



DEBATE PACK

Number CDP-2019/0058, 1 March 2019

Extending the Freedom of Information Act to housing associations and public contractors

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This pack has been prepared ahead of the debate to be held in Westminster Hall on Wednesday 6 March 2019, from 2.30 to 4pm, on extending the *Freedom of Information Act 2000* to housing associations and public contractors. The debate will be opened by Andy Slaughter MP.

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. Background

Section 1 of the *Freedom of Information Act 2000* gives individuals the right to make a freedom of information (FOI) request to obtain information held by English, Welsh and Northern Irish “public authorities”. These are, broadly speaking, public bodies which exercise public functions, such as central government departments, local government, the police, the health service, the education service and their related offices and agencies. Schedule 1 of the Act either names these public authorities specifically or describes them in general terms.

Regulations can be made under section 5 of the Act to bring new bodies within the scope of the Act if they carry out functions of a public nature.¹

The Act is enforced by the [Information Commissioner’s Office](#) (ICO).

Scotland

The 2000 Act covers UK-wide public authorities based in Scotland. However, Scotland has its own legislation which applies to Scotland only public bodies – the *Freedom of Information (Scotland) Act 2002*.

The Act is enforced by the [Scottish Information Commissioner](#).

Extending the 2000 Act?

Information held by a private company “on behalf of” a public authority with which it has a contract is subject to the 2000 Act, but other information is not.

There have been calls for the Act to be extended to private sector companies that undertake public sector contracts. In February 2019, in response to a parliamentary question, the Government [said](#) that it had “no plans to legislate in this area”.²

After the Grenfell fire, the Government was [asked](#) about extending the Act to housing associations. It said:

Housing Associations do not meet the conditions for inclusion within Schedule 1 of the FOI Act. However the Government keeps the scope of the Act under constant review.³

There are two Private Members’ Bills before Parliament that would extend the 2000 Act:

- Andy Slaughter’s [Freedom of Information \(Extension\) Bill](#) would extend it to companies contracting with public authorities, providers of social housing, local safeguarding children boards, Electoral Registration Officers, Returning Officers and the Housing Ombudsman.

¹ In March 2015, the *Freedom of Information (Designation as Public Authorities) Order 2015* brought Network Rail within the scope of the Act

² [HL13262](#), answered 5 February 2019

³ [PQ 9122](#), answered 14 September 2017

- Louise Haigh's [Freedom of Information \(Amendment\) Bill](#) would extend the Act to information held by persons contracting with public authorities.

The Bills have not yet had a second reading.

ICO report, February 2019

In February 2019, the Information Commissioner published a [report](#) calling for the 2000 Act to be reformed because of the changing nature of public service delivery:

(...) Services that are not delivered 'in house' by public authorities may be delivered by private companies, charities, social enterprises and voluntary organisations through various service models. A common model is 'outsourcing', when services are delivered by an external supplier under a public sector contract but public services may be delivered through other models such as joint ventures and public service mutuals.

Many other organisations exercise functions of a public nature across different sectors including health, justice and education. Examples include housing associations, which provide social housing, and Local Safeguarding Children's Boards (LSCB), which play a central role in protecting children.

(...)

The importance of effective accountability and transparency when services are delivered by organisations other than public authorities was brought into sharper focus in 2018 when Carillion, which had approximately 420 UK public sector contracts, collapsed. Following the Grenfell Tower fire in 2017 difficulties accessing information relating to social housing were highlighted. Kensington and Chelsea Tenant Management Organisation (KCTMO), which was established by the local authority to manage and maintain its housing stock, was not subject to FOIA...⁴

According to the Commissioner, the Act is no longer fit for purpose:

(...) Access to information legislation is essential to democratic accountability and helps to create what we all want to see – better public services.

Public services are delivered in many ways, including by organisations that are not public authorities. This report is not about whether certain methods are to be preferred. It is about highlighting the clear risks to transparency and accountability when information held by such organisations is removed from the scrutiny offered by access to information law. The current law is not fit for purpose. It needs to keep pace with the changes in the modern public sector and public expectations.

(...)

