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**Conference Report  
Civil Society and Freedom of Information – A Missed Opportunity?  
30 September 2008**

## **Executive Summary**

The conference was held to mark the launch of a new research study by the University of Strathclyde, in partnership with the Scottish Information Commissioner. The research study will explore the extent to which campaign groups and voluntary organisations in Scotland and the UK make use of freedom of information (FOI) legislation.

The conference brought delegates from the sector together in order to introduce the research and explore the issues facing voluntary organisations when making use of FOI. Although there was a general awareness of the FOI Act and its function, many delegates expressed a desire to be better informed of its potential as a campaign tool.

Delegates also identified a number of potential barriers. Delays in receiving requested information and the variation in quality of the information received were two such concerns. In addition, many delegates felt that they lacked the staff resource to make requests and follow them through any reviews or appeals that may be required, while concern over potential costs was also cited as a barrier.

Delegates also intimated that they would hold back from making FOI requests if they felt that such requests would compromise relations between themselves and the authority to whom they had requested information. This concern was heightened for those organisations seeking to make a request to an authority responsible for either funding or part-funding their work. There was also discussion over the possible extension of the FOI legislation to cover different sectors.

As well as concerns expressed, there were also examples of the Act being used effectively as a tool with which to gather information for use in campaigns. Many delegates intimated that they felt it had the potential to significantly benefit their respective organisations and expressed a desire to make use of the Act in their work.

The issues raised at the conference, which are detailed in this report, will be used to inform the development of the research study.



## Introduction

The *'Civil Society and Freedom of Information – A Missed Opportunity?'* conference was held to mark the launch of a new 3-year research study, undertaken by the University of Strathclyde, in partnership with the Scottish Information Commissioner. The research study, entitled *'Public Communication, Democracy and Citizenship: assessing civil society uptake of freedom of information'*, will explore the extent to which campaign groups and voluntary organisations in Scotland and the UK are making use of freedom of information (FOI) legislation.

The Scottish FOI legislation, which came into force in January 2005, provides individuals and organisations with the right to request and receive the information that is held by Scottish public authorities. Following the receipt of a request, public authorities must provide information within 20 working days. Information can only be withheld in limited circumstances where the legislation expressly permits it. Where information is withheld, the requester can appeal to the Scottish Information Commissioner who has the power to force the release of information if he finds that a public authority has withheld in inappropriate.

It was anticipated prior to FOISA coming into force that it would be a valuable resource for campaign groups and voluntary organisations. In practice, however, evidence suggests that the use of the legislation within the sector may be low. In 2007, for example, only 4% of appeals to the Scottish Information Commissioner emanated from this sector, compared to 7% from the media and 77% from the general public. The Commissioner is interested in investigating possible reasons for the low appeal rate, and whether it is reflective of a low uptake of the Act from the sector as a whole. It is hoped that the research will provide an accurate picture of the current level of engagement with FOI within the sector, while also allowing the Commissioner to develop resources to assist campaign and voluntary organisations in making more effective use of FOI, should it become apparent that this is required.

## The Conference

The conference brought representatives from the sector together in order to introduce the research and explore the issues facing voluntary organisations when making use of freedom of information (FOI) in their campaign and policy work. Delegates included representatives from campaign organisations, community groups, trade unions, environmental organisations, the education sector, and local authorities. The conference allowed delegates to share their experiences and opinions of FOI legislation in Scotland and to discuss these with the research team.

The conference began with a plenary session chaired by **Judith Robertson, Head of Oxfam in Scotland**. Speakers during this session were:

- **David Miller, Professor of Sociology, University of Strathclyde** (and academic supervisor of the research project) - spoke to the group about why he felt the research was important, drawing on his own perspective as an FOI user.



- **Carole Ewart, Co-convenor of the Campaign for Freedom of Information in Scotland** – discussed why FOI was seen as a valuable resource for the sector.
- **Sarah Hutchison, Head of Policy & Information, Office of the Scottish Information Commissioner** – set out why the research was important to the Commissioner and provided examples of how the legislation had been used by the sector in the past.
- **Rob Edwards, Environment Editor, Sunday Herald** – provided a ‘user’s perspective’ on FOI, outlining his own experience of using FOI in over 150 cases.

A Q&A session then followed. In the afternoon, the group broke into smaller workshops, where various issues around the use of FOI were explored and discussed.

Workshops focussed on participants’ experience in accessing information using the FOI Act, with particular focus on any barriers they felt prevented them from making more use of the legislation. Issues covered included:

1. Current Knowledge and Use of FOI
2. Barriers to Making Requests
3. Attitudes to FOI Requests by Authorities
4. Delays Encountered
5. Quality of Information Received
6. Expansion of FOI Legislation

### ***1. Current Knowledge and Use of FOI***

During the conference, several large voluntary and campaign organisations affirmed that they had never used FOI legislation. A number of delegates asserted that they were not adequately informed as to how FOI could be used as a campaign tool. While they expressed some awareness of their FOI rights, they suggested that more training was needed in order to educate voluntary organisations about the potential of the legislation. It was proposed that more examples of how FOI has already been used by voluntary organisations could be made available online. Some delegates intimated that it was difficult to ascertain what information is held by an authority, and furthermore who to contact within an authority.

There were reports of FOI requests being interpreted in a strict and narrow fashion depending on the language used in a request. Advice on how to frame requests was advocated, with many suggesting that free training programmes would be a welcome addition to the online resources currently available from the Scottish Information Commissioner.

