

<b>Title:</b> Use of works for public administration and reporting <b>IA No:</b> BIS0309 <b>Lead department or agency:</b> IPO <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 13/12/12* <b>Stage:</b> Final <b>Source of intervention:</b> Domestic <b>Type of measure:</b> Secondary legislation <b>Contact for enquiries:</b> matt.cope@ipo.gov.uk

<b>Summary: Intervention and Options</b>	<b>RPC:</b> GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year <small>(EANCB on 2009 prices)</small>	In scope of One-In, One-Out?	Measure qualifies as
£13.8m	£0.00m	£0m	No	NA

**What is the problem under consideration? Why is government intervention necessary?**

Public bodies hold vast amounts of information available for inspection by the public. Some will have been submitted by third parties and may be essential to fully understand processes and decisions. This third-party information can be shared in paper copy or viewed on the premises of public bodies, but cannot be shared online without obtaining permission or infringing copyright. Making physical copies is time consuming and costly for public bodies, and they are prevented from publishing this data widely and proactively by the law. It also costs the public, who may have to travel to the relevant body or put in individual requests for information. Intervention is required to make an exception to copyright that allows public bodies to share such data on the internet.

**What are the policy objectives and the intended effects?**

The primary aim of this measure is to allow more information held by public bodies to be made easily accessible to the public. This would mean that material open to public inspection or on an official register – including material submitted by third parties – could be made available online. It would also mean that more materials that the public has a right to access under the FOI Act could be pro-actively made available online. The effect would be reduced admin costs to individuals and public bodies from requesting and responding to requests, and easier access to more complete public information by individuals.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

0) Do nothing

1) Amend the current copyright exception for public administration and reporting to permit the publication of relevant (un-published) third-party documents online.

Option 1 is our preferred option, as it would remove administrative costs to individuals and public bodies, particularly those arising from repeat requests for information. It is not possible to consider any further options as the EU Copyright Directive does not provide any more flexibility to consider further options in addition to the single one proposed. We aim to achieve this without harming the interests of copyright owners by ensuring that the safeguards already present in the Copyright Act and FOI Act, which allow public bodies to copy only to the extent that is necessary and reasonable, are maintained.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 04/2020					
Does implementation go beyond minimum EU requirements?			NO		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
	Yes	Yes	Yes	Yes	Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			<b>Traded:</b> n/a		<b>Non-traded:</b> n/a

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible: SELECT SIGNATORY ..... Date: .....

# Summary: Analysis & Evidence

# Policy Option 1

Description: Amend the current exception for public administration and reporting to permit the publication of relevant documents online

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 13.8	High: 25.8	Best Estimate: 18.9

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	0	0
High	0		0	0
Best Estimate	0		0	0

### Description and scale of key monetised costs by 'main affected groups'

Public bodies will experience costs if they choose to set up a new online records system as a result of this exception. However we have not been able to monetise this due to a lack of available data and evidence. An illustration has been provided on page 6.

### Other key non-monetised costs by 'main affected groups'

Copyright owners are not expected to experience any costs due to safeguards in the exception that ensure it does not undermine commercial sales of copyright works.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	1.6	13.8
High	0		3	25.8
Best Estimate	0		2.2	18.9

### Description and scale of key monetised benefits by 'main affected groups'

Using figures produced by Frontier in their report looking at FOI, the average time saving per FOI of £285 which includes a £290 saving to public bodies and a £5 saving to individuals. Estimates provided by the MOD suggested that roughly 4.5% of all FOI requests relate to third party information that could be provided online with this proposal. Therefore there are potential savings of 4.5% of 168,000 FOI requests at a cost saving of £295 per request giving a best estimate of £2.2m p.a.

### Other key non-monetised benefits by 'main affected groups'

There will be other financial and labour resources outside of FOI requests that would have been spent dealing with this information.

