

PE1455/C

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By email:

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Dear Andrew,

PETITION PE1455

Please find the Scottish Government's response to the issues raised in Petition PE1455.

The Committee has asked:

- What are your views on what the petition seeks?
- What are the practical implications of making publically available the information set out in the petition?

The petition seeks the creation of a public right of access to any document produced before a court in the course of any proceedings, either criminal or civil, and calls for court documents to be available free of charge and published online.

In general terms, much of the non-confidential or sensitive information contained in court documents could be provided to the public as a matter of practice and without legislative provision. However, the Scottish Government understands that this could have considerable practical and financial implications for the organisations or persons that hold them - many court documents are held by the parties themselves (especially in civil proceedings) rather than the courts or other public institutions. In addition to the costs of publishing such information, there are a number of legal considerations which would need to be taken into account, for instance, if information

is covered by the provisions of the Data Protection Act 1998, or if there are questions as to whether the release of information might breach an individual's right to privacy or a fair trial under the European Convention of Human Rights.

In addition, the creation of a public right of access to all court documents could potentially have significant implications for the efficient and effective operation of the justice system. For example, parties might be less likely to provide information on the basis that it would become publicly available; or they may seek a court decision in respect of all documents they would wish to remain confidential.

While the Scottish Government supports the principle of open justice, it is not of the view that that requires the creation of a right of public access to all court documents. Public, or individual, access to court documents is a matter for the courts. Some court documents are (or some of the information they contain is) confidential and sensitive, for instance, where they contain financial or medical information. Consideration of whether such information should or should not be made publicly available often requires a delicate balancing of private and public rights. The Scottish Government considers it appropriate that the disclosure of court documents remains a matter for the courts to decide.

I hope the information in this letter, the terms of which have been cleared by the Cabinet Secretary for Justice, is of assistance in the Committee's further consideration of the petition.

Yours sincerely,

Robert Sandeman
Head of Courts Team