

Submitted to Access to information rights in Scotland
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Agility of the regime - maintaining and strengthening access to information rights in the context of varied models of service delivery

1(a) Do you or your organisation have direct experience of access to information rights operating in relation to 'outsourced' services?

Please select from dropdown menu:

Yes

1(b) If 'yes' how would you rate your experience of access to information rights in relation to such services?

Please select from dropdown menu:

Not a problem

Please provide any detail or context that you can regarding your experience in the box below.:

We have not, to date, found this problematic. When responding to FOIs we take a wide approach and, as required, include information held on our behalf. This means information required in order to respond to an FOI held by 'outsourced' suppliers will be captured in response to an FOI, so it has not posed an issue for our compliance with FOI.

2 (a) If seeking information about a public service delivered under contract by an external provider, how confident would you be that a member of the public could use their access to information rights to seek the relevant information, by making a request directly to the public authority on whose behalf the service is being delivered?

Please select from dropdown menu:

Somewhat confident

Please provide any reasons for your answer.:

As noted above, in our own experience we consider that we have suppliers who understand the needs under FOI and have good record keeping, to enable robust and full responses to FOI requests and where necessary assist in provision of information that is held on our behalf. However, it can of course be envisaged where this might not be the case and where external suppliers do not have this level of relationship or understanding and the flow of information or retention of relevant information may not be as strong. As a result, it is likely that this area could be strengthened to ensure consistency across all organisations within the scope of FOI.

2 (b) If seeking information about an ancillary service previously delivered in house - but now delivered under contract by an external provider - how confident would you be that a member of the public could use their access to information rights to seek the relevant information, by making a request directly to the public authority to which the service is being delivered?

Please select from dropdown menu:

Somewhat confident

Please provide any reasons for your answer.:

As above

Addressing concerns about agility of the regime and loss of information rights, within the current statutory framework

3 (a) Would you welcome further assurance about the future use of the Scottish Government's section 5 power to maintain and extend access to information rights in Scotland?

Please select from dropdown menu:

Yes

3 (b) What, if anything, would provide you with greater assurance that the power can be used consistently to ensure coverage of the Act can keep pace with any changes in the delivery of public services?

Please give us your views:

At present, it is arguable that that rationale for FOI can be confused. We query whether the rationale for inclusion in FOI relates to following public money or whether there is further consideration in relation to the size of an organisation that determines the level of accountability required, as suggested through this consultation. We consider that there requires to be that clear foundation and clarity of purpose in FOI to ensure that the power is used consistently. We fully support FOI and the importance of accountability and transparency of organisations, where appropriate, however the founding rationale for FOI must be clear in order that any such power is used consistently.

4 (a) Would stronger guidance for Scottish public authorities about the status of information held by contractors, give you greater confidence that information about outsourced services remains accessible under FOISA and the EIRs?:

Please select from dropdown menu:

Yes

Please give reasons for your answer:

Any additional guidance on this area would be helpful, particularly when establishing / building relationships with contractors to create greater understanding of each party's obligations.

4 (b) Would stronger guidance for Scottish public authorities about the status of information held by contractors, give you greater confidence that information about outsourced services remains accessible under FOISA and the EIRs?

Please select from dropdown menu:

Yes

Please give reasons for you answer:

As above

5 Do you agree that it is relevant to make a distinction in guidance between public services (i.e. those provided directly to members of the public, for which the authority itself is commonly regarded as having ultimate responsibility) and ancillary services (i.e. internal services provided to an authority which it has traditionally tasked its own directly employed officers or staff to deliver, but has now contracted to an external provider)?

Please select from dropdown menu:

No

Please provide any thoughts you may have on the relevance, appropriateness and implications of such a distinction.:

This appears to relate more to bigger public authorities than we are. However, for smaller public authorities, such as ourselves, those ancillary services tend to remain in house and we receive FOIs in relation to those services. We therefore do not consider that there ought to be that distinction made. If public funding is being used for a service, public or ancillary, the same rules should apply; we do not consider a distinction between the two is necessary. We would refer to our other comments about the rationale for FOI and clarity of purpose – in our view this is what should drive all the requirements.

