



**Government's Response to the
Department for Constitutional Affairs
Select Committee Report
*Freedom of Information Act 2000 –
Progress towards implementation***



**Government's Response to the
Department for Constitutional Affairs
Select Committee Report
*Freedom of Information Act 2000 –
Progress towards implementation***

Presented to Parliament
by the
Secretary of State for Constitutional Affairs and Lord Chancellor

by Command of Her Majesty
February 2005

© Crown Copyright 2005

The text in this document (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be addressed to The Licensing Division, HMSO, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ. Fax: 01603 723000 or e-mail: licensing@cabinet-office.x.gsi.gov.uk

Contents

Foreword	5
Conclusions and recommendations	7

Foreword

1. The Government welcomes the Constitutional Affairs Select Committee's scrutiny of the implementation of the Freedom of Information Act 2000. The introduction of the Act marks a fundamental change to the way official information is treated: a change to the way we are governed. Now fully in force, the Act fulfils the long-standing aim of achieving a statutory – and enforceable – right of access to information held by public bodies. The Government is fully committed to ensuring the success of Freedom of Information, and it is a core part of its wider Constitutional Reform Programme.
2. During the implementation period we have provided strategic leadership to central government departments and, with the Information Commissioner's Office (ICO), to the wider public sector. We have given public bodies maximum support, including advice and guidance, but just as importantly the flexibility to tailor the implementation of FOI to their needs.
3. As the lead Whitehall department with policy responsibility for FOI, DCA has focused on working with central government, and the ICO, while working across the whole of the public sector, has concentrated on public authorities outside central government. This division of responsibility was agreed to and set out in a statement of respective responsibilities.
4. We take pride in our achievements in preparing public bodies for FOI. We have taken a different approach to that suggested by the Select Committee but our approach has been productive in supporting public authorities as they prepared for FOI. Notable achievements include:
 - Provision of a series of roadshow presentations and seminars for public bodies across Great Britain;
 - Production of a Model Action Plan (widely distributed among authorities across the public sector);
 - A model training plan;
 - A generic user specification for IT systems to manage FOI requests;
 - Fostering and sponsoring the creation of local networks of FOI practitioners;
 - Production of a series of leaflets and posters aimed at increasing public and staff awareness;
 - The creation of a dedicated one stop shop website for FOI – www.foi.gov.uk

- Preparation – and dissemination via the DCA website – of extensive guidance on the proper operation of the exemptions under the Act; and
 - Production of procedural guidance, to aid public bodies in their handling of FOI requests.
5. To ensure that central government was ready we have developed a community of practitioners, the Freedom of Information Practitioners Group, to share information, thinking and best practice. We engaged the wider public sector through the Lord Chancellor’s Advisory Group, chaired by the Information Commissioner. This enabled attendees to cascade information to their relevant sectors.
 6. The Act covers 100,000 public authorities, ranging from central Government Departments, to local authorities, schools and GP surgeries. Many of these are independent of government. It would have been neither appropriate, nor sensible, for Government or the Information Commissioner to insist that they approached implementation in a particular way. To have done so would have unreasonably constrained those bodies we need to make a reality of FOI, and who were best placed to know their business needs. Each individual public authority had to take responsibility for its readiness for FOI, using the advice and leadership both Government and the ICO have provided.
 7. That said, we accept there is still more to do to ensure that FOI is properly embedded in the ethos of the whole public sector. During the implementation phase we set out to learn the lessons from other countries that already have Freedom of Information legislation in place. After implementation we will continue this approach. We will learn from emerging case law and from the challenges that public authorities face in coming to terms with the practicalities of implementation – and we will ensure that the lessons are properly digested and fresh guidance issued. And, as the Information Commissioner rightly moves to the new role of acting as the enforcement body for the Act, DCA will consider how best to ensure that the broader public sector receives appropriate support and guidance.
 8. We are committed to taking this work forward and to ensuring that Freedom of Information realises our aspiration of cultural change through embedding openness in Government.

