

Written submission from Carole Ewart, Director - Campaign for Freedom of Information in Scotland (CFoIS)
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Following the four oral evidence sessions in November 2025, CFoIS submits supplementary evidence in support of the Freedom of Information Reform (Scotland) Bill. CFoIS is pleased the Committee's call for submissions on the general principles of the Bill produced 108 responses with around 60 coming from the public and SPICe analysis proves overwhelming support for the Bill's provisions. CFoIS notes that a majority of those giving oral evidence support the Bill¹.

Section 1 Cultural Change

Section 1 addresses a problem identified by [journalists](#) and campaigners that the default setting for official minds and processes in some public bodies has not switched from a culture of secrecy to one of transparency. For example appeals to the Scottish Information Commissioner since 2005, have resulted in 37% of decisions finding fully in the requester's favour with 28% partially in their favour which often results in the disclosure of some of the requested information. Therefore in 65% of cases, all or some of the information should have been disclosed due to the initial FoI request² and, as not subject to any exemption, could have been proactively published. CFoIS believes section 1 is needed to help change culture by further emphasising the public's right to access information.

Section 2(2) New Mechanism for Designation of Public Bodies under FoISA

CFoIS is disappointed that the Memorandum from the Scottish Government opposes the measure in section (2)2 of the Bill to enable the Parliament to extend FoISA by resolution. The Bill replicates the robust process for designation currently, but occasionally, followed by Scottish Ministers. When Scottish Ministers have declined to act, CFoIS believes the Bill enables the Scottish Parliament to consult and scrutinise proposals to designate persons or organisations as 'public authorities' for the purposes of FoISA, drawing on the expertise of the Parliament's staff.

The process for designation will be considered in a transparent way enabling the public as well as MSPs to arrive at an informed view.³ The additional mechanism for designation enables Scottish Ministers to submit evidence to the lead Committee and then to Parliament when there is a vote. Therefore the executive is included in the law-making process. This new mechanism addresses a problem identified by MSPs in 2013 which prompted measures in the Freedom of Information (Amendment) Scotland Act 2013. If sought to fix the slow process of Scottish Ministers designating new public bodies under section 5 of FoISA by introducing a requirement on them to report on progress to Parliament every two years. However it has not incentivised Ministers to act. For example the latest report of 27th October 2025 states: "The Scottish Government has not exercised the section 5 power during the reporting period but is actively considering the use of the power to extend

¹ <https://www.parliament.scot/bills-and-laws/bills/s6/freedom-of-information-reform-scotland-bill>

² Point 12 <https://www.foi.scot/celebrating-20-years-foi-20-numbers>

³ Paras 32 and 34, <https://www.parliament.scot/-/media/files/committees/standards-procedures-and-public-appointments-committee/correspondence/2025/letter-from-the-minister-for-parliamentary-business-and-veterans-dated-13-november-2025.pdf>

coverage of FOISA to further entities.”⁴ Similarly, their reports of 2023 and 2021 acknowledged the section 5 power had not been used during the reporting period.

Stage 2 - Section 9 Information provided to the Commissioner

Section 9 of the FoI Reform Bill creates a new exemption covering information supplied to the Commissioner for the purpose of investigating appeals. CFoIS is persuaded by the Scottish Government’s Memorandum to the Committee, that the provision, as currently drafted, would enable other bodies to rely on this exemption and not just the Commissioner. This is an unintended consequence of section 9 and CFoIS will support an amendment at Stage 2 to limit this exemption for use only by the Commissioner.

Section 13 – Removing the FM’s Power of Veto

Section 13 of the Bill does not remove the right of the Scottish Government to appeal a decision of the Commissioner to the Court of Session. It replaces secrecy with transparency as the reasons for the Scottish Government’s opposition to disclosure of information in the public interest will be discussed in the Court of Session. By removing the Ministerial veto, it equalises the process for public bodies who disagree with a Commissioner’s decision to publish information.

Section 15 of the Bill - Proactive Publication

Under sections 23 and 24 of FoISA, public authorities are required to proactively publish information⁵. Proactive publication is a critical tool for the public to hold public bodies to account. However the Model Publication Scheme (MPS) has not worked. See Appendix 1 for more procedural information. Designated public bodies should proactively publish classes of information which meet the MPS Principles and produce a Guide to Information. The classes fit the type of information requested by the public e.g. on decision-making, spending, procurement and contracts.

