

**The Health and
Social Care
Alliance
Scotland
(the ALLIANCE)**



**Freedom of Information Reform Bill
SPPA Committee Call for Views
ALLIANCE response**

17 October 2025

Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to the Standards, Procedures and Public Appointments Committee's call for views on the Freedom of Information Reform Bill¹. The ALLIANCE had previously responded to both the consultation on the member's initial proposal for a Bill², and to the Scottish Government's concurrent consultation on access to information³.

In both responses, we emphasised our support for the principles of the Freedom of Information (Scotland) Act (FoISA). Access to information is an important aspect of public service provision. Services that the public rely on to support them through their lives should be as transparent as possible, enabling individuals to understand how they operate, why specific decisions were taken, and how duties relating to areas such as human rights, equalities and the environment are being fulfilled. In general, the public should rightly expect to be able to access such information about public services, regardless of whether that service is provided by directly by the public sector or contracted out to the private and third sectors.

However, differences in nature, capacity and resource between these sectors must be recognised. We remain concerned that formally designating third sector organisations, particularly small organisations, as Scottish public authorities under FoISA may simply add to the already unsustainable pressures on the sector. As such, we suggest that the Committee and responsible member consider amendments to the Bill which would apply a threshold that must be met to consider listing an organisation.

Question 1: To what extent do you believe the proposals in the Bill will help achieve its primary aim of improving transparency in Scotland by strengthening the Freedom of Information (Scotland) Act 2002?

The ALLIANCE agree that the proposals in the Bill will help to achieve the aim of improving transparency through strengthening the FoISA. In particular we support the general principle of a proactive publication duty



and an accompanying publication code. A culture of making information publicly available by default rather than requiring it to be formally requested is likely to improve the transparency of government, whilst also reducing the administrative burden of responding to FoI requests in line with the reduction in the number of those requests.

Enabling the Scottish Information Commissioner and the Scottish Parliament to make proposals to designate Scottish public authorities, widening the scope of FoI law as appropriate, should provide greater flexibility and responsiveness. Similarly, we agree with the general increase in the powers of the Information Commissioner including to compel the provision of information, issue enforcement notices, and to refer decision notices to court. It is important that Commissioners are able to exercise their powers independently and effectively, and we believe these extended powers will strengthen the Information Commissioner's role.

However, the ALLIANCE remain concerned about the potential impact of extending the ability to designate as a Scottish public authority under the FoISA to the third sector. Whilst we strongly support the principle of transparency of public service delivery and access to relevant information, for small organisations in particular this could be a significant additional burden. We discuss this issue in more detail in our response to the final question.

Question 2: Do you support the proposal that when a public authority is deciding whether to withhold information under a qualified exemption, it must begin from the position that the information should be disclosed?

Yes.

Whilst we recognise and agree with the need for exemptions in some circumstances, it is important that this is carefully balanced with the public interest in disclosure. The starting assumption should therefore be that information will be disclosed unless there is good reason for not doing so.



Question 3: Do you agree with the repeal of the current provisions in relation to publication schemes and the introduction of a proactive publication duty and code of practice?

Don't Know.

Note: We have chosen the “don't know” option to reflect that while we agree with some aspects of the proposal, we have concerns about others.

The ALLIANCE agree in principle with the proposal to introduce new sections 60A and 60B which will create a duty on Scottish public authorities to proactively publish information. We believe that proactive publication of information will have a positive impact on transparency of political decision-making and public service delivery, in part by encouraging a cultural shift to publication as an expected norm rather than a requested exception.

In addition, the proactive publication of information will by its very nature reduce the number of FoI requests submitted, and of those submitted that require significant action, over the longer term. This will help to reduce the administrative burden on organisations currently covered by the provisions of the FoISA. Although proactive publication will itself have implications for resource and capacity, if it becomes a normalised and streamlined part of organisational workflows, it is still likely to result in a net-decrease in time spent on FoISA compliance, by reducing the need to formally process requests and identify where information is held.

We do however have some reservations about the application of this principle to third sector organisations, particularly small organisations. As they are not currently subject to FoISA provisions, if they are designated as Scottish public authorities, they will be required to both process FoI requests and adhere to the proactive publication duty. This may be an unmanageable additional pressure on already stretched organisations. As noted in our response to other questions, instituting a threshold that must be met in order to be designated may help to reduce the burden on the smallest organisations.



Question 4: Do you support the proposal that the 20-day period for a response to be provided should be paused rather than reset in relation to requests on which the public body seeks clarification from the requester?

Yes.

Prompt and timely publication of information is an important aspect of the Freedom of Information system. We therefore agree that the timescale for a response should be paused upon request for clarification, rather than restarted.

Whilst we acknowledge that the clarification may create additional work, pausing rather than restarting the clock should incentivise public bodies to complete initial processing of FoI requests as quickly as possible, so that they can determine whether they need to request a clarification. This should also reduce the risk of that a body may use requests for clarification as a delaying tactic, using the reset in timescale to push the publication date further back.

