

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

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

SUBMISSION FROM : Care Inspectorate

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

Positive

- FOISA has provided the public with more agency in terms of the information they can obtain from local authorities in relation to services and other public function matters.
- Local authorities are now possibly more pro-active in being transparent and open in terms of the information they share publicly.

Negative

- It has perhaps led to some change in procedure within local authorities where (for example) minutes/notes are no longer taken at certain meetings to avoid the information being available for request under FOISA.
- FOISA can be used as a fishing exercise by the public, marketing companies and the media which puts additional pressure on the already under resourced Governance/FOI teams dealing with numerous requests.
- FOISA allows the public to make any size of request, there is no consistency over volume of work that may be involved for an authority.
- Costs of providing the information have increased however the charging policy has remained the same and is complicated to calculate.
- FOISA has been used to target our professional staff in regard to their professionalism therefore a zero-tolerance policy has been implemented internally because the vexatious exemption has been tested and doesn't protect our employees.

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

- Publication schemes are good in terms of signposting the public to what information is held by local authorities but they are not always current and easy to navigate.
- Balancing the public interest in relation to the possible disclosure of sensitive information can be difficult and is both subjective and very much dependent on the data being requested. There can be significant tension between the obligation for an LA to be open and transparent, and its obligation relating to its public function e.g. acting as a regulator or similar. If an applicant appeals to OSIC in relation to sensitive data it is important that OSIC is able to consider the context in which the data is generated and the impact of disclosure on the authority's public function in addition to considering the public interest.

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

- Common issues are that there are often limited resources allocated to and importance placed upon the value of having robust FOISA related processes and systems in place. Poor practice in FOISA processes should be viewed as a potential risk to a local authority in that it could lead to a reduction in public trust, scrutiny and possible enforcements by OSIC.
- Large requests impact on a large number of different business areas in a local authority which increases the true and actual cost of processing FOISA requests and these costs are not fully recoverable.

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

- A review of the charging structure to implement charges which are more reflective of the cost impact to local authorities for the FOISA process. Local authority budgets are reducing year on year and FOISA can be a significant cost to an authority.
- More openness and impartiality from OSIC in relation to the provision of guidance to local authorities as it can often feel that an authority is highlighting weaknesses or failures in FOISA practice by seeking advice or guidance. It would help local authorities improve knowledge of FOISA and best practice if they could contact OSIC through a dedicated help-desk or

perhaps they could provide more searchable briefings and guidance via their website.

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

- Not all organisations fit the traditional LA structure i.e. local council. Some are only partially publicly funded and also some have very different public function e.g. acting as regulators so it would be useful to have more specific guidance in relation to these more unique types of organisation which still fall under FOISA legislation.