

## Interventions Activity Quarterly Report: 2021-22 Q2 (July to September)

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](http://www.itspublicknowledge.info/interventions).
2. 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 2021-22 Q2 (July to September 2021). All status updates in this report relate to that period, rather than the date of publication of this report.

### Intervention Caseload

3. As with other reported interventions data, the figures below reflect the 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	Oct to Dec 2020	Jan to Mar 2021	Apr to Jun 2021	Jul to Sep 2021
Level 1	9	17	23	6
Level 2	5	5	5	6
Level 3	1	1	1	2
Level 4	0	0	0	0
<b>TOTAL</b>	<b>15</b>	<b>23</b>	<b>29</b>	<b>14</b>

4. Intervention activity was much less in July to September than in the two previous quarters, when there had been a number of cases regarding statistics submission and publication schemes - most of which were promptly closed. The second Level 3 intervention was also only opened at the end of September. However, the Quarterly Interventions Meeting on 30 September agreed a number of new interventions, to be opened in October.

### 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. All 5 of the Level 1 interventions open in July to September 2021 were continued from the previous quarter (no new cases were opened in this quarter). At the end of September, 3 remained open.

### Compliance with timescales (2)

7. *Authorities:* NHS Highland, NHS Western Isles, University of Dundee.

8. These interventions, opened in December 2020, sought to address high rates of late responses (or failures to respond) to requests, highlighted in analysis of FOI statistics.
9. **NHS Highland** identified issues with internal communication, unclear responsibilities and complex procedures as contributing to their poor performance in 2020. They have since revised their FOI procedures; reassigning responsibilities, reducing required approvals, and improving the recording and tracking of requests and reporting of performance. The pandemic has also posed challenges in relation to the redeployment of staff as well as remote working. The authority is improving but the most recent figures available (for April to June) show that 21% of responses are still being issued late; therefore, the intervention remains open while we monitor their FOI performance.
10. **NHS Western Isles** also highlighted reallocation of staff as a key factor contributing to their poor performance, with FOI staff being part of a wider public health team within the authority, which has been solely responsible for supporting the pandemic response. The authority explained that FOI requests "may not be prioritised" if resources were diverted to front line care. Although there was in fact an improvement during the winter months, to around 80% of responses being issued on time, the latest available statistics show a decline to just 62% on time in April to June 2021. We are awaiting the statistics for July to September before deciding on any further action.
11. The **University of Dundee** intervention, which was highlighted in the previous quarterly report in relation to the authority's rapid clearing of a backlog of requests, was formally closed in August but in practice had been concluded before the start of this period.

#### **Publication scheme issues (2)**

12. *Authorities:* Aberdeen Performing Arts, NHS Fife.
13. These were the last two of the 11 interventions opened in April to June 2021 following our research into compliance with the Model Publication Scheme.
14. **NHS Fife's** intervention was closed in mid-July when the authority published and shared a Guide to Information as required, in line with the deadline set.
15. The intervention with **Aberdeen Performing Arts** was escalated to Level 2 in early September, after the authority missed the original deadline for publishing their Guide to Information and failed to respond to subsequent reminders and requests for updates. (The intervention is listed here as it was at Level 1 for most of the reporting period.)
16. The matter was raised directly with the authority's Chief Executive, with a revised October deadline for publishing a Guide to Information. We also asked for an explanation for the failure to comply to be sent by 30 September, but we had not received this by that date.
17. We understand many authorities have faced challenges as a result of the pandemic, but the obligation to maintain a publication scheme in accordance with FOI law has remained throughout, and the circumstances have only served to demonstrate the importance and value of public authorities proactively making information available to the public.

#### **Statistics submission (1)**

18. *Authority:* Perth and Kinross Sports Council.

19. Having previously opened this intervention after **Perth and Kinross Sports Council** had failed to submit statistics for several successive quarters, further investigation led us to conclude that the organisation is not subject to FOI. This is because it does not meet the definition set out in a 2013 Designation Order that extended the coverage of FOI to include leisure and culture trusts set up by local authorities. We advised the organisation of this outcome and that their obligations under FOI no longer applied.

## Level 2 interventions

20. *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.
21. Five of the Level 2 interventions that were active in July to September 2021 were continued from the previous quarter, and all six remained open at the end of the period.