However ‘mystery shopping’ reports for the Commissioner’s office indicate some of the problems including that in 19 of the 71 authorities, significant effort is required (4 clicks or more) to locate the information, or if the Guide is not provided online. This includes four local government, four NDPBs, three NHS authorities, and six ‘other’ authorities.⁶

The PAPLS Post-legislative Scrutiny Report on FoISA of May 2020, quoted SOLAR/SOLACE who stated that proactive publication “has been done very successfully” by Glasgow City Council and the City of Edinburgh Council in relation to controversial issues, reducing the anticipated “flood” of requests in respect of matters of public concern.”⁷ CFoIS is pleased such learning was shared within the sector.

Under section 15 of the Bill, the Code of Practice on Proactive Publication will be consulted on in a process led by the Commissioner. This is a positive development as it enables people to provide views on what information they want to see and well

⁴ Para 22 <https://www.gov.scot/publications/freedom-information-scotland-act-2002-report-exercise-section-5-power-4/pages/4/>

⁵ <https://www.legislation.gov.uk/asp/2002/13/part/1/crossheading/publication-schemes>

⁶ 2018 reports <https://www.foi.scot/model-publication-scheme-monitoring>

⁷ Para 133

as designated public bodies understanding the public's interests better which leads to greater trust. Polling for the Commissioner in 2024 confirmed the trend: 97% agreed that it was important for the public to be able to access the information held by public bodies, 83% felt that FOI helps to prevent bad practice in public bodies and only 6% believe FOI is a waste of public money which is the lowest proportion since this question was first asked in 2011.⁸

The evidence shows that information is being routinely requested which could be proactively published. 75% of the FOI requests made in Scotland result in some or all of the information being disclosed, with 56% resulting in full disclosure. By discounting cases where the information a person is looking for is not "held" by the public body, the proportion of cases where some or all information is provided rises to 83% with 62% resulting in full disclosure. If an authority has the information then, the response will typically be disclosure.⁹ Given the high level of disclosure as a result of FOI requests, the culture on pro-active publication needs to change as well as a strengthened legal requirements which is robustly enforced.

Glacial Pace of Legal Reform of FoISA

Following a unanimous motion of the Scottish Parliament on 21st June 2017 for post legislative scrutiny of FoISA, a Committee of the Parliament consulted the public, stakeholders, Scottish Ministers and the Commissioner and in May 2020 recommended legal reform:

"The Committee recommends that the Scottish Government consults on the legislative changes proposed in this report and works with the SIC and public authorities across Scotland, as appropriate, to address the areas where implementation of the Act could be strengthened."¹⁰

In February 2021, the Minister for Parliamentary Business and Veteran's [responded](#) to the Committee's report, stating that "...the Scottish Government is of the view that there should be a public consultation exercise early in the next Parliament to seek views on legislative change, following the Committee's report".

The Minister stated that the work of the PAPLS Committee would "inform future discussion" but committed to seek alternative views so "a future public consultation will provide an opportunity to seek views from a wider set of stakeholders on all the Committee's recommendations, insofar as these relate to legislative change." However it does not matter who else you ask, support for legal reform of FoISA is sustained and broad.

What MSPs do in in this session of Parliament Matters.

In the last session of Parliament, despite the post legislative scrutiny of FoISA recommending change, nothing happened so the PAPLS Legacy Report stated:

"The Committee's report on Freedom of Information laws demonstrated that there are clear weaknesses with the current legislative framework. The Committee is strongly of the view that a significant shift is required in public bodies to move to

⁸ <https://www.foi.scot/public-awareness-of-foi>

⁹ Points 3 & 4 <https://www.foi.scot/celebrating-20-years-foi-20-numbers>

¹⁰ PAPLS Committee Rec Para 244 May 2020

proactive publication, with a focus on making accessible the information that members of public want to see (without having to request it). Public services are now delivered through a wide variety of entities, some of which still remain outside the scope of FOI legislation. This needs to change. The Committee recommends that the next Parliament robustly pursues the Committee's recommendations to ensure that the Scottish Government makes the necessary changes."¹¹

The Scottish Government has repeatedly postponed legislative measures to improve FoISA, and consistently undertakes to consider legislative changes in the future. For example the memorandum submitted to the Committee states ... "the Scottish Government does recognise that there may be some scope to improve the primary legislation in the future." ¹² The time for legislation change is now, following a public consultation in 2019 by a Parliamentary Committee followed by a robust report recommending legal reform of FoISA in May 2020, two public consultations in 2022-23 asking for views on legal reform, repeated polling by the Commissioner as recently as 2024 showing a clear majority of the public favour reform,¹³ and all four Commissioners appointed since 2003 support legal reform of FoISA. There is now a Bill which has secured clear support during the Stage 1 process and in oral evidence. Therefore the SPPA Committee has the opportunity to robustly pursue legislative reform of FoISA with the Freedom of Information Reform (Scotland) Bill.