Assessing the need for primary legislation

6 (a) What are your views on the introduction of a Gateway clause as a means of making the Act more 'nimble'?

Please select from dropdown menu:

Not sure/have no view

Please give us your views:

We are not yet sure whether we would support or oppose a gateway clause. Further information would be required, particularly a draft or proposed clause in order to consider the potential reach or ability to implement such a clause. The proposal to bring in such a clause would bring the legislation somewhat in line with the way in which the public procurement legislation is structured. While it may work in that context, there would be concerns that this could lead to reduced implementation of Freedom of Information. Any such clause would be open to interpretation. It could result in fewer bodies being aware that they are subject to FOI or that they do not actively engage in FOI requirements. It could make the system unnecessarily complex and bureaucratic. It is likely to create disparity in application between different contractors and who is caught by such a clause.

Alternatively, if properly and appropriately drafted, it could be a beneficial development, allowing the FOI legislation to encompass, appropriately, more bodies and not rely upon the continuous updating of a long list of bodies.

Until any such gateway clause is drafted, it will be difficult to provide detailed comment on its merits or challenges.

6 (b) If a Gateway clause were introduced into the legislation, what would your views be on a specific exclusion for small and medium-sized enterprises (SMEs)?

Please select from dropdown menu:

Not sure/have no view

Please provide more information about your views below.:

GTC Scotland wholeheartedly agrees with, and is committed to, ensuring transparency and accountability. We do, however, query whether there is sufficient clarity around the rationale upon which the Freedom of Information regime is based and the purpose it is intended to serve. Is it, for example, to ensure that there is accountability and transparency wherever there is use of public money? Or, is it more to do with the size and scale of the organisation and the spend that determines the level of accountability required?

At present, it is arguable that that rationale is unclear and that is why we have answered this question as 'not sure'. For example, we are a small independent organisation that receives no public funding for carrying out our statutory functions. We are funded by registration fees of individuals employed as teachers, in Scotland's public and independent schools and colleges.

Therefore, we are not confident that the rationale for the current FOI regime is clear or consistent. At present, there does not appear to be consistency on whether FOI follows public money or simply wishes to ensure accountability of certain types of organisations. At present, the size of a public authority does not factor into its inclusion under FOI. As a result, small, unique, organisations such as GTC Scotland, which is not funded by the public purse, are within the scope of GTC Scotland. As mentioned, GTC Scotland believes that it should be subject to FOI and supports the principles that underpin FOI legislation, however we believe that the underlying rationale could be clarified, which would in turn create greater clarity around terms of exclusion such as the one proposed.

By way of illustration, GTC Scotland is a small organisation of around 70 FTE employees, with 81,500 registrants and is funded by registrant (Scottish teachers) paying an annual registration fee. We are not funded by the Scottish Government or public funding for our statutory function. We receive very small pockets of funding from Scottish Government for carrying out specific contracted functions on behalf of the Scottish Government. In 2021/22 we received 74 FOI requests. For the year 2022/23, as at 28/2/23 we have received 75 FOI requests.

This is in comparison to a similar body in terms of functions, for example the SSSC, who have approximately 165,800 registrants and 314 FTE employees, with the majority of income received by grant in aid from the Scottish Government. In 2021/22 the SSSC responded to 32 requests under Freedom of Information (as per SSSC Annual Report 2021/22). We would therefore question any rationale to exclude SMEs from FOI, given this rationale is not applied through current FOI legislation as it is today.

As a small organisation, not funded by the Scottish Government, GTC Scotland bears a heavy burden to ensure compliance with FOI legislation as can be seen through the comparison noted above. If any such rationale is to be adopted when applying the regime to those contractors who are carrying out public or ancillary services, the same rationale should be applied within the current framework for FOI or we would question the logic and rationale that underpins the framework as a whole.

6 (c) If a Gateway clause were introduced into the legislation, what would your views be on a specific exclusion for third-sector organisations?

