

PE1512/H

PETITION 1512 – Further Submission by petitioner Bill Chisholm – July 9th 2014

When I decided to raise the issue of accuracy and honesty within Scotland's Freedom of Information system via the Scottish Information Commissioner (SIC), the Scottish Government, and the Scottish Parliament by way of petition, I naively thought this was a simple problem which required to be addressed in the public interest. I could not have been more wrong.

I soon discovered that my petition was the target for a concerted campaign from all sides to keep honesty and accuracy completely off the Freedom of Information agenda. In particular, the SIC appeared to oppose any amendment to the legislation even before my petition was published on the Parliament website, and her evidence to the committee dismissed my request for "an accuracy and honesty" clause. I found it difficult at first to comprehend why a call for accuracy and truthfulness by FOI responders was not receiving enthusiastic support from all sides. But I soon realised maintaining the status quo was crucial for all interested parties within the FOI system -apart from the general public - to allow our publicly funded agencies to conceal or distort information whenever necessary.

At the very outset, and even before this petition was considered by elected members, they had before them a recommendation from the committee clerk in the following terms: **The Committee is invited to agree what action it wishes to take in respect of the petition. Taking the submission from the Scottish Information Commissioner into account, the Committee may wish to close the petition under Rule 15.7 on the basis that the Freedom of Information (Scotland) Act 2002 already requires Scottish public bodies to disclose all the recorded information they hold when a request for that information is received.**" It seemed an outrageous, remarkably biased and undemocratic recommendation to make. But it certainly convinced me I had little chance of success. The Commissioner's views were bound to prevail.

As I suggested in my presentation to the Public Petitions Committee (PPC) on April 22nd, Freedom of Information surely lacks credibility without firm assurances that answers dished out by public authorities contain accurate and up to date facts. Yet if the Bureau of Investigative Journalism's research is correct – that up to 25 per cent of responses may be inaccurate – then perhaps 15,000 FOI responses out of the 60,000 requests processed in Scotland each year are worthless and meaningless. In the face of those statistics our Freedom of Information arrangements are little more than cosmetic, and there is a real need for a truly radical shake-up.

But not according to the Commissioner or the Scottish Government. Ironically, in response to a Freedom of Information request, the SIC decided to release a vast collection of correspondence – almost 200 pages in total – some of it relating to my petition. These were email messages and letters between the SIC, the Government, staff at the Public Petitions Committee, and myself which were made public without my knowledge.

Ms Agnew told the committee in her evidence on May 6th 2014: **“As soon as information is made public through a freedom of information request, that information is not just given to that individual person; it is public information that is there for everyone. Sometimes, it is not the requester who challenges the information—sometimes, other people look at it and say that it cannot be right, and so challenge it.”**

I hope members of the PPC have taken advantage of this by-product of the FOI regime, and have read the bundle of correspondence. It paints a clear picture of the SIC’s reaction to the petition and their desperate efforts to kill it off. The onslaught was launched on February 19th 2014 – one day after I informed Ms Agnew I had lodged my petition with the PPC, and fully ten days before Petition 1512 was published on the Parliament website.

The correspondence reveals that on that date the Commissioner wrote to Nicola Sturgeon, the Deputy First Minister, drawing the Cabinet Secretary’s attention to the petition and inviting Ms Sturgeon to contact her if further information is required should she receive “any queries on the matter”.

The PPC has been told the SIC simply would not have the resources to ensure responses to FOI requests were truthful and accurate. Yet as you will see from the aforementioned correspondence, the Commissioner was able to deploy adequate resources in the fight against my petition. The documents show that at least six members of staff – almost one-third of the SIC payroll - were involved in the “campaign” at some point. No shortage of effort or determination there.

SIC personnel were asking Public Petitions Committee staff for “a steer” on how to respond to my petition even before I made my presentation to committee. A detailed submission from the Commissioner was in the hands of the Members even before any call for evidence was made, and before I was able to outline my case for change. What can best be described as another pre-emptive strike by the office of the SIC.

Then, immediately after I addressed MSPs, Sarah Hutchison, the SIC Head of Policy and Information, wrote an email to Ms Agnew and colleagues declaring “There were no particular surprises today”. What had Ms Hutchison expected by way of surprises?

In her evidence to the Committee on May 6th the SIC said she saw no need to alter FOISA. This, despite the fact that 15,000 responders to FOI requests may be breaking the law in any given year, and even though there has not been a single prosecution or conviction or even a report to the Crown Office Procurator Fiscal Service (COPFS) under Section 65 of FOISA.

