive for authorities to comply, and our action in these latest cases has ensured that people are able to access proactively-published information in the way they are entitled to under FOI. Some of the interventions prompted the authority to reconsider how they publish information and keep it up-to-date, resulting in further benefits.
11. We expect all authorities to maintain their publication scheme and regularly review their overall approach to making information accessible.

Compliance with timescales (6)

12. *Authorities:* Aberdeen City Council, Creative Scotland, NHS Highland, NHS Western Isles, Scottish Environment Protection Agency, University of Dundee.
13. These Level 1 interventions sought to address high rates of late responses (or failures to respond) to requests, highlighted in analysis of authorities' FOI statistics.
14. In the case of **Creative Scotland**, a trend had been identified that pre-dated the pandemic, albeit with very low numbers of requests. This intervention was closed in this quarter after the authority recorded successive quarters of responding to 100% of requests on time.
15. The **Scottish Environment Protection Agency** (SEPA) intervention was also prompted by a longer-term trend of high late response rates. However, after being delayed following the criminal cyber-attack on SEPA in December, this case was closed in this quarter, and another intervention opened to address the changed circumstances (see Level 2 below).
16. In the other four interventions, the authority had recorded particularly high late-response rates during the Covid-19 pandemic. The figures may normally have prompted a more in-depth (Level 2) intervention, but taking into account the widespread disruption caused, the Commissioner decided to instigate action initially at Level 1, seeking information from the authority about any specific factors or challenges arising from the pandemic that were impacting performance, and details of actions being taken to resolve them.
17. The **Aberdeen City Council** intervention was closed in the quarter, after the authority showed an immediate improvement in performance and provided details of actions it was taking to sustain it. The **University of Dundee's** performance also improved as they worked to clear a backlog of requests that had built up during the first lockdown. In both cases, but particularly Dundee, our intervention had clearly prompted the authority to take action to address their FOI performance.
18. **NHS Highland** and **NHS Western Isles** remained under monitoring at the end of the quarter as they had not yet achieved the improvement required to close the interventions.

Statistics submission (5)

19. *Authorities:* Aberdeen City Integration Joint Board, Argyll College, Eden Court, Perth and Kinross Sports Council, Regional Board for Glasgow Colleges.

20. All of these cases had been opened in the previous quarter, prompted by the authorities failing to submit FOI statistics to the Commissioner for at least 3 consecutive quarters. All but one were closed in this quarter when the authorities provided statistics; the exception was **Perth and Kinross Sports Council**, but enquiries were ongoing as to whether this organisation is a Scottish public authority for the purposes of FOI - specifically, whether it is classed as one of the leisure and culture trusts that were made subject to FOI in 2013 - and therefore whether the obligation applies. The outcome will be highlighted in the Q2 report.

Other (charging policy) (1)

21. *Authority:* East Lothian Council.

22. This intervention was made after analysis of statistics and evidence from our investigations regarding **East Lothian Council's** use of the charging provisions in the Environmental Information (Scotland) Regulations (EIRs). The intervention sought to understand any reasons for this trend and ensure that appropriate procedures are followed when categorising and charging for requests.

23. The intervention was closed in this quarter after the council provided details of its charging policy and related procedures, as well as actions taken in response to Decision 132/2020 issued by the Commissioner, which found that the council had failed to correctly categorise the environmental and non-environmental information that had been requested.

Level 2 interventions

24. *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.

25. Four of the Level 2 interventions that were active in April to June 2021 were continued from the previous quarter, and all five remained open at the end of the period.

Compliance with timescales (4)

26. *Authorities:* Highland Council, Scottish Ambulance Service Board, Scottish Police Authority, University of Edinburgh.

27. These Level 2 interventions were opened during 2020 following analysis of authorities' FOI statistics, which showed a long-term trend of high rates of late responses to requests (starting before the periods of disruption caused as a result of the Covid-19 pandemic).

