

Protocol between the Office of Public Sector Information and the Scottish Information Commissioner

Introduction

1. This protocol describes the basis on which the **Office of Public Sector Information** (OPSI) and the **Scottish Information Commissioner** (SIC) will co-operate in the provision of guidance and the handling of complaints relating to public sector information.

2. This protocol is consistent with our responsibilities as set out in the Freedom of Information (Scotland) Act 2002 (FOISA) www.opsi.gov.uk/legislation/scotland/acts2002/20020013.htm, the Environmental Information (Scotland) Regulations 2004 – SI 2004 No. 520 (the EIRs) <http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040520.htm> and the Regulations on the Re-use of Public Sector Information – SI 2005 No. 1515 (the PSI Regulations) www.opsi.gov.uk/si/si2005/20051515.htm.

3. The Protocol is subject to regular review. It is an open document published on our respective websites. We will publish the minutes of our annual review meetings also.

Legal Framework

4. The SIC has responsibilities for promotion and enforcement of the FOISA and the EIRs. One of the key responsibilities set out in the Act is determining applications for a decision. Anyone dissatisfied with the way in which a Scottish public authority has responded to an information request may initially ask the authority to review its decision. If, following the authority's review, the requester is still dissatisfied, he may make an application to the SIC for a decision. The SIC has powers to investigate applications and if, following his consideration of a case, he decides that information should be released to the applicant, he has enforcement powers to compel authorities to release it.

5. Under the PSI Regulations OPSI has responsibility for handling complaints in connection with the re-use of public sector information. It also has a central policy role in promoting best practice and in the provision of guidance and advice to the public sector on compliance with the PSI Regulations.

Purpose of the Protocol

6. In broad terms the SIC's responsibilities under the FOISA and the EIRs focus on access to information held by Scottish public authorities, whereas OPSI's responsibilities under the PSI Regulations relate to the re-use of public sector information by people who have already gained access to that information, or who are able to do so because it is already accessible. The boundary between access and re-use is not, however, always clear. It is important, therefore, that there is an understanding between us concerning our respective responsibilities. It is particularly important that complaints are

handled by the appropriate organisation, but with the benefit of advice from the other where required.

The SIC's Responsibilities

7. The SIC is responsible for:

- promotion of the FOISA and the EIRs, including providing advice and guidance on access to information under the FOISA and the EIRs;
- enforcement of the FOISA and the EIRs, including the determination of applications for a decision;
- promotion of good practice to Scottish public authorities

OPSI Responsibilities

8. OPSI is responsible for:

- establishing and publishing best practice guidance on the re-use of public sector information;
- responding to requests for advice and guidance on the re-use of public sector information;
- reporting to Ministers and Parliament on issues relating to the re-use of public sector information;
- operating a complaints and mediation process for the resolution of disputes.

Process

9. Where OPSI receives a request for policy guidance that raises issues under the FOISA or the EIRs, it will consult the SIC or refer the requester directly to the SIC. Where the SIC receives a request for policy guidance that raises issues under the PSI Regulations, he will consult OPSI or refer the enquirer directly to OPSI.

10. In producing guidance for publication, we will consult and share information with each other as appropriate.

12. When a complaint or application is received that touches on the policy responsibilities of the other body we will seek advice from each other and share information where appropriate, i.e. acting within the constraints of the FOISA, the EIRs, the Data Protection Act 1998 and any other applicable law. The complainant or applicant will be informed of any action taken.

13. We shall carry out an assessment of each complaint that we receive to determine whether it has any implications for the other party, for example whether the main focus of the complaint (or application) is freedom of information or the re-use of public sector information, or whether it raises competition issues that may be more appropriate to the Office of Fair Trading. The outcome will inform the decision on how the issue at the centre of an application or complaint will be handled and by whom it will be handled.

14. In some cases the central subject of a complaint could touch on both access and re-use. In these cases SIC will usually determine the access issues before OPSI considers the re-use issues but in exceptional cases we

may agree to consider the elements of the complaint that are relevant to our own responsibilities.

15. In the event that either OPSI or the SIC consider that the complainant or applicant should make an application to the other organisation, the complainant or applicant will be advised accordingly.

Regular Liaison

16. It is important that OPSI and the SIC review this protocol regularly to ensure that it provides an effective framework for the provision of policy guidance and the handling of complaints. The following officers have been nominated by their organisations to provide a consistent point of contact for this protocol:

Susan Healy, Office of Public Sector Information

Sarah Hutchison, Office of the Scottish Information Commissioner

The officers, or their nominees, will meet annually to review this protocol in the light of casework.

Joint Working

17. OPSI and the SIC will work co-operatively in promoting best practice to public authorities. This may include the production of joint advice notes or inviting each other to participate in awareness-raising sessions for public authorities.

Related Protocols

18. OPSI has agreed a similar protocol with the Information Commissioner for England and Wales – see <http://www.opsi.gov.uk/advice/psi-regulations/disputes-resolution/opsi-ico-protocol.pdf> .

19. OPSI has a memorandum of understanding with the Office of Fair Trading – see <http://www.opsi.gov.uk/advice/psi-regulations/disputes-resolution/opsi-ofot-memorandum-of-understanding-2005-08.pdf>

20. The SIC has a Memorandum of Understanding with the Information Commissioner – see <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2702&S ID=2758>.

(Protocol as revised and agreed February 2009)