

FRIENDS OF
THE EARTH
SCOTLAND

THE RIGHT TO REALLY KNOW **CAMPAIGN**

REPORT ON PHASE 1

February 2001

Executive Summary

Increasing emphasis is being placed on the public's right of access to information and, in particular, information that relates to the environment. Recent public consultation on a Freedom of Information Bill in Scotland and a forthcoming European convention (the Aarhus Convention) have brought these issues to attention in Scotland.

In order to inform the current debate and to provide information for the Scottish Executive, Friends of the Earth Scotland developed the *Right to Really Know* campaign. The campaign was designed to test the current system for the provision of environmental information. The Right to Really Know campaign has now been expanded into the Access All Areas campaign. The campaign has been completed and this report presents the findings.

The Right to Really Know campaign resulted in 87 letters being written to the Scottish Environment Protection Agency, Local Authorities and Local Enterprise Companies across Scotland. The letters asked for simple environmental information or for policy statements on Sustainable development. The findings are as follows:

of the 87 letters sent, **seven** never received a reply (8%);

three of the replies received took longer than the 2 months currently allowed by the Environmental Information Regulations (1998) (3%);

a total of **ten** responses (or lack of them) have therefore contravened existing guidelines on access to environmental information (11%);

a further **six** responses failed to meet the future 1 month deadline that is proposed within the Aarhus convention (7%).

The results show that the existing guidelines and legislation on access to environmental information are being broken on a regular basis. The results also indicate that existing systems of information provision require substantial improvement if they are to meet the tougher regulations which are in the pipeline. The Access All Areas campaign is being developed to further test the information provision system in Scotland, involving a wider range of public authorities and asking more demanding questions.

With grateful thanks to Brendan Turvey for carrying out the work of this campaign and producing the first draft of this report.



FRIENDS OF
THE EARTH
SCOTLAND

Friends of the Earth Scotland,
72 Newhaven Rd, Edinburgh, EH6 5QG
Tel: 0131 554 9977, Fax: 0131 554 8656
E-mail: info@foe-scotland.org.uk
Website: www.foe-scotland.org.uk
Contents printed on 100% post consumer recycled paper.

February 2001

Introduction

Increasing emphasis is being placed on the public's right of access to information and, in particular, information that relates to the environment. In recognition of this fact, the report on the 1992 Earth Summit stated that '*Countries and international organisations should review and strengthen information systems and services in sectors related to sustainable development, at the local, provincial, national and international levels.*'¹ In addition, a more recent UNECE convention ², due to be ratified by the UK later this year, will put further pressure on the Government to improve the availability of environmental information.

Within this context the Scottish Executive is currently developing a Freedom of Information Bill for Scotland and has recently consulted on its proposals in '*An Open Scotland*' published in November 1999. Friends of the Earth Scotland welcomes this consultation and views these proposals as an opportunity to improve the public's right of access to environmental information in Scotland. Friends of the Earth Scotland will be campaigning to get the best possible Bill through parliament.

In order to inform the Executive and to test the current information system, Friends of the Earth Scotland developed the *Right to Really Know* Campaign which was designed to investigate the availability of environmental information under the current system and guidelines. The main aim of the research was to identify problems within the current system and to use this information to inform the development of the new system proposed by the Executive. The results of the campaign are described below and plans are discussed for future work under the Access All Areas campaign.

Public Rights to Environmental Information

Public rights to information on the environment are currently governed by the EU Directive 90/313/EEC which has been implemented in the UK through the Environmental Information Regulations 1992 and 1998. These Regulations guarantee a right of access to information held by a public authority and relating to the environment within **two months** unless the information is considered to fall within one of the following categories for exemption:

Defence, security and international relations	Internal discussions and advice
Communications with the Royal Household	Law enforcement and legal proceedings
Publication and prematurity in relation to publication	Immigration and nationality
Public employment, public appointments and honours	Voluminous or vexatious requests
Third party's commercial confidences	Research, statistics and analysis
Effective management and operation of the public service	Information given in confidence
Statutory and other restrictions	Privacy of an individual
Effective management of the economy and collection of tax	

¹ UNCED (1992) *The United Nations Conference on Environment and Development*, Rio de Janeiro, 3-14th June, 1992. Chapter 40, pg. 232, para. 40.19.