28. These interventions have involved:

- seeking an explanation of the factors that have led to the high late-response rates
- advising the authority to complete Module 1 of the Commissioner's Self-Assessment Toolkit ("Responding on Time") and complete an action plan based on the findings
- requesting details of the actions to be taken by the authority to improve their FOI performance, such as any revised procedures and management reporting
- monitoring the authority's progress towards a target outcome by viewing monthly performance reports and other evidence such as staff training and communications

29. **Highland Council** continues to be monitored, with monthly FOI performance statistics shared with the Commissioner's team after they have been reviewed by the council's Executive Leadership Team. Having made substantial changes to the structure and responsibilities for

dealing with FOI and EIR requests, alongside training and recruitment of additional staff, the council's performance continues to fall just short of the target level of 90% of responses being issued on time. The council is now focusing its attention on the service areas that account for this shortfall.

30. The **Scottish Ambulance Service Board** is now implementing an action plan for improving its FOI performance, following completion of Module 1 of the Commissioner's Self-Assessment Toolkit. These positive steps follows a number of challenges in the early months of our intervention, and may continue to be impacted by wider pressures on the authority. One area of focus has been ensuring that the authority's FOI statistics are reliable, but steps are being taken to address this.
31. The **Scottish Police Authority** is close to meeting the target we have set, having recorded 100% of responses on time in both January to March and April to June 2021. This follows a major reorganisation of how the authority manages FOI, as well as prominent internal communications and training, and recruitment of an additional team member. The authority has mostly fulfilled the actions identified following completion of Module 1 of the Commissioner's Self-Assessment Toolkit.
32. The **University of Edinburgh** has continued to report extremely high rates of late responses - the proportion of responses issued after more than 20 working days - in the first half of 2021; however, this has been due to a large backlog of requests that had built up over several previous months. The University is making good progress in clearing the backlog, including by recruiting or assigning more staff and 'batching' requests received at a similar time on a similar topic. We will continue to monitor this closely and expect to see an improvement in the statistics in the coming months.

Management of FOI function/culture (1)

33. *Authority:* Scottish Environment Protection Agency.
34. As explained under Level 1 above, **SEPA** suffered a criminal cyber-attack in December 2020 which severely impacted its access to systems or information and consequently its FOI compliance.
35. Following the closure of an earlier intervention that had sought to address longer-term rates of late responses to requests, a revised intervention was opened in June 2021 with a letter from the Commissioner to their Chief Executive expressing our intention to support SEPA in rebuilding its FOI performance. Further contact was due to take place in the next quarter.

Level 3 interventions

36. *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)

37. *Authority:* Scottish Ministers.
38. There was one Level 3 intervention active during April to June 2021 - our ongoing [intervention with the Scottish Ministers \(Scottish Government\)](#) regarding their FOI performance and practice.

39. In addition to the regular communication between the Commissioner and the Government's FOI Unit and the monthly submission of FOI statistics, during this quarter we initiated our second detailed assessment, which had been delayed as a result of the Covid-19 pandemic and will now be carried out remotely rather than in person as originally planned.
40. The assessment involves extensive work to select and review a representative sample of requests handled by the authority, using information extracted from their case management system. The preparation of this data has taken longer than expected and as a result, we were unable to begin the review of case files during this quarterly reporting period. Publication of the Commissioner's assessment report is expected in late 2021 or early 2022.
41. Recent data provided by the authority shows around 85% of responses to requests, and 76% of review responses, were being issued on time. This performance falls short of the 95% target rate, but is a continuation of the steady improvement seen following widespread disruption in the first few months of the pandemic and is in the context of exceptionally high volumes of requests.
42. The authority recruited a new Head of Improvement to help move the existing FOI improvement project forward. It is hoped this should contribute to further recovery in the coming months.

Level 4 interventions

43. *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.
44. There were no Level 4 interventions active at any time in April to June 2021.