

An open letter to Mr Graeme Dey, Minister for Parliamentary Business and Veterans; Co-Chair of the Open Government Partnership Steering Group

And for the kind attention of / Cc:

Kate Forbes, Cabinet Secretary for Finance

Aileen Campbell, Cabinet Secretary for Communities and Local Government

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17 April 2020

RE: Open Government in Scotland at the time of crisis induced by the Covid-19 pandemic

I am writing on behalf of Scotland's Open Government Civil Society Steering Group and network to set out our position on the current situation and to share some concerns and proposals raised by members as both government and civil society readjust to the pandemic.

The current crisis shines a light on the readiness and responsiveness of our systems, further challenging the fragile threads that hold our communities together. We are compelled to reflect on everything that has come to be accepted as the norm in our society, economy and environment.

We understand that some civil servants need to temporarily shift their focus to the important task of keeping Scotland safe. We have been in contact with open government commitment leads to discuss the situation and to understand where we can continue work and hold the space during this time.

It is vital that government and public bodies continue to demonstrate openness and transparency. Civil society is committed to continuing work with government and public bodies throughout this crisis and beyond to ensure that our communities are safe, informed, empowered and prepared. We welcome continuous dialogue about how that is best achieved and about the important role of civil society and the resources and support required in this endeavour.

We are plugged in to the actions and conversations happening in civil society and communities across Scotland. Through our everyday work, we have heard a range of concerns that are important to raise in the context of open government and COVID-19 now, though we will no doubt hear more over time.

We welcome a continued space for dialogue on open government, which involves ministerial presence, with a programme of steering group and commitment specific meetings continuing through virtual means.

We want to keep an open line of communication with the government so that we can continue sharing these concerns and working to find the answers and solutions that enable us to maintain a high level of openness and transparency throughout.

Delivery of Scotland's Open Government National Action Plan (2018-20)

We are aware that the Scottish Government have proposed to postpone the delivery of Scotland's Open Government National Action Plan (2018-20) until December 2020, thus extending the original deadline by 6 months. We understand this is in line with the [OGP Criteria and Standards Subcommittee Resolution issue for the COVID19 Pandemic](#). We support this proposal and consider it both sensible and necessary at this time.

We maintain a continued interest in addressing the systemic issues that hold back open government and progressing national outcomes in Scotland, but we appreciate that right now the public sector and civil society needs to respond and prioritise efforts where they are most needed to ensure our communities are safe and well.

When the time is right, Scotland should learn from this experience and 'Build Back Better' the infrastructure and systems that are meant to inform, connect and support us all, at this time or any other. We hope that we will continue with a refreshed commitment to open government.

Open government in times of crisis

We understand that these are unprecedented times and that swift action is required. We also feel that, as a new movement aiming to build trust in government and in civil society, it is possible for continuous open government to be undermined by rash and unilateral actions.

It is important that the wider public provided with the information required to understand the decisions taken, and believe that standards of openness and transparency should not take a back seat in a crisis, especially when people may be looking to the government more often for answers and reassurance.

We enter the open government partnership in the spirit of honesty and collaboration, but civil society does also play an important role across the world in monitoring government actions and highlighting where they fall short. In the letter, we have taken the opportunity to highlight some current areas of concern in Scotland and where we believe it would be better to work in partnership, transparently and in the open. They are related to:

- Open data and the impact of COVID-19
- Emergency legislation and human rights
- Freedom of information restrictions
- Transparency of decision making

Like many, we welcomed the First Minister's pledge for the Scottish Government to be as open and transparent with the public as possible. We believe that civil society has a strong role to play alongside government and public bodies in this endeavour.

Open data and the impact of COVID-19

We continue to advocate for the publication of government data proactively and in an accessible format. Open data is not solely about 'access', it is also about creation of information for use and re-use by citizens, designed to be accessible to everyone and made available not just different formats but in the equivalent of plain English. It is an act of inclusion.

For example, as it stands, we know that COVID-19 is a threat to people with 'underlying conditions' and frontline workers, labels which when translated in the reality of our local communities reveal that those more likely to be at risk are of any likely combination of:

- women, who make up nearly 70% of the health workforce, 85% of the care workforce as well, as main providers of unpaid care¹
- minority ethnic communities, who make up an unknown but high proportion of the care home workforce²
- families on low income, who live in cramped housing conditions with little recourse for self-isolation or luxury of outdoor exercise, who rely on foodbanks and are in precarious employment³
- elderly and disabled people, who not only rely heavily on caring services and care homes, but are also likely to be most left out due to digital exclusion from mainstream public health messages or major law and public policy changes such as the Coronavirus Bill⁴ or the introduction of the Care Act easements⁵ which concern them the most.