There will be wider benefits than just time-saving benefits. These include members of the public having greater access to official information and evidence about services that affect them. This in turn may give the public greater confidence in the functions of Government and public bodies and the relevant services.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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The current number of FOI requests has been taken from the Ministry of Justice's annual publication of statistics for FOI requests to government departments covering the 2011 year. The estimate for the cost per request have been taken from a study by Frontier Economics (2006) and inflated to 2010 prices. Estimates by MOD of the % of affected FOIs has informed our assumption. A 10% sensitivity analysis has been carried out on the benefit estimates.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.00	Net: 0.00		

# Evidence Base (for summary sheets)

## **Problem under consideration;**

The law currently allows a variety of acts to be performed by government departments and other public bodies without infringing copyright, to enable them to complete their required duties.

Exceptions allow public bodies to copy material that is open to public inspection or on an official register. They allow them to copy these materials and issue copies to the public if they contain information of scientific, technical, commercial or economic interest, or to enable the materials to be accessed at a more convenient time or place. In certain circumstances, public bodies are also able to make copies of unpublished works that have been communicated to them (such as letters) and to issue copies of these to the public.

Although some of these exceptions permit the issuing of copies to the public, this relates only to the issuing of individual copies, for example sending by mail or email. It does not allow copies to be shared on the internet. The copyright in most of the information held by a public body will be owned by that body or the Crown, so this will often not be an issue. But where a public body wishes to make available letters or other materials sent to them by third parties, in order to give a more complete picture of decisions they have made, they may be prevented from doing so by the owners of the copyright in those materials.

We know from various sources that certain public bodies wish to make third party materials available. For example, the Ministry of Defence, in its submission to the Hargreaves Review, noted that it was unable to pro-actively publish third-party reports of UFO sightings online. These are the most frequent requests the MOD receives under the FOI Act, and such reports can legally be copied and issued to the public on an individual basis, but cannot be published online without permission from copyright owners – permission that, in practice, is too costly and time consuming to seek.

A number of public bodies do currently obtain permission to publish documents online from the original copyright owner at the time they submit evidence to the department, for example consultation responses. However this is not practical for all types of third party documents and is only suitable in certain circumstances so there will be still be a large amount of third party material that is not published.

Concerns have also been raised that current restrictions on publication of third-party materials may deny the public access to materials they are entitled to view under FOI in the form they desire.

## **Rationale for intervention;**

Copyright incentivises and rewards the creation of new works, including for example literary works (e.g. letters). It does this by giving creators and producers of creative works the rights to control how they are used and by whom, including the right to seek payment for this use. Copyright thus imposes costs on users and consumers of copyright works to the benefit of creators and producers of them.

Given the inherent costs to users and consumers of copyright works - often creators and producers themselves - certain acts are removed from copyright infringement through specific exceptions. Government agrees with the argument made by the Hargreaves Review that copyright should only restrict useful activity by third parties to the extent necessary to fulfil its fundamental purpose - the provision of incentives to creators. To this end, the Government intends to implement more exceptions to copyright, and widen existing ones, to the extent that EU law permits, and to the extent possible without undermining these incentives.

For the reasons described above, it appears that our current exceptions applying to public bodies unduly restrict activity that would be beneficial to society and could be widened without negative impact on copyright owners.

## **Policy objective**

The primary aim of this measure is to allow more information held by public bodies to be made easily accessible to the public. This would mean that material open to public inspection or on an official register – including material submitted by third parties – could be made available online. It would also mean that more materials the public has a right to access under the FOI Act could be pro-actively made available online. As a result of

the policy it will mean:

- The public will be able to better understand why public bodies have taken certain decisions and more effectively hold the Government to account, as they will have easy access to all documents (from the public body and third parties) relevant to the decision-making process.
- The public will have easier access to information held by public bodies, as more could be made available online (and retrievable via a database search) rather than having to be issued on a per-request basis.
- Public bodies will benefit from administrative savings as they will no longer have to respond to repeat requests for the same information.

We aim to achieve this without harming the interests of copyright owners by ensuring that the safeguards already present in the Copyright Act and FOI Act, which allow public bodies to copy only to the extent that is necessary and reasonable, are maintained.

