

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

## Organisational Response (Organisation ID no 71)

### Voluntary Health Scotland

#### 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
- 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:

- 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)

Name/organisation: Voluntary Health Scotland

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Note: All answers to the questions may be published (unless your response is “not for publication”).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

Freedom of Information legislation is not our area of expertise, however, we welcome the opportunity to respond to this consultation as it could have significant implications for our members and the wider third sector.

Voluntary Health Scotland is the national intermediary and network for voluntary health organisations across Scotland. VHS exists to create a healthier, fairer Scotland served by a thriving voluntary health sector. We work to improve people’s health and wellbeing by providing an effective national network for health charities and other third sector organisations actively supporting people’s health and wellbeing. Our members and network include a range of medium and large condition specific organisations, smaller community organisations, as well as social enterprises.

In our response we hope to contextualise the operating environment which third sector and voluntary organisations supporting people’s health are in. We support the ambition of maintaining and strengthening people’s access to information rights but also have concerns about the impact some of the proposals might have on the sustainability of the voluntary sector. We are concerned about the lack of clarity in some of these proposals around definitions, anticipated impact and the complex funding environment the sector is operating in. The proposals could have unintended consequences for voluntary organisations depending on

their size, remit, delivery model and/or funding mechanisms. These potential impacts have not been sufficiently considered which leaves us with significant concerns and questions about the proposals.

Our response has been informed by the SCVO's own response and engagement with this topic. This is an area the SCVO has historically engaged with, and we are grateful for their expertise. We have encouraged our members to respond to this consultation and the Scottish Government's with their own experiences if they have capacity to. We ran our draft position by our membership before submitting it.

### **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.*

**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

We agree with the SCVO that whether policymakers should designate voluntary organisations under FoI that are publicly funded and deliver services of a public nature requires a more nuanced response than yes or no.

The voluntary sector is diverse, at Voluntary Health Scotland our network includes a range of medium and large condition specific organisations, smaller community organisations, as well as social enterprises. Many of our members

work in service delivery and provide direct support for communities and people. The definition of public service is not clear in these proposals, which could lead to confusion if FOISA duties are extended to the third sector. For example, does this only mean statutory services that the public authority would ordinarily provide or does it encompass services that there isn't a legal requirement for the public authority to provide. The definition of public service is going to be especially important to third sector organisations who provide health and social care services as they may receive some public sector funding but provide a non-statutory service. There would need to be clear definitions and guidance about what constitutes a public service to avoid potential confusion or a dilution of the legislation.

Additionally, from the consultation it is not clear whether the proposals would apply solely to contracts, service level agreements or grants. The third sector funding landscape is complicated, and many organisations are operating on one-to-three year contracts and/or short term grants. We believe a more substantial impact assessment needs to be carried out to better understand how the legislation would operate within these short-term funding cycles and for different types of voluntary organisations and funding models. Additionally, we need to better understand the demands this would place on third sector organisations, as we note from the PAPLS committee's report that information requests have been significantly increasing for public sector organisations in recent years. Third sector organisations generally do not have information officers or equivalents in their structures, so even for the larger organisations there could initially be a significant skills gap and resourcing issue.

Ultimately, it is very challenging to gauge the impact of the proposals, especially given this is an area of legislation the voluntary sector is not well versed in engaging with. We agree with the SCVO that, wherever possible, contracting authorities should retain the ultimate responsibility for managing FoI requests relating to contracted public services.

**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

At present, most third sector organisations are operating under immense pressure following the pandemic and now the cost-of-living crisis. We continue to hear of voluntary organisations losing funding, struggling to keep the doors open

and having to reduce services due to the operating environment. Many have limited resources, no access to legal support or data protection officers and will be unfamiliar with this legislation. It would likely be a significant ask of organisations to create a new officer or add duties onto existing employees' responsibilities. Any inclusion of the third sector would need to be coupled with ongoing training and resources to ensure the sector is brought up to speed on the duties. A failure to do so could erode public trust in the sector and the legislation.

Significant resources would need to be invested to bring third sector partners up to speed with the legislative duties and additional resource will need to be allocated in future contracts for staff costs and time. The current third sector funding model in relation to public sector funding is short-term, with organisations existing on one-to-three-year contracts, service level agreements or grants. We need to better understand the demands this would place on third sector organisations. Third sector organisations generally do not have information officers or equivalents in their structures, so even for the larger organisations there could initially be a significant skills gap and resourcing issue.

Voluntary organisations are not in the position to bear the costs of extending freedom of information. The sector is already facing a significant funding crisis, with many organisations having to reduce their service provision despite increasing demand for support. Without sustainable additional resources voluntary organisations will inevitably have to direct resources away from front-line delivery. This is especially worrying in the context of organisations supporting the delivery of health and social care services and preventative activity.

**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.*

**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.*

**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.*

**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.*

### **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

As outlined in previous questions we are concerned about regulatory costs to

third sector and voluntary organisations, especially given the current funding crisis and cost of living pressures. Smaller and medium organisations, and organisations primarily run by volunteers could find the regulatory costs unmanageable.

