

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

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

SUBMISSION FROM: Animal Concern

I am Secretary of the pressure group Animal Concern and the charity Animal Concern Advice Line. Until recently I was also Secretary of the charity Save Our Seals Fund. I'm also a freelance journalist and member of the NUJ.

Since its inception I have used the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 to obtain information on animal welfare, conservation and environmental issues.

Within my submission I will try to answer the five suggested questions and cover any other issues as best I can.

FOI legislation initially had a very positive effect. It created a more open Government by making it easier to obtain and scrutinise details of how taxpayer's money was being spent by local and national Government and their agencies.

One of my early uses of FOI was a request to discover how many people had a variation to their gun license allowing them to shoot seals. This revealed the shocking fact that firearms information was recorded on a paper card index system in local police stations with no easy way of accessing information on a national level. Not only could I not find out how many people were permitted to shoot seals, police officers did not have access to information on who owned what firearms outside their own local area. I understand Police Scotland has now brought the firearms register into the 21st century.

Another FOI request to the police exposed the fact that, despite having a legal obligation to deal with stray dogs under the 1906 Dogs Act, very few police stations had a microchip reader to help identify strays and get them back to their owners.

These cases, and dozens more, proved to me the very positive advantages to having FOI.

As well as allowing people to access information I believe knowing that what they were doing could become public knowledge, encouraged some people working in the public sector to be more responsible in their jobs.

However in recent years there has been a very negative development in that some Government Departments and agencies have very deliberately developed and deployed strategies to evade FOI laws. It appears to me that some Government employees believe it is their duty to protect commercial concerns from public scrutiny. The irony in this is that I have only proved this negative attitude by using FOI legislation!

Two classic examples involve salmon farming. Through FOI I obtained Minutes of a meeting where the Chairman (from SNH) warned salmon farmers, who were about to discuss the numbers of seals they had shot, that the information would be Minuted and the

Minutes could be made public under FOI. As a result the salmon farmers did not give figures for the number of seals they had killed.

A colleague used FOI to discover that employees of Marine Scotland were travelling to salmon farms to be told about sealice infestations because the farms concerned did not want to submit the information in writing for fear it would become public knowledge through FOI. Marine Scotland also tried very hard to suppress photographs showing the extent of damage caused to farmed salmon by sealice epidemics.

It is my experience that the policy intentions of FOI legislation are no longer being met by many Government Departments and agencies, especially those I deal with most, Marine Scotland and SNH. MY FOI requests usually meet with an initial refusal or partial refusal. Sometimes the request for an internal review does obtain at least some information but it is not uncommon to have to go to the Scottish Information Commissioner to force Government to release information.

I am sure some Government Departments and employees make great efforts to avoid writing letters, e-mails and Minutes/notes of meetings for fear of creating an information trail which can be recovered through FOI laws. Is it time to insist all phone calls from Government employees be recorded and retained?

A few weeks ago I had to ask SNH to review three short redactions on a statement from an "independent expert" about the Islay Goose Management Scheme. My review was upheld and, as I suspected, the redacted sentences did not identify anyone (which would have been a valid reason for redaction). The missing sentences levelled mild criticism at the way the goose cull had been carried out and thus supported my original complaint to the Government. Government had previously said the "independent expert" refuted my complaint about how the cull was conducted. Incidentally a separate FOI request to Police Scotland informed me that SNH's "independent expert" was from the organisation that trained the cullers in question.

If SNH thought it OK to redact three mild criticisms of their work I wonder what is hidden in the many Government documents I receive with more black ink redactions than readable text? One day I'll use FOI to find out who supplies the black felt-tip pens much beloved by Scot Gov and I'll buy a few shares in that company.

Many of my FOI requests to the Scottish Government are replied to on or shortly after the 20 working day deadline. I often have to request a review and, not infrequently, I have to appeal to the Commissioner. This can result in delays of several weeks and, on at least one occasion, several months. I believe this is a deliberate tactic to render information "old news" in the hope that long delays will kill any media coverage. In addition Government Departments issue spoilers by publishing FOI request findings on their various websites prior to sending them to the person who requested the information. This robs journalists of exclusive stories they may have been working on for months.

In my opinion many people working in the Scottish Government believe FOI is at best a nuisance and at worst a serious threat to the way they like to work. They also have a lower regard for investigative journalists than Donald Trump has. Are they frightened of us?

On 22nd May I used FOI to ask Nicola Sturgeon for copies of all material relating to the £2,000,000 grant discreetly given to Edinburgh Zoo to build a new enclosure for the Giant Pandas the Zoo leases from China for US \$1M a year. Yesterday, 19th June, I received a reply from the Directorate of Health Finance refusing my request on the grounds that it is likely to cost more than the £600 limit.

I doubt if more than two Departments are involved or if more than a couple of dozen letters or e-mails have been written on this issue in the year or so it would have been live. I will now have to request an internal review and, after another month has been wasted, I will probably have to appeal to the Information Commissioner.

What this also indicates is that it is time to raise the upper cost limit on dealing with FOI requests. How many working hours does £600 buy at Holyrood in 2019?

I think it is necessary to do more to make it clear to entities covered by FOI legislation exactly what their duties are regarding supply of information. To ensure they take it seriously I believe it should be a specific criminal offence to, without due cause, delay, restrict or deny access to information.

Information should not be withheld for purely political or economic reasons or to avoid embarrassing officials or politicians. Government Departments and employees should not collude with industry or other bodies to withhold information which might be critical of the industry or organisation concerned.

I believe FOI should be extended to cover all organisations funded by public money and/or carrying out duties for public services. Charities and private companies are now contracted to supply numerous services including things like school and hospital meals, health care, roads and public transport, prisons, prisoner transport, security and cleaning of public buildings, air traffic control and waste management. If an organisation is paid from the public purse it should be open to public scrutiny.

Perhaps it is also time to bring political parties within the scope of FOI legislation.