

Self-assessment Toolkit

Capture, Assess, Improve

Module 5: Conduct of Reviews



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Glossary and Abbreviations	

Term used	Explanation
The Commissioner	The Scottish Information Commissioner
EIRS	Environmental Information (Scotland) Regulations 2004
FOI	FOISA and the EIRs
FOISA	The Freedom of Information (Scotland) Act 2002
SIC	The Scottish Information Commissioner, staff of SIC (depends on context)
S21/R16	Section 21 of FOISA / regulation 16 of the EIRs
Section 60 Code / S60 Code /the Code	Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (December 2016)

Introduction to Module 5: Conduct of Reviews

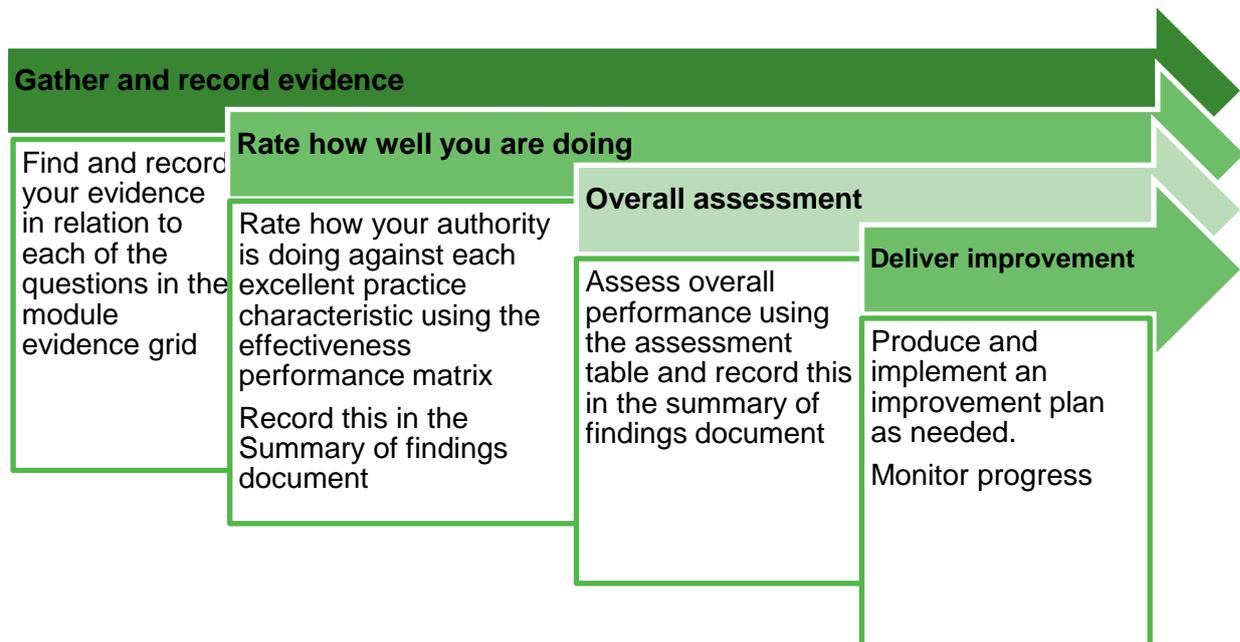
1. This document sets out the standards and criteria against which you will assess your authority's FOI performance against its duties to conduct reviews under section 21 of FOISA and regulation 16 of the EIRs.
2. This module is not just about meeting the statutory requirement to review, but about the significant benefits to the public and the authority from good review practice, including:
 - (i) Increased public trust in Scottish public authorities based on developing your culture of openness and transparency.
 - (ii) Increased service user satisfaction and better relationships with service users through thorough and fair reviews and the provision of additional context or explanation.
 - (iii) Efficiencies in handling requests and reviews.
 - (iv) Compliance with FOI law and the Section 60 Code of Practice.
 - (v) Reduced likelihood of risk of failure to comply with the duty to review, particularly adverse decisions from the Commissioner.
 - (vi) Valuable learning which the authority can use to improve both FOI procedures and the openness of the authority more generally.
3. Module 5 supports an authority to critically assess its environment, consider how supportive that environment is and how effectively senior management creates a culture that encourages and equips staff to meet its FOI statutory obligations.
4. All of the toolkit resources are available on our [Self-assessment toolkit web page](#).
5. We recommend you read the guidance on **Getting started** and **How to carry out an FOI self-assessment** for advice about how to carry out your assessment and apply the standards.
6. The purpose of self-assessment is to:
 - enable an authority to **capture** the organisation's strengths and good practice in the application of FOI law and codes of practice, then
 - **assess** the effectiveness of that practice, to then
 - identify where and how practice can **improve**.
7. Self-assessment focuses on the key questions:
 - (i) **What** are we doing?
 - (ii) **How** well we are doing it?
 - (iii) **What** are we going to do now?
8. The standards around which the module is written are based on achieving an "excellent" rating. But don't feel this is what you have to aim for right away. Improvement is a journey and you may want to take it in stages. The minimum requirement to meet statutory duties is "adequate". Also bear in mind this module relates to just one area of FOI practice. It may well be that your overall improvement plan is to achieve different rating for different areas of

