



Extension of FOI to care home and 'care at home' services

Response to Scottish Government consultation

2 April 2026

Consultation questions

- 1. Do you agree that the Freedom of Information (Scotland) Act 2002 (FOISA) should be extended, where possible, to private and third sector (charity and not-for-profit organisation) run care homes?**

Yes

The extension of Scotland's FOI Act to private and third sector care homes is both much-needed and long overdue. The coverage of such services was previously recommended by my predecessor in 2019 when my office responded to a [previous Scottish Government consultation on the extension of Scotland's FOI law](#). In that response, it was noted that these organisations carry out essential public functions for the collective benefit of the Scottish public, and significantly impact on the quality of life, health and life expectancy of the people that use them - along with their carers, relatives and dependents. Our earlier consultation response also provided examples of the substantial public funds being spent across Scotland to support the delivery of such services. It is essential, therefore, that such services are provided to as high a standard as possible and in an open and transparent manner, to help ensure that the care and well-being of service users is of paramount importance in all activity.

Unfortunately, in the period since our 2019 submission, numerous examples have emerged of circumstances where services have fallen short of both expected standards and public expectations.

This was perhaps most starkly felt during the pandemic, where serious concerns were raised about a wide range of issues - including standards of care, resident wellbeing, infection testing, the recording and reporting of infection (and fatality) rates, staff awareness and training, the availability of PPE equipment, and the openness and transparency of organisations in response to these issues.

Examples of transparency challenges during the pandemic have been regularly and repeatedly reported in the press. Examples include:

- [Tayside care home provider accused of lacking transparency after refusing to release information regarding deaths at facilities](#) (The Courier, 2 May 2020)
- [Renewed calls for transparency over Covid-19 care home deaths](#) (The Press and Journal, 20 May 2020)
- [‘Serious concerns’ over Covid response of some care homes](#) (STV, 11 June 2020)
- [‘Bereaved families want and deserve answers’: Lack of clarity on Fife care home Covid-19 cases ‘baffling’](#) (The Courier, 7 November 2020)
- [Elderly care home residents ‘neglected and left to starve’](#) (The Herald, 25 October 2023)

In short, the pandemic highlighted both the importance of these services being as open and transparent as possible, and the extent to which the current system has repeatedly fallen short. It is absolutely vital that the learning from this period is acted upon and not lost.

In the period since the pandemic, concerns around the transparency of such services have continued to surface. My office, for example, has periodically been contacted by carers to express their frustration about failures to access even the most basic information on care provision. Indeed, some of these examples have informed my response to question 9 of this consultation.

We also continue to see examples of ongoing challenges reported in the national and local press, including:

- [Constance Care apologise after Care Inspectorate uphold nine complaints](#) (The Herald, 7 May 2021)

Or, from as recently as last weekend, a report in the Guardian which highlighted that, across the UK, whistleblowing charity Compassion in Care was, at any one time, “helping between 200 and 300 employees at homes where they were worried about the quality of care”:

- [The great care home cash grab: how private equity turned vulnerable elderly people into human ATMs](#) (The Guardian, 28 March 2026)

[Care Inspectorate data](#) also reports that, since 2019 when my office made our earlier submission calling for providers to be covered, 32,903 complaints about care services in Scotland have been made to the Inspectorate. Of those, 48% of complaints concerned care home services, while 9% concerned ‘care at home’ services. The Inspectorate also notes that, during 2024/25, when complaints proceeded to an investigation, 70% of those complaints were upheld.

It may sometimes be argued by organisations that designation under FOI is not required to ensure transparency, as a result of the reporting and inspection requirements that

organisations face. However, it must be remembered that these two requirements are not equivalent, with reporting requirements rarely enabling access to all of the information that an individual may seek access to.

Information which is reported to a regulator or which is held by a contracting public body will typically be high-level information relating to expected standards, as opposed to detailed, granular, information on the day-to-day provision of services. If, for example, a person is concerned about the levels of staffing in a relative's care home on a given day, or the cleanliness of its facilities, it's possible that information may be available on how many staff *should* be on shift at a particular point in time, or how frequently it *should* be cleaned under the terms of a contract agreement. However, accurate and reliable information on the *actual* service provision at any point in time will generally only be available from a service provider directly - and can only be made truly accessible through designation under FOI.