### **Description of options considered (including do nothing);**

Option 0 - Do nothing

Option 1 - Amend the current copyright exceptions for public administration and reporting to permit the publication of relevant third-party documents online.

It is not possible to consider any other options as the EU Copyright Directive does not provide any flexibility to consider further options in addition to the single one proposed.

#### **Option 0 - Do nothing**

The current copyright exception for public administration and reporting will remain unchanged. This means the public will be able to access data held by public bodies that is generated by that body, either individually or via the internet. They will also be able to access relevant third-party documents on request. But they will not be able to access these third-party documents online.

This would mean members of the public will face barriers to accessing third party materials held by public bodies, as they would face the time and resource costs of requesting this information from the relevant public body.

It also means the relevant public body will face time and resource costs associated with dealing with such requests.

These restrictions conflict with Freedom of Information best practice on pro-active publication, and their costs mean that less information is available to the public than is desirable.

#### **Option 1- Amend the current copyright exception for public administration and reporting to permit the publication of relevant third-party documents online**

This would give public bodies the option to publish relevant third-party documents online, as well as being able to send individually by letter or email. In particular, it would enable proactive publication by public bodies, allowing them to put materials or records that are likely to be of public interest on their websites (in line with FOI best practice).

Pro-active online publication allows members of the public to search for the information they require online rather than formally request it. For material that is repeatedly requested this is expected to reduce admin burdens for both the requester and the public body dealing with it. It will also allow the public to search for and find documents that allow them to understand more about the decisions made by public bodies, which are not currently known to them.

## Costs and Benefits of Option 1:

**Benefits:** The “Independent Review of the impact of the Freedom of Information Act” by Frontier Economics (2006)<sup>1</sup> provides some insight into the costs of handling individual Freedom of Information (FOI) requests, and the overall scale of these costs.

This report estimated the annual volume of requests for information from central government to be 34,000, and from the wider public sector to be 87,000, the total number of FOI requests annually is estimated to be 121,000 and the yearly cost of dealing with these requests to be £35.5 million. It estimates that the average hourly cost to public bodies of responding to FOI requests is £34 and that on average, FOI requests in central government take 7.5 hours to deal with and cost approximately £255 per request (£34\*7.5 =£255). In order to inflate this number to 2011 prices we have used the HM Treasury GDP deflator series<sup>2</sup> to give an approximate cost of £290. (Rounded to the nearest £10).

A more recent publication by the Ministry of Justice ‘Freedom of Information Act 2000 – Statistics on implementation in central government – 2011’<sup>3</sup> (April 2012) shows that since the introduction of the FOI Act in 2005 there has been an increase in the number of FOI requests made to government bodies each year. The report shows that in 2011 central government bodies received a total of 47,141 FOI requests, the report does not detail the number of FOI requests received by the wider public sector. The figure for 2011 shows an increase of 39% on the Frontier Economics estimate for 2006. If it were to be assumed that there would be a similar increase for the wider public sector we could estimate that the overall number of FOI requests would be around 168,000 in 2011.

Assuming the cost per FOI request is £290 (as above) we can estimate the total annual cost of dealing with FOI requests to be approximately £49m.

All public bodies are encouraged to proactively publish information on their websites (Information Commissioner’s Office guidance), so are likely to already have the infrastructure for doing this. The majority of such costs could be removed if frequently-requested documents are made available online. Therefore, by automatically providing the information, hence negating the need to spend time responding to a proportion of these requests, £290 per request would be saved.

There will also be a saving to the members of the public who are sending these FOI requests. If we assume it takes 30 minutes to prepare an FOI request, and using the median hourly wage of all employees as £11.08(2011 ASHE data<sup>4</sup>) the cost saving to the public of such a request can be estimated to be £5 per request. It is unclear what proportion of FOI’s are submitted by individuals compared to businesses. For this reason we have assumed that the benefits of this public exception are for the individual. While a business may submit an FOI it is expected that such requests are in the minority. No evidence was provided at consultation in response to our questions to suggest that this statement is inaccurate and so we are not able to ascertain what proportion should be recognised as a benefit to business.

