



# **Extension of Coverage of Freedom of Information (Scotland) Act 2002**

**UNISON Scotland's response to the Scottish Government Consultation  
on Further Extension of Coverage of the Freedom of Information  
(Scotland) Act 2002 to More Organisations**

**September 2015**

## **INTRODUCTION**

UNISON is Scotland's largest trade union representing around 155,000 members working in the public sector.

UNISON Scotland welcomes the opportunity to respond to the Scottish Government Consultation on Further Extension of Coverage of the Freedom of Information (Scotland) Act 2002 (FoISA) to More Organisations.

## **GENERAL COMMENTS**

UNISON Scotland is very disappointed about Scottish Government action on extending FoISA. There has been far too long spent on discussing and consulting about extending the legislation and far too little listening to important voices, including the Scottish Information Commissioner Rosemary Agnew and her predecessor Kevin Dunion, calling for a wide range of further bodies to be included.

It is our longstanding view that the public should be able to access information about the public services they use and about public and political decisions that affect them, whatever type of body holds the information or provides the service. This does not happen in Scotland and the current proposal goes nowhere far enough, given the extent to which information rights have been lost because of the number of public services delivered by private companies and other bodies not covered by FOISA.

As Mr Dunion said in 2007, information rights should "follow the money" when public services are privatised and outsourced<sup>1</sup>. He reiterated this in a strong plea to safeguard and strengthen rights in his Special Report, laid before the Scottish Parliament, in January 2012. He noted<sup>2</sup>:

*"It is testimony to the effect of FOI that information on important matters such as public sector contracts, hospital acquired infections and school closures has not only been disclosed but proactively published. This success may be undermined if the right to information is lost when service delivery changes. It is nearly ten years since Parliament was told that powers to designate additional bodies such as local authority trusts and private contractors would be used. Disappointingly, successive administrations have failed to make good on this despite opinion polls showing that the public is strongly in favour of such action."*

Ms Agnew laid a further Special Report before the Scottish Parliament in January 2015, marking ten years of the Act being in force<sup>3</sup>. She said that Section 5 powers to designate additional bodies have been "woefully underused" and called for immediate steps to protect FOI rights from the damage caused by the outsourcing of important public services. She

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<sup>1</sup> <http://www.itspublicknowledge.info/home/News/20071025.aspx>

<sup>2</sup> <http://www.itspublicknowledge.info/home/News/20120110.aspx>

<sup>3</sup> [www.itspublicknowledge.info/home/SICReports/OtherReports/otherReports.aspx](http://www.itspublicknowledge.info/home/SICReports/OtherReports/otherReports.aspx) Jan 2015 Special Report: FOI 10 Years On – are the right organisations covered?

highlighted, among various examples, that 15,000 households have lost rights due to the transfer of local authority housing stock, warning this was not just a loss to the tenants but to the public at large.

Yet the Scottish Government defensively rejects her arguments in this consultation, refusing even to extend FoISA to registered social landlords, including housing associations. Ministers only propose designating private prisons, providers of secure accommodation for children, grant-aided schools and independent special schools.

Freedom of information, openness and transparency are supposed to be priorities for the Scottish Government. First Minister Nicola Sturgeon, as Deputy FM, said that the Scottish Government has strengthened FOI legislation, while other governments have weakened it. We disagree, as did the Campaign for Freedom of Information in Scotland, in its December 2014 report 30:10 Reflecting and Protecting Freedom of Information Rights<sup>4</sup>. Key rights have been lost here, even if some gains have been made. It is essential that those eroded rights are restored and that rights follow the public pound.

The Scottish Government didn't even get things right when it tried previously to improve the situation. The CFoIS in 2013, in response to the Scottish Government's draft Order extending FOI to cover local authority leisure and cultural trusts, complained correctly that most outsourced bodies had been missed<sup>5</sup>. But even those included were not properly described. As the CFoIS recently highlighted, a loophole in that extension, meant that one Trust, Garthdee Alpine Sports in Aberdeen, isn't covered<sup>6</sup>. CFoIS and its sister body, the Campaign for Freedom of Information, are doing an extremely important job in campaigning to protect, restore and extend Scottish FOI rights<sup>7</sup>. The UK Government is currently attacking FOI, with a Commission including members who oppose increased public scrutiny and proposals for new charges for appeals. That is a travesty, and Scotland can and should do better than that.

We condemn the small minded approach in the consultation and urge ministers to do the right thing and extend the Act to cover all public services, regardless of who delivers them. As Ms Agnew said in her 2015 Special Report, "a universal right to access information from and about public services is a fundamental pillar of democratic engagement."

