
Organisational Response (Organisation ID no 66)

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

Introduction

The TSI Scotland Network is a body of charities that support the third sector across Scotland. There are 32 TSIs – or Third Sector Interfaces in Scotland, one for each local authority area. TSIs also have a role in the local implementation of the national Volunteering Action Plan, including helping both public and third sector organisations to find the volunteers they need. The TSI Scotland Network is supported to carry out its main functions by the Third Sector Unit of Scottish Government. This document forms our response to the proposed Freedom of Information Reform (Scotland) Bill consultation undertaken by Katy Clark MSP.

Key points

SCVO has produced a much more detailed response to the consultation, and we have fed into the events they have held on the FOI. We are happy to endorse the recommendations contained within their response.

We have also included our own response to provide additional information relating to the potential impact of extending the legislation on third sector organisations operating at a local level.

Our main concern is that as local third sector organisations tend to be smaller and less well-resourced they will struggle to effectively resource FOI enquiries. Third sector organisations are facing an unprecedented level of cuts due to the constraints on local authority budgets. We are very concerned that the extension of the legislation in the current funding environment will provide a challenge that local organisations will not be able to meet.

More information

We are happy to discuss anything contained in this document in more detail. More information can be obtained from

[Redacted]

Response by TSI Scotland Network

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**

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)

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.)

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Section 2 YOUR VIEWS ON THE PROPOSAL

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 are very concerned about its potential impact on third sector organisations

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.

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.

Resourcing: We welcome the discussion of the issues in this consultation, and are committed to transparency and accountability of third sector funding and activities. However, while we are not concerned with the idea of scrutiny we are extremely concerned about our third sectors’ ability to resource any new FOI commitments.

Responding to FOI requests: We are not aware of any of our member organisations having a dedicated Data Protection Officer. Data protection issues such as GDPR commitments are an

additional responsibility usually given to a senior member of staff, alongside their other duties. It is likely that FOI responsibilities would be another task for existing staff, unless additional funding is given to allow third sector organisations to recruit additional staff. Data protection responsibilities are relatively predictable and duties can be built into a work programme. However, FOI requests hugely vary in their subject matter and in their complexity. An organisation might receive no requests in a year, or they may receive multiple complex enquiries, and they need flexibility within their resourcing to allow them to respond.

Existing scrutiny: Third sector organisations are already covered to a degree by existing FOI legislation if they are receiving funding from a statutory agency. If a member of the public wanted to know about how a third sector organisation was delivering a publicly funded activity, they could request information via the statutory agency. If the statutory agency does not already hold that information they can request it from the third sector organisation, with whom they will have a contractual arrangement or a Service Level Agreement that will allow them to do so. Charities are already accountable for how they spend public money through the Office of the Scottish Charity Regulator (OSCR) compliance regime, and other organisations will also have scrutiny through regulators such as the Care Inspectorate.

Sensitive Issues: There are organisations throughout the third sector that deal with sensitive and sometimes controversial issues. There are concerns that the FOI extension may lead to repeated FOI requests from individuals who object to their activities. This could either be an attempt to divert the resources of an organisation away from service delivery, or it could be a legitimate enquiry. Organisations operating in controversial areas could have multiple enquiries on an on-going basis that they are not resourced to respond to.

Reputational Damage: The third sector is committed to openness and transparency, and is very aware that there is potential reputational damage to not responding in an effective and timely manner to FOI requests. However, dealing with FOI requests diverts time from front-line service delivery, often with very vulnerable clients. This also presents third sector organisations with a potential reputational risk, if they are not delivering on the outcomes they are being funded to deliver. It may also put vulnerable clients at risk.

Commercially sensitive data: Third sector organisations in sectors such as social care often compete against private providers. Opening up third sector, but not private sector, activity to FOI scrutiny could potentially give private providers a commercial advantage. There would need to be water-tight exemptions for information that is potentially commercially sensitive.

Interpreting the legislation: We recognise that the legislation is not being extended to everything that third sector organisations do, and will only focus on activities that are funded by a statutory agency. Similarly, we recognise that there are exemptions for commercially sensitive data, or data that is expensive to collect. However, these exemptions are all subject to interpretation. When a local authority has to decide if an FOI request is in scope it can do so by consulting its in-house legal team and in-house information security officers. Smaller third sector organisations do not have these positions in-house, therefore there is a cost to them of assessing whether they are required to respond to an FOI request. If they refuse and this is subject to challenge, there will be additional costs for this. Without additional funding it is not clear how organisations, which are already facing funding challenges, will be able to resource this.

Threshold: The consultation asks for views on whether there should be a threshold for third sector organisations coming under the scope of FOI legislation. We recognise that the third sector is highly diverse, and in, for example, the care sector there a national and UK-wide charities delivering service. These organisations may well be able to respond adequately to the FOI extension. However, for the reasons noted above, many smaller organisations will struggle. The consultation guidance notes that OSCR publishes a list of the 300 highest income charities on its register. We strongly feel that any extension should be restricted to charities on this list, non-charitable third sector organisations of a similar size to these 300 charities, and cross-border organisations of a similar size.

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.

As noted above, the TSI Scotland Network represents many smaller, local charities. Ms Clark's Foreword to the consultation highlights that campaigners, journalists, members of the public and colleagues have alerted her to the deficiencies of the FOI regime. At the same time community groups, charities and members of the public have also been raising the issues of the very challenging environment in which they are operating, including:

- Budgets which have failed to keep pace with inflation and other cost of living increases;
- Local authorities and other statutory agencies making cuts to third sector budgets;
- Increased demand for services due to issues relating to cost of living, and the increased complexity of cases;
- The impact of Covid on service users and service delivery;
- Recruitment and retention issues related to Brexit.

It is hard to see how smaller charities and third sector organisations can respond to an additional duty that could have a marked impact on staff costs, and related legal and other costs.

It is not in the public interest to have small third sector organisations unable to deliver services to vulnerable individuals because their time is diverted into dealing with FOI requests. Any changes to the regime need to be proportionate and restricted to very large third sector organisations for there to be any positive cost-benefit analysis of the reforms.

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.

The third sector supports a wide range of equalities groups. The extension of the FOI legislation could have both positive and negative impacts, including:

Positive

- There is a potential positive impact of people from equalities groups having access to information – although it may be possible that they could already access this information via the public sector contractor.

Negative

- There may be a reduced service to individuals from equalities groups if third sector support organisations have to divert resources to address FOI requests.

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?

The third sector is highly active in climate change and sustainability issues. The extension of the FOI legislation could have both positive and negative impacts, including:

Positive

- There is a potential positive impact of people from campaigners having access to relevant information – although it may be possible that they could already access this information via the public sector contractor.

Negative

- There may be a reduced activity on the environment and sustainability if third sector support organisations have to divert resources to address FOI requests.

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.