Question 6: Do you support the requirement for all public authorities subject to the Act to designate a Freedom of Information officer?

Don't Know.

Note: We have chosen the “don't know” option to reflect that while we agree with some aspects of the proposal, we have concerns about others.

In principle, the creation of a Freedom of Information Officer would be consistent with the principles of other data and information related laws, in particular the requirement under General Data Protection Regulation (GDPR) for organisations to designate a Data Protection Officer. Having an individual within an organisation who is ultimately responsible for compliance with FoISA would help to provide both accountability and leadership as it relates to Freedom of Information.

We are however unsure how practical the expectations relating to a Freedom of Information Officer are for third sector organisations designated



under FoISA, especially smaller organisations. The Bill requires that in appointing such an officer, organisations must have regard to “the proposed officer’s expert knowledge of freedom of information law and practice.” Whilst that is certainly a reasonable expectation to have of such a role in general, a small third sector organisation with very limited administrative staff capacity may struggle to meet it.

At minimum, ensuring that there is adequate support for the role, for example via resources produced and maintained by the Scottish Information Commissioner, would be of particular aid to smaller organisations who find themselves designated under FoISA. As discussed in more detail in our response to the final question, this is another reason to consider a threshold for designation.

Question 7: The Bill proposes the introduction of an offence to prevent destruction of information with the intent to prevent disclosure, even when no information request has been made. Do you support this proposal?

Don’t Know.

Note: We have chosen the “don’t know” option to reflect that while we agree with some aspects of the proposal, we have concerns about others.

In principle, the ALLIANCE supports this proposal. We accept that there is a risk of organisations adopting a policy of destroying information with a specific view to preventing disclosure, and that this represents a bad faith attempt to circumvent FoI obligations. Ensuring that there are clear consequences for doing so may help to further discourage organisations or individuals adopting this approach. In addition, it may encourage organisations to more carefully consider what information they may need to retain for disclosure purposes, reducing the incidence of accidental deletion.

We do however have some concerns about the impacts of this, particularly in the initial period of implementation, on third sector organisations who have not until now been designated under the FoISA. As noted in our



response to other questions, given the small size of many third sector organisations, the risk of genuine and innocent errors arising from lack of capacity and expertise is likely higher than it is in larger public bodies which have access to in-house legal advice.

It would not be proportionate in those cases for organisations or individuals to be prosecuted for genuine mistakes. Appropriate guidance must be developed and promoted to help support compliance with FoISA requirements, including guidance on what information is likely to be safe to delete, as well as how accidental versus intentional deletion of information later requested will be determined.

Question 9: Do you support the proposals to strengthen the general functions and enforcement powers of the Scottish Information Commissioner, and to introduce an exemption for information provided to the Commissioner during the investigation of appeals?

Yes.

The ALLIANCE welcome the proposals to increase the Scottish Information Commissioner's powers including to compel the provision of information, issue enforcement notices, and to refer decision notices to court. Although our focus has been on what we have termed "rights-based" Commissioners, the ALLIANCE has previously made the point that it is important that Commissioners are felt to have sufficient "teeth"⁴.

That applies just as much to regulatory Commissioners. Accordingly, we believe that these additional powers and functions for the Information Commissioner will improve their ability to effectively uphold and enforce the FoISA.

Question 10: Do you have any views on the estimated costs and savings associated with the proposed changes set out in the Bill?

Yes.

The ALLIANCE are not fully convinced that the costs to third sector organisations following designation as Scottish public authorities have been



fully or accurately considered. The Financial Memorandum states that additional costs would be expected to be minimal and instead be primarily staff time. We would very strongly caution against assuming that existing staff time is effectively cost-free and diverting any amount of it to responding directly to Fol requests is a simple task.

Where a third sector organisation is expected to be designated as a result of being contracted to provide a public service, the contract must include funding sufficient to cover the additional costs of responding to Fol requests. As it is currently unclear exactly how much additional burden will be placed on third sector organisations, those costs may be difficult to estimate in advance and may require adjustments to funding mid-contract. However, such adjustments would create financial uncertainty for both the organisation and the public body issuing the contract.

Overall, we are concerned that the complexities relating to costs for the third sector have not been fully accounted for in this Bill.

Question 11: Please set out any further comments you wish to make about the Bill.

In our response to the original proposal for the Bill, the ALLIANCE expressed qualified support for extending FoISA provisions to third sector organisations that are contracted to provide a public service⁵. We recognised an inconsistency in the applicability of Fol provisions between sectors, and that members of the public may not be aware of the distinction between direct and contracted public service delivery. However, we also noted several concerns about doing so:

- That the pressure on finances, staff and time arising from formal designation may be overly onerous, particularly for smaller organisations
- The need for clarity with regards to how provision of public service will be defined, recognising a distinction between general grant funding and public service provision



- The importance of protecting the independence of the third sector, in particular the ability to have open and frank discussion in relation to policy development
- The risk of vexatious or malicious requests, particularly targeted at organisations working on equalities issues

Accordingly, we noted our preference for ensuring contracting bodies retain ultimate responsibility for managing Fol requests. This would entail use of already existing information, which may be available through reporting obligations, supplemented by additional information provided outwith the formal Fol process.

