



The Scottish Parliament
Pàrlamaid na h-Alba

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FOI Act requires improvement, says Holyrood's Public Audit Committee

In a post-legislative scrutiny report published today, the Holyrood's Public Audit Committee* says the Freedom of Information (Scotland) Act (FOISA) has improved the transparency and accountability of public bodies.

However, more needs to be done to keep pace with the changing nature of public service delivery, new forms of communication and the way in which the public accesses information. The legislation needs to be updated to reflect these developments. The Scottish Government should consult on the Committee's proposals including on extending the Act to all bodies in receipt of significant public funds.

The committee says there may also be merit in amending legislation to provide clarity on the meaning of 'information'. Communications, through official or unofficial channels, relating to official business are all currently in scope – for example minutes from ministerial meetings, Whatsapp, text messages or private emails, but the Committee considers that this could be made more explicit.

The Committee is clear that there should be no deliberate attempts to evade FOISA by failing to record information. Having clear definitions of what constitutes "information" would help to reduce the risk of this happening.

Public Audit Committee Acting Convener, Anas Sarwar MSP, said:

"It's important to acknowledge that this report was agreed by the committee before the outbreak of COVID-19 in Scotland. It contains important recommendations about how we believe the framework around Freedom of Information in Scotland must change in order to remain relevant to the changing nature of public service delivery, new forms of communication and the way in which the public access information.

"The Committee fully recognises the current pressures placed on public services amidst the global pandemic but FOI remains important, even during these trying times. We will consider the impact of amendments made to FOISA as part of the Coronavirus emergency legislation in due course."

Mr Sarwar added:

“Legislation must be robust, clear and enforceable. We heard in our evidence sessions suggestions of a shift in recent years in the level of information being routinely recorded in connection with official public business.

“We are absolutely clear that there should be no deliberate attempt to evade FOISA. Consideration should also be given to amending the legislation to make explicit that tools such as WhatsApp, texts and ministerial private email accounts are covered by FOISA.”

“We’re also concerned at the slow pace by which organisations have been designated under the Act. This suggests the legislation is not nimble enough and we would like to see changes made to address this.”

On changing public sector attitudes towards FOI, the committee said a shift towards proactive publication of information would support this, increasing trust in public authorities, but also reducing the number of requests thereby helping reduce associated costs for the public sector.

The report states that the Scottish Government should consult on the following suggested amendments to legislation:

- Introduce a ‘factors’ approach based on functional tests – eg quantifying the degree of public interest in the function/considering the cost to the public purse.
- Introduce a ‘gateway clause’ which would automatically bring those elements of organisations fulfilling certain criteria within the scope of FOISA.
- Introduce a statutory code to publish information.
- Require certain key information, such as minutes of ministerial meetings, to be recorded.
- Prevent reliance on confidentiality clauses between public authorities and contractors.

Notes to Editors:

* It is important to note that the Freedom of Information (Scotland) Act (FOISA) report was agreed, but not published, by the Public Audit Committee before the outbreak of COVID-19 in Scotland.

Amendments to FOISA legislation were agreed by Parliament as part of the Coronavirus (Scotland) Bill on 1 April 2020. As a result, an extension of the deadline for public bodies to respond to FOI requests from 20-60 days was granted. These measures were agreed in order that public authorities are not penalised for prioritising other areas during this unprecedented period of need.

Find the Committee’s report [here](#) (enclosed for political corrs during embargo).

Media information

Hilda Stewart: 0131 348 5378

hilda.stewart@parliament.scot