

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

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

SUBMISSION FROM : Alasdair Clark, journalist

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

The Act has broadly established the principle of the right to information and sets a clear standard of openness and accountability.

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

No. Too often, in recent years, the spirit of the Act has not been upheld in the implementation by those public bodies subject to it.

The options available to refuse disclosure seem to be regularly interpreted too broadly by decision makers.

Rather than commencing from a position that all information should be released, and then ensuring that there is no reason that it should not under the exemptions provided for, the culture seems to often be to start from a position that information **should not** be released and then finding reasons to support the application of exemptions.

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

I) Information requests are regularly delayed significantly beyond the 20 day limit allowed for by FOISA, with no warning or explanation provided and further contact requesting an update on the response ignored.

II) Officials regularly respond to requests asking for further information towards the end of the 20 day limit or after it, rather than requesting clarification in a timely manner. This engages a second 20 day limit, and the tenous nature of requests for clarification can appear to be an attempt by officials to frustrate the process.

III) Requests being denied for apparently tenous reasons due to exemptions being applied too broadly.

IV) Responses to requests from journalists being screened by political advisers to Scottish Government ministers, in contravention of the spirit of FOISA.

V) Scottish Government ministers, or their special advisers, over ruling responses drafted by officials and redacting information against advice due to political sensitivities.

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VI) In an apparent attempt to defeat the the act, ministerial meetings to discuss government policy are described as "informal", meaning minutes and official records which would previously exist are not held so the information cannot be released.

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

In reference to the points answered in response to question 3:

The Scottish Information Commissioner or another body should have strengthened powers to sanction public bodies who repeatedly fail to abide by the law. In extreme cases, the responsible person should be accountable directly for failure to abide by the law. Parliament should have a role to respond to investigations by the SIC and hold ministers directly accountable.

In relation to VI, there should be consideration to linking FOISA to the lobbying act, placing a requirement on public bodies to make a record of meetings with individuals or bodies discussing or lobbying on policy.