

## Council officials push to weaken freedom of information law - We Must Oppose this Attempt

Posted by RM64 - 13 Jun 2019 12:51

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Please read and continue to support and indeed strengthen the current Freedom of Information legislation.

If ERC Chief Executive (a member of Solace ?), Officials & Councillors were more open & transparent then they could easily limit their perceived problems.

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Rob Edwards on June 12, 2019

Council officials push to weaken freedom of information law

Senior local authority officials are lobbying to relax freedom of information (Fol) law so that they can increase charges, delay responses and reject more requests as “vexatious”.

Two groups representing council managers have made a submission to a Holyrood committee investigating whether Fol law should be changed.

They say that the costs of responding to Fol requests have been “significantly underestimated” and complain about having to deal with “highly disgruntled individuals”.

Their complaints, however, have been countered by the Scottish Information Commissioner, Daren Fitzhenry, who strongly defends the current legislation.

Campaigners promise to oppose any attempts to diminish people’s rights to access information.

The Ferret reported on 4 June that 40 journalists had joined together to call for Fol law to be updated, strengthened and expanded.

They accused local authorities, along with the Scottish Government, Police Scotland, the NHS, universities and others of delaying, mishandling and refusing Fol requests without good reason.

The new submission is jointly from the Society of Local Authority Lawyers and Administrators in Scotland (Solar) and the Society of Local Authority Chief Executives and Senior Managers (Solace Scotland).

They have written to the Scottish Parliament's public audit and post-legislative scrutiny committee which is reviewing the 2002 Freedom of Information (Scotland) Act (FoISA).

The council officials want to make the law more "flexible" and have a "more realistic approach to fees and charging".

Solar and Solace contended that "the resource implications of FoISA have not been adequately addressed – or indeed, addressed at all".

The current rules allowing them to charge for requests that cost over £600 to answer are "effectively pointless in practice", they said.

The cap imposed on the amount that can be charged for staff time – £15 an hour – is "artificially low", they argued.

The 40 hours of staff time they are obliged to utilise before they can ask requesters to pay "still represents a significant diversion of resources to something which may only be of interest to one individual."

Council officials urged ministers to make use of their powers under section 12 of FoISA to lump together costs where two or more requests are made by one person to make them easier to refuse.

This was "to address the scenario where councils are on the receiving end of orchestrated campaigns of

FoI requests for broadly the same material,” they said.

“We also feel that it would be helpful for authorities to be able to extend the timescale for compliance under FoISA for particularly complex cases, as is currently the case under the Environmental Information Regulations.”

Allowing longer delays would not be “abused”, they claimed.

Authorities occasionally have to deal with highly disgruntled individuals who will pursue any avenue of complaint open to them regardless of the merits of their case.

Solar and Solace suggested that there had been “misuse” of FoI by people who may genuinely have believed they were victims of misconduct.

“A review of the current very high threshold for declaring a request to be vexatious would be welcome,” they argued.

“We are also conscious that authorities occasionally have to deal with highly disgruntled individuals who will pursue any avenue of complaint open to them regardless of the merits of their case, and FoI has created another such route for these individuals, some of whom use FoI as a weapon to punish local authorities for supposed misdeeds.”

What vexatious means is not defined in FoI legislation.

According to the information commissioner, it could include requests which impose a significant burden on public authorities, have no serious purpose or value, are designed to cause disruption or annoyance, or are

manifestly unreasonable or disproportionate.

Council officials accepted that FoI law had “clearly made the public sector more transparent”.

But they insisted that “the resource implications for local authorities in complying with this legislation have been significantly underestimated.”

They added: “No additional resources were made available to implement this legislation so all the resources required to comply have had to be diverted from other front line services.”

Solar and Solace stressed that FoI law had been “broadly positive” in making information more accessible to citizens.

“However, it would perhaps be beneficial to review some elements – particularly where there have been unintended, or at least unforeseen, consequences,” a spokesperson for both groups told The Ferret.

“For example, the resource implications of FoISA remain a challenge for local authorities, particularly in relation to vexatious requests.

A degree of flexibility in the timescales for dealing with the most complex cases could potentially benefit both public bodies and requestors.”

But the information commissioner, Fitzhenry, pointed out that public expectations had changed and they now expected more information to be released.

“It is important that this is recognised and supported,” he said.

“FoI should be viewed as being a key service to the public, and while there is a cost associated with this, it must be balanced against the benefits that FoI brings, to the public, requesters, and the authorities themselves.

It is therefore important that authorities do provide appropriate resource and look at their procedures to make sure they are efficient as well as effective.”

He called on councils to adopt “a more open culture” by pro-actively publishing information of public interest.

According to Fitzhenry, the £600 charging limit “strikes the right balance between ensuring authorities do not have to spend inordinate amounts of time complying with FoI requests, and not preventing requesters from accessing information.”

He rejected the idea of delaying responses.

“We think that the current system with an emphasis on a prompt response and an upper time limit of 20 working days is a system that provides a workable balance,” he told The Ferret.

To allow authorities to refuse a request on the basis that it is not sufficiently serious would be a major retrograde step.

He also warned against making it easier to refuse requests as vexatious.

“We have cautioned against the suggestion that some requests, despite not being vexatious are, by virtue of their subject matter, unworthy requests,” he said.

“To allow authorities to refuse a request on the basis that it is not sufficiently serious would be a major retrograde step, allowing authorities to go back to a position of deciding what the public should see, rather than what they want to see.”

The Campaign for Freedom of Information in Scotland pointed out that governments get “nervous” when people have rights that are backed by law.

“We oppose all attempts to diminish the right of people to enforce transparency and accountability in elected government in Scotland,” said convener, Carole Ewart.