It is noted that [The Regulation of Legal Services \(Scotland\) Act 2025](#), designates the Law Society of Scotland as a "category 1 regulator" of legal services providers (section 7(2)). It is the only category 1 regulator to be covered by FoISA. The Faculty of Advocates and Association of Commercial Attorneys are category 2 regulators, which are not covered by FoISA. Section 1 (3) of the 2025 Act states that paragraph 40 of schedule 3 provides for category 1 regulators to be subject to the Freedom of Information (Scotland) Act 2002 only in respect of the exercise of their regulatory functions. However this provision has not yet come into force.

Glacial Pace of non-legislative measures after the consultations

Over two years ago, in November 2023, the Minister for Parliamentary Business announced at the annual Holyrood FOI conference that following a public consultation, Scottish Ministers had opted for non-legislative measures to improve FoISA. The detail was announced in June 2024 in the '[Freedom of Information policy objectives: 2024 to 2026](#)' but there are still no outputs:

- Consider further extension of FOISA to organisations not already covered, including the Scottish Government's planned consultation on extension to private and third sector care home and 'care at home' providers. This was already consulted on in [2019](#). **Still not launched.**
- Revise and update the statutory codes of practice issued by Scottish Ministers under sections 60 and 61 of FOISA. The [FOI/EIR section 60 code of practice](#) covers best practice guidance for Scottish public authorities on discharging their functions under FoISA and Environmental Information Regulations. It was published in 2016 so a revision is overdue. The [Section 61 code of practice on records management](#) -provides guidance for public

¹¹ Pub 15th March 2021 at Para 71

¹² Para 6

¹³ <https://www.foi.scot/public-awareness-of-foi>

authorities about the keeping, management and destruction of their records. It was published in 2011 and revision is overdue. **Still not published.**

- Review the list of Scottish public authorities listed in schedule 1 of FOISA, to ensure all bodies which should be understood to be Scottish public authorities are listed. **No progress published.**¹⁴

Costs

The costs provided in the Minister's Memorandum are exaggerated and fail to acknowledge that designated public bodies are already subject to a statutory duty of proactive publication (and an associated code of practice), an expenditure public bodies should already incur. They are also under a duty to invest in training and records management.

Current requirement to provide training Under section 1.3 of the Scottish Ministers' Section 60 Code of Practice on the effective implementation of FOI law, Scottish public authorities are required to provide training to ensure that all staff have sufficient knowledge, to ensure that training is refreshed on a regular basis and have flexible arrangements to allow ad-hoc training to be conducted when necessary.¹⁵

Current requirement to pro-actively publish information The section 60 Code also "promotes the importance of proactively publishing information" so the costs of delivering section 15 should already be covered in the FOI budget.

Current requirement to have good records management for the effective and efficient answering of FOI requests The Scottish Ministers' Code Of Practice On Records Management " (known as the [Section 61 Code](#)) states "In the years since FOISA came into force it has become clear that good records management is essential for the effective and efficient answering of FOI requests. Indeed, the cost of answering a request under FOI in terms of time and resources will often be determined by the quality of information management within an authority. It is ultimately in the interest of an authority to maintain a strong records management practice, as being able to identify and locate stored information allows responses to be answered quickly and with ease."¹⁶ An existing system of strong records management can easily serve the new duty to identify and routinely proactively publish information.

Conversely some public bodies may decide not to invest in records management which has the effect of stopping disclosure of information to the public. In the recent appeal [by Alexandria Gallagher against a decision of the Scottish Information Commissioner](#), the Opinion Of The Court, delivered by Lord Malcolm, expressed an understanding of " ...the concerns expressed by Ms Gallagher, not least since the less efficient a public authority's systems are, the more likely it is that the cost limit will be exceeded;" so a request for information is denied because its exempt from disclosure due to the cost of retrieval.

Costs to the Scottish Government

¹⁴ <https://www.gov.scot/publications/freedom-of-information-policy-objectives/pages/workstream-1/>

¹⁵ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

¹⁶ Pg 3.