Conclusions and recommendations

This is an important piece of legislation and one which is very welcome – the Committee fully supports its aims and looks forward to its successful operation in the future. (Paragraph 1)

1. The Government shares the Committee's commitment to successful implementation of the Freedom of Information Act.

Given the decision to implement the Act across the whole public sector at the same time, the process of implementation has created special challenges. We recognise the practical difficulties placed on those responsible for implementing this legislation on a single start date. (Paragraph 17)

2. The FOI Act provided a single access regime across the entire public sector, ensuring that the public had a statutory right of access to all information held by public authorities. This built upon a series of earlier access regimes across many parts of the public sector. Since 1994, central government had been operating under the Code of Practice on Access to Government Information. Local government has, since the Local Government Act 1972, released information in the form of council minutes, and background papers relating to decisions made by councils. The National Health Service has operated an openness regime since 1995. The whole of the public sector has been subject to the 1984 and 1998 Data Protection Acts, and the Environmental Information Regulations 1993 provided access to environmental information from across the public sector. Overall, the public sector had been becoming steadily more prepared for an openness regime as envisaged under the Freedom of Information Act. In light of this developing pattern of openness and access regimes, the Government considers that the unified approach to implementation of the Freedom of Information Act 2000 was the right approach to take.
3. Since the Act received Royal Assent in 2000, the Government has been working hard to ensure that the public sector has been prepared to meet the obligations of Freedom of Information. The four years between Royal Assent and implementation were used by all public authorities to undertake implementation programmes. This provided the same amount of time for all public authorities to put in place the detailed programmes of work needed to ensure that FOI was properly implemented.
4. The Government made a reasoned decision to implement the Act across the whole public sector in one go. Given the scale of coverage of the Freedom of Information Act, it would have been confusing if there had not have been implementation on a common date. It was important to minimise confusion amongst both the general public and those authorities

covered by the Act as to which sectors were covered at any given time. Information flows between public sector organisations, and to have phased implementation would have caused problems as to who holds information, and what information would have fallen to be released under the Act.

5. The Freedom of Information Act allows those private bodies performing public functions independently or under contract with a public authority to be brought into the scope of the Act. The Government has left this element of the Act until later. It is important that those public authorities specifically covered by mention in the Act have time to get used to operating under the FOI regime, before consideration is given to widening the scope of the Act.

The structured approach of ACPO created an impression of much greater readiness for full implementation than the two other areas of public service which we examined. Although ACPO is only an advisory body, the organisational traditions of the Police Service lend themselves to a more coherent overall approach to the implementation of freedom of information legislation than other areas of the public service which may involve independent professional practitioners or a diverse range of activities on widely differing scales. We doubt that many areas of the public service, away from central government, can be as confident as the Police Service of full implementation on 1 January 2005.

6. Departments and authorities were themselves responsible for preparation for the implementation of the Act, including records management and training, with guidance and assistance from the DCA, the Information Commissioner, and those government departments and sector wide organisations that have a leadership and co-ordination role within their own sectors. As the Information Commissioner's Office noted in evidence to the Committee, (Report, para. 25) the Association of Chief Police Officers (ACPO) is an example of a well prepared sector wide body which oversaw the implementation of FOI within its sector providing leadership and guidance to the 43 police forces of England and Wales. The ACPO implementation project is a very good example of a sector taking responsibility for ensuring preparedness.
7. It is clear that there have been many initiatives in the wider public sector in addition to those that the Police Service has undertaken. For instance the Department for Health funded the NHS national project to implement the Act. The Department for Education and Skills provided procedural guidance for schools which has been distributed via the Department's electronic networks, Teachernet and Governornet, as well as being made available through Local Education Authorities. Local government benefited from the expertise of the Local Government Association and the IDeA. In each case, the most relevant body has been able to provide guidance on the specific issues which have had to be dealt with in that particular sector.

8. Authorities were individually responsible for implementing the Act. This will inevitably have led to some variance in the degree of readiness across 100,000 public authorities when the Committee was taking its evidence. The Government does believe though that the wider public sector, supported by the relevant central government department and sectoral organisations, did sufficient work to ensure that Freedom of Information was properly implemented.

ACPO concerns were focused on certain areas. Central guidance appears to have been lacking in important areas including organising co-operation between different departments and agencies, ensuring consistency between different police forces in dealing with requests and lateness in producing general guidance on technical issues such as IT systems. It is also clear that a significant change occurred from June 2003, possibly as a result of staff changes in the DCA. (Paragraph 34)

9. This paragraph summarises four separate concerns:
10. Firstly, ACPO representatives argued that DCA should have established a process for handling requests for data that might belong to different agencies. Common data are usually held by a number of different agencies. For instance information relating to a particular issue might be held by a local police force, a local authority social services department, local probation services, and so on. In central government DCA has established procedures to enable departments and agencies to consult about requests for information shared by a number of agencies. At local level there were already a number of networks that enable data protection officials in different agencies to confer about such requests. Many of these networks developed into FOI implementation networks at county and regional level. DCA and the Information Commissioner devoted considerable resources to fostering these networks. It is also the case that Hampshire Constabulary conducted an exercise in such networking which was described in a paper circulated to the Lord Chancellor's Advisory Group on Implementation. DCA and ICO provided leadership in encouraging the emergence of these networks. Their development was best undertaken by the bodies concerned who have the fullest understanding of the information they hold and the way they operate.
11. Secondly, ACPO was concerned that DCA failed to provide strategic guidance in the establishment of a central referral process to manage requests sent to several police forces concurrently. Such a referral process has indeed been established by the Home Office. DCA is confident that this process will work well precisely because it has been established by the government department with the appropriate expertise and authority to do so. It would not have been appropriate for DCA to take on the function of another Department.

