

Friday 18 May 2018, 09:00 – 10:00 St Andrews House

INTERVIEW: ██████████ SPADs' Office ██████████

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

I am the ██████████ the SPADs' Office. I look after the management of FOI cases coming through the office, making sure that they are looked at in good time and are presented good order. I feed SPADs' comments back to officials in a timely way.

More recently I have been dealing directly with FOIs as a case handler as increased press interest in the handling of FOIs by SPADs has led to an increase in requests concerning our office.

The role of my team is to look at the case and determine whether we have everything that the SPAD and then, if appropriate, the Minister needs to look at. Sometimes information is missing – my role is to check the content and “sense check” the response. I also check that the response letter – that the correct template has been used making reference to FOISA and follows the FOI Guidance. Often the letter is so poor that we have to send it back. We'll suggest they get in touch with their Deputy Director or FOI Champion in these cases.

Often case handlers are looking at FOI for the first time. They can be thrown in at the deep end.

I have two ██████████ (and an ██████████ vacancy). When I first started in 2013 I had little involvement in FOI. A Deputy PS had that role. Over the last 18-24 months the volume and nature of FOIs has got more complex, and I have played a greater role. Sometimes FOI is all I do, although there are peaks and troughs in volume.

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

I can't really answer that. It's more than it used to be. I used to just spend Friday working on FOI, now it's right through the week.

Mondays and Fridays are the best days to work on FOI because SPADs are in St Andrew's House and there is more quiet time to consider them, but FOIs are now looked at throughout the week. Tuesdays to Thursdays are more difficult because SPADs are in Parliament. SPADs turn things round pretty quickly – it's improved over the last year.

3. What kinds of cases are referred to SPADs and why?

A variety – it depends on the subject matter. Journalist / researcher cases; those from elected members; those likely to generate media attention. SPADs decide if Ministerial clearance is necessary. Also, if an issue or event is already in the public domain and attracting interest, Deputy Directors might refer the case to us for information, if not for comment. We often get phone calls asking if SPADs need to see cases and we would make a judgement call.

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

We have a dedicated FOI inbox. Previously cases were sent either directly to SPADs or to our general admin inbox. This led to cases being overlooked – SPADs receive 100s of emails a day as does our general admin inbox. Now cases come into the top box, and an individual file is created for each case by whoever in the PO team is monitoring the inbox. Sometimes people will send us the response letter and just a link to the ERDM file – it is often difficult to work out from that the information that is to be released so we may ask for officials to send either electronic documents or, if the case is large, hard copies flagged up and linked to the schedule of documents.

5. **What is the role of the SPADs in the process?**

The SPAD role is to advise on whether exemptions are being applied correctly, and whether the correct information is being released. They advise, they don't instruct. SPADs often encourage officials to reconsider aspects of a response – this can be to release more. They see so many FOIs they help bring a consistency of approach.

For example we always get a deluge of requests for related briefings when Ministerial engagements are proactively published. Some officials will say don't release anything, others want to release everything. SPADs bring a consistency of approach across everything and ensure exemptions are correctly applied.

SPADs also have a good understanding of what Ministers are looking for. They can also suggest extra context to be disclosed alongside the response. They advise which cases Ministers should look at, making a judgement call.

When filtering requests, if changes are suggested will the case automatically go to Ministers?

It varies. Sometimes cases come up to SPADs and you wonder why they've been sent. Officials can be a bit nervous and I sometimes think they err on the side of caution - knowing SPADs have considered gives reassurance to officials. Special Advisers will often suggest there is no need for ministerial clearance – which can speed up the whole process.

6. **How do you liaise with them?**

I print off the papers and tab it up and then pass the file to SPADs – they have a day or two to look at it. They may come back with comments or views, which we will discuss, then I feed comments back to officials. There can be several exchanges, but for many cases there are no comments made. If we are not making progress I will convene a meeting which will speed things along. Sometimes the FOI Unit will be asked to attend these meetings.

Do you have engagement with Ministers?

Not a lot, but some. With the FM's office, most commonly. I also have links with Ministers' Private Offices in my other capacity as part of the Ministerial private office divisional management team – encouraging good FOI practice across Ministerial Private Offices.

7. **Can you explain to me the roles and interaction with the communication teams in such cases?**

Comms Team are usually involved at the end of the process. If a response is being issued to a journalist and if lines are being prepared we will help discuss the lines.

Are responses ever delayed for lines to be worked up?

Not that I am aware of. We work up lines with Comms as quickly as possible – Special Advisers do this all the time on other matters. There are no set timescales.

8. **Is FOI Unit advice regularly sought?**

It's unusual for us to refer to the FOI Unit these days. My team has become very knowledgeable about FOI responses. Until very recently we met regularly with the FOI Unit to go through the tracker and identify any cases that may need some expert advice regarding wording, formatting etc

9. **How do you expect case managers to view SPADs' response? Should it be treated as advice, discussion, or an instruction? – [REDACTED] seems relatively directive in nature – differences in rank and experience?**

Advice. It's framed as suggesting a way forward.

Do you think caseworkers perceive it as advice?

You'd have to ask officials. I would hope it's clear that it's a suggestion. SPADs come with a reputation – our role is to try to manage that interface – they don't have horns. Sometimes it may be interpreted as an instruction, but it shouldn't be.

