

Executive Advisory Body

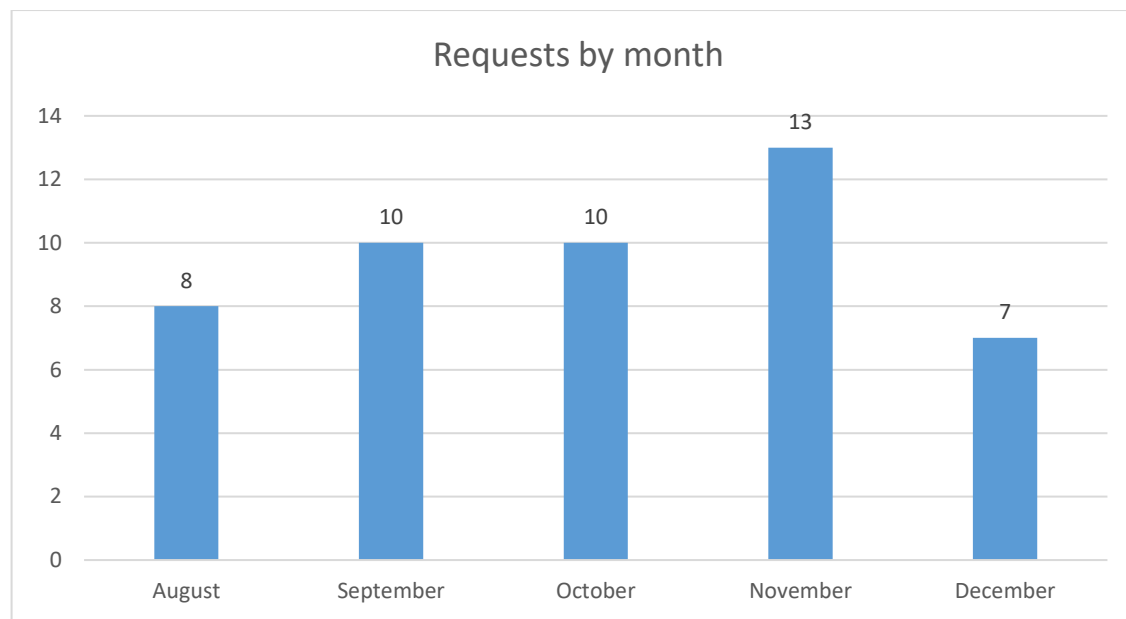
Date of Meeting	Tuesday 30 January 2024
Subject	Overview of compliance with the Freedom of Information (Scotland) Act 2002
Agenda No.	Below the Line
Paper No.	(Secretariat to complete)
Prepared By	Freedom of Information team
Purpose	Monitor

1. Background

- 1.1. The purpose of this paper is to provide the Executive Advisory Body with an overview of the requests for information that we have received in the period from August 2023 to December 2023. It also sets out our compliance with the statutory timescales for responding. Compliance with the timescales contributes to our values of dignity, fairness and respect by demonstrating transparency and assisting individuals to exercise their right to information.

2. Key points

- 2.1. Since 01 August 2023 Social Security Scotland has received 48 new requests for information. Eight of the requests were received in August, ten in September, ten in October, 13 in November and seven in December. Since the last report 45 responses have been issued. There are eight current requests.



2.2. Between August 2023 and December 2023, we have received 48 requests for information with three requests for review. For comparison, during the same period in 2022 we received 40 requests for information with zero requests for review.

2.3. Three requests for review were received.

One Applicant did not accept that we did not hold information around our decision not to obtain a named security accreditation. A different decision was substituted, and some information relating to the decision was released.

