

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (SCOTLAND) ACT 2010

SUBMISSION FROM: Celia Pattle

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

The Freedom of Information (Scotland) Act 2002 (FOISA) in the main has been very negative in that the transparency expected has not always been forthcoming and all sorts of clauses are quoted to baffle and deter the applicant. The Scottish Information Commissioner (S.I.C) has in the past engaged with those parties, who hold information, including third parties, but has failed to engage with the applicant and has changed their published Decision Notices, without it being referred to the Court of Session. Since the new Commissioners engagement, a new 'Personal Handler' system is now in place, which is very positive.

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

No. In my view, in the spirit of openness and transparency, records / minutes should be automatically made in respect of meetings that take place and this is not always the case. The S.I.C should be provided with the powers to check records, if required, in instances where a public body says it does not hold information or they are purportedly inaccessible.

Mr. Fitzhenry in a more recent Review, has cited that, "if there is a reference to a meeting taking place, it would be highly unusual if it was not Minuted and in the spirit of openness and transparency he would expect a record" and I agree.

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

Given all the above, it is my understanding, that under Section 45, it is a criminal offence to reveal any counter-argument, even though the Public Authority you are complaining about has full knowledge of everything you have submitted. I find it at odds for this to be the case, since when you are in a Court of Law, both Pursuer and Plaintiff see each others arguments, which helps to establish if there is a contradiction of facts. I have searched for Section 45 that establishes the disclosure of counter-arguments, but have unfortunately been unable to find a link. I must be over-looking it. If Section 45 is the leading provision to prevent sight of a counter-argument, then any hope of transparency is voided, if not biased and one-sided, leaving the Applicant with few if any options. In some cases, the information being withheld is vitally important, therefore, a counter-argument should automatically be released to the applicant, so they are made aware of their situation.

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

As 3 above, and allowing the applicant to see the counter-argument. The current option provided under the S.I.C. ruling is, if you are unhappy with their response, then you should apply to the Court of Session. The average person simply cannot meet the costs of attending Court and this system has been designed so that only the wealthy can ever seek information or resolution. In my humble opinion, the whole Act should be Reviewed if not Overhauled, so that, if there is a genuine request for information then there should be a way of securing it, without having to go down the costly legal process. That when a Public Authority quotes clauses, they should provide the explanation of that same clause, to enable the layman to know what is being cited. Also, and most importantly, to give the S.I.C the powers to check records that they currently cannot do, which will give them a better insight into how they make their decision.

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

No thank you - I think I have covered them.