As such, a requester will commonly be frustrated in their efforts to scrutinise the actual quality and standard of care offered in circumstances where things go wrong.

Where service failures do occur, an initial instinct within some organisations can sometimes be to resist transparency, e.g. by presenting information in ways that may perhaps minimise the culpability of the organisation, or seeking to withhold or conceal information that may not show its actions in the best light, or may cause embarrassment or reputational harm. Indeed, there are examples of this in the news stories referenced above.

Direct designation under FOI dampens such instincts, bringing both strong incentives for organisations to act transparently, and real-world consequences if they fail to do so.

FOI can also help to engender a cultural shift towards openness and transparency within organisations, with the transparency standards brought through FOI acting as an important check on corruption or malpractice. In this way, staff and services can be incentivised towards good practice as a result of the risks attached to the exposure of practice that falls short.

Coverage under FOI can also help to improve and enhance the relationship with service users. 77% of respondents to our [2022 survey of FOI staff](#) reported that FOI makes their organisation more open and accountable, while 90% of respondents to our latest - and soon-to-be-published - public awareness survey reported that they would be more likely to trust an organisation that publishes a lot of information about its work.

Finally, and as noted in our response to Question 13 below, designation of care (and 'care at home') services under FOI would go some way towards helping the Scottish Government achieve its Equality and Human Rights Mainstreaming Strategy, where the role of transparency and accountability in supporting human rights and addressing inequality is clearly recognised.

It is my view, therefore, that the extension of FOI to care (and 'care at home') services is an essential, vital and long-overdue step which would serve only to protect, safeguard and strengthen the rights of some of the most vulnerable members of our society.

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

As with care home services, 'care at home' services also provide a vital and essential public service on behalf of some of the most vulnerable members of society and should likewise be subject to the scrutiny, transparency and accountability that designation under Scotland's FOI Act would bring. The points I have made in relation to care homes in this response are equally applicable to 'care at home' services, and I see no need to draw a distinction between them in this regard.

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.**

Option A.

The introduction of a 'gateway' criteria for extension would, in and of itself, create additional challenges and add complexity to FOI designation. This would lead to a situation which is complex and unclear for all parties, including service providers, service users and the wider public. For this reason, and alongside the clear public interest in ensuring that services that provide care to the vulnerable are as open and transparent as possible (with appropriate limits), we would strongly caution against this approach.

Extending coverage only to certain funding models would create inequalities in access to information, while a consistent legal framework ensures that the extent and effect of FOI coverage is clear for all stakeholders.

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

5. Are there any issues, opportunities or challenges specific to children and young people's services which require to be considered?

Care home and 'care at home' services that are provided to young people are clearly essential public services, with the vulnerable nature of many of the users of these services mirroring that of those in receipt of services during later stages of life. There is, therefore, a substantial - and equivalent - public interest in ensuring such services are delivered in as open and accountable a manner as possible. The quality of care provided to service users should clearly and fundamentally be at the heart of all activity, and service users and those that support them should have a right to query, scrutinise and hold organisations to account in circumstances where concerns arise.

Excluding such services from any order would simply create fresh inequalities in access to information, creating a situation where some key services provided to vulnerable members of society are not subject to scrutiny through FOI, while similar services provided to people at a later stage of life are. Such a position would be irrational, inequitable and unsustainable.

Given that children and young people are themselves rights-holders (and that their parents/guardians also exercise rights on their behalf), placing these services within the scope of FOI would support transparency and accountability in matters which impact on wellbeing and development, while also preventing the inevitable inequalities that would arise from a 'two-tier' system of rights.

The designation of all related services would also, of course, provide clarity for the public around which services are covered by FOI, who they can request information from, and what they can ask for.

