

# PROPOSED FREEDOM OF INFORMATION REFORM (SCOTLAND) BILL

14<sup>TH</sup> MARCH 2023

LGBT Youth Scotland's vision is that Scotland is the best place it can be for LGBTQI+ young people to flourish and thrive. We play a leading role in the provision of quality youth work to LGBTI young people that promotes their health and wellbeing, and we are a valued and influential partner in LGBTI equality and human rights.

## SECTION I

### 1. Are you responding as:

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

### 2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose "Member of the public")

- Politician (MSP/MP/Peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

### 2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
- Consultation on a proposed Freedom of Information Reform (Scotland) Bill
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. club, local group, group of individuals, etc.)

### 3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

- I am content for this response to be attributed to me or my organisation
- I would like this response to be anonymous (the response may be published, but no name)
- I would like this response to be confidential (no part of the response to be published)

### 4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

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## SECTION 2

**Note: All answers to the questions may be published (unless your response is “not for publication”).**

### AIM AND APPROACH

#### 5. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

**Please explain the reasons for your response.**

LGBT Youth Scotland recognises the value of transparency and access to information pertaining to public funds, and indeed welcome the intention to increase transparency of public money that is spent through organisations that sit outwith current legislation. Furthermore, we appreciate that the Freedom of Information (Scotland) Act 2002 (FoISA) was put into law over 20 years ago, and subsequently methods and practices have moved on and therefore an update is overdue.

We particularly understand the need for this transparency with large contracts where significant amounts of public funds are provided to external partners to provide services or infrastructure for public use.

We welcome the opportunity for ourselves and colleagues across the third sector to engage at this stage, as we feel we have an important role to play as a registered charity in Scotland who receives some of our funding from the Scottish Government, as part of our mixed funding model. However due to the complex nature of our funding and the unique role we play, predominantly as a youth work organisation, we have some concerns that we wish to raise to ensure the safety and privacy of young people who use our services.

We would like to note that, along with many other registered charities in Scotland, as well as receiving public funds through Scottish Government grants, other public body funding and independent trusts and grants funding, we also generate income through a commercial operation. Clarity therefore around commercial interests and exemptions in section 43 of the FoISA and the limit of FOI requests in relation to this is of significant importance to enable us to protect our staff and our work.

### DETAIL OF THE PROPOSAL

#### 6. Which of the following best expresses your view on the private sector being designated under FoISA if it is publicly funded and the service is of a public nature?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed

- Fully opposed
- Unsure

Please explain the reasons for your response. See page 13-17 for reference.

**7. Which of the following best expresses your view on the third/charitable/ voluntary sector being designated under FoISA if it is publicly funded and the service is of a public nature?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. See page 16 for reference.

With regard to the impact on small third sector organisations and with the acknowledgement that this can have a significant impact, the consultation paper states: “it is proposed that the value of the contract needs to be agreed before designation under FoISA commences. Your views on what that threshold should be are sought.” It is therefore disappointing that there is no specific question in the consultation which addresses this issue.

We are unclear if the proposal is to have a per contract approach to a threshold, or if a third sector organisation should have a wholistic view of its funding. It is also unclear what is proposed to be covered – is it specifically funding from the Scottish or UK Governments? Or would it include money from all public service bodies such as NHS, local authorities, schools, etc?

There are of course other methods for decided what ‘size’ of an organisation should fall within scope. This may include the number of staff employed (or a FTE figure), the annual turnover, etc. It is incredibly difficult to judge at this stage without considerable evidence what would be appropriate, but it is important to note the burden that would be placed on charities themselves – some more than others.

We wish to make you aware that charities that work to support people with protected characteristics currently face additional scrutiny over our funding and operations. We have significant concerns that there would a number of bad faith actors who would wish to inhibit the work that we do by co-ordinating vexatious FoI requests. We have seen this currently in partner organisations that we work with who are currently required to respond to FoI requests, and whom have adequate legal teams to support responses.

We also have concerns around the mixed funding model that we employ through necessity. Although we are a national charity, we also deliver services across the country which means that we have a number of different funders including Scottish Government, local authorities, NHS, independent trust and grant providers etc. Whilst for some roles and projects within the organisation it is clear where funding comes from, there are many where there is a complicated funding model. We would request that were FoI’s were to be allowed for organisations such as ours that there would be clear guidance on what is within and what is outwith scope. For example, we deliver commercially sensitive projects which are part funded by the Scottish Government, and if the information contained within those projects became public it may render the project(s) unviable.

**8. Which of the following best expresses your view on the creation of a new statutory officer within designated authorities – a Freedom of Information Officer?**

- Fully supportive

- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

We agree with SCVO and other third sector respondents that this would prove to be a considerable burden on our service delivery. Most third sector organisations in receipt of public funds work on extremely tight budgets. If recruitment and retention of an FOI Officer were to be a legal requirement, we would need to see funding for these role(s) coming **in addition** to funds already secured (and with a presumption that if a flat level of income from public funds would be set, this would be increased to match this additional funding).

