

24 April 2015

Mr Ned Sharratt
Clerk
Public Petitions Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Mr Sharratt

RESPONSE TO SCOTTISH GOVERNMENT LETTER DATED 16 APRIL 2015

I read the Scottish Government's letter regarding Petition 1539. Their letter was very disappointing. 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 through a Section 5 Order would only reflect the increasing political maturity of the people of Scotland. It is in this spirit that this Petition has emerged and I sincerely hope that our politicians and the Scottish Government take cognisance of the above and support Freedom of Information being extended to all Housing Associations to empower all stakeholders.

Mr Gunn, in his letter, fails to give a starting date for the consultation with regard to Section 5 Order extensions. I would like the Public Petitions Committee to write back to find out the starting date of this Spring consultation.

Mr Andrew Gunn of the Freedom of Information Unit of the Scottish Government states in his letter that he does not wish to pre-empt the forthcoming consultation, and that is exactly what he has done by stating that factoring services should not be included in any Section 5 extension of the Freedom of Information Act. Any decision on the above should only be taken in the aftermath of the 3-month consultation on extension of Freedom of Information. Mr Gunn is wrong when he states that factoring services are not of a public nature, when in actual fact they are of a public nature because surpluses generated from factoring services within Housing Associations are dispersed to the community to create community facilities, for example: children's play areas, etc. In the latest edition of "Your Place Matters" (Your Place is the factoring wing of Glasgow Housing Association), GHA are asking for factored homeowners to join area committees in Glasgow to help decide on the dispersal of financial surpluses, i.e. upgrading playparks, paths and other community facilities.

Factored homeowners within Housing Associations would gain immensely from the extension of Freedom of Information in that they would be able to find out what their management fees are paying for; they would also be able to find out what rates of return Housing Associations are making from financial surpluses. I feel strongly that factoring services for homeowners within Housing Associations should be included in any Section 5 Order. It is clear to me as a factored homeowner that the Scottish Government has potentially prejudiced the consultation by giving an opinion at this

stage. (More detailed information on factoring services within Housing Associations can be given as the consultation progresses.)

Mr Andrew Gunn has misunderstood the evidence that my witness, Mr Clerkin, gave on 9 December 2014, when he referred to mergers and acquisitions within Housing Associations. Mr Clerkin was not referring to the merger process involving ballots of tenants; instead, he was referring to the fact that mergers of Housing Associations lead to factored homeowners and tenants becoming removed from centres of power, and therefore becoming isolated. To redress this imbalance, Mr Clerkin was asserting that the extension of the Freedom of Information Act to cover such merged Housing Associations would rebalance power in favour of said stakeholders. It is a poor reflection on the Scottish Government that such a basic misunderstanding has occurred.

With regard to the Scottish Social Housing Charter, Mr Gunn, for the Scottish Government states wrongly that the Charter is compulsory for Housing Associations. This is true in respect of certain aspects but not in relation to 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). Only the Scottish Information Commissioner would have that power to compel the information to be released if Housing Associations come under the Freedom of Information (Scotland) Act 2002 through a Section 5 Order. As Rosemary Agnew, Scottish Information Commissioner, correctly states: "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."

Mr Gunn states in his letter that it is not yet clear that there is evidence that tenants have concerns about not being able to request information under FOI from their landlord. The Scottish Tenants' Organisation, in their submission, stated unequivocally that they wanted Housing Associations to come under FOI to help empower tenants. In addition, as the consultation gets under way, the Scottish Government could undertake a survey of tenants' opinions on this subject, but let's be clear that the Scottish Information Commissioner's review shows clearly that 79% of the Scottish public support freedom of information being extended to cover all Housing Associations in Scotland. Mr Gunn seems to have missed this fact.

In conclusion, there are a number of mistakes and misunderstandings in the letter from the Scottish Government dated 16 April 2015. I would like the Public Petitions Committee to ask for further clarification on the points raised in this letter. Therefore, I am asking this Committee to continue the Petition and not to close it at this stage. It would be important, in my opinion, to recall myself and Sean Clerkin as my witness to give evidence on extending Freedom of Information for all Housing Associations in Scotland. More importantly, I believe that Rosemary Agnew, Scottish Information Commissioner, should be called to give oral evidence in support of this Petition, as she asked to do in her original submission on 16 January 2015.

I would call on all progressive people in Scotland to support the call that this Petition represents, in that human rights would be enhanced and power restored to tenants and factored homeowners through a Section 5 Order. It seems to me that this disappointing response from the Scottish Government to this Petition appears to deny the right to information, backed up by law, for all stakeholders within Housing Associations. It is a fundamental human right for all stakeholders to

have the right to information, backed by Statute Law, and I ask the politicians of this Committee to stand up for the stakeholders mentioned in this letter.

Yours sincerely

ANNE BOOTH

ADDENDUM TO LETTER FROM ANNE BOOTH DATED 24 APRIL 2015 IN RELATION TO PETITION 01539

I want to bring to the Committee's attention the following facts: that, in the recent response from the Scottish Housing Regulator, it is clear that they cannot compel the Housing Association to release information to a tenant when they do not wish to do so. This is backed up by the Scottish Information Commissioner in their submission to this Committee in paragraph 11(i) of their document, as stated below:-

"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 power to compel an RSL to provide particular information to an individual."

The Scottish Housing Regulator's response states that the Scottish Social Housing Charter is compulsory, and that is true in many aspects, but not in relation to the release of information. As stated below, the regulation carried out is piecemeal and not overarching, and certainly not compulsory in every aspect. This is reflected in the paragraph from the letter of response from the Scottish Housing Regulator.

"We do not carry out cyclical inspections of RSLs. This means that we do not regularly assess each RSL's compliance with all our Regulatory Standards. We can, if it is brought to our attention, deal with a concern from a tenant that their landlord has failed to provide information. But this relies on tenants being aware of the information requirements placed on their landlords."

The above quote reflects the limits that the Scottish Housing Regulator is subject to, in relation to intervening in a dispute over release of information. I again call on all housing associations to be subject to a Section 5 Order that they are brought under the Freedom of Information (Scotland) Act 2002.

I trust that this addendum helps you in your deliberations.