



**UNISON Scotland Supplementary response:  
Public Audit and Post-Legislative Scrutiny Committee's  
Post Legislative Scrutiny of the Freedom of Information  
(Scotland) Act 2002**

**12 Dec 2019**

**Introduction**

UNISON submitted evidence<sup>1</sup> in June to the Committee and we are following that up here with a short supplementary response.

Our Policy Officer Stephen Low gave oral evidence to the Committee in September<sup>2</sup> and we welcome the opportunity to update members with some new material on FOI practice in Scotland. This will be published in more detail early in 2020, in the latest in our series of Damage<sup>3</sup> reports.

We want to inform Committee members of the early data from a survey of UNISON members working in FOI, and about responses to FOI requests to a number of public bodies about how they deliver on FOI.

We believe the information from the survey and FOI requests is pertinent to the Committee's deliberations in producing the post legislative scrutiny report and may be of use to members for the evidence session with the Minister, Graeme Dey, on 19 December.

**Overview**

We will first cover the overall picture from the survey and FOI data, then provide some of the specific facts and figures and comments from our members.

**Overview - Members working in FOI**

We carried out a survey of our members working in FOI. This included those working directly in processing FOI requests and ensuring that responses are provided, reviews are carried out etc., and workers in other teams tasked with providing the information for the responses.

The results show many members of staff are overworked and under pressure, dealing with increased workloads, fearing further austerity cuts to come and warning that this of course has an impact on FOI delivery.

Our Damage reports across a range of services document the damage of austerity to public services and its effects too on the people who provide them – our members. We know that the thousands of jobs lost in local government and the immense pressures on the health service, along with cuts across the whole public sector, are damaging to the services provided, leaving fewer staff with increased workloads and high stress levels. Some of the people affected across these services are involved in providing information for responses to FOI requests.

We give you a flavour of the survey results from them and those working directly in FOI below. We urge the Committee to include in its report that FOI has to be properly funded, with sufficient staff and training and resources to deliver on the public's right to know.

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<sup>1</sup> <https://unison-scotland.org/post-legislative-scrutiny-of-the-freedom-of-information-scotland-act-2002-june-19/>

<sup>2</sup> [https://www.parliament.scot/S5\\_Public\\_Audit/Meeting%20Papers/Meeting\\_papers\\_PUBLIC\\_19\\_Sept\\_2019.pdf](https://www.parliament.scot/S5_Public_Audit/Meeting%20Papers/Meeting_papers_PUBLIC_19_Sept_2019.pdf)

<sup>3</sup> <https://unison-scotland.org/campaigns/public-works/damage/>

As one member put it: *“As staff time is being reduced in relation to FoI, the organisation is failing in our duties under the Act. This has led to increased numbers of ‘failed to respond’ Fols and an increase in the average response time.”*

### **Overview - FOI data from councils, health boards/special health boards, leisure/culture trusts and the Scottish Government**

Nearly all of these public bodies responded to our questions on whether they have a dedicated FOI team, what other roles might be covered by the team (eg. EIR requests, data protection responsibilities etc.), staff numbers currently and in September 2014 and September 2011 (where applicable), job titles and grades, money spent on delivering legal obligations under FOISA, and whether they publish a disclosure log of all FOI requests and responses.

It is clear from the responses that most of these public bodies have a team, or for smaller bodies a member of staff, that in some way co-ordinates/leads on ensuring FOI requests receive responses, that reviews and appeals are dealt with properly and that the body is complying with its legislative responsibilities. However, most of these teams/staff have a range of other responsibilities including eg. EIR requests, data protection etc. And, as noted above, many other members of staff across the public body can be involved in compiling and providing data and information for the responses.