12. Thirdly, ACPO expressed concern that guidance on IT systems for tracking requests was provided late in the day, and that this may have cost tax payers millions of pounds. DCA published a generic user specification for IT systems (GUS IT) to track FOI requests in April 2004 after wide consultation with those responsible for the implementation of the Act. The specification enabled authorities to assess commercial packages, to assess their own requirements against it, and to determine whether or not existing tracking systems (such as correspondence management) could be adapted for FOI purposes. The publication of the GUS IT, after wide consultation, provided time for authorities to assess their IT systems and adapt them own to suit the requirements or to procure upgraded IT.
13. Any attempt to impose a centrally procured FOI system on the public sector would have failed – organisationally and technically. FOI systems need to meet the business needs of the authorities that use them and they need to match the business processes and IT platforms of those authorities. For these reasons we chose not to opt for a single centralised solution and we do not share ACPO's views that savings would have resulted from this approach.
14. ACPOs points about leadership during the implementation are dealt with in paragraphs 32-33 and 34-35 below.

Some of the evidence on implementation of FOI in the health sector gave the impression of FOI simply being regarded as another hurdle that had to be surmounted, with little sign of the cultural change in attitudes towards openness which the DCA has suggested will follow from FOI. (Paragraph 44)

It is clear from its evidence that the BMA does not believe that the message on FOI implementation has been given effective profile. (Paragraph 47)

It is not clear that the whole of the health sector will be in a position to comply fully with the law on 1 January 2005. There are significant problems with ensuring consistency of approach across such a wide range of bodies which are covered by the Act. We do not underestimate the difficulties associated with introducing FOI on one date across the whole of the health service. Nevertheless, there is little evidence that the DCA has been sufficiently active in providing the necessary leadership to ensure that many of the organisational and technical problems have been addressed in time in this sector. (Paragraph 49)

15. The Government remains confident that cultural change from 'need to know' to the 'right to know' will follow as Freedom of Information becomes part of the daily business for departments and public authorities. The National

Health Service ran a clearly defined and successful project to ensure that the health sector implemented the Freedom of Information Act. This was supported by funding provided by the Department for Health.

16. As the Committee note in their report (para. 40-42) the British Medical Association worked with the NHS project to develop Model Publication Schemes for GPs. This was publicised through the Information Commissioner's letter to GPs in May 2003. Model Publication schemes were also developed for NHS trusts and Strategic Health Authorities. As a result all NHS public authorities, which number over 600, successfully adopted and published their publication scheme in accordance with the implementation timetable. By advising practices, trusts and strategic health authorities to adopt the model publication schemes the Information Commissioner, NHS and the BMA greatly reduced the administrative burden upon the health sector as the committee themselves recognised (para. 42).
17. The Government considers that the NHS was the best placed organisation with specialist knowledge of the unique challenges faced within the health sector, and operational expertise, to ensure that the Act was implemented across that sector. Each public authority within the health sector, and the wider public sector, though had to take responsibility for ensuring implementation within their own organisations.
18. Against this background, the Department for Constitutional Affairs has provided strong leadership throughout the course of the implementation phase of Freedom of Information. The DCA and the ICO provided best practice guidance on FOI procedures to departments and the wider public sector authorities. In order to support implementation of the Act, the DCA published a Model Action Plan setting out the steps which needed to be taken by all public authorities between December 2003 and January 2005 in order to ensure compliance with the obligations it imposes. The DCA also published a training guide which set out the steps necessary to ensure that organisations provide sufficient, timely training.
19. The DCA ensured that information was disseminated to sectors through a number of different forums. For example the FOI Practitioners Group and the Lord Chancellor's Advisory Group had representatives from the Department of Health and the wider health sector. These forums enabled the DCA to promote and share good practice, as well as provide regular updates on progress towards implementation. This allowed the representatives of the health sector to cascade information to the most appropriate local level.

We believe that Chief Executives in all local authorities should ensure full compliance with FOI. (Paragraph 57)

20. Freedom of Information will only work properly if there is sufficient buy in from senior people in each organisation. Hence, the Government agrees that Chief Executives of local authorities should take responsibility for ensuring full compliance with the Freedom of Information Act within their own organisations. Within central government departments, the DCA has ensured that each has a senior Information Champion in place to ensure strategic level leadership within the organisation.