CFoIS is surprised at the internal costings submitted to the Committee given the investment the Scottish Government has recently made in its FoI function to ensure compliance with the Level 3 intervention initiated by the Commissioner in 2017 into how it handles FoI requests. For example the restoration of an effective network of FoI staff after the Commissioner raised specific concerns at a senior level in May 2023. The investment also includes compliance with the [action plan](#) agreed with the Commissioner in November 2018, the [FOI improvement project](#) and the [FoI Improvement Plan 2024](#) announced in October 2023.

Eight years later, the Level 3 intervention remains ongoing and it should be noted that in October 2023 the Commissioner stated that they had “anticipated that this report would announce the successful conclusion of this intervention, but, unfortunately, the Scottish Government's improvement activity has not reached a point where this work can be appropriately concluded.”¹⁷

CFoIS agrees with the Scottish Government that “in large public authorities there will invariably already be a well established FOI compliance function and that by requiring the designation of a Freedom of Information Officer, the Bill would not necessarily require the creation of a wholly new job role.”¹⁸ From research and speaking to practitioners, CFoIS believes the impact on smaller organisations will continue to be managed well and will draw on compliance with Data Protection law. For example, several RSLs outsource their Data Protection Officer role, normally done with a consultant or firm of consultants acting under a services agreement. A number of consultants act as DPO for multiple organisations.

Global Impact

At a meeting of the Scottish Public Information Forum on 1st December 2025, [Citizens Network Watchdog Poland](#) reminded us that what happens in Scotland matters and the progress of the FoI reform Bill is being closely watched by FoI advocates globally. They point out that “In countries facing democratic pressures, examples of strong openness laws elsewhere create a kind of shield. They make it harder for governments to justify weakening transparency norms. If Scotland, as one of Europe’s respected FOI regimes, takes a step forward it sends a message: Transparency is not optional. It is modern, necessary, and achievable.”

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Appendix 1 – Section 61 Code of Practice

Scottish Ministers’ Code Of Practice On Records Management By Scottish Public Authorities Under The Freedom Of Information (Scotland) Act 2002 Pub.16th December 2011

Section 2. Importance of records management

Freedom of information legislation is only as good as the quality of the records and other information to which it provides access. Access rights are of limited value if information cannot be found when requested or, when found, cannot be relied upon

¹⁷ Pg. 4 <https://www.foi.scot/sites/default/files/2023-10/2023%20Scottish%20Government%20Intervention%20Report.pdf>

¹⁸ Para 113

as authoritative. Good records and information management benefits those requesting information because it provides some assurance that the information provided will be complete and reliable. It benefits those holding the requested information because it enables them to locate and retrieve it easily within the statutory timescales or to explain why it is not held. It also supports control and delivery of information promised in an authority's Publication Scheme or required to be published by the EIRs.

Records management is important for many other reasons. Records and information are the lifeblood of any organisation. They are the basis on which decisions are made, services provided, and policies developed and communicated.¹⁹

Appendix 2 Model Publication Scheme

Requires an authority to:

- Publish the information, including environmental information, it holds which falls within the classes of information (see below)
- Ensures that the way it publishes its information meets the MPS Principles.
- Produces a Guide to Information

Class 1: About the authority

Information about the authority, who we are, where to find us, how to contact us, how we are managed and our external relations.

Class 2: How we deliver our functions and services

Information about our work, our strategies and policies for delivering our functions and services and information for our service users.

Class 3: How we take decisions and what we have decided

Information about the decisions we take, how we make decisions and how we involve others.

Class 4: What we spend and how we spend it.

Information about our strategy for, and management of, financial resources (in sufficient detail to explain how we plan to spend public money and what has actually been spent).

Class 5: How we manage our human, physical and information resources

Information about how we manage our human, physical and information resources.

Class 6: How we procure goods and services from external providers

Information about how we procure goods and services and our contracts with external providers.

Class 7: How we are performing

Information about how we perform as an organisation and how well we deliver our

¹⁹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2011/12/code-of-practice-on-records-management/documents/section-61-code-practice-records-management-pdf/section-61-code-practice-records-management-pdf/govscot%3Adocument/Section%2B61%2Bcode%2Bof%2Bpractice%2Bon%2Brecords%2Bmanagement.pdf>

functions and services.

Class 8: Our commercial publications

Information packaged and made available for sale on a commercial basis and sold at market value through a retail outlet e.g., bookshop, museum or research journal.

Class 9: Our open data

The open data we make available as described by the Scottish Government's Open Data Strategy and Resource Pack, available under an open licence.²⁰

²⁰ <https://www.foi.scot/sites/default/files/2022-03/ModelPublicationScheme.pdf>