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**To:** Audit, Scrutiny and Petitions Board

**On:** 30 November 2015

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**Report by:** Director of Finance & Resources

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**Heading:** Scottish Information Commissioner – Annual Report 2014/15

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1. **Summary**

- 1.1 The purpose of this Report is to advise the Board on the Scottish Information Commissioner's Annual Report, "2014/15 Annual Report – Information for All".

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2. **Recommendations**

- 2.1 It is recommended that the Board notes the terms of the report.

3. **Background**

- 3.1 The Freedom of Information (Scotland) Act 2002 ("FOISA") came into force on 1 January 2005 and created a general right to obtain information from any designated Scottish public authority subject to limited exemptions. Most of the exemptions are only available if the request fails the "public interest" test. In other words, information must still be released if it is of greater benefit to the public to release the information than withhold it.
- 3.2 The Annual Report for 2014/15 explores the performance of the Office of the Scottish Information Commissioner ("OSIC") across the year and how FOISA can support "openness and transparency" within Scotland.
- 3.3 Key highlights include:
- 474 appeals were received by OSIC in 2014/15

- In 64% of decisions the Commissioner found wholly or partly in favour of the requester.
- 14% of appeals concerned requests for environmental information, the highest proportion to date
- 94% of the public think that FOI is important in holding public bodies to account
- Appeals received by OSIC about failures to respond fell to 16% after publication of the Commissioner's Special Report on timescales.
- Scottish public bodies report receiving over 66,000 information requests in 2014/15

3.4 The statistics detailing the outcome of requests for information that have been referred to the Commissioner in 2014/15 are set out in tables forming part of the Annual Report. There were a total of 474 Appeals to the Commissioner in 2014/15, and the largest proportion (44%) of appeals related to requests made to local government.

3.5 In the 2014/15 period covered by the Report, Renfrewshire Council had three valid applications, which are summarised below, for ease of reference:-

- 1 July 2014 (Decision No: 144/2014) - the Commissioner overturned the Council's decision. The Applicant had requested a report on noise levels taken within his home by the Noise Enforcement Team. The Council had provided a summary of all the information held by the Council, but the Applicant wanted a copy of the Report. The Noise Enforcement Team had not actually produced a "Report" so the Council informed the Applicant that all information held had been provided. The Commissioner felt that a copy of the notes on the Council system should have been provided to the Applicant rather than a summary of the information, but as a copy was provided to the Applicant during the investigation, the Commissioner did not require the Council to take any further action.
- 6 August 2014 (Decision No: 173/2014) - the Commissioner upheld the Council's decision not to disclose information held by Trading Standards on a specified company. The Council withheld the information under the exemption in section 26(a) of FOISA on the basis that there was a prohibition on disclosure created by the Enterprise Act 2002. Following an investigation, the Commissioner

found that the Council was entitled to withhold the information on the basis that it was exempt from disclosure.

- 30 September 2014 (Decision No: 210/2014) - the Commissioner partially upheld the Council's decision. The Commissioner concluded that the Council was correct to withhold financial information contained within a Report on Waste and Recycling Services, but instructed the Council to disclose some ranking information to the Applicant, which was held not to fall under the 'commercial interests' exemption which had been applied.

3.6 Although the Commissioner's Report covers only 2014/15 and statistics for 2015/16 will be reported to Board next year, there has, to date, been only a single valid appeal application for the year 2015/16. This was received in October and a decision in the Council's favour was received on 06 November 2015. A summary is below:-

- 06 November 2015 (Decision No: 169/2015) – the Commissioner fully upheld the Council's decision to refuse to release material under Section 25(1) of the Act in relation to a meeting of its Procurement Sub-Committee. The Commissioner agreed with the Council that the information requested was already publicly available on its website and no further release of information was required.

3.7 Since FOISA came into force in 2005, the Council has had a total of 15 Appeals to the Commissioner. In 7 of these decisions, the Council's decision has been completely upheld and 4 have been partially upheld. Only 3 have been overturned by the Commissioner and one is currently outstanding. Of the 3 which have been overturned, 1 is the July decision outlined above at 3.5, when the Commissioner instructed the Council to provide a copy of notes in addition to information held; one is from 2007 when the Commissioner concluded that information was not on the Council's publication scheme and therefore should be disclosed; and one is from 2005 when the Council failed to respond within the 20 working day time-limit due to a temporary technical problem with receipt of email requests, which was subsequently resolved.

3.8 The Commissioner has, this year, launched a number of self-assessment modules, which supplement the first module, referred to in last year's Audit, Scrutiny & Petitions Board. As reported last year, these are to replace audit style Practice Assessments. The modules focus on issues such as searching for, locating and retrieving

information as well as advice and assistance. In addition to these modules, a major review was started into the content of all the guidance that the Commissioner produces with the aim of making it more focused and as user-friendly as possible.

- 3.9 2015 has also seen the further development of the 'Statistics Portal' which the Commissioner launched in 2014. Public authorities, including Renfrewshire Council, upload data on FOI and EIR (Environmental Information Regulations) requests to this portal. Data uploaded includes, the number of requests and review requests received, which exemptions and exceptions have been applied and whether statutory timescales have been met. This information is collated and published quarterly.
- In total there have been 66,804 FOI requests in Scotland in 2014/15, an increase of 24.0% over last year's (2013/14) totals.
  - Renfrewshire Council received 823 FOI requests in 2013/14 and 1,040 in 2014/15 (an increase of 26.4%).
  - In the first half of the current financial year, Renfrewshire Council has processed 602 requests compared to 475 over the same period last year (increase of 26.7%)
  - There were 25 requirements for Review in 2014/15 compared to 18 the previous financial year.
- 3.10 The low level of requirements for Review compared to the high volume of requests processed by the Council, together with only 3 appeals to OSIC during 2014/15 indicates that the Council is managing its responsibilities well and has successfully risen to the challenges of freedom of information.
- 3.11 It is crucial that the Council maintains consistently good practice in relation to FOI compliance to avoid any reputational damage. The Commissioner's findings also revealed that organisations which took a strategic approach to freedom of information were more likely to recognise the importance of learning and development; underlining that good FOI performance starts at the top.
- 3.12 According to an Ipsos MORI poll, commissioned by OSIC in October 2014 to ask the public about their views on FOI, public awareness of FOI is at its highest level with 84% of respondents having heard of FOISA previously. This is compared to 78% in September 2013. 95% of people agreed that "it is important for the public to be able to access information held by public authorities." With the increasing awareness

of FOISA among the general public it is not surprising that the overall numbers of requests received by public authorities is increasing.

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## Implications of the Report

1. **Financial** – none
2. **HR & Organisational Development** – none
3. **Community Planning** – none
4. **Legal** – none
5. **Property/Assets** – none.
6. **Information Technology** – none.
7. **Equality & Human Rights** – The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because it is for noting only.
8. **Health & Safety** – none.
9. **Procurement** – none.
10. **Risk** – none.
11. **Privacy Impact** – none.

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## List of Background Papers

Scottish Information Commissioner 2014/15 Annual Report: Information for all

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