

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

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

**SUBMISSION FROM : Neil Findlay MSP**

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

The FOISA has opened up democracy to ordinary people in a way that many similar reforms have not. On a political level it has allowed representatives with less access to Ministers to hold those individuals to account whilst revealing information that is of considerable public interest.

As an MSP I have used FOIs successfully to reveal the inner workings of government and the decisions that have been made behind closed doors without the knowledge of the public. FOI in this sense is one of the sharpest tools the public have to hold the powerful to account.

It is the case however that as time has gone by those subject to FOI have worked out how to avoid giving away information that would be in any way damaging, which has degraded the public trust in this legislation and called into question its usefulness. In particular political interference in Ministerial office's responses have degraded trust in the system and brought it under greater scrutiny.

In order for FOISA to be improved the negative aspects of the policy have to be reviewed and the findings of the Information Commissioner's report have to be implemented.

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

Unfortunately the original intentions of the FOISA, to allow ordinary people to hold power to account and expose the misuse of information, has not been realised. The process by which FOI requests are answered is both convoluted and weighted in the favour of the information holders.

It is often very difficult to actually get the information you are entitled to and the organisations subject to FOI go out of their way to misinterpret the request or to otherwise obfuscate the information. In particular this has been the case with the Scottish Government who have allowed special advisors to interfere with FOI requests, specifically when those requests come from politicians of opposing parties or journalists (as detailed here <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-44469059>).

The report from the Information Commissioner into the government's handling of FOI

requests was launched in response to this, however the actions from that report are yet to be meaningfully introduced and the government's response has been evasive. There are many actions from this report which are vital for the improvement of FOI in Scotland (clarified in section 3.)

A key point which needs to be stated separately is that the use of FOI is increasing in the Scottish Parliament because the current government have devalued Parliamentary Questions to such a level that they are seen to be ineffective and used as a way for the government to avoid scrutiny.

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

The key findings of the Scottish Information Commissioner's report found that the Scottish Government's FOI policies and procedures are not clear enough regarding the role of special advisers in responding to FOI requests. It also found that the Scottish Government takes longer to respond to journalists' FOI requests than other requests.

In doing so the report considered that a number of areas have been highlighted for action, including clearance procedures, quality assurance of FOI responses, training, case handling and case records management, monitoring FOI requests and review procedures, and calls for an independent review of both FOI handling and the recording of information from meetings.

In particular the claim that information would be too expensive to reveal often means in practice that very important revelations are kept hidden in favour of keeping down administrative costs.

Furthermore, in the case of the government I have encountered on several occasions peculiar data retention practices that seem designed solely to prevent the information being revealed. One example is the habit of deleting records of Ministerial meetings after 3 months. The knowledge of these meetings is only published quarterly, as such it is impossible for the public to get this information despite it being subject to FOI. I have evidence of this on a number of occasions should it be of interest to the committee.

If all of these proposals were taken into account and actioned the general robustness and propriety of FOI legislation in Scotland would be massively improved.

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

Recommendations:

- The involvement of special advisors in FOI responses should be expressly prohibited. This

would improve independence and bolster accountability.

- There should be a national database of organisations subject to FOI and the contact details for individuals to send requests to.
- There needs to be oversight of how government/organisations are maintaining records. Their data recording processes are often either unfit or not adhered to. The idea that minutes are not taken at Ministerial meetings is simply unacceptable.
- The financial threshold needs to be increased significantly so that wide reaching requests to reveal the activity of large organisations is not prevented by administrative costs.
- The review process for rejections is lengthy and cumbersome. In many cases the timelines are ignored entirely. There needs to be independent oversight of adherence to these expected response times so that they are not deemed to be meaningless.

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

N/A

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