

ITEM 1.3: FREEDOM OF INFORMATION AND RECORDS MANAGEMENT

Purpose

1. To advise members of the Council's obligations in relation to the [Freedom of Information \(Scotland\) Act 2002](#) (FOISA) and the [Public Records \(Scotland\) Act 2011](#) (PRSA).
2. To seek members' agreement to the proposed procedures and related documents in respect of the FOISA and PRSA regimes.

Discussion

Freedom of information

3. The Council is subject to FOISA under paragraph 14 of schedule 1 to the [Criminal Justice and Licensing \(Scotland\) Act 2010](#). Under this regime, the Council is required to make certain information available, respond to requests for information and adopt a publication scheme as approved by the Scottish Information Commissioner.
4. The Commissioner has produced and approved a Model Publication Scheme (MPS) for use by public authorities (**Paper 1.3A**) subject to FOISA, to assist in fulfilling these obligations. Currently, all Scottish authorities have adopted the Commissioner's MPS. The MPS may be adopted only in its entirety, without amendment, and commits an authority to:
 - publish the classes of information that it makes routinely available, and,
 - tell the public how to access the information and whether information is available free of charge or on payment.
5. **It is suggested that the Council should adopt the MPS.**
6. An authority which adopts the MPS must produce a 'Guide to the Information available through the Scheme', a draft of which is provided at **Paper 1.3B**. The authority can decide the format of its Guide to Information. However, it must:
 - allow the public to see what information is available (and what is not available) in

relation to each class;

- state what charges may be applied;
- explain how to find the information easily;
- provide contact details for enquiries and to get help with access to information;
- and
- explain how to request information that has not been published.

Classes of information

7. The Council must publish information that it holds which falls within the following classes. Once published, information should be available for the current and previous two financial years. Where information has been updated or superseded, only the current version need be available (previous versions may be requested).
8. The Commissioner's Guidance accompanying the MPS provides lists of the types of information authorities are expected to publish under each class. The Council's Guide to Information should make it clear what is available under each class. The different classes and a short description of each are as follows:

Class 1: About the Scottish Sentencing Council

Information about the Scottish Sentencing Council, who we are, where to find us, how to contact us, how we are managed and our external relations.

Class 2: How we deliver our functions and services

Information about our work, our strategy and policies for delivering functions and services and information for our service users.

Class 3: How we take decisions and what we have decided

Information about the decisions we take, how we make decisions and how we involve others.

Class 4: What we spend and how we spend it

Information about our strategy for, and management of, financial resources (in sufficient detail to explain how we plan to spend public money and what has actually been spent).

Class 5: How we manage our human, physical and information resources

Information about how we manage the human, physical and information resources of the

authority.

Class 6: How we procure goods and services from external providers

Information about how we procure goods and services, and our contracts with external providers.

Class 7: How we are performing

Information about how we perform as an organisation, and how well we deliver our functions and services.

Class 8: Our Commercial Publications

Information packaged and made available for sale on a commercial basis and sold at market value through a retail outlet e.g., bookshop, museum or research journal.

Draft Guide to Information

9. A draft Guide to Information (**Paper 1.3B**) is provided for the Council's consideration and has been developed with feedback received from the Commissioner's Office. The Commissioner has been notified that the draft Guide to Information will be submitted to the Council for consideration.

10. In accordance with advice received from the Commissioner's Office, the draft Guide to Information only covers documents or information which currently exists, or will soon be available. As the Council is a new body, it necessarily does not have much, or any, information under particular classes of information. For example, with regard to *Class 3: How we take decisions and what we have decided*, the Council's Standing Orders will require to be listed, as well as agendas and minutes of meetings. That information will soon be published and so markers have been provided rather than links to the actual information. In terms of *Class 7: How we are performing*, it is noted that as the Council is a new body, there is currently no information held in respect of this class and we do not expect to hold any information for some time.

11. **Members are invited to note that, should the Model Publication Scheme be adopted, and the draft Guide to Information available through the Model Publication Scheme be approved, the Council's publications, consultations, agendas and minutes of meetings will be published once available. It is however**

not considered necessary to publish all meeting papers, most of which are likely to focus on policy development.

Bespoke publication scheme

12. There is the option for members to adopt a bespoke publication scheme, if it is considered that the MPS does not suit the Council's purposes. The Commissioner is required to approve (rather than be notified of) bespoke publication schemes. The Commissioner strongly encourages authorities to adopt the MPS, as it embodies best practice. Whilst developing the draft Guide to Information with feedback received from the Commissioner's Office, it was not considered that there are any particular reasons for adopting a bespoke scheme.

