The Campaign for Freedom of Information in Scotland

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Response to Scottish Government Discussion Paper

COVERAGE OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

Campaign for Freedom of Information in Scotland
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Summary

We support the extension of the scope of the Freedom of Information (Scotland) Act 2002 to contractors providing services on behalf of Scottish public authorities and to bodies with public functions. We think this should be done by a series of orders under section 5 of the FOISA, that the initial order should be ambitious in scope, and that a timetable for the introduction of a subsequent order should be established.

We do not believe that alternative measures, such as changes to the terms of contracts, will be sufficient to facilitate access to contract information. Allowing FOI requests to be made directly to the contractor is more likely to provide access in many cases than relying on requests made to the authority responsible for the contract.

We do not believe that the role played by regulators reduces the case for designating either contractors or bodies with public functions.

We also support the designation of Registered Social Landlords, privately managed prisons and prison escort services and trusts established by local authorities to provide sports, leisure and cultural services.

We believe that the Law Society of Scotland and the Faculty of Advocates should be designated in relation to their responsibilities for dealing with complaints about the professional conduct of legal practitioners.

The Association of Chief Police Officers in Scotland plays a key role in policing decisions and should be brought under the FOISA in its own right.

Q1: In principle, do you support extending the coverage of the Act to contractors? Please explain your reasoning e.g. do you consider that you are at present unable to access certain information from contractors as they are not covered by the Act?

We support the extension of the Act's coverage to contractors. This would prevent the contracting out of public services leading to any reduction in the public's rights of access. It would also allow any rights that may have been lost in the past by contracting out to be reinstated.

Although the reinstatement of 'lost' rights is important, it should not be regarded as the prime aim of the exercise, particularly if this involves distinguishing between contracts let after the FOISA came into force on 1 January 2005 and those let before that date. We note that this possibility is raised in the Discussion Paper. We think all contracts of a particular description should be designated, regardless of whether they were let before or after the FOISA came into force.

A distinction based on 1 January 2005 would in any event be arbitrary. The date on which the Act received Royal Assent, 28 May 2002, might equally be chosen as the cut-off date, as contracts let after that date would have removed an enacted and imminent right of access. Alternatively the start date might be 23 June 1999 when the Deputy First Minister and Minister for Justice made a statement to the Scottish Parliament promising the early introduction of FOI legislation.[1]

The approach should be to ensure that the exercise of what may broadly be described as "public functions" is subject to the Act, whether these are performed by public authorities, contractors acting for them or by other bodies. The contractors capable of being designated under section 5(2)(b) of FOISA by definition must be carrying out public functions (since the contracts relate to services which it is an authority's function to provide).

Support for a broad approach to the definition can be found in the drafting of

[1] Col. 655

section 5(2)(a) itself which states that the persons who can be designated are those which "appear to the Scottish Ministers to exercise functions of a public nature" rather than those which, on a strict reading, do exercise such functions. The drafting may be contrasted with that in section 5(2)(b) which permits the designation of contractors which provide services "whose provision is a function of that authority". Similarly, the definition of a "public authority" in regulation 2 of the Environmental Information (Scotland) Regulations and section 6(3)(b) of the Human Rights Act both refer to bodies exercising "functions of a public nature" and not to bodies which "appear to Ministers" to be exercising such functions. It must have been the Parliament's intention to allow a wider definition to be used in connection with s 5 of FOISA.

Q2: If supportive of an extension of the coverage of the Act to contractors, what particular activities would you like to see covered? In particular, do you consider that contractors who operate privately managed prisons or providers of prison escort services should be covered?

We agree that contractors operating privately managed prisons and providing prison escort services should be brought under the Act's scope.

Decisions on designation should depend on the function or service involved and not on the body undertaking it. Where contracts are performed by voluntary organisations, they should be designated on the same basis as any other contractors. We welcome the statement in paragraph 35 of the Discussion Paper that decisions on designations will be taken "irrespective of whether the activity is carried out by the public, private or third sector."

