



FRIDAY 18 May 2018, 10:00-11:00, St Andrews House

INTERVIEW: Colin McAllister, Special Advisor

1. **Can you describe how you're involved in FOI in the Scottish Government?**

Draft FOI responses come to me. Generally those with any level of complexity or significance.

I assess whether they've been prepared fully and properly, with correct supporting material and are in a fit state to either go to Ministers or go out. (If not I'll growl at someone!). It's the same role we play in relation to any other submission to Ministers.

Also whether or not it needs to go to Ministers, but I apply a high threshold of whether information should go to Ministers, and the default is that it should be seen.

What do you look at?

Has it been completed properly? Is it in the right format? Is it packaged up as it should be? Now the SPAD PS tends to look at this before it hits me. I also think about whether there are any additional materials that might be required. Are more briefing notes needed? Has it been done properly?

I also check if supporting work like media lines has been done or not.

2. **Roughly, how often do you clear FOI cases? How many do you get each month?**

A week with less than five is unusual. A week with more than 10 is not uncommon. I'll start to growl if I get more than 20. 20 would be unusual.

When I first started as a SPAD I received half a dozen a month – I now see that a week.

Sending a response to SPADs is a judgement call on the part of the person with the FOI. Reviewing an FOI is often just a five minute job, but it takes up a lot of five minutes. We see a lot of traffic from Education Scotland. Generally the quality can be patchy – issues with formatting, use of templates etc. We also see statements of fact which are clearly not true.

Why is the quality patchy?

It's an "end of the telescope" thing. For SPADs FOIs are routine and regular. For case handlers they're not. Often it's a rare, nerve-wracking, or unusual thing to do. They're often not doing it well. I see the same mistakes regularly.

Should there be an increased role at departmental level?

This is a wider point. Every FMQ briefing note is meant to be cleared at Deputy Director level. I don't think it is getting that level of clearance across the board. Often people are working in isolation with no wider experience.

Are you getting too much?

Difficult question to answer. As long as the quality is patchy the SPAD role is required. If you can offer me a solution that increases the quality I will not be unhappy to see fewer.

What's your current portfolio?

Mainly education, but I also have a wide-ranging policy brief.

3. **How do you get them? (who sends them to you?) What information do you typically see about a case?**

They arrive on my desk in hard copy format, tabbed up. I want to see the actual request and not a summary of the request. There are too many mistakes made in summaries.

4. **Do you ever have to go back to query how a case has been handled so far e.g., the information identified in scope of the request, the quality of arguments?**

I don't hesitate to pick up the phone. A common occurrence is where a response says "info not held" and I've been in meetings where we've had the papers.

Is that quite common?

It's one of the more common errors. Commonly errors are around scope, exempting entire documents, or the public interest test. It's a judgement. Sometimes conversations lead to me saying "OK, fine"; others "I don't agree".

5. **Can you explain to me the roles and interaction between ministers, special advisers and the communication teams in such cases? Do all cases down for clearance end up with Ministers or is there a filter process? If so, how does that work?**

Sometimes a handling plan is required. Usually coming up with lines is straightforward – a quick 2 paragraph quote from Comms is developed while the Minister reviews. Often I don't see the line, but the Minister may well want to see it.

When a case goes to the Minister I normally get an email from the Ministerial Private Office clearing the request. There's often not much active engagement with the Minister at that stage, unless asked (which is very rare).

6. **Is the FOI team involved in advising in all cases which are referred for clearance?**

The FOI Team is in the chain. On occasion my feedback may lead to a chain of interaction between the case worker and the FOI Unit.

7. **What value do you see from special adviser advice in FOI cases?**

I'll give you an example. There was a recent press story about Education Scotland not holding a copy of all school inspection report. It led to questions in Parliament. Then, a couple of months ago a draft Education Scotland FOI response said "we hold a copy of every inspection report". No you don't! The case handler was not aware of this, but I was.

Also, in relation to policy development, officials often don't know that a policy is under development. I do. I have oversight. SPADs hold a lot of institutional memory whereas officials may move more frequently.

I also know my Ministers. I have a good sense of how they respond to issues. It's the value I add. I'm a bridge between Ministers and Officials.

We also provide quality assurance. The Grossart case is a good example of what the world would look like without SPADs. The initial submission went to Ministers without going through SPADs and it led to a chaotic process. Now ██████████ would have knocked it back. SPADs provide a quality check.

Could someone other than SPADs do the quality check?

Yes, but I don't know who.

8. **Typically, do you expect to comment on matters such as what information falls within the scope of a request, what information should be redacted, what exemptions should apply etc?**

Sometimes it is their understanding of FOI, for example whole documents being redacted, or classes of documents, or failure to consider qualified exemptions where I would comment. SPADs also have a greater breadth of awareness – of the bigger picture – that may impact on the use of exemptions.

9. **How do you expect case managers to view your response? Should it be treated as advice, discussion, or an instruction?**

Most definitely not instruction. We're precluded by the SPAD code from instruction. It's advice. Involvement in a process. Is it always welcome? Not always. You might get some debate. Most times it's an "OK" response. Where there is discussion in most cases it's quicker to pick up the phone.

