



Openness, Transparency, Accountability & Empowerment Manifesto for Scottish Parliament Elections 6th May 2021

The Campaign for Freedom of Information in Scotland (CFoIS) calls on all candidates for the Scottish Parliament elections to endorse our three ‘asks’ and if elected, to deliver them:

- 1. Reform the Freedom of Information (Scotland) Act 2002 (FoISA) to ensure the law delivers openness, transparency accountability and empowerment. Commit to begin the consultation process on the legal details, within 100 days of the election and to pass legislation by June 2022. Scotland’s new Fol law needs to be in place 20 years after the first!**
- 2. Acknowledge that the right to access information in the public interest is a human right. Consequently the detail of FoISA reform should be informed by human rights law. The enforceable right to access information must align with the design and delivery of a human rights strategy in Scotland.**
- 3. Work with the UK Government to sign, ratify and implement the Council of Europe’s Tromso Convention which provides a general right of access to official documents held by public authorities.**

The Fol landscape in Scotland is busy and challenging, with over 10,000 bodies across Scotland designated under the Freedom of Information (Scotland) Act 2002 (FoISA). FoISA¹ and the Environmental Information (Scotland) Regulations 2004 (EISRs)² establish the ‘right to receive’ information (RTI) and place a duty on the holder of information to provide it unless it is subject to one of the numerous exemptions. Fol rights are popular in Scotland: there were 79,300 reported requests³ for information in 2019/2020’. The UK Freedom of Information Act 2000 applies to reserved matters and cross border bodies.

¹ The Act is available at <http://www.legislation.gov.uk/asp/2002/13/contents>

² At <https://www.legislation.gov.uk/ssi/2004/520/contents/made>

³ The duty is on designated bodies to identify and record the number of requests it receives p.g. 13 at [SIC_ARA_2019-20_FOR_PUBLICATION.pdf \(itspublicknowledge.info\)](#)

There are barriers to openness and transparency in publicly funded services that negatively impact on the accountability to, and empowerment of, the public in Scotland. This manifesto urges MSPs to agree that FoISA is out of date and promise to deliver urgent reform as:

- Technology and how we store and transmit official information has radically changed since the Bill was first drafted and published in 2001. Therefore the law needs to keep up to ensure information requests yield all the information available, the law is clear on the duty to comply and on enforcement.
- Although 10,000 bodies are covered by FoISA, a large proportion are individual GP practices as they operate as private companies. CFoIS believes bodies are missing from FoISA coverage because they are ALEOs (arm's length external organisations) which have been set up by public bodies to operate outside of FoI law. Others are missing because despite being public companies, their existence is unknown and therefore beyond scrutiny. For example CFoIS' FoI request for the names of publicly owned companies was refused even though the number was listed in an official publication.⁴
- Attempts to update the range and number of bodies covered by FoISA have been repeatedly slow and the consultation to extend FoI rights to private care homes and those being delivered by Third Sector organisations have again been 'paused'.
- FoISA is being weakened in some designated bodies by a variety of operational tactics such as removing staff to other duties, failing to replace expert staff and the consequent organisational memory loss. A new law can remove the loopholes on duties.
- The Scotland Act 1998, Section 29, requires MSPs to comply with the European Convention on Human Rights (ECHR). Article 10 of the ECHR is the right to information to form an opinion and case law rules it applies when requests for information are in the public interest which is defined by four tests: the purpose of the information request; the nature of the information sought; the particular role of the seeker of the information in "receiving and imparting" it to the public; and whether the information is ready and available.⁵
- The details of FoISA reform also needs to be influenced by international developments on access to information. Specifically it should give effect to the Council of Europe's Tromso Convention, which is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities.⁶

Progress To Date

In 2016, CFoIS made nine 'asks' of politicians at the Scottish Parliament. Underpinning each was the firm belief that 'far more bodies should be covered by the Freedom of Information (Scotland) Act (FoISA).' Whilst we welcomed the politicians' commitment on transparency and accountability, our focus was on ensuring that the

