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**Briefing on Section 1 of the Bill**

**Exercising Your Right to Know & How to Access Information**

**Legal Reform of FoI Law Overdue**

The Campaign for Freedom of Information in Scotland (CFoIS) believes the Freedom of Information (Scotland) Act 2002 (FoISA) is outdated and urgently needs improved. Therefore we are working to build all party support for the [Freedom of Information Reform (Scotland) Bill](https://www.parliament.scot/bills-and-laws/bills/s6/freedom-of-information-reform-scotland-bill), introduced by Katy Clark MSP, to deliver transparency by design and strengthen accountability and enable informed scrutiny. After two decades of progress and challenges in exercising the enforceable right to information, it is clear that more needs to be done to ensure the default setting for official minds and processes switches from a culture of secrecy to one of transparency.

The Stage 1 consultation process on the Bill is now underway, led by the Standards, Procedures and Public Appointments Committee of the Scottish Parliament. It is inviting submissions on the Bill’s general principles by [22nd October](https://yourviews.parliament.scot/sppa/freedom-of-information-reform-bill/consult_view/). This briefing focuses on section 1 of the Bill and briefings are being finalised on the other sections to increase understanding of the Bill’s 23 sections and to inform submissions. Please support our Bill campaign and make your voice heard.

**Popularity of Rights**

The public has consistently used their access to information rights. For example, the Scottish information Commissioner estimates that [1.4 million FoI requests](https://www.foi.scot/celebrating-20-years-foi-20-numbers) have been made to Scottish public authorities since FoISA became operational in 2005. Also, polling shows a high level of [public awareness](https://www.foi.scot/public-awareness-of-foi) and support: in 2024 88% of people had heard of FoI and 97% agreed that it was important for the public to access the information held by public bodies.

**Freedom of Information Reform (Scotland) Bill**

**Debunk Misinformation**

Section 1 is **not** about the removal of the public interest test. Section 1 is designed to change culture and practice to ensure more information is disclosed as a result of FoI requests. Section 1 emphasises the public’s general entitlement to receive information and provides that the public authority which “holds” the requested information must apply a presumption in favour of disclosing the information unless the information is about a subject that qualifies for an “absolute exemption”, such as an official secret.

From practice the current law is insufficient despite the clear intention in [Section 1 of FoISA](https://www.legislation.gov.uk/asp/2002/13/section/1): “A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.”

As a result of culture and practice, a lot of information which should be routinely disclosed is not. Therefore people are forced to make an FoI request. For example 75% of the FoI requests made in Scotland result in some or all of the information being disclosed, with 56% resulting in full disclosure. This means that, if you [make a request](https://www.foi.scot/your-rights), the most likely outcome is that you will receive information that you are looking for. By discounting cases where the information requested is not actually “held” by the public body, the proportion of cases where some or all information is provided rises to 83% and 62% enjoy full disclosure. If there is no reason to withhold information, why is it not routinely published? After an information request is made and information disclosed, there should be organisational and operational learning to choose disclosure for that and related categories of information going forward.

Requestors have the right of appeal to the Commissioner and 4,100 formal decisions have been issued since 2005. These decisions set out the Commissioner’s view on the case and require, where appropriate, that an authority take further action – such as disclosing more information. 37% of decisions have found fully in the requester’s favour and 28% have found partially in their favour - often requiring the disclosure of some, but not all, of the information. Therefore the total finding for the requester in some way is 65%.[[1]](#footnote-1)

The expectation is that Section 1 will be interpreted more enthusiastically by the FoI Officers whose functions are set out in section 16 of the Bill. FoI officers will be responsible for FoI compliance within each public body designated under FoISA and when given the role, it should be on the basis of their professional qualities and expert knowledge of FoI law and practice. In delivering the role, the FoI officer should be involved, properly and in a timely manner, in all matters which relate to access to information including delivery of the new duty, under section 15 of the Bill, to pro-actively publish information. What is routinely pro-actively published must comply with the Code of Practice on Information which is enforced by the Commissioner. The categories of information listed in the Code will be the subject of consultation and the public will have their say on what they routinely want to see e.g. from a health board or local authority such as Minutes of meetings, how decision on the spend of public money are made and what are the monitoring arrangements of contracts and services.

**Conclusion**

Section 1 of the Bill is designed to change culture and practice and amplify the current general entitlement to receive information. Section 1 spotlights people’s right to receive information and should change practice so that the number of information requests is reduced. If you have any questions, please contact us at [info@cfois.scot](mailto:info@cfois.scot)

**What Can You Do?**

Please support our campaign by writing to your [MSP](https://www.parliament.scot/msps/current-and-previous-msps) to ask them to support the Bill and explain the Bill strengthens the outdated FoI law in Scotland by:

* Introducing a new, enforceable duty to pro-actively publish information
* Improving legal compliance by designating an FoI officer in each public body
* Strengthening the enforcement powers of the Scottish Information Commissioner.
* Support the [CFoIS](https://www.cfois.scot/support-us/) all party campaign in support of the Bill

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1. Statistical analysis from the Scottish Information Commissioner <https://www.foi.scot/celebrating-20-years-foi-20-numbers> [↑](#footnote-ref-1)