² UNECE (1998) *Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters*. Aarhus, Denmark, 25th June, 1998.

In Scotland there is also a 'Code of Practice on Access to Scottish Executive Information' (published in July 1999) which applies to all public bodies within the Executive's jurisdiction, including, for example, the Scottish Environment Protection Agency and Scottish Natural Heritage. The document states that the target for responding to requests for information should be **20 working days**.

However, a number of public organisations have developed their own additional guidelines. SEPA, for example, aim to respond to letters, faxes or e-mails within 10 working days, whilst most Local Authorities aim to respond within 21 to 28 days. Scottish Enterprise aim to respond within 7 working days, or 14 if a fuller response is required.

The combination of guidelines and legislation can therefore seem complicated. For example, SEPA, as mentioned above, is covered by the code of practice, which states that 20 working days is the target for responding to requests for information. However, SEPA's own strategy document states that requests for environmental information, which are presumably the bulk of those received, also fall under the Environmental Information Regulations, thereby allowing 2 months for a response. This variety of existing guidelines is confusing and clouds the rights of the general public to access environmental information.

Future Proposals and legislation

Freedom of Information Bill

The Scottish Executive has consulted on proposals to develop a Freedom of Information Bill for Scotland. The proposals outlined in '*An Open Scotland*' are encouraging and Friends of the Earth Scotland welcomes the positive approach that the Executive has taken. The document states, for example, that the Scottish Executive "considers that a statutory right of access to official information is essential" and that there is a firm commitment to a "culture of openness." A number of concerns and suggestions for improvements to the proposals are outlined in our briefing '*Access all Areas*' and are not repeated here.

The Aarhus Convention

The UK Government has stated that it intends to ratify the UNECE 'Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters' (known as the Aarhus Convention) in the near future. The main impacts of the convention will be to reduce the time available to public authorities to release information to **one month**, whereas under current legislation, they are allowed two. The convention will help to clarify what is meant by 'environmental information', providing a clearer definition of the types of information involved. The convention will also require states to produce Pollution Release and Transfer Registers (PRTR's) which will require the collection and release of more detailed information than is currently available. This will particularly affect the Scottish Environment Protection Agency (SEPA) and implications are discussed in a separate Friends of the Earth Scotland briefing '*Keeping Count of Chemicals*'.

The Right to Really Know Campaign

Introduction

The *Right to Really Know* campaign was launched in December 1999 and was developed to raise awareness of issues relating to Freedom of Information and, in particular, access to environmental information in Scotland. As part of the campaign, Friends of the Earth Scotland decided to test the effectiveness of the current legislation and guidelines on information held by public authorities.

Methodology

Friends of the Earth Scotland wrote to its members and asked them to write to either SEPA, about packaging and waste, their Local Authority, about recycling in their area, or to their Local Enterprise Company asking about sustainable development. Members were asked to keep a copy of the letter they sent and to note the date it was posted and the date that a response was received. We asked members to assess their reply in terms of the speed of the response, its accuracy, its quantity and its tone (see sample form attached as appendix 2). Members were also asked to note whether they were asked for payment for the information and if they had any further comments on the response they received.

Results

The survey resulted in a total of **87** letters being written to the three sets of public bodies concerned: **28** to SEPA, **35** to Local Authorities and **24** to Local Enterprise Companies (a list of the Local Authorities and Enterprise Companies that were contacted is included as appendix 1, including details of the number of letters sent to each one). The study involved 17 Local Authorities and 10 Local Enterprise Companies. Although letters to SEPA were sent to local offices, all of the enquiries were sent on to the SEPA headquarters in Stirling, which meant that one unfortunate officer dealt with all 28 of them. Despite a reasonable response to each of the letters, this did not really test the SEPA system as we had intended.

The results are discussed in two sections. Firstly, by the length of time that the public authority took to respond and, secondly, the quality of the responses, as assessed by the letter writers themselves.

1) Time taken to respond

The first outcome to analyse is whether or not the public authorities were able to meet their own targets for responding to requests for information. The number of days taken to respond has been calculated as the number of *working days*. These have been counted from the first working day after the letter was sent, to the working day before the reply was received (assumes first class postage) and does not include weekends and public holidays.