In considering the coverage of care services provided to children and young people, the consultation also raises questions relating to the size of organisations, and the impact of FOI on smaller organisations. The Commissioner's view in relation to this aspect of designation is discussed in response to question 6 below.

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?

No

Do you have any other comments on the challenges or opportunities that might come from extending FOISA to smaller providers?

It is the Commissioner's experience that the volume of information requests received by an organisation will broadly be proportionate to the size of that organisation and their public profile.

This general trend can clearly be seen in the FOI statistics that are submitted to the Commissioner by those bodies which are currently covered by FOI law.

For example, of the 494 bodies submitting statistical data during 2024-25, around one-fifth (105 bodies) reported receiving no FOI requests over that year, while just under half (46%) reported receiving 6 requests or fewer – that is, no more than one request every two months.

These were typically bodies which were smaller in size and with a low public profile. This included cultural and leisure trusts, social landlords and their subsidiaries, joint boards, independent special schools and secure accommodation providers.

At the other end of the scale, those bodies that reported a high volume of requests were typically significantly larger organisations with a substantially higher public profile. This included, for example, the Scottish Government and Police Scotland, along with local authorities and regional NHS Boards.

It is generally the case therefore that smaller organisations with a lower profile can expect to receive significantly fewer requests. While there will be occasional outliers to this trend, these will typically occur in circumstances where an organisation has, for example, suffered a significant service failure, or where it is involved in activity which is of interest among service users and/or the wider community. This might include, for example, a new planning development or, as we have seen in the case of the social housing sector, reviews of the charges that service users face. Such circumstances will, of course, be those where the transparency and accountability of processes and practice will be of vital importance, and service users and the wider public may have a real need to ask questions, understand actions and seek reassurance.

We also acknowledge, however, that the duties that arise from FOI designation are not solely restricted to responding to requests, and FOI also places other obligations on organisations. This includes the duty to publish information proactively and responsibilities relating to the training of staff to ensure FOI obligations are appropriately met.

Smaller organisations will, however, inevitably hold less information than their larger counterparts, so tasks relating to the proactive publication of information will likewise generally be proportionate. With regards to staff training, we would anticipate that this will typically be embedded alongside the general training which will already be delivered by organisations. It may also be appropriate to follow the model used by the social housing sector, with sector-wide training events held in the run up to designation, followed by subsequent training events periodically being organised to provide refresher training for staff – often provided on a ‘shared’ basis.

The Scottish Information Commissioner would also, of course, aim to work closely with relevant umbrella bodies to support the development and delivery of appropriate training and resources in the run up to designation.

It should also be noted that a system which contains a gateway which designates organisations on the basis of size will inevitably create fresh inequalities, where those in receipt of essential and equivalent care services from smaller organisations would be denied rights which are afforded to others.

An approach which standardises access to information rights across all related services will inevitably be the only way to ensure that fair and equitable access rights are available to all service users and those who support them.

Finally, it should also be noted that all relevant organisations being considered for designation, regardless of size, will currently be subject to separate rights and responsibilities under data protection law. The impact of data protection on relevant organisations will also typically be proportionate to the size of the organisation, and organisations will, regardless of size, already have staff who have responsibility for this aspect of information governance, providing relevant training and guidance to colleagues, as appropriate. We would expect,

therefore, that the steps required to accommodate FOI would not be as significant as some may anticipate.

Our office would also, of course, always be on hand to provide relevant advice, guidance and support.

7. What would be most helpful to assist care providers in discharging their obligations under FOISA?

To assist care providers in meeting their obligations under FOI law, it would be helpful to ensure that the scope of designation is clear and well-defined, avoiding the ambiguity or inequality that may arise from an approach which creates different 'tiers' of designation based on the funding, size, or model of service delivery.

Sector-specific guidance and training in the run up to designation will, of course, be essential, and the Commissioner would hope to work with relevant representative bodies on the development and delivery of appropriate training and guidance. Where possible, this would include practical examples relevant to care settings, and support for providers of all sizes to enable them to implement their duties confidently and effectively.

