

**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (Scotland)
ACT 2002**

SUBMISSION FROM OSCR

The Scottish Charity Regulator (OSCR) is the independent regulator and registrar of Scotland's 24,500 charities. Our work as Regulator ultimately supports public confidence in charities and their work.

Our vision is for charities you can trust and that provide public benefit.

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

OSCR supports the overall aim of the FOISA legislation, which is to make public authorities' information available to the public, ensuring public authorities, are open and accountable for their actions and decisions.

As a public authority, OSCR aims to be transparent, consistent and fair in our work and in our decision-making processes and we welcome the FOISA legislation.

Positive effects:

We believe that the strength of the Act lies in the legal duty it imposes on public bodies to provide information to members of the public on request. This has established the principle that public bodies must operate in an open, transparent and accountable manner.

Negative effects:

We believe that a number of our requestors are making use of FOISA for their own personal benefit rather than acting in the public interest. Reasons, which we believe, are not in the true spirit of the legislation. For example, requestors will look to use FOISA to get:

- Names of complainants
- Full details of complaints received about them/their charity
- Information relating to the internal running of individual charities. The information is held by OSCR only by virtue of the organisation being a charity, and release would not contribute to enhanced public scrutiny of OSCR or of OSCR's regulatory processes. It should be noted that most charities are not designated public authorities under the Act and are therefore not subject to FOISA.

We also find some requestors will use the Act to try to circumvent OSCR's processes, especially where there is no right of appeal within the charity legislation.

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

While the majority of the requests received by public authorities are submitted within the spirit of the legislation, we strongly believe that some of the original policy intentions have been lost because of the way in which the Act is being used by certain individuals. We believe a significant proportion of the requests we receive do little to advance public knowledge or meet wider public interest.

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

Requestors

Like many other public authorities, we receive numerous requests from:

- journalists who use the Act for articles/stories which have little to no relevance to our public duties and accountabilities
- from individuals presumably acting on behalf of commercial organisations, requesting certain information in order to give them commercial advantage
- serial requestors, making frivolous and vexatious requests.

Responding to such FOI requests can often be onerous and expensive on already struggling public authorities.

Recommendation

We would welcome the introduction of some form of deterrent; say a form of charging, preventing individuals from misusing the Act or using it for their personal benefit.

Plain English vs technical compliance in responses

Like many other public authorities operating under the Act, we find that our FOI responses can sometimes be lengthy, legalistic and bureaucratic in order to be technically compliant with the Act.

For example, when dealing with a request where the information is otherwise accessible (section 25), we must issue the requestor with a refusal notice, acknowledging that we hold the information and explaining our reason for exempting it. We must then tell the requestor how to access it and provide adequate signposting e.g. a direct link to the document whether held by us or a

third party. The response then finishes with details of the right to review and then the right to appeal to OSIC. In our opinion, this feels overly bureaucratic.

Recommendation

We would welcome any changes to the legislation that would support a Plain English approach to how we set out our responses. We believe this would help requestors better understand the responses they receive and aid understanding of the Act.

Timescales

We believe the legislative timescale of 20 working days is too short to respond to some requests – especially the more complex requests where hundreds of pieces of information need to be considered. Our small FOI team is multidisciplinary in nature, often dealing with multiple FOI requests, among other things. This limited timescale can often place undue pressure on teams and individuals.

Recommendation

We would welcome an extension to the 20 working days response time.

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

S9: Fees

The legislation allows for charges to be made in terms of locating, retrieving, redacting and providing information, but it doesn't allow for the time spent reading the information and determining whether it can/should be exempted or released. Our FOI requests vary from very simple requests considering only a handful of pieces of information, to more complex requests where hundreds of pieces of information have to be considered. This for us can be far more time consuming than actually locating, redacting and providing the information.

Recommendations

We would welcome a change in the legislation that would allow public authorities to charge for time spent reading and considering information.

S14: Vexatious or repeated request

This appears to be a very difficult exemption to enforce, and one, which, like many other public bodies, we typically try to avoid using. We often find it difficult to understand when we can apply the exemption. When we do make use of S14(1) we put in a considerable amount of resource and effort to gather and compile evidence in order to defend our decision should we receive an OSIC appeal. These types of request can place significant burden on us and other public authorities already operating in difficult times.

Recommendation

Clearer guidance on using s14 with changes that will reduce bureaucracy and assist public authorities in successfully challenging vexatious and frivolous requests.

We would also welcome the introduction of some form of deterrent, preventing individuals from misusing the Act.

S18: Further provision as respects responses to request (Neither Confirm nor Deny).

We find this exemption both difficult to understand and to apply.

Recommendation

We would welcome any changes to the legislation that would support simplification of the s18 exemption. We would also welcome a guidance note from OSIC.

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

OSIC appeals

Responding to an OSIC appeal can sometimes be a complex process where we are repeating and justifying arguments that we have already made to the original requestor.

OSIC appeals follow a set format that, we believe, has not changed since the legislation and process was first introduced. We find the process can be very bureaucratic, and we find ourselves often repeating the same information time and again across all appeals, for example all appeals ask repeat/standard questions such as: where do we derive our powers from and what are our statutory functions.

Recommendation

We would welcome simplification of the process with removal of burdensome and repetitive elements.

We would also welcome extended timescales for replying to these appeals.