Please select from dropdown menu:

Not sure/have no view

Please provide more information about your views below, including your thoughts on whether a distinction should be made between large and small/medium sized third sector bodies (e.g. those employing fewer than 250 staff members):

Same rationale as above. As mentioned previously, we consider that clarification of the rationale and principles underpinning FOI is essential. This would enable there to be greater clarity and consistency around the purpose, scope and reach of the legislation. This may in turn mean that even where a small amount of public funding is utilised for a public service that it is included in FOI requirements. We consider consistency of approach across the legislation is key driven by clarity of purpose. We question whether the amount of public funding or the size of the organisation can appropriately create an exclusion in relation to third-sector organisations, where other such small, unique organisations are not so excluded nor are dispensatory measures provided to support such organisations within the scope of current FOI legislation. To make exclusions in this way would, in our view, require a review of the scope of FOI legislation as a whole.

7 What are your views on the desirability of broadening the section 5 power to enable Scottish Ministers to extend FOISA to a wider range of bodies?

Please select from dropdown menu:

Not sure/have no view

Please provide more information about your views, including any thoughts you have on how a broadened section 5 power might operate.:

The power does not appear to be effectively utilised and may result in a lack of clarity around who is captured by Freedom of Information legislation.

8 (a) What are your views on the necessity of amending legislation to provide a clearer legislative steer about when information held by contractors about the delivery of public services (i.e. any service provided directly to members of the public, for which the authority itself is regarded as having ultimate responsibility) is to be considered 'held' by the contracting authority for the purposes of FOISA and the EIRs.

Please select from dropdown menu:

Not sure/have no view

Please provide more information about your view, including any thoughts you have on how any such approach might work.:

As noted earlier in this response, clearer legislative steer and guidance will provide assistance. We have no strong view on whether this is by clearer guidance or by amendment to the legislation.

8 (b) What are your views on the necessity of amending legislation to provide a clearer legislative steer about when information held by contractors about the delivery of ancillary services previously delivered in house (i.e. any internal service within an authority which it has traditionally tasked its own directly employed officers or staff to deliver, but has now contracted to an external provider) is to be considered 'held' by the contracting authority for the purposes of FOISA and the EIRs.

Please select from dropdown menu:

Not sure/have no view

Please provide more information about your view, including any thoughts you have on how any such approach might work.:

As above.

9 Do you have other thoughts on how the Committee's general concern about the agility of the legislation, in terms of its ability to keep pace with developments in the way public services are delivered, might be addressed?

Please give us your views:

There requires to be greater understanding of how the system works for those who are responding to FOI requests and the pressures that this can place on organisations, particularly small organisations with limited resource. As noted above, this can quite radically affect some organisations more than others in a very disproportionate way. It is recommended that what is required is a more holistic approach to how 'fit for purpose' and fair the current regime is, as well as looking at ways to ensure increased transparency where public or ancillary services are being carried out by contractors.

There is a requirement to look at this more widely, and to ask what the purpose of FOI is and who it applies to. Through the current legislation that purpose and rationale it is not entirely clear. As we have stated in our responses above, it is possible that this lack of clarity continues to run through this consultation particularly around the basis upon which organisations will be within scope of the legislation.

There is disparity and inequity of burden and pressure on certain organisations and there can be said to be inconsistency and lack of clarity around the scope of the legislation and where it should and should not capture certain organisations. Until that clarity is found, it will not progress to be a fair system.

Further thought given to additional support to organisations may be beneficial. This may ensure that there is an appropriately wide scope of FOI legislation, while ensuring that those which are of smaller scale or resource can ensure compliance and continued development of their accountability and transparency processes. We consider those principles to be essential, but suggest that perhaps further support for organisations is necessary, to take in to account the reality of managing a complex FOI regime. For example, the UK ICO has recently released a package of support for organisations, recognising the pressures and difficulties organisations can experience in responding to FOIs. We benefit from a wealth of resources within the Scottish system, however, we consider additional consideration of the impact FOI can place on organisations and how this might be better supported, while ensuring the essential principles of openness and transparency are protected, would be beneficial.

Additional issues concerning agility of FOISA in the context of varied models of public service delivery (1)

10 Do you have any experience of a confidentiality clause agreed between a Scottish public authority and its contractor - as opposed to a wider concern to respect commercial interests - acting as a barrier to the release of information under FOISA?

