

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

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

**SUBMISSION FROM LOCH LOMOND AND THE TROSSACHS NATIONAL PARK AUTHORITY**

**This updated submission replaces the submission made on 27<sup>th</sup> May 2019.**

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

In the view of Loch Lomond and The Trossachs National Park Authority, FOISA and its associated legislation have had a positive impact in assisting in promoting openness and transparency in decision making and enabled greater accessibility to information. The legislation, together with the work undertaken by the Office of the Scottish Information Commissioner in promoting and enforcing the law, has helped to achieve greater accountability for public authorities which is supported by the National Park Authority.

The existence of FOISA means that the National Park Authority continually reviews and seeks to improve its practices in relation to publication of information, which is in the public interest and something that is welcomed by the Authority.

Although the National Park Authority is supportive of FOISA the resource implications of FOISA for a small public body can be significant. The operation of FOISA when dealing with requests for information, requirements for review and appeals to OSIC can result in a significant investment of staff time to process requests, legal costs in obtaining advice on some of the more complex areas of the regime and competing demands of authorities trying to balance compliance with FOISA with the range of other duties and functions they have to perform. On occasions there are difficult judgements in deciding how to handle requests where a release could have implications regarding commercial confidence or personal data protection.

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

Yes, the National Park Authority considers that the policy intentions of FOISA are being met and delivered overall in terms of promoting a culture of greater openness and providing a statutory right of access to information held by public authorities.

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

In the National Park Authority's experience, the resource implications of FOISA for a small public body can be significant. The National Park Authority is a member of SOLAR (The Society of Local Authority Lawyers and Administrators in Scotland) and the resource issues referred to in the submission by SOLAR reflect the experience of the National Park Authority.

Over the last few years, the Authority has received a large number of requests from one or two individuals which cover a wide range of subject matter. As a small public authority, these requests by a few individuals place additional pressure on our staff and reduce the resource available to carry out other responsibilities. The complex nature of some of these requests mean that input is often required from a wide range of staff, including managers within the organisation. Consideration could be given to updating the aggregation of costs provisions included in the Fee Regulations.

For the purposes of assessing whether FOISA or EIRs apply to a request for information, the term 'environmental information' has been interpreted widely in case law. This means that a large amount of information held by the National Park Authority is subject to EIRs, rather than FOISA. As a result, the FOISA exemption for information intended for future publication is not available in relation to this information. To perform its functions, the National Park Authority needs to collect data and information for analysis, which our staff require time to process and then publish. As the FOISA exemption for information intended for future publication is not available under EIRs, the Authority may be obliged to release this data and information before proper analysis and context can be provided, which may not always be in the public interest. To address this, consideration could be given as to how widely the term 'environmental information' is being interpreted. Consideration could also be given to whether exemption under section 27 of FOISA should also be available under the EIRs.

#### **4. Could the legislation be strengthened or otherwise improved in any way?**

##### **4.1 Vexatious requests**

The provision in section 14 of FOISA enabling an authority to refuse to deal with a request that is vexatious have been clarified to some extent in guidance produced by OSIC and considered in a recent Court of Session case. However, further guidance on the application of these provisions would be welcomed as it is a complex area of law.

##### **4.2 Fees Regulations**

Consideration could be given to updating the aggregation of costs provisions included in the Fee Regulations, to address the issues raised in response 3.

#### 4.3 Scope of EIRs and implications of this

Consideration should be given as to how the term 'environmental information' is being interpreted in relation to the application of EIRs. Consideration should also be given to whether exemption under section 27 of FOISA (information intended for future publication) should also be available under the EIRs.

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

No.