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

FOISA has a positive effect in Scotland – resulting in increased transparency for public authorities, and enabling the public’s wider access to information on how public bodies, central and local government operate, and go about their decisions.

FOISA has also resulted in increased scrutiny of the use, and potential misuse of public funds by public authorities – including until revealed – secretive payments or deals struck with departing personnel.

The use of FOISA by journalists, MSPs, law firms, members of the public and others, have also led to investigations or enquiries by Scottish Parliament Committees (incl PAPLS) into issues or instances where public authorities have failed to comply with the public’s expectation of transparency and accountability – particularly in key public services such as policing, and justice.

A negative effect of FOISA is certainly that in some instances, certain persons within public authorities clearly do make concerted and determined efforts to misuse the current terms of FOISA to conceal information from requirements of disclosure, either by deliberately concealing data from disclosure, or - in some cases - resorting to the use of costly ‘legal advice’ to alter or conceal information on anything from accountability to external inquiries into potential wrongdoing.

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

Overall, I would say the policy intentions of FOISA are being met, however, as many are now well aware, a culture of ‘anti-transparency’ in public authorities to FOISA requests has increased over the years, which has been made plain in media coverage on how public authorities and especially the Scottish Government have increasingly concealed data which should be published even under the current terms of FOISA.

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

Personally, I have found there is a reluctance on the part of the Scottish Information Commissioner to take on certain organisations compared with others when it comes to requests for investigations by the SIC.
While this is in part down to a lacking brief in some parts of FOISA, such as in relation to the Crown Office and Procurator Fiscal Service, and Police – two public services who most certainly overuse exemptions relating to ‘information being held for the purposes of investigation’ etc ... it does appear to me that certain public authorities in key sectors have undue sway over how the SIC will tackle calls for investigating refusals to disclose information.

Clearly such obvious deficiencies could be tackled with reforms to FOISA and increased enforcement.

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

FOISA should be continually strengthened and organisations which play key roles in public life included in compliance – such as the recent, and long overdue addition of Housing Associations.

However, there are clearly problems in how organisations are added to the list of compliance by the current structure – involving the Scottish Government & Ministers, and most certainly considerable weaknesses in the SIC’s ability, or even will to recommend organisations be brought into FOISA compliance.

From experience of asking the SIC to look at, consider, and recommend key organisations in Scotland for FOISA compliance, noting their equivalents of which are already FOI compliant in England & Wales, and SIC refusals to do so – I feel there needs to be a new tier in the FOISA structure – that of a fully independent ‘Transparency Commissioner/Ombudsman/Tribunal’ – set apart from both the SIC and Scottish Government – an office and individual not tied to what many feel is a Scotgov secrecy agenda or an SIC unwilling-to-rock-the-boat agenda – which/who has a will to go forth on transparency & FOISA related issues and take on requests to make changes to FOISA in shorter spans than years, and if necessarily hold the SIC itself to account.

This would be much better than transparency reticent SIC & Scotgov/public authorities relying on the clumsy, costly and adversarial world of the Court of Session to deal with/defend against refusals to disclose information, or failures in the SIC, Scotgov or FOISA itself.

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

Greater and regular scrutiny of FOISA, and if possible a Transparency Committee formed at the Scottish Parliament which meets regularly, and is solely dedicated to issues of FOISA, holding regular sessions and required appearances from the Scottish Information Commissioner on a regular basis.