

Response ID ANON-E458-D3WZ-E

Submitted to Freedom of Information Reform (Scotland) Bill
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About you

1 Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.

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2 How your response will be published

I would like my response to be published in its entirety

3 What is your name?

Name:
Trina Budge

4 What is your email address?

Email:
info@forwomen.scot

5 Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation details

1 Name of organisation

Name of organisation:
For Women Scotland

2 Information about your organisation

Please add information about your organisation in the box below:

For Women Scotland is a not-for-profit grassroots group campaigning to protect and strengthen women's rights in Scotland.

Question page 1

1 To what extent do you believe the proposals in the Bill will help achieve its primary aim of improving transparency in Scotland by strengthening the Freedom of Information (Scotland) Act 2002?

Please provide your response in the box provided.:

Unfortunately, we believe the proposals in the Bill will only achieve limited success in its aims and fall short of the changes we hoped for in improving transparency and accountability.

The Policy Memorandum states that councils were using an estimated 130 external organisations in 2018, with an annual spend of more than £1.3 billion, to provide public services. This gives an indication of the scale of the problem and in our area of work we are particularly concerned about the Scottish Government contracting out its responsibilities in funding third-sector organisations to provide public services to Inspiring Scotland, who manage the Delivering Equally Safe and Equalities and Human Rights Funds, totalling £30m per annum. Consequently, there are dozens of third-sector organisations providing vital public services and policy advice who are almost entirely dependent on Government funding and are wholly unaccountable. This structure has created a dependent circle of conforming organisations and any outsiders trying to contribute to Government policy making can be easily ignored and denied information.

Arguably, a primary motivation for the Government arranging its business in this way is to specifically avoid the requirements of the FoI Act. The fact that it is in special measures over its FOI performance, has continuously declined to introduce much needed improvements to the legislation, and has not used its powers to designate additional bodies under the FoI Act makes it quite clear that neither incentives nor guidance will change the status quo.

Inspiring Scotland has not been designated as a public body under the FoI Act despite ample opportunity for the Scottish Ministers to do so since it started administering Government funds in 2020. As an example of how this benefits the Government, an FoI request for basic information on progress reports was refused on the grounds that Inspiring Scotland is not subject to FoI legislation. [1] Another, for the total value of the contract awarded to Inspiring Scotland was refused on the grounds of "substantial prejudice to commercial interests". [2] One of the organisations awarded a grant, again not

subject to FoI, provides teaching materials to schools which are subject to confidentiality clauses which means parents are denied access, even if an FoI request is alternatively submitted to the local authority. [3] A final example, a request for the funding application for Edinburgh Rape Crisis Centre was also denied on commercial interest grounds. [4] This was particularly egregious given that this organisation has repeatedly hit the headlines by losing an employment tribunal on provision of women-only services and failing to adhere to the law on occupational requirements for female counsellors. The decisions of the grant making body remain obscure and the public have been denied transparency on what services are funded, how they are delivered and (possibly unlawful) conditions attached by the Scottish Government.

Guidance is insufficient to resolve these issues. Nor is the provision in the Bill to designate public authorities. Even if the Information Commissioner were to propose adding Inspiring Scotland, or charities such as Engender (98% funded by Scottish Government, award of £617k in 2024 [5]) or Equality Network (90% funded by Scottish Government, award of £576k in 2025 [6]) it is difficult to see any reason why the Scottish Ministers would feel obliged to add them to the FoI Act. The alternative route of addition by resolution by the Scottish Parliament is equally unlikely to make a material difference when a whipped vote and partnership with the Scottish Greens has repeatedly achieved the Ministers' desired outcome.

70.7% of respondents to the initial consultation [7] on the Bill supported publicly funded third sector organisations being designated under the FoI Act and it seems such a missed opportunity for the Bill to now rely on politicised hurdles for this to be achieved, rather than an automatic mechanism based on funding thresholds.

References:

[1] <https://www.gov.scot/publications/organisations-funded-by-the-equality-and-human-rights-fund-via-the-scottish-government-foi-release/>

[2] https://forwomen.scot/wp-content/uploads/SG-FOI-Inspiring-Scotland-costs-202500447623_redacted.pdf

[3] p12: <https://forwomen.scot/wp-content/uploads/2024/08/Whats-Happening-in-Your-Childs-Classroom.pdf>

[4] https://forwomen.scot/wp-content/uploads/SG-FOI-ERCC-funding-application_redacted.pdf

[5] Engender accounts to March 2024:

<https://find-and-update.company-information.service.gov.uk/company/SC286639/filing-history/MzQ1MjY5Mjk5MmFkaXF6a2N4/document?format=pdf&download>

[6] Equality Network accounts to March 2024:

<https://find-and-update.company-information.service.gov.uk/company/SC220213/filing-history/MzQ0NzU0MjU5OGFkaXF6a2N4/document?format=pdf&download>

[7] p17: <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/final-version--foi-consultation-summary.pdf>

2 Do you support the proposal that when a public authority is deciding whether to withhold information under a qualified exemption, it must begin from the position that the information should be disclosed?

Yes

Please provide your response in the box provided.:

3 Do you agree with the repeal of the current provisions in relation to publication schemes and the introduction of a proactive publication duty and code of practice?

Yes

Please provide your response in the box provided.:

Question page 2

1 Do you support the proposal that the 20-day period for a response to be provided should be paused rather than reset in relation to requests on which the public body seeks clarification from the requester?

Yes

Please provide your response in the box provided.:

2 Do you think that the provisions of the Bill in relation to the reporting by Scottish Ministers of the use of 'section 5' powers to designate new public authorities would, as the Policy Memorandum contends, "incentivise Scottish Ministers to regularly use their section 5 powers and at a pace which enables the system of independent regulation to operate effectively"?

No

Please provide your response in the box provided.:

As described in our answer to Q1 in the first section we see little that will motivate the Scottish Ministers to use powers which they have already demonstrated is not in their interests to use.

3 Do you support the requirement for all public authorities subject to the Act to designate a Freedom of Information officer?

Yes

Please provide your response in the box provided.:

Question page 3

1 The Bill proposes the introduction of an offence to prevent destruction of information with the intent to prevent disclosure, even when no information request has been made. Do you support this proposal?

Yes

Please provide your response in the box provided.:

2 Do you support the proposal to remove the power of the First Minister to 'veto' certain decision of the Scottish Information Commissioner in relation to information deemed to be of "exceptional sensitivity"?

Yes

Please provide your response in the box provided.:

3 Do you support the proposals to strengthen the general functions and enforcement powers of the Scottish Information Commissioner, and to introduce an exemption for information provided to the Commissioner during the investigation of appeals?

Yes

Please provide your response in the box provided.:

Question page 4

1 Do you have any views on the estimated costs and savings associated with the proposed changes set out in the Bill?

No

Please provide your response in the box provided.:

2 Please use the text box below to set out any further comments you wish to make about the Bill.

Please provide your response in the box provided.: