

*Open letter to the Scottish parliament selection panel for the Scottish Information Commissioner appointment:*

*Ken MacIntosh MSP, Presiding Officer*

*Clare Adamson MSP*

*Margaret Mitchell MSP*

*David Stewart MSP*

*Andy Wightman MSP*

*cc: Derek Mackay, Cabinet Secretary Finance and the Constitution*

*Leslie Evans, Permanent Secretary at the Scottish Government*

*Margaret Keyse, acting Scottish Information Commissioner*

Dear interview panel members:

We are a group of newspaper, online and broadcast journalists who routinely use freedom of information legislation in our reporting and research, and we are writing to you to raise live concerns we have about current practice and experience trying to use that legislation, particularly with respect to the Scottish government and its agencies.

The freedom of information laws and procedures which came into force in Scotland through the Freedom of Information (Scotland) Act 2002 and the Environmental Information Regulations has led to a major improvement in government transparency, setting strong standards for openness and accountability.

In the last few years, however, we have become increasingly concerned about the way in which the legislation is being interpreted and implemented. We would be grateful if these concerns could be taken into account during the process to appoint a new Scottish Information Commissioner.

We have recent examples of:

1) information requests being repeatedly delayed significantly beyond the 20 working day deadline without clear justification or warning;

2) emails asking for an update on answering requests in cases of delays beyond the legal deadline being routinely ignored by officials;

- 3) officials delaying responses for so long that the initial requests only get answered under internal review, making it impossible for journalists to ask for incomplete replies to be internally reviewed again. This leaves them facing further longer delays by appealing to the Scottish Information Commissioner;
- 4) Scottish government officials taking control of requests to other government agencies without the consent of the applicant;
- 5) requests being blocked or refused for tenuous reasons;
- 6) requests being screened for potential political damage by special advisers and of responses to individual journalists being routinely handled by special advisers.

Some of these experiences raise questions of whether information requests by journalists are being treated and managed differently, even though the legislation requires all requests to be handled equally and without favour or prejudice. We suspect there have been cuts in the resources and time being made available by the civil service for handling freedom of information requests.

We are increasingly told the information we are seeking is not held where ministerial meetings with other bodies or individuals to discuss government policy are said to be informal, minutes are not taken, and records are not kept. Correspondence and reports that should be available seem not to exist. This raises the question of whether Scottish ministers and civil servants now have a practice of not recording information that would previously have been recorded.

The Scottish government has described itself as a beacon of transparency under the Open Government Partnership and says it is committed to becoming more open, accountable and responsive.

<http://news.gov.scot/news/world-leaders-on-openness-and-transparency>

We believe our experiences put that commitment under great doubt. Rosemary Agnew, the most recent Scottish Information Commissioner, has consistently raised her concerns about the Scottish government's handling of information requests both in her decisions on individual appeals and also in her annual reports.

Ms Agnew set out her concerns before leaving her post, telling one interviewer the performance of ministers in dealing with FoI requests had been "totally unacceptable", and in her "end of term" report to the Scottish parliament on 28

April, where she said public authorities now put greater emphasis on what not to disclose than on what ought to be released.

<https://theferret.scot/information-watchdog-scottish-ministers/>

<http://www.itspublicknowledge.info/home/SICReports/OtherReports/SpecialReportProactivePublication2017.aspx>

We believe there are now grounds for a review of the Scottish government's treatment of and policies for dealing with freedom of information requests, and would urge the Scottish government to address these concerns by immediately acting within the spirit and letter of Scotland's freedom of information legislation.

We believe that review should also look closely at the question of whether the legislation should include a duty to record on government officials, advisers and ministers, particularly when meeting with outside bodies, individuals or lobbyists to discuss government policy.

This open letter will be published online by The Ferret and CommonSpace on Thursday 1 June.

Yours, the undersigned

Billy Briggs, Fiona Davidson, Rob Edwards, Peter Geoghegan, Rachel Hamada and Layla-Roxanne Hill (The Ferret)  
Angela Haggerty, Nathanael Williams, David Jamieson and Michael Gray (CommonSpace)  
Severin Carrell (The Guardian)  
James McEnaney (freelance)  
Daniel Sanderson (The Times)  
Andrew Picken (Sunday Post)  
Chris Diamond on behalf of the BBC NUJ chapel  
Bernard Ponsonby on behalf of the STV NUJ chapel  
David Clegg (Daily Record)  
Michael Blackley (Daily Mail Scotland)  
Paul Hutcheon (Sunday Herald)  
Kieran Andrews (The Courier)  
Simon Johnson (The Telegraph)  
Ian Dunn (Scottish Catholic Observer)  
Tom Gordon (The Herald)