We were disappointed to read in the consultation the proposal that “if a potential provider does not wish to be covered, they need not tender.” Although this was in the context of private providers of social care, it isn’t made clear whether the same sentiment is held relating to third sector organisations. We share SCVO’s concern that unfunded and unsupported demands placed on organisations will likely lead to third sector organisations not tendering for public service contracts. We hope this is not the intention of the proposal, as the third sector often provides local community-based expertise and support which would leave a significant gap in public service provision if they are locked out of tendering.

## **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?**

We support the ambition of maintaining and strengthening people’s access to information rights but also have concerns about the impact some of the proposals might have on the sustainability of the voluntary sector, which could have implications for the individuals in society who are supported by the third sector.

In particular we share SCVO’s concerns about vexatious requests and the burden on organisations to prove a request is vexatious. We note the SCVO example of how corporate entities could use FOI to slow down processes to impede progress and abuse avenues to access information to misrepresent and undermine the credibility of voluntary sector research, policies, and activities.

We would also have concerns about organisations working to protect marginalised communities who could be subject to malicious information requests. In their response, SCVO also noted the particular difficulties and misrepresentations that have recently affected organisations campaigning on equalities issues, in particular relating to LGBTQ+ people. We appreciate FOI does not cover personal and private information, but targeted campaigns of vexatious requests could have significant resource implications for organisations working in these spaces. Voluntary organisations need certainty that people and organisations cannot use FOI nefariously to bring undue burden to their organisations, their staff and volunteers, and other

organisations supporting people with protected characteristics.

## **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?**

Similarly to our response to question 13, we believe strengthening people's access to information rights would have a positive impact, but we have significant concerns about the impact some of the current proposals might have on the sustainability of the voluntary sector.

## **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)?**

In general, we believe there needs to be a more clarity on the definitions, details of designation and potential impacts on the third sector. Our member organisations are not entirely clear about the information gap that is trying to be filled through the current proposals. It is our understanding that any third sector organisation that is contracted to provide a public service is required to report back extensively on the service they provide as part of their funding arrangement. Additionally, contracting authorities can request information from third sector providers in response to any freedom of information requests they receive. If a gap has been identified in people's access to information rights, then we believe existing structures and advice should be strengthened to aid in the provision of information. In general, the third sector is already adept at proactively publishing information. We are required to evidence ourselves through work plans, impact reports and other information often required to secure funding, especially from the public sector. Additionally, due to the nature of funding cycles voluntary organisations are well versed in evidencing impact to secure funding. The sector already proactively publishes significant information about service delivery and charities' accounts are publicly available through OSCR. We would suggest training and tools to help align this information with FOISA would be the best first step to bridge any gap in access to information rights.

We strongly believe that charities and the third sector should be held accountable for the services we provide. Some organisations provide support and services to the most marginalised and vulnerable groups in society. This work should be scrutinised, and organisations should be held accountable. However, we do have questions about whether there is a gap in the information being provided to contracting authorities at present from third sector

organisations. If there is a gap, we would like to better understand the solutions which have already been explored by contractors using the existing mechanisms and legislation. We believe that contractual obligations could be strengthened to provide information to support requests under FOISA and additional guidance would support third sector organisations in their response and collection of information.

If the case is made for designating a voluntary organisation under FOISA, a sustainable, long-term and increased funding model must be put in place or else third sector organisations will be locked out of bidding. Third sector organisations, by their very nature, direct the majority of their resources into front-line service delivery and may face challenges if forced to absorb additional costs as a result of FOISA.

At present, most third sector organisations are operating under immense pressure following the pandemic and now the cost-of-living crisis. We continue to hear of voluntary organisations losing funding, struggling to keep the doors open and having to reduce services due to the operating environment. Many have limited resources, no access to legal support or data protection officers and will be unfamiliar with this legislation. Any clauses to include the third sector would need to be coupled with ongoing training and resources to ensure the sector is brought up to speed on the duties. A failure to do so could erode public trust in the sector and the legislation.

**Thank You**

## **31. How to Respond to This Consultation**

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

### **Format of responses**

If possible, please submit your response electronically – preferably in a MS Word document. Please keep formatting of this document to a minimum.

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

Please include with your response contact details (e-mail if possible, or telephone or postal address) so we can contact you if there is any query about your response.

### **Where to send responses**

Responses prepared electronically should be sent by e-mail to:

[clarkkatyfoi@parliament.scot](mailto:clarkkatyfoi@parliament.scot)

Responses prepared in hard copy should be sent by post to:

Katy Clark MSP  
The Scottish Parliament  
Edinburgh  
EH99 1SP

### **Deadline for responses**

All responses should be received no later than **2<sup>nd</sup> February 2023**. Please let me know in advance of this deadline if you anticipate difficulties meeting it.

## **32. How responses are handled**

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website at [katyclark.org](http://katyclark.org). Published, responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content or may edit the content itself and publish a redacted version.

I expect to prepare a summary of responses that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The summary may cite, or quote from, your response (unless it is “not for publication”) and may name you as a respondent to the consultation (unless your response is anonymous).

If I lodge a final proposal, I will be obliged to provide copies of responses (other than confidential responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

### **Requests for anonymity or for responses not to be published**

If you wish your response to be treated as **anonymous**, please state this clearly. You still need to supply your name, but if the response is treated as anonymous, only an anonymised version will be published or provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response to be treated as “not for publication” please state this clearly. If the response is treated as confidential it will not be published or provided to SPICe.

### **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

## 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).