

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

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

SUBMISSION FROM : THE CITY OF EDINBURGH COUNCIL

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

The overall effect of freedom of information legislation has been very positive. Establishing a legal right of access to recorded information has, without question, created greater transparency and accountability across the Scottish Public sector. However, it is difficult to quantify if it has led to increased levels of trust between citizens and public authorities about what they do and how they do it.

The introduction and on-going maintenance of FOISA has come at a cost. Even with effective records management practices and systems, the time spent collating information and responding to requests can be considerable. While FOISA is an accepted way of working, it can be seen to detract from other duties and priorities at a time of increasing budgetary pressure and limited resources.

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

In general, the policy intentions of FOISA have been met and delivered. However, the legal requirement to produce a publication scheme has done very little to encourage the pro-active publication of information. The publication scheme is a document which is rarely used or referenced. Other initiatives, such as open data, have been more successful in this regard. However, as with other FOI regimes, perhaps a more prescriptive approach around what should be published would be beneficial (e.g. invoices over a certain amount, publication of all FOI responses etc). This would help to drive a more transparent culture within organisations.

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

Responses to requests under FOISA require the inclusion of various legal notices and explanations which are legalistic in nature. This is off-putting for requestors and using legalistic language does little to engender trust between the organisation and the requestor. A more flexible approach around wording and the inclusion of notices, at least in relation to section 1 responses, could help to drive a more customer focused approach and create a more accessible regime.

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

When the Scottish Information Commissioner issues a decision, there is no immediate opportunity to provide comment or challenge. The chance to provide additional comments on a draft decision before the final decision is issued would be helpful. Taking decisions to the Court of Session is an expensive option and the introduction of an information tribunal should be considered.

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

Any access regime is underpinned by effective records management and record keeping. While the inclusion of the section 61 Code of Practice on Records Management was appropriate at the time FOISA was introduced, the code has now been superseded by the Public Records (Scotland) Act 2011 (PRSA). While the PRSA does not have universal coverage in Scotland (e.g. universities are not covered by the PRSA), it does provide a statutory and regulatory records management regime for most public-sector organisations. In this context, it might be helpful if the code was replaced by a direct reference to the PRSA, stating that the records management standards expected of organisations are set out in the PRSA. This would not only acknowledge that the legislative landscape has changed, but would, by aligning FOISA with PRSA in this way, potentially help to drive improved records management for organisations not covered by PRSA. It would also provide the Scottish Information Commissioner with a records management baseline when considering any record-keeping issues as part of any FOI decision.