



Scottish Information  
Commissioner

It's Public Knowledge

Our Ref: INV1004

Parental Involvement Bill Consultation  
Scottish Executive Education Department  
Schools Division  
Area 2-B North  
Victoria Quay  
EDINBURGH  
EH6 6QQ

22 March 2005

Dear Sirs

### **MAKING THE DIFFERENCE – IMPROVING PARENTS' INVOLVEMENT IN SCHOOLS**

I refer to your letter of 1 March 2005. Thank you for giving me the opportunity to comment on the consultation paper.

As Scottish Information Commissioner, I am responsible for enforcing and promoting the Freedom of Information (Scotland) Act 2002 (FOISA). While the consultation paper covers a number of different topics, given my role as Commissioner, I am mainly interested in sections 9(1) and 10 of the Bill, which relate to the right of parent forums and parents to make reasonable requests to schools for information. I will therefore restrict my comments to those two areas.

Section 9(1) of the Bill states:

“An education authority are to give advice and information to a parent forum established for a school in their area when the forum reasonably requests it from them on any matter.”

Question 17 of the consultation paper asks whether this is an appropriate obligation to place on education authorities in relation to their working with parent forums.

While I do not wish to comment on the provision of advice to forums (except insofar as that advice relates to FOISA – see my comments below), it is important to note that any person (and this will include parent forums) already has a right under FOISA to obtain information held by local authorities. As a result, a right already exists to access information from education authorities and from local authority run schools.

FOISA gives local authorities 20 working days to respond to requests for information. If the information is withheld or the request is ignored, the applicant can ask the local authority to review the way in which it dealt with the request. If the authority continues to withhold the information or to ignore the request, the applicant can refer the case to me. I will investigate the way in which the request for information has been dealt with and will, where appropriate, issue a legally binding decision to force the authority to release the information.

It is important that parent forums (and, indeed, parents) are made aware that they do have existing rights under FOISA. Indeed, FOISA imposes a duty on local authorities to provide advice and assistance to people making requests for information to ensure that they know how to use their rights under FOISA. Given these existing rights, I would be concerned at the introduction of new rights under the Bill if they were to conflict with the rights under FOISA. For

example, I note the Bill says that requests must be "reasonable". There is no reasonableness test as such set down in FOISA, although information can be withheld under a number of exemptions and information need not be provided if the cost to the authority will exceed £600. I also note that no timescales have been set down for responding to requests under the Bill. As mentioned above, local authorities currently have 20 working days to reply to requests for information under FOISA – regardless of whether a request is made during the school holidays. Finally, I note that no systems for enforcing these rights have been set out in the Bill.

I recognise that there are certain types of information which cannot be accessed under FOISA, e.g. personal information. However, given the existence of the Data Protection Act 1998 (the DPA), which is based on a European Directive, the types of information which parent forums can obtain from schools under the Bill is likely to be restricted in any event.

Section 10 of the Bill states:

"(1) An education authority are to give advice and information to any parent of a pupil in attendance at a public school in their area when that parent reasonably requests it from them on any matter relating to the education provided to that pupil.

(2) An education authority are to take such steps as appear to them to be appropriate to ensure that the headteacher and staff of the school –

- (a) are available to give such advice and information to the parent in question, and
- (b) in giving it act in a manner consistent with the authority's duties under this Act."

Question 19 of the consultation paper asks whether I agree with the proposed duty on education authorities to provide advice and information to individual parents on request, on matters relating to the education of their children.

I do not wish to repeat the comments I made above on the proposed duty on education authorities to provide advice on request. However, as I have already mentioned, a general right to obtain information is already available to everyone, including parents, under FOISA and this right is enforceable by me. Although the information which parents are entitled to obtain under FOISA will be limited to non-personal information about their children (e.g. school exam results and school policies), parents already have additional rights to information under legislation such as the DPA, the Pupils' Educational Records (Scotland) Regulations 2003 and the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002. These existing rights to information should be taken into account when considering the proposed new right under section 10 and when considering whether this additional right is required.

You may wish to contact Richard Thomas, Information Commissioner, for his comments on the proposals as he is responsible for regulating the DPA throughout the UK.

To summarise, both sections 9(1) and 10 aim to introduce a right to information which already exists under FOISA (I presume that the right to access personal data will continue to be dealt with under the DPA and associated regulations). This right is enforceable by me. While it is true that the level of public knowledge of this right is currently low (FOISA only came into force on 1 January 2005), a public promotion campaign is currently underway and it is likely that public knowledge of the rights contained in FOISA will become more widely known with the passage of time.

All Scottish public authorities (including education authorities) will have procedures in place to deal with requests under FOISA. All requests for information (except verbal requests) should



be treated as formal requests under FOISA. This means that even if parents were given additional rights under the Bill, the requests would still have to be treated by local authorities as requests under FOISA, unless steps were taken to amend FOISA. I would not support any move to amend FOISA in this way.

The final point I would like to make is in relation to the definition of "public school" (see section 10(1) of the Bill). I am not clear whether "public schools" includes privately run schools or is limited to local authority run schools. The reason this is relevant is that privately run schools are not subject to FOISA and so the comments I have made about existing rights to information under FOISA do not apply to information held by private schools.

I hope these comments are of some assistance to you. If you would like further clarification of any of the points raised, please contact Margaret Keyse, Head of Investigations on 01334 464610.

I have completed and enclosed the response information form which forms part of the consultation document.

Yours faithfully

PP **Kevin Dunion**  
**Scottish Information Commissioner**

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# respondee information form

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name: KEVIN DUNN, SCOTTISH INFORMATION COMMISSIONER

Postal Address: OFFICE OF THE SCOTTISH INFORMATION COMMISSIONER

KINRURN CASTLE, DOUBLEDYKES ROAD,  
ST ANDREWS, FIFE KY16 9DS

Consultation title: **Making the difference - Improving parents' involvement in schools**

**1. Are you responding as:** (please tick one box)

(a) an individual?

(go to 2a/b)

(b) **on behalf of** a group or organisation?

(go to 2c)

**2a. INDIVIDUALS:**

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

Yes (go to 2b below)

No, not at all

**2b. Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address



**2c. ON BEHALF OF GROUPS OR ORGANISATIONS:**

Your name and address as respondees **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

Yes No **3. SHARING RESPONSES/FUTURE ENGAGEMENT**

We will share your response internally with other SE 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 the SE to contact you again in the future in relation to this consultation response?

Yes No