Please select from dropdown menu:

I don't know/would prefer not to say

Please provide details or any further reflections.:

11 Do you favour amending FOISA to prevent Scottish public authorities from relying on confidentiality clauses with contractors as a basis for withholding information?

Please select from dropdown menu:

I don't know/have no view

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

Additional issues concerning agility of FOISA in the context of varied models of public service delivery (2)

12 Are you aware of any specific instances where access to information through FOISA has been frustrated as a consequence of the current structure of the section 6 provisions?

Please select from dropdown menu:

I don't know/would prefer not to say

Please provide details or other comments below.:

13 Do you agree that the wording of section 6 of FOISA should be amended so as to ensure all companies wholly-owned by any combination of schedule 1 authorities, including the Scottish Ministers, fall within the definition of a 'publicly-owned company'?

Please select from dropdown menu:

I don't know/have no view

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

Developments in Information Technology – ensuring access to information rights in the face of changing modes of information use

14 Do you agree that updating the Section 60 Code of Practice, to provide explicit guidance on mitigating the risks associated with any use of unofficial platforms, would be the best way to provide greater assurance that authorities are fully appraised of their obligation in relation to information held on unofficial platforms?

Please select from dropdown menu:

I don't know/have no view

Please provide reasons for your answer.:

Any additional clarity or guidance on this area would be helpful, however we have no strong view on where this additional clarity is best placed.

15 Do you believe there would be value in amending FOISA to incorporate a fuller definition of the term 'information' within the legislation?

Please select from dropdown menu:

Yes, I would be in favour of such a change

Please provide reasons for your answer.:

16 If a definition of information were incorporated within FOISA should this definition be:

Please select from dropdown menu:

'any information in written, visual, aural, electronic or any other material form'

Please give us your views:

Improving proactive publication – promoting openness as 'business as usual' in a digital age

17 Do you agree that the current provisions of sections 23 and 24 of FOISA, in regard to publication schemes, require to be updated?

Please select from dropdown menu:

Yes, I agree there is a need to update the provisions

Please explain the reasons for your answer.:

It is somewhat outdated and relatively inflexible. We do not consider that it is currently the most meaningful, or user friendly way to ensure proactive publication. Meaning or impetus can often be lost within the publication scheme and there can be scope to misinterpret or underutilise the publication scheme.

18 Do you agree with the Commissioner's proposal that the requirement to adopt and maintain a publication scheme should be replaced by a simple duty to publish information, supported by a Code of Practice on publication, set by the Commissioner subject to Parliamentary approval?

Please select from dropdown menu:

Yes, I would be in favour of such a change

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

This would be required to be very clear what the obligation was and the scope of the duty. Anything open to interpretation or without complete clarity could create a reduction in the publication practices. However, it is clear that public authorities are committed transparency and accountability and so to provide for a general duty would be beneficial. This would likely create greater flexibility and adaptability for public authorities.

Any such duty would have to take in to account the competing interests that public authorities have to consider in its publication, but would set a minimum and agreed standard of publication to ensure and promote transparency and accountability across public authorities.

19 Is there any other alternative, that you see as preferable to the Commissioner's proposed approach?

Please select from dropdown menu:

I don't know/have no view

If 'yes', please elaborate.:

Improving approaches to proactive publication within the existing statutory framework

20(a) How satisfied are you with the availability of information about the work of government and public services in Scotland in the public domain?

Please select from dropdown menu:

Neither satisfied nor dissatisfied

Please provide reasons for your answer.:

20(b) Specifically, what types of information regarding the work of government and public services in Scotland do you consider should be made available proactively?

Please give us your views:

20(c) How would you prefer to access information about government and public services in Scotland?

Please give us your views:

Technical and other changes – ensuring the Act remains fit for purpose

21 Do you support changes to FOISA, and to the fees regulations, to permit authorities to estimate excessive cost of compliance in terms of staff time, rather than financial cost (the limit being set at 40 working hours)?