While many local authorities will be compliant with the FOI legislation when it comes fully into force in January 2005, some will not. Successful compliance will be dependent on a relatively low initial level of requests. A 'business as usual' approach is far from the intention of the Act, which aimed to introduce a culture change in the handling of information. It seems clear that, so far, too few common standards for handling FOI requests across local government have been established. It is likely that different local authorities will handle similar requests in very different ways. (Paragraph 63)

21. Successful compliance with the Act will be dependent upon local authorities having adequate procedures in place to deal with requests, as well as good records management practices to enable them to find the information. It will not be dependent upon a low level of requests. To help ensure that local authorities were prepared for their obligations, the DCA engaged the wider public sector through a programme of county and regional roadshows and through its support for practitioner networks. These networks ensured that common standards were promulgated across local government.

22. Responsibility for implementation of the Freedom of Information Act lay with each public authority covered by the Act. The Office of the Deputy Prime Minister, the Local Government Association and the Improvement and Development Agency have worked hard with the local government sector to implement the Act and will continue to do so to assist effective implementation.

23. One of the fundamental principles of the Freedom of Information Act is that requests for information have to be dealt with on a case-by-case basis, and that the assessment of whether the information should be released needs to be made by the authority holding the information. This will lead, undoubtedly, to different responses being provided by different authorities, dependent upon the circumstances of the case, the wider public interest at the time of the request and the level of information in the public domain. The DCA published detailed exemptions guidance, detailing the operation of the exemptions and the factors to take into account. Whilst this was primarily aimed at central government, it will be of practical assistance to the wider public sector and will enable a

common approach to be taken to applying exemptions. The Promotion and Development Division of the ICO will offer general advice to local authorities and provide examples on the exemptions and how they can be applied.

Late guidance from the DCA on such matters as fees has meant that issues of central importance have had to be addressed by local government at the last moment. We are concerned that the necessary guidance for enabling all staff to understand the requirements of the Act has been produced so late. In some respects the result has been that local government has been given a few weeks rather than four years to prepare fully for the advent of FOI. (Paragraph 64)

Guidance on exemptions is a further example of late decision-making which reduced the amount of preparation time to a matter of weeks for legislation which has been on the statute book for four years. (Paragraph 96)

- 24.** The Government recognised the need to provide early guidance on the requirements of the Freedom of Information Act. It published the first Section 45 Code of Practice on the on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 in November 2002. This provided clear guidance on the steps which the Government felt was necessary for public authorities to undertake to ensure that they would meet their obligations under the Act. The Code of Practice provided practical interpretation of, and best practice guidance on, the FOI Act, and allowed public authorities to start to understand in greater detail their obligations under the Act. The National Archives produced a Code of Practice on Records Management, issued by the Lord Chancellor, at the same time. This provided advice on records management and transfer of public records to The National Archives in the context of Freedom of Information. These two Codes of Practice allowed all public authorities from 2002 onwards to start putting in place procedures within their own organisations to meet their obligations.
- 25.** The key messages contained in the 2002 Codes of Practice were elaborated by the DCA at the 25 regional seminars it ran, and the 15 presentations is gave to various regional and county local authority discussion groups. At these events, the DCA ensured that local authorities were given assistance on the impact of FOI, and their obligations under the Act.
- 26.** The 2002 edition of the Section 45 Code of Practice was reinforced by the detailed manual published by the DCA on 26th October 2004 which dealt with recommended best practice on how to deal with requests for information. Whilst aimed primarily at central government, it will have been of practical assistance to the wider public sector as well.

27. The DCA circulated the draft of the exemptions guidance in June 2004 to central government departments. This was revised in the light of comments and was published in full on the DCA website on 26 October 2004. The Committee itself praised the guidance during the course of the evidence session. The Government had previously committed to issuing guidance on certain of the exemptions by September 2004. But the guidance published addresses *each* exemption in turn, considering the type of exemption, an explanation of the key terms, relationship with other exemptions and how to apply the public interest test if appropriate. It is accompanied by: guidance to processing requests, and a simplified handbook on the use of exemptions.
28. This guidance will be of lasting value to authorities in implementing the Act. But the DCA will not leave it to ossify: rather, we have committed to update it in response to emerging case law and to practical experience of implementation.