The majority of letters were answered within the individual authorities guidelines, with SEPA taking an average of 7 days, the Local Authorities 10 and the Local Enterprise Companies 8. However, a significant number of letters were not answered as quickly, with one letter to SEPA taking 26 days (their target is 10) and 3 to Local Authorities taking longer than the 21-28 days that most local authorities aim for. Similarly, 5 letters to local enterprise companies took longer than the 7-14 days that they aim to reply within.

The first finding is therefore that some of the public authorities have contravened their own guidelines for responding to requests for information. A total of nine letters fall into this category. Without doubt, those authorities would point out that because the request was for environmental information, they in fact have 2 months to respond as stated in the environmental information regulations. However, as is shown below, a number of authorities have failed to meet this deadline as well.

Letters not replied to within 2 months:

Of the nine letters that failed to meet the public authorities own guidelines, three failed to meet the two month deadline currently allowed by the Environmental Information Regulations. These were replies from: Moray Council, Midlothian Council and Lothian and Edinburgh Enterprise Limited.

Letters not replied to at all:

In addition a total of six letters have yet to receive an answer from the following Local Authorities and Local Enterprise Companies (Friends of the Earth Scotland will be following up these letters to find out why they have not been replied to):

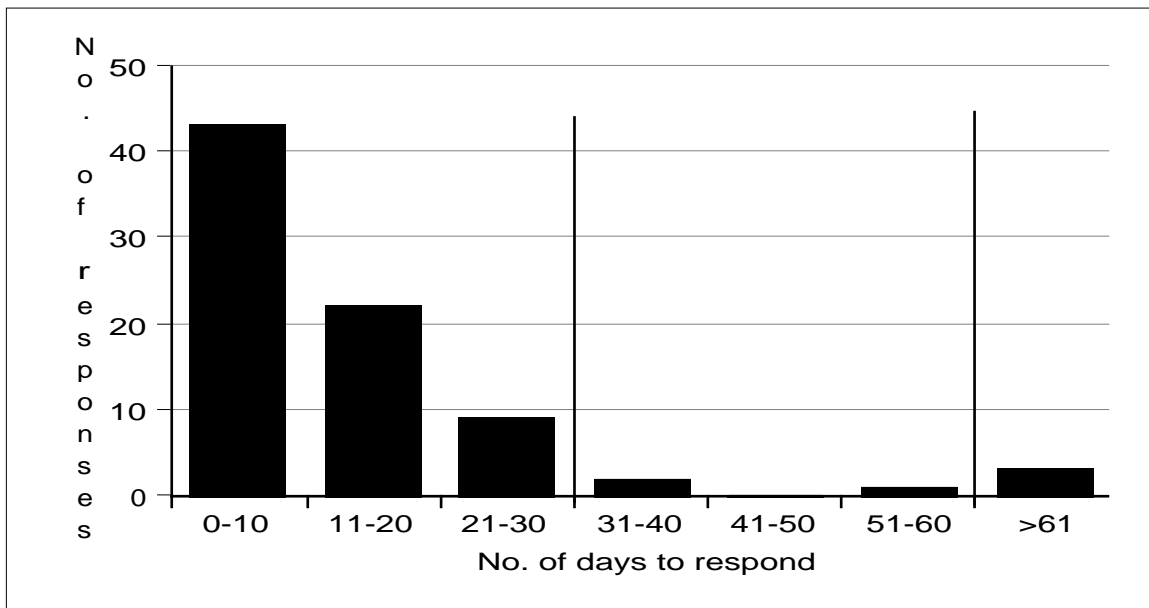
East Dunbartonshire Council	Glasgow Development Agency
Highland Council	Scottish Enterprise Tayside
North Ayrshire Council	Skye and Lochalsh Enterprise

One letter to Fife Council was never received by them.

Letters that were not replied to within 1 month:

While three letters contravened current legislation (allowing two months), a total of six failed to meet the one month deadline associated with the Aarhus convention. The chart overleaf shows the distribution of responses in relation to current and future legislation. The line on the left indicates the length of time proposed by the Aarhus convention, whilst the line on the right represents the current deadline of two months.

Chart showing number of number of days taken to respond in relation to current and future legislation: NB. These are total days, not working days.