Throughout the entire process Ms Agnew has continued to claim that in my case Scottish Borders Council withheld information from me, and I had the opportunity to ask for a review. I have tried repeatedly – without success it would seem – to make it clear the council did not withhold information but did supply completely false information in a bid to conceal the truth. And the Commissioner made it clear to me on several occasions that she had no powers to investigate allegations of inaccuracy.

The Commissioner's stance coupled with the Scottish Government's refusal to even acknowledge the FOI system is blighted by the lack of regulation on matters of accuracy simply means local authorities like mine can continue to tell me they spent £13,000 on legal fees in a particular case when the actual figure was £47,000. It makes no difference to the SIC nor to Government ministers and civil servants who appear to believe public bodies which mislead or deceive FOI requesters should be able to do so without punishment.

In his four page letter to the PPC, Andrew Gunn, of the Scottish Government Freedom of Information Unit, appears to blame me for "truncating" the FOI process, and goes on to claim there was no evidence that Scottish Borders Council had sought to mislead or misinform me by deliberately concealing information. Sound familiar? I have never accused the council of concealing information; my evidence proves conclusively that my local authority provided bogus figures in an attempt to conceal the true extent of spending on legal fees and expert witnesses. But this form of deception seems to be acceptable.

The SIC also explained that an individual with a complaint about the accuracy of a FOI response had recourse under other Acts as well as FOISA. But it would seem much more logical for all issues relating to Freedom of Information to be governed by FOISA and monitored by the Commissioner. How is that individual supposed to negotiate the labyrinth of legislation which seems to have been concocted to protect local authorities, Government agencies, and other organisations covered by FOISA? The average citizen would need a degree or at least a certificate in Freedom of Information practice to navigate the multiple legal strands as well as the restrictive procedures should he or she wish to take allegations of inaccuracy or dishonesty to the SIC and/or the police. While no such course or qualification is available to members of the general public, the same cannot be said for so-called FOI practitioners in the public sector.

In the course of my research I have discovered a burgeoning Freedom of Information “industry” out there. For example, a company called Act Now Training is offering a four-day course leading to a Practitioner Certificate in The Freedom of Information (Scotland) Act 2002.

Public authorities are sending candidates on this course which costs £1,350 (plus VAT) at taxpayers’ expense. In its first year (2013) the course recorded a 94% pass rate. The chair of the Independent Exam Board Honorary Professor Kevin Dunion, was Scotland’s first SIC. Details of the course can be found here:

<http://www.actnow.org.uk/content/121>

The course syllabus is also available on the internet here:

http://www.actnow.org.uk/themes/custom2010/foisa/FOISA_Syllabus.pdf although each page is marked “strictly confidential” for some reason.

The syllabus contains the following sentences on page 13:

Candidates must have an understanding of key SIC / Court of Session decisions for each of the core exemptions / exceptions. This module also includes the following issues

- **Redacting and editing – including the practicalities of removing information from copies of documents, summarising, extracting and re-typing of information**

A whole day of the course is given over to “Exemptions, Vexatious and Unreasonable Requests”, but there is no mention anywhere of the need for honesty and accuracy when processing requests.

The course is endorsed by the Centre for Freedom of Information (link to website here):<http://www.centrefoi.org.uk/index.php> an organisation established as a joint venture between the School of Law at Dundee University and Professor Dunion when he was Scottish Information Commissioner. The centre is bankrolled, at least in part, by the US-based Open Society Foundations, one of the wealthiest organisations of its kind in the world with many millions of dollars at its disposal. Professor Dunion is the executive director of the Centre for Freedom of Information while current Scottish Information Commissioner Ms Agnew is its vice-chair and the Centre’s secretary is Sarah Hutchison, Head of Policy & Information in Ms Agnew’s office. The Centre endorses the FOI courses offered by Act Now Training.

I have provided the above information to illustrate the level of resources and support available to those organisations which are meant to be open to scrutiny under FOISA. All of this surely demonstrates the Freedom of Information system to be heavily biased in favour of public bodies with individual citizens virtually frozen out.

Perhaps the entire Freedom of Information system requires investigation and overhaul to examine vested interests, and ensure concerned and inquisitive individuals receive a fair crack of the whip. At the same time some of the protective layers that shield public bodies from public glare at present might be peeled away. That is an issue which I hope our politicians may wish to address at some point. But for now, I would submit that my request for "an accuracy clause" to be inserted into FOISA is reasonable and sensible, even though my efforts to promote such an inclusion seem doomed to fail. At the moment any requester who has evidence of dishonesty or inaccuracy by a responding authority stands no chance of achieving redress given the complete failure or unwillingness by the Commissioner and the police to even submit reports with a view to prosecution to COPFS. Regrettably, that sad state of affairs is set to continue.