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Dear Martin

I was grateful for the opportunity to provide evidence to the Committee on 20 November in relation to the Freedom of Information Reform (Scotland) Bill, introduced by Katy Clark MSP on 2 June 2025. During that evidence session I committed to write to you regarding a number of matters that were raised.

Timeline for revision of Section 60 Code of Practice

The Scottish Government received initial comments on the existing Code from the Commissioner's office in late 2024. Internal consideration and discussion within Scottish Government has been taking place since that time. Whilst I acknowledge that this process has taken longer than originally expected, we have taken the time necessary to ensure that the revised wording of the Code is robust. I have asked my officials to ensure that a further revised version of the Code is shared with the Commissioner's office before the Christmas recess, for further discussion with the Commissioner in January.

Subject to the views and input of the Commissioner – there will then be a short, focussed engagement with public sector and civil society stakeholders prior to the text being finalised. This will be undertaken with a view to enabling a revised Code to be laid before the Parliament before the close of the current parliamentary session.

Review of Schedule 1 of FOISA

I can confirm that preparatory work has been undertaken in relation to the review of Schedule 1. A point that may not have come across fully at the 20 November session is that there is a connection between that work, and work to identify any companies whose FOISA status may be affected by joint ownership between the Scottish Ministers and other Scottish public authorities. Having identified such companies, our first recourse would be to consider whether they may be suitable for addition to Schedule 1, by means of an order made in exercise of Scottish Ministers' power under section 4 of FOISA.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

As referred to in my evidence on 20 November, Research Data Scotland is the only organisation so far identified as possibly falling into this category, with its status still to be fully assessed. This work will continue in 2026. As indicated on 20 November, the Scottish Government will update the Committee should any further examples be identified.

This will be accompanied by wider work to identify any organisations understood to be part of the devolved public sector but which may have not been added to Schedule 1. Generally, addition of new public sector organisations to schedule 1 of FOISA is affected by the primary legislation that establishes that new organisation. However, new bodies can be established in parts of the public sector without specific primary legislation. When this happens it may create issues for FOISA coverage. The work on the Schedule 1 review is intended to explore this.

Scottish Government position on consideration of appeals about COPFS

Whilst noting that Katy Clark's Bill does not propose to repeal sections 48(b) or (c) of FOISA, the Committee sought to explore the Scottish Government's position on this issue. These are the provisions of FOISA which prevent the Commissioner from considering appeals about the Lord Advocate as head of the system of prosecution and investigation of deaths or of Procurators Fiscal.

The original [Policy Memorandum for the Freedom of Information \(Scotland\) Bill](#) (see paragraphs 113-119) in 2001 set out the former Scottish Executive's position at that time, that it would be outwith the legislative competence of the Scottish Parliament to empower the Commissioner to carry out that role. The Memorandum also highlighted that Ministers at the time were not persuaded, had it been competent, that it would be appropriate to empower the Commissioner to compel the release of information regarding decisions in relation to prosecutions or the investigation of deaths.

In its [response to the analysis of responses to the Access to Information Rights in Scotland consultation in 2023](#) the Scottish Government set out that there had been no reassessment of the position in relation to legislative competence. The response also highlighted that the exclusion is understood to relate only to matters regarding prosecutions and the investigation of deaths. The Commissioner has in fact considered a number of appeal cases regarding the Crown Office and Procurator Fiscal Service, which related to administrative matters.

Yours sincerely



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