

Campaign for
Freedom of
Information
in Scotland



Enforceable Access to Information Rights Why reform is urgent!

Why Campaign for Legal Reform?

FoI law is 21 years old and needs updated, legal loopholes closed, lessons learned from practice and enforcement strengthened so rights remain robust and duties delivered. Legal reform is necessary to establish an equal approach to which bodies delivering public services are covered, as FoISA's section 5 'add in' power has proven inadequate.

In 2002, the Scottish Parliament passed the Freedom of Information (Scotland) Act (FoISA) which covers bodies such as local authorities, NHS Boards, individual GP practices, colleges, universities and regulators. Free enforcement of the right through the Scottish Information Commissioner, from 1st January 2005, remains the key to improving transparency, accountability and scrutiny. Hundreds of thousands of people have used FoISA to make a difference for their families, end injustices in communities and improve delivery of national services.

Problems

The public has been able to enforce their right to information from designated public bodies for 18 years but rights have become weaker because of huge changes in how public services are delivered and how information is sent and stored. For example, "partner" organisations are increasingly delivering public services so if you want information about a private care home or a service for disabled people run by a charity, you cannot enforce the right under FoISA. Instead you can use the clunky route of finding the public sector funder or a regulator which is covered by FoISA and ask them if they "hold" the information. They check their own records and ask their "partner" organisation if they have the information. If they do, they must share it with the designated body which decides to disclose or withhold citing one of the numerous exemptions. As the "partner" bodies do not have to gather, store and manage the types of information specified by the Commissioner, the information may not exist.

There is a lot of very good practice delivered by expert staff but the culture within some designated bodies can be hostile to disclosure and some FoI officers don't have the resources to comply with duties. Reforming FoISA to change both culture and practice is essential. One solution is to make clear in law that the purpose of FoISA is to empower people by publishing

information they want to see which builds trust, debunks fake news, informs opinions and enables evidence led decision making.

Problems with FoISA Are Evidenced and Confirmed

Addressing the transparency deficit is urgent given the breadth of evidenced problems and reports which have accumulated since 2002.

- The Commissioner has produced various reports making specific recommendations for legal reform e.g. in 2015, 2019 and 2022.
- Journalists have repeatedly exposed failings and called for reform.
- A critical Parliamentary report of 2020, following an inquiry based on 58 submissions and five evidence sessions, stated: “there is a clear need to improve the legislation, particularly in respect of the bodies that it covers and in relation to proactive publication.”
- CFoIS has published many critical reports, plus a FoISA Reform Bill with 21 amendments in 2022. Katy Clark MSP has adopted this Bill.

Public Supports Transparency and Reform

Independent polling proves public support for FoI rights and reform:

- 87% want information on how authorities spend money
- 80% want information about decision-making
- 79% want information on service delivery
- 77% want information on performance
- 71% want information on contracts
- 80% said it is 'very' or 'extremely' important that privately-run but publicly funded health & social care services are subject to FoI law.

Proactive publication grows public trust and enables informed opinions.

Solution - What You Can Do

CFoIS evidenced proposals for legal reform are contained in the consultation published by Katy Clark MSP. Will you:

- [Respond](#) by 2nd February 2023 to say you support reform of FoISA?
- Support the CFoIS campaign to build awareness by sharing this leaflet, inviting us to speak at a meeting or making a [donation](#)?

The Scottish Government has now issued an [FoI consultation](#) too but is seeking more evidence that legal reform is necessary. CFoIS disagrees, particularly as the section 5 power has only been used three times in 21 years proving FoISA is insufficiently nimble to cover all public services.

@CFoIScot info@cfois.scot <https://www.cfois.scot/> SC051263

References for Statistics and Reports

Available in the CFoIS [FoISA Reform Bill](#) and in the [consultation from Katy Clark MSP](#)