



Scottish Information
Commissioner
It's public knowledge

Susan Duffy
The Clerk to the Local Government and
Communities Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

4 March 2010

Dear Susan

I am writing in response to the Local Government and Communities Committee's call for evidence on the general principles of the Housing (Scotland) Bill. My comments are in relation to the proposal in Part 3 of the Bill to publish a Scottish Social Housing Charter and specifically, the intention explained in the Policy Memorandum to "*give tenants the information they need to hold their landlords to account and to drive improvements in their landlord's performance*".

My aim in making this submission to the Local Government and Communities Committee is two-fold: to both welcome the proposals to make more information available to tenants and to offer my support to the development of the provision so that it is effective.

In January 2009 I responded to the Scottish Government's discussion paper seeking views on the extension of the Freedom of Information (Scotland) Act 2002 (FOISA) to new bodies. In that paper I expressed my view that FOISA should be extended to all Registered Social Landlords in principle, with a suggestion that the Government could start with those over a certain size (e.g. 1,000 or more units)¹ in the first instance. I provided detailed evidence to substantiate that view and pointed out the anomaly that tenants of local authority-provided social housing are entitled to information about their homes which tenants of RSLs are not. In December 2009 the Minister for Parliamentary Business announced that the Government would formally consult a range of different organisations about the possibility of designation under FOISA. The Government's proposals in relation to RSLs, however, extend only to the Glasgow Housing Association. While I am disappointed that there are no intentions to consult other RSLs this year, I am encouraged to note that there will be future opportunities to revisit this position.

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¹ See my submission to the Government, page 10 paragraphs 75 to 77
<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3003&sID=377>

I consider that the proposed Scottish Social Housing Charter has the potential to improve access to information from RSLs, for tenants. Nevertheless it is important to recognise that the Charter will not replicate the rights to information which the public, and especially local authority tenants, enjoy under FOISA. For example, under FOISA tenants of local authorities can ask their landlords for *any* recorded information that they hold, and they have the right to appeal to me if they are not satisfied with the response they receive. As Commissioner I have powers to issue legally enforceable decisions, which can compel information to be released. Local authority landlords enjoy the comfort of legal exemptions and the opportunity afforded by independent review to resolve complex disputes (a procedure which is not available to RSLs under the Charter). The benefits which the Charter may bring are not at all comparable to freedom of information rights.

Another key point I would like to draw to the Committee's attention is the fact that the Charter will apply to tenants only, while FOISA rights apply to anybody. Tenants are clearly the most important stakeholder of RSLs but they are not the only one. For example, the media, advocacy groups, academics or simply interested members of the public, would all have rights to information under FOISA, which they will not have under the Charter.

Nevertheless I do welcome the measures being taken. I have offered my personal support to the Bill Team who will be developing the Charter in the coming months. I would hope that the standards will include both the types of information which tenants can expect their landlord to make available to them and a clear indication of the response they can expect to receive to requests for information e.g. timescales for correspondence and a complaints procedure. This will also be an opportunity for me to work with the Scottish Housing Regulator and the Scottish Public Services Ombudsman who may be called upon to determine complaints about access to information which, under FOISA, would otherwise have been referred to me.

In the same period, I expect also to be actively involved in supporting Glasgow Housing Association to prepare for designation under FOISA, should this go ahead, including the development of its first publication scheme. I hope that it will be possible to use the coincidence of these two developments to explore and understand how freedom of information would work in practice for an RSL.

Yours sincerely



Kevin Dunion
Scottish Information Commissioner