Relevant training and support would also emphasise the important of embedding FOI into governance arrangements from the outset, drawing on the wide range of experience and learning gathered in the 20 years since FOI laws were introduced. As noted above, appropriate alignment with existing data protection frameworks will also be important, given providers' existing experience of data protection compliance.

In the run up to the successful designation of registered social landlords in 2019, the Commissioner worked with representative bodies on the development and delivery of appropriate training for staff within that sector. Our subsequent survey report, [Registered Social Landlords and FOI: One Year On](#), found that 98% of organisations reported that they were either 'fairly' or 'very' prepared to meet their FOI duties by the designation date, while 97% reported they were confident in their ability to respond to requests.

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?

A key element of supporting people to use their rights under FOI would be to ensure that those organisations that are covered by FOI law have findable, understandable and accessible guidance on using FOI available at all customer-service or service user 'entry points' for that organisation, whether it be on a website, at a front desk, in a newsletter, or through staff awareness and guidance. Service-users and their families should be made aware of their rights in circumstances where it may be helpful for them to use them, and the 'duty to advise and assist' that FOI law places on organisations would help ensure that staff provide appropriate guidance in relevant circumstances.

The Commissioner would also, of course, work to promote any designation under his general and ongoing responsibility to promote FOI rights to the public.

It would also be beneficial for bodies that support service-users and their carers to be made aware of any relevant designation, to ensure that appropriate information was available at these 'entry-points' also.

9. What categories of information relating to the work of care home and 'care at home' services would people be most likely to seek?

Experience suggests that people may seek a wide range of information under FOI, informed by their own specific circumstances, concerns and interests. Where concerns arise relating to an actual or perceived service failure, for example, requests may potentially seek access to information on:

- Levels of staffing, including levels of staffing at the time when a particular incident may have occurred, or information on actual staffing levels compared to scheduled or contracted levels.
- Details of the number and nature of any related incidents that may have arisen – i.e. helping to answer questions about whether a particular incident was a 'one-off', or whether it may indicate a more systemic issue, or otherwise be a cause for wider concern.
- Information on the logging of incidents within a service, including e.g. incidents relating to safeguarding, accidents, falls or assaults, or concerns relating to sexual or racial harassment.
- Information on internal policies and procedures, including anti-abuse policies, safe working policies, medication dispensing policies, health and safety policies, etc.
- Information on the training and induction to be provided to staff, and whether appropriate training and induction has been carried out.
- Information on the standards, quality and conditions of care, or data about standards and quality measures applied within the service.
- The condition of facilities, including monitoring procedures and evaluation outcomes.
- Information related to complaints, safeguarding incidents or issues raised by relatives or carers.
- The outcomes of internal reviews and inspections.
- Documentation setting out how decisions on particular issues were arrived at.
- Information on risk management practices.
- Environmental information relating to e.g. heating, lighting, air quality, water quality, cleanliness, building conditions or plans for new developments.

Under FOI, organisations would also, of course, be required to publish a variety of related information proactively, including information about planning, decision-making, spending, procurement, policies, procedures and performance.

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

Regulatory transparency obligations are, of course, an accepted and expected element of public service provision. Designation under FOI provides a route through which bodies can be held to direct account by their service-users, on the specific issues that matter to them. Designation would, therefore, provide a platform for a stronger, more open and more trusted dialogue between service users and providers in some circumstances, while also providing a route through which practice which falls short can be highlighted, scrutinised and addressed in others. Designation therefore provides benefits for both service users and the organisations themselves.

Available data suggests that, even following FOI designation, service-users continue to make requests only in circumstances where they need to do so.

Our [Registered Social Landlords: One Year On survey](#), for example, found that most organisations did not report a large increase in the number of requests they received from people seeking information following FOI designation, with 81% of respondents reporting that request volumes had either increased a little, or stayed the same. In addition, 82% of respondents reported receiving 12 requests or fewer across the first year of designation – i.e. no more than one request a month.

As noted in the consultation document, it is also the case that fewer than 1% of FOI requests subsequently go on to be the subject of appeals to the Commissioner. For the registered social landlord sector, the Commissioner has received fewer than 40 valid appeals in relation to social landlords over the six years following designation.