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<sup>4</sup> <https://www.cfoi.org.uk/wp-content/uploads/2015/01/CFoIS-30-10-Report.pdf>

<sup>5</sup> <http://unison-scotland.blogspot.co.uk/2013/09/new-foi-rights-miss-out-most-outsourced.html>

<sup>6</sup> <https://www.cfoi.org.uk/2015/06/loophole-in-new-law-allows-trust-to-avoid-public-scrutiny/>

<sup>7</sup> [http://publicworksscotland.blogspot.co.uk/2015/08/support-campaign-to-protect-and-extend.html?utm\\_medium=twitter&utm\\_source=twitterfeed](http://publicworksscotland.blogspot.co.uk/2015/08/support-campaign-to-protect-and-extend.html?utm_medium=twitter&utm_source=twitterfeed)

She called for the priority reinstatement of lost rights and for a system to ensure any change of service provider leads to automatic consideration of ensuring the new provider is subject to FoISA. That is the minimum the Scottish Government should be doing.

These are our answers to the consultation questions:

## **CONSULTATION QUESTIONS**

1) *Do you agree with the proposal to extend freedom of information coverage to **contractors who run privately managed prisons**?*

*You may wish to provide information to support your views, for example, what do you consider to be the key factors for or against the proposal?*

Yes. All public services should be covered, regardless of who provides them.

2) *Do you agree with the proposal to extend freedom of information coverage to **providers of secure accommodation for children**?*

*You may wish to provide information to support your views, for example, what do you consider to be the key factors for or against the proposal?*

Yes. All public services should be covered, regardless of who provides them.

3) *Do you agree with the proposal to extend freedom of information coverage to **grant-aided schools**?*

*You may wish to provide information to support your views, for example, what do you consider to be the key factors for or against the proposal?*

Yes. All public services should be covered, regardless of who provides them.

4) *Do you agree with the proposal to extend freedom of information coverage to **independent special schools**?*

*You may wish to provide information to support your views, for example, what do you consider to be the key factors for or against the proposal?*

Yes. All public services should be covered, regardless of who provides them.

5) *The proposed order would be expected to come into force in spring 2016 – probably on 1 April – so bodies would have to answer FOI requests from that date. Do you feel this proposed timescale is reasonable to allow bodies to prepare?*

*If not, you may wish to provide comments on what timescales you feel would be more appropriate and why.*

Yes

6) *Do you have any comments on the draft partial Business and Regulatory Impact Assessment provided at Annex A?*

The rationale for government intervention could equally be applied, and should be, to extend FoISA to cover all bodies delivering public services.

7) *Do you have any comments on the proposals in terms of how they may impact on any particular equalities group i.e. in respect of age, gender, race, religion, disability or sexuality?*

As the Scottish Information Commissioner pointed out in her 2015 Special Report, calling for FOI rights to be protected and strengthened, “Access to information is also fundamental to the concepts and aims of equality; whether to enable someone to exert their human rights effectively, or to challenge the fairness of public services. To demand fair and equitable services, people need to know the standards they can expect and have the evidence to demonstrate the extent to which they are being met.” Therefore, these proposals will aid equalities groups, but do not go anything like far enough.

### ***Future Orders***

8) *This latest consultation on extending coverage is part of the process of regularly assessing the scope of Scotland’s Freedom of Information legislation and ensuring coverage remains up-to-date.*

*We would welcome proposals in respect of other organisations or types of body which should be considered in future for inclusion within scope of freedom of information legislation.*

*In taking a ‘function-led’ approach to extension, as outlined above, we would ask you to support your views by including key factors you consider favour extension of coverage (for example, the nature of the function or service being provided, the level of public funding, the extent of state control or oversight etc.). Evidence of difficulty in obtaining information in respect of a particular organisational function would also be welcome.*

We urge ministers to act immediately to extend coverage to all public services, regardless of provider. It is a disgrace that the Scottish Government is moving so slowly on this. Rights to information should not be restricted by the length and value of the contract. We refer to our

submission to the 2010 consultation on extension of the Act\* for further background, including details on why it is important not to have factors that describe relying on whether the body provides a 'core' function of the state. FOI should cover all parts of public services. (Would, for example, cleaning – crucial to health and safety – be considered a core function?) And FOI should never be described as a “significant administrative burden”. Small GP surgeries comply, so any other body should be considered capable of doing so. Re difficulty obtaining information, the issue is that FOI should be a 'right', with the expectation that information is provided, unless the exemption criteria are met. \* <http://www.unison-scotland.org.uk/response/FOIExtensionConsultationResponseNov%2010.pdf>

**For further information, please contact:**

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# FREEDOM OF INFORMATION (SCOTLAND) ACT 2002: EXTENSION OF COVERAGE

## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

UNISON Scotland

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Montgomery

Forename

Fiona

### 2. Postal Address

14, West Campbell Street,

Glasgow

Postcode G2 6RX

Phone 0141 342 2870

Email

[f.montgomery@unison.co.uk](mailto:f.montgomery@unison.co.uk)

### 3. Permissions - I am responding as...

Individual

Please tick as appropriate

Group/Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No