

Extension of FOISA to private and third sector providers of care home and 'care at home' services: consultation

Respondent Information Form

Please Note this form **must** be completed and returned with your response.

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Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Coalition of Care and Support Providers in Scotland

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes**
 No

Consultation Questions

1. Do you agree that FOISA should be extended, where possible, to private and third sector (charity and not-for-profit organisation) run care homes?

- Yes
 No
 No view

Please use the space below to set out your detailed views:

We are supportive of transparency in principle, particularly in relation to commissioned services with public funding. However, we cannot support this proposed extension as set out at this time, and feel it necessary to answer “no” on a binary question to highlight our concerns. We are not convinced that this change would provide additional transparency and is likely to lead to significant resource demand placed on service providers at a time when contracts do not provide full cost recovery for existing costs.

Commissioned services are already open to scrutiny by regulators, through information shared with local authorities, and Subject Access Requests. Duplicate information sharing requirements under FOISA would require additional resource, which, if not reflected in contract values, could shift funding away from service delivery and threaten organisational stability.

Transparency – which we believe is provided through other reporting – has to be balanced against the safeguarding of vulnerable people supported by services. Redacting personal information about supported people from FOI releases would be a necessary but time-consuming and costly process, adding pressure to services which may already be under strain.

We suggest there may be a way to improve strategic-level transparency of the social care sector through section 31 of the Care Reform (Scotland) Act 2025. The report required to be made under this provision on the state of the social care market could consider the sustainability of the sector and the level of profit being made. CCPS would be keen to engage in the development of this statutory report to enable clear and coherent public information is readily available.

2. Do you agree that FOISA should be extended, where possible, to private and third sector (charity and not-for-profit organisation) run ‘care at home’ services?

- Yes
 No
 No view

Please use the space below to set out your detailed views:

In addition to the above, we are concerned about the definition of “care at home” services and the potential additional work that would be required to

separate services which would be subject to FOISA and those which would not. This could lead to confusion and inconsistency. This does not mean we are supportive of all care home and care at home services being subject to FOISA, but that this additional complexity would have to be reflected in resourcing. We have no indication that this would be forthcoming and therefore we do not support extension at this time.

3. Whether or not you actually support any extension, please indicate which of the following statements best reflects your view:
- a) If FOI law were to be extended to care home and 'care at home' providers, information about all such services should, where possible, become subject to FOI law, irrespective of the level or type of public funding that supports those services.
 - b) If FOI law were to be extended to care home and 'care at home' providers, only information about such services which are mainly publicly funded should, where possible, become subject to FOI law.
 - c) No view

3(a). If you chose option 'b' above, please set out any more detailed thoughts you may have on the type or level of public funding that should result in the provider becoming subject to FOISA :

[please insert response here.....]

4. Do you agree that any extension to private and third sector care home and 'care at home' services should apply to such services when delivered to children and young people (i.e. people under 18 years of age)?

- Yes
 No
 No view

5. Are there any issues, opportunities or challenges specific to children and young people's services which require to be considered? If so, please set out how you see these:

There needs to be given consideration of how children's right to privacy and protection would be addressed in any responses to FOI requests, especially as children may be identifiable. The extension of FOI obligations would require substantial resource for children and young people's services and there is concern that this would impact service delivery capacity as a result.

As noted in the consultation paper, children and young people's services tend to be significantly smaller than adult services. It is established practice to not provide data relating to fewer than five people, to prevent the potential identification of any individual. The average number of registered places per children and young people's services is 4.5, as set out in the consultation paper. This could mean that a significant number of children and young people's services would be de facto exempt from FOISA requests related to the people they support, raising questions about the purpose of this proposed change.

6. Do you consider that the size of a private or third sector care home or 'care at home' service provider should have any bearing in whether that provider is made subject to FOISA?

- Yes
 No
 No view

6(a). If you answered 'yes' to question 6, which of the following statements best reflects your views in relation to care home providers?:

- a) Only the very smallest providers, offering services to up to 10 people, should be exempt from FOISA.
b) Providers offering services to up to 50 people should be exempt from FOISA.
c) Providers offering services to up to 100 people should be exempt from FOISA.

- d) Only the largest providers, offering services to over 1000 people should be made subject to FOISA.

6(b) If you answered 'yes' to question 6, which of the following best reflects your views in relation to 'care at home' providers?:

- a) Only the very smallest providers, with a staff headcount of up to 10, should be exempt from FOISA.
b) Providers with a staff headcount of up to 25 should be exempt from FOISA
c) Providers with a staff headcount of up to 50 should be exempt from FOISA
d) Providers with a staff headcount of up to 100 should be exempt from FOISA
e) Only the largest providers, with a staff headcount of over 1000 should be subject to FOISA.

6(c) Do you have any other comments on the challenges or opportunities that might come from extending FOISA to smaller providers? Please use the space below to set out your views:

We recognise smaller providers may have specific concerns around data privacy. However, we cannot support the extension of FOISA obligations to providers of any size.

We would oppose any implication that larger organisations are better placed to handle and absorb the work of being subject to FOISA. The extension of FOISA would be more work for already under-funded organisations regardless of size and would require appropriate funding to meet FOI obligations. Larger providers could face more requests due to increased visibility and/or commercial interest, leading to more demand on their resources without any additional funding.