Therefore there would be a potential saving of £295 per request including both savings to public bodies and members of public. A 10% sensitivity analysis has been applied to this giving a low estimate of £266 and high estimate of £325.

Public bodies will benefit by putting documents online that are frequently requested, removing the need to deal with the same types of request repeatedly. The Ministry of Defence in their response to the Hargreaves consultation explained that in the case of requests to MOD for information on UFO sightings, the volume of work was so high that it took up a significant proportion of the time of a full-time employee.<sup>5</sup> According to MOD figures, they were receiving on average 153 such requests every year that related to third party information, out of a total 3,483 FOI requests per year – 4.4% of all requests.

1 Available at: <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

2 [http://www.hm-treasury.gov.uk/data\\_gdp\\_index.htm](http://www.hm-treasury.gov.uk/data_gdp_index.htm)

3 <http://www.justice.gov.uk/downloads/statistics/mojstats/foi-statistics/foi-stats-bulletin-q4-2011.pdf>

4 Available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-256648>

5 (Available at: [http://www.mod.uk/NR/rdonlyres/A080AF4D-C9AB-4E32-9A34-E4345E294EE4/0/Transfer\\_ufo\\_files\\_NAO.pdf](http://www.mod.uk/NR/rdonlyres/A080AF4D-C9AB-4E32-9A34-E4345E294EE4/0/Transfer_ufo_files_NAO.pdf) ).

We have assumed that all public bodies face similar levels of FOI requests that could be avoided by online publication as the MOD (i.e. have assumed 4.5 %) and have carried out a sensitivity analysis. Bringing in this exception would therefore remove the need to deal with 5,324 requests per year (4.5% x 121,000). Therefore using our cost saving estimates we get:

**Best Estimate: (4.5% \* 168,000) \* £295 = £2.2m per year**

Low Estimate: (3.5% \* 168,000) \* £266 = £1.6m per year

High Estimate: (5.5% \* 168,000) \* £325 = £3.0m per year

At consultation we tested these assumptions and asked for data from more public bodies, particularly with regard to how many third party documents are requested. However no further information or case studies were provided. We do not consider it possible or proportionate to carry out more work to confirm these assumptions. We have assumed that the majority of information benefiting from this exception would be covered under FOI. There may be instances where data can be made public that would otherwise not be requested under FOI and occasions where data may be put into a more formal register. This suggests that there could be additional benefits that we are unable to quantify.

There will also be wider benefits, not just time-saving benefits, to members of the public who will now have greater access to official information and evidence about services that affect them. The Impact Assessment for Extending the Coverage of Freedom of Information Act 2000<sup>6</sup> (assessed the benefits to the public of providing more access to information as “ensuring greater public scrutiny (including from private individuals, journalists and businesses). As a result, the public may gain greater confidence in the functions these government bodies perform or public services they provide, better informing the public debate. This may generate direct economic welfare benefits for society. There may be further economic welfare benefits if, as a result of being brought within the Act, public bodies operate in ways which are more defensible to public scrutiny and which accord more closely to the preferences of society.”

This option is supported by the Information Commissioners Office (ICO) which detailed some potential benefits in its consultation response although they have no evidence on the magnitude of the costs and benefits. The ICO anticipates that this exception would have the benefit of promoting openness and accountability of public bodies. The ICO recognises that in some cases third party information influences decisions made by public authorities and that in such cases it is in the public interest to make this information available.

The ICO also notes that this exception would allow public authorities to fully publish disclosure logs (lists of FOI requests and the accompanying responses) which may reduce the number of requests for similar information.

There was also support from organisations including ITV, British Screen Advisory Council and Consumer Focus which confirmed what was said by the ICO about the accountability of government bodies, they also mentioned the need to bring this exception up to date with the ‘digital age’. We also received supportive comments from organisations representing libraries and archives, including the National Museum Directors’ Conference and the Libraries and Archives Copyright Alliance, along with the Tate, University of Reading and the Cambridge University.