Summary statistics:

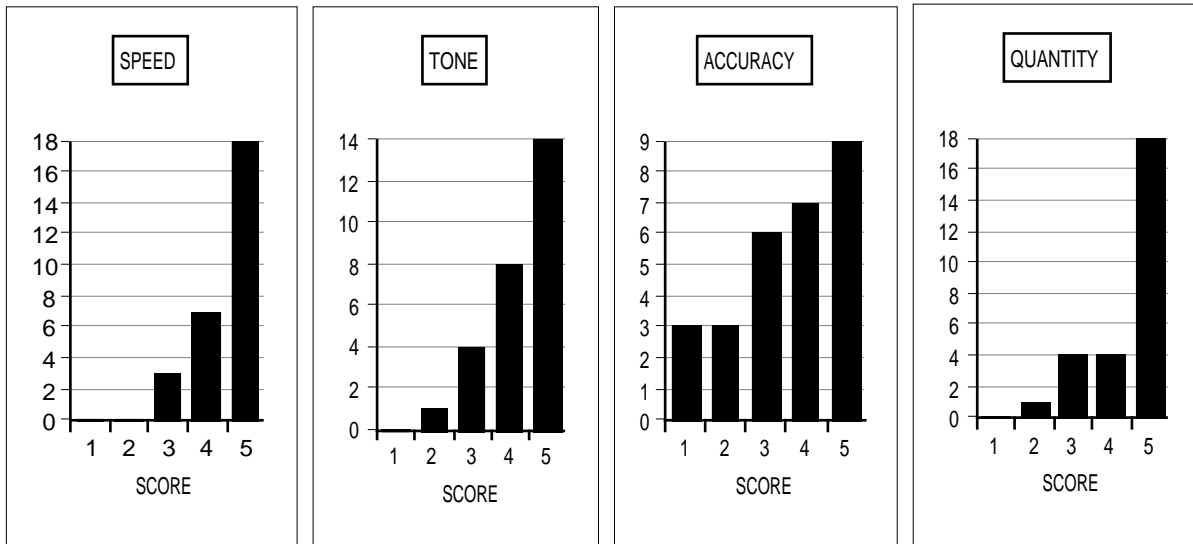
- nine letters (10%) produced responses that contravened individual authorities guidelines;
- six letters (7%) never received a reply;
- three letters (3%) took longer than 2 months to get a reply;
- six letters (7%) took longer than 1 month to get a reply.

2) Participants opinions of responses

The members that received responses were asked to rate the response in four categories: the speed of the response, tone of the response, accuracy of the response and quantity of the response. For each category, the participant was asked to give the response a rating of between 1 and 5, with 1 being poor and 5 being good. The results have been summarised on the bar charts below. Some of the participants comments have also been added.

SEPA

In the opinion of the participants, SEPA fared well in terms of the speed, tone and quantity of its response. However, a number of people were clearly disappointed with the accuracy of the response and felt that it did not answer their question particularly well. SEPA sent a considerable volume of information, but it seems that the response failed to satisfy some of the requests by failing to answer the question fully.



Comments from the questionnaires:

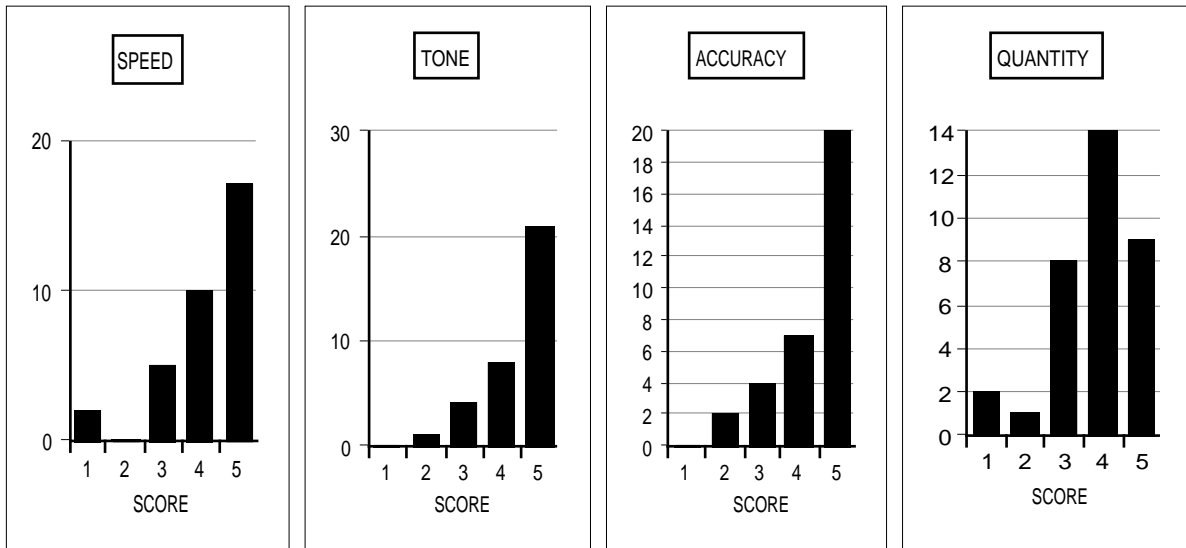
'SEPA could not give me any data on waste figures produced by companies, but did explain why this was so.'