## Compliance with timescales (4)

22. *Authorities:* Highland Council, Scottish Ambulance Service Board, Scottish Police Authority, University of Edinburgh.
23. These interventions were opened in 2020 after analysis of the authorities' FOI statistics showed a long-term trend of high rates of late responses to requests (since before the Covid-19 pandemic). The interventions have involved:
- seeking an explanation of the factors that have led to the high late-response rates
  - advising the authority to complete a self-assessment and produce an action plan
  - requesting details of the actions to be taken by the authority to improve performance
  - monitoring and seeking evidence of their progress towards a target outcome.
24. Monitoring of **Highland Council's** performance continues, with monthly FOI performance statistics shared with the Commissioner's team after review by senior managers. The latest available statistics (for April to June) show that around 16% of responses were issued late, and the council continues to focus attention on services with the highest late response rates and/or largest request volumes. The authority's FOI leads gave a presentation about their improvement work during the Centre for FOI Practitioners' Conference in August, explaining their new corporate approach.
25. The **Scottish Ambulance Service Board** continues to implement an action plan for improving its FOI performance, after completing Module 1 of the Commissioner's Self-Assessment Toolkit. The authority has revised its approach to recording and reporting FOI statistics; proactive publication is being explored, and work is also underway to provide training for staff. However, the latest statistics show that 24% of responses issued in April to June were late, and the authority has expressed concerns that wider pressures may continue to impact FOI performance.
26. The **Scottish Police Authority** is expected to meet its intervention target soon, as it has continued to respond on time to all FOI requests received in 2021. This follows a major reorganisation of how the authority manages FOI, as well as staff training and recruitment

of an additional team member. The authority's FOI lead gave a presentation during the Centre for FOI Practitioners' Conference in August, explaining their team's continuing self-evaluation and search for improvements.

27. Although the **University of Edinburgh**'s statistics continue to show exceptionally high rates of late responses, the authority has made significant progress in clearing the backlog of requests that had built up during 2020. The last report submitted in quarter 2 as part of the intervention shows a reduction from over 200 to around 80 open requests in the space of 3 months, with zero unassigned requests in the backlog (down from 50 in the same period). The authority now expects to be able to focus on reducing their late response rate and we will continue to monitor this closely in the coming months.

### **Management of FOI function/culture (1)**

28. *Authority:* Scottish Environment Protection Agency (SEPA).
29. Following the closure of the previously-opened intervention that had sought to address long-term high rates of late responses to requests, this intervention was opened in June 2021 with the aim of supporting SEPA in rebuilding its FOI performance following the cyber-attack in December 2020.
30. In July, the Commissioner held a meeting with SEPA's Chief Executive to gain an understanding of the authority's overall recovery from the attack and explain our overall approach in terms of the intervention, including ensuring that sufficient resources and attention are given to FOI compliance, and that all reasonable steps are taken to provide information to requesters and the general public. The authority gave assurances about their recognition of the importance of transparency.
31. Subsequent contact with the authority discussed their planned FOI staffing and resources and their approach to tackling backlogs and improving information-related processes generally. A further meeting was scheduled for October, after which a detailed action plan was to be drawn up which would form the basis of our monitoring through the intervention.

### **Searches/records management (1)**

32. *Authority:* Fife Council.
33. This intervention was logged in September 2021 in relation to concerns arising during the course of an investigation into a particular appeal case. However, no action was taken during this quarter, pending the completion of that investigation and issuing of a decision notice, expected in October. Details will be set out as appropriate in the Q3 interventions activity report, as relevant contact will take place in that quarter.

### **Level 3 interventions**

34. *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 (2)

35. *Authorities:* Aberdeenshire Council, Scottish Ministers.
36. Our long-running [intervention with the Scottish Ministers](#) regarding their FOI performance and practice continued. After an earlier delay, our second detailed assessment got underway in this quarter (carried out remotely rather than in person due to the pandemic).
37. 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, as well as conducting interviews with authority staff members. This work is likely to continue throughout the autumn, with the assessment report expected to be published in December or January.
38. Statistics for April to June show that around 79% of responses to requests, and 76% of review responses, were issued on time. This falls short of the 95% target rate and is slightly down on previous quarters, but is expected to be reversed as improvement work moves forward and request numbers fall slightly after exceptionally high volumes in 2020-21.
39. The **Aberdeenshire Council** intervention was initiated at the very end of the month after concerns were raised about an aspect of the council's handling of FOI requests. However, no contact was made with the authority in this period. Details will be set out as appropriate in the Q3 interventions activity report, as relevant contact will take place in that quarter.

## Level 4 interventions

40. *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.
41. There were no Level 4 interventions active at any time in July to September 2021.