## **Costs:**

In the consultation response submitted by the ICO, it was acknowledged that making more information readily available may prompt an increase in FOI request; although the ICO does suggest that it would be possible that such requests would be better-focussed enabling public bodies to deal with them more quickly.

There were some respondents who were concerned that this exception may result in publication of material that is currently only available to purchase or license and several respondents thought the proposal contravened the three step test. However, Copyright owners are not expected to experience any costs due to safeguards in the exception that ensure it does not undermine commercial sales of copyright works. There will be no costs to members of the public who would currently need to request FOIs which incurs costs in terms of time and also postage. Therefore all costs will be borne by Government and public bodies in implementing a system of making all documents publicly available.

<sup>6</sup> Available at: <http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/extending-foi-ia?view=Binary>

It is not possible to estimate the totality of the costs for if all public bodies were to launch a new public service because we are unable to estimate whether, or how many, other Government departments and other public bodies will want to create online records systems and how they will want to go about it. No further information was provided during the consultation in order to improve these estimates and we do not consider it to be either possible or proportional to gather more information on this.

However we have illustrated what the costs could be for a single new public records service using estimates calculated in the Impact Assessment of Amending the Patents Act to provide for online patent document inspections<sup>7</sup>.

When the online patent file inspection system was set up, the Intellectual Property Office (IPO) estimated the one-off cost of setting up such a system to be £55,000, annual costs to be £13,000 based on IT development costs and testing costs. These costs are conservative costs as all public bodies are encouraged to proactively publish information on their websites (Information Commissioner's Office guidance), so are likely to already have the infrastructure for doing this and would therefore experience lower costs. It is not possible to extrapolate these costs across all government departments and public bodies as it will be dependent on the size of department and the level of third party information it holds.

### **Risks and assumptions;**

We have assumed that this exception will have no impact on sales of copyright works. This is because the current exception only permits public bodies to copy and issue third-party materials if they are unpublished, and to the degree that is necessary. So if someone sought access to a scientific journal held by Government in order to understand a decision that it had been used to support, they would be directed to the published journal, and the relevant department would not be able to publish this journal itself online. Primarily, therefore, this exception will permit the publication of letters, unpublished third-party reports, etc., to the extent necessary under FOI and other legislation.

### **Direct Costs and Benefits to Business Calculations (following OIOO methodology)**

Under the "One In, One Out" rule, whereby a measure that has a net cost to business must have a measure or measures of equivalent cost removed in order to be implemented. Our preferred option has no costs or benefits to business, only to public sector bodies, therefore this measure is out of scope as was recommended by the RPC opinion dated 17/11/2011

### **Wider impacts;**

As well as bringing efficiency and cost savings, amending this exception will deliver benefits to the public by supporting pro-active publication of information by public bodies and enabling more effective public scrutiny.

### **Summary**

The benefits of introducing this exception would be the reduction in administrative costs incurred by public authorities, members of the public would also experience savings as more information would be readily available online reducing the need for making formal FOI requests. Also of benefit is the increased openness that this could potentially bring about, so improving the relationship between the general public and government.

### **Preferred Option**

Option 1.

## Evaluation

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the copyright reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured, which will depend on the type of benefit, as some benefits will be measured by applications and take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the copyright system, as well as research that is commissioned in order to measure the benefits.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the copyright reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

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\*Note:

This Impact Assessment (IA), which is one of a series of IAs concerning copyright exceptions, was originally published in December 2012 alongside the policy statement “Modernising Copyright”. It was republished to accompany the publication of the secondary legislation that implements the chosen options set out in the IAs. Since the original publication of the IAs the Government has engaged extensively with stakeholders both formally (through a technical review of the draft legislation) and informally. No new evidence has been provided that has led the Government to alter the overall numerical assessment of the costs and benefits contained within this IA.