

THURSDAY 17 May, 2018, 10:30 – 11:15, Scottish Parliament

INTERVIEW: Shona Robison, Cabinet Secretary for Health and Sport

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

The process is laid out clearly. Officials pull out cases they think I should see. Generally, these comprise sensitive, contentious or high-profile cases. Officials may seek advice from SPADs or my private office on whether case should be seen by me. Not all FOIs for my portfolio are cleared by me.

The aim is to clear as quickly as possible. SG as a whole is trying to improve, and statistics are showing improvement.

My role is to clear the cases. The role of others (SPADs, Officials) is to provide advice. I will take on board any advice that is given in my consideration of the case.

Most cases are clear. For some (but very few) there is debate, given a degree of subjectivity around consideration of the public interest test. In the main though, consideration is very straightforward. My role is "deciding the case".

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

Not many recently. Case volumes ebb and flow. Some weeks there are none. Estimate single figures on a monthly basis.

[FOI Unit Official: Newsworthy issues may generate request increases (mesh implants given as an example). PS to follow up with details of average number of cases per month].

Some cases can be lengthy and complex, but this is the exception. Where this is the case, I may go through the proposed withheld information in detail.

40% go up to SPADs and Ministers – wondering why so few reach the Minister?

The health portfolio is split across three Ministers. Maureen Watt and Aileen Campbell deal with their own FOIs. Ministers tend not to speak to each other about FOIs (but can, where it is required).

3. What's the quality of presentation of cases to you? Do you have enough / too much / too little information?

A summary is often received in the first instance. Often depends on the volume of information requested / complexity of the case – if lots of information, normally just a summary and I can ask for more. Clear advice is usually provided from officials / SPADs which I take into account.

4. **Can you explain to me the role of special advisers in such cases?**

Official advice is provided with the body of the ministerial submission. These submissions usually contain SPAD comments too. Usually technical issues around interpretation / scope etc. are resolved before it gets to me. I may ask for the original document in some cases. More often than not though, advice is accepted and the case is cleared.

SPADs may provide a view on interpretation of the guidance, application of the PI test, etc. The SPAD role is to give their view. The Minister makes the final decision.

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

I'm not certain how often they are consulted. Certainly not in every case. Most cases are quite clear. I don't recall directly seeking FOI team advice – issues are normally resolved without the need to do this.

6. **Do you regularly seek their advice?**

No – any issues are normally resolved by the time they get to me.

7. **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?**

Generally I provide a high level consideration. Issues like consideration of the PI test are not argued over in a huge amount of detail by the time it reaches Ministerial level. Consideration of the tests in the Ministerial Submission is normally presented at a fairly high level.

8. **Can you recall being aware of the difference of opinion between FOI unit and SPAD when you made the original decision in case FO [REDACTED] ?**

Yes. These things can be quite subjective.

This case was an unusual situation. I can't recall any other cases where there was a disagreement when it reached me.

My thinking was that, from the point of view of a group of Chief Executives, the free and frank exchange of views is inhibited by policy development taking place in the public domain. Having a running public commentary on issues under consideration can make things difficult for government and the CEOs involved. It's not easy for government to make policy in that environment.

I was wary of setting a precedent through disclosure. It's not good for policy development to be subject to a running commentary. Ministers need space for discussion. Public commentary can often just pick up on part of the issue, and lead to an undue focus on that issue.

Ultimately, however, the information was released. Govt may have to accept that policy development has a running commentary. My view is that this is not a good idea per se, but I may have to accept it.

Was the decision made on paper, or through verbal briefings?

Verbal discussion with Paul Gray and SPAD. Did not involve FOI Unit

9. **Do you remember your approval/clearance being sought in relation to the review, and, if so, how did you deal with looking 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? (If yes, how did you deal with this? If not, why not?)**

The case came back to me. I determined that there was no point in continuing with the line taken. I agreed the review in the light of subsequent clear advice.

It's unusual to be asked to overthrow an earlier decision I had made. This is the exception rather than the rule though.

There has to be a space to make policy.

I did not perceive a conflict of interest. I recognised that I had to accept that this was the way forward in this case, but it was an unusual case, with unusual circumstances.

10. **Would you also expect officials to raise any concern they may have if they thought you had made an incorrect decision?**

Cases are normally very clear before they reach me.

Can we discuss the Sectarianism in football case?