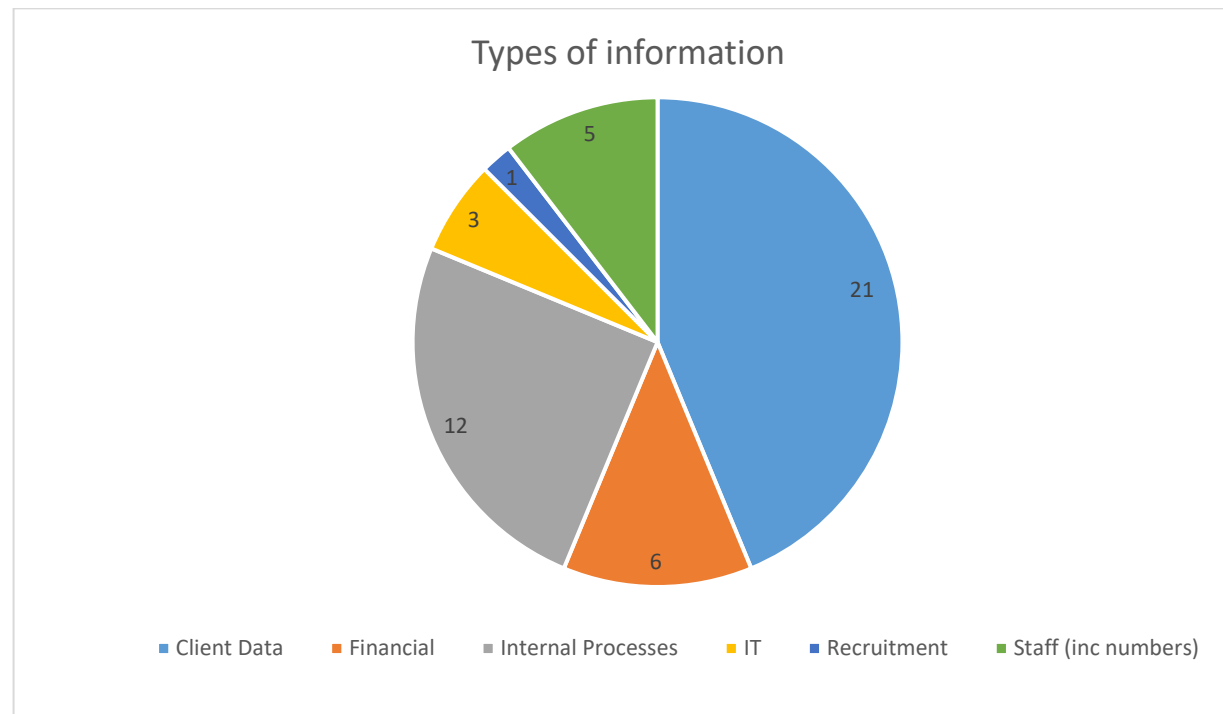
The second Applicant was unhappy with our decision to rely on the exemption from Section 35(1)(a)(prevention or detection of crime) of FOISA to withhold information relating to the amount of money spent by Social Security Scotland on benefit fraud related projects and services and the number of clients that have been removed as a recipient of a benefit as a result of benefit fraud investigations. A different decision was substituted which relied on the cost exemption notice from Section 12 and the exemption under Section 30(c)(effective conduct of public affairs) of FOISA.

The third Applicant was dissatisfied with our advising that we did not hold information relating to the time taken to complete benefit reviews. A different decision was substituted which relied on the cost exemption notice from Section 12 of FOISA.

2.4. The Scottish Information Commissioner monitors public authorities compliance with the Act. The information provided to the Commissioner includes compliance with the statutory timescales for response which is 20 working days. As agreed with the Scottish Information Commissioner, core Scottish Government and it's agencies have a target of responding to 95% of requests within the timescales afforded by the Act. Social Security Scotland has exceeded this target with an on-time response rate of 100% since the last report.