“The focus of the campaign remains on extending and improving the rights regime in Scotland.”

She added: “Within local authorities there needs to be a change in culture and practice so that far more information is pro-actively published and jobs are created to process FoI requests lawfully.”

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## Re: Council officials push to weaken freedom of information law - We Must Oppose this Attempt

Posted by RM64 - 14 Jun 2019 15:31

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----- Original Message -----

To:

This e-mail address is being protected from spambots. You need JavaScript enabled to view it

Sent: Friday, 14 Jun, 2019 At 17:14

Subject: Scottish Parliament's Review of the 2002 Freedom of Information (Scotland) Act

Dear Chief Executive

Review of the 2002 Freedom of Information (Scotland) Act (FoISA) by Scottish Parliament's public audit and post-legislative scrutiny committee

I understand that a new submission jointly from the Society of Local Authority Lawyers and Administrators in Scotland (Solar) and the Society of Local Authority Chief Executives and Senior Managers (Solace Scotland) has been forwarded/submitted to the Scottish Parliament's public audit and post-legislative scrutiny committee which is reviewing the 2002 Freedom of Information (Scotland) Act (FoISA).

I would appreciate if you will confirm if the East Renfrewshire Council Chief Executive, Senior Council Officials and/or East Renfrewshire Council contributed to and/or provided information/evidence to Solar and/or Solace Scotland for this submission.

Your help with this matter is appreciated.

Thanks

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## Re: Council officials push to weaken freedom of information law - We Must Oppose this Attempt

Posted by RM64 - 11 Jul 2019 17:46

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----- Original Message -----

From: &quot;Mahon, Gerry&quot;;

Sent: Tuesday, 25 Jun, 2019 At 08:31

Subject: Review of FOISA

Further to your email of 14 June 2019 regarding the council's participation in the Scottish Parliament's review of the Freedom of Information (Scotland) Act 2002, I have been asked by the chief executive to reply to you on behalf of the Council.

Having liaised with officers across the Council I can inform you that the council did not supply specific information to SOLAR and SOLACE but did have knowledge of the responses submitted on behalf of those organisations through participation in regular groups held under those auspices.

Yours sincerely

Gerry Mahon

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## Re: Council officials push to weaken freedom of information law - We Must Oppose this Attempt

Posted by RM64 - 11 Jul 2019 17:50

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----- Original Message -----

To: &quot;Mahon, Gerry&quot;;

Sent: Friday, 28 Jun, 2019 At 16:14

Subject: Re: Review of FOISA

Hi Gerry

I asked if the East Renfrewshire Council Chief Executive , Senior Officials (as well as East Renfrewshire Council) contributed to and/or provided information/evidence to Solar and/or Solace Scotland.

You replied regarding the Council's participation but you did not reply regarding the Chief Executive, Senior Officials.

Is East Renfrewshire Council a member of the Society of Local Authority Lawyers and Administrators in Scotland (Solar) and/or the Society of Local Authority Chief Executives and Senior Managers (Solace Scotland)?

Within East Renfrewshire Council who are members of the Society of Local Authority Lawyers and Administrators in Scotland (Solar) and/or the Society of Local Authority Chief Executives and Senior Managers (Solace Scotland)?

Did East Renfrewshire Council contribute directly/separately (not through the Society of Local Authority Lawyers and Administrators in Scotland (Solar) and/or the Society of Local Authority Chief Executives and Senior Managers (Solace Scotland)) to the Scottish Parliament's public audit and post-legislative scrutiny committee which is reviewing the 2002 Freedom of Information (Scotland) Act (FoISA) ?

You say - 'the council did not supply specific information'.

What information did the Council supply?

Where did the Council get this information?

Did the Chief Executive and/or Senior Officials supply specific information or any other information?

What information did the Chief Executive and/or Senior Officials supply?

Where did the Chief Executive and/or Senior Officials get this information?

You say 'through participation in regular groups held under those auspices.'

Who in East Renfrewshire Council participates in these groups?

Do they represent East Renfrewshire Council in these groups?

You say 'but did have knowledge of the responses'

How did the Council get this knowledge?

Who provided this knowledge?

What is the knowledge?

Thanks

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**Re: Council officials push to weaken freedom of information law - We Must Oppose this Attempt**

Posted by RM64 - 11 Jul 2019 17:59

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It would appear Gerry has gone on holiday(reply 28/6).

Not sure why the Chief Executive cannot supply requested information ?

Sent: 30 June 2019 11:28

To: McMillan, Lorraine

Cc: Mahon, Gerry

Subject: Fwd: Re: Review of FOISA

Dear Chief Executive

Copied to: Gerry Mahon

I refer to my email (28/6) to Gerry Mahon and the reply(28/6) below.

I consider this an important matter. As the Chief Executive will know this information I would appreciate a reply before 15 July 2019.

Thanks

----- Original Message -----

From: "Tait, Alison";

Cc: "Mahon, Gerry";

Sent: Friday, 5 Jul, 2019 At 11:08

Subject: RE: Re: Review of FOISA

Thank you for your email of 30 June addressed to Lorraine McMillan, Chief Executive.

Your email has been passed to Gerry Mahon, Chief Officer – Legal & Procurement, who will review your request on his return to the office.

Kind regards

Alison Tait

Executive Assistant to Chief Executive

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## Re: Council officials push to weaken freedom of information law - We Must Oppose this Attempt

Posted by RM64 - 11 Jul 2019 18:01

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You can read the submission from

The Campaign for Freedom of Information in Scotland (CFoIS)

here -

[www.parliament.scot/S5 Public Audit/Generation in Scotland.pdf](http://www.parliament.scot/S5_Public_Audit/Generation_in_Scotland.pdf)

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