

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

Glasgow City Council

Organisational Response (Organisation ID no 28)

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
- X 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:

- X 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.

- X 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)

Name/organisation:

Glasgow City Council

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.)

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Note: All answers to the questions may be published (unless your response is “not for publication”).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

We support updating some of the exemptions but do not support a number of other specific proposed amendments, as detailed 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

See page 13-17 for reference.

Please explain the reasons for your response:

Although the council fully supports openness and transparency, we are concerned, in the context of a local authority setting, that there is a risk of deterring private bodies from bidding for public sector contracts. It is also likely that such obligations would incur additional costs which would be passed on to the public sector.

Currently, information held by private bodies on behalf of public authorities would be subject to FOISA.

The consultation paper seeks views on thresholds; however, it is unclear exactly how this would work. Further explanation in this regard would be required before we would be able to comment. We do believe that there would be a number of risks involved with this approach, for example the proposal in the consultation paper that companies would be subject to FOI if they were awarded a publicly-funded contract above a particular threshold would only apply to companies based in Scotland. This would have the effect of putting Scottish-based companies at a significant competitive disadvantage compared to companies based outwith Scotland as the Scottish company would need to factor in FOI compliance costs which their non-Scottish counterparts would not need to include.

The suggestion that individuals could potentially be fined would also act as a significant disincentive for Scottish based companies to tender for public contracts. The proposals run a real risk that public sector outsourcing would end up with a much larger proportion of these contracts being awarded to non-Scottish companies. There are also procurement implications to the suggestion that companies under an OSIC intervention would be barred from tendering for public sector contracts. There is also a real risk that the costs of any fines incurred by private bodies would be passed on to public sector bodies, similar to the costs of FOI being passed on to public bodies.

It is also unclear from the consultation how far down the supply chain these provisions are intended to apply.

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:

Although the council fully supports openness and transparency, we are concerned that there is a risk of deterring third-sector bodies from bidding for public sector contracts. It is also likely that such obligations would incur additional costs which would be passed on to the public sector.

Currently, information held by third-sector bodies on behalf of public authorities would be subject to FOISA.

The cost implications for third-sector bodies would be significant and could result in major operational issues.

There is a concern around the understanding of what is involved in responding to an FOI request. As an organisation that receives around 3,000 FOI requests each year, specialist knowledge is required to respond to these requests and the amount of time involved is onerous.

Although Housing Associations have been brought under FOISA, we believe that the position is different for third-sector bodies, who are unlikely to have the same level of resources available to them.

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:

From the perspective of the Local Authority, we have an existing robust framework overseen by the Monitoring Officer. We do not believe that this would be the most appropriate use of resources. Current organisations subject to FOISA already have specialist staff members who are experienced in this area. It is unclear what benefit the introduction of an FOI Officer would have.

It is not clear what the proposed officer would be responsible for. The necessity of a FOI Officer would also result in further cost implications, which could be particularly onerous for small organisations, with such small organisations likely being unable to afford to employ such a specialist.

The draft CFOIS Bill referenced in the consultation does not reference whether private and third sector organisations would require an FOI officer.

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

See page 21 for reference.

Please explain the reasons for your response:

The local authority is in favour of proactive publication and already has a statutory duty to publish information under EIRs. We regularly publish information on our website.

We would welcome a general obligation to publish information relevant to the public interest, along with supporting guidance, however imposing a statutory duty to publish information would, we believe be excessive in terms of cost and resourcing. This may also result in crucial resources being diverted from front line services in order to meet further statutory duties in this regard.

It is not clear how this duty can be written given the scope of organisations subject to FOISA. Furthermore, it is unclear what information publication is being sought over and above what is currently being voluntarily published. Further information is required defining the information sought to be published. The indication is that this would be a legally enforceable code of practice, however would this be at the instance of the Commissioner only and not at the instance of private individuals or companies? Further clarification would be helpful around this.

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:

The local authority does not rely on many of the exemptions contained within FOISA, however believe that the ones which are there remain fit for purpose.

We note that there is a suggestion that all FOISA exemptions should be subject to a public interests test. We would oppose this for the personal data exemption. We would support updating some of the exemptions.

While not directly being consulted on the CFOIS suggests an amendment to exemptions which don't appear to have an evidence base.

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

Please explain the reasons for your response:

Confidentiality clauses do not have the effect of excluding information from release under FOI. We therefore do not feel that these amendments would be necessary.

We note the reference to the inappropriate use of Confidentiality Clauses, we also believe that this is a misunderstanding of when and why such clauses are entered into.

It is also unclear who determines this when such clauses would be “inappropriate”

Further clarification would be required to confirm what is not working with the current legislation that requires such a change?

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
- Fully opposed
- Unsure

Please explain the reasons for your response:

All recorded information is covered and as such, it is unclear what updates are proposed in this regard.

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 response:

It is unclear what costs are being considered here. In order to answer this question, we would require further details as to what costs are meant here. We have also made specific reference to cost implications in responses above.

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:

FOI is applicant blind. It is unclear, therefore, what response is sought for this question.

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?

N/A

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)?

There is a concern around the consultations apparent misunderstanding as to the costs and resource implications of FOISA and the operational requirements of meeting these obligations. We are unclear as to how many of the suggested changes would work in practice, e.g. the proactive publication suggestion.

Proactive publication in an organisation the size of Glasgow City Council, which has around 28,000 members of staff and a turnover of around £2 billion, engaged in providing public services, represents a very significant resource requirement, due to the publishing process but the ongoing maintenance of any published information.

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.