



Freedom of Information: a Manifesto for Holyrood Elections 2011

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**Campaign for Freedom of Information in Scotland
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Introduction

The Campaign seeks assurances from candidates standing for election to the Scottish Parliament that they will support an extension in the scope of the Freedom of Information (Scotland) Act 2002 (FoISA) to include a range of private and public sector bodies such as housing associations and that they will oppose any attempt to restrict the legislation for example by introducing new charges for information. We ask candidates to support this Agenda within their party and to explicitly support and deliver these two 'asks' if elected.

The FoISA has been successful in assisting people to engage with their public services and in beginning to change attitudes within the public sector. Those advances now need to be extended into other important sectors, particularly the private and voluntary sectors, involved in delivering public services.

While the FoISA is widely regarded as providing stronger rights of access than legislation at UK level - for example the fact that MSP's expenses were published ensured that the secrecy and scandal of MP's expenses did not happen here – there is now a risk that it will fall behind the the UK Act in terms of coverage.

The Campaign is concerned at the possibility that new restrictions to the legislation may be introduced, such as further charges for information or measures allowing authorities to refuse more requests on cost grounds. When charges were introduced under Ireland's FOI law a few years ago, there was an immediate 75% fall in the number of requests. Such measures should not be introduced in Scotland.

Although we live in times of budgetary cuts, FoISA was introduced in Scotland, in 2005 with no additional funding from the Scottish Government. Scotland's 10,000 public sector bodies were expected to mainstream the law into their existing operations – and have done so successfully.

If public sector bodies proactively release a far greater amount of the most frequently requested information into the public domain via their publication schemes and publish full details of information released in the past, then fewer requests may be received from the public in the first place and authorities would save time and money in responding. Despite six years of FoISA, it is still unclear what percentage of new information is now proactively published in Scotland creating work as public authorities have to spend time reacting to requests.

Manifesto

Specifically we ask for candidates to declare:

1. Explicit support for people's right to access information on the spending of public money by extending the range of information routinely disclosed to include all new Scottish government contracts and tender documents over £10,000 – featuring all performance indicators, break clauses and penalty measures – and all new local government contracts and tender documents over £500 – again, in full. This change would involve proactive disclosure by existing public authorities such as the Scottish Government, NHS Boards and local authorities, of specified contract information.
2. The need for a simple system so that people can access their right to receive and impart information from public bodies, rather than the current system whereby some bodies are covered and some are not.

3. The need to make private contractors subject to FoISA. Transparency and openness should be part of doing business with the public sector. We believe contractors who build and maintain hospitals and schools, who build and maintain trunk roads or water and sewage facilities, run privately managed prisons or provide prison escort services whether via PFI/PPP or any other contracts, should be covered by FoISA. Trusts and other arms-length organisations running public service facilities such as sports, leisure and cultural facilities, building, parking, transport, property, IT, finance and other support services, health, home, safety and social care should also be covered as should the Association of Chief Police Officers in Scotland. We note that the recent Scottish Government consultation resulted in “near universal support” from everyone who had commented on the proposals to extend coverage of the Act, apart from the contractors, or other designated service providers.¹
4. That only contractors responsible for contracts above certain values should be brought under the Act but the thresholds must be realistic and subject to debate and public consultation. This change would bring certain contractors within the scope of FoISA in their own right.
5. That all housing associations should be covered by FoISA so that tenants have the right to access information which is part of individual and community empowerment strategies. Housing associations are already covered by Data Protection and Health and Safety laws so they already have to comply with a series of regulatory laws that give individuals enforceable rights.
6. No increased charges for information, or changes that would make it easier for authorities to refuse requests on cost grounds should be introduced. It is important that public services and public finances are transparent and information is freely accessible.
7. That it is important that a comprehensive extension to FoISA is introduced by the Scottish Parliament.

Examples of the Current Problem

- The Scottish Information Commissioner has ruled that information about the cost of utility contracts on the Edinburgh Trams Project could not be disclosed because the information had been provided by the contractors in confidence to tie Ltd, the public body responsible for the project. (*Decision 006/2011 Mr Jim Cooney and tie Limited, Value of tie contracts, 11 January 2011*).
- In relation to the Association of Chief Police Officers in Scotland (ACPOS), the equivalent body in England, Wales and Northern Ireland – ACPO - had volunteered to be brought under the UK’s Freedom of Information Act. The Westminster government confirmed in 2011 that ACPO would be covered by the UK Act, a decision originally announced by the last Labour government. Unless ACPOS is brought within the scope of FoISA the Scottish public will have less information about its policing than the public in the rest of the United Kingdom.
- Tenants of local authorities have the right to obtain information under FoISA but if they are transferred to a housing association then they lose this right. All housing associations are covered by the Human Rights Act 1998 so tenants do have rights, under Article 10 of the European Convention on Human Rights, “to receive and impart

¹ Consultation Paper, Extension of Coverage of the Freedom of Information (Scotland) Act 2002 (FOISA), Scottish Government Response Paper, January 2011. <http://www.scotland.gov.uk/Resource/Doc/175356/0112479.pdf>

information” but this is a more complicated right to enforce than the simpler FoISA process.

Conclusion

Scotland risks falling behind the UK in FOI terms. When the legislation was originally passed, FoISA was widely regarded as superior to the Act which applied across the rest of the UK. Now, the Westminster government is proposing to extend the UK FOI Act to other bodies including the Local Government Association, the NHS Confederation, the Law Society and the Bar Council. Their Scottish counterparts should be brought under FoISA.

All candidates are asked to formally declare their support for more open Government and greater access to information to enable people to understand how public money is being spent whether on the public, voluntary or private sectors in Scotland.

About the Campaign for Freedom of Information

The Campaign for Freedom of Information was established in 1984 to secure a legal right of access to information so that people could find out about how they are governed and how their services are delivered. We have been involved in all the major developments of the legislation both at UK and Scottish levels.

During the passage of FoISA and subsequently we have consistently argued that the legislation should cover a much wider section of Scottish society, recognising that our public services are delivered by bodies other than public authorities, though paid for by public money.

We welcome opportunities to work with the Scottish public authorities to ensure that the FoISA is implemented effectively and have organised and participated in a number of activities to this effect such as training and participation in the Scottish Public Information Group.
