



Government response to the Constitutional Affairs Select Committee Report

Freedom of Information: Government's proposals for reform

**Presented to Parliament
by Lord Chancellor and the Secretary of State for Justice**

**By Command of Her Majesty
October 2007**

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Contents

Introduction	3
Summary	4
Proposed Changes to the FOI Charging Regime	5
Parliament	8
The Information Commissioner's Office	9

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Introduction

1. The Government welcomes this second Report on the Freedom of Information (FOI) Act 2000 and is grateful to the Constitutional Affairs Select Committee (CASC) and all those who gave evidence in the preparation of this Report.
2. The Government's response to the conclusions and recommendations of the Report are set out below.

Summary

3. The Government has carefully considered the conclusions and recommendations of CASC on the proposed changes to the fees regulations under the FOI Act.
4. In parallel, the Government has also been considering the responses from the public consultation on this issue, which closed on 21 June 2007.
5. As a result, the Government has decided to make no changes to the existing fees regulations, but to deliver a package of measures to make better use of the existing provisions to improve the way FOI works.
6. On the issue of correspondence between Members of Parliament and their constituents, the Government considers that it is right that Parliament should be covered by the FOI Act. We are promoting the Information Commissioner's guidance on dealing with requests for MPs' correspondence to ensure that public authorities apply the Act in a way that balances openness with the need to protect the privacy of constituents.
7. On the funding of the Information Commissioner's Office, the Commissioner has made great improvements to the way his office operates and has received additional funding for the past 2 years. The Ministry of Justice holds regular discussions with the Information Commissioner and the funding of the ICO is constantly under review.
8. CASC reiterated its recommendation that the ICO should be responsible directly to Parliament. The Government's position remains that the present arrangements are appropriate: they provide for independent decision making by the Commissioner while permitting proper scrutiny of resources.

Proposed Changes to the FOI Charging Regime

Recommendation 1. We have no evidence to indicate that the Government has adequately reviewed whether the existing charging regime balanced public access rights with the needs of public authorities to deliver services effectively, before examining ways of reducing compliance costs.

Furthermore we have not heard sufficient evidence from the Department to support the need for a radical change in the arrangements for charging for Freedom of Information requests.

Recommendation 2. The cost-benefit analysis used to support the proposed new regime is insufficient. The costs to the public of reduced access to information are ignored, the additional costs of the proposed new regime are omitted and alternative ways of making information provision more efficient are not considered.

Recommendation 3. The poor quality of information presented in the cost-benefit analysis, in particular the lack of information about the benefits of FOI to the public, suggests that little effort was made by the DCA to balance public rights against the needs of public authorities to deliver services effectively. The focus of the DCA's work has been entirely on cost reduction, despite the absence of any evidence that such measures were necessary; there is no evidence that the DCA took steps to assess the benefits of the present regime.

Recommendation 4. We have not received any convincing evidence that the new regime would be sufficiently transparent and subject to adequate review. It is unclear how a framework for independent review would operate. We conclude that the proposed regime could result in public authorities avoiding answers to embarrassing, contentious or high-profile cases as the number of internal consultees rises in proportion to the sensitivity of particular requests.

Recommendation 5. There is no objective evidence that any change is necessary. The cost-benefit analysis provided with the Government's consultation papers is incomplete. There is clear evidence that the proposed amendments could be open to manipulation and abuse. There is no sign that any consideration has been given to proper funding of the independent review process. The proposed measures have the scope significantly to reduce the flow of information into the public domain. We recommend that the proposed new charging regime be withdrawn.

Recommendation 6. The Ministry of Justice should now focus on improving compliance with the existing provisions of the FOI Act and on reducing the delays encountered by requesters seeking information. Any future proposed changes to the charging regime must be supported by a firm evidence base and take proper account of the impact they would have on the benefits which the public derive from FOI.