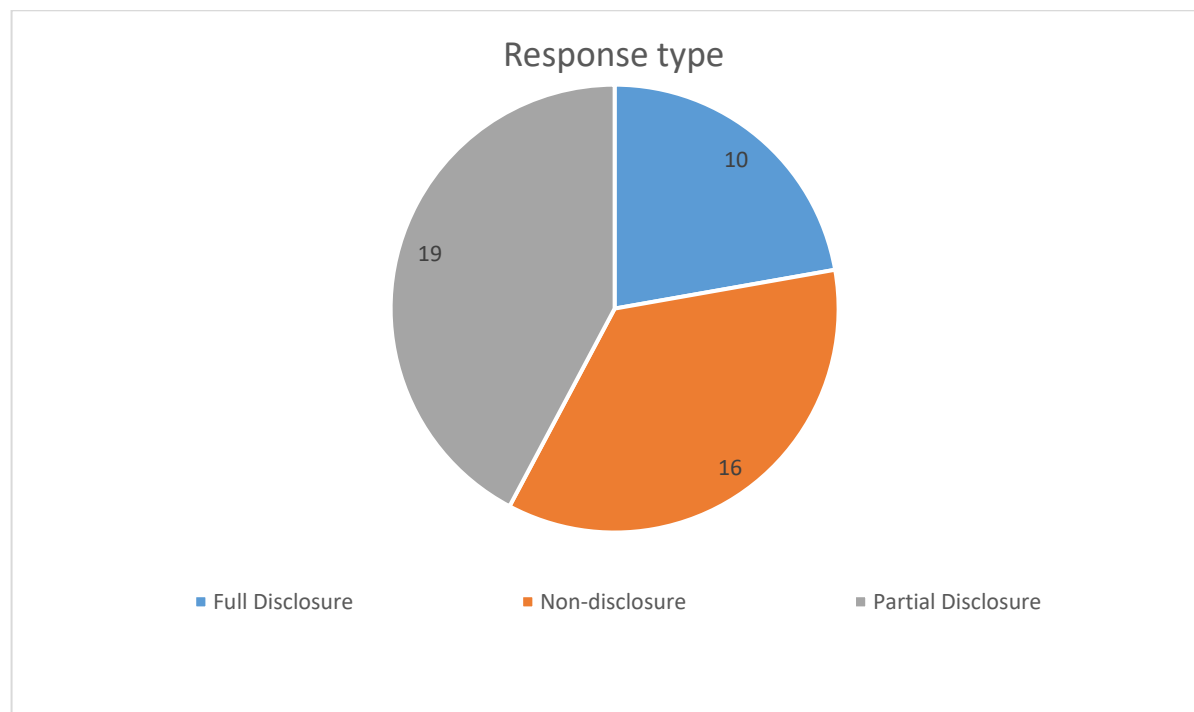
A monthly performance breakdown is provided in Annex A.

2.5. We record the type of information requested and the requester in order to identify patterns and inform decisions on proactive publication of information.



Of the 48 requests received in the period specified, 19 were from Members of the Public, 17 from a Political Source, four from commercial sources, three from journalists, three from the Third Sector and two from the What Do They Know website.

- 2.6. Of the 45 responses issued, information was disclosed in full in 10 requests and in part in 19 requests. No information was disclosed in 16 requests. Notices were applied from Sections 12 and 14(2) of the Act. Exemptions applied to withhold information were Section 17, Section 25(1), Section 30(c), 35(1)(a) and Section 38(1)(b). Details of notices and exemptions can be found in Annex B.



- 2.7. In light of the information requested by applicants a decision has been taken to proactively publish within 12 weeks, the agenda, accompanying papers and minutes of the Executive Advisory Board and the Audit and Assurance Committee. These can be found here:

<https://www.socialsecurity.gov.scot/publications>

2.8. We have not been notified of any applications to the Scottish Information Commissioner since the last report.

3. Conclusions

3.1. The Executive Advisory Body are invited to note the contents of this paper.

4. GOVERNANCE CHECKLIST

Please ensure that you detail which Corporate Plan Strategic Objective the paper contributes to. These strategic considerations should be used to assist you with the content of your paper.

Strategic Objective	Contribution
Helping to deliver a social security system with dignity, fairness and respect.	Compliance with the timescales contributes to our values of dignity, fairness and respect by demonstrating transparency and assisting individuals to exercise their right to information.
Supporting people in Scotland to access devolved benefits that they are entitled to.	Not Applicable –
Running our service in a responsible way.	This paper contributes to our continuously improving our services.

State here how the paper considers these areas and any consultation undertaken in the agency. Only complete the section(s) relevant to your paper.

Strategic consideration	Impact
Environment	Not Applicable
Governance	This paper is for discussion and sets out how we have complied with our obligations under the Freedom of Information (Scotland Act) 2002 in the period.
Data	Not Applicable

Strategic consideration	Impact
Finance	Good information rights management and properly formed and considered responses reduces the need for review and mitigates against appeals.
Staff	Not Applicable
Equalities	Not Applicable
Estates	Not Applicable
Communications and Presentation	Not Applicable

An Impact Assessment must be carried out during the development of all new Agency policies and services and when making significant changes to policies and services. The Corporate Assurance team should be involved from an early stage to provide guidance and advice relating to completing impact assessments.