The picture which emerged from the evidence we received was of uneven levels of success and a strong perception of a lack of strategic control and support from central government to other public bodies. The cause appears to have been a combination of a lack of consistent leadership by the DCA and an unclear division of responsibility for implementation between the DCA, the Information Commissioner's Office (ICO) and other government departments. (Paragraph 72)

There appears to have been some confusion amongst public sector bodies about where to seek advice and about which department or agency was responsible for supporting them. (Paragraph 74)

29. The Department for Constitutional Affairs and the Information Commissioner's Office made clear their respective roles with regard to implementation of Freedom of Information. The Department for Constitutional Affairs was responsible for the Freedom of Information Act and secondary legislation made under the Act. Within Government, the Department had a specific (non-statutory) role in leading and co-ordinating the work of government departments in preparing for implementation an application of the Act. The Information Commissioner's Office had responsibility for promotion and enforcement of the Freedom of Information Act. The DCA and the ICO have updated the document governing their respective roles and responsibilities to reflect the transition on 1 January to live running of FOI.
30. DCA and the ICO worked in close co-operation to ensure the smooth implementation of FOI. The DCA produced a comprehensive set of guidance on processing requests for information, and advice on the application of each of the exemptions (see paragraphs 24-28 above).

Whilst this was aimed primarily at central government, it is applicable, and of practical benefit, to the wider public sector as well. The ICO produced Awareness Guides to assist the wider public sector understand their obligations and published these on their website.

31. Within this framework, the DCA provided strong and consistent leadership at Ministerial and official level to support the implementation of the Act within central government and the wider public sector. *Controlling* the implementation of Freedom of Information across 100,000 public authorities would have been overly bureaucratic and unwieldy. And it would have ignored the status of those public authorities; they are best placed to take the judgements as to how to implement FOI within their organisations. Rather, the DCA provided clear advice to central government departments, who were able to cascade this to their relevant sectors, tailored to overcoming the problems faced in each.

32. The Department worked closely with the Office of the Deputy Prime Minister to encourage engagement at political and chief executive level in local government. The following measures were put in place by DCA:

- A comprehensive Model Action Plan was issued to local authorities and other public sector bodies to show how they should prepare for FOI legislation;
- The FOI website – www.foi.gov.uk, provided a one-stop shop on FOI for public authorities and the general public, giving comprehensive guidance on the Act;
- DCA produced a training plan for authorities to use in planning their training;
- DCA ran a series of 25 regional seminars over the course of two years, giving local authorities and other public authorities information on the Act, and suggestions for good preparation;
- DCA led a programme of activities to foster networks of Freedom of Information practitioners within Whitehall and to promote two way information exchange between Whitehall and the wider public sector;
- DCA delivered 15 FOI presentations to Regional and County local authority discussion groups. During these presentations to the wider public sector FOI practitioners were encouraged to cascade FOI information and key messages within their organisations; and
- DCA set up an advisory group of senior figures from public authorities to advise the Lord Chancellor on implementation.

We formed the impression from the evidence provided that the high staff turnover in the DCA during the period between the agreement of publication schemes in the summer of 2003 and the autumn of 2004 seriously interfered with the delivery of coordination. (Paragraph 81)

33. The Government's delivery of implementation was not disturbed in the manner suggested. The DCA's record on the staffing of FOI is a good one which bears out the priority it gives to successful implementation. Its record shows significant investment of staff resource (rising from 8 staff in 2001 to over 30 by late 2004), and strong leadership from senior staff.
34. Because of the high priority given to FOI, DCA strengthened its team significantly over the period of implementation. The DCA looked critically at the experience of foreign jurisdictions in FOI implementation, and concluded that some focussed on the 'go live' date to the detriment of delivering continual central guidance and support thereafter. The DCA wanted to ensure that there were appropriate structures and resources in place to provide this long term support. Consequently it re-organised the team in early 2004 in readiness for the implementation challenge which was to begin *after* January 2005. This was the right decision and it is already bearing dividends.

The approach has been to rely on the FOI Champions in each organisation to take responsibility for energising the organisations and ensuring adequate preparations for compliance. While this appears to have worked quite well amongst some central government departments, the approach does not seem to have achieved consistent results. Lack of consistency was a message repeatedly relayed to the Committee, as well as a failure to share good practice early enough across differing sectors. (Paragraph 84)

35. The Freedom of Information Act places responsibility for answering requests upon the public authority to which the request is made. It is therefore right that each organisation should be responsible for implementing the Act. It is especially important that senior figures act as Information Champions: this is an established technique for other change initiatives and its value is borne out by international experience.
36. The Department undertook upon a programme of presentations to Permanent Secretaries, executive boards and senior managers across Whitehall to ensure that they were fully aware of the implications of the Act for their own organisations, and to encourage them to assess progress made within their Departments.