'This was a very professional and business like response which answered my questions thoroughly.'

'Lengthy response, but which did not supply the information requested!'

LOCAL AUTHORITIES

Most people felt that their Local Authority answered relatively quickly, that the tone of the response was good and that the accuracy was good. However, a number of respondents were disappointed with the quantity of the response and felt that more information could have been provided.



Comments from the questionnaires:

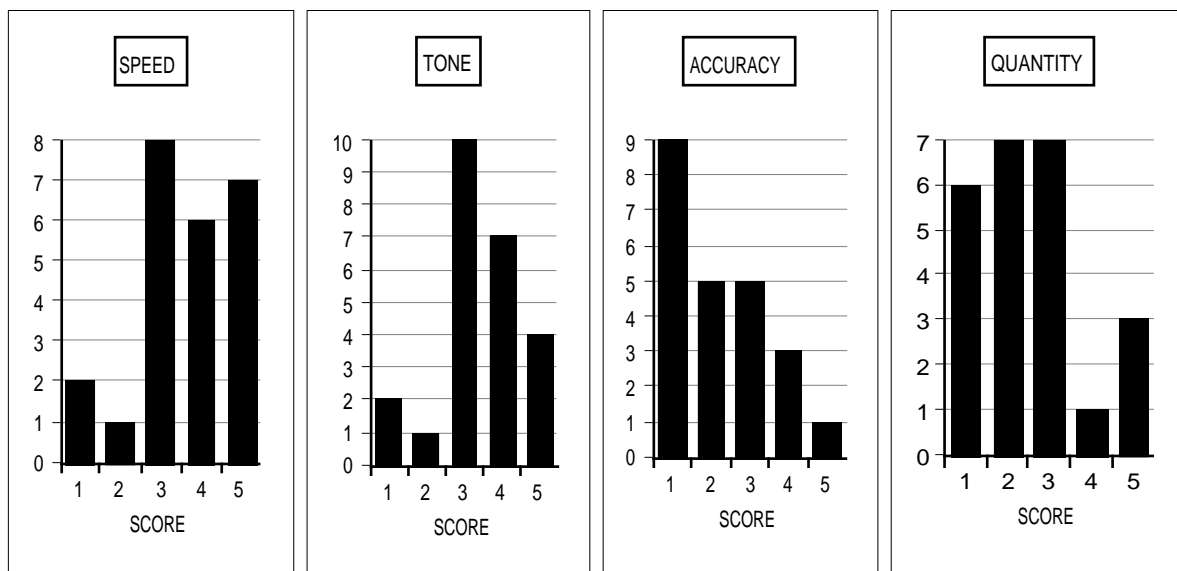
'Reply inadequate and slow.'

'I was sent a copy of the Highland Council's LA 21 Action Plan- but it didn't mention the issue I was particularly interested in, ie. recycling.'

'I thought this response answered my questions clearly and I was impressed with the amount of material sent.'

LOCAL ENTERPRISE COMPANIES

The Local Enterprise Companies fared less well, especially in terms of the accuracy and quantity of the response. The majority of responses were relatively brief letters, which failed to explore the meaning of Sustainable Development and which provided little in terms of information about policies relating to it. The Local Enterprise Companies also fared less well than SEPA and the Local Authorities in terms of the speed and tone of their responses.



Comments from questionnaires:

'The summary of the network strategy enclosed doesn't say much about sustainable development.'

'I did not think that any of my questions were answered clearly and I did not understand the response.'

'Too much detail and too little in the way of simple answers or explanations.'

