



RSLs, FoISA and The Public's Right to Know Submission from the Campaign for Freedom of Information in Scotland

Overview

The Campaign for Freedom of Information in Scotland (CFol in S) welcomes the opportunity to comment on Public Petition [PE1539](#) and agrees that the Scottish Government should make an Order under Section 5 of the Freedom of Information Act (Scotland) 2002 (FoISA) to make all housing associations subject to the provisions of FoISA. This will ensure that housing associations are more open, transparent and accountable to all their stakeholders and to the general public.

CFol in S urges the Public Petitions Committee of the Scottish Parliament to work, urgently, for implementation of this Petition. We believe this is the right course of action as promises have been made to include RSLs under FoISA as far back as 2002, and those promises should be honoured. Also, the evolution of a rights framework in Scotland rather than a pro-active strategy on rights, means an inconsistent landscape is emerging which causes confusion and inconsistency for duty bearers and rights holders. For example housing associations are covered by The Human Rights Act 1998, human rights law such as the European Convention on Human Rights (ECHR) and the UN International Covenant on Economic, Social and Cultural Rights (ICCPR); RSLs are covered by the Environmental Information (Scotland) Regulations. So for consistency RSLs should be covered by FoISA too.

More generally, CFol in S is concerned that Scotland is lagging behind the rest of the UK in maintaining a progressive and effective freedom of information regime. As the method of delivery for public services change, the enforceable right to access information has not kept up to date so the amount of information covered by FoISA is reducing. For example there is no Scottish equivalent to the Openness of Local Government Bodies Regulations 2014 which apply in England.

Context

Since 2002, the public has been promised that FoISA would be extended to a range of new bodies: RSLs (housing associations) were removed from the Bill at Stage 3 but the Minister assured that "... the Executive recognises that larger and more formal RSLs might be appropriate for coverage by the Freedom of Information (Scotland) Bill, and they can be added to the bill. There is a statutory obligation to consult before that is done and we will consult the sector. ... I assure members that we expect the majority of organisations to be covered."¹ Thirteen years later, we are still waiting.

¹ Stage 3 Debate Freedom of Information (Scotland) Bill 24th April 2002, column 8206
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4372&mode=pdf>

The public's right to know is a human right!

The Universal Declaration of Human Rights in 1948 made the public's right to know a human right: Article 19 is the 'freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.' The right complements Article 21 which is 'the right to take part in the government of her/his country'.

The ECHR affirms such international rights and under Article 10 we have the right to hold opinions and to receive and impart information. Another important right in respect of this Petition is the 'right to the peaceful enjoyment of possessions' (Protocol 1) as this Petition acknowledges that homeowners who purchase factoring services from a housing association are also stakeholders.

Given that the Scotland Act 1998 and the Human Rights Act 1998 place obligations to comply on the Scottish Government and on all public authorities in Scotland, human rights can assist us in exercising our 'right to know'. However for consistency, FoISA should be extended to provide a robust framework for providing the public with an enforceable right to know.

Human Rights

CFol in S believes there needs to be a better understanding about the role of human rights in assisting people to access information as a broad range of bodies are covered by the HRA including housing associations (RSLs).

- The Human Rights Act 1998 (HRA) requires all public bodies to comply with the European Convention on Human Rights (ECHR) eg the Office of the Scottish Information Commissioner.
- Article 10 of the ECHR states that everyone has the right to hold an opinion and to receive and impart information (see Appendix 1)
- It is the State's responsibility to protect ECHR rights: S29 of the Scotland Act 1998 requires MSPs to pass legislation that is ECHR compliant; S57 (2) of the Scotland Act 1998 places a positive duty on Scottish Government Ministers to comply with the ECHR.

European Court of Human Rights (ECtHR)

There have been a number of ECtHR rulings which are relevant including: Tarsasag v. Hungary 2009², Kenedi v. Hungary³, Matky v Czech Republic⁴, Gillberg v Sweden⁵ ⁶, ZORICA JOVANOVIĆ v. SERBIA 2013⁷, Hadzhiev v.

² <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92171>

³ Appl. no. 31475/05 <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92663> (2009)

⁴ 19101/03 ECHR 1205 (10 July 2006)

⁵ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110144>

⁶ <http://inform.wordpress.com/2012/04/14/strasbourg-case-law-gillberg-v-sweden-criminal-conviction-for-refusal-to-give-access-to-research-files-no-violation-of-convention-dirk-voorhoof-and-ronan-o-fathaigh/>

⁷ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-118276>

Bulgaria⁸, Guerra and Others v. Italy⁹ ¹⁰

UN Human Rights Committee - Article 19 ICCPR¹¹

The UK has ratified the ICCPR and so all our laws and policies should comply. In 2011, the Committee issued a new General Comment on Article 19, freedom of opinion and expression, to aid interpretation, and which specifically extends the right to include access to information:

“To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.¹² The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant.”

Access to Information

A Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression¹³ confirms access to information as a human right: “The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.”

Conclusion

CFoIS is impatient for change. There is a history of inactivity across successive administrations in Scotland to maintain and develop the public’s enforceable right to know and ensure public services, despite a change in provider, are covered by FoISA. Clearly the right to know is a human right and we should give that human right effect via FoISA to maintain a consistent and enforceable framework to accessing information in Scotland.

**For further information contact the Campaign for Freedom of Information in Scotland <http://www.cfoi.org.uk/scotland/>
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⁸ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114076>

⁹ http://www.hrcr.org/safrica/environmental/guerra_italy.html

¹⁰ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58135>

¹¹ Human Rights Committee 102nd session Geneva, 11-29 July 2011 General comment No. 34 Article 19: Freedoms of opinion and expression CCPR/C/GC/34

¹² Concluding observations on Azerbaijan (CCPR/C/79/Add.38 (1994)).

¹³ http://www.right2info.org/resources/publications/instruments-and-standards/joint-declaration_2004

Appendix 1 Article 10 ECHR

1. “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society...”