practice, depending on your organisation's wider strategic and business aims, or to bring all areas up to the minimum adequate standard.

9. This document is in sections:
- (i) **Overview of process:** how to carry out an assessment.
 - (ii) **Outcomes and legal context:** what you could achieve through this self-assessment, and your authority's duties under FOI. To comply with FOI legislation, you must achieve at least an **adequate** rating overall.
 - (iii) **Characteristics of good practice:** these give you an overview of what excellent practice in conducting a review looks like.
 - (iv) **What next:** improvement planning.
 - (v) **Assessment ratings and criteria:** the standards against which you rate your authority's performance as **Excellent, Good, Adequate** or **Unsatisfactory**. (NB, this section is A3 to make it easier to read but should print out as A4 if sent to an A4 printer)

Overview of Process

10. Our **Guide: How to carry out a self-assessment** and later sections of this document set out how to approach an assessment, in summary:



Module 5 outcomes and legal context

Outcomes

11. Good FOI practice in conducting robust, effective and timely reviews contributes to:
- (i) Increased public trust in Scottish public authorities, based on developing a culture of openness and transparency.
 - (ii) Compliance with FOI law and the Section 60 Code of Practice.

- (iii) Better informed, higher quality and more timely responses from authorities to review requests.
- (iv) Increased service user satisfaction with responses.
- (v) A reduced likelihood of an appeal to the Commissioner with a corresponding reduction in the resource requirements to respond to appeals.
- (vi) A more empowered, engaged and confident workforce.

Legal context

12. In respect of the requirement of review, the legislation contains three key elements:

- (i) Responding to requests for review **promptly** and in any event within statutory timescales
- (ii) The duty to reconsider the original response or respond where no response has been provided; and
- (iii) The duty to provide requesters with their rights of appeal

13. The full details of the legislative requirements of review are set out below:

FOISA	EIRS
21(1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.	Regulation 16(1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.
21(3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on the requirement.	Regulation 16(3) – The Scottish public authority shall on receipt of such representations- <ul style="list-style-type: none"> a) Consider them and any supporting evidence produced by the applicant; and b) Review the matter and decide whether it has complied with these Regulations.
21(4) The authority may, as respect the request for information to which the requirement relates – <ul style="list-style-type: none"> a) Confirm a decision complained of, with or without such modifications as it considers appropriate; b) Substitute for any such decision a different decision ; or c) Reach a decision, where the complaint is that no decision had been reached. 	Regulation 16(4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.
21(5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.	Regulation 16(5) Where the Scottish public authority decides that it has not complied with its duty under these regulations, it shall immediately takes steps to remedy the breach of duty.
...	*No discretion to accept late representations for review – the Commissioner cannot investigate.

21(10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

17(2)(f) : A notice under reg 16(4) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and s6 of FOISA.

*FOISA offers discretion to authorities to accept a late request for review and provides for the opportunity to “resolve” requirements for review.

14. These legislative requirements are supplemented by the Section 60 Code of Practice (the Section 60 Code). Compliance with the Section 60 Code of Practice is a requirement of good practice and the Commissioner can take action against an authority which fails to comply.
15. Section 10 of the Section 60 Code relates to reviews:
 - (i) In para 10.1.1 – Authorities must ensure, that all staff:
 - *Can recognise a request for review and ensure it receives an appropriate response.*
 - *Staff should recognise that an expression of dissatisfaction with the way in which a request has been handled should be treated as a request for review.*
 - (ii) Para 10.3.3 and 4, set out what a review procedure should aim to achieve:
 - *The aim of a review is to allow the authority to take a fresh look at its response to an information request...The review procedure must therefore be fair and impartial and allow decision makers to look at the request afresh. (...) Review procedures should be sufficiently flexible to allow for differing circumstances such as the complexity and sensitivity of the information.*
 - *It is good practice for the reviewer to be a person who did not respond to or advise on the original request (where possible or practical).*
 - (iii) Para 10.6.1 also provides for reflection on practice:
 - *It is good practice to put in place procedures for learning lessons from reviews and ensuring that any recommendations are taken forward to prevent recurrence of any failures.*
16. The Commissioner’s guidance is available to every public authority and should be used to supplement the guidance and arrangements to ensure staff have the relevant levels of knowledge, skills and awareness they need to deliver their statutory duties.

The characteristics of an excellent review process

17. Excellent FOI practice in terms of the conduct of reviews has four characteristics:

- A demonstrable corporate commitment to the conduct of timely, independent and robust reviews
- A clear but flexible review process
- Staff are provided with sufficient support and training to recognise and conduct reviews in an effective yet timely fashion.
- A responsive authority adapts, evolves and learns from the conduct of reviews

ONE: Leadership Commitment

Senior managers have integrated the conduct of timely and robust reviews into the authority's governance and management framework. Providing information is integral to the authority's business and there is clear strategic responsibility for it.

This looks like:

- ✓ Leaders of the authority are accountable for ensuring the authority meets its statutory requirement to conduct robust and timely reviews.
- ✓ Governance frameworks recognise the risk impact of not conducting timely and robust reviews.
- ✓ Governance and management frameworks reflect the link between the authority's FOI policies and procedures, customer service arrangements and statutory duties.
- ✓ Managers ensure sufficient resources are allocated for reviews.
- ✓ A scheme of delegation sets out who should conduct reviews and ensures each reviewing officer has sufficient authority to conduct a proportionate and robust review.

TWO: Clear but flexible review process

The authority has a written review procedure, accessible to all staff, that is proportionate and flexible.

This looks like:

- ✓ A written review procedure, accessible to all relevant staff which includes a clearly stated commitment to openness and transparency. The procedure ensures reviews are fresh, fair and impartial. It incorporates the good practice in the Section 60 Code of Practice.
- ✓ The procedure recognises the importance of robust record keeping practices – maintaining detailed records of searches, contact with requesters, deliberations and reasons for decisions.
- ✓ The procedure and associated processes are proportionate not only to the size of the authority and its resources but also to the cases under review.
- ✓ The review process is adaptable to circumstances and includes a commitment to excellent customer service, with a focus on providing advice and assistance to the requester.
- ✓ The procedure is subject to regular review in light of organisational change and learning from the conduct of reviews and appeals to the Commissioner.
- ✓ The review procedure is carried out by an independent person, where possible.

THREE: Staff resources and training

Training and guidance provide staff with the knowledge and skills they need to recognise, process and conduct reviews. Reviewers are provided with sufficient support, resources and the authority to analyse and challenge the original decision.

This looks like:

- ✓ All staff receive training appropriate to their individual roles and have access to suitable guidance and support to enable them to communicate effectively and to provide, helpful, meaningful and timely advice and assistance. The training for relevant staff includes recognising a request for review.
- ✓ Review officers understand their statutory obligations and are provided with sufficient authority to analyse and challenge the response to the request.
- ✓ Training arrangements and requirements are reviewed periodically and staff are kept up-to-date with changes to procedures and/or practices.
- ✓ Reviewers are able to distinguish between a valid and invalid request for review, and are able to provide suitable advice to requesters where necessary.
- ✓ Procedure and processes support staff to provide a robust, efficient and timely review response which is resilient in times of staff absence. Including the provision of resources to log, monitor and handle reviews (including the location and retrieval of information) and, where necessary, an appropriate escalation process to ensure timely responses.
- ✓ The review process has a role in identifying resource, training and knowledge gaps.
- ✓ Review process is recognised as an opportunity to robustly review original response to ensure all statutory requirements have been met and the collation of all material to assist with potential appeal to the Commissioner.