Taking the experience of previous designations into account, we therefore anticipate that the business and regulatory impact of extending FOI to the sector is likely to be manageable and proportionate, while also bringing significant benefits for both services and service-users.

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

As noted earlier, the organisations currently being considered for FOI extension will already be subject to data protection law in relation to the personal data they hold. We do not anticipate that FOI designation would impact negatively on the fulfilment of data protection rights. Indeed, all bodies currently covered by FOI law are also subject to data protection law, and we are not aware of any significant concerns raised by relevant bodies of negative data protection consequences arising from FOI designation.

Indeed, FOI rights are designed to sit alongside data protection rights, providing individuals with a wider right of access to general information beyond that which relates to their own personal circumstances. These two sets of rights will, therefore, be complimentary in many circumstances.

Data protection rights, for example, give an individual a right to information relating to their own specific care and circumstances, while a complimentary right of access to general information under FOI would enable those circumstances to be directly compared against the established standard, or allow individuals to explore how common - or uncommon - their own experiences have been. This would consequently support them to take appropriate action where concerns are identified.

An organisation's existing experience with data protection frameworks will, we anticipate, have a positive impact on FOI designation, with organisations having the ability to capitalise on their pre-existing information-handling infrastructure, adapting this, where appropriate, to meet their FOI obligations.

As the FOI Act's statutory duties sit alongside data protection obligations, good practice in data protection can support good practice in FOI request handling - and vice versa.

A clear and consistent approach to the interaction between FOI and data protection obligations will, however, be essential for organisations. This should, of course, be addressed through relevant training and guidance.

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 any of the protected characteristics?

Extending FOI to care home and 'care at home' providers would clearly have a positive impact for those groups who disproportionately rely on these services - including older people and those with disabilities. Designation would support greater transparency and accountability within the services that affect them, while also giving them – and their carers - rights to access information where concerns arise.

However, inconsistent coverage based on funding or organisational structure would result in inequitable information rights for individuals with the same

protected characteristics, depending on who provides the service. It is our view that ensuring a consistent application of FOI across providers is therefore essential to prevent the development of further inequalities.

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

The extension of FOI would enhance the public's right of access to information about the vital public services that are provided on their behalf.

Extending FOI to care home and 'care at home' providers would strengthen the rights available to vulnerable people and their carers, enabling them to seek and receive reliable information about the essential services on which they rely.

The Scottish Government's own 2025-2030 [Equality and Human Rights Mainstreaming Strategy](#) clearly recognises the value of transparency and accountability in supporting human rights and addressing inequality. Indeed, a key objective of the strategy relates to embedding and enhancing transparency within public services to ensure it is "easier for those affected by decisions to hold Scottish Government and the wider public sector to account". The strategy also correctly highlighting that "Accountability and transparency are critical for ensuring good governance and essential for building and maintaining public trust..."

We would, of course, wholeheartedly support this principle, and note that the extension of FOI rights and responsibilities to providers of care and care-at-home services would enable the Scottish Government to take urgent, direct and impactful action in this area. This would, in turn, have a real and positive impact for some of the most vulnerable members of society and those who support them.

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

Individuals affected by socio-economic disadvantage may, in some cases, be more reliant on publicly funded care and support services. Extending FOI to providers delivering those services will therefore have a positive impact by enhancing transparency and accountability in areas that directly affect them, giving those individuals (or those who support them), the power to hold service providers to account in circumstances where it is appropriate to do so.

For people on low incomes or with fewer resources this matters because they often have less power to hold service providers to account in other ways.

Consistent coverage across different service models will also be important to ensure equal rights of access to all those in receipt of such services. Clear and accessible guidance in plain-English will also help ensure that individuals facing practical barriers are appropriately supported to exercise their rights effectively.

David Hamilton
Scottish Information Commissioner

Contact us

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@foi.scot

www.foi.scot

© Scottish Information Commissioner 2026

You may use and re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>