

Report to:	SMT
Report by:	Margaret Keyse
Meeting Date:	By email - August 2022
Subject/ Title: (and VC no)	Review of key documents – guides to investigations (VC173745)
Attached Papers (title and VC no)	<ul style="list-style-type: none"> • C2 What Happens Next? A guide for applicants (VC173542) • C2 Investigations: A guide for Scottish public authorities (VC173550)

Purpose of report

1. To seek SMT approval following the review of the attached two key documents.

Recommendation and actions

2. It is recommended that SMT :
 - (i) approve the revised key documents
 - (ii) agree the recommendations in the “Records management impact” and “Publication” sections.

Executive summary

3. Under section 49(1) of the Freedom of Information (Scotland) Act 2002 (FOISA), the Commissioner must, except in the circumstances specified in section 49(2), make a decision in relation to an application made to him.
4. We publish guidance for both applicants and public authorities on what to expect during an investigation.
5. We are currently investigating a very high number of applications and are looking for ways to streamline our procedures. In June 2022, it was agreed at the Investigations Performance Management Meeting that we should change the way we ask public authorities to provide us with comments on applications.
6. Section 49(3)(a) of FOISA requires us to notify public authorities when we receive an application and provide them with an opportunity to provide comments. Under our current procedures, the Validation Officer notifies a public authority of an application (and will obtain any withheld information from the public authority for the purposes of the investigation), but comments are not sought from the authority until the case has been allocated to an investigator.
7. Given the reasons for the delay in cases being allocated to investigators (reported elsewhere), we have decided to change this approach from 1 September 2022.
8. From 1 September, when the Validation Officer notifies a public authority that an application has been received, they will also provide the authority with an opportunity to provide comments.
9. Currently, we generally give public authorities two weeks to provide withheld information and, once the case has been allocated, a further two weeks to provide comments.

Understandably, some authorities have expressed concern at these time limits, given the delay in cases being allocated for investigation.

10. From 1 September 2022, we will give authorities six weeks to provide comments (and the withheld information). To be clear, this is one set of six weeks, not six weeks to provide comments and a further six weeks to provide withheld information.
11. By asking for comments at this stage, the authority will not be given the same direction on the specific matters they need to address in their comments as they currently receive. (Currently, when the investigator asks for submissions, they have already seen the withheld information and therefore, along with the request for comments, ask specific questions about the case.)
12. C2 Investigations: A guide for Scottish public authorities has therefore been substantially redrafted to include guidance on what sort of submissions we need from authorities in the most common types of cases.
13. It will still be open to the investigator, once the case has been allocated to them, to seek further comments from the public authority, but we hope that, in some cases, we may be able to go straight to decision (subject to, where appropriate, seeking additional comments from the applicant).
14. The guidance for applicants C2 What Happens Next? is also being submitted for approval. Minor changes have been made to that document to reflect the changes made regarding seeking comments from authorities.

Risk impact

15. The changes are designed to streamline our investigation procedures and will help us meet our statutory duties. The risk of not having in place and monitoring effective and robust procedures is mitigated by the regular review of those procedures with the aim of streamlining the procedures and, in turn, helping us meet our statutory duties.

Equalities impact

16. No equalities impact arises directly from this report.

Privacy impact

17. No privacy impact arises directly from this report.

Resources impact

18. Ensuring our investigations procedures remain up to date and efficient is reflected in the Operational Plan, so the resources impact has been taken into account.

Operational/ strategic plan impact

19. As noted above, ensuring our investigations procedures remain up to date and efficient is reflected in our Operational Plan. In addition, it reflects objective 6 in the Strategic Plan, i.e. to be recognised as an organisation of independent and trusted experts run efficiently, governed effectively and is open and transparent.

Records management impact (including any key documents actions)

20. These are key documents. If approved, the Register of Key Documents will be updated in the usual way and the final versions of the guidance will be published on our website.
21. SMT are asked to agree the recommendations in the document control sheets for each key document.

Consultation and Communication

22. The (Acting) Head of Policy and Information, Deputy Heads of Enforcement and Validation Officers were consulted on the draft documents and their comments have been taken into account.
23. The Policy and Information Team will be undertaking work to promote the changes to our procedures to public authorities. Standard letters to public authorities are also being updated to ensure that the change in procedures are highlighted to authorities.

Publication

24. I recommend that this committee report is published in full.
25. I also recommend that the drafts of the guidance are withheld under section 27(1) of FOISA. This allows information to be withheld if it is held with a view to it being published within 12 weeks and it is reasonable for the information to be withheld from disclosure. It is expected that the final versions of the documents will be published by 1 September 2022.