Q3: Do you agree that the factors summarised in paragraph 33 are relevant in assessing the appropriateness of extending coverage to contractors? Do you think any additional or alternative factors are relevant? Please explain your reasoning.

We agree that it may not be appropriate to designate contracts of small value and short duration. For contracts of, say, six months duration, the contract may be over before the process of consulting with the contractor and then making the necessary order can be completed.

Significant work of a public nature

We are not clear why designation should be limited to contracts which involve "the core functions of the state", particularly as outlined in paragraph 35 which suggests that the term would include "front line public services in respect of health, education and transport, law enforcement, the administration of justice and the operation of the prison system".

There are other functions, not covered by this expression, which are at least as important to the community. These include social services, the protection of public safety and the collection of arrears, for example, of council tax, which is often contracted out to firms providing Sheriff Officer services. Their activities may result in those affected becoming bankrupt or losing their homes.

Some apparently ancillary services may be equally crucial. There may be little to be gained by designating contractors responsible for photocopier maintenance but significant public benefit where the maintenance is for fire extinguishers or life saving hospital equipment. We also share the concerns expressed by the Scottish Information Commissioner and UNISON about any definition which might, for example, exclude contract hospital cleaners from designation.

Coverage would enhance transparency and accountability

We regard it as axiomatic that bringing a body within the scope of FOISA will lead to greater transparency and accountability.

We do not believe that the existence of other forms of accountability reduces the case for FOI. For example, Scottish Ministers are accountable to the Scottish Parliament but making them subject to the FOISA has nevertheless provided substantial additional benefit.

We do not agree with the Discussion Paper's suggestion that there will be less case for designation where a body is answerable to a regulator which 'holds it to a high degree of accountability'.

- Regulators do not normally provide transparency. On the contrary, many are subject to statutory secrecy provisions which prevent them releasing information about regulated bodies to the public. In addition FOI exemptions, such as that for breach of confidence, may prevent the regulator from releasing information about a regulated body which that body would have to provide if it were subject to the Act in its own right.

- Regulatory failures are not unusual and the 'high degree of accountability' provided by a regulator may be illusory (the current economic crisis is widely regarded as an example of such failure by financial regulators). Shielding the regulated bodies themselves from FOI, on the grounds that the regulator's role makes it unnecessary, may only compound the problem.

- Typically, regulators do not have the resources to subject all regulated bodies to regular scrutiny. FOI requests may help them by exposing possible shortcomings on the part of such bodies.

- Requests may relate to aspects of a problem over which the regulator exercises no control.

Contract information available from the authority

We recognise that copies of contracts or successful tender documents may be available directly from the public authority concerned, as suggested in paragraph 41. However, a direct right of access to information held by the contractor would allow internal information held by the contractor to be obtained. Such information may not be regarded as held 'on behalf of' the authority.

Examples of such requests for information can be found in decisions under the Environmental Information Regulations 2004, which provide a right of direct access

to environmental information held by some contractors.[2] The UK Information Commissioner[3] has ruled that a contractor carrying out an environmental review for a UK public authority was required to deal with a request for, amongst other things, correspondence about the report between the company and the authors of the review, the reasons why particular material was removed from the draft report and the reasons for decisions about the scope of the report. The Commissioner's decision notice stated: "*If ERM [the contractor] are not subject to the EIR for the purposes of this request, the public cannot access background information relevant to the preparation of an environmental report."*[4] Another decision notice involved the disclosure of a contractor's plans for implementing an integrated waste management contract for two local authorities, involving the collection, recycling and disposal of waste.[5]

Equivalent requests for non-environmental information may only become available if the contractors themselves are made directly subject to the FOISA.

Even where the contractor could be regarded as holding information "on behalf of" the authority, exemptions which protect third party information might prevent its disclosure. For example:

(1) Actionable breach of confidence

Information which the authority has obtained from the contractor may be withheld under the section 36(2) exemption for information whose disclosure would be an actionable breach of confidence. Such information might have to be disclosed if the contractor was subject to the FOISA in its own right. The contractor's rights would

[2] Contractors are subject to the EIRs if they provide public services, exercise public functions or have public responsibilities in relation to the environment. Environmental Information Regulations 2004, regulation 2(2)(d)

[3] A similar right of access applies under the Environmental Information (Scotland) Regulations 2004, but this particular issue does not appear to feature in any of the Scottish Information Commissioner's published decisions to date.