They can ignore advice – we are not permitted to 'suppress or supplant' civil service advice. Officials can put anything they like to Ministers.

I generally ask myself three questions – should it go to Ministers? Does it need a Comms line? Am I content?

Does it happen often that people go against advice?

It can happen. Often though, people don't deal with FOI often so they'll take the advice. Involvement of the FOI Unit can lead to changes. SPADs aren't the favourite people. We're not always popular. Do people acquiesce though? Absolutely not – we get resistance.

I am a robust individual, but I've never felt that people in this organisation don't fight their corner. Absolutely not.

10. **What about if you disagree with FOI unit advice – what happens then?**

These are the ones that cause the most concern. Take the Teach First case. The FOI Unit didn't agree with me and the information was disclosed. The issue I was concerned about was the public interest in not revealing commercially sensitive information that could significantly impact on the procurement we were undertaking.

As it turned out, I believe that there was a causal link between the story that appeared in the Herald with details of a paper from the Deans of the Universities and Teach First not bidding for contracts.

I feel this validates my view that the public interest was served by redacting the info I suggested as there is a clear public interest in having multiple bidders to a contractual process.

Unbelievably, the paper then wrote a story about how few bidders there were.

11. **Have you ever been asked to look at a case a second time because it was the subject of a review? If so, did you perceive any conflict of interest, given you had cleared the initial response?**

I'm sure, yes. Back in the day. The process has now been changed so that I would not be involved in both the original request and the review.

12. **Do you record reasons for the decisions you take or advice you give on FOI cases?**

I'm struck by the gaps in case files you presented. For me it depends on the circumstances of the case. I will usually just go back to a case handler and say "Have you looked at this?" e.g. in relation to "free and frank". Sometimes I'll say to unredact material, or to redact others. You probably won't find a long note on the record but we do have a conversation. We have discursive, interactive conversations, rather than fixed positions.

DF – When looking at s.29/30 the position normally appears to be one of the broader, rather than narrower application of the exemption?

The breadth of awareness we have perhaps drives our thinking. Are you looking at a representative sample?

DF – looking at the [REDACTED] case, the scope of the request appeared to be an issue in your clearance.

It was whether or not SPADs "cleared" requests which I disagreed with. We don't clear requests – clearance is for ministers, not for SPADs – we don't make a decision on the case.

DF – How many times has SPAD authority been the basis for things being issued?

I have never "cleared" an FOI request which has gone on my authority. That may seem like a nuance to you, but it's a critical nuance. To not take that approach you're responding on the basis of a false premise.

13. **Have you had any FOI training? (what, when?)**

I was in Parliament when the Bill went through. I was also trained in FOI while a Head of Comms in the Health Service.

Do you ever receive refresher training?

Every day of the week – on the job

Do you keep up with Decision Notices?

Your website is often the starting point for a response. We also receive notification of Decision Notices from the FOI Unit.

14. **How confident are you about your FOI knowledge?**

I'm sufficiently confident in my knowledge to perform the function I've been asked to do.

15. **How confident are you about your knowledge of the Environmental Information (Scotland) Regulations?**

I would not be confident but I can't recall having dealt with any.

I would probably ask SPAD Davie Hutchison who is more expert in that area.

16. **Do you refer to any guidance to help you with clearing a case? If so, what is it?**

I refer to the SG Sharepoint FOI site. It also allows clickthrough to your website and is very useful.

17. **Can you call on anyone for support with an FOI case? (case handler, FOI Unit, colleague?). Do you ask for help? How often?**

Yes – on occasion. Most commonly within the SPAD team.

18. **Would you like more guidance and support for FOI?**

Personally I feel comfortable. I understand that training may be appropriate for new SPADs. There is an inconsistency between FOI and DP training, with the latter mandatory training happening every year.

19. **Can you describe how you manage your FOI caseload? Do you allocate specific time for it in your diary? [the procedures say it's done on Mondays and Fridays].**

My day can be challenging. I often don't know what I'll be dealing with on a day-to-day basis. The new system has made a massive difference though. Private Secretaries manage me now. The volume of FOIs "is just incredible". Mondays and Fridays are the key days for responding. Tuesday to Thursday are Parliamentary days. Doing anything then is a real battle.

Where are you based?

Edinburgh

20. **From your experience, what's the purpose of the FOI clearance process? Why is it needed? Ministers and special advisers?**

Responding to FOI is the role of Ministers. It's Ministers that are covered by the Act. They can delegate, and they do. Ministers should be across their portfolio.

Judgement is fundamental to the Act. In the final analysis, when there are tough calls it should be the judgement of Ministers. They are the ones who will stand or fall by the decision. Ministers are accountable to Parliament, so they should be looking at FOIs. Ministerial considerations may add time, but they add value. I think Ministers should see the bulk of the FOIs that come to me.

21. **Do you feel the current process is working? Can you suggest any changes to improve the process?**

It's working far better than it did – even a couple of years ago. The volume was causing the system to creak. Some FOI use was malicious. We have seen a deluge of pointless FOI requests to try and break the system – e.g. those received by the budget team.

If things arrived at SPADs' door the way they should arrive you could begin to make a case that you don't need SPADs, but I'm sceptical about whether you can reach that point though. The idea that Deputy Directors are the solution is for the birds.