[Impact Assessment Saltire Page](#)

General Impact Assessment Queries: Corporateassuranceteam@socialsecurity.gov.scot

Equality Impact Assessment Queries: Corporateassuranceteam@socialsecurity.gov.scot

Please complete the below table.

Type of Impact Assessment	Required (Y/N)	If No - briefly state reason e.g. Not relevant/Not eligible – agreed with Deputy Director	If yes – briefly state progress to date, highlight any significant issues.
<u>Child Rights and Wellbeing Impact Assessment (CRWIA)</u>	N	Not relevant	
<u>Data Protection Impact Assessment</u>	N	Not relevant	
<u>Equality Impact Assessment (EQIA)</u>	N	Not relevant	
<u>Fairer Scotland Duty assessment</u>	N	Not relevant	

Type of Impact Assessment	Required (Y/N)	If No - briefly state reason e.g. Not relevant/Not eligible – agreed with Deputy Director	If yes – briefly state progress to date, highlight any significant issues.
<u>Future proofing legislation</u>	N	Not relevant	
<u>Human rights in policy making</u>	N	Not relevant	
<u>Islands Communities Impact Assessment (ICIA)</u>	N	Not relevant	
<u>Strategic Environment Assessment (SEA)</u>	N	Not relevant	

Information Commissioner Monthly Performance Reports (August 2023 – December 2023)

Annex A

Month	No. Requests On Time	No. Requests Late, Responded	No. Request Late, In Progress	% Reqs On Time	No. Reviews On Time	No. Reviews Late, Responded	No. Reviews Late, In Progress	% Revs On Time
August	5	0	0	100%	n/a	n/a	n/a	n/a
September	13	0	0	100%	0	n/a	n/a	n/a
October	6	0	0	100%	n/a	n/a	n/a	n/a
November	11	0	0	100%	n/a	n/a	n/a	n/a
December	10	0	0	100%	n/a	n/a	n/a	n/a



FOI Exemptions

Annex B

Notices commonly applied by Social Security Scotland are:

- Section 12(exceeds the upper cost limit): allows a public authority to refuse to deal with a request where it estimates that it would exceed £600.
- Section 14(1)(request is vexatious): Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious, it can only be applied to the request itself and not the individual who submitted it.
- Section(17)(information not held): the public authority does not have access to the information requested or the information does not exist.
- Section 18(1) refusal to confirm or deny whether information is held.

Exemptions commonly applied by Social Security Scotland are:

- Section 25(1)(information otherwise accessible): This allows information to be withheld if it is already accessible to the applicant.
- Section 27(1)(information intended for future publication): This allows information to be withheld if the information intended for publication within 12 weeks of the request being submitted.
- Section 29(1)(a)(formulation of Scottish Government policy): This allows information to be withheld if the information relates to the formulation or development of government policy and ministerial communications.
- Section 30(b)(i)(free and frank provision of advice): This allows information to be withheld if disclosure of the information would, or would be likely to, cause substantial harm.
- Section 30(b)(ii)(free and frank exchange of views): This allows information to be withheld if disclosure of the information would, or would be likely to, cause substantial harm.
- Section 30(c)(effective conduct of public affairs): This allows information to be withheld where disclosure would, or would be likely to, cause substantial harm.
- Section 33(1)(b)(commercial interests): This allows information to be withheld where it relates to the audit of the accounts of other public authorities, or the

examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

- Section 35(1)(a)(prevention or detection of crime): This allows information to be withheld if disclosure of the information would, or would be likely to, cause substantial prejudice.
- Section 38(1)(b)(personal data relating to third party): This allows information to be withheld if it is personal data.

Qualified exemptions

Most of these exemptions are subject to the public interest test. These are known as “qualified exemptions.”

Where a qualified exemption applies, the information must be disclosed unless the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption. Where the competing public interests are evenly balanced, the information should be disclosed.

Absolute exemptions

Exemptions which are not subject to the public interest test are known as “absolute exemptions.”

Where an absolute exemption applies, a public authority is entitled to withhold the information without going on to consider the public interest. They include:

Information Otherwise Accessible - Section 25

Prohibitions on Disclosure - Section 26