[4] Information Commissioner, Decision Notice FER0090259, Environmental Resources Management Ltd, 7 June 2006

[5] Information Commissioner, Decision Notice FS50114241, South Downs Waste Services Ltd, 18 March 2008

be protected by the exemption in section 33(1)(b) for information causing substantial prejudice to its commercial interests.

The Scottish Information Commissioner has found that:

- information about the costs of particular items supplied under contract for photographic services were exempt under section 36(2), because disclosure would have been a breach of confidence, but disclosure would not have substantially prejudiced the contractor's commercial interests and section 33(1)(b) did not therefore apply.[6] This information would therefore have been accessible, had the contractor itself been subject to FOISA.

- the price at which knee and hip replacement operations were carried out for the NHS at private hospitals was exempt under section 36(2). In that case the Commissioner did not go on to consider whether the section 33(1)(b) exemption applied, but it seems likely from the decision notice that it would not have applied.[7]

In addition, if access to contract information is only available via the authority, an obstructive contractor may be able to prevent disclosure by threatening to sue the authority for breach of confidence. For example, Oxford City Council in England was threatened with action for breach of confidence or contract if it disclosed information about a contract for the sale of land, even though the Information Commissioner had issued a decision notice requiring it to do so. The authority felt obliged to appeal against the notice to the Information Tribunal, though it had no

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[6] Scottish Information Commissioner, Decision 216/2006, Mr David McNie and West Lothian Council, 30 November 2006

[7] Scottish Information Commissioner, Decision 181/2006, Ms Helen Puttick of the Herald and Greater Glasgow NHS Board, 5 October 2006

In this case, the Commissioner found that disclosure would cause some 'detriment' to the hospitals but he has elsewhere observed that the level of harm needed to establish detriment under s.36(2) is lower than that need to show substantial prejudice to commercial interests under s.33(1)(b). (See paragraph 47 of decision 216/2006.) In this case he also found that the public interest in revealing whether the NHS was receiving value for money by paying for these operations to be performed at a private hospital was not sufficient to justify disclosure under section 36(2). However, he observed that the public interest test under this exemption was more difficult to satisfy than the equivalent test under other exemptions, which raises the possibility that, if the only exemption available was that in section 33(1)(b), then even if 'substantial prejudice' had been established the information might have had to be disclosed on public interest grounds.

objection itself to releasing the information, and only withdrew its appeal when the purchaser of the land abandoned its threat of legal action.[8]

(2) Information held for the purposes of investigations or proceedings

If employees or members of the public are injured or put at risk by a contractor's unsafe working practices a request could be made to a regulatory body, such as the local authority. However, the section 34 exemption for information obtained during an investigation or a routine inspection may prevent disclosure, to protect the investigatory process, even if no prosecution is pending and even after consideration of the public interest test.[9] Some of this information would be available directly from the contractor itself, were it designated under the FOISA in its own right (subject to no other exemption applying).

Significant public funding

We agree that a substantial level of public funding should be a factor favouring designation. However, the level of funding is an unreliable indicator of the public interest in a contract. Relatively low value contracts may be critical to the safety or welfare of the public or to the formulation of significant policy within an authority.

Only designate new contracts?

We would be concerned if designation applied only to new contracts and not to those already in place. This would, as the Discussion Paper suggests, lead to slow progress and arbitrary distinctions between the contracts that were and were not subject to FOI.