This would be particularly burdensome for organisations which support people with protected characteristics such as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Often there are individuals and particularly groups online who oppose work to support people with these protected characteristics, and wish to slow down and inhibit the work we do to support and advocate on behalf (in our case) of LGBTI young people. We have seen increasing attempts by such groups to mobilise and request information pertaining to our work from our partners. We fully expect that they would continue use this tactic in an attempt to bog down our work on progress through nefariously using the reform of FoISA.

If there were guarantees that third sector organisations would be given additional funding that does not impact on their core funding, we could be minded to support this move.

**9. Which of the following best expresses your view on creating a statutory duty to publish information?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

**See page 21 for reference.**

**10. Which of the following best expresses your view on reducing exemptions under FoISA?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

See page 26 for reference.



**11. Which of the following best expresses your view on amending FoISA to prevent the use of confidentiality clauses where inappropriate between public authorities and contractors providing public services?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.  
See page 26 for reference. 12.

**Which of the following best expresses your view on FoISA being updated to ensure aspects of procurement policy set by the Scottish Government are covered?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

See page 31 for reference.

## FINANCIAL IMPLICATIONS

**13. Any new law can have a financial impact which would affect individuals businesses, the public sector, or others. Do you think any cost is outweighed by the public interest benefit?**

- Yes
- No
- Not Sure

Please explain the reasons for your answer.

If we were to fall within scope of this reformed legislation, we simply would not have capacity in house to be compliant as we currently stand. We would require additional funding to cover costs, otherwise our service delivery would be significantly compromised across the country. To avoid this disastrous situation, we would hope that the burden to remain compliant would be made achievable through an increase in our funding from Scottish Government and any other organisations that we receive public funding from that would be within scope.

However, given the significant financial difficulties of Scottish Government and uncertainties in general around funding for the third sector, we have significant concern that this legislation would place the burden on us to find resources which we would find incredibly difficult to secure. This would mean that we may have to use our reserves to cover the shortfall which would put the security of the whole charity at risk. It may also mean that we have to look at cost savings that can be found elsewhere which may mean closing down some of our young people services around the country.

As a national service this is a galling prospect given our recent Life in Scotland for LGBT Young People<sup>1</sup> research which shows:

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<sup>1</sup> Cronie, K., (2022) Life in Scotland for LGBT Young People. LGBT Youth Scotland. Available online: [www.lgbtyouth.org.uk/media/2712/life-in-scotland-for-lgbt-young-people-2022-e-use.pdf](http://www.lgbtyouth.org.uk/media/2712/life-in-scotland-for-lgbt-young-people-2022-e-use.pdf)



- The numbers of LGBTI young people who think their local area is a good place to live – is 62% for those in urban areas, and only 28% in rural Scotland
- Less than 1 in 10 (9%) respondents in rural Scotland had attended an LGBTI-specific space within the last year – as opposed to 36% of respondents in urban Scotland.

The services that we offer are unique and impactful. When asked about LGBTI specific spaces, young people said<sup>2</sup>:

- “LGBT Youth Scotland groups have consistently made me feel welcome and provided me with opportunities to meet people, make connections and otherwise build confidence”
- “LGBT Youth Group was for a very long time my only queer space and the only place I could be myself uncritically. This may have, unexaggeratedly, saved my life and I am eternally grateful”
- “I go to a youth group for trans people, it’s the one place I feel like I won’t be judged for how I look / sound, and I can actually talk to people who get what being trans is like”

## EQUALITIES

**14. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law? Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.**

With recent experience we can say with that organisations that support people with protected characteristics are often the focus of co-ordinated campaigns to analyse our work, and to nefariously inhibit us from undertaking our work by impacting on our capacity. Steps must be taken to ensure that any new legislation does not impose a disproportionate burden on such organisations. This could be rectified by additional funding for organisations supporting people with protected characteristics to employ staff who could respond to FoI requests. Furthermore, there remains a need to ensure that the burden for evidencing vexatious requests is not set too high, and that this includes bad faith actors who set up requests from multiple individuals, such as co-ordinated letter writing campaigns.

## SUSTAINABILITY

**15. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?**

**Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?**

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<sup>2</sup> ibid

## GENERAL

**16. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?**

We note with disappointment, that this set of consultation questions, and the accompanying documentation do not give reference to vexatious use of a FoI legislation. As made clear throughout our response, we welcome transparency in the public sector when public funds are spent through alternative means – include in the third sector - when this is proportionate response to a legitimate request. This is a particularly important aspect of the work of third sector organisations who work with and for people with protected characteristics.

However, we are aware that public sector organisations that we have worked with for a number of years have over recent years been subject to a significant number of FoI requests about the work that we do with them. We have been made aware of campaign groups on social media who ask followers to request FoI data to be shared in an attempt to gain commercially sensitive information about our work and to negatively impact on our capacity. Again, this makes clear the difficulty in applying a blanket rule for third sector organisations that have complex funding models meeting a range of different outcomes.

We have significant concern that if this legislation goes through and we do not receive a proportionate increase in funding from our public sector funders to allow us to respond in a legally competent manner to FoI requests, that we would be left in breach of the law. On top of this, given our experience of nefarious FoI requests currently circulating about our work with public sector organisations, we are concerned that these requests would be pointed also to our services who would then be required to respond and provide significant amounts of information to bad faith actors.

**FOR FURTHER INFORMATION, PLEASE CONTACT  
INFO@LGBTYOUTH.ORG.UK**