

**Campaign for
Freedom of
Information
in Scotland**



Freedom of Information (Scotland) (No 2) Bill

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Campaign for Freedom of Information in Scotland
www.cfois.scot/ info@cfois.scot @CFoIScot Contents

Freedom of Information (Scotland) (No 2) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS Explanatory Notes, together with a Policy Memorandum, Financial Memorandum and Statement on Legislative Competence are available separately at www.cfois.scot

Freedom of Information (Scotland) (No 2) Bill

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Amendments

1. Part 1 - Purpose

- (1) Part 1 (Scottish public authorities) of the FOI Act is amended as follows.
- (2) Before Section 1 insert new section “1A –
 - “(1) An Act of the Scottish Parliament with the purpose to provide for the disclosure of information held by Scottish public authorities or by persons providing services for them, and for connected purposes.
 - (2) This Act will contribute to the protection of the right of every person to make an informed opinion by receiving and imparting information.
 - (3) In this Act, the enforceable right of access to information is guaranteed.
 - (4) This Act will promote participation in decision-making.
 - (5) This Act will promote transparency and efficiency of public administration and encourage informed participation by the public in matters of general interest.”

2. Section 1 - General entitlement

- (1) Section 1 (General entitlement) of the FOI Act is amended as follows.
- (2) After sub section (3) insert new “(3A) –
 - “(3A) When the authority informs the applicant that further information is requested:
 - (i) the 20 day response time is paused until receipt of the requested information;
 - (ii) the response time restarts the day after the date on which the authority receives it.”

3. Section 2 - Effect of exemptions

- (1) Section 2 (Effect of exemptions) of the FOI Act is amended as follows.
- (2) Repeal sub section (1) (a).
- (3) Repeal sub section (2).

4. Section 3 - Scottish public authorities

- (1) Section 3 (Scottish public authorities) of the FOI Act is amended as follows.
- (2) In sub section 1 after paragraph (b) there is inserted “; and
 - “(c) any other Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998); or
 - (e) has public responsibilities; or
 - (f) exercises functions of a public nature; or
 - (g) provides public services; or
 - (h) any other person who is neither a public body nor the holder of a public office and who is under the control of a person or body falling within paragraphs (a) – (g) of this definition.”

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(3) After sub section (1) there is inserted a new sub section “(1A) -
“(1A) For the purposes of this Act, information is not held by authorities under sub section (2) if the nature of the act is private.”

5. Section 3 - Information Held

(1) Section 3 (Scottish public authorities) of the FOI Act is amended as follows.

(2) After “.. information is held by an authority if it is held” insert new sub section
(2)(c) - “
“(2)(c) by a person other than the authority on a personal device, on behalf of the authority.”

6. Section 5 - Further power to designate Scottish public authorities

(1) Section 5 (Further power to designate Scottish public authorities) of the FOI Act is amended as follows.

(2) Insert new sub section (5)(a)(iii) – “
“(5)(a)(iii) requestors.”

7. Section 6 - Publicly-owned companies

(1) Section 6 (Publicly-owned companies) of the FOI Act is amended as follows.

(2) Insert after sub section (1)(b), a new (c) –“
“(c) by any other Scottish public authority listed in section 3(1) (c) – (g).”

(3) After sub section (3) insert new sub sections (4), (5) and (6) – “
“(4)In subsections (1) and (2), “company” includes any body jointly owned.
(5)It shall be an offence for the chief officer of the publicly owned company to fail to comply with subsections (1) – (4).

(6) A person guilty of an offence under subsection (5) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”

8. Section 8 – Requesting Information

(1) Section 8 (Requesting Information) of the FOI Act is amended as follows.

(2) Substitute (1)(b) with –“
“(b) Applicants have the right to remain anonymous except when disclosure of identity and address are essential to process the request.”

(3) Insert new (1)(d) ‘-
“(1)(d) Formalities for requests shall not exceed what is essential in order to process the request.”

9. Section 10 - Time for Compliance

(1) Section 10 (Time for compliance) of the FOI Act is amended as follows.

(2) Repeal “sixtieth” from sub sections (1) and (3).

10. Part 1 - Freedom of information officer

(1) Part 1 of the FOI Act is amended as follows.

(2) After section 14 insert new sections 14A, 14B and 14C -

“14A Designation of a freedom of information officer

(1) An authority must designate a freedom of information officer.