Parliament clearly intended information rights to adapt to changes in public sector delivery - section 5 of FOIA includes a provision to bring contractors under its scope but it has never been used since the law came into force in 2005. There is a strong case for contractors to be more accountable when delivering public services. Similarly, powers to bring other organisations exercising

⁴ ICO, [Outsourcing Oversight? The case for reforming access to information law](#), February 2019, pp5-6

functions of a public nature under the scope of FOIA have only been used a few times since the legislation came into force 13 years ago. This should now be addressed urgently.

(...)

Information is only accessible under FOIA [the 2000 Act] ...if it is held by outsourced providers on a public authority's behalf. In practice this can be very difficult to determine, and attempts to improve contractual provisions to tackle this issue have not made enough progress...⁵

Recommendations

The report recommends, among other things, greater use of existing powers under section 5 of the 2000 Act to:

1. designate contractors regarding the public functions they undertake where this would be in the public interest, whether because of the scale, duration or public importance of the contracts.
2. designate a greater number of other organisations exercising functions of a public nature, and do so more frequently and efficiently.

Designation orders under section 5 of FOIA would give the public the right to make requests directly to these organisations and require them to proactively disclose information in line with a publication scheme.⁶

On housing associations, the report argues that:

...It would be better for the public if the Government sent a clear message that housing associations that are not publicly-owned are still covered by the law by using its section 5 FOIA powers...⁷

The report also recommends amending section 3 of the Act to "give a clearer legislative steer about what information regarding a public sector contract is held for the purposes of the legislation". This would require primary legislation.⁸

Further detail on the recommendations is set out in chapter 3 of the report.

Scotland: extending the 2002 Act

After a [consultation](#) between December 2017 and March 2018, the Scottish Government concluded that the 2002 Act should apply to registered social landlords. This will take effect from 11 November 2019.⁹

⁵ Ibid, pp6-7

⁶ Ibid, p8

⁷ Ibid, p32

⁸ Ibid, pp8-9

⁹ Scottish Government, [Freedom of Information: extension of coverage to registered social landlords - consultation response](#), 8 February 2019

2. Media

[FOI to apply to Registered Social Landlords from November 2019](#)

Scottish Housing News, 11.02.2019

[Watchdog wants public sector contractors subject to FOI laws](#)

Out-Law, 01.02.2019

[Government must extend Freedom of Information](#)

Tom Sasse, Institute for Government, 30.01.2019

[The UK must close the private sector gap in the public's right to know](#)

Elizabeth Denham, *Financial Times*, 27.01.2019

[Andy Slaughter MP's 2nd reading speech](#). This is the speech that Andy Slaughter MP the bill's promoter would have given had time permitted.

Campaign for Freedom of Information, 18.06.2018

[FOI bill debate blocked by MPs](#)

Nathaniel Barker, *Inside Housing*, 15.06.2018

[How many British spies use five-star hotels? The law stops us knowing](#)

Phil Miller, *Guardian*, 15.06.2018

[MP seeks stronger FOI powers after Grenfell fire and Carillion collapse](#)

Owen Bowcott and Ian Cobain, *Guardian*, 13.06.2018

[Expert Comment: Freedom of Information after Grenfell](#)

Sandy Fleming, University of Kent, 27.03.2018

[Should FOI be extended to private companies that carry out public services?](#)

Gruffydd Davies, Ashfords, 09.10.2017

[Proposal to extend Freedom of Information to all public contractors](#)

Tim Hughes, Open Government, 10.03.2016

3. Parliamentary material

3.1 Debates

[Freedom of Information \(Amendment\) Bill 2017-19](#)

HC Deb 31 January 2018 cc824-6

3.2 Questions

[Freedom of Information](#)

Asked by: Lord Taylor of Warwick

To ask Her Majesty's Government whether they intend to extend the scope of freedom of information laws to include bodies in the private sector that provide public services.

Answered by Lord Young of Cookham | Cabinet Office

The Government has already introduced a range of measures to increase transparency in public sector contracts and is publishing more data than ever before. At present, the Government has no plans to legislate in this area.

05 February 2019 | Written questions | HL13262

[Social Rented Housing: Correspondence](#)

Asked by: Helen Jones

To ask the Secretary of State for Housing, Communities and Local Government, if he will issue guidance to providers of social housing on how they should deal with and respond to enquiries from hon. Members.

