

## Organisational Response (Organisation ID no 16)



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.

c I am content for this response to be attributed to my organisation

Name/organisation: COSLA

### **COSLA response to Freedom of Information Reform (Scotland) Bill consultation**

1. COSLA welcomes the opportunity to respond to the consultation on the Freedom of Information (Reform) Bill being proposed by Katy Clark MSP. COSLA notes that the proposed Member's Bill builds on the recommendations of the Public Audit and Post Legislative Scrutiny (PAPLS) Committee inquiry into the Freedom of Information (Scotland) Act 2002 (FoISA), which reported in 2020.
2. COSLA is the national membership organisation for Scottish Local Government, which represents all 32 local authorities. As an organisation COSLA is made up of around 130 staff members working in policy teams, Business Gateway national unit, Trading Standards Scotland, myjobscotland and the Local Government Digital Office.
3. COSLA notes in particular the planned amendment to Section 4 of FoISA within the proposed Freedom of Information (Reform Bill), which would remove Ministerial discretion and see public authorities "with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998)" automatically covered by FoISA.
4. COSLA is mentioned by name as an example of a body that would automatically become subject to FoISA, with our role in public service reform, local government pay negotiations, and supporting local authority joint working highlighted as key aspects of the organisation's strategic role.
5. Whilst COSLA's work encompasses all aspects of Local Government in Scotland, the number of staff responsible for each area of policy or practice is very small in comparison with councils or the Scottish Government, with many policy or practice areas covered by just one COSLA staff member. The designation of COSLA as

subject to FoISA would, therefore, have significant workload implications for the current staff team, as well as a substantial financial impact.

6. Whilst we recognise the support that the Scottish Information Commissioner provides to newly designated organisations to help them prepare, the sheer breadth of COSLA's work areas must be taken into account in any decision about designation.
7. The fact that the Local Government Association (LGA) in England is now covered by Freedom of Information (FOI) legislation does not justify an argument for COSLA becoming a designated public authority in Scotland. A better comparison can be made between COSLA and the Welsh Local Government Association (WLGA) which is not a designated public authority under FOI legislation and it is of a more similar size to COSLA in terms of staffing and resources, as compared to the LGA.
8. Whilst it is certainly true that proactive publication of information can reduce the volume of requests under FoISA that an organisation receives, the resource implications for COSLA becoming a designated public authority should not be overlooked.
9. The consultation document makes the point that the number of exemptions to disclosure listed in FoISA "needs to be reduced", however no further detail or rationale is provided on this proposed reduction. COSLA does not have a position on which exemptions "should be deleted", as the consultation paper asks, however we are concerned about any potential erosion of the exemption under Section 30, which covers prejudice to effective conduct of public affairs. Our concern is that any erosion of the exemptions under Section 30 may have the unintended consequence of harming and inhibiting the effective conduct of public affairs and could have serious implications for the work of COSLA's office bearers and politicians.
10. Of particular relevance to COSLA's work are the exemptions under Section 30(b), which covers the free and frank provision of advice or exchange of views. The free and frank provision of advice (section(b)(i)) exemption would be crucial to allow COSLA to continue fulfil its special adviser role to our politicians and allow this advice to be kept confidential if the advice is of a sufficiently sensitive nature to outweigh the public interest of disclosure.
11. Furthermore, COSLA has serious concerns that any erosion to the exemption related to the free and frank exchange of views for the purposes of deliberation (section 30 (b)(ii)) may have an effect on the breadth and depth of discussions during Leaders' meetings, COSLA's main decision-making body comprised of the political leaders of Scotland's 32 councils. Whilst much of what is discussed at Leaders' meetings may not fall under this exemption, the provision to exempt certain aspects

of discussion from disclosure must be retained to protect genuinely sensitive information.

12. COSLA does recognise the importance of exemptions under Section 30 being subject to a public interest test, however, and supports the case-by-case approach to disclosure endorsed by the Scottish Information Commissioner. COSLA is also of the view that the public interest test in its current form functions well and that the guidance produced by the Scottish Information Commissioner on applying the test is a valuable resource.
13. COSLA is of the opinion that COSLA should not become subject to FoISA at this time because of the resource and staff time implications of becoming designated and the potential for this to have a detrimental impact on the core work of the organisation. Whilst COSLA's remit spans all aspects of the Local Government policy, as well as the national delivery of services such as Business Gateway and Trading Standards Scotland, we have serious concerns about the volume of requests that we are likely to receive, particularly on sensitive issues such as pay negotiations, and the huge demands that this will place on the relatively small staff team.
14. COSLA would argue that we are a comparative organisation to the WLGA, who is not subject to the UK FOI Act, and that there should be consistency across the devolved nations and their Local Government Associations when considering whether COSLA should be designated under FoISA.

**March 2023**

### **Contact details**

[Redacted]

## 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](http://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 Fol. Further information about Freedom of Information can be found at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info).