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[8] Information Commissioner, Decision Notice FS50090744, Oxford City Council, 1 February 2007. See also: 'Was Stadium Sale Good Value?', Oxford Times, 19.10.07

[9] For example, the SIC has found that a local authority was entitled under s.34 of FOISA to withhold information about a fatal accident at a football club in which an apprentice footballer was electrocuted. By the time of the request the club had pleaded guilty to a health and safety offence and been fined £4,000. But the information was held to be exempt under s.34 because it had at an earlier time been held in connection with an investigation into the offence and the balance of public interest was held to favour withholding it. Scottish Information Commissioner, Decision 004/2009, Mr John R. Gowans and Falkirk Council. 12 January 2009.

We do not think that designating existing contracts would be unfair to contractors. There has been considerable advance notice of the proposal to designate contractors under FOISA, which was announced in the Scottish Executive's 1999 consultation document "An Open Scotland".[10] A similar commitment appeared before devolution in the UK government's 1997 white paper "Your Right to Know".[11]

All the existing elements of the current access regime were introduced with retrospective effect. These include the FOISA itself, the right of access to personal data under the Data Protection Act 1998 and the rights under the Environmental Information (Scotland) Regulations 2004, including the right to information held by environmental contractors.

The Discussion Paper mentions at paragraph 44 a number of elements of potential cost to contractors. However, public authorities appear to have minimized any such costs and no doubt contractors will do the same. Many public authorities appear to have spent little on records management in preparation for FOI and it is unlikely that contractors will feel obliged to do more, unless this is perceived as valuable for their own business purposes. Many existing publication schemes appear extremely modest in scope and are unlikely to have involved significant burden on the authorities concerned. Such schemes are unlikely to prove more burdensome for contractors. Where necessary, model schemes which could be adopted by all contractors could be drawn up as provided for under section 24 of FOISA.

Q4: Of the 4 proposed options given in Part 4 (no action/self-regulation/improved statutory guidance/one or a series of section 5 orders), which do you consider the best option? Or would some other option or combination of options be preferable? If supportive of an extension of coverage please also state whether you would support an incremental approach to extension as opposed to a 'big bang'.

We favour the extension of access by a series of section 5 orders, so that the process is treated as a continuing one rather than a one-off exercise. However, we

[10] Scottish Executive, "An Open Scotland. Freedom of Information: A Consultation", November 1999, paragraph 2.4

[11] "Your Right to Know. The Government's proposals for a Freedom of Information Act", December 1997, Cm 3818, paragraph 2.2

think the initial order should be ambitious and that a target date for the introduction of a subsequent order should be set, so that the process does not stagnate.

A single section 5 order may in any case only be capable of covering contracts that are in existence at the time it is made (unless the class of contracts can be designated). Subsequent contracts would not be covered without a further designation. A single order would become out of date as existing contracts lapsed were replaced by new ones, or if functions carried out in-house at the time of the order were contracted out subsequently.

We think the alternative options mentioned in Part 4 of the Discussion Paper are unsatisfactory.

A voluntary code of practice would be unenforceable. Even where an authority had legitimately withheld information, requesters would have no way of establishing, and the organisation will have no way of demonstrating, that this was the case. The absence of an independent enforcement mechanism would also undermine the credibility of the arrangement, even where the organisation was conscientiously striving to comply. Where it was not seeking to comply at all, the lack of an enforcement mechanism would be a fatal defect.

Although we would welcome any improvement to the statutory guidance issued under section 60 of the Act, it is unclear whether this would result in significant improvement in relation to information about contracts, given that information held by a contractor ‘on behalf of’ a public authority is already accessible under section 3(2)(a)(i) of FOISA.

It may be helpful to encourage authorities to insert clauses into contracts clarifying that information held by the contractor about the contract must be provided to the authority if required in order to answer an FOI request. However, the authority may still be prevented from disclosing such information to the requester by an obligation of confidentiality. Unless contract clauses expressly set aside any such obligation this would remain a significant obstacle.

In addition, the enforcement of a contractual obligation would be a matter for the courts not the Scottish Information Commissioner. This could lead to a stalemate where an authority asks the contractor for information needed to answer an FOI request but the contractor refuses to supply it claiming either that (a) the authority does not have the power under the contract to demand this information or (b) that its release under FOISA would be an actionable breach of confidence. In these circumstances, the SIC could not compel the contractor to provide the information and we doubt whether it could compel the authority to bring civil proceedings to compel the contractor to provide it with the information.

