

PE1512/D

PE01512, PUBLIC PETITIONS COMMITTEE

Further Submission by Petitioner Bill Chisholm

The information now available from the Commissioner concerning the operation of section 65 of the Freedom of Information (Scotland) Act (FOISA) proves conclusively that current arrangements for the investigation and punishment of wrongdoing by public authorities is neither robust nor fit for purpose.

It is both astonishing and deeply concerning to learn there has not been a single successful prosecution since the Act became law in 2005 even though research suggests inaccurate and therefore misleading responses are being supplied to FOI requesters in up to one in four cases. Only ten complaints were even considered for potential legal proceedings and all of those were abandoned after becoming entangled in time limits.

There should also be a measure of concern that it is Police Scotland which makes any referrals to the Crown Office and Procurator Fiscal Service (COPFS). After all Police Scotland is an organisation which is FOISA compliant; therefore what would happen should there be a Section 65 complaint laid by a FOI requester against Police Scotland?

After Petition 01512 was submitted to the Scottish Parliament I had contact from a well-respected retired journalist who frequently deployed Freedom of Information requests during his career with a national newspaper. He commented: **“Why on earth anybody should have a problem with someone wanting information supplied at public expense to be accurate is beyond me. The Commission is supposed to be independent, but of course it's not.**

“The FOI people and all the local or central government bodies are in cahoots. They scratch one another’s backs. I cannot see what justification the FOI Commissioner can have for objecting to information being sought being accurate.”

I would not wish to comment on those views. But the fact that complaints made under Section 65 of FOISA have **NEVER** resulted in a single criminal case being taken to court – let alone a conviction - certainly suggests the legislation is weighted heavily in favour of public bodies rather than the general public.

Perhaps the Petitions Committee might find it useful to contact the Information Commissioner’s Office (ICO) in England and Wales to determine how they deal with inaccurate FOI responses south of the Border. The ICO should also be able to

confirm whether there have been any prosecutions/convictions under the equivalent legislation approved by the Westminster Parliament.

All of this would seem to support the case for amendments to FOISA as outlined in Petition 1512 and subsequently discussed at the Petitions Committee hearing on April 22nd 2014. The responsibility for investigating allegations of inaccuracy should lie solely with the Commissioner who should also be given powers to impose penalties where appropriate. At the same time a form of words should be added to FOISA instructing public authorities to give accurate and up to date information in FOI responses.

Finally, so far as the relevance of PE1512 is concerned, can I once again attempt to explain the sequence of events which PREVENTED me from taking my grievance to the Scottish Information Commissioner?

Before I could gain access to the SIC I would have had to secure a review of my original request from Scottish Borders Council on the grounds that they had withheld information. But the council did not withhold information from me...they simply supplied me (originally) with grossly inaccurate figures, so I could not request a review.

Instead I was able to challenge their answer because I knew it to be false, and they then sent amended information (twice) by email within a matter of hours. However, had I not known the original information was inaccurate that would have been an end to the saga.

I would suggest that I should have been able to ask for a SIC investigation as soon as I could provide evidence of the council's "inaccurate" response without having to go through the hoops and hurdles which litter the current version of FOISA.