

Consultation on a proposed Freedom of Information Reform
(Scotland) Bill by Katy Clark MSP

Anonymous
Organisational Response (Organisation ID no 06)

Questions

You are required to complete questions 1-5. Please complete the remaining parts of the consultation that are of interest. You do not need to answer all the questions.

SECTION 1 - ABOUT YOU

1. Are you responding as:

- an individual – in which case go to Q2A
 on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)

- Politician (MSP/MP/Peer/MEP/Councillor)
 Professional with experience in a relevant subject
 Academic with expertise in a relevant subject
 Member of the public

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
 Commercial organisation (company, business)
 Representative organisation (trade union, professional association)
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 Other (e.g. club, local group, group of individuals, etc.)

3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

- I am content for this response to be attributed to me or my organisation
 I would like this response to be anonymous (the response may be published, but no name)
 I would like this response to be confidential (no part of the response to be published)

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[Redacted]

4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

[Redacted]

Note: All answers to the questions may be published (unless your response is “not for publication”).

Aim and approach

5. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Our reasons are given in answer to specific questions below.

Detail of the proposal

6. Which of the following best expresses your view on the private sector being designated under FoISA if it is publicly funded and the service is of a public nature?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

While we appreciate that designation would not cover all aspects of the private sector's activities, experience under the EIRs has shown how difficult it can be to identify the extent of the organisation's obligations to disclose information.

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We are aware that proportionality is an important consideration in decisions about extension of FOISA. We would be concerned if there was an automatic designation under FOISA of SMEs without further consultation with that sector.

See page 13-17 for reference.

7. Which of the following best expresses your view on the third/charitable/voluntary sector being designated under FOISA if it is publicly funded and the service is of a public nature?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

While transparency in use of public funds is always to be welcomed, imposing additional compliance burdens on organisations which are already stretched for resources would not be the best use of public funds.

We are aware that there is a suggestion that there should be a material threshold for being designated under a public sector contract for third sector organisations. If this proposal were to proceed then it needs to carefully consider the level of designation and minimum threshold, taking into account the level of reliance of such organisations on volunteer support.

We are aware that proportionality is an important consideration in decisions about extension of FOISA. We would be concerned if there was an automatic designation under FOISA to third sector organisations without further consultation with that sector.

See page 16 for reference.

8. Which of the following best expresses your view on the creation of a new statutory officer within designated authorities – a Freedom of Information Officer?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

Public bodies for the most part are already required to appoint a Data Protection Officer. Giving similar status to the lead on Freedom of Information would recognise their status within the organisation. However, in reality the same

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person is often responsible for Data Protection and Freedom of Information so it may place an additional burden on one person rather than spreading the work.

See page 21 for reference.

9. Which of the following best expresses your view on creating a statutory duty to publish information?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

See page 21 for reference.

10. Which of the following best expresses your view on reducing exemptions under FoISA?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

FOISA provides a limited range of exemptions which public bodies can rely upon and for many the additional requirement to assess the balance of public interest. In our experience of advising on the application of these exemptions they provide an appropriate balance between the ability of the bodies to carry on their business with a degree of confidentiality at the same time as ensuring accountability and proper use of public funds. If a body does not want to disclose information it will find exemptions it wants to apply and it will only be at the stage of determination by the Commissioner that disclosure will be made. Reducing the available exemptions or limiting their scope will not prevent this from happening.

See page 26 for reference.

11. Which of the following best expresses your view on amending FoISA to prevent the use of confidentiality clauses where inappropriate between public authorities and contractors providing public services?

- Fully supportive
- Partially supportive

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- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

The interpretation of the confidentiality exemption by the Scottish Information Commissioner already makes it clear that blanket confidentiality agreements cannot be used to limit disclosure under FOISA. The test set out in the case of *Coco v Clark* needs to be met and if the information in question is not confidential in nature then the exemption cannot be maintained.

See page 26 for reference.

12. Which of the following best expresses your view on FoISA being updated to ensure aspects of procurement policy set by the Scottish Government are covered?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed

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- Fully opposed
 Unsure

See page 31 for reference.

Financial implications

13. Any new law can have a financial impact which would affect individuals businesses, the public sector, or others. Do you think any cost is outweighed by the public interest benefit?

- Yes
 No
 Not Sure

Please explain the reasons for your answer.

While transparency in use of public funds is always to be welcomed, imposing additional compliance burdens on organisations which are already stretched for resources would not be the best use of public funds.

Equalities

14. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

Sustainability

15. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

General

16. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

Thank You

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31. How to Respond to This Consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

If possible, please submit your response electronically – preferably in a MS Word document. Please keep formatting of this document to a minimum.

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

Please include with your response contact details (e-mail if possible, or telephone or postal address) so we can contact you if there is any query about your response.

Where to send responses

Responses prepared electronically should be sent by e-mail to:

clarkkatyfoi@parliament.scot

Responses prepared in hard copy should be sent by post to:

Katy Clark MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Deadline for responses

All responses should be received no later than **2nd February 2023**. Please let me know in advance of this deadline if you anticipate difficulties meeting it.

32. How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website at katyclark.org. Published, responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content or may edit the content itself and publish a redacted version.

I expect to prepare a summary of responses that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The summary may cite, or quote from, your response (unless it is “not for publication”) and may name you as a respondent to the consultation (unless your response is anonymous).

If I lodge a final proposal, I will be obliged to provide copies of responses (other than confidential responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as **anonymous**, please state this clearly. You still need to supply your name, but if the response is treated as anonymous, only an anonymised version will be published or provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response to be treated as “not for publication” please state this clearly. If the response is treated as confidential it will not be published or provided to SPICe.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

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Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for your response not to be published. I will not publish your signature or personal contact information.

Information on how I process your personal data is set out in my **privacy notice**, which can be found [here](#). Please confirm that you have read the privacy notice by ticking the box below.



I confirm that I have read and understood the **privacy notice** (referred to above) to this consultation which explains how my personal data will be used.

If a respondent is under 12 years of age, I will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.



Please tick this box if you are under 12 years of age.

I may also edit any part of your response which I think could identify a third party unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, once your response is received or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FoISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FoI. Further information about Freedom of Information can be found at: www.itspublicknowledge.info.