Q5: In principle, do you support extending the coverage of the Act to RSLs? Please explain your reasoning e.g. do you consider that you are at present unable to access certain information from RSLs as they are not covered by the Act?

We support the designation of Registered Social Landlords under the Act. RSLs are responsible for the provision of a major public function, at least in the wider sense and perhaps also within the specific legal meaning of the term.[12]

It is also highly significant that the UK Information Commissioner has ruled that housing associations in Northern Ireland are public authorities for the purposes of the Environmental Information Regulations 2004.[13] Housing associations are therefore already, at least to a degree, subject to existing access legislation.

Housing associations are now responsible for what in the past has been a key local authority function, the provision of social housing particularly to those in need. The construction of new housing for social purposes by local authorities has largely been eliminated, and new social housing is now provided chiefly by housing associations. In 2006, only 6 new dwellings were completed by local authorities compared to 4,204 by housing associations.[14] Many local authority tenants have

[12] A Court of Appeal ruling indicates that a housing association may be regarded as having public functions, depending on the specific circumstances of the case. Donoghue and Poplar Housing and Regeneration Community Association Limited, [2001] EWCA Civ 595

[13] Information Commissioner, Decision Notice FER149772, Wesley Housing Association Ltd, 8 October 2008 and Decision Notice FER0152607, Belfast Improved Housing Association, 8 October 2008.

[14] Scottish Executive, Statistical Bulletin, Housing Series, HSG/2007/5, May 2007, Table 6.

become housing association tenants, and lost rights of access that they would otherwise have enjoyed. The wider public has also lost such rights. The council housing stock transfer in Glasgow and the establishment of the Glasgow Housing Association creates particular problems for anyone who wishes to make an FoI request about social housing in Glasgow.

It has been suggested that housing associations are open enough already.[15] If so, the FOI Act will not inconvenience them as information which associations already publish will be exempt under section 25 of FOISA (so long as it is referred to in the relevant publication scheme). However, housing associations which do not currently release the information that is likely to be requested from them would be required to do so in future.

We think the property management functions of housing associations should be also be covered by any designation of RSLs including those provided to properties which they do not themselves own. A recent report by the Office of Fair Trading found significant dissatisfaction with the standards of property management in Scotland. The report found that 117 RSLs were providing property management services. Consumers receiving properties services from RSLs were slightly more likely to rate the service as "poor" than those receiving them from private provider and were substantially more likely to be dissatisfied with the way in which any complaint was handled (78 per cent compared to 60 per cent). The overriding reason for dissatisfaction with complaint handling was that the complaint was not addressed.[16] We think that establishing a right of access to information held by RSLs under FOISA would assist in addressing these problems.

[15] See for example "Scottish associations oppose FOI change", Inside Housing, 19 January 2009
[16] Office of Fair Trading, "Property Managers in Scotland. A Market Study', OFT1046, February 2009. See paragraphs 3.10, 4.17, 5.39 and 5.40

Q6: If supportive of an extension of the coverage of the Act to RSLs, on what basis would you wish to see coverage extended (i.e to all RSLs/to all over a certain size/on the basis of provision of specified functions only/GHA only etc)

We think all RSLs should be designated. All housing associations, regardless of size, are covered by health and safety and data protection legislation. The same should apply in relation to FOI legislation.

Q7: Do you agree that the factors summarised in paragraph 62 are relevant in assessing the appropriateness of extending coverage to RSLs? Do you think any additional or alternative factors are relevant? Please explain your reasoning.

Our earlier comments about these factors apply.

