

Organisational Response (Organisation Response ID no 31)

Consultation Response – Human Rights Consortium Scotland

Consultation on a proposed Freedom of Information Reform (Scotland) Bill

March 2023

Questions

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

We welcome the opportunity to respond to this consultation, and we have engaged in numerous meetings and workshops to provide an informed response.

We agree with the aim of this consultation on strengthening people’s access to information rights, and the principles behind it of enhancing transparency and accountability. We emphasise that transparency of government body decision-making – what decisions they have made and why – is essential to be able to hold the Government to account for what they are doing to protect, respect and fulfil human rights obligations. Such transparency should be a feature of a government who takes human rights seriously and of being world-leading on human rights, which is the Scottish Government’s ambition.

Such government transparency is not only about freedom of information (Fol), but this is one of the most important tools for transparency. We welcome that Fol comes, not only with principles and best practice, but with a means of enforcing those information rights. Fol directly empowers individuals and communities.

We recommend that if an organisation is delivering statutory functions, whether a private or third sector organisation on behalf of Government, there should be a way of holding that organisation accountable for how it complies with human rights, and this requires Fol transparency. Government should not be able to contract out of human rights transparency and accountability by contracting to external bodies. An important example of this would be care homes for older people which operate across different sectors dependent on their source of funding. It should be a requirement for these organisations to share information about their internal policies and decision making with the public so that the human rights of residents are protected to the highest possible standard. The same standards set by the Scottish Information Commissioner for universities and colleges, and local councils, should be applied to any institution with the responsibility for the right to life, and the daily essentials that entails.

We highlight that the changes proposed in the consultation would have considerable

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funded in some way by the government, which will have to allocate funding and capacity to training and support, or recruitment of FoI officers. Without substantial, long-term, and adequate funding, many organisations would have no choice but to relocate resources from service delivery and frontline work, to training and support to then actually responding to FoI requests, reducing the reach and impact of their services and work, and harming the communities that rely on them. This is especially true for organisations who provide collective advocacy or support through community or shared campaigning. FoI should not be extended to these smaller organisations whose capacity could not match that of larger organisations.

We believe that the proposed changes do not offer enough protection from harm and do not prevent the system from being abused, especially for organisations that work with some of the most marginalised and vulnerable groups. This is due to the potential of vexatious requests, and we would welcome further consideration about how to prevent a reform of the FoI system from being abused.

FoI enforces accountability law, there should be more proactiveness from the Scottish Government to work with statutory bodies promoting and defending human rights through their work to ensure proactive publication of information without having to resort to FoI as a tool. Guaranteeing transparency through consistent and proactive publication of information important to the public would mean that FoI would only need to be used as a tool in certain circumstances.

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?

We recommend that all bodies, including third sector/charities, who carry out a statutory function on behalf of Government should be required to provide the information in response to FoI requests. There may be different ways to apply FoI to these third sector bodies, for example we are unclear if this could be done in different ways such as the contracted-organisations designated under FoISA, or by indirect means through the FoI duties remaining with their government contractors – either way, the system should work so that a rights holder should be able to use FoI to get the information they need on statutory obligations, no matter who is delivering these.

However, we would be very concerned on the implications of extending FoI to all third sector organisations or even to all those who receive public funding in some way. Most of these organisations are not carrying out statutory functions. Many of them are defending human rights, are challenging those in power, and driving cultural change. It is not appropriate for them to be treated as ‘duty bearers’ in

human rights terms. Many of them are fully transparent as a matter of good practice, and all charities must comply with OSCR public information requirements, but it would not be appropriate or make sense for the wider third sector to have FoI-related duties.

Furthermore, many third sector organisations, whether they receive public funding, are also relatively small with limited capacity. We know from our members how many of them struggle to meet the demands of supporting those who need them, and this is only increasing in the face of the cost-of-living crisis. If FoI requirements were to be placed on these organisations, many would be seriously hampered in supporting their communities, and some would simply cease to exist under the administrative burden.

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

We emphasise that FoI is a tool that should have to be used rarely by individuals or communities because government bodies proactively publish the information that people want and need. In 2020, HRCS used FoI powers to request information from public bodies around how they had taken into considerations their Human Rights Act 1998 duties during 2019, and during the first COVID-19 period.

The reason we decided to use FoI was because our members, and our own searches had been unable to find out this information. In particular, our members spoke about policy and practice decisions about care, support and services being taken in the midst of COVID that seriously affected their communities without any information about what, why or how long of these changes.

Even after the initial emergency COVID period was over, this information was still not available. People were left completely in the dark about the criteria being applied to local authority and NHS decision-making, and when or if they could expect the support services that they needed to be reinstated. We therefore strongly support any measures which would increase the reliable proactive publication of decision-making information by government bodies at all levels.

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)?

We agree with the aim of this consultation on strengthening people's access to information rights, and the principles behind it of enhancing transparency and

accountability. However, we want to highlight our key points which should be considered before a Bill is progressed through Parliament, as detailed throughout this consultation response:

1. Holding any government to account requires transparency. If the Scottish Government are serious about human rights, they need to improve transparency across sectors which either provide a statutory duty, public service or provide care which upholds human rights. This includes both improving FoI, but also improving collaboration with organisations to ensure proactive publication of information, ensuring that FoI is a last resort function.
2. FoI is not appropriate for smaller organisations who do not have the capacity of larger organisations providing statutory functions. There should be a consideration of capacity and resource of organisations when a blanket reform is applied to organisations with any government funding. Smaller human rights organisations in particular who work in human rights and collective advocacy should be considered in reform due to vexatious requests which may come their way.
3. We need more proactive publication from duty bearers, meaning more proactive publication of information on a regular basis. People should not have to use FoI, and it should be a last resort tool. We welcome any measures that will improve this.

For more information, please contact [Redacted]. We are content for our response to be published and attributed to us.

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.