Please select from dropdown menu:

Yes, I would support changes of this nature

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

At present the way in which the current regime is framed does not reflect the true cost to an organisation of collating a complex response. Not least, as is set out in the consultation itself, the limit of £600 has remained unchanged since FOISA came into force in 2005 and the cost of staff members' time has remained fixed at £15 per hour. Even if the fundamental element of how the costs were to be calculated, these amounts are vastly out of date and far too low to be a fair reflection on the cost to an organisation. As a small organisation which of around 70 FTE employees, the burden upon resource can be intense. It is often the case that the way in which the cost exemption is to be applied, the time and cost associated with calculating the cost of the request can sometimes also be disproportionate, given the complexity of the calculations required.

To transfer this to a simpler system of cost and to associate the cost more with the resource implications on the organisation, would be more appropriate. It is, after all, the human resource cost that is attached to every element of collating a response. Further, it is notable that there is then no ability to cost the resource for considering exemptions to what has been identified as a large and complex request, again removing some of the benefit of the cost exemption applied.

Finally, the time limits associated with more complex requests that have attracted a s12 would also merit further consideration. As noted above, the time taken to consider a request, initially to determine what information would fall within scope and then to assess the implications of collating that information, and then to calculate a fee notice can be great. While every effort may be made to issue a fee notice 'as soon as possible' after a request is received, that may ultimately leave only around 10 days of the time limit to later process the request, should the fee be paid.

In a small organisation where it is identified that the request is so large and complex as to attract a fee notice, this indicates that the resource pull on the organisation will be great. It would be beneficial to consider flexibility in the timeframes and to take account of the level of resource that may be required. In an organisation which deals with public, particularly child, protection and safeguarding, to have such a resource intensive request to be dealt with in such a short period of time removes resource from critical statutory functions. In addition, given the organisation's finite financial resource, this cannot be easily remedied by adding short term, or long term, resource to our information compliance teams.

This is an important point, which we do not feel is explored enough, that effects the entirety of the FOISA regime.

Amending FOISA to allow requests to be transferred between Scottish public authorities (similar to the way in which EIRs requests can be transferred).

22 Are you aware of any examples or evidence of how the existing power to transfer requests under the EIRs regime has affected the service provided to requesters, either positively or negatively?

Please select from dropdown menu:

No

Please elaborate.:

23 Do you favour introducing a provision into FOISA to allow the transfer of requests between authorities, similar to that contained within Regulation 14 of the EIRs?

Please select from dropdown menu:

No, I would not be in favour of such a change

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

While in theory this would seem like a beneficial addition to the legislation, it is unlikely to have any material benefit in practice and may in fact cause more difficulties for public authorities. As is stated within the consultation document, the EIR transfer is used infrequently. Further, there are risks and reservations attached to the ability to transfer the request, primarily around data protection.

In addition to those, which would we endorse, we also would identify further challenges. At present where information is not held, we will provide such a notice and as required, if we have further thoughts or information on who might hold the information, we will provide that advice and assistance. This will include advising an individual of which other organisation we believe may hold the information. In some cases, given our area of work, this could be, for example, all local authorities within Scotland, or all education institutions in Scotland, depending on the scope of the request. That would be a heavy burden to place on a small organisation. In addition, it is envisioned that where this has occurred and the request has been transferred, it remains likely that the requester's first point of contact (given they will not have points of contact at each of those organisations to which the request has been transferred) will continue to be the originating organisation. This similarly adds a burden and resource requirement to the organisation who does not hold the information and has confirmed as such.

Therefore, we consider it more appropriate to ensure that public authorities do provide advice and assistance to requesters to signpost them to the appropriate public authority. We do not, however, consider it to be a beneficial addition to require or allow the transfer between public authorities given the added complexity this could create.

Amending the provisions of FOISA with respect to time for compliance so that requests for clarification merely pause - and do not reset - the 'clock' for compliance within the statutory timescale.

24 Which of the following approaches in relation to the effect of seeking clarification do you most favour.

Please select from dropdown menu:

Leaving the provisions of the legislation unchanged in respect to timescales.

Please provide comment/reasons for your answers.:

While we accept that there may be some benefit to “amending FOISA to allow an authority a defined period in which to seek clarification, after which any additional days delay in seeking clarification will be deducted from the statutory timescale for response”, we can envisage difficulties created by this approach and our views in relation to this span more widely than this discrete area.