In general, most said that spending on FOI and staff time on FOI are not recorded (with some exceptions and we give examples below). Dedicated teams, where they exist, have a range of other responsibilities. The data from the FOI responses suggests the total number of staff working on FOI across the public sector is not a huge figure and that costs of delivering FOI (where given) are not onerous and are generally absorbed in wider budgets. UNISON is a strong supporter of the public’s right to know and wants to see FOI suitably resourced. We regularly make the political argument for proper funding of public services. We do not believe there is evidence to support any calls for charging for FOI requests and are pleased that the Scottish Information Commissioner Daren Fitzhenry said, as we would expect, in his evidence before the Committee on 5 December<sup>4</sup> that the universal right of access to information is his preference, rejecting ‘full cost recovery’ and saying: *“That would have an impact on those who are least able to pay—in essence, access to information would depend on how deep someone’s wallet was. That is in no way an attractive way forward for us in Scotland.”*

We have still to fully analyse the FOI responses, but our initial reading is that some of these public bodies have slightly increased their FOI staffing resource (perhaps to address failures to respond and other problems<sup>5</sup>), and others have maintained staff numbers (on FOI) rather than reduced them. There are also some which have cut staffing slightly. But of course, the numbers of FOI requests – and other demands on these workers – have increased over time (e.g. Glasgow City Council dealt with 2173 requests in 2013/14 and 3271, fifty per cent more, in 2018/19), meaning workloads are likely to be generally much higher, with the resultant impact on FOI delivery. Our survey of members certainly shows that is often the experience of those who responded.

### **Some facts, figures and comments - Members working in FOI**

As noted above, the overwhelming picture from the survey responses is of members feeling under intense pressure at work and warning that cuts to FOI and/or other staffing levels has led to heavy workloads, huge stress and a resultant impact on how well their employer complies with FOI legislation. Several members said their council was failing to meet its obligations under FOISA.

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<sup>4</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12419>

<sup>5</sup> As Glasgow City Council did <https://unison-scotland.org/robust-action-promise-unison-public-bodies-poor-foi-practice/>

A total of 18% said their main role is working on FOI, with 77% saying they are in a team/role that can involve providing info/data for FOI responses, while 6% said they are in a team with FOI staff. A total of 36% said FOI is in their job description, 48% said not, with 15% unsure. 12% said they work full time on FOI, with 67% saying it takes up approximately 10% or less of their time. From a list of the types of work they may have to do, selecting all that apply, 82% said their work involves providing information for responding to FOI requests, 58% have to ask colleagues for info for this, 56% have to 'chase up' colleagues for the info, 46% decide what can be released, 38% deal mainly with admin/clerical aspects and 26% deal with every aspect of FOI, with 14% providing information to the Scottish Information Commissioner for appeals investigations and 4% carrying out FOI reviews. Eighty per cent work for councils.

Of those working in an FOI team or similar, 22% said the budget had been cut in the last few years, with 14% saying it stayed the same, 3% that it increased, and most unsure (62%).

We asked whether teams had had a cut in staffing and 28% said there was a large cut, 13% a small cut and 54% said not applicable. 40% had been asked to take on additional functions, with examples given as 'co-ordinate cross council requests', larger geographical coverage and an environmental health team losing staff including admin staff leading to "management and front line staff required to do FOI work, taking us away from the day-to-day public health work." Staff who said their team had been given additional functions outwith FOI (43%), gave examples including: GDPR, procurement and purchasing and debt recovery, "inappropriate and unrelated functions", "more duties due to restructuring" and "same functions, less staff resources, so busier." One member wrote: "I have been told to answer the absolute minimum as we do not have time. My boss doesn't understand these are legal requests. I often feel like a piggy in the middle."

Examples given of cuts/increased work included: "50% decrease in numbers since 2010", "reduction of FOI team hours", "lost two members of staff in the last five years", "FOI team reduced as further duties added to officers' role and remit", "two FOI officers consistent since 2014" and "not filling vacancies", although one previously sole worker is now in a team of three and one of them "covers my work when off."

Asked about the impact of these cuts to FOI teams, members wrote: "Although we have had very little staff decrease, our workload has increased making the delivery of FOI very difficult and time consuming." "Many vacancies unfilled. Doing two or three people's remits." "Further duties added have led to poor performance and recording of Fols across the organisation." "Both quality of FOI work and performance has suffered as the council's focus has drifted away from FOI and it's duties under the Act."