Paragraph 70 states that RSLs are subject to scrutiny by a number of regulatory bodies. In fact two of the four specified regulators are subject to statutory restrictions which prevent them releasing information to the public:

- The Financial Services Authority, which regulates RSLs as Industrial and Provident Societies, is prohibited from disclosing information about any person which it has received in the course of its functions.[17]

- The Scottish Public Services Ombudsman is prohibited from disclosing information obtained in the course of an investigation, unless it is disclosed in its investigation report itself or for certain other very limited purposes.[18]

The public's ability to obtain information as a side-effect of complaining to the SPSO is limited. In most cases the Ombudsman can only investigate a complaint where there is an allegation of injustice or hardship to members of the public caused by maladministration.[19] It cannot deal with complaints about decisions which do not have these effects, for example, those merely involving wasteful

[17] Financial Services and Markets Act 2000, Section 348,
[18] Scottish Public Services Ombudsman Act 2002, Sections 19(1) and 19(2)(a)(ii),
[19] Scottish Public Services Ombudsman Act 2002, Section 5(3). A slightly wider remit applies in relation to certain specified bodies.

spending or poor policy making. On the contrary the Ombudsman is expressly prohibited from:

- questioning the merits of a decision involving the exercise of discretion where there has been no maladministration[20]
- investigating any action taken in relation to a contractual or commercial matter[21]
- investigating personnel matters[22]
- investigating complaints relating to the determination of any rent or service charge.[23]

In addition the Ombudsman can refuse to investigate matters where the complainant has a remedy before a tribunal or court, unless the Ombudsman is satisfied that it would be unreasonable to expect the complainant to use that remedy.[24] The SPSO might, therefore, decline to investigate a complaint that someone has been injured as a result of an RSL's alleged negligence.

In any event, the use of the Ombudsman as an alternative to a free standing statutory right of access to information has already been tested and found to be insufficient. The Code of Practice on Access to Scottish Executive Information was introduced in 1999 and supervised by the Scottish Ombudsman. In the three years from 2000 to 2002 not a single complaint under it was investigated by the Ombudsman.[25] By contrast, in the first three years of FOISA's existence (2005-2007) the Scottish Information Commissioner received 410 complaints involving Scottish Ministers, non-ministerial office holders and the Scottish Parliament.[26]

Q8: Of the 4 proposed options given in Part 4 (no action/self-regulation/improved statutory guidance/one or a series of section 5 orders),

[20] Scottish Public Services Ombudsman Act 2002, section 7(1)
[21] Scottish Public Services Ombudsman Act 2002, Schedule 4, paragraph 7(1)
[22] Scottish Public Services Ombudsman Act 2002, Schedule 4, paragraph 8
[23] Scottish Public Services Ombudsman Act 2002, Schedule 4, paragraph 15
[24] Scottish Public Services Ombudsman Act 2002, section 7(8)(b) and (c)
[25] See for example, Code of Practice on Access to Scottish Executive Information - Report on the Calendar Year 2000, from http://cci.scot.nhs.uk/Publications/2001/03/8569/File-1.
[26] Scottish Information Commissioner, Annual Report 2007, page 24

which do you consider the best option? Or would some other option or combination of options be preferable? If supportive of an extension of coverage please also state whether you would support an incremental approach to extension as opposed to a 'big bang'.

We think RSLs should be designated as a class and by a single order.

Q9: In principle, do you support extending the coverage of the Act to trusts and bodies set up by local authorities? Please explain your reasoning e.g. do you consider that you are at present unable to access certain information from local authority trusts and bodies as they are not covered by the Act?

We support this measure. The people should have the right to this information, which directly affects the facilities provided to them. This will be particularly relevant when the 2012 London Olympics and the 2014 Commonwealth Games take place, given that in both cases some events will be held in Scotland.

Designation of other bodies

Law Society of Scotland and Faculty of Advocates

The disciplinary functions of the Law Society of Scotland and the Faculty of Advocates are public functions of a kind which the government would be required to undertake in the absence of self-regulation. Although the Scottish Legal Complaints Commission is responsible for dealing complaints about the *service* provided by legal practitioners the handling of complaints about their professional *conduct* remains the responsibility of the Law Society and Faculty of Advocates and we think these functions should be subject to FOISA.