⁴ Read CFoIS report of 9th March 2020, at [Briefing-on-Public-Company-Case-Final.pdf \(cfois.scot\)](#)

⁵ For example, the Grand Chamber decision in the case of on Magyar Helsinki Bizottság v. Hungary (Application no. 18030/11) 8th November 2016 <http://hudoc.echr.coe.int/eng?i=001-167828> and Studio Monitori and Others v. Georgia (applications nos. 44920/09 and 8942/10) 30th January 2020 at <http://hudoc.echr.coe.int/eng?i=001-200435>

⁶ Council of Europe Treaty effective from 1st December 2020 at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205>

public continues to enjoy an enforceable right to know. So in parliamentary session five (2016-2021), what did the elected MSPs and the Scottish Government deliver?

1. Restore the public's right to access information to at least its 2005 status – **Not Delivered.**
2. Restore the operation of the Scottish Public Information Forum to enable effective engagement with stakeholders, and to maintain and develop an enforceable right to access information which meets the public's expectations. – **CFoIS reconvened SPIF in May 2017 and it continues to meet twice a year. The meetings are collaborative and include reports from the Scottish Government and Scottish Information Commissioner. Achieved by civil society, initially funded by UNISON Scotland.**
3. Extend the right to access information to reflect changes in public service delivery in Scotland - **Not Delivered.**⁷
4. Undertake an audit of all arms-length external organisations (ALEOs) and catalogue their functions, to enable informed decision making about the coverage and operation of FoISA. **Matter ongoing as it is still difficult to establish precise number in Scotland. Prior to COVID-19 there were useful reports such as from Audit Scotland in 2018 on the use of ALEOS by Councils.**⁸
5. Quickly extend the coverage of FoISA to all known ALEOs not already included, all public sector organisations and others delivering services of a public nature. – **Not Delivered.**
6. Agree it is the function delivered that requires FoISA coverage. Adopting this principle will ensure consistency in the coverage of FoISA. **Not Delivered**
7. Maintain the principle that FoISA obligations apply equally to all organisations covered. **Not Delivered in the case of independent and special schools which are permitted longer response times.**
8. Reject any introduction of a new category of 'core' public organisations as a way of diluting the effectiveness of FoISA. **Delivered.**
9. Review the operation of FoISA to ensure our enforceable right to access information remains effective in delivering open, transparent and accountable government and public services. **Delivered by the Public Audit and Post Legislative Scrutiny Committee of the Scottish Parliament in its report of May 2020⁹. The inquiry was approved by a unanimous vote of MSPs on 21st June 2017¹⁰.**

About CFoIS

The Campaign for Freedom of Information in Scotland (CFoIS) was established in 1984 to improve public access to official information, to secure the legal right to access information and to enforce that right. The initiative came from the Scottish Consumer Council. We are a civil society organisation, operating in Scotland and collaborate with colleagues in the UK and internationally. **For further information contact us** at info@cfois.scot go to www.cfois.scot follow us @CFoIScot

⁷ A Scottish Government consultation ran from 30 August to 3 December 2019 which considered extension of FoISA to organisations which exercise functions of a public nature. The proposals would have brought private care homes and Third Sector organisations delivering public services into the FoI regime. CFoIS supported the extension of FoISA to these bodies to ensure consistency in the delivery of rights and duties. The matter remains outstanding.

⁸ At [Councils' use of arm's-length organisations \(audit-scotland.gov.uk\)](http://www.audit-scotland.gov.uk)

⁹ At [Post-legislative scrutiny: Freedom of Information \(Scotland\) Act 2002 | Scottish Parliament](https://www.parliament.scot/parliamentarybusiness/report.aspx?r=11021&i=100720)

¹⁰ Available at Scottish Parliament Official Report <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11021&i=100720>