We had similar responses from members working in other teams/services, as well as fears for further cuts down the line. In FOI teams, 31% expect further austerity cuts to affect them. In other teams, 56% fear more cuts in the coming year. They have already been hard hit. We asked about the impact, with 85% reporting stress on staff involved, 70% pressure on working relationships when seeking information from colleagues, 67% saying late responses and 21% failure to respond. 27% also said there was a pressure to limit responses when a fuller response could/should be given if more time. Similarly, 18% said this led to more withholding of information, 21% to more reviews/appeals. Seventy per cent said they had not received enough training – a shocking figure. One member said: "I have never had FOI training. Had to look up legislation myself & work out what we can & cannot do myself. Par for the course for almost everything. No training, expectation is do it & criticise if a mistake is made."

Eighty two per cent said their workload has become heavier or much heavier in the last few years. One member said: "Increased workloads have led to FOI falling down the council's priority list." While 71% said that senior managers recognise the importance of compliance with FOI legislation,

23% felt they do not. Forty eight per cent described morale as poor (31%) or very poor (17%), 35% said OK, with 14% good and 3% very good. Some praised managers' approaches to FOI, but others said they did not see it as a priority. One member said: "Management see FOI as a nuisance."

UNISON pays tribute to the hard work of our members across public bodies, dedicated professionals who do their best in often difficult circumstances to deliver on FOI for their employers.

### **Some facts and figures - FOI data from councils, health boards/special health boards, leisure/culture trusts and the Scottish Government**

**Dedicated FOI team?** We asked public bodies: *Do you have a dedicated staff team or department to deal with FOI requests?*

Eleven councils said yes and eleven said no, with the others giving a range of explanations of the type of team they have and some overlap between yes and no answers too, so it is complicated. Very few have any team/member of staff dealing only with FOI. A good number of teams also deal with EIRs requests and sometimes other areas such as data protection, often as part of a corporate services/information governance team. Several councils have an admin team processing the requests, which are sent out to individual departments for responses, sometimes with someone in that department with FOI in their remit, often not.

A typical answer is this from East Renfrewshire: "ERC have a central team who have various roles with FOI being part of their remit." Or this from South Ayrshire: The Information Governance Team receive, log and allocate FOI requests to service areas. (They also deal with EIR requests, Subject Access Requests and DPA Law Enforcement requests and more.) "Once allocated, co-ordinating staff for the service areas gather and respond to Information Governance who issue responses and apply exemptions if/when appropriate, in consultation with the service holding the data."

Aberdeenshire Council said they operate a hub and spoke model with all requests received to a central point, then allocated out to the relevant service which responds directly. Most who gave an explanation referred to passing requests to relevant departments/services for staff there to provide a response.

Five leisure/culture trusts said they don't have a dedicated staff team, one does and three explained how they operate, but again answers overlapped to an extent with e.g. Leisure & Culture Dundee saying 'yes, a member of staff has dedicated responsibility for ensuring FOI requests are responded to appropriately' but this person is also responsible for a number of other different functions. While Culture Perth and Kinross said 'no, FOI requests are handled by our Finance Manager, with input from other relevant officers depending on the nature of the request.'

Nine health boards and four special health boards said they do have a dedicated team. These are usually within an Information Governance or Information or Communications team. Two said no.

The Scottish Government said: "FOI(S)A requests are dealt with by staff across the Scottish Government. The Scottish Government also has a FOI Unit which offers support and advice to any member of staff dealing with an FOI request, review or appeal. The unit also tracks and monitors performance across the Scottish Government, publishes FOI/EIR responses and implements improvement and training across the Government."

Across all of the public bodies, most of the teams, where there are teams, deal also with EIR requests and data protection etc.