However, in addition to this, several organisations shared their successful experiences in using the legislation. Notably, the Scottish Rural Schools Network reported that they have used information gathered from FOI requests to aid in the prevention of many school closures. It also became evident that a number of organisations were already making information requests to authorities that technically class as FOI requests, although the organisations may not have recognised them as such. Discussions helped to raise delegates’ awareness of their rights under the legislation with regards to these requests. Significantly, the majority of delegates remarked on opportunities for use of the Act within their organisations and expressed a desire to utilise information garnered from requests in order to further their campaign work.



## **2. Barriers to Making Requests**

Concerns were indicated regarding the process of making requests and the staff support required to follow a request through, particularly if an appeal is required. There was also some concern voiced over the possible cost of requests. However, delegate experience suggested that the 10% charge that authorities are entitled to make (where a request costs the authority over £100 and less than £600) is, in practice, rarely applied.

One of the most commonly expressed concerns regarded making FOI requests to authorities who are involved in funding the organisation making the request. There were fears that working relations between voluntary organisations and authorities would be jeopardised as people are commonly expected to work within established communication relationships. Anecdotal evidence was voiced intimating that one local authority did penalise an organisation which had made an FOI request which they viewed unfavourably. Some delegates pointed out that individuals had made FOI requests in a personal capacity – i.e. seeking information on behalf of an organisation but acting as an individual when submitting the request. This allowed the organisation to remain free from any penalty which may occur in terms of either goodwill or funding. It was suggested that an anonymous request system might be introduced as a solution to this problem.

## **3. Attitudes to FOI Requests by Authorities**

Delegates expressed a great deal of concern over some of the responses and attitudes they had encountered to FOI requests they had made. It was suggested that requests to certain authorities were at times reacted to with suspicion, and therefore responses could be defensive, or in extreme cases confrontational. For example, one delegate reported receiving “hectoring” phone calls seeking to discourage him from pursuing his request. Concerns were expressed that using FOI legislation to gain information rather than established communication relationships could foster resentment, compromising existing working relations.

It was acknowledged that FOI requests may have brought an extra workload for authorities, not always adequately provided for by their staffing levels. It was noted that in such situations, FOI requests are more likely to be unwelcome or discouraged.

Delegates pointed out that a culture change towards access to information should mean that if a request is refused, authorities come back to the requester and make it clear what they can provide in terms of relevant information. This does not regularly happen in practice, but a desire was expressed that this became the norm through a general change in attitude by those receiving FOI requests.

## **4. Delays Encountered**

There was great concern over delays in getting information requested under FOI legislation. It was noted that it can be a lengthy process, particular if a review is requested. As a result, the information required may be received too late if it is needed to defend a position in consultation or to pursue a particular campaign. Concern was also voiced over the amount of time taken for an appeal to the Scottish Information Commissioner to be resolved.

Publishing information that has been released online in disclosure logs, a procedure now followed by the Scottish Parliament, was deemed an expedient method of accessing information quickly, saving the duplication of requests.



Some delegates expressed concerns that time delays are frequently used as delaying tactics in order to ensure that the information requested is rendered less beneficial, or at worst useless. One delegate cited the example of an FOI request made with a view to proceeding with a judicial review. The information was received too late to be of use, and he regarding the stalling of the request as an attempt to prevent the review.

### **5. Quality of Information Received**

Delegates observed that there was a great deal of variation in the responses provided by the 32 councils. Generally the differing quality of responses was attributed to an organisation's overall attitude to FOI, and whether or not they had a dedicated FOI officer. It was reported that if requests were co-ordinated by one FOI officer they were responded to more efficiently, however there were concerns that the expertise of liaising with a specialist may be lost.

Concern was expressed over the way in which authorities collate information. It was pointed out that information requested could not always be provided because it is not collected in an appropriate form for release. An example was given of an organisation seeking to access information on the number of prosecutions brought to court concerning violence inflicted on a minor. They were unable to gain this information as only general numbers are recorded, not the age of the victim. Representatives from several voluntary organisations reported that they had found data received from different authorities impossible to compare due to the different ways in which it was collated.

It was also noted that it is generally difficult to ascertain whether there has been information omitted within the date received. Some delegates reported that they try to use informal contacts in order to gain a rough idea whether the information they receive is comprehensive. However, it should be noted that, while this can be a useful approach, it is not always an available option.

The quality of the information received was also discussed. It was suggested that at times authorities attempt to flood requesters with information in order to make it more difficult to pinpoint relevant information.

### **6. Expansion of FOI Legislation**

Some concern was expressed over the possibility that FOI legislation may be expanded to cover voluntary organisations. A lack of resources to cope with FOI requests was cited as the main reason for this concern. Several delegates suggested that only certain contracts should be included, such as large scale contracts and functions dealing with public money. If voluntary organisations were to come under the Act, it was suggested that so too should private companies. If this were not to happen there was concern that it could leave a situation where companies were given a commercial advantage, in that they could request information from voluntary sector competitors, but not vice versa.

There was support for the legislation to be extended to cover housing associations and private companies carrying out public functions, such as Scottish Power and TRANSCO. Other organisations which delegates were keen to see come under the Act were included COSLA, and the GMC.



## **Going Forward**

As, the *'Civil Society and Freedom of Information – A Missed Opportunity?'* conference acted as a launch event for a three-year research project which will explore in detail the interaction that campaign groups and voluntary organisations have with FOI, in Scotland and beyond. As such, it represented an excellent forum to discuss some of the issues affecting voluntary organisations when making use of FOI legislation in their campaign and policy work, allowing organisations to not only voice the difficulties which they face in using the Act, but also to propose ways in which some of these difficulties might be overcome.

The issues raised by organisations will inform the development of the research project, and is currently shaping the design of the quantitative questionnaire which will be used to gather data from relevant organisations. This data-gathering stage of the research is due to launch in April 2009.

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