

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (Scotland) ACT 2002****SUBMISSION FROM : Maureen Macmillan**

The Freedom of Information legislation was introduced early on in the first term of the Scottish Parliament around the same time as a similar bill was introduced at Westminster. The Scottish proposals were considered to go further than the rUK equivalent.

At that time, the culture in governments/administrations and public bodies was to make public only what they wished or what they had a legal obligation to publish; and in fact much important Information/ statistics wasn't recorded eg domestic violence statistics. One could of course ask a parliamentary question and members of the public could ask their MP, MSP or Councillor to find out Information for them if officials were reluctant. The new legislation meant that members of the public were entitled to ask for and receive a whole range of information directly and public bodies were encouraged to be proactive in publishing information and statistics.

Discussion in committee centred around timescales for responding , arrangements for submitting requests other than in writing, what information would and would not be covered, class exemptions, commercial confidentiality, the First Minister's veto; and the role of the Commissioner. Naturally the then main opposition party wished to push for much more openness over eg government contracts (which was a current issue), and particularly did not agree with the FM's veto.

However, we all hoped the resulting Act would lead to more open government at all levels and result in a cultural change in Scotland so that information would be readily accessed.

This has happened to a certain extent, but the Commissioner's annual reports show that Scotland is falling short of the hopes we had back at the beginning of the Parliament. I think many public bodies made a good start on building informative websites which are also easy to navigate but these need to be kept up to date, especially important when there is a current issue that concerns members of the public. Media/ communications officers need to have the nous to be proactive in this. People now are used to immediate access to information on the internet and I believe that most of the public's complaints are because of late responses. There is no doubt a resources issue. Local authorities/ Health Boards are struggling to fund and deliver even core services. This is in fact a concern I raised in the Stage one debate. It might be useful to find out what staffing capacity/ funding is in place for dealing with FOI requests and maintaining websites.

*Shorter timescales could be legislated for, but this would need to be resourced.

How do you legislate for culture change?

The other problem is a political one. I called it "bloodymindedness" in the Stage 1 debate. Governments/ Administrations resent "hostile" requests from journalists or opposition parties and are reluctant to answer them. There have been concerns that delaying tactics are used, that political advisers interfere, that minutes of meetings are not taken. This is a great disappointment. It is something I hoped would not happen but I was obviously naive to think that we could build "an ethos in which government is open and information seekers behave in a responsible way"

The Commissioner has rightly been tough on such instances of recalcitrance in the present Scottish Government.

Like tax avoiders, some politicians will always seek loopholes. What sanctions are available? Politicians most fear the court of public opinion. Demanding high standards and shaming bad practice is possibly the best deterrent.

*Is there a case for an FOI officer, answerable to the Commissioner, to be embedded in government/ public bodies to track the progress and handling of requests where there have been repeated failures or political interference?

Culture change really does need to begin at the highest level. FOI should not be a political game. If information is not in the exempt category it should proactively be made available. If government ministers were to answer parliamentary questions properly, I am told, then there would be far fewer FOI requests. This is a point that Christine Graham MSP made of the then current administration in the Stage 1 debate of the bill. Government needs to set an example of openness or other bodies will become more cynical about their own responsibilities.

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