**Staffing levels** We asked: *How many members of staff (Full/Whole Time Equivalent), currently (latest available) work principally on delivering on your legal responsibilities under Freedom of*

*Information legislation?* This was asked for current/latest available figures and for September 2014 and September 2011.

A good number said that they don't have any staff working only on FOI, so provided no figures. Even more stressed that in giving us some information about FTE/WTE, it should be noted that these staff covered other areas of work as well as FOI. Several gave figures for one or more of the requested years but not all, as well as saying sometimes that any comparison is not exactly like for like.

Aberdeen City said they have 5 FTE staff in the Access to Information team, but they cover a range of work. In 2014 they had 4 FTE and in 2011 2.89 FTE staff. Examples from others who gave figures include: Edinburgh 5 FTE; East Renfrewshire 1 FTE. Fife 9.5 FTE (but again they cover a wide range of work). None of those councils held info/comparable info for the previous years.

North Lanarkshire said it had 2FTE staff, and gave the same figure for 2011 and 2014. Glasgow said it has 12 full time members in the council's Information and Data Protection Team and 2 part time employees. None of the team works only on FOI. The team is supported by 1.5 solicitors and the data protection officer. There are 7 full time members of staff within the GCHSCP CFIT (Complaints, Freedom of Information and Investigations Team) dealing to some degree with FOI enquiries relating to the council's social work services. One FTE staff member works in Financial services and deals with FOI, but has other responsibilities. Comparable information for 2011 and 2014 was not held except in relation to social work FOI work. In Sept 2011 there were 2 FTE and in 2014 4 FTE in what was then known as the Social Work Rights and Enquiries Team.

Most leisure/culture trusts gave very low figures of usually less than 1 FTE. Glasgow Life said 1FTE clerical assistant currently carries out "administrative processing of requests and issuing of responses." They gave figures for the other two years of 2 x 0.5 FTE. NHS Boards gave similarly low numbers – e.g. NHS Lanarkshire said in 2011 and 2014 they had 1 FOI officer and 0.3 communications and FOI officer. Current figures are 1 FOI officer and 0.5 x a senior communications and FOI Officer. Tayside said 1 WTE. In 2011 they had 2 WTE and 3 in 2014. NHS 24 reported 3 FTE, up from 2FTE in 2011 and 2014. Their Information Governance and Security Team deal with FOI and other areas of work.

The Scottish Government said that in 2011 and 2014 the FTE headcount in their FOI Unit was respectively 7.62 and 7.86. Their response appears to show approximately 14 FTE currently.

**Spending** We asked: *How much money did you spend in your financial years 2018/2019, 2013/2014 and 2010/2011 on delivering obligations under FoISA - which includes answering individual requests, identifying and proactively publishing information, maintaining a disclosure log and staff training?*

Most public bodies responded that they did not hold such information (often referring to the fact they do not have a dedicated FOI team) or that staff time and other costs are not recorded.

Of the few who provided some information, these were usually estimates of staff costs.

Argyll & Bute Council said they spent approximately £50,689.25 in 2013/14 and this had risen to approximately £82,586.25 for 2018/19. The information was not held for 2010/11.

Inverclyde Council said the information is not held to the level of detail sought, that all costs re FOI (and EIRS/appeals and Data Protection Subject Access requests) are contained within existing budgets. "However, information on the estimated time spent on dealing with FOI and EIR and the estimated costs (based on the mid-point of the relative salary grade) has been collated since May 2016." Inverclyde reported estimates for this as: • January – September 2019 – information does not reflect the full period however to date estimated time spent has been 1427.35 hours and an

estimated cost of £27,956.84 • January – December 2018 – time spent 1814.14 hrs and an estimated cost £30,112.93

Other financial figures and/or estimates included:

North Ayrshire Council – budget for the corporate FOI/EIR team for 2018/19 was £76,152.

High Life Highland (which develops and promotes opportunities in culture, learning, sport, leisure, health and wellbeing in the Highlands Council area) said that a safe estimate of total costs in delivering obligations, based on 0.5 FTE and an average hourly rate of £20 per hour, plus oncosts/printing etc would not exceed £3,000 per annum.

Culture Perth & Kinross said they spent £1,260 in 2018. Prior to 2016, libraries and museum services were managed by the Council.

South Lanarkshire Leisure & Culture said in 2013/14 the total was less than £500, as they were not subject to the legislation until April 2014. In 2018/9 the total was less than £1,000.

NHS Greater Glasgow & Clyde said they had no data for the earlier years, but for 2018/19 staff costs were £103,365, with training costs £1,995.

NHS Orkney said financial information is not held beyond seven years. For 2013/14 they spent £14,915.09 and for 2018/19 the spend was £39,573.99.

Carstairs State Hospital said training spend was zero for the earlier two years in question, but provided a figure of £1962.80 for 2018/19.

The Scottish Government said that it does not routinely record FOI costs. However, its research in 2012 “sought to ascertain the ‘cost’ of responding to a request in terms of staff time. This was estimated to be an annualised cost of £216. The full research report can be accessed by following the link below:

<https://www.webarchive.org.uk/wayback/archive/20170701145354/http://www.gov.scot/About/Information/FOI/Reporting/> Allowing for adjustments for inflation we now estimate this cost to be around £234 (adjusted in December 2018).”

**Disclosure logs** We asked if the public bodies publish a Disclosure Log of FOI responses, whether this includes the text of all questions and all responses, for a link to the log - and for those who said they don't, information about whether this was published previously and what it included.

Aberdeen, Edinburgh and Moray Councils do, as does the Scottish Government, each including most responses. Fife Council said it is planning to do so. South Ayrshire does, but only includes questions. NHS Borders, NHS Orkney, NHS Shetland and NHS Tayside do - and the State Hospital and NHS National Services do.

Highland Council did but stopped in 2013/14. Western Isles did but stopped in Sept 2018. NHS Fife did but stopped in May 2014. NHS Grampian did but stopped in May 2016. We will be looking into whether these being axed was for financial reasons.

A total of 45 of our respondents said they do not publish a disclosure log. We think this is extremely disappointing. As some of our members' survey responses pointed out, if public bodies publish more information proactively, this not only promotes transparency, but can contribute to fewer requests

being made. Disclosure logs are good practice. The Section 60 Code of Practice<sup>6</sup> says: “It is good practice for an authority to also consider regularly what other information is likely to be of interest to the public and could be published proactively, e.g.: · information which is regularly the subject of information requests; · information relating to forthcoming/recent decisions or announcements; · information about current issues which are attracting, or are likely to attract, significant public interest or media coverage; and · information disclosed in response to requests (i.e. disclosure log).”

## Conclusion

Daren Fitzhenry, in his response to the consultation on extension of FOISA, pointed out that increasing the number of bodies subject to FOI has resourcing implications for his office. We have previously raised concerns about the Commissioner’s office needing extra resources and of course we support further funding for it if FOISA is extended, which it should be. On the same basis, it is essential to recognise that underfunding of public services due to austerity cuts is impacting on the delivery of FOISA and that this must be addressed urgently. Mr Fitzhenry, in his oral evidence on 5 December referred to above, said that in 2018/19 27% of appeals were due to failure to respond. Asked about reasons for the delay, he identified several potential factors including workload and someone being ill or on holiday when the request came in – but said the net effect for the authority was that it created more work as well as not providing the requester with the information to which they are entitled. These points are borne out from our survey of members.

We hope that this supplementary evidence is useful to Committee members and that the Committee’s report will underline the importance of sufficient funding to ensure proper staffing levels and training, along with the important legislative changes we have proposed in our earlier evidence. We also endorse the evidence from the Campaign for Freedom of Information in Scotland. FOI is too important a right to get wrong. The Committee has a great opportunity to help ensure that FOI legislation in Scotland is fit for purpose in every way, that the public’s right to know follows the public pound and that it is not compromised by inadequate funding.

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<sup>6</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>