

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

**Individual response (Individual ID no 16)**

**Jackie Baillie MSP**

**SECTION 1 - ABOUT YOU**

**1. Are you responding as:**

an individual

**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)

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

Representative organisation (trade union, professional association)

**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)

Name/organisation: Jackie Baillie MSP Scottish Labour

**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.)**

Note: All answers to the questions may be published (unless your response is "not for publication").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

Please explain the reasons for your response.

The consultation document issued by Katy Clark MSP, the Bill and Explanatory Notes from the Campaign for Freedom of Information in Scotland, the FoISA Inquiry report of the Public Audit and Post Legislative Scrutiny Committee (PAPLS), the complaints from journalists and the numerous reports from the Scottish Information Commissioner proves the need for broad and detailed reform of FoISA.

**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

**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

**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

Please explain the reasons for your response

The establishment of a statutory Freedom of Information Officer provides an important line of accountability and independent scrutiny within designated organisations. The new role will have similar powers and duties to Data Protection Officers under Sections 69-71 of the Data Protection Act. Strengthening the role is a recognition of the professionalism and expertise needed. In 2022, the Scottish Information Commissioner carried out a survey of Scotland's FoI practitioners who said they would like to see the profile of FoI and FoI practitioners elevated within organisations.

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

Fully supportive

Please explain the reasons for your response.

Proactively publishing much more information (of the type which the public wants to see) is crucial to enabling people to make informed opinions, debunking fake news and increasing participation in democratic institutions. FoISA has not been successful in increasing proactive publication despite the Model Publication Scheme, so targeted and enforceable action is needed. Specific work also needs to be required within designated bodies to ensure the information is accessible and is available inclusively. If the information is already available, then there is no need for the information request.

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

Fully supportive

Please explain the reasons for your response.

Section 2 of FoISA permits information to be withheld if one of the numerous exemptions to disclosure apply, some of which are subject to a public interest test and some which are “absolute” – which means the public benefit in disclosure cannot even be considered. The only current exemption which is still “fit for purpose” is section 25, which applies if the information requested is already “reasonably” accessible to the requestor. Case decisions from the Commissioner have confirmed that each individual case should be examined to confirm accessibility.

In Part 2 of FoISA, 17 other exemptions are listed and that number needs to be reduced. Your views are welcome on which ones should be deleted in sections 26-41. Also, given the purpose of FoISA, and requirement for the Scottish Parliament to comply with human rights law and the Sustainable Development Goals (SDGs), each listed exemption under FoISA should now be subject to a public interest test.

**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

Please explain the reasons for your response.

Sections 33 and 36 of FoISA relate to “confidentiality”. Section 33 needs to be reviewed in light of the recommendation from the PAPLS Committee that it “considers that the Scottish Government should consult on amending FoISA to prevent reliance on confidentiality clauses between public authorities and contractors providing public services”. This would be in similar terms to section 35(2) of the Irish Freedom of Information Act 2014 which prevents public authorities and those bodies

providing services to them from relying on confidentiality clauses in their contracts to prevent access to information held by the public authority. A public interest test should be added to section 36 of FoISA.

**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

### **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

Please explain the reasons for your answer.

Historically, the cost of delivering on FoI rights had to be absorbed within the “business as usual” agenda. The Scottish Executive’s Financial Memorandum which accompanied the FoISA bill of 2001 required designated bodies to “absorb within planned resources” the costs of implementation. Therefore, the centrality of delivering openness and accountability was understood to be core for public bodies as “many Scottish public authorities already handle, within existing resources, large volumes of requests for information – and make a great amount of information available to the public proactively as well as in response to requests – whether or not under a formal regime. Many public authorities will therefore have existing structures in place to support the provision of information under the Bill”. The report ‘Registered Social Landlords and FoI: One Year On’, published in March 2021 by the Commissioner, confirmed RSLs have not been overwhelmed by FoI, with 57% reporting a 'small' impact on staff workload, and 95% reporting 24 requests or fewer during 2020. Most organisations used existing staffing to deal with FoISA.

### **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?**

I am persuaded that these proposals individually and collectively will make the rights more equally enjoyed by focusing on public services covered rather than which body provides the services. I appreciate that certain groups currently have unequal access to FoI as their services are overwhelmingly provided by the private and third sectors. I believe that the appointment of an accountable FoI officer within each designated

body will ensure the impact of the law delivers more equal outcomes such as the duty to advise and assist applicants and in ensuring accessible information is published online or at a cost affordable for them.

## **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?**

Yes, I believe the proposals will help Scotland deliver on the Sustainable Development Goals (SDGs). SDG 16 is designed to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. Specifically, SDG 16.10 states: “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.” Therefore, reforming FoISA so that all providers of public services are covered and increasing regulation of duties helps deliver SDG 16. The SDGs are given effect through Scotland’s National Performance Framework, which impacts on all aspects of our lives and presupposes delivery of some services through the private and third sectors.

**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)?**

No

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