



Scottish Information
Commissioner

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Your Ref: SP Paper 72

Anas Sarwar MSP
Acting Convener of the Public Audit
and Post-legislative Scrutiny
Committee
Scottish Parliament

Sent by email to the Committee
Clerk

17 June 2020

Dear Acting Convener

Report of the Committee on post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002

I write to express my thanks to the Committee for its work on post legislative scrutiny of the Freedom of Information (Scotland) Act 2002 (FOISA), which culminated in publication of its report on 19 May 2020. I welcome the report and am pleased to see the Committee's recognition of the important benefits that FOISA has brought in terms of greater transparency and accountability of public authorities in Scotland, as well as its recommendations for improvements in key areas, such as proactive publication, ensuring the right organisations are covered, confidentiality clauses between authorities and their contractors, and removing the ministerial veto.

The Committee's recommendations in relation to new and contemporary ways to approach proactive publication are encouraging, and I agree that there needs to be a cultural shift in authorities' approaches to publication. Indeed, in the context of the Coronavirus pandemic, the duty to proactively publish information is arguably more important now than ever. While there are undoubtedly challenges as we move forward, removing the existing requirement to adopt a publication scheme, and replacing it with a statutory duty to publish information, supported by an agile, legally enforceable Code of Practice, will be a useful step in enabling such a cultural shift to develop and embed within authorities. I particularly welcome the Committee's clear statement that public sector bodies need to view FOI as an essential element of public service provision and ensure that it is resourced accordingly. Moving forward, my office will continue to encourage and help authorities to adapt their ways of working and develop their approach to proactive publication.

I am also grateful to the Committee for its regular mention of the importance of intervention work carried out by my office. As set out in my evidence to the Committee, I am keenly aware of the benefits that interventions can bring to the FOI community as a whole, both on the authority side and from the perspective of those who use FOI. While the intervention work of my office has already secured improvements in authorities' performance, there is more that could be achieved; but that greater impact will require an increase in resource.

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I note the various places where the Committee comments on opportunities to supplement guidance and/or further promote particular aspects of FOISA, and can confirm that these will be considered in my office's operational planning when prioritising the work that will be carried out within the available resource.

My team and I are ready to play our part in delivering change, and I look forward to engaging in the next part of that process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daren Fitzhenry', with a stylized flourish at the end.

Daren Fitzhenry
Scottish Information Commissioner