Aileen Campbell dealt with sectarianism case, so I'm not aware of the detail of this one.

11. **Can you give me a rough estimate of how much time it can take to clear a complex case?**

It can take a few days to clear a complex case. It depends on complexity. We're talking days, not weeks though.

12. **Very little recorded in the cases referred to – as in the note in the last case. Do you record reasons for the decisions you take or advice you give on FOI cases?**

No – answer conveyed to officials is mostly a yes or no, setting out whether I'm content or otherwise. Decision-making is usually straightforward.

The only caveat is when the information is sensitive. Then there may be some record.

13. **Do you consider that such a process would be helpful in keeping a better record of the rationale of decisions which may be subject to appeal?**

No objection to this. In general, however, we try to minimise bureaucracy and paperwork.

Notes would be perfunctory in most cases. Ministerial Submissions could have more detailed information though. No objection to that.

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

I received training in 2007 when I first became a Minister. I review guidance, and my experience has developed on the job.

I've learned from the guidance, so now spend less time reviewing this than in the early days.

15. **How confident are you about FOI knowledge including exemptions?**

I feel I have a pretty good working knowledge.

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

Not a huge amount of EIR knowledge. Doesn't impact on Health so much.

17. **What procedures and support are in place to provide you with guidance and support on applicable FOI law and relevant considerations? Do you use/seek that support? How often?**

I would ask my Private Office to seek anything required through the FOI Unit

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

I feel I have enough.

19. **Are the requests for clearance coming to you the right ones? Are there any that don't need to come to you?**

I think I'm dealing with the right ones. I'm aware that other offices may deal with it differently. Officials determine which ones I see, and I'm happy with this. I don't need to see more – I've got enough going on!

20. **The rule is that all journalist FOIs should be referred for clearance. Do you look at them all, or just some? (How do you decide which ones?)**

Yes. The volume of journalist requests has increased.

21. **Other (non-media) cases are referred for clearance because they are sensitive. Generally, do you agree with officials' assessment that these cases need clearance?**

Officials "test the water" to see if a case is sensitive. Generally I feel the assessment of those that come to me is correct.

22. **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].**

I receive my box every day including one on Friday for the weekend. Content depends on volume of work.

I receive a red folder with most important work FOIs are included in this "top copy". They're given a high level of priority. I don't recognise the "Monday and Friday" rule.

Cases would be drawn to my attention if there was a deadline approaching by my PS.

23. **From your experience, what's the purpose of the FOI clearance process? Why is it needed?**

It's needed because the issues underpinning requests are important in terms of Ministerial Portfolios. Ministers need to be aware of the potential implications of disclosure. They are inevitably asked about matters that arise.

Does it require clearance, or just knowledge?

Ministers do need to be involved. Ministers are accountable, and will be asked about it. It would feel odd if Ministers were not involved given that they are ultimately the decision maker. There are risks attached, but it is better that we are involved.

How do you approach situations where there are concerns that the disclosure of information may be damaging for you?

If there's no exemption, there's no exemption. However, we can take advice, discuss with the communication team, we can prepare for disclosure and we can add context. Disclosure may sometimes be uncomfortable, but you can think through the handling. Decisions must be based around the legislation.

Would a more accurate record help?

I wouldn't see any harm with this.

24. **In the second case I referred you to, the case about sectarianism, the review was over a month and a half late. Already late when it was sent to special advisers, but it then remained in discussion for another month and a half before a decision was reached. Is this an example of the risks of staffing a case to too high a level – too many layers of clearance? Duty is to respond promptly.**

Disagreements about interpretation can make cases take longer, but this is the exception, rather than the rule. Volume of information can also be a factor. Decision making process is normally quite short though.

25. **I mentioned earlier that all authorities have FOI sign off processes that reflect their own organisational structure and culture. My perception is that the Scottish Government's clearance process is particularly resource-heavy and that the resources are expensive because the process is at such a senior level.**

There has been huge improvement recently. Joe FitzPatrick keeps us all on our toes. Reminders about deadlines are sent regularly. It already feels like a quick system.

The Parliamentary Motion called for action to be taken – have there been changes introduced to reflect that?

There has been a sharp focus on performance improvement. Government is taking the Motion seriously, alongside the concerns raised by the SIC. We haven't rested on our laurels. We are collectively taking these issues seriously.