37. In addition to the FOI Champions, DCA has made consistent use of the FOI Practitioners Group, and the Lord Chancellor's Advisory Group – set up for the purpose of sharing best practice across the whole of the FOI community.
38. To ensure consistency, DCA is providing a central point of reference and advice for Departments. Within DCA a dedicated team may be contacted through a special help-line and e-mail address to give prompt guidance on particular cases. In addition, DCA will monitor how cases are handled throughout government. From January 2005 all the central government public authorities will report to the DCA on their handling of FOI and EIR information requests according to the monitoring criteria in set out by DCA.

In the course of preparing evidence for this inquiry a number of public bodies reviewed their preparations for implementation. While this was welcome, we would have liked to have seen more evidence that the Department was encouraging this degree of thoroughness at an earlier stage. (Paragraph 86)

39. Throughout the course of November 2003 – April 2004, DCA ministers held a series of bi-lateral meetings with Whitehall colleagues to ensure that Departments were progressing on schedule with preparations for implementing FOI. Prior to these meetings the DCA conducted a survey of all central departments to gauge their readiness, and used the meetings to ensure that satisfactory plans were in place. These messages were reinforced at official level throughout the course of 2004 at the FOI Practitioners Group and the Lord Chancellor's Advisory Group.
40. The National Audit Office conducted fieldwork in Spring 2004. This resulted in a joint publication, with the DCA and the ICO, of *Countdown to Implementation – Moving from the Need to Know to the Right to Know* in Autumn 2004. This report identified challenges which organisations would face in the final implementation stage, gave practical advice on how to address these challenges and offered some best practice examples of how some organisations had already met them. The DCA followed this up by conducting a review of Whitehall departments' implementation project plans in Autumn 2004. This resulted in a good practice guide for departments, based on the findings of the review.
41. To supplement this work the DCA used all available channels to communicate the need for departments to be ready and several specialist networks were set up in government to ensure departments were ready for FOI implementation. The DCA ensured that there was a:
- Senior FOI Champions group with representatives at board level;

- FOI Practitioners Group – which meets once a month and has representatives from Whitehall Departments, Non-Departmental Public Authorities and Devolved Administrations. To ensure best possible access to the network, an e-forum was also created;
- Lawyer’s network;
- Communication Directors network;
- Press Officers network;
- Records Managers network across government run by the National Archives.

We do not consider that the question of possible extensions of the time limit of 20 days for responding to FOI requests has been effectively handled by the DCA in respect of public sector bodies outside central government. (Paragraph 90)

The Department’s attitude to questions relating to the nomination of qualified persons able to grant exemptions and related training, which are exercising those who will have to implement the Act, illustrates deficiencies in its approach to supporting the process towards implementation. (Paragraph 95)

42. The Government disagrees with the Committee’s conclusions on these points. The DCA held a consultation within Whitehall to identify priority areas which needed an extension to the twenty working days time limit in certain circumstances. This was never intended to be a full scale public consultation. The Government believes that it is important that public authorities ensure that they comply with the statutory obligations to respond to requests for information promptly and, in cases where there is no public interest test involved, within twenty working days.
43. The DCA received a number of responses from central government departments, and on the basis of this made an order under s10(4) of the Act which allowed for an extension of the twenty day period in limited circumstances. Firstly, in the case of schools the regulations made provision that school holidays should not be counted for the purpose of calculating the 20 working days, provided that the request is answered within 60 working days. The regulations also provided an extra ten days for The National Archives to consult public authorities in the case of closed transferred public records as to whether an exemption applies or whether the existence of the information can be confirmed or denied.

44. The Regulations also specify that the Information Commissioner can extend the time by which authorities must comply with Freedom of Information requests to up to 60 working days following receipt of requests in the following two situations:

- Firstly, if the authority cannot comply with the usual time limits because it has to obtain information from an individual actively involved in an operation of the armed forces or in the preparations for such an operation;
- Secondly, when a request applies to information from abroad, either because the information itself is not held in the UK or additional information must be obtained from outside the UK before answering, and the authority could not comply with the usual time limits for this reason. For example, an authority might need to obtain information from or consult with posts, governments or companies based abroad before answering the request. It might not be reasonable to expect foreign governments or companies to reply in time for the authority to respond to the applicant within 20 working days. The Information Commissioner will be given discretion to extend the time limits if appropriate.

45. The DCA has no further plans at present to make any further orders to allow public authorities more time to respond to requests.

