

Our ref INV45162

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Dear Mr Mackay

Response to the Consultation on the Community Empowerment (Scotland) Bill

I do hope that you will accept this late submission in response to the Scottish Government Consultation on the Community Empowerment (Scotland) Bill. As I am sure you will appreciate, this particular consultation period was slightly shorter than the normal three months and it was a challenge to meet it, particularly with Christmas and New Year holidays.

As Scottish Information Commissioner, I am responsible for the promotion and enforcement of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). Less well known is that, as part of my duties, I am responsible for ensuring that all Scottish public authorities publish information proactively by operating publication schemes. Publication schemes and the accompanying guides to information, set out the information authorities are make readily available as a matter of course. In developing their schemes, authorities are required to have regard to the public interest in the information they hold.

While broadly supportive of the aims of the Bill, I have restricted my comments to those matters which fall within my statutory remit.

In August 2012, my response to the Government's earlier consultation on a Community Empowerment Bill highlighted the critical importance of access to information in community engagement and the role of proactive publication in supporting it. I enclose a copy of that response for easy reference.

I believe strongly that the proposed Bill could place greater weight to ensuring that communities have adequate access to information to support their participation in other respects. I have set out my rationale for that by reference to the specific provisions in the draft Bill and to the final section of the consultation paper which relates to Community Planning Partnerships.

Part 1 of the draft Bill

1. Part 1 proposes to require communities requesting asset transfers to set out the financial aspects of their proposals, the reasons for their requests and the benefits which they anticipate would ensue. There appears to be no equivalent requirement of authorities to make available information they hold about the condition of the asset, the costs of upkeep and its potential value. I would suggest that community empowerment would be served by an equivalent requirement of authorities to make such information readily available to communities to support them to make informed representations.
2. Section 5(5) of the draft Bill proposes to require authorities to give notice to any community body of its decision and reasons for its decision. Section 8(8) would require authorities to issue a further decision notice in relation to any appeals. I consider that it would increase transparency and accountability if authorities were required to publish these notices. I would recommend that any Scottish Government guidance on this should make explicit the connection with the publication scheme duty under FOISA.

Part 2 of the draft Bill

3. Part 2 concerns participation in authority outcome improvement processes. Again, the onus is on the community body to submit a reasoned submission to the authority, which sets out its reasons and explanation of the improvement that it anticipates. I expect it would considerably strengthen community engagement if authorities were required to provide detailed information about relevant service plans and performance to support communities to make their submissions.
4. I recommend that decision notices under section 15(5) should be published.
5. I endorse the proposed section 20 which will require the publishing of reports of participation in outcome improvement processes.

Part 3 of the draft Bill

6. I welcome the proposals in this Part to increase transparency about Common Good assets. I note that section 22 will require local authorities to publish lists of bodies to be added to a register of Common Good assets.
7. In the context of this organisation's experience of enforcing access to information, I do not believe it should be left to authorities to decide (section 22(3)) how their lists are published. Again, I would expect that any guidance issued by the Scottish Government under section 23 will make the connection between this duty and FOI duties to publish proactively.

Strengthening community planning

8. Finally, I wish to comment on the proposal in Section 4.2 (*Strengthening community planning*) of the consultation paper to put Community Planning Partnerships and their key roles and responsibilities on a statutory basis. I note,

at paragraph 150, that the intention is not to require CPPs to be formally incorporated as legal bodies. I trust that you will be encouraged to hear that in the nine years since FOI rights have been operational in Scotland, I have found no evidence that there are significant problems in identifying which CPP partner holds the information that communities want to see.

Yours sincerely

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Attachment:

Commissioner's submission to consultation on Community Empowerment and Renewal Bill, August 2012

The submission below details the response by Rosemary Agnew, Scottish Information Commissioner, to the Scottish Government's consultation on a Community Empowerment and Renewal Bill.

A response is provided to selected questions only, in the order set out in the consultation paper.

Community Planning

Q1. What would you consider to be effective community engagement in the Community Planning process? What would provide evidence of effective community engagement?

I welcome this opportunity to contribute views to the Scottish Government on the proposals for a Community Empowerment and Renewal Bill. The Scottish Information Commissioner has a statutory duty to promote and enforce Scotland's access to information laws (Freedom of Information (Scotland) Act 2002, Environmental Information (Scotland) Regulations 2004 and the INSPIRE (Scotland) Regulations 2009).

I would like to draw attention to the critical importance of access to information in community engagement. I am pleased to note that the consultation proposals include potential requirements on public authorities to publish particular types of information. This is a step in the right direction. As will be evident in my responses to later consultation questions, I think it would be helpful to make the link between the types of information which should be published and the existing requirements under freedom of information law for proactive publication.

The case for including strong access to information provisions in community engagement is supported internationally:

Abid Hussain, the Special Rapporteur to the United Nations on Freedom of Opinion and Expression, noted in his report E/CN.4/1995/32 "Access to information is basic to the democratic way of life."