7. What would be most helpful to assist care providers in discharging their obligations under FOISA? Please provide your thoughts below:

The extension of FOISA to care homes and care at home providers would require additional resource to respond to requests. Providers would have to be funded appropriately to meet FOISA obligations, especially for central and support staff roles which are often not accounted for in contract uplifts. We are concerned that new FOI responsibilities, without adequate support, could threaten organisational viability.

Care providers would also require clarity on which elements of services would be subject to FOISA requirements and which would not, particularly where care at home functions are delivered in a combined service with housing support functions. Work is ongoing on the review of the definitions of care and we have heard of confusion about the breadth of care at home definitions, further complicating the identification of functions subject to FOISA. Providers would benefit from clear, practical guidance that takes into account the unique operational and financial constraints of the social care sector, and the diversity of organisations within it.

If this extension were to be implemented, providers would also welcome sector-specific publication scheme templates that set realistic expectations

for what should be routinely published if this extension were to be realised. We would hope to see national infrastructure or shared tools, such as secure platforms for transmitting data, alongside best practice guidance on efficient, secure handling of large or sensitive requests. Small providers would also require specific support, such as training and scenario-based guidance to aid understanding of how to triage and prioritise requests and competing demands.

8. What would be most helpful to people who access social care and other members of the public to enable them to access their rights under FOISA? Please provide your thoughts below:

It is unclear what, if any, additional access to rights would be provided by extending FOISA obligations to care providers. People who access social care and other members of the public can already make FOI requests to local authorities, which hold information shared by providers. Information is also available through the Care Inspectorate. Supported people cannot access their personal data through FOISA requests, as this information would be released into the public domain. Subject Access Requests provide supported people with an appropriate route to access their personal data while preserving their right to privacy.

9. What categories of information relating to the work of care home and 'care at home' services would people be most likely to seek? Please provide your thoughts below:

[please insert response here.....]

10. Do you have any comments on the business and regulatory impact of FOISA extension for organisations?

We are concerned that care and support services may not have the resources to respond to a high volume of requests. As noted above, in responding to FOI requests, it could be difficult for organisations to isolate the parts of their work to which FOISA would apply. Responding to FOI requests could require significant staff time to redact documents to avoid naming individuals.

We are further concerned that third sector providers would be considered easier to direct FOI requests to in comparison with local authorities, while not having the resources or mechanisms needed to fulfil obligations. RSLs, who are already subject to FOISA requirements in some areas of their work, have expressed concerns about the uncapped and sometimes speculative nature of information requests which can consume public resource without meaningful outcomes. They have, anecdotally, shared experiences of handling requests of a commercial nature from private companies, for example. It is difficult to see how the public would gain rights by private organisations consuming public resource in requesting commercial information.

We are aware that FOISA contains exemptions for information which would (or would be likely to) prejudice substantially the commercial interests of any

person or organisation (section 33(1)(b)). However, we are concerned that there may be requests for proprietary and organisational information which would not be considered to be subject to this exemption, or which may pass a public interest test, but would threaten providers' commercial interests and competitiveness.

11. Do you have any comments on impact of FOISA extension in relation to the fulfilment of data protection rights and obligations?

We are concerned the resource required to respond to FOI requests may hinder timely responses to Subject Access Requests. SARs require significant staff time to gather data and redact personal information. Individuals and families may be negatively impacted by resource being directed elsewhere if FOISA is extended. FOI requests by commercial organisations may take away resources from people who access social care.

We are unaware of any additional transparency the FOISA extension would provide which is not already covered by existing reporting demands, inspections, information given to local authorities and SARs. We are in favour of transparency but with a purpose.

12. Do you have any comments on how the proposed extension might impact differently, whether positively or negatively, on different people in Scotland in relation to the following characteristics?

- Age.
- Disability (including both physical and mental impairments).
- Gender reassignment.
- Marriage and civil partnership (apply specifically to employment contexts).
- Pregnancy and maternity.
- Race.
- Religion or belief.
- Sex.
- Sexual orientation.

[please insert response here.....]

13. Do you have any comments on how the proposed extension might impact on the human rights of people in Scotland or beyond?

We do not see any positive impact of the proposed extension on the realisation of human rights of people in Scotland or elsewhere. Transparency in relation to care services is already provided through the Care Inspectorate and information shared by providers with local authorities, who are themselves subject to FOISA. Supported people cannot access their own personal data through FOI requests, as set out in section 38(1)(a) of FOISA. Third party personal data is also exempt from disclosure under three broad conditions set out in section 38(1)(b). However, an individual can already access their own personal data through Subject

Access Requests. We are concerned the proposed extension would be an additional burden on providers without offering additional transparency.

We also note that an additional and under-resourced focus on FOI requests could necessitate the shifting of resources away from frontline or other support and, in so doing, have a harmful effect on supported people's right to achieve the highest possible standard of physical and mental health.

14. Do you have any comments on how the proposed extension might impact individuals affected by socio-economic disadvantage?

[please insert response here.....]