

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

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

**SUBMISSION FROM : GLASGOW CITY COUNCIL**

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

The introduction of FOISA has, in our opinion, led to greater transparency in the public sector. It is very important for public bodies to demonstrate openness and transparency to promote trust and the legislation has greatly assisted with this issue. Glasgow City Council has always supported the legislation and continues to do so.

There is no doubt that the introduction of the legislation has had a significant impact on resources and there is a considerable financial cost to the public sector in handling requests.

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

We believe that the policy intentions of FOISA have broadly been met. We welcome the opportunity to make some suggestions which we believe, if implemented, would improve the operation of the legislation.

The publication scheme mechanism has not led to more proactive publication and is not, in our opinion, widely used by applicants.

While Glasgow City Council is supportive of proactive publication of information, it is resource and cost intensive to establish and maintain such schemes.

Glasgow City Council's view is that the exemptions contained within the legislation are appropriate and should be retained.

While the current statutory deadline of responding to applicants no later than the twentieth working day after receipt of a request is challenging, we believe this allows authorities a reasonable period of time to respond.

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

Commercial undertakings

Many freedom of information requests made to Glasgow City Council are made by commercial organisations. These commercial enterprises profit from public effort and oblige public bodies to expend public resources on collating information for their private commercial gain.

We believe that it was not the intention of the Scottish Parliament for the legislation to be used in this way as it does not meet the openness and transparency agenda.

We note that the ministers may make regulations under section 12 of FOISA and that these regulations state that "different amounts may be so prescribed in relation to different cases". We would suggest that regulations are issued to the effect that FOISA requests which a public authority has reasonable grounds to believe may be being made for commercial gain (exempting those for political, research, academic or journalistic purposes in the public interest) may be refused by the public authority where costs exceed the prescribed amount and that the full cost of compliance with the request may be recovered where the request is within that amount.

### Vexatious

A lot of time can be taken up with a small number of applicants who make many FOI requests on a related topic. Glasgow City Council has had experience of a single applicant making around 100 information requests on a related topic. The legislation does not allow an applicant to be vexatious, only a request so provided the requests are different enough from each other, they must be answered. These applicants often then proceed to internal review and appeal, taking up a significant amount of public resource. Cases with these applicants can take many months and sometimes years. Often these applicants have been put under the Council's 'unacceptable actions policy' for their behaviour but they are still able to make voluminous FOI requests to us which we must still answer. In many cases, they have other means of redress (such as the complaints process, the SPSO, tribunals etc). A review of the vexatiousness criteria at section 14 of FOISA would be welcomed.

### Costs

The legislation allows authorities to refuse a request if it would cost more than £600 for the authority to comply with it. This £600 figure is calculated on the basis of a capped hourly rate of £15. In reality, most FOI requests are processed by officers who are paid significantly more than £15 per hour, a figure which has not been changed since it was introduced in 2005. This means that some very substantial requests still have to be answered, using significant public resource because we are unable to consider an excessive costs argument.

If we do want to charge for responding to an FOI request, the Fees Regulations only allow public authorities to charge a maximum of £50 which is close to the cost of processing the invoice.

In addition, under the current FOI Fees Regulations, a public authority can only charge for the time physically spent redacting information in their cost calculations. More time is actually spent reviewing and considering documentation for release but this time cannot be considered in cost calculations.

In contrast, the Environmental Information (Scotland) Regulations 2004 allow authorities to charge the actual costs of locating and retrieving the information requested by an applicant.

We would suggest the provisions around fees should be amended to make them more meaningful.

Clarification at review stage

We believe it would be helpful to have some further legislative provision specifically on the review process. The legislation provides in section 1(3) for the 20 working day clock to stop where the authority clarifies an FOI request at the initial request stage. However there are no provisions for clarifying a request at the review stage and the clock does not stop or pause during a review where clarification is required.

Given that reviews are conducted by a different officer to the one who dealt with the initial response, it sometimes becomes apparent during the review process that an applicant's intentions need to be clarified.

It can also be necessary to clarify a review which is made on the basis that the applicant believes that documents are missing from the information provided in the initial response. If the relevant department is confident that all information and documentation has been provided, a clarification might be necessary to ask the applicant what information they consider to be missing.

Not having provision within the legislation for the timescales to reset at this stage reduces the available time for carrying out the review from when the clarification is received. It could also lead to a review response being issued where there has been no response to a clarification request, simply on the basis of what the reviewer and initial responder thinks the applicant is requesting.

Timescales for requests relating to schools

There continues to be an on-going issue in the Council's ability to respond to FOI requests where information is held by a school when a request is received either during or across a school holiday period. We are aware that grant aided and independent special schools are subject to an extended response time of up to 60 days and it would be very helpful if these provisions were extended to local authority schools. While a lot of education related information is held centrally, the reality is that a lot of information that is sought by applicants is held locally by individual schools.

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

Please see above responses.

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

Glasgow City Council believes the Office of the Scottish Information Commissioner works well. The staff are helpful and support the promotion of the legislation. A challenge for the Council at appeal can be around the timescales imposed by OSIC to respond to often very complex and voluminous queries. We support applicants receiving early resolution to their cases but in these difficult financial times for the public sector, our resources are stretched

and it can be difficult to comply with some of the deadlines we are given. We have also noted an on-going trend at appeal which allows applicants to withdraw their appeals when they are given guidance by OSIC that they are unlikely to succeed with their application. This means that public bodies are not given the opportunity to learn from that case and receive constructive feedback on how matters were handled. It also means that other public bodies will be unsighted on any arguments put forward by the authority who is the subject of the appeal.