In its report for World Press Freedom Day 2010, UNESCO stated: "A fundamental premise for promotion of freedom of information is the tangible impact that the right to know can have on people's lives, by facilitating the fulfilment of other rights. Timely access to information empowers people by allowing them to participate in an informed way in decisions that affect them, while also holding governments and others accountable."

The EU Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 25 June 1998 (the Aarhus Convention), notes: "[E]very person has the right to live in an environment adequate to his or her health and well-being and the duty, both individually and in association with others, to protect the environment for the benefit of present and future generations... [T]o be able to assert this right and observe this duty citizens must have access to information, be entitled to

participate in decision-making and have access to justice in environmental matters, and ... may need assistance in order to exercise their rights.”

Scotland's freedom of information law came into force in 2005. Since then there have been many examples of the crucial role of access to information in community empowerment. I would point to several strong Scottish case studies which exemplify this:

Members of the C Diff Justice Campaign have made extensive use of their rights, under the Freedom of Information (Scotland) Act 2002 (FOISA) to provide them with the information they needed to make a successful call for a public inquiry into deaths caused by hospital acquired infection at the Vale of Leven Hospital.

The A84 Road Partnership has used rights under FOISA and the Environmental Information (Scotland) Regulations 2004 (the EIRs) to engage with Transport Scotland and the local authority about the need for improvements in the A84.

The Scottish Rural Schools Network has used FOISA extensively to access information to support community consultation on local school closures. The Network was also successful in lobbying the Scottish Parliament to ensure that specific provisions were introduced to the Schools (Consultation)(Scotland) Act 2010 to require local authorities to publish particular information during consultations on rural school closure.

Short video case studies of the above examples are available on the Scottish Information Commissioner's website at

<http://www.itspublicknowledge.info/home/News/Downloads/Videolinks.asp>

Community engagement plans

Q11. Should there be a duty on the public sector to publish and communicate a community engagement plan?

Yes No

I have not indicated a preference in response to this question. I would advise that I am aware that some authorities already publish their community engagement strategies, but not that this is common to all authorities. If it is decided that there should be a duty to publish such a document, I would recommend that the link be made with the publication scheme duty.

Section 23 of the Freedom of Information (Scotland) Act 2002 (FOISA) requires all Scottish public authorities to adopt and maintain a publication scheme which has the approval of the Scottish Information Commissioner. In preparing their schemes authorities have to have regard to the public interest in the decisions they take and the services they provide.

Since early 2011 I have made available a single Model Publication Scheme (MPS) suitable for adoption by any Scottish public authority. This format allows for greater prescription of the information which should be published. Where there is a statutory duty to publish certain types of information, I expect to see that information made available through the MPS. If there were a duty on the public sector to publish and communicate a community engagement plan, I would ensure that it was included in the list of information I expect to see in an authority's guide to information.

There is a benefit to authorities in proactive publication of information that the public wishes to see. Section 25(3) of FOISA provides an absolute exemption for information published in accordance with an authority's publication scheme. Where an authority already publishes requested information, it need do nothing further than point the requester to it.

Auditing

Qu12. Should community participation be made a more significant part of the audit of best value and Community Planning?

Transparency and accountability is a pillar of the Best Value framework. Access to information is essential, as explained earlier, to community engagement. I would suggest that access to information, at least, should be a more significant part of audit of Best Value and Community Planning.

Named Officer

Q13. Should public sector authorities have a named accountable officer, responsible for community participation and acting as a primary point of contact for communities?

Enquiries to my office occasionally concern whether it is possible to access information from a Community Planning Partnership. As CPPs are not subject to FOI law, we routinely recommend that the enquirer makes the request directly to the relevant local authority, health board or police service which will hold the information. In our experience it would greatly assist the public to have a named person to contact about access to information from a CPP.

Community service delivery

Q16. Can current processes be improved to give community groups better access to public service delivery contracts?

Yes No

In my experience, procurement information is rarely volunteered by Scottish public authorities. It is generally possible to find published information about procurement processes, but not about contracts operated by public authorities. I continue to receive a significant number of appeals in relation to contract information and all too often find that it can be made available. I would welcome any steps to increase public access to public contracts.

Q17. Should communities have the right to challenge service provision where they feel the service is not being run efficiently and that it does not meet their needs?

Yes No

I have not indicated a preference in response to this question, but would again advise that access to information is critical to the community engagement process. Access to the information held by public bodies provides communities with the essential information required to accurately and objectively assess the quality of the services being delivered. Communities have to be able to see information about service provision if they are to engage effectively with an authority or challenge its position. This issue was central to the specific provisions in the Schools Consultation (Scotland) Act 2010 for proposed closure of

rural schools. I fully expect that the issue is also applicable to a much wider range of community engagement.

Asset management

Q27. Should all public sector authorities be required to make their asset registers available to the public?

Yes **No**

I have not indicated a view about whether this should be a statutory requirement. If, however, this is to be a duty under the proposed Bill, I would again recommend (as in my response to Q10 above) making the link between statutory requirements of Scottish public authorities and their duty to adopt and maintain a publication scheme.