

## Response ID ANON-E458-D3MT-X

Submitted to Freedom of Information Reform (Scotland) Bill  
Submitted on 2025-10-22 16:51:13

### About you

1 Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.

I have read and understood how the personal data I provide will be used.

2 How your response will be published

I would like my response to be published in its entirety

3 What is your name?

Name:  
Benjamin Brown

4 What is your email address?

Email:  
bbrown@ercs.scot

5 Are you responding as an individual or on behalf of an organisation?

Organisation

### Organisation details

1 Name of organisation

Name of organisation:  
Environmental Rights Centre for Scotland (ERCS)

2 Information about your organisation

Please add information about your organisation in the box below:

The Environmental Rights Centre for Scotland (ERCS) is an environmental law charity. We advocate for policy and law reform to improve environmental rights and compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

### Question page 1

1 To what extent do you believe the proposals in the Bill will help achieve its primary aim of improving transparency in Scotland by strengthening the Freedom of Information (Scotland) Act 2002?

Please provide your response in the box provided.:

ERCS believe that the reforms proposed in this Bill will modernise Scotland's Freedom of Information (FOI) laws by broadening their coverage and scope to include the numerous private companies, Arms-Length External Organisations (ALEOs) and third sector organisations who have entered into contractual arrangements with the Scottish Government and local authorities to deliver services of a public nature.

ERCS has experienced first-hand the shortcomings of existing FOI laws. Public authorities frequently fail to respond to FOI requests and follow-up review requests in line with the applicable statutory deadlines (in our experience, SEPA almost always fails to respond in line with the deadlines) and rely on exemptions with little basis for doing so. There are lengthy delays in appeals to the Scottish Information Commissioner.

Problems with the law and practice of FOI in Scotland inhibit the efficacy of our work on upholding environmental rights in Scotland. We are therefore particularly supportive of provisions to speed up the process and prevent potential delay tactics from authorities seeking to withhold information.

ERCS believe this Bill can reduce delays in accessing information; ensure better compliance by service providers; address concerns about how information is stored and transmitted; and improve proactive publication by public authorities as well as third parties currently outside the scope of the Freedom of Information (Scotland) Act 2002 (FOISA).

2 Do you support the proposal that when a public authority is deciding whether to withhold information under a qualified exemption, it must begin from the position that the information should be disclosed?

Yes

Please provide your response in the box provided.:

ERCS agrees with this position, since access to information is a fundamental public good, strengthens democratic oversight, and is integral to building public trust in institutions. The presumption should be in favour of disclosure, and the onus should be on a public authority to demonstrate why a qualified exemption is necessary. This can help to foster an organisational culture of openness and transparency and deter malpractice that might otherwise avoid detection or scrutiny.

3 Do you agree with the repeal of the current provisions in relation to publication schemes and the introduction of a proactive publication duty and code of practice?

Yes

Please provide your response in the box provided.:

A proactive publication duty and code of practice would bring greater clarity to transparency requirements and make it easier for citizens and civil society to routinely hold public authorities to account.

The duty to actively disseminate information as set out in Section 4 of the Environmental Information (Scotland) Regulations 2004 already requires public authorities to publish and maintain accessible, up-to-date records of environmental information to ensure compliance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).

In the above example, environmental information is to be made available for the practical purpose of informing public participation in decision-making processes, such as live planning applications and judicial reviews which have specific time limits attached. There is a clear public interest case to extend this to other types of information and thus improve the functioning of our democratic decision-making processes.

## Question page 2

1 Do you support the proposal that the 20-day period for a response to be provided should be paused rather than reset in relation to requests on which the public body seeks clarification from the requester?

Yes

Please provide your response in the box provided.:

The ability of public bodies to reset the 20 day response time for an FOI request through seeking clarification from the requester is antithetical to the spirit of the original FOISA and could be abused as a delaying tactic to prevent or obstruct the release of information in the public interest, which for advocacy or journalistic purposes is often time sensitive. Lengthy delays can also cause wider disillusionment or disengagement from members of the public seeking to access information. It is therefore appropriate to pause rather than replace the 20 day period for obtaining a response.

2 Do you think that the provisions of the Bill in relation to the reporting by Scottish Ministers of the use of 'section 5' powers to designate new public authorities would, as the Policy Memorandum contends, "incentivise Scottish Ministers to regularly use their section 5 powers and at a pace which enables the system of independent regulation to operate effectively"?

Don't know

Please provide your response in the box provided.:

3 Do you support the requirement for all public authorities subject to the Act to designate a Freedom of Information officer?

Yes

Please provide your response in the box provided.:

ERCS believe that the creation of a Freedom of Information officer in public authorities would uphold standards, ensuring that service providers issue timely responses and do not neglect their public duties. Many countries (e.g. Brazil, Croatia) already have such a provision in their FOI laws to establish officer roles, who oversee compliance, monitor performance, provide expert internal advice, and engage with the FOI Commissioner. Other legislation, including the Ethical Standards in Public Life (Scotland) Act 2000, and Public Records (Scotland) Act 2011, already include similar provisions and mandate the appointment of officers who assume responsibilities to uphold standards and ensure compliance.

The designation of an FOI officer with public authorities can ensure greater accountability and provide clearly defined responsibilities that increase the efficacy of both internal information management, and external engagement with individuals and group seeking to obtain information.

## Question page 3

1 The Bill proposes the introduction of an offence to prevent destruction of information with the intent to prevent disclosure, even when no information request has been made. Do you support this proposal?

Yes

Please provide your response in the box provided.:

There may be merit in the introduction of such an offence, although ERCS is uncertain since it may be difficult to define or prove 'the intent to prevent disclosure'. Awareness raising and training for staff at public authorities would need to be robustly implemented in response to this proposal.

2 Do you support the proposal to remove the power of the First Minister to 'veto' certain decision of the Scottish Information Commissioner in relation to information deemed to be of "exceptional sensitivity"?

Yes

Please provide your response in the box provided.:

There is a risk that veto power can be abused by the First Minister to prevent political embarrassment, and in order to restore and maintain public trust, it is appropriate that the decisions of the Scottish Information Commissioner are vested with real power so that information in the public interest is readily available. 'Exceptional sensitivity' is a vague term liable to misuse and should not be used to interfere with the mandate of the Scottish Information Commissioner, who is appointed with clearly defined public duties to uphold and with due consideration to their expertise and experience in matters relating to information disclosure.

3 Do you support the proposals to strengthen the general functions and enforcement powers of the Scottish Information Commissioner, and to introduce an exemption for information provided to the Commissioner during the investigation of appeals?

Yes

Please provide your response in the box provided.:

As outlined above, the Scottish Information Commissioner is appointed with due consideration to their expertise and experience in matters relating to information disclosure, and strengthening the functions and enforcement powers can ensure the role of the Commissioner has a clearly defined mandate and powers with 'teeth' to effectively uphold access to information rights.

#### Question page 4

1 Do you have any views on the estimated costs and savings associated with the proposed changes set out in the Bill?

Yes

Please provide your response in the box provided.:

Greater transparency and democratic scrutiny is in the public interest, and can enhance the effectiveness, responsiveness, and overall functioning of institutions subject to the law's requirements. Any financial impact must be considered against the added value of informing the public, building trust and legitimacy, and stimulating higher standards in public life.

While there is an inevitable cost associated with releasing information, this is likely to be offset by the effect of greater transparency in public contracts and the expenditure of public funds. Proactive duties to publish information may also result in the incorporation of routine procedures within service providers, which increase in efficiency over time as operations are streamlined.

2 Please use the text box below to set out any further comments you wish to make about the Bill.

Please provide your response in the box provided.: