

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

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

**SUBMISSION FROM : HIGHLANDS AND ISLANDS ENTERPRISE**

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

The effects of FOISA are wide ranging and, from HIE's perspective, are both positive and challenging. It has provided an impetus for a change in culture, to become more transparent with regards to decision making and the way in which money is spent, which is positive. It also allows stakeholders and the public to engage with an organisation and challenge processes in way they were never able to previously.

FOISA in conjunction with the recent changes to data protection legislation also plays a continuing role in increasing people's understanding of good information governance and why it is required, and the benefits of setting appropriate standards.

The primary negative effect for HIE has been, and continues to be, the resourcing of FOISA. The time required from staff both in the team that manages FOISA and across the wider organisation, is substantial. At a time when resources are already stretched to capacity, it can be extremely demanding to meet the required standards of compliance without compromising the productivity of the organisation as a whole. Operationally it can also be very challenging to meet the requirements of FOISA without compromising HIE's ability to establish and build relationships with clients. As an economic development agency, it is vital that clients can trust HIE with what can be their most sensitive information (for example, to perform due diligence checks for funding), and are confident in HIE's ability to manage any requests relating to their information appropriately.

Additionally there are significant challenges with implementing the necessary standards of information management and governance due to the required levels of investment of both time and funding.

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

HIE's view is that they have been met to some extent. As highlighted above, the right of access to information has brought about a cultural change which is related to the policy intentions of FOISA. There is also a considerable volume of information that is now routinely published that would not have been made available prior to FOISA.

Whether this has resulted in the public feeling that they are better informed about decisions and how public money is spent is difficult to quantify. HIE doesn't collect information that would allow a public-facing assessment to be made although has committed extensive resources since FOISA was introduced to working towards a more open and transparent culture. Progress has undoubtedly been made across the organisation although, as with all assessments of culture in a workplace, it is complex and not straightforward to determine exactly what has changed and what benefits have been realised.

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

HIE is committed to operating in an open and transparent way and considers FOISA to be one of a number of positive mechanisms by which to interact with communities and stakeholders. However, it is questionable whether the time and effort spent processing some requests falling within FOISA provides benefit and value to the public as a whole.

Since the implementation of FOISA, it has frequently been used as a mechanism by which some have tried to seek redress for issues rather than using the complaints procedures, which in many cases is more appropriate. HIE also regularly receives requests that amount to, in effect, "fishing trips".

It can be very time consuming to manage these types of enquiry to the satisfaction of the applicant, many of whom have misunderstandings or false expectations of what they can expect under the legislation. While it is appreciated that a lot of work is already undertaken, more awareness raising of the legislation, the purpose of it, and what people can and should expect from public bodies may help address these issues.

One other area that can be particularly problematic is where the Environmental Information (Scotland) Regulations 2004 (EIRs) may apply to some or all of the information being requested. The EIRs don't seem to have the same profile of FOISA and people are unclear on why their request is being processed under this legislation rather than FOISA, and the implications of doing so. Again, more awareness raising may assist with this.

The final point concerns the review process. This can cause confusion with applicants who often think that a review process will not or cannot be initiated until it is specifically requested. It is not well understood that an organisation is likely to have to trigger this process if an applicant expresses any aspect of dissatisfaction following the receipt of an initial response. Applicants seem to want more control over this process in some instances. It may be useful to revisit the guidance relating to the review process.

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

HIE considers that the legislation is achieving many of its objectives although there are some areas that it may be useful to revisit. Firstly, the part of the legislation that deals with publication schemes is perhaps not as effective as it could be, and it is not particularly easy to incorporate information relating to new or emerging initiatives within a scheme. Consequently schemes are more likely to be reactive rather than enabling organisations to plan ahead and develop publication plans for projects that are likely to be of public interest.

The next area is that of excessive requests and charging mechanisms. HIE will always look to provide information requested where possible and rarely uses the charging regulations although it has, on occasion, used them to determine whether a request is excessive. It would be useful if, rather than the only legally acceptable course of action being to reject the request, organisations had an option of extending the response deadline to a reasonable timescale for dealing with a large volume of information, as they do with EIRs.

One final area that would be useful to consider is the introduction of appropriate safeguards under the legislation that enable and facilitate collaborative sharing across the public sector.

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

Moving forward, HIE is keen to continuously improve its performance and welcomes feedback from the Scottish Information Commissioner (SIC) on how its management of FOISA can be improved. HIE's experience is that the SIC staff will look to assist where they can and are helpful and prompt with their advice.

It may be useful to revisit the collection and reporting of statistics to the SIC and statistics portal. These statistics do provide a large volume of information about the performance with various elements of the legislation and allow a comparison of those elements with other public bodies. However, it is questionable whether they accurately reflect the work being undertaken by a public body to manage their FOISA requests. They also don't allow a public body to assess whether there is any progress with working towards the policy intentions of FOISA referred to above or give any indication of performance when taking into account the nature of the request. That type of feedback would be very useful to HIE to facilitate and encourage continuous improvement within the organisation. At a collective level, it would also help demonstrate the value of the legislation and what is being achieved by its implementation across all Scottish public bodies.