It is crucial that we are clear on who has been impacted and who is most at risk, in order for members of the public to make informed decisions and for civil society to respond accordingly. We have early noticed gaps in the publication of data and asked for them to be addressed further.

In response, Ian Watt (civil society lead for commitment 3) manually created an open data resource⁶ which has been picked up for re-use by the Roslin Institute Epidemiology, Economics and Risk Assessment Committee⁷, the Ferret⁸, DIGIT⁹ and features on the OGP Government Approaches to Covid19 website¹⁰. This has been done to address the gap in publication of government data, and to address a clear need by the data community.

¹ <https://www.oecd.org/coronavirus/en/>

² <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>

³ <https://lgiu.org/briefing/local-government-and-covid-19-issues-for-disadvantaged-groups/>

⁴ https://publications.parliament.uk/pa/bills/cbill/58-01/0122/cbill_2019-20210122_en_1.htm

⁵ [https://www.parliament.scot/S5_Bills/Coronavirus%20\(Scotland\)%20Bill/SPBill66S052020.pdf](https://www.parliament.scot/S5_Bills/Coronavirus%20(Scotland)%20Bill/SPBill66S052020.pdf)

⁶ <https://theferret.scot/coronavirus-cases-in-scotland/>

⁷ <https://digit.fyi/open-data-being-used-to-help-track-covid-19-in-scotland/>

⁸ <https://www.opengovpartnership.org/collecting-open-government-approaches-to-covid-19/>

⁹ <https://digit.fyi/open-data-being-used-to-help-track-covid-19-in-scotland/>

¹⁰ <https://www.opengovpartnership.org/collecting-open-government-approaches-to-covid-19/>

A recurring issue is that the Scottish Government continues to publish data in a format which suits its current organisational needs but is still not listening to the Open Data community. The right thing to do is for the Scottish Government to publish the basic data as open data in an accessible format. It would dispel early and systemically fears around confirmed or presumed deaths which have caused confusion and reduced trust and confidence.

We recognise the pressure felt by government colleagues and the challenge and complexity of producing statistics with accuracy and responsiveness when information gathering systems and processes are adjusting. We thank the statistics team at the Scottish Government for their arduous work and welcome that as of 16 April 2020, historical data is provided in addition to daily snapshots, and that a shift of perspective we have long pursued has received validation.

Beyond technicalities, we see this as a question of setting the policy, commitment, standards and protocols right at the very start, so that at times of pressure, generating data and practical applications for citizen use is not burdensome for civil servants or civil society.

Emergency legislation and human rights: Coronavirus Act 2020 and Coronavirus (Scotland) Bill 2020

In times of crisis, we understand that government may need to enact legislation that outlines a proportionate response to keep people safe. In response to COVID-19, the UK wide [Coronavirus Act 2020](#) and the [Coronavirus \(Scotland\) Act 2020](#) were enacted.

We recognise that the government needs to take steps to minimise risk to the public at this time, but we are also conscious that emergency legislation has human rights implications in a number of areas, including (but not limited to) the right to private and family life, freedom of assembly and the right to liberty. The [Scottish Human Rights Commission](#) have compiled a briefing on this matter.

We want Scotland to maintain its standing and best practice in human rights (including rights to information), the empowerment of civic spaces, and commitment to strengthening participatory democracy.

The impact on civic freedoms of COVID-19 measures are monitored openly across the world (e.g. International Center for Non-for-profit Law¹¹) and Scotland's response will be noticed.

As the Human Rights Consortium Scotland¹² describes, there can be derogation of human rights in times of national crises. Therefore, it is important that Scotland adheres to the following principles that any decisions and actions taken at this time:

- Must be lawful and that law must be accessible and transparent
- Must be necessary: closely related to the desired outcome
- Must be proportionate: solely what is required and no more

¹¹ <https://www.icnl.org/covid19tracker>

¹² <https://hrcscotland.org/2020/03/24/corona-virus-and-human-rights/>

- Must contain non-discrimination throughout
- Must be time limited.

We ask that a commitment to these principles is stated openly and repeatedly, and that the Scottish Government approach matters that may temporarily restrict human rights in order to prevent loss of life as a result of COVID-19 with full openness and transparency. We also request that civil society are involved in discussion prior to decisions that impact communities being taken, including those related to the extension of timelines or scope of emergency legislation.

Already, examples have surfaced in which operating behind closed doors have led to disproportionate measures or detrimental decision making, such as discrepancies in reporting cases and deaths from COVID-19, the lack of transparency in procurement of Personal Protective Equipment (PPE) and the potential early opportunities missed by the UK Government¹³.

