



### RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

#### 1. Name/Organisation

Organisation Name

SCOTTISH LEGAL COMPLAINTS COMMISSION

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

AGNEW

Forename

ROSEMARY

#### 2. Postal Address

10-14 WATERLOO PLACE

EDINBURGH

Postcode EH13EG Phone 0131 528 5157 Email rosemary.agnew@scottishlegalcomplaints.org-uk

#### 3. Permissions

I am responding as...

Individual  / Group/Organisation  Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?  
Please tick as appropriate  Yes  No
- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis  
Please tick ONE of the following boxes  
Yes, make my response, name and address all available   
or  
Yes, make my response available, but not my name and address   
or  
Yes, make my response and name available, but not my address
- (c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).  
Are you content for your response to be made available?  
Please tick as appropriate  Yes  No
- (d) 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?  
Please tick as appropriate  Yes  No

## **Annex E: List of Consultation Questions**

### **Q1 Do you agree that a public record is one that is created or received by a publicly funded authority, or do you think that the 'public' status of a record is determined by the information that it contains?**

The public status of a record should be determined by the information it contains. The reason for this being that increasingly there are non-publicly funded organisations (such as the SLCC) or 'third sector/voluntary' organisations involved in delivering public services.

A more appropriate test might be an assessment tool based on a public interest/impact assessment and applied to information held.

### **Q2 Do you have any comments on the inclusion of those bodies listed in Annex D?**

The SLCC is not publicly funded and our governing legislation prohibits disclosure of much of the information we hold. We also hold a lot of private information in relation to legal practitioners and their clients. However, the trend and statistical information we hold would have a value over time and is of public and social interest. There may well be other organisations in similar positions.

What this highlights is a need to define public information rather than base public records on the way organisations are funded.

### **Q3 Do you believe the proposals should cover more or fewer authorities?**

I refer back to my previous answer. The issue should be one of the information held rather than who holds it. The drawback with a large number of authorities is the cost of enforcing and monitoring compliance. Careful thought needs to be given to costs and benefits and the proportionality of action required.

Smaller organisations such as us already bear a disproportionate burden in relation to funding other public functions such as FOI and other returns to SG. Is there scope to make some of this voluntary or subject to codes of practice rather than rules.

### **Q4 Do you have any further comments on the proposals outlined in this section?**

No

### **Q5 Do you agree that the definition of a public record should focus on the informational content rather than the physical format of the record?**

Yes – see answer to question 1.

### **Q6 Are there other issues that need to be considered in relation to technology and future-proofing?**

With regard to technology, care would need to be taken to ensure consistency of storage media to ensure that information remains retrievable and accessible.

### **Q7 Do you agree that when voluntary or private organisations deliver public services, using public money, records relating to carrying out that work should be considered to be public records?**

Not necessarily. It is the nature of the information and service that should drive the requirement for public records not the source of funding. The source of funding may be a factor or trigger point for closer examination but should not be the only factor. There are some organisations, eg those dealing with Children or Vulnerable Adults which should be regarded as holding public records but that should be in relation to nature of specific information not a blanket requirement.

**Q8 Do you have any further comments relating to records of voluntary and private organisations delivering public services?**

Yes – you need to define what a public service actually is. Is it a service provided to the public on behalf of Government, is it a service that is of public interest and so on?

**Q9 Do you agree that the Keeper should be responsible for producing and publishing a model records management plan to guide public authorities?**

Yes but this should not be mandatory and should be more of a framework that allows an assessment of whether records are public records and should be scalable to meet the needs of different sizes of organisation. Care would also need to be taken that it did not promote behaviours that were inconsistent with FOISA, DPA or organisation-specific legislation.

**Q10 Do you agree that public authorities should be required to produce records management plans, following the Keeper's model and with the Keeper's approval, within a certain time?**

No. It is the principles of good record keeping that should be followed, tailored to the needs of the organisation concerned. We are in danger of creating a new bureaucracy that the public ends up paying for. It would be more appropriate for the keeper to define the outputs required and to allow authorities to demonstrate how they are achieving those outputs.

**Q11 Should the proposals allow for the creation of generic records management plans by groups of public authorities rather than separate plans for each authority, where appropriate?**

Yes. This is likely to achieve greater consistency and spread costs.

**Q12 Do you agree that the existing duty on local authorities to make "proper arrangements" for their records would be adequately covered by the requirement to produce and implement records management plans to be approved by the Keeper under the new proposals? Please give an explanation.**

Difficult to say without seeing a plan. Perhaps the question should be how can plans be written to ensure they have 'proper arrangements'?

**Q13 Should public authorities who fail to produce a records management plan within the specified time or to an approved standard, or who fail to provide record keeping arrangements specified in the plan, be subject to civil sanctions? If so, what sanction do you consider would be appropriate?**

No.

**Q14 Should the Bill allow the Keeper to issue recommendations to achieve compliance to public authorities found to be in breach of the provisions?**

Yes but the legislation would need to make the status of these recommendations and the consequences of non-compliance very clear.

**Q15 Should the Bill allow the Keeper to publish the names and details of those public authorities found to be in breach of the provisions?**

Does it need to? If someone submitted a FOISA request the information might be releasable anyway. The question perhaps should be should the Bill prohibit release, except in the public interest?

**Q16 Do you consider that the Keeper should have an additional role to scrutinise public authorities in the management of their records and archives? If so, what should be the extent of that scrutiny?**

No – there is a danger a records keeping role turns into something different which adds costs but for which no discernable benefit has been identified.

**Q17 Should the Bill allow the Keeper to recognise or reward public authorities who are seen to adopt particularly successful records management practices? In what way might this be done?**

Recognition yes, reward no. The recognition should be reward enough. This could be done through the annual report.

**Q18 To what extent would a scrutiny and enforcement role for the Keeper enhance or otherwise change the nature of the relationship between the National Archives of Scotland and the creators and potential depositors of public records?**

Not clear from the information provided.

**Q19 Do you think there is a place for peer assessment, where public authorities are scrutinised by other authorities, either within or across individual sectors?**

The principles of peer assessment are good but who funds it? It might be better to communicate and share good practice with the aim of learning from each other rather than assessing and judging each other. Could this be built into a recognition scheme?

**Q20 Do you consider that lasting and measurable improvements could be made to existing poor record keeping practice without legislation or sanctions? If so please explain how.**

Yes.

Government can pass all the legislation it wants but it only makes a difference if enforced. The costs of producing and ensuring enforcement of a bill might be better invested in a more strategic way of sponsoring departments building in targets and the Keeper providing support and advice, seminars, conferences, on-line tools and so on.

**Q21 Do you agree that the proposed legislation should not be retrospective, and if not, are there reasons why it should be?**

Agree it should not be retrospective as the costs are likely to be too high for many organisations. It might also be difficult to achieve consistency if records have been kept in a variety of ways and to differing standards.

**Q22 Both Shaw and the Keeper found failings in record keeping across the public sector and considered that new legislation should extend beyond the looked after children sector. Do you agree, or do you consider that this legislation should be restricted to the looked after children sector?**

A balanced view has to be taken as to the benefits of extending the legislation and what is to be gained out of having such records. It might be easier to have a bill which allows a phased introduction that itself allows for a review of which sectors/organisations should be included.