9. The benefits of Freedom of Information are not disputed and the Government remains committed to the Act. The purpose of the Independent Review was to responsibly assess the economic burden imposed by a new piece of legislation. The Government has consistently stated its intention to review the fees regulations within 12-18 months of the introduction of the Act, to ensure that a balance is met between public access to information and delivery of public services.
10. There was significant evidence from our networks of practitioners suggesting that some requests were imposing a disproportionate burden on their resources. The Independent Review confirmed that.
11. The Government has considered CASC's conclusions and recommendations alongside the responses to the consultation on the proposed fees regulations changes.
12. In the consultation process, the majority of respondents opposed the proposals. This was particularly the case of responses from media organisations, other non-governmental organisations and members of the public.

13. However, some public authorities, especially local authorities, welcomed the prospect of some relief from the administrative burden of the FOI Act.
14. Taking account of the range of responses received, the Government has decided to make no changes to the existing fees regulations.
15. We do intend, however, to deliver a package of measures to make better use of the existing provisions to improve the way FOI works and to meet the concerns particularly of local authorities. These measures include:
 - Working with the ICO to promote their new guidance on making more robust use of the existing provisions in the FOI Act, such as **section 14 vexatious requests**, to deter requests that have no serious purpose or value, impose disproportionate burdens and have the effect of harassing the public body
 - Producing new, clearer **guidance on the existing fees regulations** for public authorities so that they are clear about when they can refuse requests on costs grounds
 - Supporting the Information Commissioner's "**Charter for Responsible FOI Requests**"
 - Working with the ICO to identify a standard in basic information which public authorities should **release proactively**
 - Working with the National Archives to revise the **records management** code of practice under section 46 of the FOI Act

Parliament

Recommendation 7. A Private Member's Bill, the Freedom of Information (Amendment) Bill, has passed through the Commons and is awaiting debate in the House of Lords. Its effect would be to exempt Parliament from the Freedom of Information Act 2000. In the course of our various inquiries into the Freedom of Information Act 2000, we have been sent no evidence indicating a need for such an exemption or that existing protections for constituents' correspondence were inadequate. We believe an exemption would be contrary to the culture of openness which we have argued should prevail in the public service.

16. While the Government considers that it is right that Parliament should be covered by the FOI Act, we welcome the recent debate about the confidentiality of MPs' correspondence with their constituents.
17. In August, the Information Commissioner produced guidance for public authorities on dealing with requests for MPs' correspondence relating to constituents. The Ministry of Justice will promote this guidance to public authorities to ensure that they apply the Act in a way that balances openness with the need to protect the privacy of constituents.

The Information Commissioner's Office

Recommendation 8. We are not convinced that the funding of the ICO is sufficient to enable it to deliver an effective complaints resolution service. We question whether it is appropriate for the Ministry of Justice to set the funding levels for the independent regulator and thereby directly influence its capacity to investigate complaints. With regard to the proposed new charging regime, the cost-benefit analysis suggests that no significant additional resources would be provided to the ICO to enable it to manage the additional workload predicted in the Frontier Economics review. This suggests to us that the Government would be content to accept the consequentially slower complaints resolution process.

18. As stated in the Government's response to CASC's previous report on the FOI Act, the Information Commissioner is independent of Government and reports to Parliament on his responsibilities under the Data Protection Act 1998 and the Freedom of Information Act 2000. He is wholly independent in his decision making, subject to the right of appeal to the Information Tribunal and the Courts.
19. The Ministry of Justice holds regular discussions with the Information Commissioner and the funding of the ICO is constantly under review. The Commissioner has made great improvements to the way his office operates and has received additional funding for the past 2 years. Along with all public authorities he must continue to deliver service improvements within his existing funding.
20. As the Government has decided not to proceed with changes to the fees regulations, there will be no additional workload for the ICO.

Recommendation 9. In our last Report on this subject we concluded that the relationship between the DCA and the ICO was not working as effectively as it might. We have not seen any improvement. We repeat our recommendation made in that Report that the Information Commissioner should become directly responsible to, and funded by Parliament.

21. The Government remains of the position that the present arrangements regarding the Information Commissioner are appropriate. They provide for independent decision making by the Commissioner while permitting proper scrutiny of resources.



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