FOUR: Responsive and evolving authority

The authority monitors and reports how effectively it conducts reviews. Where lessons are learned, they are incorporated into future practice

This looks like:

- ✓ The authority has quality standards and performance measures to demonstrate it provides robust, effective and timely review responses.
- ✓ The authority learns from its FOI and customer service experiences to identify ways it can improve the quality and effectiveness of its initial response and review process.
- ✓ FOI reviews are seen as an opportunity to assess whether appropriate advice and assistance was given to the requester. Where issues are identified, lessons are learned and lead to practice improvements.
- ✓ The authority and reviewers learn from SIC decisions (positive and negative). Where decisions are about the authority, arrangements are in place to ensure the learning is converted into action at a senior level.
- ✓ Lessons learned from quality monitoring leads to more information being published by the authority, fewer late and better quality request and review responses.

Ratings and evaluation criteria

Rating

18. Performance is rated as: **Excellent**, **Good**, **Adequate** or **Unsatisfactory**.
19. In order to comply with the legislation, you must achieve at least an **Adequate** overall rating.

Assessment table

Overall rating	
Excellent	<ul style="list-style-type: none">• Excellent in at least 4 characteristics, 2 of which must be Leadership, and Clear but flexible review process.• No more than 1 adequate rating and no unsatisfactory ratings.
Good	<ul style="list-style-type: none">• Good or excellent in at least 3 characteristics, 2 of which must be Leadership, and Clear but flexible review process.• No unsatisfactory ratings.
Adequate	<ul style="list-style-type: none">• Adequate, good or excellent in at least 4 characteristics, 2 of which must be Leadership, and Clear but flexible review process. No more than 1 unsatisfactory rating
Unsatisfactory	<ul style="list-style-type: none">• Unsatisfactory in more than 1 characteristic, irrespective of other ratings.

20. Remember, when you apply these standards, you should be proportionate in your approach. It is the adequacy of your FOI approach and arrangements, and the outcomes they deliver that is important, not how sophisticated or detailed they are. For example, where the criteria call for something to be done “routinely”, for some organisations annually is routinely enough, while for others it may be monthly.

What next?

Work plan

21. Reflect on your evaluation and develop an appropriate work plan using **the Improvement Action Plan**. This may be a plan to improve your rating or a maintenance plan to ensure you maintain current standards. **How to carry out a self-assessment** gives you more details about this.

Help and advice

22. Contact our Policy and Information Team for further advice and guidance on using the Self-assessment toolkit on 01334 464610 or via enquiries@itspublicknowledge.info.