46. The DCA began consulting with all government departments in August 2004 on the issue of who the qualified person should be for those authorities in the wider public sector. The qualified person has a limited role in relation to the FOI Act. They make an assessment of the harm likely to arise from the release of information covered specifically by s36 of the Act, and they make a reasoned decision as to whether the information should be released. As soon as the consultation was concluded, the DCA was in a position to issue guidance to all Ministers as to who the authorised person should be for those bodies which fell under their remit. This guidance was issued on 29 October 2004 to all central government departments and stated that the qualified person should be the person or persons in charge of that public authority. This allowed the departments to identify the most suitable person in each of the public authorities required to have a qualified person and ensure that they were authorised before 1 January 2005.

We welcome the Department's decision to waive fees for requests below £450/£600 which will cover the vast majority of requests. However, this decision came unnecessarily late and created avoidable uncertainty for the public sector bodies concerned. Detailed guidance on the fees regime still has not been produced and needs to be as a matter of urgency. (Paragraph 99)

47. The Fees regulations policy was announced by the Secretary of State for Constitutional Affairs on 18 October 2004. This was a key announcement in the implementation phase, and one which will have provided reassurance to the public sector as a whole. The Government, through this announcement, committed itself to a liberal fees regime which meant that the majority of requests for information will be dealt with for free. This is positive news for requestors – and for the authorities who administer the Act who do not need to put cumbersome fee charging arrangements in place.
48. In developing the fees system, DCA had three key criteria. Firstly, that it should meet the commitments made to the House during the Bill stage that no more than 10% of the marginal cost of finding information would be charged. Secondly, that it should be simple to understand and to operate. Thirdly no-one should have to pay for information that was previously provided free. Having the right fees system is critical to the success of the Act.
49. The DCA considered a range of options and consulted extensively with key stakeholders to make sure the correct decision was taken. We recognised that public authorities needed to know what the fees regime would be: that is why the broad outline of the fees policy was announced ahead of the full order being laid in Parliament. The order is now laid before Parliament and fully in force. In order to support authorities in implementing the fees regime, the DCA has published detailed guidance on fees, as well as a summary of the steps necessary in order to assess whether fees apply to a request, which is available on www.foi.gov.uk.
50. Had the Government continued with the original, more complex policy, the Committee would be correct in its assertion that the decision came too late for public authorities to fully implement. However, as the stated policy is simple to understand and operate the Government does not believe that the announcement caused any problems in the implementation of the Act.

While the removal of fees for the majority of applications is a positive step towards encouraging ease of access to official information, under the terms of the Act there is no requirement for public bodies to make information available if the cost of retrieval exceeds these limits. While public bodies may choose to provide the information on a full-cost basis, there is no requirement under the Act to do so. Paradoxically, while the non-imposition of fees will make many applications easier, this may also mean in effect that any request for information that takes more than 2–3 days to retrieve can be refused. Therefore, whether intended or not, the setting of the fees limit sets an arbitrary and potentially vast exemption to the scope of information which can be required to be produced. Notwithstanding this fact, the ICO emphasised to the Committee that this did not remove a public body's obligation to give what assistance it could. (Paragraph 100)

We hope that the decision to waive fees for most FOI requests does not inadvertently lead to a more restrictive approach to the application of freedom of information. (Paragraph 101)

- 51.** The Government disagrees with these conclusions. The fees regime announced by the Government will facilitate access, not restrict it. It is only right that authorities are able to refuse on the grounds of excessive cost as if they were forced to answer all requests regardless of scale this would be an unreasonable diversion of public resources away from service delivery. This is clearly not the purpose of the FOI Act. Departments and authorities have three choices if the cost of responding is over the limit: either to inform the requestor that the cost of the request is over the limit and will not be met; to inform the requester of the total cost; or to waive the cost altogether. In addition, a public authority has a statutory duty under s16 of the Act, as set out in detail in the Section 45 Code of Practice, to provide appropriate advice and assistance to requestors about how to bring the cost of particular requests down.
- 52.** The Act itself, at s9(2), states that where a fees notice has been given the public authority does not have to answer the request until the fee is paid. Furthermore, the Act stipulates at s12 that a public authority does not have to comply with a request for information if the authority estimates that complying with the request would exceed the appropriate limit. Authorities will however, have to provide advice and assistance to the applicant in order to help them bring any requests for information which cost too much under the appropriate limit.
- 53.** The purpose of the fees regime is, as the Secretary of State announced, designed to operate so that most requests will be met without charge. Ministers have laid a Fees Order before both Houses of Parliament. The Fees Order states that:
- For central government, in response to FOI requests there will be no charge for the time taken to locate, sort, redact, edit material (the 'marginal cost'), or for the time taken to consider whether or not information is exempt, up to a cost limit of £600. £600 is the current upper cost limit for Parliamentary Questions.
 - The upper cost limit for those public authorities outside central government (including local authorities, the health service, schools and the police) will be set at £450.
 - If requests cost more than that to answer, the public authority in question can either refuse to answer, answer and charge the full cost of replying, or answer without charge, at its discretion.