Summary

On the whole participants were pleased with the response they received, the majority of which had been sent relatively promptly. Clearly, the system is working well in some areas.

However, a significant number of participants were disappointed with the length of time taken to respond and the quality of the response they received. Many of the responses received failed to provide the information requested, failed to answer the question and often provided spurious and irrelevant details.

Conclusions

The first phase of the project has shown that despite the existing guidelines and legislation relating to information, a number of public authorities are failing to meet both their own targets and those laid out by the Environmental Information Regulations. **Three** replies took longer than the 2 months allowed by current legislation and **six** were left unanswered. A total of **ten** letters out of eighty seven therefore failed the test.

The first phase has therefore uncovered significant deficiencies within the current system, in particular relating to the length of time taken to respond.

Within this context, it is important to consider that future legislation, under the Aarhus Convention, will reduce the time allowed for supplying environmental information to just 1 month. A total of **six** of the letters that were written in the first part of the campaign were not responded to within one month and it is clear, therefore, that significant improvements will have to be made in the way that both Local Authorities and Local Enterprise Companies in particular handle requests for information if they are to conform to future legislation.

It is recommended that those public authorities that are failing to meet present guidelines should urgently review their information systems in anticipation of the tougher systems that are on their way.

This report will be discussed with SEPA and representatives of both the Local Authorities and the Scottish Enterprise Network. It will also be submitted to the Scottish Executive as further input into the Freedom of Information Bill consultation and will be presented to the new Scottish Information Commissioner when they are appointed.

Future Action

The next phase of the *Right to Really Know* campaign will involve further testing of the existing system and is likely to extend to a number of other public authorities. The project intends to repeat the first phase on a wider scale, using more people and asking a wider variety of questions to see how public authorities will respond. The project will then be repeated once the new legislation is in place and will be used to test its effectiveness and that of the proposed Information Commissioner.

Further information:

Our briefing report '*Access all Areas*' provides further information on the Government's Freedom of Information proposals and the impacts of the Aarhus convention and is available free.

A second briefing '*Keeping Count of Chemicals*' provides further information on the Aarhus convention and focuses on the need for greater collection and dissemination of environmental and, in particular, pollution information.

For further information contact Kirstie Shirra at Friends of the Earth Scotland.

APPENDIX 1

Local Authorities included in the survey and the number of letters written to each:

Aberdeenshire	2
Angus	1
City of Edinburgh	5
Dumfries and Galloway	3
East Dunbartonshire	2
Falkirk	1
Fife	1
Glasgow City	1
Highland	3
Inverclyde	1
Midlothian	3
Moray	5
North Ayrshire	1
Perth and Kinross	1
Scottish Borders	2
Stirling	1
West Lothian	1

Local Enterprise Companies included in the survey and the number of letters written to each:

Dunbartonshire Enterprise	1
Dumfries and Galloway Enterprise	1
Enterprise Ayrshire	3
Forth Valley Enterprise	2
Glasgow Development Agency	1
Highlands and Islands Enterprise	1
Lothian and Edinburgh Enterprise	11
Moray, Badenoch and Strathspey Enterprise	2
Renfrewshire Enterprise	1
Scottish Enterprise Tayside	1

THE RIGHT TO REALLY KNOW CAMPAIGN YOUR MARKS COUNT

This form lets you tell us what you thought of the responses you got to the letters you sent as part of the Right to Really Know Campaign. Your opinion of the responses is an important part of the results of the project, so we would be grateful if you would take a few minutes to fill in this form and send it, along with copies of the responses to us.

Please use one form for each of the responses you received.

If you have received no response to one of your letters after two months, please send in a form about this - this is extremely valuable information.

Name: #

Address: #

#

#

#

Tel no: #

E-mail: #

Subject:

Local Authorities and Waste

SEPA and Packaging

Local Enterprise Companies and Sustainable Development

I sent my letter on:

I got a holding response on:

I got a final reply on:

Did the response ask you for any payment ?

Please give details:

Your opinion of the response

Speed of response: I thought the time taken to reply was: Slow - Reasonable - Fast

Tone of response: I thought the response was: Unhelpful - Neutral - Helpful

Accuracy of response: the response answered my questions: Badly - Adequately - Well

Quantity of response: the amount of information sent was: Small - As expected - Large