Can officials ignore SPAD advice?

It's their judgement. Special Advisers may suggest looking again some of the information to be released. For example in case [REDACTED], for that official the policy discussions in her area may well have finished, but SPADs see things across the piece and were aware that some of the information proposed to be released would impact on policy discussions taking place elsewhere in the health portfolio. In my experience exemption S.29(1) most frequently leads to differences of opinion where SPADs see the bigger picture.

Is the reality not that in such a case officials wouldn't be free as the case would be escalated to Ministers?

It would be escalated to senior officials first before going to Ministers. It's up to officials whether they take advice. SPADs feed comments back to officials. Officials then make the case to Ministers.

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

There can be differences of opinion. The application of exemptions is a judgement, is it not? The issue we face most is in relation to policy formulation and the application of the public interest test. I would usually convene a meeting to talk through the different views and generally that will resolve the matter.

11. **Do SPADs often advise that more information should be provided than caseworker suggested?**

There's a big mix, but it's mostly "no comment" or small tweaks.

From the cases we've looked at we've seen one which suggested more information be disclosed, while most proposed limitations

It does vary - I would give you the example of the Historic Child Abuse Enquiry – we had a large number of FOI requests – in this instance the SPAD pushed for releasing more information and indeed for proactive publication of the material.

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

That's a difficult question. It varies so much. We try and deal with them all as quickly as possible but it does depend on the quality of the response when it reaches us.

13. **We noted some delays in a number of cases when with SPADs – what role do you play in keeping cases on time? Refer to cases [REDACTED], [REDACTED] and [REDACTED]. What were the reasons for delay in these cases?**

These are old cases. They were all prior to the establishment of our new systems.

In the China case, it was a large and complex case which we received in hard copy from the official. The hard copy file was sent to the FM, but at some point after the FM had considered the case it got 'put in a drawer' by someone in the Private Office. There was some confusion over who had it and who was dealing with it. We spotted it on the tracker and realised it was still live. This wouldn't happen under the new system.

For the Monetary Authority request I'm not clear what happened. Special Advisers saw it for the first time at review stage before it went to the FM and DFM. We turned it around in 48 hours. Consideration took place in the election period which may have had an impact. I'm not sure why the file note says in June that it was "Still With SPADs" – we dealt with it quickly. Sometimes file notes aren't updated.

14. **Do you record reasons for the decisions SPADs take or advice they give on FOI cases? (Case [REDACTED] – the need for rationale to be clear – FOI unit comments).**

The record is the email we send back to the case handler. It's their responsibility to keep it on file – it's not our role. We are not the official record of exchanges – we delete our records in line with MPO inbox management good practice.

Files are often empty or sparse, with little evidence of the SPAD role, and rules suggest that everything bar the final advice should be deleted immediately – why?

Those rules are about our inbox management. Why would we keep it? Case handler is responsible for filing the exchanges in the case file. There are clear rules in MPO – our records are kept for three months.

You mentioned that meetings are sometimes convened for complex cases. Are records kept of these meetings?

For meetings, we would put an email into the system summarising the meeting and any decisions taken. We keep the final emails for a year – it is useful to be able to go back and look at previous cases where similar requests are received. Officials will have telephone conversations directly with SPADs as well – we don't always know about these but generally the Special Adviser will feed back any decisions to us which we will record.

Over the last 18 months we've got better at making sure we put something on the record by flagging where a case has got to with Special Advisers. It makes it easier for individual members of the Private Office team to provide cover and pick up cases.

In the NHS case there were repeated requests chasing SPADs, with very little evidence of progress

That wouldn't happen now. I think in that case there may have been a misunderstanding over who had the case. SPADs thought comments had been provided.

Are SPAD cases the right ones? Should there be more filters in place before cases reach SPADs?

If the quality of the FOI responses was better it might be possible to lessen the review requirement. At the moment I don't feel the quality is sufficient. We'd need to see an improvement before we changed this. Special Advisers currently provide a quality assurance role.

Ministers and SPADs have been in post for some time. They bring a knowledge and understanding of FOI that others perhaps don't have.

Ministers also have a role. They need to be aware of issues in their portfolio area that they may be asked to comment on. We need to be careful that this isn't taken away.

The system shows that 40% of cases are subject to clearance – does this surprise you?

Not really – journalist requests have increased by a similar percentage.

Can the system keep coping?

In our office we are actually getting better. We are coping – we've made real improvements over the last 18 months.

15. Have you had any FOI training?

Yes. I've completed the online module. We also go out and train others. SPADs also receive FOI training. I organise refreshers from the FOI Unit, where requested.

Does this still happen?

Yes – the last SPAD joined last year and undertook the SG training and met with the Head of the FOI Unit.

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

In the SPAD office we've done everything we can. For the wider organisation, more could be done to support case handlers and improve wider knowledge. Some departments are much better than others. For case handlers, it's one case a year for many – this makes it difficult to maintain knowledge. Some people deal with a lot of FOI cases – e.g. departments dealing with the budget, Trump or historical child abuse – they generally tend to be the better ones. There used to be issues with Transport Scotland but they worked with SPADs' private office and the FOI Unit, and are now much improved.

Do you do anything to keep up with precedent / latest developments?

We see decisions coming through. The FOI Unit will advise us of precedent.