We therefore draw particular attention to Section 2 of the Bill, which seeks to introduce a new Section 5A in the FoISA which will grant Parliament the power to designate persons who “are providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority.” In relation to this, the policy memorandum states that “For private and third sector providers of public services designated in the future, the information requested will only apply to the public functions and not the rest of their business portfolio.”

Similarly we note that Section 4 makes explicit that the FoISA does not apply where “the information does not relate to the service specified in the resolution.” We welcome the clear intention to limit the applicability of the FoISA only to the public service being provided by a third sector organisation, thus ensuring that the independence of the sector to develop policy is upheld and organisations are protected from vexatious or malicious requests related to their policy work. However, we remain concerned about the pressure that formal designation may put upon third sector organisations, as we have noted throughout this response.

In addition to the points relating to costs which we made in our response to the previous question, it is more likely that a small third sector organisation with very few staff and limited expertise will make innocent mistakes in response handling than a larger and more experienced public authority. Transferring direct responsibility for responding to Fol requests to such



organisations may then, on occasion, result in poorer quality responses and more challenges than at present.

As such, we would ask that the Committee and the member responsible for the Bill consider how it could be amended, or supplemented by statutory guidance, to minimise the burden on affected third sector organisations. For example, formal designation as a Scottish public authority could be based on the value of the contract and/or turnover of the contracted organisation. This was suggested in the original proposal but does not appear to have been included in the present version of the Bill.

In our response to the original proposal, we noted that turnover was likely to be the best measure against which to define a threshold for designation, both in terms of keeping within the spirit of FoI and the complexity of larger organisations holding some contracts that do not have FoI obligations and some that do. Regardless, in such a case there should be a presumption against designating third sector organisations that do not cross the threshold, with the contracting public authority retaining direct responsibility for relevant FoI responses, as is presently the case.

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector membership organisation for the health and social care sector. We bring together over 3,500 people and organisations dedicated to achieving our vision of a Scotland where everyone has a strong voice and enjoys the right to live well, with dignity and respect. Our members are essential in creating a society in which we all can thrive, and we believe that by working together, our voice is stronger.

We work to improve the wellbeing of people and communities across Scotland by supporting change in health, social care and other public services so they better meet the needs of everyone in Scotland. We do this by bringing together the expertise of people with lived experience, the third sector, and organisations across health and social care to shape better services and support positive change.



The ALLIANCE has three core aims.

We seek to:

- **Empower people with lived experience:** we ensure disabled people, people with long term conditions, and unpaid carers are heard and that their needs remain at the heart of the services and communities.
- **Support positive change:** we work within communities to promote co-production, self management, human rights, and independent living.
- **Champion the third sector:** we work with, support and encourage co-operation between the third sector and health and social care organisations.

The ALLIANCE is committed to upholding human rights. We embed lived experience in our work and aim to ensure people are meaningfully involved at every level of decision-making.

Working together creates positive, long-lasting impact. We work in partnership with the Scottish Government, NHS Boards, universities, and other key organisations within health, social care, housing, and digital technology to manage funding and develop successful projects. Together, our voice is stronger, and we can create meaningful change.

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¹ Scottish Parliament Standards, Procedures and Public Appointments Committee, 'Freedom of Information Reform (Scotland) Bill', available at: https://yourviews.parliament.scot/sppa/freedom-of-information-reform-bill/consult_view/

² The ALLIANCE, 'Proposed Freedom of Information Reform (Scotland) Bill – Consultation Response' (March 2023), available at: <https://www.alliance-scotland.org.uk/wp-content/uploads/2023/03/Proposed-FOI-Reform-Bill-Consultation-ALLIANCE-Response.docx>

³ The ALLIANCE, 'Access to information rights in Scotland – Consultation Response' (March 2023), available at: <https://www.alliance-scotland.org.uk/wp-content/uploads/2023/03/Access-to-information-rights-in-Scotland-Consultation-ALLIANCE-Response.docx>

⁴ The ALLIANCE, 'Review of the SPCB Supported Bodies Landscape: Alliance Response' (February 2025), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-responds-to-the-spcb-supported-bodies-landscape-review/>

⁵ The ALLIANCE, 'Proposed Freedom of Information Reform (Scotland) Bill – Consultation Response' (March 2023), available at: <https://www.alliance-scotland.org.uk/wp-content/uploads/2023/03/Proposed-FOI-Reform-Bill-Consultation-ALLIANCE-Response.docx>