(2)When designating a freedom of information officer, the authority must have regard to the professional qualities of the proposed officer, in particular—

(a)The proposed officer’s expert knowledge of freedom of information law and practice, and

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(b)The ability of the proposed officer to perform the tasks mentioned in section 14C.

(3) The authority must publish the contact details of the freedom of information officer and communicate these to the Commissioner.”

“14B Position of freedom of information officer

(1)The authority must ensure that the freedom of information officer is involved, properly and in a timely manner, in all issues which relate to access to information.

(2)The authority must provide the freedom of information officer with the necessary resources and operations to enable the freedom of information officer to—

(a)perform the tasks mentioned in section 14C, and

(b)maintain his or her expert knowledge of access to information law and practice.

(3)The authority—

(a)must ensure that the freedom of information officer does not receive any instructions regarding the performance of the tasks mentioned in section 14C;

(b)must ensure that the freedom of information officer does not perform a task or fulfil a duty other than those mentioned in this Part where such task or duty would result in a conflict of interests;

(c)must not dismiss or penalise the freedom of information officer for performing the tasks mentioned in section 14C.

(4)A requestor may contact the freedom of information officer with regard to all issues relating to—

(a)a request for information, or

(b)the exercise of the requestor’s rights under the Fol Act.

(5)The freedom of information officer, in the performance of this role, must report to the highest management level of the authority.”

“14C Tasks of freedom of information officer

(1)The authority must entrust the freedom of information officer with at least the following tasks—

(a)informing and advising any person engaged by the authority, and any employee of the authority on their obligations under the Fol Act;

(b)providing advice on the carrying out of legal duties and monitoring compliance;

(c)co-operating with the Commissioner;

(d)acting as the contact point for the Commissioner’s office on issues relating to any matter under the Fol Act;

(e)monitoring compliance with policies of the authority in relation to the Fol Act;

(2)In relation to the policies mentioned in subsection (1)(e), the freedom of information officer’s tasks include—

(a)assigning responsibilities to deliver duties,

(b)raising awareness of rights and duties,

(c)training staff, and

(d)conducting audits required to ensure efficiency and compliance.

(3)In performing the tasks set out in sections 14B and 14C the freedom of information officer must have regard to the risks associated with failure to

comply with the FoI Act.

11. Section 21 - Review by Scottish public authority

(1) Section 21 (Review by Scottish public authority) of the FOI Act is amended as follows.

(2) In subsection (1) repeal “sixtieth”.

12. Sections 23 - Publication Schemes/Code of Practice on Publication

(1) Section 23 (Publication Schemes) of the FOI Act is amended as follows.

(2) For subsections (1) – (6) there is substituted – “

“(1) A Scottish public authority has a statutory duty to publish information in the public interest.

(2) The duty to publish information is subject to a legally enforceable Code of Practice on Publication.

(3) The Code will be prepared by the Scottish Information Commissioner and approved by the Scottish Parliament.

(5) The Code will give effect to The [Public Records \(Scotland\) Act 2011](#) and comply with such other legislation as may be relevant.

(6) The Code shall include what information must be published, how the published information must be made available and searchable; how long it should be available for.”

(3) Insert new subsection (7) – “

“(7) Before drafting the Code under subsection (3), the Scottish Information Commissioner must consult—

(i) designated bodies,

(ii) persons appearing to them to represent such persons,

(iii) requestors,

(iv) Scottish Ministers, and

(v) The Scottish Parliament.

(4) Insert new subsection (8) – “

(8) “Authorities shall manage their documents efficiently so that they are easily accessible.”

(5) Insert new subsection (9) – “

“(9) An authority’s compliance with the Code will be subject to an enforcement notice conferred by section 51.”

13. Model publication schemes/Pro-active publication

(5) Section 24 (Model publication schemes) of the FOI Act is amended as follows.

(6) For section 24 (Model publication schemes) of the FOI Act there is substituted – “

“24 Pro-active publication

(1) A Scottish public authority has a duty to pro-actively publish information.

(2) An authority shall take reasonable steps to organise and keep up to date the information, relevant to its functions, which it holds and at least the types of information listed in section 23, with a view to the active and systematic dissemination of that information to the public and shall make that information progressively available to the public by electronic and other means.