With the restrictions on freedom of assembly, many planned opportunities for community engagement and participatory democracy have had to be postponed. Whilst it is possible to move some of these interactions online and to continue processes by other means, there are many challenges, including digital exclusion (the last [Scottish Household Survey](#) found that 13% of households have no internet access and a significant number more do not have basic digital skills).

We are encouraged by collaborative efforts to get people connected and supported at this time, including the establishment of a [Wellbeing Fund](#), the [No One Left Behind digital programme](#), and community-led mutual aid.

We are interested in reading a comprehensive overview of the impact of COVID-19 on community empowerment and public involvement in decision making, including the status of Democracy Matters, initiatives under the [Community Empowerment Act \(2015\)](#) and digital engagement statistics. We hope to see public involvement in decision making continue where possible during this time, enabled by digital options, and a commitment that other activities will resume as planned when restrictions are lifted.

We hope that the Scottish Government maintains the commitment to open policy making and participation, with thought given to the active role that the people of Scotland can play in shaping our effort to 'Build Back Better'. It's important that there is space to discuss the big issues and that existing processes continue, including the [Citizens' Assembly of Scotland](#) and plans for the upcoming climate assembly.

Freedom of Information (FOI) restrictions

Information rights are vital and the restriction of scrutiny and transparency during a national emergency is deeply troubling. The changes to Freedom of Information (FOI) are not consistent with the commitment to open government and present challenges for citizens, including the most vulnerable, that are most in need of protection

¹³ <https://www.theguardian.com/world/2020/apr/13/uk-missed-three-chances-to-join-eu-scheme-to-bulk-buy-ppe>

through the right to scrutiny.

We understand that balancing public interest and practicability for government will be challenging at this time, but we do not agree with the basis by which this decision was taken and do not believe that it is taken in the spirit of open government. Ultimately, it does a disservice to our communities.

Time restrictions on FoI requests in the Coronavirus (Scotland) Act 2020 have been highlighted in the press and discussed in detail by the Campaign for Freedom of Information Scotland¹⁴. Concerns are also shared by the Scottish Information Commissioner¹⁵, particularly around proposals of extending the response timescale from 60 to 100 working days. We agree that this will have done little to rebuild trust in the communities we serve.

We welcome the commitment from the Care Inspectorate to publish its COVID-19 data routinely¹⁶, rather than as a result of FoI requests. They have demonstrated the feasibility of working to a new default and standard of openness and the proactive publication of data.

We ask that, as we rebuild, that this approach becomes the new normal, based on an understanding that government and public body data has intrinsic value for its citizens. This would systematically avoid time and human efforts spent in validating the merit of requests or responding under pressure.

Similarly, we heard early concerns from the National Union of Journalists about freedom of movement of journalists in Scotland and welcome that Police Scotland is adopting the NPCC media guidance and that Fiona Hyslop MSP, on behalf of the Scottish government is expecting public authorities to allow journalists reporting on the current crisis to have the freedom of movement.

We ask that citizen's interests and views are put at the heart of policy decisions which involve interpretation of what constitutes 'meaningful information' and 'key working'.

Openness, leadership and the benefits of scrutiny

We need ongoing scrutiny of government even while Parliament must operate differently. It ought to be self-evident why scrutiny should be strengthened and not weakened in a time of crisis. We commend examples of politicians putting divisions aside, such as Anas Sarwar's and Murdo Fraser's proposals for an emergency Scottish Parliament committee overseeing the response to the coronavirus outbreak¹⁷, which were supported by the Scottish Government.

We hope to see constructive cross-party work continue and have been enthused by examples from elsewhere, such as in Wales where opposition parties have been

¹⁴ <https://www.cfois.scot/wp-content/uploads/2020/04/Press-Release-1st-April-web.docx>

¹⁵ <http://itspublicknowledge.info/home/News/20200401.aspx>

¹⁶ <https://www.thescottishsun.co.uk/news/5490762/coronavirus-scotland-two-resident-die-shetland-care-home/>

¹⁷ <https://www.eveningexpress.co.uk/news/scotland/scottish-government-supports-coronavirus-committee-to-oversee-crisis-response/>

invited into the government's core group for the duration¹⁸, and in New Zealand, where Parliament has set up a select committee¹⁹ with an opposition majority that is tasked with scrutinising the government's COVID-19 response.

On a side note, we could not help but notice there a different class of political leadership, with the New Zealand Prime Minister Jacinda Ardern, her ministers and public service chief executives taking a 20% pay cut²⁰ for the next six months in solidarity with their citizens. Meanwhile, UK MPs have been offered an additional £10,000 each by the Independent Parliamentary Standards Authority (IPSA), to the distaste of many²¹. It is in times like this that satirists find themselves having a tough job and our task of rebuilding trust in institutions becoming even tougher.

