

## FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

### REPORT ON INFORMATION REQUESTS HANDLING IN THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE

JANUARY – DECEMBER 2005

The Freedom of Information (Scotland) Act 2002 (FOI(S)A) came into force on 1 January 2005. Under FOI(S)A, anyone may request information from a Scottish public authority which holds it and is entitled to be given it by the authority subject to an assessment of applicability of the statutory exemptions.

This report covers the first year of FOI(S)A in force and relates to the handling by Crown Office and Procurator Fiscal Service (COPFS) of requests for information received during the period 1 January 2005 – 31 December 2005.<sup>1</sup>

#### **Number of requests**

The provisions of FOI(S)A apply to all valid requests for information made to COPFS. Receiving and responding to requests for information is part of normal business and many requests for information are handled routinely as “business as usual” e.g. requests for information from solicitors, case progress information. The information contained in this report includes requests for information where the requested information would not have been routinely provided prior to the coming into force of FOI(S)A.

FOI requests addressed to Crown Office are logged in Policy Group. An acknowledgement is sent and the request is allocated to an appropriate member of staff within Crown Office for reply. Copies of replies are kept in Policy Group to ensure that statistical information is up to date. Guidance on handling requests is provided to COPFS colleagues as required by Policy Group.

In Procurator Fiscal Offices FOI requests are logged by area co-ordinators and Lead Officers have been appointed and trained to assist in providing guidance within the areas.

#### **Timeliness of responses 2005**

FOI(S)A requires public authorities to respond to written requests for information as soon as possible, and in any event within 20 working days of receipt. Of the 347 requests we received in 2005, we achieved the target reply date in 83% of cases.

#### **Use of exemptions**

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<sup>1</sup> The figures also include a small number of requests which have been received under the Data Protection Act 1998.

Under FOI(S)A, a public authority can refuse to provide requested information that it holds if the information falls within one or more of the categories of exempt information listed in Part 2 of the Act. Of the 347 requests, the information was considered fully exempt in 88 requests (25%) and in 70 requests (20%) the information requested was not held. Given the nature of the work of this department, the main exemptions relied upon were Section 34 (Investigations by Scottish public authorities and proceedings arising out of such investigations and sudden deaths), Section 35 (Law Enforcement) and Section 38 (Personal Information).

### **Internal reviews of requests**

Applicants have the right to ask a public authority for an “internal review” if they are not satisfied with the way in which the authority handled the original request for information. In 2005, 37 reviews were requested, which equates to 11% of the total number of cases processed. Most of these reviews were requested in FOI requests handled by Crown Office. To date all original decisions have been upheld, though further information has been provided in some of these cases. Also, on occasion the applicant has not been advised of their right to review procedure and an apology has been offered.

### **Appeals to the Scottish Information Commissioner (“SIC”)**

Section 48 of FOI(S)A states that no application may be made to the Commissioner for a decision as respects a request for review made to a Procurator Fiscal or the Lord Advocate to the extent that the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland.

The SIC has, however, issued a decision in respect of one COPFS case. This concerned the handling of a review request within Crown Office and provided comment on the interaction between the Freedom of Information and Data Protection legislation. The SIC found in favour of COPFS in all elements of the appeal, except with regard to the delay in handling the review request.

### **Conclusion**

The indications after the first year of Freedom of Information are that the Department has a good understanding of the requirements of FOI(S)A and has embraced the principles of the legislation and the culture of greater openness. While much of the information held by COPFS relates to the investigation and prosecution of crime and cannot be released into the public domain where it is likely to compromise the apprehension of offenders or law enforcement, a wide range of information has been made available as a direct result of information requests.

The FOI Unit in Crown Office will continue to monitor requests during the course of 2006 and a further report will be issued at the end of the year.

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

FOI/DATA PROTECTION STATISTICS – 01.01.05 – 31.12.05

| Information                        | Crown Office  | Area     | Total    |
|------------------------------------|---|----------|----------|
| No of Requests                     | 197   | 150      | 347      |
| Requests outstanding               | 1   | 0        | 1        |
| Info provided/ Part provided       | 87 (47%)  | 81(54%)  | 168(48%) |
| Not held                           | 46 (25%)  | 24(16%)  | 70(20%)  |
| Exempt                             | 43(23%)   | 45(30%)  | 88(25%)  |
| Answered within 20 working days    | 157 (80%)<br>(176 answered within 22 w/days = 89%)  | 132(88%) | 289(83%) |
|                                    |   |          |          |
| No of reviews                      | 31(16%)   | 6 (3%)   | 37 (11%) |
| Decision upheld in review          | 31<br>(in 4 cases some further info was provided and in one case, decision was only partially upheld) | 6        | 37       |
| Outstanding reviews for 2005       | 0   | 0        | 0        |
| Appeal to Information Commissioner | 1<br>(original decision upheld, except for delay in handling review request)                          |          |          |