- All public authorities will be able to charge the full cost of disbursements including copying or printing and sending out information. DCA will issue guidance on what these charges should be.

54. The fees regime is liberal, and will lead to the majority of requests being dealt with for free. The fees regime as set out in the order will not lead to a restrictive approach as envisaged by the Committee.

It is clear from other evidence we have received that a number of publication schemes may not have met the aim of the freedom of information legislation, notably in the medical sector. (Paragraph 105)

55. All publication schemes were developed and approved by the Information Commissioner's Office in accordance with the phased roll out of this provision of the Act. Publication schemes across Whitehall are generally of a high standard, but we recognise that some are better than others and there are issues of consistency and ease of access for the public. As is noted above (para. 16) the health sector benefited greatly by adopting the Model Publication Schemes developed by the BMA and the NHS implementation project, and accredited by the Information Commissioner's Office. These were successfully adopted by all NHS public authorities in accordance with the implementation timetable.

56. The Government is not complacent on this issue and remains committed to improving the standard of publication schemes across Whitehall departments and to encouraging the wider public sector to follow suit.

In our view the DCA should have recognised the need for training to start earlier and should have issued relevant advice in a timely way. (Paragraph 108)

57. The DCA identified training as a key issue at an early stage and planned accordingly. To assist departments and authorities develop a customised approach to training, comprehensive guidance was published in July 2004 together with a Model Action Plan detailing the steps needed to be taken to achieve full compliance with the Act within an organisation. The FOI website – www.foi.gov.uk, provides a one-stop shop on FOI for Whitehall Departments, public authorities and the general public. Different organisations have different modes of working and different training needs and methods. It would have been inappropriate for DCA to have attempted to proscribe on model for training courses for the public sector – or to have provided one training supplier. Instead, DCA provided detailed guidance as outlined in paragraphs 24-28 above, which set out clearly the obligations of the Freedom of Information Act, as well as using the various networks, forums and presentations it attended to deliver briefing on the Act.

58. Since June 2004, FOI presentations have been made to top departmental management teams throughout Whitehall. In October 2004, the DCA Permanent Secretary hosted an FOI seminar for Permanent Secretaries across Whitehall and Devolved Administrations. Additionally DCA has provided assistance to departments with their own FOI awareness and training programmes and provided a valuable forum for the DCA to reinforce key messages regarding the need for departments to properly engage with providing adequate training for staff.

It is unclear what level of requests will be faced by public bodies following full implementation on 1 January 2005: will it be a flood of requests or a trickle? It is reasonable to suppose that there are some requests waiting in the pipeline, but only time will tell about the extent of the use of FOI. If an initial flood of requests leads to an unexpectedly large number of complaints, we believe that the DCA must ensure that the Information Commissioner is properly resourced to deal with them. Whether the system is used a great deal or very little, the law requires that all areas of the public service covered by the legislation should be ready on 1 January 2005. We are not confident that adequate preparations have been made to ensure that this will be achieved. (Paragraph 116)

59. The DCA is confident appropriate action had been taken to enable all sectors to be ready for implementation on 1 January 2005. The Government expects that there will be an increase over time in the number of requests for information as people get used to exercising their new rights. As the Committee recognised, there were a number of requests for information from the media and campaign groups which had, understandably, been waiting for the Act to be fully implemented.

60. The DCA agrees that the Information Commissioner's Office needs to have adequate resources to properly discharge its statutory duties – and this applies to the important work the office carries out on Data Protection, as well as FOI. The DCA has recently reached agreement with the ICO on a revised funding arrangement whereby all receipts from data protection notifications will be retained by the ICO, rather than being surrendered in return for a fixed amount of grant-in-aid. This will aid transparency of expenditure on the various elements of the ICO's work and provide a further incentive to the ICO's work in ensuring that all data controllers carry out their statutory responsibility to notify. The ICO's work on FOI will continue to be funded by grant-in-aid and this will be kept under review in the light of the demands put on the organisation – subject to the normal expenditure constraints which govern all public sector organisations.



Published by TSO (The Stationery Office) and available from:

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London, WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

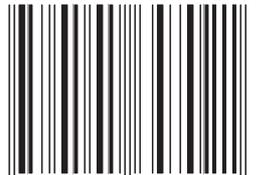
0870 606 5566 Fax 0870 606 5588

TSO Accredited Agents

(see Yellow Pages)

and through good booksellers

ISBN 0-10-164702-6



9 780101 647021