Pro- active publication of information

13. The Secretariat FOI Officer has attended network meetings with other similar public authorities and representatives from the Office of the Commissioner in order to be informed of best practice whilst developing internal procedures for handling FOI requests.
14. Experience suggests that authorities should be, and be seen to be, as pro-active as possible in publishing its information, and as open and transparent as possible. Where authorities have not been proactive in publishing information which should be made available in terms of FOISA, the result will normally be significant numbers of requests under FOISA, along with appeals to the Commissioner with the possibility of resulting decisions made against the authority.
15. The Council's website currently contains as much information as is possible to publish at this stage, and the draft Guide to Information at **Paper 1.3B** provides that the Council will continue to publish all of the information as is expected under FOISA.
16. The Secretariat has put in place procedures to enable FOI requests to be identified, recorded and responded to timely, and for the Council's quarterly statistics to be reported to the Commissioner. Once a publication scheme is adopted, procedures will also require to be put in place to ensure that the Council's publication scheme is regularly maintained and reviewed.

- 17. Members are invited to agree to the adoption of the Commissioners Model**

Publication Scheme 2015 and approve the draft Guide to Information available through the Model Publication Scheme (Publication Scheme) at Paper 1.3B.

- 18. Members are invited to consider whether they would be content for the Secretariat to update the Council's Guide to Information as information becomes available, with further iterations only being presented to the Council where substantial changes are proposed.**

Records management

19. The Council became subject to Part 1 of the [Public Records \(Scotland\) Act 2011](#) on 17 September 2015, as a result of [The Public Records \(Scotland\) Act 2011 \(Authorities\) Amendment Order 2015](#).
20. The PRSA regime provides for the management of public records and requires the Council to prepare a Records Management Plan (RMP), submit the RMP to the Keeper of the Records of Scotland for agreement and ensure that its public records are managed in accordance with the plan.
21. Officials at the National Records of Scotland (NRS), on behalf of the Keeper, have advised that the Council will not be expected to submit a RMP for several months as bodies newly subject to the Act are allowed a period of time to develop and implement a RMP.
22. As the Scottish Courts and Tribunals Service (SCTS) provides the relevant systems for storing and filing of records, it is considered sensible that the Council be incorporated into the SCTS RMP as the majority of it will be applicable to the Council. The Secretariat met representatives of NRS and SCTS to discuss the matter, and there do not appear to be any particular reasons for adopting an individual scheme. It is understood that the Secretariat of the Scottish Civil Justice Council and the Criminal Courts Rules Council Secretariat are also in discussion with the keeper as to being added to the scope of SCTS RMP.
23. The SCTS RMP is currently being agreed with the Keeper and NRS officials have advised that the three Councils may be added at the first review of the SCTS RMP. However, a specific timeframe is still to be agreed with the Keeper. The Secretariat has

been liaising with SCTS to ensure that its plan is drafted in a way which will enable the Council to be easily added to it.

24. Members will be provided with the SCTS RMP once it has been agreed with the Keeper. In the meantime, members are advised that internal procedures are in place to ensure that the Council's records, which will be kept in electronic rather than paper format, are managed within the following principles of good records management, as [provided](#) by the NRS:

- **Authentic**

It must be possible to prove that records are what they purport to be and who created them.

- **Accurate**

Records must effectively reflect the transactions which they document.

- **Accessible**

Records must be readily available when needed.

- **Complete**

Records must be sufficient in content, context and structure to reconstruct the relevant activities and transactions that they document.

- **Comprehensive**

Records must document the complete range of the Council's business.

- **Compliant**

Records must comply with any record keeping requirements resulting from legislation or internal audit rules.

- **Effective**

Records must be maintained for specific purposes and the information contained in them must meet those purposes.

- **Secure**

Records must be securely maintained to prevent unauthorised access, alteration, damage, or removal.

25. Members are invited to agree that the Council be incorporated into the SCTS RMP at its first review and note that, in the meantime, Council records will be maintained in line with the principles of good records management as set out by NRS.

Recommendation

26. The Council is invited to:

- **agree to the adoption of the Commissioner’s Model Publication Scheme 2015 (Paper 1.3A);**
- **approve the draft Guide to Information available through the Publication Scheme (Publication Scheme) at Paper 1.3B and to its publication;**
- **agree that the Council be incorporated in the SCTS RMP at its first review;**
- **note that until a RMP is agreed with the Keeper, the Secretariat will continue to manage the Council’s records in line with the principles of good records management prescribed by NRS.**

**Scottish Sentencing Council Secretariat
November 2015**