Answered by: Mrs Heather Wheeler | Ministry of Housing, Communities and Local Government

As public authorities, local authority providers of social housing are subject to the Freedom of Information Act 2000 and we would expect them to respond promptly to all enquiries from Hon. Members.

Housing associations are private sector bodies. They are not subject to the Freedom of Information Act 2000. It would be inappropriate to single this sector out for instructions on how to respond to enquiries from Hon. Members. However as responsible companies with a social purpose we would expect them to deal promptly to such enquiries.

The Tenant Involvement and Empowerment Standard within the regulatory framework, requires registered providers to offer a range of

ways for tenants to express a complaint and set out clear service standards for responding to complaints, and details of what to do if they are unhappy with the outcome of a complaint. This includes a requirement to deal appropriately with complaints made by advocates - such as Hon. Members acting on behalf of their constituents. Once a tenant has exhausted a registered provider's complaint procedure, the Localism Act 2011 provides for them to escalate the complaint to the housing ombudsman by a designated person. The definition of a designated person includes Hon. Members

21 May 2018 | Written questions | 144176

[Freedom of Information: Private Sector](#)

Asked by: Jon Trickett

To ask the Minister for the Cabinet Office, whether he intends to hold a consultation on extending the Freedom of Information Act 2001 to private sector providers of public services.

Answered by: Chloe Smith | Cabinet Office

The Government is committed to the principles of transparency and openness across the public sector.

We continually keep the scope of the Freedom of Information Act under review.

16 May 2018 | Written questions | 142762

[Health Services: Freedom of Information](#)

Asked by: Rosie Cooper

To ask the Secretary of State for Health and Social Care, what his policy is on the application of the Freedom of Information Act 2000 to private healthcare providers in respect of information they hold on behalf of the NHS.

Answered by: Stephen Barclay | Department of Health and Social Care

The Freedom of Information Act 2000 does not apply directly to private healthcare providers.

However, where private healthcare providers hold information on behalf of the National Health Service, should a Freedom of Information request be made for this information, NHS Improvement would be required to source the information from the private provider.

16 April 2018 | Written questions | 134862

[Freedom of Information: Housing Associations](#)

Asked by: Mr Stewart Jackson

To ask the Minister for the Cabinet Office, whether reclassification by the Office of National Statistics of housing associations as public entities will entail their carrying the legislative obligations contained in the Freedom of Information Act 2000; and if he will make a statement.

Answered by: Matthew Hancock | Cabinet Office

Registered providers of social housing will not automatically become subject to the Freedom of Information Act as a result of their reclassification.

23 November 2015 | Written questions | 16827

3.3 Committee work

[Post-legislative scrutiny of the Freedom of Information Act 2000](#)

Justice Committee, First Report of Session 2012–13, 26 July 2012

[Government Response to the Justice Committee's Report: Post-legislative scrutiny of the Freedom of Information Act 2000](#)

Cm 8595, November 2012

[After Carillion: Public sector outsourcing and contracting](#)

Public Administration and Constitutional Affairs Committee, Seventh Report of Session 2017–19, 3 July 2018

[Written evidence from the Information Commissioner](#)

Public Administration and Constitutional Affairs Committee, *Sourcing public services: lessons to be learned from the collapse of Carillion inquiry*, February 2018

4. Further reading

[Freedom of Information: extension of coverage to registered social landlords - consultation response](#)

Scottish Government, 08.02.2019

[Outsourcing Oversight? The case for reforming access to information law](#)

Report of the Information Commissioner to Parliament, February 2019

[Extending FOI to contractors](#)

Campaign for Freedom of Information, 2018

[Independent Commission on Freedom of Information report](#)

(March 2016) and [Government response](#) (HCWS566, 1 March 2016)

[Extend Freedom of Information to all public contractors: A proposal for the UK's 2016-18 OGP National Action Plan](#)

UK Open Government, undated

Cabinet Office, [Freedom of Information Code of Practice](#), July 2018

ICO, [Guide to Freedom of Information](#), August 2017

ICO website, [How to access information from a public body](#)

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