(3) A public authority shall take the necessary measures to make public, official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

(4) Authorities shall maintain a Disclosure Log of information provided to requestors and the outcome of appeals to the Scottish Information

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Commissioner involving the authority.

(5) Authorities must have due regard to how the public wishes to access the information that they hold, when designing and updating their pro-active publication strategies.

(6) The Scottish Information Commissioner shall develop comprehensive guidance for compliance with this section.

(7) The Scottish Information Commissioner shall regularly share good practice in pro-active publication which is freely available to all designated bodies.”

(8) An authority’s compliance with this section will be subject to an enforcement notice conferred by section 51.”

14. Section 31 - National security and defence

(1) Section 31 (National security and defence) of the FOI Act is amended as follows.

(2) Repeal sub section (2)

(3) Repeal sub section (3)

15. Section 33 - Commercial interests and the economy

(1) Section 33 (Commercial interests and the economy) of the FOI Act is amended as follows.

(2) After subsection (3) there is inserted a new sub section (4) – “

“(4) Subsection (1) shall not apply to a record which is prepared by a head or any other person (being a director, or member of the staff of, an FOI body or a service provider) in the course of the performance of his or her functions.”

16. Section 43 - General functions of Commissioner

(1) Section 33 (General functions of Commissioner) of the FOI Act is amended as follows.

(2) After sub section (3) insert new (3A) – “

“(3A) The Commissioner may require any person employed, contracted to or appointed to the authority, to appear as a witness in order to discharge functions under sections 44, 47 and 51 of the FOI Act .

17. Section 48 - When application excluded

(1) Section 48 (When application excluded) of the FOI Act is amended as follows.

(2) Repeal section 48

18. Section 51 - Enforcement Notices

(1) Section 51 (Enforcement Notices) of the FOI Act is amended as follows.

(2) In sub section (1) after “Part 1 of this Act” insert “and sections 44, 60 and 61”.

19. Section 52 - Exception from duty to comply with certain notices

(1) Section 52 (Exception from duty to comply with certain notices) of the FOI Act is amended as follows.

(2) Repeal section 52.

20. Section 63 - Disclosure of information to Scottish Public Services Ombudsman or to Information Commissioner

(1) Section 63 (Disclosure of information to Scottish Public Services Ombudsman or to Information Commissioner) of the FOI Act is amended as follows.

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- (2) “Section 63 after the words “Disclosure of information to Scottish Public Services Ombudsman or to Information Commissioner” insert “or Audit Scotland”
- (3) Insert new 63 (c) – “
“63 (C) Audit Scotland any information obtained by, or furnished to, the Commissioner under or for the purposes of this Act if it appears to the Commissioner that the information relates to a matter which is, or could, fall within its powers under the Public Finance and Accountability (Scotland) Act 2000.

21. Section 64A - Offence of preventing disclosure

- (1) Section 64 (Power to amend or repeal enactments prohibiting disclosure of information) of the FOI Act is amended as follows.
- (2) After section 64 there is inserted a new section 64A –“
“64A Offence of preventing disclosure
(1) a person to whom this subsection applies who, with the intention of preventing the disclosure by the authority of the information, or part, to which the entitlement relates, alters, defaces, blocks, erases, destroys or conceals a record held on their own equipment, is guilty of an offence.
(2) Subsection (1) applies to the authority and to any person who is employed by, is an officer of, or is subject to the direction of, the authority.
(3)A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”

General

22. References to the FOI Act

References to the FOI Act In this Act, “the FOI Act” means the Freedom of Information (Scotland) Act 2002.

23. Commencement

- (1) Sections 1A, 3A, 3(2)(c), 5, 6(1)(c) and section 8 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under sub section (2) will be presented to Parliament within six months of Royal Assent.
- (4) An order under sub section (2) may include transitional and transitory provision
- (5) An order under sub section 2 will come into effect within 12 months of Royal Assent.

24. Short title

The short title of this Act is the Freedom of Information (Scotland) (No 2) Act.

Freedom of Information (Scotland) (No 2) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to amend provisions of the Freedom of Information (Scotland) Act 2002 .

Introduced by:

On:

Supported By:

Bill type: To be determined as to whether it becomes: a Government Bill, a Member's Bill, a Committee Bill or a Private Bill.¹

¹ [Proposals for Bills – Scottish Parliament | Scottish Parliament Website](#)