

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

Organisational Response (Organisation ID no 68)

Unite the Union Glasgow Not for Profit Sector Branch.

SECTION 1 - ABOUT YOU

1. Are you responding as:

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 my organisation: Unite the Union Glasgow Not for Profit Sector Branch.

- 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.)

Contact details: [Redacted]

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Note: All answers to the questions may be published (unless your response is “not for publication”).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

As a branch, we have used FOI requests to support our work representing members as well as in our campaigning role for members across the Third Sector in the Greater Glasgow area and surrounds; and to support members in local campaigns to receive the information they need to make informed choices. Freedom of Information legislation must be “fit for purpose”. The current Act is not. Section 5 is not being used as it should be. Many more organisations need to be accountable to Scottish citizens and our members about how they spend funding they receive from the public purse. The Scottish Government puts too much emphasis on the “rights of those receiving funding from the public purse” rather than on the rights of Scottish citizens having access to how that funding is spent. It doesn’t matter whether or not the organisation or company is in the Public, Private or Third Sector. What needs to matter is that if the service being delivered is funded by money from the public purse, then how that service is provided needs to be open, transparent, accountable and accessible. It needs to provide the data/information in a way that people understand and it should be publishing that data/information before people have to ask for it. There is no “pot of gold at the end of the rainbow” providing the funds that government gives out to provide services either in grants or through procurement. The money is owned by Scottish citizens, including our members, who have to pay into the pot with increasingly high taxes. This means it is a finite resource and every penny needs to be accounted for. Scotland is not a democratic country when so many organisations/companies hide what they are doing and therefore are not accountable to the people of Scotland.

Freedom of Information is a basic human right. The Scottish Government constantly tells us that it has a great record in human rights and that all its policies are human rights impact assessed. So why does this current government pay so little notice to Article 10 of the Human Rights Act:

Freedom of expression: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

If it hadn’t been for your consultation coming out when it did, we would still be waiting for an appropriate response from the Scottish Government to the Parliamentary Report. The current act needs a serious overhaul.

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

Please explain the reasons for your response. *See page 13-17 for reference.*

Data such as demographics and data collected on protected characteristics is valuable as it shows who in Scotland is benefitting from public money/public services. It also shows the gaps in service provision and can stop postcode lotteries across the country. All companies/services should be gathering this type of data to show they are meeting the needs of Scottish citizens who use these services. Infrastructure/transport contracts paid for by the public purse should produce data/information as it shows how the money has been spent.

The precedent was set when GP practices were added to the original designated list, and this should apply to all private companies that tender for contracts paid for by national and local government as well as those public bodies that are fund holders and contract private sector companies to deliver public services.

Too often companies try to use commercial confidentiality as an excuse not to report on what they are doing. If a company is providing a project or service that is of a public nature and paid for by the public purse, then it should be publishing all data/information relating to that project/service. How else do we know whether or not we have had good value for money?

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. *See page 16 for reference.*

Organisations in these sectors – where our members work – need to be proactive in publishing their funding reports, board minutes, demographic data, policies and accounts. If they do this, the FOI work will not be the burden some have been led to believe that it could be. If their focus is on co-production of services and user involvement, they should be publishing most of their information in accessible formats right now. If they are not, then the question to be asked is, why not? What sort of user involvement are they encouraging if the data/information is not available?

Some of our members are working in or in addition to their work, involved in Community Interest Companies and Social Enterprises. These too should be included if they tender for public contracts or apply for grant funding.

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. *See page 21 for reference.*

Each public body should already have a FOI officer and this should be clear on their website: who and how to contact. Large public bodies should have FOI departments. Large private companies and Third Sector organisations/charities should also have designated officers. Smaller charities with few paid staff/no paid staff, no to designated officers. Organisations and grassroots groups running on very small budgets should be encouraged to publish proactively to cut down on the potential for FOI requests.

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

Please explain the reasons for your response. *See page 21 for reference.*

Proactive publication should be a legal duty, but the Bill should go further. There should be an onus on larger organisations and companies across the Public, Private and Third Sector to go further and publish data/information that is written in plain language and is accessible to the public. A lot of information that is published is written in such a way that the majority of people don't understand it. This is just as bad as not publishing information. It is less than helpful and can be harmful in some instances.

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. *See page 26 for reference.*

“Information is exempt information if—

(a) its disclosure under this Act would, or would be likely to, prejudice substantially—

(i) relations between the United Kingdom and any other State;

(ii) relations between the United Kingdom and any international organisation...”

<https://www.legislation.gov.uk/asp/2002/13/section/32>

Could this be used to prevent non-Scottish companies from publishing information even though they tender for and receive funding from the Scottish public purse? If so, then this exemption needs to be looked at.

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. *See page 26 for reference.*

“Confidentiality clauses, also known as non-disclosure agreements or NDAs, are provisions which seek to prohibit the disclosure of information on the basis that commercially sensitive business information needs to be protected.” If the organisation/company has gone through an open and transparent procurement process for public contracts paid for by the public purse, part of the procedure should be to rule out any possible “commercially sensitive business information”. Too often companies state that, for example, what people working on projects are paid is commercially sensitive. There have been plenty of examples of projects where if the information on spend and materials had been published, maybe the outcomes for the people using the end product of these contracts would have been very different.

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

See page 31 for reference.

The procurement process used by public bodies and government (national and local) in Scotland needs to be covered by FOISA as it is this process that decides who gets the money from the public purse to provide public services or infrastructure to be used by the public. It needs to be open, transparent and accessible in order to keep the whole process honest.

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.

Article 10 of the Human Rights Act and the fact that Scotland claims to be a democracy. Without access to data/information on how our services are run and Scotland's infrastructure is provided when money from the public purse is used, democracy in Scotland falls very short in our expectations. We need to know that our money is working for us and our families and friends now, not in 20 years' time.

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.

There should be a positive impact on all people with these protected characteristics, including our members, as the FOI reform as proposed should make it much easier for our members to access the data/information they need to make properly informed choices about their own lives and for those they care for.

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?

No comment

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?)

We would ask that you consider putting in a clause about how information is written for publication. Too often, information published by some of the more “obscure” public bodies and quangos, and private companies, at the moment is not accessible. This means that is useless to the people who are actively looking for the information and want to use it in their own lives.

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.

[Redacted] Unite the Union Glasgow Not for Profit Sector Branch.