



Andrew Gunn  
FOI Policy Officer  
Scottish Government

By email:  
[Andrew.Gunn@scotland.gsi.gov.uk](mailto:Andrew.Gunn@scotland.gsi.gov.uk)

Room T3.40  
Scottish Parliament  
Edinburgh  
EH99 1SP  
Tel: 0131-348-5229  
Fax: 0131-348-5600  
[ici.committee@scottish.parliament.uk](mailto:ici.committee@scottish.parliament.uk)

17 July 2015

Dear Andrew

**PE1539 – HOUSING ASSOCIATIONS TO COME UNDER FREEDOM OF INFORMATION ACT (SCOTLAND) 2002 (FOISA)**

The Committee considered petition PE1539 at its meeting on 24 June 2015. The petitioner calls for the Scottish Government to make an order under Section 5 of FOISA to make all housing associations subject to the provisions of that Act. The Official Report of the meeting is available here:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10045>

The Committee noted from correspondence submitted to the Public Petitions Committee that some housing associations (which I will hereafter refer to as Registered Social Landlords (RSLs)) argued that they already have duties to be open and transparent under the Scottish Social Housing Charter (SHC). It was also suggested by RSLs that extending FOISA could add a further layer of bureaucracy, or lead them to being designated public bodies, having the unintended consequence that debts held by them might be reclassified as public debt. The Information Commissioner disagreed that it would affect a body's constitutional status, recommending that FOISA be extended to all RSLs given that the SHC does not afford the same level of access to information to enable public scrutiny.

In your current consultation on which bodies to include in the next Section 5 order to be covered by FOISA, you have not included RSLs as you are not yet "currently persuaded of the merits of extending coverage to housing associations". You have, however, acknowledged the Information Commissioner's views above and request that all interested parties, including RSLs, tenants and representative bodies whether RSLs (amongst other bodies) should be included in future Section 5 orders. You highlight that in order to take a "function-led" approach to extension that examples are provided, such as nature of the function or service being provided, the level of public funding, the extent of state control or oversight, along with evidence of difficulty in obtaining information in respect of a particular organisational function.

You also confirm that you intend to review the effectiveness of the SHC in promoting openness and transparency to assess whether it “needs strengthening in some respects and/or if extending freedom of information coverage to some or all of RSLs’ social housing functions would be appropriate.”

The petitioner, in her email to you of 16 June attached at Annexe A, sets out her views on how housing associations carry out a public function and how the SHC falls short on FOISA in terms of the release of information, reiterating the view of the Information Commissioner.

Following consideration of the petition, the Committee agreed it would urge you to engage fully with the petitioner’s views in respect of extension of FOISA to RSLs. Upon conclusion of the current consultation, the Committee would also welcome confirmation of how you intend to take forward these views to your review of the SHC and how it will assess whether RSLs should be included in the next FOISA section 5 consultation.

Finally, you informed the Public Petitions Committee that you would respond to the Information Commissioner’s views on the matter in your first report later this year in its first report of the use of section 5 powers. The Committee would welcome sight of your response in future correspondence regarding the petition.

Should you have any questions, please do get in touch.

Yours Sincerely

**Jason Nairn**  
**Assistant Clerk**  
**Infrastructure and Capital Investment Committee**

**Correspondence from the petitioner to the Scottish Government, dated 16 June, regarding the Scottish Government's consultation on further extension of coverage of the freedom of information (Scotland) Act 2002 to more organisations**

I read the Scottish Government's letter regarding Petition 01539 dated 16 April 2015 and the consultation document that you sent out on Friday 12 June. I have to state that your stance that Housing Associations should be omitted from a Section 5 Extension Order under the Freedom of Information (Scotland) Act is unacceptable. I have to reiterate to the Scottish Government that Scottish civil society has changed completely since the Referendum in September 2014 in that people at all levels of Scottish Society are more politically engaged and therefore to extend Freedom of Information to tenants and factored homeowners of Housing Associations through a Section 5 Order would reflect the increase in political maturity of the people of Scotland. It is in this spirit that this Petition has emerged and I sincerely hope that the Scottish Government during this Consultation takes cognisance of the above and supports Freedom of Information being extended to all Housing Associations to empower stakeholders. The right to information is a fundamental human right to which all stakeholders are entitled.

The Scottish Government, in the above documents, has prejudiced this Consultation by severely limiting its remit and therefore deciding to leave out Housing Associations. This is undemocratic and is a "slap in the face" for the Scottish Information Commissioner, whose Parliamentary review put at its very centre the extension of Freedom of Information to all Housing Associations. For the Scottish Government to state, as it does in its consultation document that Housing Associations only meet some of the criteria of functions of a public nature is untrue. The very so-called commercial activities that are quoted, such as: factoring, shared equity and shared ownership etc. are indeed functions of a public nature. In relation to factoring, the surpluses are used for public communal purposes. To take one example, the Glasgow Housing Association uses its considerable surpluses from factoring to fund the upgrading of playparks, paths and other community facilities. In a recent newsletter from Your Place, the factoring wing of GHA, it stated that they were setting up area committees and asking factored homeowners to join these area committees to help disperse the surpluses within poor communities. The increased involvement of Housing Associations in shared equity and shared ownership is a manifestation of Scottish Government public policy to increase the opportunity for people to take part in affordable housing and to get on to the property ladder. Again, the aforementioned are activities of a public nature.

All Housing Associations should be subject to Freedom of Information. The current setup under the Scottish Social Housing Charter is inadequate in that the Charter is not compulsory for Housing Associations to follow in providing Freedom of Information. What I mean by that is that, if a tenant is refused information by a Housing Association, the Scottish Housing Regulator does not have the power to compel that Housing Association to provide the information to the said tenant. This is supported by the submission of the Scottish Information Commissioner, Rosemary Agnew, on 16 January 2015, paragraph 11(I) in relation to Petition 01539. Rosemary Agnew states in 11(I) "Where someone has been unlawfully

refused information by a body, subject to FOISA, the Scottish Information Commissioner can order its release. The Scottish Housing Regulator may make interventions, but does not have the power to compel an RSL to provide particular information to an individual." As Rosemary Agnew goes on to state, correctly, "The Charter requirement, although welcome, falls significantly short of the FOISA right, in that it does not provide the same level of access to information to enable public scrutiny."

Nicola Sturgeon, First Minister, had stated unequivocally in the past that she wants to extend FOISA to many other organisations, but, when it comes to the first real test, she has failed to give the promised empowerment to the people of Scotland. This is clearly the case in refusing to countenance all Housing Associations coming under FOISA to empower factored homeowners and tenants. I would like the Scottish Government to reconsider its position on the aforementioned in the light of this submission. I would call on all progressive people in Scotland to support the call that my Petition represents in that, human rights would be enhanced and power restored to tenants and factored homeowners through a Section 5 Order. To do otherwise is to deny the human right to information, backed up by law, for all stakeholders within Housing Associations. I ask that this submission be supported by the Scottish Government in this current consultation period to extend Freedom of Information to all Housing Association tenants and factored homeowners across Scotland.

**Anne Booth**