Association of Chief Police Officers in Scotland

We believe that the Association of Chief Police Officers in Scotland (ACPOS) carries out essential public functions and should be brought within the scope of the FOISA.

A number of factors point to ACPOS's public functions, including the closeness of the relationship between ACPOS and the Scottish Government. For example, the Scottish Government has representation on each of ACPOS's business areas.[27] ACPOS is partly funded by a Scottish Government grant, of £314,000 in 2007-08.[28]

The association's central role has been described by the Scottish Parliament's Justice Committee which stated that ACPOS has:

> "evolved to the strategic body which oversees and co-ordinates all aspects of the direction and development of the Scottish Police Service as a whole."[29]

There can be no doubt that ACPOS's role goes well beyond that of a professional body and indeed directly overlaps with that conventionally fulfilled by government. A January 2009 report by HM Inspectorate of Constabulary for Scotland noted that the priorities of the first post-devolution administration:

> "may...have led to ACPOS filling something of a vacuum in the national strategic direction of policing – a role performed in England and Wales by the Home Secretary and Home Office"

The report adds that:

> "whether ACPOS or Scottish Government holds sway in deciding the future direction of policing in Scotland, both are vital partners"

Elsewhere it notes:

> "ACPOS makes decisions affecting local, regional and national policing"

> "Over the last few years ACPOS has taken an increasing lead in developing policies for policing across Scotland."

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[27] ACPOS, 'Accountability of ACPOS', http://www.acpos.police.uk/Documents/Annual%20Reports/Accountability%20of%20ACPOS_090205%20.pdf

[28] Written Answers, 20 February 2008, (S3W-9101), http://www.scottish.parliament.uk/business/pqa/wa-08/wa0220.htm

[29] Scottish Parliament, Justice Committee. 4th Report, 2008 (Session 3) Report on inquiry into the effective use of police resources (SPP 50), paragraph 25.

> "ACPOS also co-ordinates some operational policing such as counter-terrorism, and occasional multi-force responses or operations through something known as the Scottish Police Information and Co-ordinating Centre (e.g. for outbreaks of foot and mouth disease, fuel disputes, the G8 Conference)."

The report comments that "there is little public scrutiny" of ACPOS decisions and adds that:

> "currently policing risks at a national level are being assessed by ACPOS alone and on the basis of a significantly incomplete picture"

Although ACPOS has recently become a limited company:

> "this does not, nor can it be expected to, introduce any improvements to existing public governance arrangements that would require it to demonstrate that the decisions being made are balanced and informed, or that its use of resources from forces and the Scottish Government is efficient and effective."

It concluded:

> "the Scottish Government should introduce appropriate mechanisms to strengthen the accountability of ACPOS in order to secure its legitimate status as the leadership of the police service in Scotland."[30]

This theme has been echoed elsewhere. In a 2007 report Audit Scotland noted that it was not clear how ACPOS could be held to account for major strategic decisions.[31]

In January 2009 the Parliament's Public Audit Committee reported that it:

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[30] HM Inspectorate of Constabulary for Scotland, 'Independent Review of Policing in Scotland', January 2009. The quoted passages are found, respectively, on pages 59, 60, 38, 42, 59, 38, 16, 43 and 68

[31] Audit Scotland, Police call management, an initial review, September 2007, paragraph 162

> "shares the concerns that have been expressed by the Justice Committee, the Auditor General for Scotland and HMICS about the transparency and accountability of ACPOS. The Committee is particularly concerned that it appears that ACPOS may only effectively be held to account via local police authorities' scrutiny of their own chief constable's activity.
>
> The Committee recommends that, following the receipt of the HMICS report on the roles and responsibilities of the police in Scotland, the Scottish Government should consider this matter further with a view to developing stronger and more transparent national mechanisms for scrutinising and holding ACPOS to account."[32]

The arrangements to provide more accountability and transparency for ACPOS should include brining the organisation with the scope of the FOISA.

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[32] Scottish Parliament, Public Audit Committee, 2nd Report 2009, Police call management (SPP 196), paragraphs 93-94/