

## 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 "exhausting".

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 FoI 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 FoI 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 Â£600 to answer are "effectively pointless in practice", they said.

The cap imposed on the amount that can be charged for staff time "Â£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 Â£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 - 18 Jul 2019 19:10

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You have to ask yourself -

Why did Council not make their own submission?

Are they hiding behind SOLACE/SOLAR ?

It's all done verbally?

Nothing is recorded?

Therefore nothing to disclose via FOI?

You have to question the reliability of the submission? -

Anecdotal meaning -

'Anecdotal evidence is based on individual accounts, rather than on reliable research or statistics, and so may not be valid.'

'(of an account) not necessarily true or reliable, because based on personal accounts rather than facts or research.'

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

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

Sent: Thursday, 18 Jul, 2019 At 11:33

Subject: RE: Review of FOISA

Apologies for the delay in replying â€œ as you will have noted from my out of office message I was on annual leave and only recently returned to the office.

Turning to the queries raised in your message, my original response outlining the Council's participation was intended to reflect all individuals employed by the council including the Chief Executive as part of that collective term.

For the sake of absolute clarity I would therefore reaffirm that no officer of the Council, including the Chief Executive, supplied any information to SOLACE/SOLAR in a representative capacity to specifically assist in preparation of their formal response to the consultation.

As regards membership of SOLAR, the Council holds a corporate membership.

This entitles the Council to send any relevant representative to any of the working groups held under the auspices of SOLAR.

Certain Council officers are members of SOLACE on an individual basis but this is personal to them and they do not as such act in a representative capacity in that context.

The Council did not issue a separate response to the consultation on the basis that the response jointly issued by SOLACE/SOLAR was considered reflective of its own views.

No information was supplied by the Chief Executive or other senior officials.

SOLACE did not release a draft response to their membership for comment but rather had the response ratified by their Executive Board.

No East Renfrewshire Council officer is a member of that board.

No information was supplied by the Council specific to the consultation response.

The various working groups set up under SOLAR do however provide a forum for discussion of shared experiences across Councils and anecdotal information is often shared in that context.

The SOLAR response reflected much of that discussion and experience of FOI.

These groups are attended by a variety of legal and administrative officers dependent on the field of work covered, their own area of expertise and experience and availability.

The proposed response was issued generally by SOLAR for comment.

This Council did not offer any comment being satisfied with its terms.

I hope this helps

Regards

Gerry Mahon

Chief Officer " Legal and Procurement



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

Posted by RM64 - 07 Aug 2019 13:43

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More answers from Gerry Mahon, Chief Officer " Legal and Procurement

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

To: "Mahon, Gerry";

Sent: Thursday, 18 Jul, 2019 At 21:21

Subject: RE: Review of FOISA

Hi Gerry.

Thanks for this.

To me this all looks/sounds very secretive as nothing is recorded and is anecdotal.

Would appreciate if you will clarify -

You say - '

The Council did not issue a separate response to the consultation on the basis that the response jointly issued by SOLACE/SOLAR was considered reflective of its own views.'

Who in the Council considered it 'reflective of its own views.' ?

How was this considered?

When was this considered?

Where was this considered?

What are the Council's own views?

How were these views collected?

Who supplied these views?

Where are these views recorded?

How can these views be accessed?

Thanks

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

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

Sent: Tuesday, 6 Aug, 2019 At 09:43

Subject: RE: Review of FOISA

Q. Sorry, I have a few more concerns regarding your reply and feel some aspects require more details to properly explain this.

Q.Â Would appreciate if you can clarify and answer below.

A. You will appreciate that under the Freedom of Information regime you are entitled to access recorded information rather than be supplied with explanations as you appear to be requesting Â in the initial paragraph of your message.

On this occasion and to bring the matter to a close I am however prepared to supply you with the detail sought.

Q. As regards membership of SOLAR, the Council holds a corporate membership

How much does this cost?

A. SOLAR membership currently costs Â£250

Q. Who are the relevant representatives?

A. Any officers working in the field of law and administration within the Council

Q. What are the working groups?

A. The groups are based on a number of different disciplines within these general fields of work and vary from time to time depending on topical matters at Â that particular juncture.Â As an example there are longstanding groups for community care, childcare, education, planning, asbo issues, DP/FOI etc

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Q. Who has attended these working groups?

A. A variety of current and former officers of the Council

Q. please give details of these working groups

A.As above

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Q. are these working groups minuted etc?

A. Depends on the particular group but generally these are fora for professional discussion and sharing of learning so minutes taken (if any) tend to be fairly Â general.

Q. are any details recorded?

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A. See above. The general tenor of any discussion may be recorded if the group consider it worthwhile and of benefit to other practitioners.

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Q. Did the ERC Chief Officer, Legal & Procurement attend any of these groups?

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A. I have attended a number of these different groups over my period as Chief Legal officer and have also, throughout my time Â with ERC, participated in them before holding that position

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Q. Who decided the Council was satisfied with its(SOLAR) terms?

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A. I did in my capacity as Chief Officer Legal and Procurement having delegated responsibility for FOI matters in terms of the Councilâ€™s Scheme of Delegation

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Q. How was this decided?

A.I considered the terms of the response and compared it to our own views and Â experiences of FOI since its inception.

Q. When was this decided?

A. When I saw the proposed terms of the SOLAR response

Q. Where was this decided?

A. It was made by me as part of my general duties Â during the working day.Â Given your other questions I can only assume this is about the location of the decision making and in that sense do not understand the relevance of the question.

Q. How was this decision made?

A.As above

Q. Where is this decision recorded?

A.The decision is not recorded as no formal communication was required in order Â to exercise this delegated authority

Q. How can this decision be accessed?

A. You have already been provided with the detail of the decision in my previous response with further detail supplied above as to the mechanics of it.

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Yours sincerely

Gerry Mahon

Chief Officer " Legal and Procurement

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Sent: 06 August 2019 10:50

To: Mahon, Gerry

Subject: RE: Review of FOISA

Hi Gerry

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Thanks for reply regarding SOLACE.

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You will appreciate that any request for information whether recorded or not is usually treated by ERC as an FOI request.

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But, as we are all in a benevolent mood, would appreciate reply to below regarding the Council's views on FOI.

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Thanks

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

From: "Mahon, Gerry"

Sent: Tuesday, 6 Aug, 2019 At 12:01

Subject: RE: Review of FOISA

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my previous message explained that the decision was taken by me under my delegated authority. In essence my views are those of the Â Council in this regard. I therefore consider these questions to have been answered,

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Regards

Gerry

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

Posted by RM64 - 09 Aug 2019 13:16

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What do we make of all this?

The Chief Officer, Legal and Procurement made the decision on his own on behalf of the whole council and the Cllrs, to support this view by SOLAS.

The Chief Officer, Legal and Procurement cannot produce the Council views he purports to agree with.

If these Council views do indeed exist, you have to ask, why did ERC not make their own submission to the FOI review?

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