In Scotland, we have witnessed in civil society considerable leadership by Dr Donald Macaskill, CEO of Scottish Care, who early in the pandemic opened up the debate and access to webinars discussing access to PPE equipment and mortality in care home settings and scrutinised the ramifications of the ['COVID-19 Guidance: Ethical Advice and Support Framework'](#) in care settings. We commend such approaches, as it is through frank and open debate that we can truly learn from the results of our actions and decisions.

Open Government in Scotland, after the crisis

We reiterate our position that the open government movement and civil society can help circumvent and pre-empt many issues which we know are more often than not the result of an historical or ingrained top-down culture. We know this creates silence, distrust and disengagement from communities, which we seek to empower.

At the start of this letter, we noted that the current situation has compelled us to reflect on everything that has come to be accepted as the norm. This crisis has further exposed inequalities, but also demonstrated how our communities can step up and be a part of finding solutions. We hope that people across Scotland will be invited to share their experiences and wisdom to shape what it means for Scotland to 'Build Back Better' and that the Scottish government will make available the necessary space and resources to involve people in a collective endeavour, through existing participatory initiatives and through a renewed agenda.

We ask that the open government civil society network is involved in any conversations about openness, transparency, accountability and participation in Scotland, including how we involve our communities in the effort to 'Build Back Better'.

Despite the difficulty of the challenge, we all firmly believe it is a worthwhile undertaking and will help in rebuilding our communities after weathering the worst

¹⁸ <https://www.itv.com/news/wales/2020-04-01/plaid-cymru-and-conservative-leaders-join-welsh-government-s-coronavirus-core-group/>

¹⁹ <https://www.theguardian.com/commentisfree/2020/apr/03/in-the-absence-of-parliament-we-must-ensure-new-zealands-response-to-covid-19-is-the-best-it-can-be>

²⁰ <https://uk.reuters.com/article/uk-health-coronavirus-new-zealand-pay/new-zealands-ardern-ministers-take-20-pay-cut-for-six-months-due-to-coronavirus-impact-idUKKCN21X05E>

²¹ <https://www.itv.com/news/2020-04-12/130-000-sign-petition-demanding-mps-10-000-work-from-home-fund-is-scrapped/>

part of this pandemic. We look forward to being able to resume work on these premises.

We are going through a stern test and we hope that government and public bodies in Scotland will continue to work constructively with civil society to demonstrate that the value and commitments to open government hold true even times of crisis.

We would welcome a direct response to the questions and proposals raised in this letter. This includes further written detail about the proposals to delay the national action plan.

We remain open and available for any questions that arise after reading this letter. Stay safe and please stay connected.

Eric Honoré
Chair, Open Government Civil Society Network

[*Civil Society Steering Group Representatives 2020](#)

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Alex Stobart, Mydex CIC

Ian Watt, CodeTheCity

References

Covid-19 Civic Freedom Tracker, International Center for Non-for-profit Law

<https://www.icnl.org/covid19tracker>

Impact on local communities

<https://lgiu.org/pdfdownload/?b=local-government-and-covid-19-issues-for-disadvantaged-groups&key=027678c1c09b763c4ae7871e4050c718>

Local Authority guidance for Care Act easements:

<https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>

From Covid-19 information to Open Data – Scotland Civil Society

https://github.com/watty62/Scot_covid19/tree/master/data/processed

Examples of Open Data Reuse in Scotland – Dashboards/Visualisations

https://smazeri.shinyapps.io/Covid19_Scotland/

<https://theferret.scot/coronavirus-cases-in-scotland/>

Open Data Dashboards – International Examples (provided in correct formats)

UK: Rapid Covid-19 Surveillance, Public Health Wales

<https://public.tableau.com/profile/public.health.wales.health.protection#!/vizhome/RapidCOVID-19virology-Public/Headlinesummary>

EU

Austria: <https://info.gesundheitsministerium.at>

Czech Republic: <https://onemocneni-aktualne.mzcr.cz/covid-19>

Germany: Interactive Visualization for the Analysis of Bed Capacities for Covid-19 Patients, University of Konstanz <https://coronavis.dbvis.de/en/> / <https://www.intensivregister.de/#/umgezogen>

Netherlands: <https://www.rivm.nl/actuele-informatie-over-coronavirus>

Switzerland: <https://covid-19-schweiz.bagapps.ch/de-1.html>

Non-EU

Iceland: <https://www.covid.is/data> (in 9 languages)

Other / Community-developed / Open Resources and Tools

<https://airtable.com/universe/expAvHxkW4rRwtVab/covid-19-resources-and-projects?explore=true>