We have responded earlier in this consultation in relation to fee notices and the timeframes that are applied to those. Namely, if a complex request is received, the time taken to calculate a fee notice (which can take significant time) is not taken into account, nor is additional time allowed to then respond to the request provided once a fee is paid. This again goes to the earlier point made of ensuring there is consistency across FOI legislation, both in terms of rationale and scope of the legislation but also in relation to matters such as timeframes and managing those.

The consultation document itself states that “the requirement to respond within the 20-working day statutory timeframe can be challenging for authorities, particularly when handling large or complex requests”. If this is acknowledged in one part of the legislation, in this instance where additional clarification of a request is required, that should be reflected throughout the legislation. At present, the legislation is disjointed and at times unfair in its approach. There appears to be little consideration given to the differing size of organisations and financial or resource constraints on organisations designated as a public authority under FOISA. For instance, as noted in an earlier response, a similar body to our own in terms of functions, but with over 4 times the staff of our organisation and is funded primarily by Scottish Government will find themselves in a better position to respond to requests than we, as we receive a finite financial resource through registration fees and therefore have finite human resource to manage these requests. Nevertheless, our organisation receives 2.3 times more FOI requests than that comparative body. We would urge that further consideration is given to the fairness of these timelines as well as assessing the rigidity of these, to ensure a joined up, fair and consistent approach across the FOI regime both for requesters and for organisations.

In relation to seeking clarification, it can take time to consider a request appropriately and to determine whether further clarification is required, be that within a small or large organisation. Ensuring that the ability to seek clarification, or to engage in communication with a requester, is not inhibited through the legislation (such as by dedicating only a specific amount of time within which clarification can be sought) is essential. Any step such as limiting that timeframe could have a negative impact on an authorities ability to meaningfully and openly engage with a requester in order to provide assistance and ensure a requester receives the information that they are seeking. Instead, introduction of ringfenced timeframes for this could lead a public authority to be less able to facilitate meaningful discussion with a requester to ensure a helpful and beneficial response. It may also result in more public authorities deeming a request to be invalid rather than to work with a requester to ensure clarity of a request.

It appears that there is no evidence that the current practice is being used by public authorities to stop or delay responding, but instead, from our own experience may simply be as a result of processing a complex response which may, for example, touch upon various areas of the organisation. It is not uncommon that the need for further clarity can be identified at a later point once, what is deemed to be, relevant information is collated.

Our FOI legislation should be encouraging public authorities to engage with its requesters, to provide assistance and to ensure the requester receives the information that they wish to receive. To amend the legislation to either of the proposed amendments may discourage communication beyond a certain point, which would be a negative impact of amended legislation.

We identify with the ongoing difficulty of complying with short timeframes, and any steps taken to reduce those timeframes must be carefully considered. As a small organisation that can receive multiple requests in a short space of time this can result in a heavy resource requirement and reduce the ability to identify the need to or to seek clarification immediately. Consideration must be given to the practical effect this proposal may have on organisations managing these requests, while ensuring requesters continue to receive information as quickly as possible.

We therefore strongly urge the consideration of the timeframes overall in light of the acceptance that responding to complex or large requests within 20 days can prove challenging for organisations.

Removal of (section 48) prohibitions against appeals being made to the Commissioner against: the Commissioner himself; procurators fiscal; the Lord Advocate in his capacity as head of the systems for criminal prosecution and the investigation of deaths

25 In principle, would you favour allowing the Scottish Information Commissioner to consider appeals concerning decisions of the Commissioner's own office, subject to assurances about the internal independence of that process?

Please select from dropdown menu:

Yes, I would be in favour of such a change

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

Many organisations have internal review processes, where they can assess the appropriateness of a decision made. It would seem entirely appropriate, if there were sufficient safeguards to the independence of the process, for decisions of the Commissioner's office to be reviewed. While of course that could be challenging to set up and certainty around the independence of that process essential, the fundamental principle is sound.

26 In principle, would you favour allowing the Scottish Information Commissioner to consider appeals concerning decisions of procurators fiscal and the Lord Advocate (relating to the systems of criminal prosecution and investigation of deaths)?

