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

**Positive effects**

Provision of a means for the public to request and receive information that they would previously have been unable to access.

At its best, the release of information into the public domain through FOI requests has uncovered areas of misuse of public funds, such as the MPs expenses scandal.

Provides an incentive to public authorities to proactively publish information that improves transparency and demonstrates their accountability in the discharge of their functions.

**Negative effects**

Misuse of the process by some individuals who have actively harassed public authorities, deluging them with repeated requests on the same subject.

Misuse of information by the public who are not required to state how they will use the information and choose to use the information they are given to denigrate public authorities and their staff.

Pressure on staff who process requests and who can feel stuck between demanding requesters pressing for information to be released, and pressure from colleagues asking for the use of exemptions to withhold information.

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

Yes

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

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

Consideration is required in the definition and application of the vexatious provision which is extremely difficult to uphold. It would be worth investigating the options for a halfway house that does not go as far as denying the public their rights, but could mitigate the impact on staff who deal with multiple requests from the same individuals on the same issue which have the effect of harassing an authority. The vexatious provision under FOISA does not
match the ‘manifestly unreasonable’ provision under the EIRs. The term manifestly unreasonable is easier to quantify and apply.

Use of fees notices is another area which would be worth re-visiting, currently fees notices are rarely applied, it appears that the threshold for applying a fees notice is too high under FOISA and does not match the EIRs where there are not the same limitations.

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

It would be worth looking at defining the role of an FOI officer, in similar terms to the way that the role of a Data Protection Officer has been defined in the recently updated data protection legislation. The role of an FOI officer requires the post holder to be robust in upholding the rights of the public, communicate with staff at senior level and provide guidance on the disclosure of information, which may run contrary to the wishes of senior management.