Effectiveness performance matrix

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	Excellent	Good	Adequate	Unsatisfactory
Leadership	<ul style="list-style-type: none"> Strategic responsibility for FOI performance exceeds s60 Code in one or more respects 	<ul style="list-style-type: none"> Strategic responsibility for FOI performance with clearly named senior officer 	<ul style="list-style-type: none"> Strategic responsibility is understood at senior level but not set out in procedures 	<ul style="list-style-type: none"> Insufficient oversight of FOI performance at senior level
	<ul style="list-style-type: none"> Reviews are a valuable quality assurance tool 	<ul style="list-style-type: none"> Reviews that highlight areas for improvement are reported 	<ul style="list-style-type: none"> Review outcomes generally not reported unless significant 	<ul style="list-style-type: none"> Senior staff generally unaware of reviews and their outcomes
	<ul style="list-style-type: none"> Review compliance is embedded in budgeting, risk management and governance systems 	<ul style="list-style-type: none"> Review compliance is generally covered in budgeting, risk management and governance systems 	<ul style="list-style-type: none"> Review compliance is occasionally covered in budgeting, risk management and governance systems 	<ul style="list-style-type: none"> Insufficient oversight of review arrangements
	<ul style="list-style-type: none"> Reviewers are appointed under the scheme of delegation. There is a review panel, or reviewers are from another business area that was not involved in the original request. 	<ul style="list-style-type: none"> Responsibility for reviews is determined within business areas. Reviewers have not had involvement with the original request. 	<ul style="list-style-type: none"> Appointment of reviewers is ad hoc, not planned. In some cases, the reviewer may have provided the original response. 	<ul style="list-style-type: none"> There is no formal arrangement for appointing reviewers
Review process	<ul style="list-style-type: none"> Detailed procedures to ensure reviews are fair and impartial and consider matters afresh. 	<ul style="list-style-type: none"> Principles and guidance to ensure reviews are fair and impartial and consider matters afresh 	<ul style="list-style-type: none"> General guidance ensures reviews are fair and impartial and consider matters afresh 	<ul style="list-style-type: none"> Basic s60 Code requirements are not met
	<ul style="list-style-type: none"> Routine monitoring of progress of requests for review, with defined timescales for individual processes and escalation to prevent delays 	<ul style="list-style-type: none"> Frequent monitoring of progress of requests for review and escalation to prevent delays 	<ul style="list-style-type: none"> Monitoring of progress of requests for review is the responsibility of the reviewer or business area 	<ul style="list-style-type: none"> Monitoring of requests for review is insufficient to provide oversight
	<ul style="list-style-type: none"> Reviews are consistently recorded, including information about searches, correspondence with requesters and deliberations 	<ul style="list-style-type: none"> Reviews are recorded, but practice varies from one business area to another 	<ul style="list-style-type: none"> Reviews are not routinely recorded unless an appeal is thought very likely 	<ul style="list-style-type: none"> No, or insufficient recording of reviews
Staff resources and training	<ul style="list-style-type: none"> All staff can recognise a request for review and know what to do if they receive one 	<ul style="list-style-type: none"> Most staff can recognise a request for review and know what to do if they receive one 	<ul style="list-style-type: none"> Relevant staff can recognise a request for review and know what to do if they receive one 	<ul style="list-style-type: none"> Few staff can recognise a request for review / may not know what to do if they receive one
	<ul style="list-style-type: none"> There are always sufficient staff resources for reviews, even in holiday periods 	<ul style="list-style-type: none"> There are usually sufficient staff resources for reviews, even in holiday periods 	<ul style="list-style-type: none"> There are generally staff resources for reviews, though it can be challenging in holiday periods 	<ul style="list-style-type: none"> Don't know / have difficulty identifying reviewers
	<ul style="list-style-type: none"> All reviewers have received training and can always access support and advice where required. 	<ul style="list-style-type: none"> Most reviewers have received training and can usually access support and advice where required. 	<ul style="list-style-type: none"> Reviewers have access to procedures and guidance but have not been specifically trained 	<ul style="list-style-type: none"> Reviewers have little or no support
Responsive and evolving authority	<ul style="list-style-type: none"> Reviews routinely identify improvements to the quality and effectiveness of FOI request handling 	<ul style="list-style-type: none"> Reviews often identify improvements to the quality and effectiveness of FOI request handling 	<ul style="list-style-type: none"> Reviews sometimes identify improvements to the quality and effectiveness of FOI request handling 	<ul style="list-style-type: none"> Reviews do not consider quality and effectiveness of FOI request handling
	<ul style="list-style-type: none"> Reviews always consider wider issues about the handling of the original request e.g., quality of customer service or records management 	<ul style="list-style-type: none"> Reviews sometimes consider wider issues about the handling of the original request e.g., quality of customer service or records management 	<ul style="list-style-type: none"> Reviews focus on the handling of the original request only 	<ul style="list-style-type: none"> Reviews do not meet the statutory requirements
	<ul style="list-style-type: none"> Learning from reviews often leads to the publication of more information 	<ul style="list-style-type: none"> Learning from reviews sometimes leads to the publication of more information 	<ul style="list-style-type: none"> Learning from reviews is unlikely to lead to the publication of more information 	<ul style="list-style-type: none"> There is little or no learning from reviews

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