Please select from dropdown menu:

Yes, I would be in favour of such a change

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

We would agree that it seems to be a gap in information rights in Scotland. If carefully framed, we do not consider that allowing the Commissioner to consider appeals concerning the handling of requests by procurators fiscal or by the Lord Advocate to be inappropriate, nor undermine the independence of the prosecution service. Access to information is essential for transparency and accountability and this should extend to criminal justice agencies. Exemptions will apply and, if appropriately applied, this would not cause any additional issue. Criminal justice agencies may not be applying the legislation effectively or correctly and it is essential that they have the same accountability requirements as other public authorities. If exemptions have been appropriately applied, no further disclosure would be required, if they have been inappropriately applied then it is important for the operation of the FOISA regime that any such error is assessed and addressed. We would support this amendment.

Removal of First Ministerial 'veto' power (section 52)

27 Do you support the retention of the First Minister's 'veto' power in relation to the release of information held by the Scottish Administration, or do you consider the power should be removed from FOISA?

Please select from dropdown menu:

I consider that the power should be removed

Please provide reasons for your answer.:

The current power, despite having never been used, appears to threaten to obstruct the independent role of the Commissioner in applying Freedom of Information legislation. With relevant exemptions in place, information can be exempt from disclosure under the FOISA legislation, where appropriate. The Commissioner would take all matters in to consideration when determining release of information to be lawfully disclosed or withheld under FOISA. It therefore seems somewhat inappropriate that this veto power should exist.

Add provision to FOISA, similar to 10(2)(b) of the EIRs, 'that exemptions should be interpreted in a restrictive way and there should be a presumption in favour of disclosure'.

28 Do you agree that specific provisions requiring the restrictive interpretation of exemptions and a presumption in favour of disclosure require to be incorporated within FOISA?

Please select from dropdown menu:

Yes, I would be in favour of such a change

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

We have no strong view on this proposal as we consider these principles to be embedded within FOISA and best practice, however consider that its inclusion, or further clarification, would be beneficial. As noted in the consultation paper, while there are a number of FOISA exemptions these are all very specific and well defined. If the information requested does not fall within these narrow exemptions, information must be disclosed. As an organisation, we work on the presumption in favour of disclosure unless an exemption applies, and we apply those exemptions in a restrictive way. It may be that these principles would be better to be further embedded within guidance and briefings, however we are not opposed to the idea that these would be reiterated within the legislation to ensure consistency of approach.

Amend section 53(1)(a) to make it clear that failure to comply with a decision on time can also be referred to the Court of Session

29 Do you support amending section 53(1)(a) to make it clear that failure to comply with a decision notice on time can be referred to the Court of Session?

Please select from dropdown menu:

I don't know/have no view

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

Amend definition of "information" to exclude environmental information as defined in the EIRs

30 Do you favour amending the definition of 'information' within FOISA so as to specifically exclude environmental information, within the definition of Regulation 2(1) of the EIRs?

Please select from dropdown menu:

No, I would not be in favour of such a change

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

While this may, in the longer term, be a reasonable approach, given the status of the EIR legislation and its links to EU Directives and potential for change in the near future, we do not consider it an appropriate time to amend FOI legislation in this way. Any such link may more helpfully be included in guidance to ensure consistency and clarity, for the time being.

Provide an exemption for information provided to the Commissioner under or for the purposes of FOISA

31 Do you support the creation of a new exemption, available only for use by the Commissioner, specifically for information provided to the Commissioner under, or for the purposes of FOISA?

Please select from dropdown menu:

Yes, I would be in favour of such a change

Please explain your reasons for either supporting or opposing such a change or your reasons for being unsure.:

This would appear to be a safeguarding measure to ensure that public authorities can confidently and openly engage with the Commissioner when carrying out his statutory function. We would welcome the explicit exemption ensuring such information disclosed to the Commissioner for the purposes of fulfilling his role in the consideration of appeals.

About you

What is your name?

Name:

Freedom of Information team

What is your email address?

Email:

foi@gtcs.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

General Teaching Council for Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

The format was quite difficult to navigate to allow for consideration of the consultation outwith the survey response - it also made it quite difficult to enable internal collaboration within the organisation. It would have been more beneficial to have access to a PDF/Word version of the consultation and questions to allow for that more easily.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly dissatisfied

Please enter comments here.:

As above