

**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**

**POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (Scotland) ACT 2002**

**SUBMISSION FROM : ANGUS COUNCIL**

**1. In your view, what effects has the Freedom of Information (Scotland) Act 2002 (FOISA) had, both positive and negative?**

Pro

Greater transparency;

Increased citizen participation in decision-making;

As the body of SIC decisions has expanded years officers have readily accepted the release of information that they initially might have seen as problematic.

Con

Occasional “weaponisation” of the FOI process.

**2. Have the policy intentions of FOISA been met and are they being delivered? If not, please give reasons for your response.**

Largely yes.

**3. Are there any issues in relation to the implementation of and practice in relation to FOISA? If so, how should they be addressed?**

See below

**4. Could the legislation be strengthened or otherwise improved in any way? Please specify why and in what way.**

FOISA

- A. In the council’s view the creation of Leisure Trusts and Integration Joint Boards has added an additional hurdle to members of the public to obtain information from public authorities, partly because they may not always be aware what the division of responsibilities between authorities is (Leisure Trusts), they are not aware of changes to the administrative setup or because they assume that an authority continues to deal with all issues as previously known to them (NHS/ council, IJB). As a result the council has to issue a “s 17” response and refer the applicant to the new authority. Under FOISA authorities currently are not permitted to transfer requests for information even if for example it would be easy

to obtain information from another linked authority or to transfer the request (following notification of the applicant). It is suggested that this issue could be simplified for applicants by allowing for the transfer of requests between related authorities or to permit obtaining information internally in preparation of a response, e.g. Leisure Trusts/Local Authorities, Integration Joint Board (Health and social services integration).

- B. The council does not generally charge for the provision of information under FOISA and in practice has refused the provision of information on cost grounds on six occasions during 2018. However, while the £600 cost limit under s 12 FOISA would still seem to be appropriate, particularly in the current situation of a shortage of public funds, the maximum charge per hour of £15 staff time does no longer reflect the public authority pay structure which formed the basis for the Freedom of Information Bill almost 20 years ago.
- C. Under the current legislation a request for information may be validly received by any member of staff. In addition, requests for information can be “buried” in long emails of correspondence which addressees may not immediately pick up as requests for information. This leads at times not only to delays in responding but may require additional resources to ensure timely compliance. Currently all authorities are publishing information on their website how to request information. In addition, the increasing digitisation and automation of service requests allows for the automation of certain processes, such as acknowledgements of requests, internal distribution etc. In order to support a more efficient and rapid way of dealing with requests for information it is suggested to require valid applications for information to be made through dedicated channels for FOI/EIR communications as publicised by authorities.
- D. The council would be in support of the comprehensive use of s 12(2) FOISA powers by Scottish Ministers.

### EIR/FOISA

The implementation of Directive 2003/4/EC by the Environmental Information (Scotland) Regulations 2004 has left the question unresolved to what extent principles of FOISA can be applied to the EIRs. Efficiency and effectiveness might be aided by an increased alignment between both processes: e.g. repeated requests, vexatious requests, cost calculation, transfer of requests. There seem to be at least two countries in the EU that have achieved this in the form of a singular regime (Latvia, Lithuania). While this may not necessarily be the aim of the legislator it is suggested that an EU directive provides the legislator with a certain amount of discretion what action it can take and in which way it will implement a directive.

**5. Are there any other issues you would like to raise in connection with the operation of FOISA?**

--