



Briefing for the Public Petitions Committee

Petition Number: [PE01512](#)

Main Petitioner: Bill Chisholm

Subject: Amendments to the Freedom of Information (Scotland) Act 2002

Calls on the Parliament to urge the Scottish Government to strengthen the Freedom of Information (Scotland) Act 2002 by requiring public bodies to provide full and accurate information in all responses to FOI requesters, and to extend the powers of the Scottish Information Commissioner (SIC) to enable the Commissioner to investigate complaints alleging erroneous responses. The SIC should also be able to impose monetary penalties on any public body which breaches the amended FOISA regulations on accuracy.

Background

The [Freedom of Information \(Scotland\) Act 2002](#) (FOISA) came into force on 1 January 2005.

The Act:

- provides a right of access to information held by Scottish public authorities (listed in Schedule 1)
- creates exemptions from the duty to disclose information (Part 2)
- establishes the arrangements for enforcement and appeal.

The Act provides that a Scottish public authority must disclose *all* the recorded information it held when it received a request for that information. The Act also provides that if any of the information is exempt under any of the provisions in Part 2, it can be withheld and notice served on the requester explaining this. Any information disclosed is effectively made public and so available to anyone

If the requester is dissatisfied with the way an authority dealt with the request, section 20 of FOISA gives a right to ask for a review by the authority. If, after that review, the requester remains dissatisfied, FOISA gives the requester a right of appeal to the Scottish Information Commissioner (SIC). The SIC's investigation and decision is based on the outcome of the authority's review, i.e. on the final response of the authority, plus any handling issues raised by

the requester. The Commissioner cannot investigate and make a decision if requester has not sought a review by the authority. The Commissioner can investigate after 20 working days even if a response to a review request has not been received.

Scottish Information Commissioner

FOISA established the office of [Scottish Information Commissioner](#). The Commissioner's role is to enforce the FOI legislation, promote good practice and inform the public about their rights with regard to access to information held by public authorities.

The SIC has published an [Enforcement Policy](#). This includes enforcement around the issue of good practice. Under section 43(1), the SIC has a duty to promote the following of good practice (and, in particular, compliance with FOISA and the statutory Codes of Practice by authorities.)

FOISA makes no mention of the accuracy of the information provided and the SIC has no power to investigate the accuracy of the content of information provided. The Commissioner's powers only extend to access to information held by the authorities covered by the Act.

If the FOI requester believes that they have been given incomplete information, or a version that had been updated, amended or changed (at or before the time of the request), the SIC could investigate this because the requester would not have been provided with all the information the authority held.

For example, if a requester asks a council for the details of legal fees it incurred in relation to court action, and in response the council gives the requester information about legal fees but the requester believes the figures are wrong and that the council holds more (i.e. the correct) information, the Commissioner could investigate on the basis that potentially the council did not disclose (or properly withhold) all the information it held. If the council failed to comply with an SIC decision, it could be treated as contempt of court and the SIC has the powers to refer the matter to the Court of Session.

Section 65 of FOISA makes it a criminal offence to "...alter, deface, block, erase, destroy or conceal..." information intentionally, so that it does not have to be disclosed. If the SIC was satisfied that an authority had intentionally given incorrect information out (by altering etc. what it held), she could refer the matter to the police.

Scottish Government Action

Under Section 60 of FOISA Scottish Ministers are required to issue, and from time to time revise,

“a code of practice providing guidance to Scottish public authorities as to the practice which it would, in the opinion of the Ministers, be

desirable for the authorities to follow in connection with the discharge of the authorities' functions under this Act”.

The latest revised version of the [Scottish Ministers' code of practice on the discharge of functions by Scottish public authorities under the Freedom of Information \(Scotland\) Act 2002 and the Environmental Information \(Scotland\) Regulations 2004](#) was published in December 2010.

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